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Chris Robson looks back at this year's achievements.

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Carl Swansbury outlines the importance of second-tier management.

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Welcome to our final FJ of 2012!

This has been a challenging but successful year for Ryecroft Glenton and I am delighted that in this edition of the FJ we report not only on exam success but also on the award won by Carl Swansbury from our Corporate Finance team on page 8. Carl's award was extremely well deserved and I know that he will agree with me that the award recognises not only his hard work in the last 18 months since he joined but also that of the other members of his team.



In relation to exam success we are pleased to be able to congratulate two team members who have recently passed their final stage professional exams.

Michael Parry, a Senior within our Business and Assurance Services team, has passed his final stage Chartered Accountancy exams. Michael joined the practice as a graduate trainee in 2009 and has extra reason to celebrate as he was a prize winner for achieving the highest mark in the region in regard to the final stage Taxation exam paper.

Michael Cole, a member of our specialist Solicitors' Accounts Rules Team, has passed his final stage Certified Accountancy exams. Michael joined the practice as a trainee in August 2007 and has achieved first time passes in all of his professional exams.

The success reflects the emphasis we place upon training our staff. Our approach is to ensure that our clients receive the high level of service they require from team members who are sufficiently qualified within their respective fields.

Both Michaels look forward to continuing their career development within the practice. Well done to you both.

We cannot sit on our laurels however and we continue to advise clients on areas which will provide challenges for all of us in the months to come. In this edition, we look at recent guidance from HMRC on "one-man companies" and also on the next tax charge facing some of us, the High Income Child Benefit Charge.

We hope that in the next twelve months we can help you to meet your challenges and we look forward to helping you do that.

Success through succession

Any good business needs to have an experienced, well regarded and committed management team in place. In the SME space this management team is often the founders/shareholders of the business. Whilst the business is in its growth and development stages this is not normally an issue, however it can become a business risk when those founding shareholders look to exit the business, perhaps through a retirement, sale, trade disposal or MBO.

If the individual wishing to step away from the business is a key part of the senior management team, their exit would also represent the exit of one of the business's most valuable assets, that individual's knowledge and experience.

Prior to an exit and in order to ensure the business continues to deliver its current performance and retain its current value, the business must ensure it has an effective second-tier management team and structure in place. This second-tier management team is likely to be invaluable in retaining the business's operational performance following the exit of a departing shareholder.

Any business exit strategy must therefore contain within it the necessary steps to attract, motivate and retain second-tier management. In our work with businesses moving towards exit, we find that incentivisation tools, such as profit related bonuses, share option schemes etc are becoming increasingly important.

These reward mechanisms can include EMI schemes, growth shares, long-term incentive plans (LTIPs) and can often be implemented with HMRC approval.

Typically we look to discuss the desired outcomes with the current shareholders and to identify what reward would motivate second-tier management. We find that communication between all parties is vital; without this it may be that the scheme desired to motivate management doesn't motivate them at all!

There are many pros and cons to each of these incentivisation tools and it is important that each is assessed on its own merits in any particular given circumstance pre-implementation.

Please contact me or Tim Mallon (Tax Planning Partner) to discuss succession planning and incentivisation of management in more detail.



Simon Hopwood sets out the latest guidance from HMRC on personal service companies.

Simon Hopwood
Taxation Services Director

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One Man, Twelve Tests

Just when the accountancy profession thought HMRC had seemingly lost interest, HMRC have issued new guidance setting out their risk-based approach to checking taxpayers, compliance with the intermediaries legislation, commonly known as IR35. At the same time HMRC have created a new unit in Sheffield to specifically focus on IR35 compliance.

Background

The IR35 rules are designed to prevent the avoidance of tax and national insurance contributions through the use of personal service companies and partnerships. The rules do not stop individuals selling their services through either their own personal companies or a partnership, commonly known as "one-man companies". However, they do seek to remove any possible tax advantages from doing so.

The tax advantages mainly arise by extracting the profits of the company by way of dividend. This avoids any national insurance contributions which would generally have been due if that profit had been extracted by way of remuneration.

Purpose of the guidance

The guidance is designed to look at the business as an 'entity' giving 12 tests which the business should apply to their own circumstances, each test having a different score for a positive answer. The total scores determine whether the business is at a low, medium or high risk of an IR35 review.

Note that the IR35 legislation however applies to individual contracts and as such having a low score on any one contract does not mean that you are outside the IR35 legislation.

What are the tests?

A score of 20 points or more puts you in the low risk category, 10-20 medium and a score of under 10 in the high risk category.

The 12 tests and their ratings are:

-  Business premises – this is a simple question as to whether the business owns or rents premises. This question scores 10 points.
-  Professional Indemnity Insurance – is cover required? Scores 2 points.
-  The efficiency test – would the company (if the opportunity presented itself) have been able to increase income over the last 24 months by say taking on additional contracts or finishing a fixed price contract early? This question scores 10 points.
-  The assistance test – does the business employ workers who contribute towards at least 25% of the business turnover? This question alone scores 35 points and automatically moves you into the low risk category.
-  The advertising test – has over £1,200 been spent on advertising in the last 12 months? Scores 2 points.
-  The previous PAYE test – has the current end client previously engaged you as an employee? This test is designed to combat those workers who leave the employment on a Friday and are re-engaged on Monday through a company on broadly the same terms. A yes to this question deducts 15 points from your score.
-  The business plan test – does a business plan exist including cash flow forecasts? Is there a separate business bank account? This question scores 1 point.
-  Repair at own expense test – do you have to bear the cost of putting right any mistakes? This question scores 4 points.
-  The client risk test – has the business been unable to recover payment for work carried out in the last 12 months? This test rather oddly looks to reward bad business practices, scoring 10 points.
-  Billing test – does the business invoice for work before being paid, and are payment terms negotiated? It scores 2 points.
-  Right of substitution test – looks at whether a substitute could be sent and scores 2 points.
-  Actual substitution – has a replacement been hired to do the work taken on? This scores 20 points.

Conclusion

Although the guidance is welcome it is clear that IR35 is back on HMRC's radar, and whilst the guidance does give the opportunity to identify the level of risk to the business, it does not provide any degree of certainty. This may only be achieved by asking HMRC to review each individual contract.

It is however clear that in determining the level of risk, the business may be able to take action to move from a high to medium or medium to low risk category. Please do not hesitate to contact us should you require any additional information on IR35 or HMRC's guidance.



Nigel Wyrley-Birch looks at an, often, essential document for SMEs.

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Tony Glenton alerts us to the next tax charge on the near horizon.

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“A shareholders’ agreement... What’s the point in that?”

A shareholders’ agreement regulates the running of a company and is something that investors are always keen to see, even if those starting a business are close friends. The agreement typically deals with situations when those relationships break down. Those suggesting that such an agreement should be negotiated at the outset of a business are often criticised as being unduly pessimistic, but our experience is that time spent doing this can save many hours later, not to mention professional fees!

Protection

The strain of running a business can test the strongest of friendships, and a shareholders’ agreement can set out the key issues, such as share transfers, the business of the company, further share allotments and the obligations of the shareholders. It serves to protect personal friendships from exploitation, manipulation and deterioration in the future by defining a business relationship.

This can often protect a minority shareholder who does not control the board, and the majority shareholder who is not involved in the day to day management of the company.

Company operational details are often included in a company’s articles of association, which are filed at Companies House, enabling competitors to access them. This is a major advantage of a shareholder agreement, as it can document dividend policies, manager incentives, and exit strategies without making sensitive information public. It is advisable to ensure that the shareholders’ agreement and articles of association do not contain contradictory provisions to each other, although generally the shareholders’ agreement will take precedence over the articles of association in the event of a dispute.

What to include

It is important when negotiating the shareholders’ agreement to address a range of possible future developments, and the way in which to proceed should they arise. These can include matters such as additional funding from shareholders in the event that the bank stops lending, how any disputes are to be resolved, the use of restrictive covenants etc.

An often contentious issue which can be covered is whether an employee shareholder may retain their shares if they resign from their post.

Another area of dispute can be the price for which these shares are sold. Employee shareholders can be “good leavers” who retire after an agreed period of time, or due to poor health, generally receiving market value for their shares, or “bad leavers” who have been dismissed due to misconduct, generally receiving just the nominal value of their shares.

How can we help?

As you can see, a properly drafted agreement can deal with contentious issues before they arise, leaving the shareholders and directors to develop the business. We have many years of experience advising companies on the provisions to be included. Much of our experience stems from having to deal with shareholder disputes where agreements have not been entered into. In this way we can help shareholders to learn from others’ mistakes. If you require any advice on setting up a shareholders’ agreement, please contact us.

Dear Children?

I am sure that you will be aware of the proposals to tax child benefit for “high-earners”. HMRC will be writing to all those who they think may be affected by this new tax charge in the coming weeks. What is this new tax charge and how will it affect those “high-earners’ with children?

The new tax charge will be equal to either:

- 1% of the child benefit received for each £100 of income between £50,000 and £60,000, or;
- The full child benefit if income exceeds £60,000.

So, a person will be liable to the charge if their taxable income for a tax year exceeds £50,000, and either:

- They are entitled to an amount of child benefit for any week during the tax year or;
- Their partner is similarly entitled, and the person’s taxable income is higher than their partner’s.

If a person’s taxable income is £60,000 or more, the appropriate percentage to be applied to the amount of child benefit received is 100%, so that the increase in income tax will be equivalent to the amount of child benefit claimed!

If taxable income is between £50,000 and £60,000 the tax charge will be proportionally reduced from 100% of the child benefit for income of £60,000 or move to 0% for income of £50,000 or less. The amount of the reduction will depend on the level of income between those two amounts.

The charge applies for the tax year 2012/13 and beyond, but for 2012/13 will not apply to child benefit for a week beginning before 7 January 2013.

A likely result of these new rules is that if a person is not already required to prepare annual tax returns, but may be subject to the charge, these may be a need to complete an income tax return on an annual basis so that this new tax charge can be determined.

How to avoid the charge

You can however avoid the charge (and possibly avoid the need to complete a tax return) by electing not to receive child benefit.

If you, or your partner, expect to earn over £60,000 in 2012/13 you may want to elect, or persuade your partner to elect, not to receive child benefit from 7 January 2013. We understand that as long as the election has been received by HMRC before 7 January they will not levy a tax charge, even if it takes them a couple of weeks to stop the payments.

Changes in circumstances

What happens if you make the election and then your income falls below £60,000? In those circumstances, the election can be cancelled and the child benefit payments started again.

With the high marginal rates of tax applying to many of those caught by these changes, there is an opportunity for tax planning. For anyone in a position to decide when to take earnings, or when to claim reliefs, the incentive to arrange their affairs so as to earn under £50,000, or say under £50,000 one year and over £60,000 the next year, is not insignificant. Pension contributions and gift aid payments can be used to make them even more attractive in these circumstances.

Time is running out! The deadline for electing not to receive child benefit is 7 January 2013. Please get in touch to discuss matters if you believe you may be affected we are here to help.

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And the Winner is...



Carl Swansbury wins NE Young Dealmaker of The Year Award

Carl Swansbury of Ryecroft Glenton Corporate Finance scooped one of the highest accolades of the night at the prestigious Deal Makers Dinner in Newcastle in September when he was named 'Young Dealmaker of the Year'.

The well-established awards ceremony, organised by Insider Magazine, attracts high numbers of entries from legal, accountancy and corporate finance professionals. The event brought together over 350 professionals at the Marriott Gosforth Park, compered by BBC Radio 4's Paddy O'Connell.

Carl won the coveted Young Dealmaker of the Year award for his outstanding achievements since he joined Ryecroft Glenton Corporate Finance (RGCF) as lead advisor in May 2011.

The North East Dealmakers Awards recognise the achievements of individuals and firms whose "skill, creativity and sheer determination have stood out over the past year."

In its first 12 months RGCF completed a number of transactions including advising international IT consultancy firm E-Resourcing Limited on the acquisition of Williams McKinley Limited. RGCF also advised on the sale of Wild Recruitment Limited to the national consolidator, Berry Recruitment Limited and on the sale of WillSCO Limited to Boardwalk Investments Limited.

Carl has also successfully helped a number of clients, including E-Resourcing, to secure the funding and bank facilities needed to fund acquisitions and the future development of their businesses. He says RGCF has many more transactions in the pipeline, which will conclude in the coming months.

Carl said: "The Young Dealmaker of the Year award has crowned a fantastic first year for us at Ryecroft Glenton Corporate Finance. It's a real honour to have won the award against fierce competition from excellent fellow professionals."

"We've worked hard to make each of our transactions happen, with great results for each of our clients and the firm. We have a great team at RGCF and strong support from Ryecroft Glenton's specialist teams. This award is testimony to the commitment of the whole team and is great news for RGCF."

Insider's specialist publications editor Philip Cunliffe said that seeing new names being shortlisted and winning this year was refreshing. He believes it "reflects the vibrancy of the dealmaking community in the North East."

Chris Robson, managing partner, is delighted with Carl's success at the Dealmaker awards. He said: "Carl's ability to convert potential transactions into completed deals with the best possible results for clients is outstanding. I am delighted that this has been recognised by the Dealmaker awards in one of its top categories. His exceptional approach has produced great results for our firm and for each of the clients we have advised."