tlp - news

November 2008 — The monthly newsletter of The Long Partnership — www.thelongpartnership.co.uk

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Quote

For time and the world do not stand still. Change is the law of life. And those who look only to the past or the present are certain to miss the future

John F. Kennedy

November Dates:

Tue/Wed - Alan & Helen in Thurso

12-14 Mairi in Thurso

22 Alan & Helen at CIOT Stirling Tax Conference

27 Alan in Westray

How do you decide what you need to do next? Each month we have to make the decision to sit down and produce our little ol' newsletter. Not that we have any reservations about putting finger to keyboard but there are always plenty of other demands on our time. However, we know that our little effort is appreciated because of the number of times we hear these words "I was reading in your newsletter….." which is usually followed by a question. Sometimes it seems a little surprising that anyone should want to read it, but we even have other accountants on our mailing list, honest!

When we started we did not know where it would go or if it would be appreciated. We knew we would be putting our heads above the parapet and someone (hopefully not you) would take shots at us. But we did it and, now that we have reached our twelfth edition, we are one year old, it looks as if it will be a permanent feature. Will it run as long as The Orcadian which celebrated 150 years not long ago? Who knows, but your esteemed author is unlikely to be caring by then.

Anyway, getting back to the original question. How do you prioritise? Do you do the things you like first, or do you leave them till last? You know what you should do next, don't you? It is the thing that makes the most ground in your progression to reaching your primary goal, whatever that may be. It may not necessarily make you the most popular person in the short term, but how else are you going to get where you want to be in a reasonable time.

If we asked you how we should get from Kirkwall to Inverness, you would tell us which road to use, which ferry to catch etc.

Knowing that, we would take action to travel that way.

Anyone in the car who does not want to go to Inverness should get out now. Can you see where we are going with this?

If getting to Inverness is our primary goal and that is what we most wanted to achieve, why would we go to Shetland or Tongue or Ullapool, nice though they may be.

But, let's pose another question. We say we want to go to Inverness, but is that what we really truly want to do. Do our words convey what we really mean. Maybe we have underlying feelings that are not obvious. Deep inside, something within has a different set of priorities, and that involves going west to Tongue and down to Ullapool. Have you clearly identified your primary goals. So, what motivates you? What drives you on, and where are you going? Do you know?

The brain can be likened to a ship. Conscious thought is your captain while the crew is your subconscious. How often have you decided to do something with your head but you could not stick to it, your crew mutinied, or just went to sleep and ignored the ever more frustrated captain who then just gave up.

The captain can say whatever he wants but without a willing crew nothing will happen. So, how do you get a happy crew? Maybe we should ask the crews crossing the Pentland Firth every day this winter. Surely it must in large part be that the crew and the captain have a common goal. Here it is their livelihood and they all have to work together to ensure the ferry prospers and provides them with secure employment.

How do you ensure that your own personal captain and crew have common goals? Surely it must have a lot to do with being honest, not just with other people, but also with yourself. Identifying the values that are really important to you and staying true to them every day.

In many respects people of strong faith have an advantage here. While the basis of that faith is usually a set of principals that almost anyone can sign up to, they also have a code or set of life rules to make it easy to keep to them. The rest of us have to muddle through life picking up principles and finding our own set of values as best we can. Food for thought.

Alan, Helen and the team at TLP

Warning : buy-to-let investors

Buy-to-let investors must keep accurate records or face inspection from the taxman's newly empowered inspectors.

HMRC is increasing its efforts to recoup lost revenue as a result of landlords either making accidental errors on their tax returns or deliberately evading the payment of levies on rental income.

As part of a new initiative to identify untaxed rental income and gains, information routinely gathered from local government authorities, letting agents and the Revenue's stamp taxes office will be 'data matched' to identify individuals who have not made the appropriate returns.

With effect from 1 April 2009, if HMRC suspect a landlord has untaxed rental income and gains, officers will have the power to inspect business records at premises. For an individual landlord this could include his or her private residence.

Landlords need to be aware that HMRC has new inspection powers for visiting business premises to look at records and these powers are expected to take effect from next April. Landlords should therefore keep business and private records separately to avoid an Inspector seeing personal records that they have no right to.

Landlords, like businesses, must keep records of property income and expenses for at least six years after the tax year to which they apply.

A quick and easy way

……….. to save NICs!!

Have you explored how to use pensions to cut the tax bill on wages and salaries?

Under what are known as "salary sacrifice" schemes, it is possible to save up to 23.8% in National Insurance contributions on the pension contributions made. These savings can, of course, be shared between you and your staff so that everybody is better off.

Get in touch to discuss how this might benefit you.

A topical issue for the Credit Crunch - Redundancy or given the sack!

An employment relationship can end for a variety of reasons. It is worth examining the most frequent of these, looking at the tax treatment as it affects both employee and employer.

1. Termination by resignation

Where an employee resigns there will normally be no compensation payment in respect of the termination of the employment relationship, but the matter of notice may be in play.

If he serves his notice, all payments including wages or salary, overtime, holiday pay, bonuses, etc. will be subject to the deduction of tax and National Insurance contributions under the PAYE regime as normal.

If he does not serve out his notice period, he may either be asked to go on 'garden leave' or be paid an amount in lieu of the period, and cease employment immediately thereafter.

Garden leave: All payments to the employee remain subject to deductions under PAYE as if he had continued to attend the office.

***Payment in lieu of notice*:** A PILON which flows from a term of the contract of employment will be subject to the deduction of tax and NICs as they fall within the definition of 'earnings' as prescribed by ITEPA 2003, s 62.

It is important to mention at this point that the absence of a contractual right to a PILON will not in all cases be a defence from an attack by HMRC, who have in the past sought to tax as earnings payments made on termination of employment where the employer has a 'custom and practice' of making such payments on the cessation of employment i.e. where there is a reasonable expectation on the part of an employee that he will receive a PILON instead of being allowed to work out his notice period.

Termination by dismissal for poor performance or gross misconduct

If the employee is served with notice to terminate the contract of employment, and they serve out their notice, then PAYE will flow as discussed above.

In reality, however, most dismissals of this nature are followed by either a period of garden leave or the making of a PILON which may or may not be taxable (see above).

If a PILON clause exists and the employer does not allow the employee to serve out the notice period, a breach of contract will have occurred and any subsequent compensation payment will not be treated as earnings but will still be taxed under ITEPA 2003, s 401.

In the event of gross misconduct leading to a summary dismissal, there will normally be no provision within the contract for a PILON and the employer will not be obliged to compensate the employee for the termination of the employment relationship.

Any payment made on termination will therefore be deemed to be earnings, unless there is an argument for damages related to a failure to comply with the aforementioned procedures under Employment Relations Act 2004, in which case taxation under s 401 will be triggered.

Termination by mutual agreement

In exceptional circumstances, an argument may be made for the agreement by both parties to the mutual termination of the contract of employment.

The possible reasons for this are many and varied and may be outside the scope of this article. Where these occur, any payment made on the cessation of the employment will require careful analysis before a decision is made on how the payment should be treated.

Redundancies

Put simply, where an employment relationship is terminated by redundancy as defined by the Employment Rights Act 1996, s 139, a redundancy payment may follow. An employee will qualify for statutory redundancy payment if he has the required minimum of two years' service which is not taxed as earnings in the usual way but may still be taxable.

Any payment in respect of restrictive covenants, holiday, terminal bonuses, et al, will remain taxable as contractual payments. Restrictive undertakings that are to be linked to the payment on termination will also be subject to tax.

Tax planning opportunities

There are a number of ways in which an employer can mitigate the costs of a payment on termination of employment, as certain types of payments that might be made when an employment ends are exempt from taxation. Consider:

- making of payments in respect of removal costs that arise as a result of a change or termination of duties.
- Payments on death or disability.
- Payment by the employer of contributions to a tax exempt pension scheme.
- Foreign service deduction.
- Making use of the £30000 tax exemption on certain termination payments.

Come and speak to us if this might affect you.

Have you borrowed money from your company? You may have to pay tax!

Directors commonly borrow funds from their companies either by way of loan or alternatively by drawing money from the company which makes their account with the company overdrawn. What are the various tax implications in these situations?

Company law

To give an overview – it is not possible for a company to make a loan to a director or indeed to provide a guarantee or security in respect of a loan without approval by way of a resolution from the members of the company. If this is your own company this may not have been documented. Naturally there are a number of exceptions, for example providing funds to the director to enable him to meet expenditure incurred by the company.

Consequences of loans to directors

Both the director and the company suffer tax consequences of loans being made or indeed written off. Some of you will have heard us talk about Section 419 which is actually Section 419 TA 1988.

The director's tax position

The cash equivalent of the loan is treated as earnings for that year subject to a number of exceptions. e.g. where interest on the loan would actually qualify for tax relief. This is effectively the interest that the director has saved by obtaining funds from the company instead of from a commercial lender.

The benefit does not need to be reported if the loan is less that £5000. Additionally, expense advances are ignored provided the maximum amount outstanding does not exceed £1,000, the advances are spent within six months and the employee makes regular accounts to his employer evidencing the expenditure.

Calculation of the benefit in kind

There is a benefit if the interest actually paid by the director is less than 6.25% (a rate published and updated regularly by HMRC). The benefit is reportable on the employer's form P11D for the year and Class 1A National Insurance contributions are payable by the employer at 12.8% on the "interest". The director enters this on their own tax return and pays income tax on it.

Loans subsequently written off

Generally, the amount written off is taxable as income in the year it is written off. However for controlling director/shareholders special rules apply preventing the company from having a deduction against Corporation Tax and treating the amount written off as a dividend. National Insurance contributions are payable on any amount written off whether treated as salary or dividend.

The company's tax position - the charge under section 419

Additionally, there are generally tax implications for any small company with director/shareholders. The company must notify HMRC within twelve months and pay a 25% tax charge on the amount of the loan or indeed the balance of the overdrawn loan account if one exists. The tax is payable nine months after the end of the accounting period in which the loan is advanced unless the loan is repaid prior to this date.

It is possible for companies to claim a repayment of this s 419 tax if the loan is subsequently repaid. It is effectively an interest free loan to HMRC.

Company filing deadlines

All change next year!

... and it is going to be painful!

The time limit for filing limited company accounts at Companies House is coming down from 10 months to 9 for accounting periods beginning on or after 6 April 2008.

This will generally mean that the first companies to be affected will be those with an accounting date of 30 April and the first accounts affected will be those for the year ended 30 April 2009.

The penalties for late filing are also changing **from 1 February 2009** and any accounts filed late from that date will suffer much higher penalties, so make sure you do not get caught out or it will cost you.

Less than 1 month late - £150

From 1 to 3 months late - £375

From 3 to 6 months late - £750

More than 6 months late - £1500

A further penalty will also shortly be added - if you are late for 2 consecutive accounts the second penalty will be doubled, ouch!

Pensions……

...can still be a good investment

Have you made the most of your opportunities to save tax by investing in a personal pension?

Subject to certain limits, pension contributions made personally are tax allowable - which means that the effective cost may be as little as 60p to invest £1 in a pension. If you don't provide for your retirement, who else will?

Have you reviewed your pension arrangements recently?

April 2006 saw the introduction of new Pensions regulations which increase the amounts that can be invested in a pension fund, broaden the rules on what the pension scheme can invest in and relax the rules on retirement.

We do not provide investment advice but we know some people who can. We have local contacts and also ones in Edinburgh and Glasgow. Just get in touch and we will arrange for them to contact you.

Tax Planning Tips and Tricks….

Timing

If you are about to invest in a new car, computer or any other business equipment, have you considered the best time to buy them and the best way to pay for them?

You will get tax relief a lot quicker if you make the investment shortly before rather than shortly after your business year-end.

From April 2008, first year allowances are replaced by a 100% annual investment allowance of £50,000 on most plant and machinery.

Making the most of losses

If your business has made losses, have you made sure that those losses are being used to reduce your current tax bills by as much as possible?

If you are self employed it may be possible to set off the losses against your other income, or even against income from earlier years (if you've just started trading). It may also be possible to use the losses to reduce your National Insurance bills.

The loss available may be restricted for non-active sole-traders and partners and professional advice should be taken.

If your company has not prospered and is about to cease trading, you may qualify for tax relief. Going out of business could get you a tax refund, especially if you speak to us beforehand.

Best rate of tax for companies

If you run a very profitable limited company, have you done everything possible to make sure that your profits are taxed at 21% or 28%, instead of 29.75%?

Companies with profits of up to £300,000 are taxed at 21% from April 2008, while for profits of more than £1.5m the tax rate is 28% from April 2008. But for profits of between £300,001 and £1.5m, the tax rate effectively jumps up to a staggering 29.75% for the financial year to 31 March 2009.

You can't usually get round this by setting up lots of companies in an attempt to keep them all paying the lowest rates of corporation tax, since there are "associated companies" rules designed to make that impossible. Professional advice should always be taken.

A review of expenses and how profits are taken out of the company can significantly reduce this tax bill.

VAT Registration

If you are not already registered for VAT, do you have a system for making sure that you are still entitled to stay non VAT registered?

If your sales in the previous 12 months are more than £67,000 then you MUST register for VAT immediately. So our advice is to set up a system for monitoring your 12 monthly cumulative sales every single month.

VAT Flat Rate Schemes

If your sales (excluding VAT) are less than £150,000, have you considered switching to the flat rate VAT accounting scheme?

Under the flat rate VAT scheme smaller businesses do not need to calculate the VAT liability from invoices received and issued. Instead they are allowed to pay VAT as a flat rate percentage of their sales.

Not only could this scheme be simpler to administer, but it could also result in you paying less VAT. But it could cost you more – so proper advice is essential.

VAT Cash Accounting

If your sales are less than £1.35m a year, are you making VAT potentially much easier and cheaper for your business by making the most of the cash accounting scheme or the annual accounting scheme?

Many businesses find that annual VAT accounting saves them a lot of time, and cash accounting dramatically improves their cash flow. So, both are well worth exploring.

Tax Deductible Business Gifts

Have you considered making greater use of business gifts as a marketing tool?

The cost of business gifts is tax deductible for the business if the gift (a) contains a conspicuous advert for your business, and (b) is NOT food, drink, tobacco or tokens or vouchers exchangeable for goods, and (c) does not amount to more than £50 per person a year.

Partnership with your spouse

If you are a sole trader, have you considered taking your spouse into partnership?

Care must be taken to ensure that your spouse's share of profits is not disproportionate to their share of involvement, and it must be run as a genuine partnership (e.g. both names on bank accounts, stationery, etc).