

BUSINESS UPDATE

HMRC pursue unlawful dividends

Over recent years, HMRC have become increasingly interested in the company law elements of dividends. This is mainly due to the fact that running a business through a company and taking the profit as dividends can create substantial savings. Introducing family members as shareholders can effectively double up on these savings.

Even with the proposed changes to the tax system from next year, including the 50% additional rate and a corporation tax (CT) rate of 22% for small companies, there are still savings to be made.

The taxman cometh...

From 1 April 2010 officers of HM Revenue and Customs (HMRC) have significant new powers to obtain information from taxpayers and to carry out inspections of business premises. We have a factsheet on this subject which outlines those powers and the rights of taxpayers. If you would like a copy call Bev Waters on 01483 416232 or email her on bwaters@roffeswayne.com.



Consider Anthony, who makes annual profits of £300,000 and his year end is 31 March. A comparison of his position as a sole trader or if he incorporates at the start of the 2010/11 tax year (taking a salary equivalent to the nil rate NIC threshold and the balance as dividend and using figures for 2009/10 where appropriate) is as follows:

2010/11		As company	
Profits before salary if incorporated			£ 300,000
Salary			5,715
Dividends if incorporated			229,542
Taxes payable:			
As sole trader	£	As company	£
Income tax	127,520	Income tax on salary	1,143
NI	5,739	NI on salary	Nil
		Tax on dividends	61,332
		CT @ 22%	64,743
Total	133,259	Total	127,218
Extra taxes payable if unincorporated		£6,041	

However, if HMRC can show that the dividends were unlawful from a company law perspective at the time of payment, then they will argue that the money extracted was not a dividend but a loan.

For many owner managed companies, this would result in;

- a 25% corporation tax bill for the company on the amount treated as a loan and
- a benefit on the director shareholder, on the use of the monies, calculated currently at

- 4.75% for each tax year the loan is outstanding; and
- an employer NI charge on the taxable benefit for each tax year.

Overall this may result in more tax than a dividend, especially if the loan remains outstanding for some time.

Further in a recent case, the taxpayers entered into a particular corporate structure which, if it worked, mitigated the corporation tax bill greatly. HMRC said that this structure did not work. However, the companies involved did not have enough money to pay the corporation tax.

HMRC then looked back in time and saw that the owners had extracted a lot of the profit over the years as dividends. So HMRC attempted to use company law to make the owners repay the dividends on the basis that they had been paid unlawfully... which would then leave the companies involved with money to pay the corporation tax. Sneaky!

HMRC won the first two rounds of this case. Although they have lost the latest round, it just goes to show how important dotting the 'i's and crossing the 't's can be and that for companies on an ongoing basis, they need to ensure there are enough reserves at the time of paying the dividend to cover it.

If you have any concerns please do not hesitate to get in touch with Linda Warner on 01483 416232 or lwarner@roffeswayne.com.

Client focus



Robinson Buckley

Robinson Buckley Insurance Brokers Limited is an independent commercial insurance brokerage based in Godalming. Their business is 90%+ commercial insurance and clients range from local to national and international businesses including, among many others, a wide variety of professionals, manufacturing companies, property owners, marinas and boatyards, motor traders, hotels and information technology industries.

The business was founded in Guildford in 1977 by Jim and Clare Robinson and Tony Buckley. After more than 30 successful years the founders decided it was time for the new management team to continue to grow the business. They sold their shareholdings in August 2009 to existing directors Alan Strudwick and John Lanning and former Company Secretary Carol Aston.

Managing Director, Graham Tomlinson, first contacted Roffe Swayne when he needed help to understand the process for buying out the shareholders. He also needed to know how to structure the management buyout in a tax efficient way which would benefit both the exiting and the incoming shareholders.

With the assistance of Roffe Swayne's managing partner, Sharon Ward, a price was agreed for the shares and a buy out structure was put in place. This achieved the shareholders the management team wanted whilst minimizing the tax payable by all concerned. The Roffe Swayne company secretarial team and tax team provided support throughout the transaction. This included obtaining HMRC's agreement to the structure of the buyout as well as setting up a new holding company and dealing with various share exchanges and share issues.

Graham Tomlinson said "The work carried out by the Roffe Swayne team helped us achieve exactly what we wanted in the management buyout. They explained everything clearly so we understood potentially complex matters. This was particularly important as none of us are accountants! They were there with us, holding our hand through every step of the transaction, making a potentially stressful process relatively pain free. We are now in a strong position to see the business through another successful 30 years".

To find out more about Robinson Buckley visit the website at www.robinsombuckley.co.uk

Above from left to right: John Lanning, Alan Strudwick, Sharon Ward, Carol Aston and Graham Tomlinson MD.

A change in the Status Quo?

For many years, HMRC have been concerned that individuals are correctly classified as employed or self-employed. Usually, there are more taxes payable overall if the individual is classed as an employee. Also, employees generally obtain more statutory protections than the self-employed because of a variety of employment law legislation which includes for example, Statutory Sick and Maternity pay.

Clearly, for these and other commercial reasons, such as flexibility, many employers would rather the people that they pay work for them on a self-employed basis. The construction industry, whilst not alone, is a business sector which sees a great deal of work conducted by self-employed subcontractors.

The government has decided that the best way to address this issue, which they refer to as 'false self-employment in the construction industry', is to introduce legislation which deems workers within the construction industry to be taxed as employees unless one of three criteria is met.

HMRC comment: 'Where both the worker and the engager decide that self-employed status is the desired outcome, then it is very challenging for HMRC to build a full and accurate picture of the true terms of the engagement. As a result, demonstrating any mismatch between the contract and the reality can be difficult and time-consuming. Or, if there is no written contract in place, establishing the actual terms of the engagement can also be problematic.'

The criteria

The government believes that the following three criteria are reliable indicators, within the context of the construction industry, of a worker being in receipt of self-employment income:

- Provision of plant and equipment – that a person provides the plant and equipment required for the job they have been engaged to carry out. This will exclude the tools of the trade which it is normal and traditional in the industry for individuals to provide for themselves to do their job.





Scrappage scheme extension

The government scheme, which offers a £2,000 discount on certain new vehicle purchases, funded partly from the government and partly by motor manufacturers, has had a further £100 million injection. The scheme is still destined to end on 28 February 2010, whether or not funding is still available, so now is the time to act. Further, the original requirement that only the trade in of vehicles registered by 31 August 1999 could qualify has been amended to allow cars registered by 29 February 2000 to qualify. A van now qualifies, where registered by 28 February 2002.

Roffe Swayne supports local appeal

Roffe Swayne has joined other local businesses in making a donation to help replace graves recently desecrated in Eashing Cemetery in Godalming. Vandals attacked the cemetery in November and destroyed 12 headstones. The Surrey Advertiser is leading the appeal to replace the memorials and has already raised over £600. Anyone wishing to contribute should contact Joanna Till at the Surrey Advertiser on 01483 508901.

Managing partner Sharon Ward said: "Being a local company and having local staff and local clients, we wanted to do something positive to help because we all feel strongly about the shocking vandalism."

- Provision of all materials – that a person provides all materials required to complete a job.
- Provision of other workers – that a person provides other workers to carry out operations under the contract and is responsible for paying them.

A worker will have to meet one or more of these three criteria in order not to be deemed to be in receipt of employment income. If the worker is deemed to be in receipt of employment income, PAYE will be due on the payment he receives. The person who makes the payment to the worker will have the obligation to apply the statutory criteria.

We will keep you informed of the progress of these proposals but in the meantime please contact Kerena Allen on 01483 416232 or kallen@roffeswayne.com if you need further information on status issues.

A new system for dealing with disputes with the taxman

It has always been a fundamental part of the UK tax system that there should be a way in which the taxpayer can dispute decisions made by the taxman. For nearly 200 years that has been via the Special Commissioners and General Commissioners.

The Special Commissioners were individuals with a tax legal background who generally heard the more complex cases either in London or one of the main cities in the UK. The General Commissioners on the other hand were laymen – much like the tax equivalent of magistrates. They sat in local areas known as 'divisions' of which there were several hundred around the country.

When VAT was introduced a parallel body – the VAT Tribunal – was set up to deal with disputes with Customs and Excise.

Appeals by taxpayers could be heard by either type of Commissioner and the losing party had the right to have the appeal heard on a question of law by the High Court and then higher courts if appropriate. From these decisions comes a large body of case law which helps to interpret the tax legislation.

On 1 April 2009 all of this changed with the introduction of a new tribunal system. The bodies of General and Special Commissioners and the VAT Tribunal have been abolished and replaced by what is known as the Tax Chamber in the First-tier Tribunal. This has an administrative base in Birmingham but appeals will be heard in a number of centres around the country.

The losing party in the First-tier Tribunal will be able to appeal to the Upper Tribunal which has a status equivalent to the High Court. The right of the taxpayer to appeal a decision made by HMRC remains enshrined in the new system. Such appeals will be made to the Tribunal which will deal with more routine matters by simply looking at written evidence and producing a decision.

Only more contentious matters will be dealt with by a formal hearing.

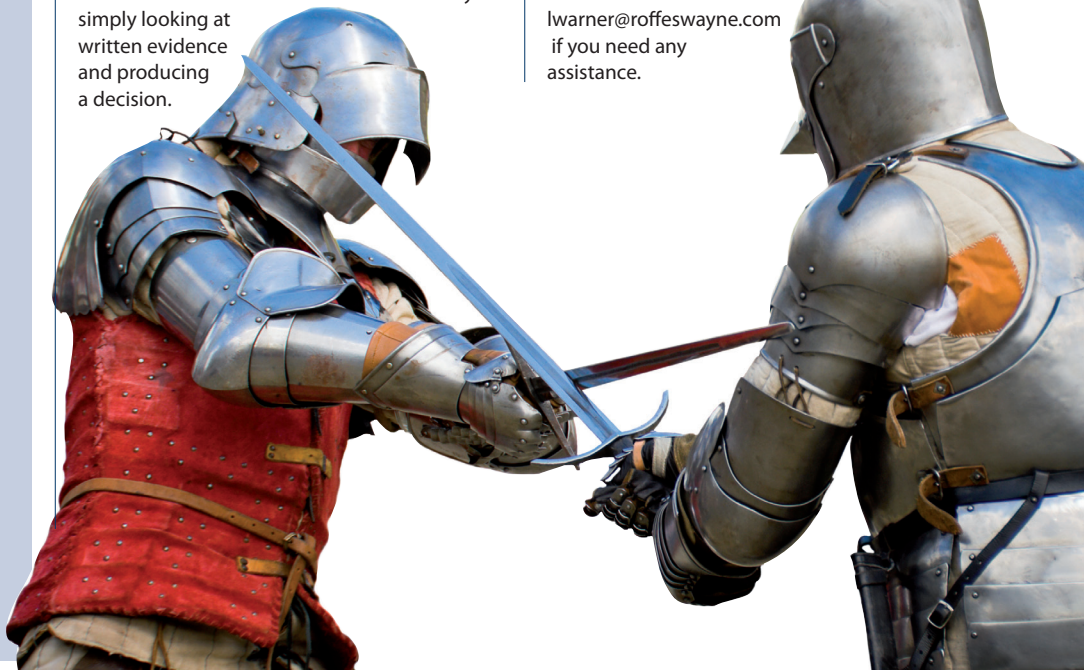
Issues of costs and formality could put people off deciding to appeal, allowing HMRC to win an argument by default. To avoid this happening HMRC has been required by law to introduce a new review system to come into play when an appeal is made.

When an officer of HMRC has made a formal decision, the taxpayer will have the right to appeal against that decision as before but, in addition, the taxpayer will be able to ask for a review of the decision. This will be carried out by another HMRC officer who is not connected to the officer who made the original decision. That officer will generally have 45 days in which to carry out the review and can either agree the original decision or decide to change it in some way. If they uphold the original decision then the taxpayer has a further 30 days to advise the Tribunal that they wish the appeal to be considered.

HMRC have gone to great pains to try to make the system as impartial as possible. They are creating separate review teams who will sit outside the normal taxpayer contact and will not be part of the line management system in the tax office. They have been given detailed guidance on how to carry out the review and that guidance is available for all to see on the HMRC website. It certainly envisages that the taxpayer should have the right to present further evidence and meet the review officer to discuss the case.

Inevitably the new system will take time to bed down and it will be closely scrutinised both by HMRC and by professional bodies to ensure that it is really working and that taxpayers' rights are protected.

Please call Linda Warner on 01483 416232 or lwarner@roffeswayne.com if you need any assistance.



Your contacts

Partners and Associates

Richard Edmondson, Chris Baxter,
Mark Leigh, Sharon Ward, Jeremy Gardner,
John Fisher, Elaine Way, Tony Kelly,
Linda Warner, Liz Beadsley, Helen Kay,
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Roffe Swayne Seminars

Sage Hints & Tips Seminar – Sage HR and Payroll

24 February 2010 - 12.30

This workshop is designed to help existing Sage 50 software users get more from their system. It will be led by Richard Shelton from Sage UK.

VAT for Charities

25 February 2010 – 5.30pm

A seminar led by Roffe Swayne VAT expert David Moll covering all aspects of VAT that needs to be considered by charities.

Have you got everything in order for your company year end?

10 March 2010 – 12.30pm to 1.30pm

A seminar led by our Tax Partner Linda Warner which will cover all aspects of preparation for your company year end.

All seminars will be held at Ashcombe Court.

If you would like further information on any of the above seminars or would like to reserve a space please phone Jane Steel on 01483 416232 or email her on jsteel@roffeswayne.com



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Crossing the VAT channel

A package of measures is being introduced to 'simplify' and modernise the VAT system for cross-border trading and to counter fraud with effect from 1 January 2010 across the EU.

Who will be affected by the changes?

The changes will affect all businesses:

- supplying services to overseas businesses
- receiving services from overseas businesses
- supplying goods to other EU countries
- that want to reclaim VAT incurred in another EU country.

The measures include changes to:

- the basic place of supply of services rules
- the European Sales List (ESL) reporting requirements
- the refund procedure for VAT incurred in other EU Member States.

Place of supply of services rules

Changes will be made to the complex rules on the place of supply of services rules which determine the country where a supply of services is made and where any VAT due is payable. The rules also determine, if VAT is due on a supply, whether it should be accounted for by the supplier or their business customer.

The change is that, as far as possible for business to business supplies, VAT will be due in the country where the customer is based, as opposed to the current rule of where the supplier is based.

The basic rule for supplies to non-business customers will remain unchanged in that it will be where the supplier is based. As now, there will be exceptions to these general rules but not necessarily the same exceptions, so it will be vital for any business involved in cross border services to review their position.

The changes will be phased in over the next few years commencing 1 January 2010.

EC Sales Lists for services

UK VAT registered businesses that supply services to EU VAT registered businesses, where the place of supply is the customer's country, will have to complete ESLs for each calendar quarter and submit these within 14 days for paper returns and 21 days for electronic returns. This means businesses will need to start collecting their customers' VAT registration numbers now.

EC Sales Lists for goods

UK VAT registered businesses that supply goods to other VAT registered businesses in other EU countries already submit ESLs. However from 1 January 2010 new rules will:

- reduce the time available to submit ESLs from the current 42 days in line with the limits above
- require the monthly submission of ESLs where the value of the supplies of intra-Community goods (excluding VAT) exceeds £70,000 in the current quarter, or any of the previous four quarters. This threshold will be reduced to £35,000 (excluding VAT) with effect from 1 January 2012.

VAT refund procedures

A new electronic VAT refund procedure is being introduced across the EU from 1 January 2010 to replace the current paper based system.

From that date UK businesses which are entitled to a refund of VAT paid in another EU member state will submit refund claims electronically on a standard form to HMRC rather than direct to the Member State where the VAT was suffered.

For advice or a review on how these and other VAT changes may affect your business, please do contact our VAT expert David Moll on 01483 416232 or dmoll@roffeswayne.com.

Christmas card donation

As in previous years, the partners have made a donation to three local charities instead of sending Christmas cards to our clients and contacts.

The charities, nominated by members of staff, are Phyllis Tuckwell Hospice, Guildford and Waverley Cruse Bereavement Care and GUTS.

Newsletters by email

This newsletter is available in digital format and has been sent to all our contacts for whom we have an email address. If you no longer require a paper copy please call Bev Waters on 01483 416232 or email her on bwaters@roffeswayne.com

