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Arctic Systems: what next for family companies?

Earlier this year, the House of Lords passed judgement on a crucial tax case involving husband and wife business Arctic Systems, finding in favour of the taxpayer, Mr Jones. Shortly after the ruling, the Government announced that it intended to make changes to the law in order to prevent people from splitting their income in what it perceives to be an 'unfair manner'.

Even before the ruling, the 2007 Budget had announced its business tax reform objective to maintain the fairness of the tax system by ensuring that people engaged in similar economic activities pay broadly the same overall level of tax and national insurance contributions, regardless of the legal form they choose for their business. Rather ominously, it introduced the concept of 'extracting labour income in the form of dividends'.

In the 2007 Pre-Budget Report, the Government announced that it will be consulting on draft legislation to address income shifting, to come into effect from 2008/09. The legislation will work alongside the existing rules on business deductions and settlements, and will seek to remove the tax advantage obtained from income shifting. It will only apply when the income is in the form of distributions from a company (dividends) or partnership profit. Income from employment, interest on savings and any other source will not be affected.

Some points to consider

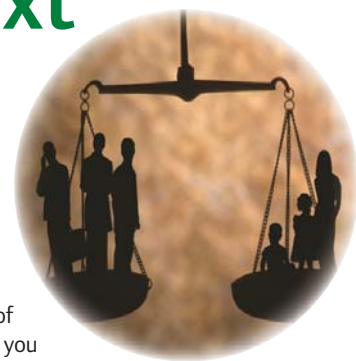
If you and your spouse or civil partner are both actively involved in running the business, and the ownership split is a commercial arrangement, you should have little to worry about. If you and your spouse or civil partner own all the shares in your limited company, you may want to consider taking some precautions to ensure that your arrangements are as watertight as possible. This may include the following:

- You should both be appointed as directors of the company. This means that you are both responsible for the running of the company, so collectively you can make important decisions such as how much dividend to pay, or which contracts to take on. You should document all of these decisions so that you can prove to HM Revenue & Customs that you were both actively involved in making them
- Make sure that you and your spouse or civil partner both hold ordinary shares in the company and that the rights attached to those shares are not restricted in any way
- Follow the correct procedure when paying dividends to ensure they cannot be reclassified as loans. The directors need to check there are enough profits (after tax) in the company to pay the dividend and suggest an amount to pay, and then the shareholders can vote on whether to pay it out. Dividend vouchers should be prepared and given to the shareholders when the dividend is paid.

If you want to bring your spouse or civil partner into the business as a shareholder, you can divide profits between you. However, you should consider a number of issues beforehand, such as:

- Will giving away some of the dividend income actually save tax? If your spouse or civil partner already has enough income to cover most of their basic rate tax band, there is unlikely to be much of a tax saving
- What may happen to the business should you divorce or separate?

This article is intended for guidance only, and is not exhaustive. We can advise you on the best route for your business, and would welcome the opportunity to discuss your individual circumstances.



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2007 Pre-Budget Report Round-Up

Chancellor Alistair Darling presented his first Pre-Budget Report to a lively House of Commons on 9 October. Among the key measures covered was a much-anticipated announcement on the controversial issue of inheritance tax (IHT), together with significant reforms to the capital gains tax (CGT) system.

The new measures on inheritance tax

For many years there has been concern that rising house prices have outstripped the annual increases in the inheritance tax nil-rate band (effectively that part of your estate which escapes IHT on your death). As a consequence, there have been many calls for the Government to take action.



In his Pre-Budget Report, the Chancellor announced a measure aimed at helping those married couples and civil partnerships who have a combined estate which is worth more than the IHT nil-rate band (currently £300,000 each), but who are not truly 'wealthy'.

Prior to the announcement, the IHT nil-rate band was specific to an individual, and could not be carried forward on the death of the first spouse or civil partner. However, following the Pre-Budget Report the unused percentage of the nil-rate band can now be carried forward and added to the nil-rate band that is available to the second partner.

What could the measures mean for you?

Case study

Husband and wife Andrew and Anna have assets comprising a home worth £500,000, and £150,000 of savings. On Andrew's death he leaves everything he owns to Anna, and it escapes IHT because of the husband and wife (and civil partnership) exemption, so on

Andrew's death none of his nil-rate band is used.

When Anna dies, she owns the house (now worth £600,000) and has a total of £200,000 in savings, making a combined total of £800,000. If the IHT nil-rate band at the time of Anna's death was £350,000, the estate would pay no tax on 200% of that sum – so £700,000 tax-free – with 40% to pay on the excess of £100,000, ie a total of £40,000. That compares with a pre-announcement figure of £180,000.

The new rule applies to all second deaths after 9 October 2007, though the full details will not be certain until the 2008 Finance Act.

It is understood that it will apply regardless of the date of the first death, so that even if the first death was before 9 October 2007, the potential for doubling the nil-rate band exists.

Remember, there are many ways to reduce the IHT payable on your death, through lifetime planning and action – speak to us if IHT remains a concern.

Changes to the capital gains tax system

This year's Pre-Budget Report also unveiled controversial plans to impose a single flat rate of 18% for capital gains tax (CGT), together with the withdrawal of taper relief. The new rules come into effect from 6 April 2008 and will apply to gains made by individuals, trustees and personal representatives.

Single CGT rate

To balance a single tax rate of 18% from 6 April 2008, taper and indexation reliefs will be withdrawn. With gains potentially taxable at up to 40% in 2007/08, you may think that the new rate means it will automatically be better to hold off realising gains until after 5 April 2008. However, this is not necessarily the case.

Case study

As an example, take a business asset held on 31 March 1982, when it was worth £100,000. When the asset is sold on 5 April 2008, the net proceeds are £1,000,000. The amount of tax payable will depend on the exact circumstances, but will be in the region of £80,000. If you apply the same figures to a sale made on 6 April 2008, the tax is approximately £162,000. So a perceived reduction in the rate of tax could in reality double the tax bill.

The rules are complex, and care will have to be taken in planning a sale, whether it relates to business or non-business assets. It is therefore vital that you discuss any possible sale with us.

Other changes

From 6 April 2008 all shares in the same class in the same company will be treated as forming a single asset (a 'share pool'), regardless of when they were originally acquired. The 'same day' rules, and the 'bed and breakfasting' rules in relation to share dealing, will remain unchanged.

The Annual Exempt Amount for 2008/09 will be announced in the 2008 Budget. Other CGT reliefs will continue to be available, including: Private Residence Relief; reliefs under the Enterprise Investment Scheme and Venture Capital Trusts; business asset gift hold-over relief; and any unused allowable losses brought forward from past years. While the Government has expressed its intention to use the new measures to simplify the CGT system, some leading business groups have expressed concern regarding the plans, and have lobbied the Chancellor to postpone the reforms.

If you would like more information on the new regulations and how they may affect you and your business, including optimising the timing of any disposals, please do contact us.

Capital Allowances update: forthcoming changes to property tax relief

Following the announcement of significant changes to the Capital Allowances system of tax relief in the 2007 Budget, HM Treasury has since published a consultation document setting out the proposed changes in more detail.

The changes are of interest to anyone who may be considering new buildings expenditure or investing in commercial property, especially as around 30% of the costs could qualify for tax relief in the construction of a typical office building.

Annual Investment Allowance (AIA)

From next April, the first £50,000 of annual expenditure on Plant & Machinery (P&M) – such as heating, lifts, and qualifying fit-out – will be claimable as a tax deduction in the year of expenditure. Expenditure above this level will be then claimed as an annual writing-down allowance on the relevant pool (see below). The principal advantage of the AIA is that it provides a simple incentive for the 95% of businesses that invest up to £50,000 per year.

Integral & Trade-Related Plant & Machinery

It is proposed that the pool of P&M allowances will be split between the integral plant which might be expected to be present in a building (heating, lifts etc), and trade-related items. The former will have a slower 10% per annum rate of claim and the latter a more attractive 20% rate of claim.

The good news is that the Treasury has taken the view that toilets, kitchens, etc should not be treated as integral plant and will qualify for the faster rate of claim. As these items can form a significant portion of buildings expenditure, this may be helpful to many businesses.

Electrical Systems

Under the current system, only parts of an electrical system can be claimed for, and lighting is usually excluded. The proposed changes will make the entire system qualify for Capital Allowances. This could result in valuable savings for many types of building, and means that, for example, low energy lighting which qualifies for Enhanced Capital Allowances (ECAs) will be claimable with a 100% allowance in that tax year.



Payable Enhanced Capital Allowances

Where a business incurs expenditure on qualifying items but cannot use the allowances because it is unprofitable, as may be the case for a start-up business, then it is being suggested a tax credit will be payable against the claimable items.

Environmentally Beneficial Integral Fixtures

The Treasury is considering allowing parts of buildings to be treated as integral fixtures, such as brise soleil (architectural sun-shading features) or active façades (climate-responsive features). As a principle this means that the traditional tests for Plant & Machinery are likely to become blurred as we move closer to a system of 'Green' building allowances.

Energy Performance Certificates

It is proposed that Energy Performance Certificates (EPCs) on commercial buildings will become a requirement on new build completions, and the sale or letting of new or existing buildings from April 2008. There are some exclusions, such as low energy demand buildings, e.g. workshops and agricultural buildings.

Traditionally, building expenditure has been undertaken without regard to possible tax reliefs, and Capital Allowances have been a part of the year-end accounting process. If fully implemented, the coming changes are likely to emphasise the need for forward planning to ensure that potential claims are optimised.



Declaring foreign income on your tax return

When you live in the UK, you must declare all of your taxable income on your tax return form. This includes any foreign income, such as rents from overseas properties, interest from offshore bank accounts or dividends from foreign companies. Although the basic tax return form and the short version tax return form do not have boxes for foreign income, such income must still be shown on a UK tax return.

Offshore bank accounts in particular have featured prominently in the news in recent months, following the closure of HMRC's Offshore Disclosure Facility. HMRC has announced that it intends to specifically target those taxpayers who still have undeclared offshore accounts.

What you need to do

If you receive any form of foreign income, you need to answer question 6 on page 2 of the tax return and complete the foreign income pages, SA106. These extra pages can be ordered from the HMRC self-assessment helpline (0845 9000 404), or downloaded from the HMRC website: www.hmrc.gov.uk/forms/sa106.pdf

If we complete your tax return for you, we can print these extra pages. If you do your own tax return online, reporting foreign income can cause a problem as the tax return software provided free by HMRC does not currently support the foreign income pages. In this case you will need to use third party software to complete the foreign income pages (we can do this for you), or complete your whole tax return on paper instead of online.

If you receive a short tax return and your foreign income consists of less than £300 gross or less of dividends from an overseas company, such as the Santander Bank, you can enter the foreign dividends in box 5.5. There will be no difference in the tax you pay as a basic rate taxpayer, but as a higher rate taxpayer you will not get the full benefit of the overseas tax deducted from the dividends.

If you receive other types of foreign income, you must complete the foreign income pages to report the gross amounts and any expenses to set against the income, even if the money has not been paid into a UK bank account. If you have the special 'non-domicile' status for UK tax purposes you are not taxed on foreign income that is kept outside of the UK, but you must still make a special claim for this treatment to apply to your tax return each year.

Ask us for advice on this specialist area.

Business Round-Up

First stage of holiday increase comes into force

The statutory annual paid holiday entitlement increased to 4.8 weeks in October (the equivalent of 24 days of leave), in the first stage of a two-phase increase.

The Department for Business, Enterprise and Regulatory Reform (DBERR) changed the entitlement in response to the fact that as workers do not have a legal right to paid time off on public or bank holidays, some have had to include time off for these days as part of their standard 20 days' allowance.

In the second phase of the increase, the minimum entitlement will be rising to 5.6 weeks (28 days of leave) with effect from 1 April 2009.

Payment can be given in lieu of the additional days introduced on 1 October 2007, but from 1 April 2009 payment in lieu cannot be provided for anything less than 5.6 weeks, unless a member of staff is leaving.

For staff wishing to carry over unused holiday, this is only allowed for any entitlement above the four week minimum, and additional statutory leave can only be carried over into the following leave year.

Part-time workers will be entitled to the same level of holiday pro rata, and staff working six days a week are entitled to 28 days of leave from 1 October 2007 onwards.

National Minimum Wage sees latest rise

1 October 2007 saw the latest increase in the National Minimum Wage (NMW), with the main adult rate rising to £5.52, while the development rate rose to £4.60, and the rate for 16 and 17-year-olds increased to £3.40.

Following a series of increases in recent years, the Low Pay Commission has been asked by the Government to monitor, evaluate and review the impact of the NMW, with particular reference to the effect it has on the following areas: pay, employment and competitiveness in the low paying sectors and small firms; different groups and workers; pay structures; and the forthcoming changes to the annual leave entitlement.

The Commission will review each of the minimum wage rates and make its recommendations for October 2008, by the end of next February.



Single equality body is launched

The new Equality and Human Rights Commission has now been launched, replacing the Equal Opportunities Commission, the Disability Rights Commission, and the Commission for Racial Equality with a single independent body.

The Commission covers England, Scotland and Wales, and has all of the powers of the existing Commissions, as well as new powers to enforce legislation and promote equality and human rights.

This unified body aims to provide a single source of information and advice and act as a focal point of contact for individuals, businesses and the voluntary and public sectors. Experts from the three previously separate Commissions have joined forces in a bid to reduce inequality and discrimination across a variety of key areas.

The Government believes the recent amalgamation will enable the Commission to tackle discrimination at multiple levels and offer previously under-represented groups, such as older people, an effective national body through which to tackle discrimination.

Web Watch

Essential sites for business owners

Equality & Human Rights Commission

www.equalityhumanrights.com

The official website, with information on individuals' rights and the legal obligations for businesses.

Investors in People

www.investorsinpeople.co.uk

Provides useful tools for improving the performance of your business.

Advice Guide

www.adviceguide.org.uk

Online CAB service that offers information on a range of different topics.

Growing Business

www.growingbusiness.co.uk

News, tips and resources for entrepreneurs.

Reminders for your Winter diary

December 2007

30 Last day to file your 2007 Tax Return electronically if you wish to have a 2006/07 balancing payment of less than £2,000 collected through your 2008/09 PAYE code.

31 Last day for non-EC traders to reclaim recoverable UK VAT suffered in the year to 30 June 07.

End of relevant year for taxable distance supplies to UK for VAT registration purposes.

End of relevant year for cross-border acquisitions of taxable goods in the UK for VAT registration purposes.

End of CT61 quarterly period.

Filing date for Corporation Tax Return Form CT600 for period ended 31 December 06.

January 2008

1 Due date for payment of Corporation Tax for period ended 31 March 07.

14 Due date for income tax for the CT61 quarter to 31 December 07.

19/22 Quarter 3 2007/08 PAYE remittance due.

31 First self assessment payment on account for 2007/08.

Capital gains tax payment for 2006/07.

Balancing payment - 2006/07 income tax/Class 4 NICs.

Last day to renew 2007/08 tax credits.

Deadline for amending 2005/06 Tax Return.

Last day to file the 2007 Tax Return.

February 2008

1 Tax geared penalty may apply if 2006 Tax Return not yet filed. £100 fixed automatic penalty if 2007 Tax Return not yet filed. Additional penalties may apply for further delay. Interest starts to accrue on 2006/07 tax not yet paid.