



The Law Society

Tax update 2018 - Hot topics for private and family businesses

Howard Hackney
Howard Hackney LLP

Martin Dawson
Aquarius Tax

11 April 2018

Representing, promoting and supporting solicitors



The Law Society

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 focus is providing "special projects" advice to firms with up to 20 partners. His experience extends from highly profitable sole practitioners to advising 3 of the top 100 law firms. Recent assignments have included sales of law firms, partnership disputes, fund raising, LLP and ltd company conversion, ABS conversions, sales and acquisitions.



howard hackney^{LLP}

howard.hackney@hshadvice.co.uk

07968 059363

www.howardhackney.co.uk

Representing, promoting and supporting solicitors



The Law Society

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.



martin@ataxg.co.uk

07824 357972

www.aquariustax.co.uk

Representing, promoting and supporting solicitors



The Law Society

Introduction

Representing, promoting and supporting solicitors

Key topics

- Tax cases
- Profit extraction
- Unincorporated property businesses
- Recent changes
- CGT & IHT on reorganisation of family business
- Patent box and R&D relief
- Other thoughts

- Focus – mid market privately owned businesses & HNWI's



Representing, promoting and supporting solicitors



The Law Society

Tax cases



Representing, promoting and supporting solicitors

A few topical cases

- Christa Ackroyd Media Limited - personal service company
- McQuillan - what is ordinary share capital for ER
- Cyclops Electronics Limited & Graceland Fixing Limited - tax avoidance (UTT)
- A Nicholson - Payments to Son
- Vaines v CRC - "wholly and exclusively"
- CRC V Tottenham Hotspur - Termination payments (UTT)
RFC 2012 (in liquidation) v CRC - Advocate General



Representing, promoting and supporting solicitors



The Law Society

Profit extraction



Representing, promoting and supporting solicitors



The basics

	Remuneration		Dividend		Interest	
	45%	40%	38%	33%	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 loans					(1,000)	(1,000)
Subject to corporation tax	0	0	1,000	1,000	0	0
Corporation tax at 19%	0	0	(190)	(190)	0	0
Dividend paid	0	0	(810)	(810)	0	0
Profits retained	0	0	0	0	0	0
Personal income	879	879	810	810	1,000	1,000
Income tax	(396)	(352)	(309)	(263)	(450)	(400)
NI	(18)	(18)			0	0
Net proceeds	466	510	501	547	550	600
Effective tax rate	53.4	49.0	49.9	45.3	45.0	40.0

Representing, promoting and supporting solicitors

The complexities

- Partnership/sole trader - tax rate plus NI at 9% up to £46k then 2%
- Tax rates and allowances
 - £2.5k 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

Representing, promoting and supporting solicitors

The complexities

- Pensions
 - Tax allowable, tax free growth, IHT free until age 75
 - B/fwd relief = max contribution of £170k in 2016/17
 - But restriction if income > £150k
 - Purchase of own business 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 profits taxed at only 20%

Representing, promoting and supporting solicitors



The Law Society

Other issues

- EMI

- Options 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
- State aid approval expired 6 April 2018

- 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 £2.5k → £14k tax free
- Representing, promoting and supporting solicitors



The Law Society

Unincorporated property businesses



Representing, promoting and supporting solicitors

The issues

- Reducing tax relief on interest - phased from 5/4/17
- 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
- £2.5k dividends 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 share capital
- 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%



Representing, promoting and supporting solicitors



The Law Society

Recent changes



Representing, promoting and supporting solicitors

Changes

- Not a lot in last budget
- Deemed domicile – onshoring of trusts pre 5/4/18
- Trading losses after 1/4/17 can be c/fwd & set against other profits & gains
- Consultation on trusts
- Optional remuneration arrangements (salary sacrifice) now taxed
- CGT indexation for companies ceased at 1/1/18
- ATED applies to properties >£500k
- Entrepreneurs Relief on pre-dilution gains



The Law Society

CGT & IHT on reorganisation of family businesses



Representing, promoting and supporting solicitors

Family reorganisation

- Typically one or a no. 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





The Law Society

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 is 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
 - Representing, promoting and supporting solicitors



www.shutterstock.com - 205465135



- 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
- Business Property Relief -
 - wholly or mainly trading
 - Owned for two years
 - the “50% test” and of what
- Loan notes do not attract BPR and are chargeable

IHT ctd

- Excepted assets in a company
 - The danger
 - What are they? - can be surplus cash
 - Is property investment an excepted asset?
 - Distinguish “business” from “trade”
- Invest instead in BPRable assets e.g. AIM shares then BPR after 2 years
- Remember death is excellent IHT planning for a trading business!!!



Representing, promoting and supporting solicitors



The Law Society

Patent box and R&D reliefs



Representing, promoting and supporting solicitors

Patent box

- Corporation tax reduced to 10%
- Qualifies if owns or has exclusive right to exploit a patent
- Other IP e.g. trademarks or copyright excluded
- Applies to
 - Sale of patented items
 - Licence fees
 - Sale of patents
 - Compensation for infringement
- Excludes income from branding
- Need to elect & complex calculations involving streaming





The Law Society

R&D – definition per HMRC

The work that qualifies for R&D relief must be part of a specific project to make an advance in science or technology. It can't be an advance within a social science like economics or a theoretical field like pure maths.

The project must relate to your company's trade - either an existing one, or one that you intend to start up based on the results of the R&D.

To get R&D relief you need to explain how a project:

- looked for an advance in science and technology
- had to overcome uncertainty
- tried to overcome this uncertainty
- couldn't be easily worked out by a professional in the field

Your project may research or develop a new process, product or service or improve on an existing one.

Representing, promoting and supporting solicitors

R&D

- Easier than you might expect in spite of the definition e.g.
 - Software development
 - Innovative recipes
 - Environmental products
 - Improved processes
- On related expenditure – people costs in particular
- Worth 130% additional tax relief on qualifying expenditure
- So £10k spend = £23k relief → £4.4k tax saving = net cost £5.6k
- Or surrender £23k loss for 14.5% receipt = £3.3k



The Law Society

Other thoughts



Representing, promoting and supporting solicitors

Musings

- Abusive tax planning - SRA warning notice
- Buy to let properties - gift to trust & carve out income
- Offshore bonds if now deemed domicile
- Non Statutory clearance very useful genuine doubt about interpretation
- Remember SDLT reliefs (multiple residential purchases, MDR etc.)
- Sale of occupational income - potential HMRC weapon?
- Stamp Duty/Capital reduction
- Capital allowances on buildings
- Whole of life assurance very cheap to mitigate IHT

Representing, promoting and supporting solicitors

Musings

- ATED - remember to claim exemption ?
- ESOT - any merit for OMB/SME's?
- Pensions likely to change
- ISA at £20k now very valuable
- Rate of CGT at 20 is historically low
- Non resident investors in UK assets likely to be taxed from 5/4/19 (residential already covered)
- VAT threshold review → MTD
- Off payroll working in private sector consultation



The Law Society

Thank you

Thank you for participating.

Representing, promoting and supporting solicitors



The Law Society

Professional Development Centre

The home of legal learning

The Law Society's Professional Development Centre is your free, enhanced eLearning portal that helps you to:

- Capture all your learning in one free online record
- Assess yourself against the SRA Competence Statement
- Create your own personal development plan
- Receive training suggestions tailored to your areas of interest and competence needs.



Available from November 2016.

Visit www.lawsociety.org.uk/professional-development-centre for more information.

Representing, promoting and supporting solicitors