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Solving partnership problems

Partnerships can carry on for years without anyone even thinking about the partnership agreement. Then a problem arises and the partners discover that the agreement is inadequate, out-of-date or – worst of all – might not even exist. A well-designed partnership agreement can help solve a number of difficulties.

The basic problem is that the provisions of the Partnership Act 1890 apply where there is no specific agreement to the contrary. For example, under the Act, it is not possible to expel a partner, an individual partner can dissolve the partnership, and the death or bankruptcy of a partner will automatically dissolve the partnership.

An out-of-date or non-existent partnership agreement could make it difficult to deal with the problem of an under-performing partner. A well designed partnership agreement might give the majority the right to expel an individual partner or at least the power to alter a partner's status, maybe changing them to a salaried partner.

Different problems can arise if a partner leaves of their own accord. It might be desirable to be able to place an outgoing partner on 'gardening leave' to protect the partnership's business interests. Once a partner has actually left, a restrictive covenant can prevent them from soliciting the partnership's clients. But covenants must be carefully constructed or they could turn out to be unenforceable.

Partners' retirement can raise other issues. A recently retired partner may have made a significant contribution to the partnership's value, so the partnership might want them to benefit from a sale of the business if it were to take place within a given period after their retirement.

Partnership agreements should be up-to-date with changes in the law generally – especially discrimination law. Agreements should therefore provide for parental leave, comply with sex discrimination legislation, and take account of the recent changes regarding age discrimination – particularly the recent abolition of the default retirement age of 65.

Firms that have grown in size may be especially vulnerable. An agreement that worked for a small three or four person partnership may no longer be appropriate. Decisions that could once be taken by all the partners may now have to be delegated to an individual or to a small group. Every partnership should have a proper partnership agreement and then review it regularly.

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This newsletter is for general information only and is not intended to be advice to any specific person. You are recommended to seek competent professional advice before taking or refraining from taking any action on the basis of the contents of this publication. The newsletter represents our understanding of law and HM Revenue & Customs practice as at October 2011.

HMRC fails the grade on guidance



Taxpayers can avoid a penalty for filing a tax return late if they have a 'reasonable excuse'. But HM Revenue & Customs (HMRC) has come under fire for giving taxpayers guidance on what 'reasonable excuse' means that is at odds with the interpretation given by tribunals. HMRC is also being criticised for delays that allow penalties to mount up.

The term 'reasonable excuse' is not defined in the legislation. In a number of recent

cases, tax tribunals have criticised HMRC's guidance, which states that taxpayers would have a 'reasonable excuse' when some unforeseeable and exceptional event beyond their control has prevented them from filing the return on time. The tribunal says that HMRC's official interpretation is too narrow, in particular its view that the event need not be 'exceptional'.

Employers face a different problem. If they file their end-of-year returns late they are charged a penalty of £100 per 50 employees for each month or part month that the return is outstanding. However, HMRC does not send out the penalty notice until four months after the filing date of 19 May, which means that employers might accumulate a minimum £500 penalty before realising there is a problem.

How to delay tax payments

For many taxpayers the problem is not so much making the return as it is paying the tax due. If you know that you will be unable to pay a tax bill (including VAT), you might

be given more time to pay. You must contact HMRC's business payment support service before the tax payment is due.

If you can pay your tax on time, make sure you actually do so. Payments to HMRC by bank transfer are not within the banks' faster payments system and so still take three working days. For VAT, you should consider using direct debit as it gives you another three days before HMRC takes the payment from your bank account, on top of the seven extra days allowed if you file your VAT returns online.

Although HMRC expects taxpayers to get returns and payments in on time, its attitude to dealing with taxpayers' correspondence is more relaxed. Bulk post issued by HMRC often arrives many days or even weeks after it is dated and letters to HMRC go astray all too frequently. Such problems only reinforce the need to get your tax right and avoid lengthy enquiry correspondence. If you would like further advice on tax deadlines and paying your tax, please get in touch.

Did you know that the Government recently announced the location of 11 new enterprise zones, completing the total of 22 across England? The new locations include sites in Cornwall, Kent, Oxfordshire, Hereford and Warrington. The advantages of relocating your business to an enterprise zone or setting up a new business within a zone, include a business rate discount worth up to £275,000 over five years, simplified planning regulations and Government support to ensure that super-fast broadband is rolled out within the zones. In addition, certain designated areas will benefit from enhanced first-year capital allowances for investment in plant and machinery.



Escaping employee tax status

Some people have tried to avoid being taxed as employees by setting up sham contracts.

The IR35 legislation was introduced to tax income from 'disguised employment' at a rate similar to any other employment income. It has been particularly devastating for freelance contractors who often have little choice but to operate through an intermediary company.

However, contractors have been successfully fighting back by using 'IR35 friendly' contracts so that arrangements with clients are outside the scope of IR35. One of the most important factors in such a contract is the right of substitution. Whereas an employee is obliged to perform work personally, in a contractor/client relationship the contractor will normally be free to

provide a substitute if they are ill or on holiday.

But the problem is that actual working practices must match those stated in the contract – so a substitution clause must be a genuine right. The most recent case to be heard, involving Autoclenz Ltd, reinforces this position as it was heard in the highest court in the land – the Supreme Court.

The case concerned car valets who actually wanted to be treated as employees so that they would be entitled to various employment rights. The valets' contracts stated that they were self-employed and contained an express term allowing them to appoint a substitute. However, the court concluded that the contracts did not reflect the true relationship between the parties, and that the valets were in reality employees.

To rely on a substitution clause the right should ideally be included in the original contract, and you, as the contractor, should be responsible for the substitute's recruitment, their work and their remuneration. Although it is unlikely that a client will permit unfettered use of substitutes, the fewer restrictions placed on their use the better. Bear in mind that just because the right to use a substitute has never been exercised does not mean that it does not exist. If contractors engaged on similar terms have supplied a substitute then this indicates that the right is genuine.

Although substitution clauses are important in establishing self-employed status, there are many other factors to consider. The goalposts for contractors are constantly moving, so contact us if you need advice.

Did you know that the amount of tax debt or underpaid tax that HM Revenue & Customs (HMRC) can collect via PAYE if you are employed has increased from £2,000 to £3,000? HMRC can now use this collection method for the majority of tax debts, including tax credits. If you owe tax for 2010/11 and didn't complete a tax return, then you should receive a tax calculation from HMRC. Underpayments up to £3,000 will automatically be collected through your tax code for 2012/13. If you complete a tax return and have PAYE income, then you will have the option of having underpayments up to £3,000 collected in the same way.



New proposals aid non-dom investment

A new tax relief for non-domiciled individuals who invest in UK business will have no upper limit and be simple to claim, according to a recent Government consultation document.

In the March 2011 Budget the Chancellor announced that from April 2012 non-domiciled individuals who are taxed on the remittance basis will not be taxed on overseas income and capital gains brought into the UK for commercial investment. The Government has now published more details, although these might change before they become law.

Under the proposals, tax-free remittances will be allowed for investment in any company carrying out trading activity, or developing or letting commercial property. The only exclusions will be leasing and residential property letting, although building and developing residential property will be permitted. The investment will have to be in a company, but no decision has yet been made on whether the relief will be confined to investment in companies not

listed on a recognised stock exchange. It will be possible to invest in shares or loans.

Investment of overseas income and capital gains held in offshore trusts or other investment vehicles will also attract relief. Another unexpected feature is that the investment can be in a company incorporated and trading outside the UK, as long as it has a permanent establishment in the UK. Furthermore, investors can be connected with the company and draw 'commercial remuneration' for any work they do, for example, as directors.

There are to be some anti-avoidance rules. They are directed mainly at preventing non-domiciliaries taking out their investment to enjoy in the UK. When they dispose of an investment, the original amount invested will have to be taken out of the UK within two weeks of the disposal, or reinvested in a qualifying business in the same period. The relief will have to be claimed in the investor's tax return.

Also starting in April 2012 will be the increased £50,000 annual charge for non-domiciled individuals who claim the



remittance basis and have been resident in the UK in 12 or more of the 14 previous tax years. This charge will not be affected by the new relief for business investments. Those who decide not to pay the charge will pay tax on all their worldwide income and capital gains in the year they arise.

Surviving the social media whirl

Many businesses are using social media, such as Facebook, LinkedIn and Twitter, to interact with customers and promote their goods and services in an up to date and customer-friendly way.

Social media can provide a wide range of opportunities for businesses to communicate with customers, suppliers, employees and the public. But the very flexibility and freedom of social media carry risks as well, so it is important for employers to have a robust social media policy and a well thought-out strategy.

First you need to be clear what you want to achieve and how social media are relevant to your business goals and marketing strategy. Are you aiming to improve your brand presence, for example, or to increase traffic to your company website? Do your research by checking out all the potential sites you might use. Try to understand your target audience. You can also join groups and Twitter chats relevant to your business.

Using social media can make staff more productive by helping them to gather instant information and feedback from customers and prospects, but without an effective strategy it can also be a waste of time and effort. Your staff should understand what you are

trying to achieve from your social media strategy and a manager needs to monitor its effectiveness. Employees need training on ways to identify the best approaches to take, how to manage any negative coverage you receive, and on what is acceptable to post, both during and outside working hours. It is good practice for employees to have different profiles for their business and social use.

It is vital to let staff know that messages posted to social media sites will be monitored – and you need to have the technology to do this – and that employers can take disciplinary action against employees who post defamatory comments online that bring their company into disrepute, or disclose confidential information. A combination of training and enforcement should help you to make effective use of social media and protect your business from negative publicity.

A clear written social media policy, which you can incorporate into your staff employment contracts, will strengthen your position if you need to dismiss an employee as a result of unacceptable social media use. Please get in touch if you would like any further advice on these issues.

New rules for agency workers

New rules came into force on 1 October 2011 that aim to improve workplace conditions for hundreds of thousands of temporary workers.

Broadly speaking, the Agency Workers Regulations will give agency workers the same pay and holiday entitlements as their full-time colleagues. Until now, temporary employees received an average of five fewer days holiday a year than permanent staff, and one in three said they were paid less for doing the same work as their full-time workmates. A Labour Force Survey had discovered a 32% pay gap between agency workers and the directly employed.

Agency temps will have the right to use all the facilities provided by their hirer (for example, the staff canteen and childcare) and to be

advised of internal vacancies from the first day of their assignment. But they will have to be consistently employed for 12-weeks in the same role before being granted the same working hours, holidays, pay and maternity rights as full timers.

Any employer who tries to sidestep the new rules by moving their temps from one role to another so that they fail the 12-week requirement will face a fine of £5,000, which will also apply if a temporary worker is let go just before the end of their 12-week stint and then re-hired later.

It is hoped that employers will also see benefits in the form of increased productivity and skill levels from workers with greater job security.

Inheritance tax relief on farmhouses



There is good news for owners of farmhouses. Owners of agricultural land can qualify for 100% relief from inheritance tax, but claims for agricultural property relief are not straightforward especially with farmhouses.

In particular, HM Revenue & Customs (HMRC) has tried to restrict relief for those farmhouses that it considered to be out of character with the related farmland – for example, where a large mansion is situated on just a few hundred acres of farmland.

The decision in the landmark Antrobus case was that relief is only available for the agricultural value of a farmhouse – not its open market value – and that relief may be denied entirely if the occupier of the

farmhouse is not involved in farming on a day-to-day basis. So-called ‘lifestyle’ farmers might therefore find the entire value of a farmhouse is subject to tax.

However, a recent tribunal ruling has resulted in a big setback to HMRC’s endeavours to restrict the relief. HMRC contended that a property owned by a farmer, Dennis Golding, was too large in relation to the farmland and concluded that it must therefore be a family home with no connection to the farming business. The tribunal decided that the farmhouse was large enough for a working farmer but not for an entire family – it therefore qualified for relief. If you are a farmer then the ruling sets a precedent for when relief is eventually claimed against the value of your estate.

KEY TAX DATES	Every month	December 2011	February 2012	
	<p>1 Annual corporation tax due for companies with year ending nine months and a day previously, eg tax due 1 July 2011 for year ending 30 September 2010.</p> <p>14 Quarterly instalment of corporation tax due for large companies (depending on accounting year end).</p> <p>19 Pay PAYE/NIC and CIS deductions for period ending 5th of the month if not paying electronically. Submit CIS contractors’ monthly return.</p> <p>22 PAYE/NIC and CIS deductions paid electronically should have cleared into HMRC bank account.</p> <p>30/31 Submit CT600 for year ending 12 months</p>	<p>previously. Last day to amend CT600 for year ending 24 months previously.</p> <p>File accounts with Companies House for private companies with year ending nine months earlier and for public companies with year ending six months earlier.</p> <p><i>If the due date for payment falls on a weekend or bank holiday, payment must be made by the previous working day.</i></p>	<p>30 Last day to submit 2010/11 tax return online to have unpaid tax of up to £2,000 collected through the 2012/13 PAYE code.</p> <p>31 Deadline for traders taking part in the VAT initiative to register for VAT.</p>	<p>31 Submit 2010/11 self-assessment return online (up to £100 penalty if late). Pay balance of 2010/11 income tax, Class 4 NIC and CGT plus first payment on account for 2011/12.</p>
	November 2011	January 2012		
	<p>2 Submit employer forms P46 (car) for quarter to 5 October 2011.</p>	<p>6 Deadline for self-employed tutors and coaches to notify HMRC that they wish to disclose under the Tax Catch Up Plan to qualify for reduced penalties on previously unreported income.</p> <p>14 Due date for paper EC Sales List (VAT 101), CT61 return and CT payment for quarter to 31 December 2011.</p>	<p>1 Initial £100 penalty imposed (even if no tax due) where the 2010/11 return has not been filed or has been filed on paper after 31 October 2011.</p> <p>2 Submit employer forms P46 (car) for quarter to 5 January 2012.</p>	