

SHIPSHAPE



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New decade, new challenges

As the new decade gets into its stride, signs of life are beginning to emerge, with statisticians declaring the UK officially out of the recession.



Although we've said goodbye to the 'noughties' – a decade of property and consumer excesses, capped off with the worst year for the global economy since the Second World War – their legacy is still with us. The Treasury's coffers are worse than bare, with tax revenues having shrunk dramatically below forecast. This, compounded by the effects of the banking crisis, will

reduce public debt immediately or whether this might prejudice the first small steps of economic recovery.

However, by June, if the opinion polls are to be believed, there will be a new Conservative government in power. They have already said they will raise the inheritance tax nil-rate band to £1m in the next Parliament. This would essentially mean a £2m

of services to the automotive industry, about how it has weathered the recession. We discuss how to look after your staff with the use of Employee Benefit Trusts, the new filing requirements at Companies House, and, of course, all the latest tax and VAT news.

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“ Arguably, those looking for certainty under the current rules should take action before Budget Day.

take decades to repay and can only mean more borrowing and therefore more taxes for us all – for some time to come.

Now that the dust has settled, we've had a chance to think about the implications of Alistair Darling's third Pre-Budget Report. Although it was generally good news for business, it was widely heralded as politically motivated and badly thought through. With a general election imminent, his critics say Darling took the populist route by targeting bankers' bonuses and those with the "broadest shoulders". In this issue of *Shipshape* we report on the ever-stricter tax-avoidance legislation coming into force, which some say is Labour's last roll of the dice.

All political parties will be in conflict over whether to go for a vote-winning manifesto or pledge to take less popular measures, which are nonetheless necessary for recovery of the nation's finances. Even the nation's economists seem divided over whether we should take measures to

threshold for married couples as the Conservatives would allow couples to transfer a spouse's £1m allowance on their death to the surviving partner. George Osborne says the tax shortfall will be funded by a £25,000 levy on non-domiciled wealthy individuals in the UK.

Some commentators have suggested that capital gains tax rates are likely to increase, as at 10% or 18% these now look out of step with 50% income tax. Arguably, those looking for certainty under the current rules should take action before Budget Day (not announced at the time of going to press). In this issue we look at how you might be able to get the 10% rate while you still can. You may also need to know how much the shares in your business are worth. Valuation is 'an art, not a science', with many different methods that can be used. Later in this issue we explain some principles of valuation for tax purposes.

Also in *Shipshape*, we talk to one of our long-standing clients, Nexus Business Solutions, a global supplier



Shipshape by email
To receive future copies of Shipshape by email, please send your details to Clare Schorah at schorahc@shipleys.com

Cashing in on Entrepreneurs' Relief

How to make the most of the current CGT rates before the anticipated increase



With the Government's coffers bare, there is considerable pressure to not only reduce public spending but also to raise taxes. It is surely only a matter of time before the Government (whichever political party wins the election) narrows or closes the wide gap between capital gains tax (CGT) at 10% or 18% and income tax at 50%. There are many ways they could reduce this difference, including by increasing the normal 18% rate of CGT or by introducing a higher rate of CGT for assets held for 12 months or less.

Where assets qualify for Entrepreneurs' Relief (10% CGT rate on gains up to £1m over a lifetime),

the differential is even greater. So what opportunities are there to 'bank' Entrepreneurs' Relief or the current rate of 18%? Consider the case study below.

Possible planning measures

What are the options for 'crystallising' a gain at current rates?

1. **Sell to a third party** under the current tax rules and rates. This could be the ideal solution but may be difficult to achieve before the forthcoming Budget Day or this April, and may not achieve the best price.

2. **Give to a family member** (although this would not help if the gift is to a spouse or a civil partner).

3. **Set up a trust** and transfer the shares to the trust. Inheritance tax issues would need to be considered.

4. **Sell to a new company.** It is possible to structure the sale so that the sale contract can be rescinded by mutual agreement. Where a contract is made and later rescinded by mutual agreement, there is no disposal for CGT purposes. One possibility could be to enter into a contract for sale in this tax year with completion in the next tax year.

Case study: Ben, 62, Company Director

Ben is 62, and with his health not as good as it used to be, he is considering selling his clothing business in the next year or two, once the economy has recovered. He hopes to receive £5m for the company, which he set up in the 1970s.

CGT at current rates

Ignoring the small base cost of the shares and the annual exemption, a sale of the shares in his company which Ben owns outright would, under current rules, result in CGT as follows:

- First £1m of gain taxed at 10% = £100,000
- Balance £4m of gain taxed at 18% = £720,000
- Total CGT due = £820,000
- Net proceeds retained = £4,180,000 (83.6%)

CGT at 25%

If the Chancellor decided in the forthcoming Budget to increase the CGT rate to 25% from 6 April 2010 (only half the 50% rate of income tax) and abolish Entrepreneurs' Relief, the CGT payable would be as follows:

- £5m gain taxed at 25% = £1,250,000
- Net proceeds retained = £3,750,000 (75%)

CGT at 50%

Net proceeds from the sale of Ben's company drop off a cliff if the rate of CGT is harmonised with the income tax rate – this happened in 1988 and carried on until 1998 when taper relief was introduced. If CGT is charged at the marginal rate of income tax

of 50% (from next April), the net proceeds would be as follows:

- CGT at 50% on £5m gain = £2,500,000
- Net proceeds retained = £2,500,000 (50%)

This final scenario is unlikely but these are unusual financial circumstances for the Government and the possibility cannot be discounted.



Act now to avoid the 50% tax rate

FINAL REMINDER

The new tax year is fast approaching and with it comes the new 50% tax rate on income over £150,000. Higher earners should anticipate income which might fall after 5 April 2010 and defer tax deductible expenditure to reduce 2010/11 taxable income. Where possible, this means action, including:

- paying dividends by 5 April 2010, not just after
- voting directors' remuneration by 5 April 2010, if possible
- paying bonuses or commission by 5 April 2010 rather than the following tax year.

5. Incorporate the business.

Sole traders or partnerships should consider whether it would be beneficial to incorporate the business, thereby rebasing the assets. This could be a sale of assets for cash or with consideration credited to a director's loan account, enabling tax efficient withdrawal of funds out of the future profit made by the business.

It is important to note that crystallisation of a gain will trigger a tax charge. Bringing forward a disposal that results in a CGT liability will, of course, also advance the date of payment of CGT and this will be a factor to consider when deciding whether to transfer an asset.

Entrepreneurs should be considering their CGT position now in conjunction with their tax advisers. Don't delay!

A UK resident taxed on the remittance basis might consider remitting income in 2009/10, if they anticipate that remittances afterwards will mean the 50% rate will apply.

Some last minute words of warning

The self-employed and partnerships may be tempted to change their accounting date to 5 April or 31 March. Although this can move income otherwise chargeable at 50% into a 40% band, it can prove a very expensive action in cash flow terms, especially if profits have increased substantially in recent years. Every case should be examined very closely on its own merits.

The effect on tax relief on pension contributions under the new forestalling regime should also be considered, if any action is taken to increase income for 2009/10.

Bespoke tax planning arrangements could be useful, but all schemes must be approached with caution to make sure they suit individual circumstances. If you are considering a tax planning scheme, please speak to us first.

End of Year Tax Planning

Enclosed with this issue of *Shipsshape* is our End of Year Tax Planning summary for the 2009/10 tax year, providing you with useful information on all the points to think about before 5 April. It is also available on our website www.shipleys.com

Please note that this flyer was produced before the 2010 Budget, so please check our website for the very latest version.





Private investigations

Labour's anti-avoidance drive could be their last roll of the tax dice

Since the introduction of self-assessment in 1997, HM Revenue & Customs has cracked down on tax avoidance, bringing in increasingly draconian anti-avoidance legislation. Tax officers are increasingly spending less time calculating tax liabilities and more time making enquiries.

Mistakes can be costly

The taxman normally has 12 months from the date your personal tax return is filed to ask questions. But this time limit does not apply when something which should have been included is not mentioned on the return at all.

In addition to the tax, interest and penalties that could result from an enquiry, being subjected to a tax investigation can be very costly in terms of time, professional fees and stress. Anyone caught out might face the additional humiliation of being named and shamed.

Under the spotlight

Many investigations are totally random. But others can be triggered by information from another source

50% penalty and criminal prosecution. HMRC is expected to extend this to other professionals including accountants, lawyers and surveyors.

“ Tax officers are increasingly spending less time calculating tax liabilities and more time making enquiries.

which suggests that the tax return is inaccurate. For example, HMRC may receive information about bank interest, property sold as shown on the land registry or school fees paid.

The medical profession will be the first to be targeted under a new enquiry campaign that will focus on professionals. They are being offered a reduced penalty of 10% to voluntarily disclose income or anything else omitted from past tax returns. This compares favorably with a possible

Don't get caught out!

The best advice we can give is to avoid being chosen for investigation in the first place. Extra care should be taken when completing a tax return. Don't be tempted to leave something out just because it seems very minor, as it could result in you being selected for enquiry. If something is missed off a return, it can be amended very easily and HMRC is generally sympathetic in situations where a taxpayer makes voluntary disclosures.

HMRC introduces penalties for late PAYE payment

HM Revenue & Customs is introducing a penalty scheme for late payment of income tax, National Insurance Contributions, Construction Industry Scheme (CIS) deductions and student loans, with effect from the 2010/11 tax year.

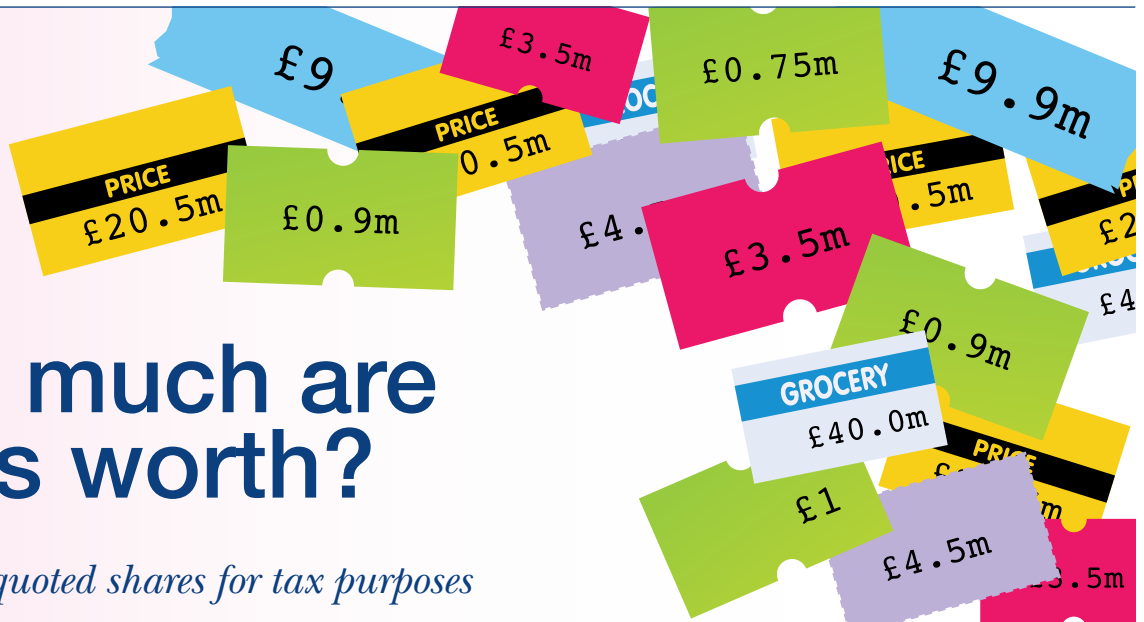
It means that from May 2010 you may have to pay a penalty if you do not make full payment on time. The penalties will not be levied automatically, but on what HMRC calls a risk basis.

HMRC has also announced proposals for charging in-year interest on late payments, but says this will not start before 6 April 2012. Current interest provisions remain unchanged and HMRC will continue to charge interest on payments received after the due date following the end of the tax year.

The percentage of penalty charged will depend on the number of times your payments are late, and will range from 1% to 4%. However, if your

payments are more than six months late this could rise to 5%, and a further 5% if more than 12 months late.

For full details visit www.hmrc.gov.uk/employers/pay-penalties-faqs.htm



How much are yours worth?

Valuing unquoted shares for tax purposes

Calculating the market value of unquoted shares in a company for tax purposes can be necessary for a number of reasons. It may be required as at the date of death, as at the date of a gift, or at a variety of other dates which may be relevant, such as 6 April. Working out the value of an unquoted shareholding is an inexact and subjective exercise. Here we explain some of the factors that can affect the value of shares for tax purposes.

arm's length by private treaty from a willing vendor. This might include management accounts, product development details, asset valuations and such like.

A common misconception is that a percentage shareholding in an *unquoted* company, say 10%, is worth that percentage of the total value of the company. In practice, in most instances, its value will be far less. After all, few people in the real world would

history and prospects are usually taken into account. Sometimes, in a property investment company for example, the value of the company's assets will be relevant. Occasionally, price/earnings ratios are compared with those of quoted companies.

Special situations

But it is important to note that the term "open market" contains everyone, including other shareholders in a company. For some, the shareholding under review might have marriage value. Suppose that 90% of the shares in a company are held equally by two people who perhaps have fallen out. In this situation, the remaining 10% shareholding is much more valuable, as it offers control to whichever 45% shareholder acquires it.

There will be other circumstances where the value of a minority shareholding is closer to that proportion of the company's total value. For example, it will apply where a sale or liquidation of the company is imminent. It will also apply if it is clear that a sufficient majority of shareholders, normally 75%, are keen to sell the company, and they are not holding out for an implausibly high price!

“ A common misconception is that a percentage shareholding in an unquoted company, say 10%, is worth that percentage of the total value

Defining market value

The tax definition of market value is "the price which an asset might reasonably be expected to fetch on a sale in the open market". When valuing for tax purposes a number of hypothetical assumptions are made. It is assumed that there is a willing seller (disregarding the actual identity or attitude of the real shareholder) and a willing buyer. Any constraints on the transfer such as pre-emption rights are disregarded, but it is assumed that the buyer would take the shares subject to such constraints subsequently. The "open market" is the real one.

It is also assumed that a prospective purchaser has all the information available to them, which might reasonably be required if they were proposing to purchase it at

buy a small minority shareholding in a company where the majority is likely to be controlled by other directors, who would be able to deny a minority shareholder any significant say in the running of the company or the level of dividends paid. Such investments are generally only made where the buyer becomes a party to a shareholders' agreement, typically giving him or her board representation and/or a power of veto.

Basis of valuation

Whilst there are special situations, as outlined below, in general the value of a minority shareholding is mainly affected by the income potential.

The historic profit record, any management figures available for the current financial year and dividend

If you need any help with valuing your shares please speak to your usual Shipleys contact.



Tax Matters

A round-up of tax issues which may affect you or your business

Pre-Budget Report

In his third Pre-Budget Report (PBR) back in December, the Chancellor announced a number of changes to tax and National Insurance Contributions (NICs). Tax rates and allowances were broadly maintained, but a swingeing short-term tax was introduced on bank bonuses. Since then there has been further clarification on the bank payroll tax and the relevant draft legislation will undoubtedly be revised and tightened up.

Visit www.shipleys.com/current-issues for a summary of the main tax issues covered in the PBR.

Pension contributions for higher-earners

Another major change announced in the PBR affecting higher-earners concerns pension contributions. These were already hit by changes in the Finance Act 2009 where tax relief from 2009/10 was confined to the basic rate for those with 'relevant income' of at least £150,000 in that year, or in either of the two preceding years. The Chancellor has now lowered this threshold to £130,000, with effect from 9 December 2009. Similar rules will apply to 2010/11.

From April 2011, however, much more rigorous rules are proposed. The Government is consulting on aspects of these, particularly on the measurement of the value of the 'pension input' in defined benefit schemes, previously known as final salary schemes.

The term 'pension inputs' embraces contributions to personal pension policies and retirement annuity contracts, contributions met

by deduction from pay, employers' contributions to defined contributions schemes and benefits accrued in defined benefits schemes.

Two different measurements of 'gross income' are adopted for the proposed new rules applicable from 6 April 2011.

The new rules *will not* apply to those whose gross income is under £130,000, where 'gross income' means taxable income before deducting the individual's own pension contribution and any charitable contributions. There are to be anti-avoidance provisions to prevent this being 'abused' by arrangements such as salary sacrifice.

If the new rules *do* apply, then a different definition of 'gross income' is adopted. This is income before charitable contributions and before the individual's own pension contributions, plus any pension inputs provided by an employer on their behalf.

With this definition, if gross income is £180,000 or more, only

basic rate income tax relief will be available. If gross income is between £150,000 and £180,000 a taper is proposed, to gradually reduce the relief to the basic rate.

Retirement age for pension schemes rises to 55 from 6 April

Current rules allow members of registered pension schemes to draw their pension and tax-free lump sum benefits once they are aged 50. But on 6 April 2010 the minimum retirement age will increase to 55. So anyone who will be 50 or over by 5 April 2010, but well under 55, should consider his or her position as they will need to wait up to five years longer before being able to access their pension benefits.

Gifts to charities

The Finance Act 2010 will contain measures effective from 15 December 2009 to block a tax avoidance scheme

Company cars – advisory fuel rates from 1 December 2009

Engine size	Petrol	Diesel	LPG
1400cc or less	11p	11p	7p
1401cc to 2000cc	14p	11p	8p
Over 2000cc	20p	14p	12p

Petrol hybrid cars are treated as petrol cars for this purpose. HMRC will also accept the figures in the table for VAT purposes, although employers will need to retain receipts. The rates are reviewed at least twice a year. The latest rates are posted on www.hmrc.gov.uk/cars/advisory_fuel_current.htm

exploiting the relief for gifts of qualifying investments to charities.

Foreign currency losses for those on the remittance basis

The Finance Act 2010 will contain measures effective from 16 December 2009 to prevent the creation of capital gains tax losses which arise in certain circumstances from transactions in foreign currency bank accounts.

Opening offshore bank accounts

The Government is consulting on proposals to make it obligatory for individual taxpayers to notify HMRC when an account is opened offshore in certain jurisdictions, probably within 60 days. This would not apply if the bank is in a jurisdiction which automatically exchanges information on savings with the UK. But in the case of jurisdictions where there is no tax information exchange agreement nor an information exchange provision in the relevant double taxation agreement, all accounts would have to be notified to HMRC. The suggestion is that notification would be required if the balance of an account exceeds £25,000. The suggested penalty for failing to disclose would initially be a £100 fixed penalty, then a period of daily penalties, followed by a tax-geared penalty. The effect, when combined with the tax-geared penalty for non-disclosure of income or gains, could be a combined penalty of 200% of the tax evaded.

Budget 2010

Please note that this issue of *Shipshape* went to press before the Budget 2010. For the latest information, check our website www.shippleys.com



Voluntary aided schools

A change to VAT policy will have an adverse effect on voluntary aided schools. This applies where a governing body has statutory responsibility for capital expenditure but is able to get some or all of the funding from a local authority.

HMRC previously allowed a local authority to recover the VAT element of any such expenditure, but this is no longer allowed for projects begun after 1 September 2009. It means that funding from a local authority may be cut to reflect the lack of VAT refund.

HMRC says it will still allow local authorities to recover VAT incurred where they both procure and pay for the work. Affected schools may wish to explore this as an option, but we would recommend seeking written confirmation from HMRC that the VAT refund will be allowed.

Yachts

HMRC has announced another crack down on VAT planning schemes used by yacht owners. Anyone who has one of these in place should review the arrangements to ensure they are robust.

Insurance – internet ‘click thru’ sites

There may be a VAT reclaim opportunity for some clients following two recent High Court VAT cases concerning the companies Insurancewide and Trader Media. They earn commission from ‘click thru’ from their websites to insurance company websites. The companies successfully argued that they were acting as insurance intermediaries and that the commission should be exempt.

Those affected should lodge protective VAT refund claims as it could take several years for the cases to be resolved.

Assets used for non-business purposes

A recent Dutch European Court Case held that UK VAT law on the recovery of VAT incurred on the acquisition of goods intended for both business and non-business purposes has been overly generous.

The case relates to what is known as ‘Lennartz accounting’, which allows VAT to be recovered in full on the acquisition of an asset, with some VAT paid back whenever the asset is put to non-business use.

This treatment, often used by charities, is more advantageous than apportioning the VAT at the time of acquiring the asset as it gives a cashflow advantage. However, the case has confirmed that Lennartz accounting should only be used where an asset is acquired for both business and private use.

HMRC has stated that it will allow those using Lennartz accounting for an asset acquired before the change of policy on 22 January 2010 to continue doing so provided that they carry on paying output VAT in respect of the non-business use. If the organisation is unwilling or unable to keep paying the output VAT it will be obliged to go back and unravel the Lennartz treatment.

HMRC has said that it will be sympathetic towards organisations that have already committed to a project before 22 January 2010 on the assumption that Lennartz will be available.

Refunds of foreign VAT

Visit www.shippleys.com for details of the new procedure for claiming back foreign VAT on things like hotels, professional fees and conferences.

For further information about any of the above topics, please speak to your usual Shippleys contact or the VAT team.

New filing requirements at Companies House

A warm welcome to Jay Sanghrajka



Not so long ago, falling a little behind with filing accounts or annual returns meant little more than a stropy letter from Companies House and a modest late filing penalty – in the case of accounts filed past the filing deadline.

But those days are now gone. Not only are the filing penalties now quite severe, particularly for companies with a history of late filing, but also the risk of the company being struck off the register has increased. Nowadays, a company that files its annual return late, but is still up to date with its accounts and other documents, will find itself being lined up for dissolution if the missing return is not filed.

Even grovelling to Companies House about the late filing and asking for an extension to the period allowed for filing a particular document is not always a good idea. A period of grace may be granted before dissolution proceedings commence, but if this period of grace is exceeded, directors frequently find themselves up for prosecution.

Stricter implementation of the rules is compounded by the fact that this year (2009/10), private companies will be experiencing the full impact of the new deadlines for filing accounts (nine months instead of ten), so it will be even easier to fall into default. Companies with an accounting period ending 31 March need to be particularly careful as their accounts will have to be filed before 31 December 2010 instead of 31 January 2011.

The message has never been clearer – it is imperative to keep accurate and up-to-date accounting records and start the statutory accounts preparation process immediately after the end of the financial year, and keep on top of all document filing.

If you have any questions about your filing requirement please contact:
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UK and international business tax planning specialist Jay Sanghrajka has joined Shipleys as a principal. He has more than 30 years' experience of advising clients ranging from public companies and substantial private companies to family businesses and their owners on issues including international structuring, profit extraction and maximising shareholder wealth.

Aside from having an excellent understanding of the tax issues for owner-managed businesses, Jay can provide valuable insight into many of the strategic issues facing such businesses, enabling him to advise on the effective structuring of business transactions and provide tax efficient solutions.

Jay trained with Coopers & Lybrand (now PwC) before joining a medium-sized practice in the City. He then worked at Chantrey Vellacott before joining Shipleys. He is a member of the Institute of Chartered Accountants in England and Wales, the Chartered Institute of Taxation and the Institute of Indirect Tax Practitioners.

Shipleys in the news

Shipleys continues to demonstrate its expertise in the real estate sector, with our principals contributing a number of articles to the property trade press. In the January/February 2010 edition of *The Estate Agent* Gary Haselton discussed the tax benefits of driving an eco-friendly company car. In *Residential Property Investor* Nancy Cruickshanks looked at some of the VAT pitfalls for developers. And Steve Foster continues with his regular column in *RICS Business*. A recent article was a reminder for surveyors that when

converting property to a care home, the building work costs could be subject to VAT at 5% instead of 17.5%.



Exam successes



Congratulations to Jack Welsby, James Eyre, Rob Wood (pictured left to right) and Jemma Cuff, who have passed their final exams to become qualified chartered accountants.

Nexus Business Solutions

Peter Blease, managing director of Nexus Business Solutions – a leading global provider of support services to the automotive industry, talks to Shipshape about the challenges of the past year and plans for the future.



Nexus Business Solutions provides management services and IT systems to vehicle manufacturers, their dealer networks, major fleet management and rental companies around the world.

Global reach

Based in Milton Keynes, Nexus also has offices in Detroit, Dubai and Melbourne. A base in Shanghai is currently being established from where the firm plans to extend its reach into the growing markets of China and the Asia Pacific region. They also have representatives based in Mexico, Latin America and Africa implementing management and IT solutions.

“We serve the manufacturers by helping their fleet divisions develop their penetration into corporate, rental and leasing companies” explains Peter Blease. “We also provide fleet management software for daily rental operations, HR resources for sales and marketing operations and aftermarket programmes to enhance aftersales services to fleet customers.”

As one of the largest management services companies providing this type of service to the automotive fleet sector, Nexus employs some 230 people around the world and is backed by a comprehensive HR capability and sophisticated IT infrastructure.

“The corporate sector in mature markets such as Western Europe, the US and Australia is very well developed. We are now focused on leveraging our expertise from these mature markets into the emerging markets of Latin America, Africa, China and the Asia Pacific region where the corporate sector is

developing fast. In the past, many of these countries’ resources and infrastructure were not sophisticated enough to focus on this sector but this is now changing.”

Growth despite recent challenges

Peter explains that service providers dependent on the automotive industry have had a very difficult time since the economic meltdown in September 2008. “The challenges faced by our clients have been massive and this has inevitably affected all of their suppliers.”

“Initially, banks treated the automotive industry as volatile and with an uncertain future with some companies at risk of failing. Banking facilities and credit lines have in consequence been severely constrained by the banks taking a very conservative position.”

“Insurers withdrew debt underwriting in many instances, which obliged companies like Nexus to self finance those parts of working capital that had hitherto been funded by normal banking arrangements. We are not alone in finding that the withdrawal of the status quo presented major challenges last year.”

On the upside, while vehicle manufacturers in mature markets were cutting back, many in emerging markets were able to sustain activity and budget to maintain progress. Nexus’ presence in these markets has helped to balance the difficulties experienced in the US and Europe.

“We were able to benefit from our broad footprint and minimise our exposure. Maintaining progress in the emerging markets helped to compensate for contraction in the mature markets.”

Shipleys advice and support

Shipleys has been providing Nexus with professional support and advice for more than a decade in a wide range of areas, including audit, tax, a restructuring review for shareholders and assistance with finance planning.

“Shipleys’ Principal Ben Bidnell has really engaged in our activities, personally going way beyond the diligence and professional services that one might expect from the company’s accountants,” says Peter. “He’s been directly involved in the challenges we have faced, everything from reviewing finances and forecasting to suggesting ways we can improve our operations by reducing infrastructure costs and improving our use of resources. He also introduced us to an agency in Hong Kong to facilitate formation of our new company in Shanghai.”

“In my experience he has that rare combination of proven ability and genuine interest in the welfare of our business that has manifested itself in real energy and effort to contribute significant added value. If only decision makers in the banking sector could conduct themselves like this.”

www.nexusplc.co.uk



What does the future hold for Employee Benefit Trusts?



In the summer 2009 edition of *Shipshape* we looked at Employer Financed Retirement Benefits Schemes (EFRBS) as a tax efficient way for directors to extract profits from a company. EFRBS have increased in popularity and somewhat overshadowed the use of Employee Benefit Trusts (EBTs). So, do EBTs have a future?

What is an EBT?

An EBT is a discretionary settlement, established in the UK or overseas by a company for the benefit of its employees and their families. The EBT is generally established overseas with overseas trustees who have the ultimate decision-making on the use of the funds and assets, and any distribution and payments out of the EBT, including outright payments or loans to employees.

Benefits

EBTs can be used to provide a range of benefits to employees, including:

- bonuses (income tax and NIC are deferred until the bonus is paid)
- employee benefits, subject to normal tax rules
- loans (making funds available to employees at a reduced tax cost)
- termination payments (potentially tax-free, up to £30,000)
- providing a market for the company's shares
- employee share plans
- 'warehousing' of shares
- exit route for former shareholders (succession planning)
- funding buyouts of shareholders in dispute.

In addition, EBTs can be used to separate surplus cash from the other assets of the company. For example, the surplus cash may affect business property relief for inheritance tax purposes or be at risk of a claim

from creditors. This can also ease a management buyout, succession planning and the sale of a company.

Since a change in the law on EBTs in 2002, a corporation tax deduction is only available when payments are made to beneficiaries which are subject to PAYE and NIC. These payments include cash payments, providing taxable benefits in kind, awarding shares or other assets but not the provision of loans. Termination payments on termination of employment also qualify.

HMRC has come down heavily on EBTs where they have been used for tax avoidance. But the approach has not changed where EBTs are used for share schemes or holding the company's shares.

EBTs are also useful for providing benefits to employees where the company's financial position is cyclical – funds can be transferred to an EBT in good years for paying out benefits to employees in the not so good years.

U-turn on childcare vouchers

At the Labour Party Conference last year, the Prime Minister announced that the provision of free nursery places will be extended to two-year-olds (in addition to the existing free provision for all three and four-year-olds). Against that, the existing tax and National Insurance Contribution

(NIC) exemption was to be withdrawn for childcare vouchers provided by an employer with effect from April 2015, and would be denied to employees who join a scheme after 5 April 2011.

Subsequently, however, the Government has advised a change to those proposals which mean that

those who join from April 2011 will enjoy some tax advantages. The NIC exemption will remain but relief from tax will be confined to the basic rate only.

Detailed advice should be obtained before taking action, or refraining from taking action, as a result of information in this newsletter.

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