Property tax issues

Hot topics for private & family businesses

Applicable at 1 March 2016

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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STEP Private Client AWARDS 2013/14 Finalist Boutique Firm of the Year STEP

TAXATION AWARDS 2014 FINALISTS

Agenda

- Key topics
  - Legislation
  - Avoidance
  - Unincorporated property businesses
  - Capital Gains tax
  - Inheritance tax
  - Income
  - Other topical issues

- Focus – privately owned mid market businesses & HNWIs
- Property investment discriminated against
- VAT **NOT** covered
- Multiple choice quiz

Legislation

Actual

- Actual
  - Interest relief at only 20% phased in from April 2017
  - "Dividend tax"
  - Additional 3% stamp duty on 2nd homes & buy to let from April 2016
  - Potential exemption may apply to those owning > 15 properties
  - CGT due on residential property sold by individuals & trustees due 30 days after completion – from 6/4/19
- Rumoured
  - Budget 16th March – this recorded 1st March
  - "Serial" liquidations
  - Possible CGT relief on incorporation removed
  - Entrepreneurs relief restriction
  - Pension – flat rate tax relief and 25% tax free
- Fundamentally property investment frowned upon

Avoidance

Current environment

- Evasion – always illegal
- (Unacceptable) Avoidance
  - Political hot potato
  - Schemes
  - DOTAS
  - GAAR & how used
  - Accelerated payments
  - EBTs
- (Acceptable) Planning
- What this webinar is about

Avoidance

- Accelerated Payment Notice (APN)
  - Agreed lawful → Notices being issued
  - Ensure correctly issued
  - Negotiate time to pay
  - Do not ignore – some scheme providers suggesting do not pay!
- In autumn statement
  - Serial avoiders – surcharge & special reporting
  - 60% penalty where GAAR substantiated
  - Offshore tax evasion – stricter criminal sanctions
- Conclusion – plenty of legitimate planning without being artificial so **AVOID**

Unincorporated property businesses

The issues

- Reducing levels of tax relief on interest
- Tax at upto 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 tax free
- Alphabet shares & possible education planning

- Use the HMRC non-statutory clearance procedures

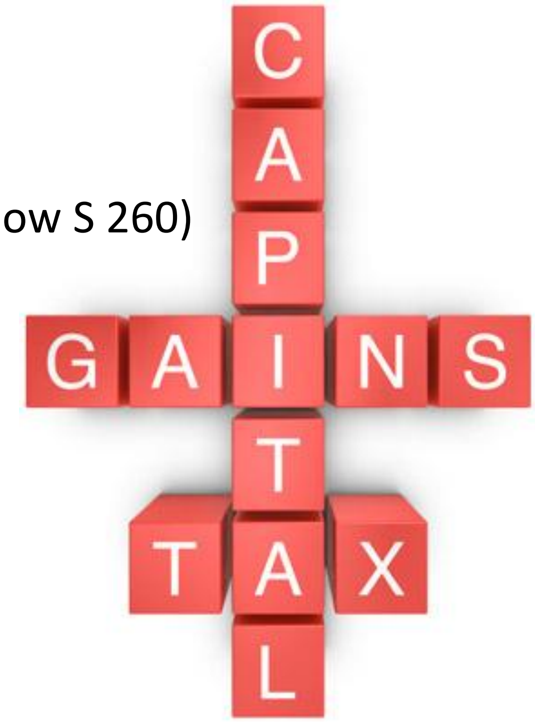
Incorporation - caveats

- 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
  - Multi dwellings relief (min 1%)
  - Partnership exemption if same proportions
- Tax costs of extraction
  - Dividend
  - Interest on capital
  - Liquidation – no ER & expected changes

Capital Gains Tax

Investment property and trading businesses

- Pure property investment
  - 28% CGT on sale or gift of shares
  - 20% on realised gain in company
  - Hold over into a trust (see below) but IHT chargeable (S 165 now S 260)
  - No CGT on death – BUT IHT
- Property investment in a trading business
  - **IF meet** "The 80% test" & of what
  - Entrepreneurs Relief (ER) on shares may be available
  - Hold over on a gift of shares available (S 165)
- ER
  - At least 5%
  - Officer or employee
  - Whole business
  - 1 year ownership



Freezer/banking arrangements

- Reconstruction – paper for paper in new holding company
- If ER available that is banked → threat to ER
- “Cash out” at CGT rate rather than dividend
- CGT can be held over – even if not trading
- Future growth outside estate
- CGT crystallises on realisation of paper for cash
- Technical issues
  - – Shares in same proportion
  - – Reduced control
  - – HMRC clearances
  - – Need for commercial rational – often succession planning

Inheritance Tax

Key issues

- 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)
- Property investment & BPR - the “50% test” and of what
- Excepted assets in a company
  - The danger
  - What are they?
  - Is property investment an excepted asset?
  - Distinguish “business” from “trade”

Planning opportunities

- Reconstruction/freezer arrangements
  - Likely to create an IHT issue – cash, shares or loan notes
  - But probably was one already unless trading & BPR applies
  - Think about sheltering the IHT

- BPRable assets
  - Two years ownership
  - Basket of managed AIM shares
  - Farmland
- Commercial products
  - Defer CGT
  - BPR available after two years
  - Use for crystallised gains on reconstruction
- Remember death is excellent tax planning for a trading business!!!

Trusts – end of the road?

- Out of favour – BUT
  - Genuine family protection
  - Flexibility & wide class of beneficiaries
- CGT & IHT
  - CGT hold over in and out – whether or not trading
  - IHT chargeable at 50% of usual rates but BPR potentially available
- Education planning (if not from parents)
- Watch
  - Complexity & cost
  - 10 year charge
  - 45% tax rate unless distributed
- Freezes current value but not nature (APR/BPR)
- Use of deferred leases & EBTs

Income issues

Profit extraction

- “Dividend tax” from 6/4/16
  - – Still better than remuneration
  - – BUT approx. the same as LLP or sole trader/partnership
- Dividends pre 5/4/16
- Liquidation at 28% CGT but watch new proposals
- Interest on directors loans better than dividends
- Employee shareholder shares (ESS) - With £5k dividend exempt may become of > interest
- Pensions
  - – Difficult to justify for property investment business – BUT
  - – Currently beneficial in spite of changes & b/fwd relief & potential extra in 2015/16
  - – Purchase of own commercial premises almost a “no brainer”

Other topical issues

What is “hot”

- Capital allowances
- Offshore bonds for those likely to move overseas
- The family home
- Protected Cell and EU close companies
- Annual Tax on Enveloped Dwellings (ATED)
- Furnished Holiday lettings
- Stamp duty
  - – capital reduction/swamping
  - – Partnership changes
- Business Premises Renovation Allowance (BPRA)

Multiple choice quiz

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