



Tax & the family businesses – a guide for professional advisers

Hot topics

The law as stated during this webinar is up to date as of
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Introduction

Howard Hackney

Howard escaped from Grant Thornton UK LLP in 2008 where he had been a partner for over 25 years to establish his own boutique practice. During his time at Grant Thornton he was head of professional practices for the North West and head of family businesses for the UK. At Grant Thornton he had a variety of roles including office Managing Partner, North West regional marketing partner and membership of the partners appointments panel. Howard specialises in advising mid market professional practices and family businesses. In 2002 he won the CBI's national award as "Best Business Adviser".

Howard's current focus is providing "special projects" advice to family businesses with turnovers up to £30m and professional firms with up to 20 partners. His experience extends from first generation to eighth generation family businesses with all the succession issues that involves.



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Martin Dawson

Martin Dawson, director Aquarius Tax Consultancy Limited. Martin was previously a tax partner at both Baker Tilly and Grant Thornton UK LLP where he provided bespoke tax advice to owner managed businesses and high net worth individuals. Aquarius was set up in January 2010 to provide similar advice to both their own individual clients and those of smaller accounting firms that they work closely with. Aquarius have particular expertise in dealing with foreign domiciled clients (“non-doms”) and those with UK property issues.

Current projects include the restructure of several family companies (including the image right company of a well-known sportsman!), all with HMRC advanced clearance, securing significant tax savings on future value extracted. The company are also currently advising on the purchase and ownership restructure of various high value properties in London to avoid the annual ATED charge and ensure future CGT and IHT liabilities are minimised for their non-dom owners.



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Agenda

- Key topics
 - Tax cases
 - Profit extraction
 - Avoidance v. evasion
 - Unincorporated property businesses
 - Recent changes
 - CGT & IHT on reorganisation of family businesses
 - Other thoughts
- Focus – privately owned mid market businesses & HNWIs
- VAT NOT covered
- Finance Act 2017 update



Tax cases



A few topical cases

- *Bayliss v HMRC* - tax penalties
- *Cyclops Electronics Limited & Graceland Fixing Limited* – tax
- *McQuillan* – Entrepreneur's Relief
- *Tottenham Hotspur* – termination payment
- *Rupert Grint v HMRC* – invalid change of year end
- *Terence Raine v HMRC* – paperwork not in order



Profit extraction



Profit extraction – the basics

	Remuneration		Dividend		Interest	
	45%	40%	38.1%	32.5%	45%	40%
Company profits	1,000	1,000	1,000	1,000	1,000	1,000
Remuneration	(879)	(879)				
Employers NI at 13.8%	(121)	(121)				
Interest on directors loan					(1,000)	(1,000)
Subject to corporation tax	0	0	1,000	1,000	0	0
Corporation tax at 20%	0	0	(200)	(200)	0	0
Dividend paid	0	0	(800)	(800)	0	0
Profits retained	0	0	0	0	0	0
Personal income	879	879	800	800	1,000	1,000
Income tax	(395)	(351)	(305)	(260)	(450)	(400)
NI	(18)	(18)	0	0	0	0
Net proceeds	466	510	495	540	550	600
Effective tax rate	53.4	49.0	50.5	46.0	45.0	40.0

Profit extraction – the complexities

- Partnership/sole trader - tax rate plus NI at 9% up to £43k then 2%
- Tax rates and allowances
 - £5k dividend zero rate band
 - £1k (£500) personal savings allowance
 - Loss of personal allowance of £11k if income > £100k to £122k
- Retain and liquidate – subject to phoenix rules in within two years

	CGT	
	20%	10%
Retained profits	1,000	1,000
Corporation tax at 20%	(200)	(200)
	800	800
Less CGT	(160)	(80)
Net proceeds	640	720
Effective tax rate	36	28



Profit extraction – the complexities

- Pensions
 - Tax allowable, tax free growth, IHT free until age 75
 - B/fwd relief = max contribution of £160k in 2017/18
 - But restriction if income > £150k
 - Purchase of own commercial premises almost a “no brainer”
- LLP or Ltd Co
 - Close decision
 - LLP more flexible
 - Difficult to convert back from Ltd Co if climate changes
 - If borrowing - easier to repay from income taxed at only 20%



Profit extraction – other issues

- EMI
 - Option arrangement for employees (25 hrs p.w.) with < 30% shares
 - Company assets < £30m
 - Up to £250k of options
 - Entrepreneurs Relief available → 10% CGT
 - Great flexibility re types of shares and rights attaching
- School fees
 - Grandparents gifts of shares to trust – see IHT & CGT below
 - Different class of shares to allow differential dividends
 - Use of children's PA and £5k dividend allowance → £16k tax free



Avoidance & evasion



Definition

Noun[[edit](#)]

avoidance ([uncountable](#))

1. ([taxation](#), law) [Nonpayment](#) of [tax](#) that cannot clearly be seen as either [tax avoidance](#), which is legal, or [tax evasion](#), which is illegal.

Synonyms[[edit](#)]



Recent developments/what's new?

- Schemes – UBS, Clavis Liberty
- Finance Act 2016 update (649 pages!)
 - changes to the GAAR
 - Increased penalties for “serial tax avoiders”
 - Large businesses must publish their tax strategy
 - new civil sanctions for anyone “enabling” tax evasion
- Black Economy being targeted in 3 (new) consultations (tinyurl.com/jxas9re)
- FA 2017 — “promoters” threshold definition passed - others deferred
- EC and evasion post “Panama Papers” (tinyurl.com/hdcha2c)
- Proposed tougher tax avoidance sanctions/deterrents (tinyurl.com/jaug7fa)
 - penalties for enablers and users of defeated schemes
 - what constitutes tax avoidance
 - “discouraging” avoidance

Transactions in Securities

- It is worth remembering what still isn't caught by the TiS rules
 - A “normal” liquidation
 - Statutory reconstructions
 - Share reorganisations



Conclusion

- Avoidance and professional conduct in relation to tax – new code from 1 March 2017
- Government has won the PR battle
- Courts interpret historical events based on current attitudes
- Effectively retrospective legislation
- Significant uncertainty
- Do you have PII cover – even to introduce?
- Conclusion – plenty of genuine opportunities , AVOID !



Unincorporated property businesses



The issues

- Reducing levels of tax relief on interest – phasing started 5 April 2017
- Tax at up to 45%
- Borrowing repaid out of taxed income
- Additional 3% stamp duty charge
- Earlier payment of CGT
- IHT gifting difficult
- New landlords – Ltd company vehicle



Incorporation- the benefits (S 162)

- CGT uplift on properties (but shares nil base cost)
- Profits taxed at 20% in the company
- Borrowing repaid more easily
- Can control income for pension relief purposes
- Interest on directors loans – better than dividends
- IHT gifting of shares easier – but watch CGT
- £5k dividends (for now) tax free
- Alphabet shares & possible education planning
- Use the HMRC non-statutory clearance procedures



Incorporation - caveats

- Must be a **business** & **whole business** – what qualifies?
- Locking tax paid reserves into shares – extract beforehand (see below)
- Stamp duty
- Banking costs & issues
- VAT – TOGC often for commercial premises
- SDLT but
 - Partnership exemption if same proportions AND a business
 - Multi dwellings relief (min 1%)
- Tax costs of extraction
 - Dividend
 - Interest on capital
 - Liquidation – no ER but only 20%



The banking opportunity/problem

- Extract reserves pre deal to owner's personal account
- Reinject as directors loan
- Security position?
- Tax avoidance & GAAR?



	Sole trader			Limited company	
	Opening	Stage 1	Pre incorp	Step 2	Post incorp
Residential freehold properties					
Cost	5,000		5,000		5,000
Unrealised gain	5,000		5,000		5,000
OMV	10,000		10,000		10,000
Borrowing	4,000	6,000	10,000	(6,000)	4,000
Equity	6,000		0		6,000
Retained reserves	6,000	(6,000)	0		0
Directors loans	N/a		0	6,000	6,000
Net worth	6,000		0		6,000

Recent changes



Including FA 2017

- Corporate Loss relief not passed but was proposed from 1/4/17
 - Sideways relief available on b/fwd losses
 - Restricted so that cannot reduce profits by more than 50% where > £5m
- £50 trivial benefit per employee and cap of £300 per director & family – must not be convertible into cash
- £5k zero rate dividend allowance
 - Reduction to £2k not implemented
 - watch allocation of PA
 - Impact on Gift Aid – may impact the donor with only dividend income
 - Estates do not have the allowance
- Proposed changes to EIS/SEIS/VCT/BIR not implemented
- Domicile & UK residential property changes not implemented for now

Including FA 2017 ctd

- Investors Relief
 - Shares issued in unlisted trading company
 - 10% CGT on up to £10m gain
 - 3 years ownership
 - Can be unpaid directors
- Downsizing and residence nil rate band – too complex to deal with here
- ATED now on £500k properties
- 3% additional SDLT on additional residential properties – no relief for landlords
- Making tax digital (MTD)
- MTD & overlap relief crystallisation

CGT & IHT on reorganisation of family businesses



Family reorganisation

- Typically one or a number of family members bought out
- Alternative routes:
 - Share buy-in
 - Reconstruction using Newco to acquire Oldco for cash loan notes & shares
- Share buy back not used when
 - Insufficient distributable reserves
 - Disproportionate shareholding after event
- Taxes considered below
 - CGT
 - IHT



CGT

- Any transaction is a disposal for CGT purposes at OMV but subject to reliefs
- Paper for paper i.e. shares for loan notes can hold over gain:
 - Until realised for cash
 - At tax rate applicable on conversion to cash
- QCBs v non QCBs not as relevant as it was
- Gifts of shares
 - In a trading company gain can be held over (but watch investments in company)
 - But no hold over on investment company unless gifted to a trust
- No CGT on death a valuable relief



CGT ctd.

- Entrepreneurs Relief at 10%
 - 5% shares
 - Officer or employee
 - One year ownership
 - 80% trading
 - Watch phoenixing
- Statutory clearance highly recommended that
 - For share buy in a capital transaction
 - For Newco no breach of TiS rules
 - Need commercial justification
- Do not forget stamp duty on share issue
- Deferred consideration – highly complex



IHT

- Lifetime gifts of shares or property
 - Direct = a PET → no limit;
 - Into trust = chargeable transfer so £325k every 7 years
 - Watch CGT on gift but can be held over into a trust (see above)
- Business Property Relief –
 - wholly or mainly trading - the “50% test” and of what
 - Owned for two years
- Excepted assets in a company
 - The danger
 - What are they? – can be surplus cash
 - Is property investment an excepted asset?
 - Distinguish “business” from “trade”
- Loan notes do not attract BPR and are chargeable
- Invest instead in BPRable assets e.g. AIM shares then BPR after 2 years
- Remember death is excellent IHT planning for a trading business!!!



Other thoughts



A miscellany of musings

- Rumoured post election
 - Anything possible – good and bad
 - CGT increase from 20%???
 - Possible CGT relief on incorporation removed
 - Entrepreneurs relief restriction
 - Pension – flat rate tax relief and 25% tax free – or age related tax relief
- Other thoughts
 - Buy to let properties – gift to trust & carve out income
 - IHT planning for higher value residential properties – deferred lease
 - Offshore bonds if moving overseas in future
 - Whole of Life assurance very cheap to mitigate IHT
 - QNUPS possible use for commercial & residential property ownership
 - Non Statutory clearance very useful genuine doubt about interpretation
 - Capital allowances – on sale of building and on existing buildings





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