

newsline

A roundup of the news that affects you and your business

Summer 2008

In this issue:
P11D Deadline 6th July 2008
The Credit Crunch
Update on the Companies Act 2006

EMI (Enterprise Management Incentive) schemes

EMIs are tax advantaged share options. They are designed to help small, higher risk companies recruit and retain employees who have the skills to help them grow and succeed.

How do they work?

A trading company grants an option to an employee over, say, 100 shares. The current market value of the shares is £1 per share and it is agreed that this is what the employee will pay.

The employee has to meet various criteria and it takes him 3 years to do this. He is then permitted to exercise his options and convert them into shares. At this time, the shares are worth £5 each.

The employee has received shares worth £500 for a payment of £100. There is no income tax charge on the employee **AND** the company gets a corporation tax deduction of £400.

In due course, when the employee sells his shares, he will pay Capital Gains Tax (CGT) (not income tax) on the difference between his proceeds and the £100 he paid for them.

Changes in the Budget

There were some significant changes to EMI schemes taking effect from April 6th 2008. These include:

- The value of shares that can be held under an EMI option has increased from £100,000 to £120,000.
- The number of employees in an EMI company must be less than 250.
- Previously the holding of an option under an EMI scheme entitled an employee to accrue business asset taper relief. There are no similar provisions under Entrepreneur's Relief.

Employees will need to hold shares (not just options) representing at least 5% of the company for a continuous period of 12 months prior to a disposal to benefit



from the 10% CGT rate. Existing EMI schemes entitling employees to exercise options immediately prior to a takeover or floatation should be reviewed to see how the changes might affect them.

For further information on EMI or employee incentives, please contact Meeten Nathwani on 01442 220732 or email meeten.nathwani@hhllp.co.uk.

Post death tax planning - an opportunity not to be missed

It is well known that far too many people die without leaving a will. It is also the case that those who do make wills do not review them on a regular basis. The unintended consequences in both cases can be that it is not necessarily the right people who inherit the estate.

Yet help is at hand with the use of a little known device known as a Deed of Variation which enables a will to be rewritten within two years after death. This can apply in cases where there is no will.

For example, the deceased might have left a legacy to her son who is already well off and who would rather that his share went to his children. With a Deed of Variation the will can be rewritten so that the legacy passes to the

grandchildren either outright or through a trust. A Variation can also be used to increase the amount given to charity and sometimes to increase the tax exemptions which can be claimed.

There are some rules: everyone involved in the rearrangement must agree and there can be complications with children under 18 and certain trusts. However, the message is that it makes abundant good sense to look at the estate of the deceased to see whether any rearrangement of the legacies might be sensible from a family viewpoint or perhaps from tax efficiency.

For more information please contact David Nye on 01442 220712 or email david.nye@hhllp.co.uk.



If you would like to discuss anything contained in Newsline, please speak to your usual Hillier Hopkins contact or the article author, whose details are at the bottom of each article.

If you are not on our mailing list to receive this newsletter and would like to do so please contact the **marketing team on 08452 770660 or email info@hhllp.co.uk.**

P11D - Deadline 6th July 2008



The deadline for filing your employee benefit form P11D and P11D(b) is **6th July 2008** and the Class 1A National Insurance contribution calculated on these benefits is payable by **19th July 2008**. This form is required for all directors (irrespective of earnings) and any employees earning over £8,500 per annum.

The **penalties** for non-compliance are **onerous**. As a general guide, the penalty for late submission of the forms is £100 for each 50 employees for each month that it is late. There are severe penalties of up to £3,000 for incorrect or negligently completed forms and for failure to provide employees with a copy of their P11D.

If you are an existing client of Hillier Hopkins and would like us to complete the forms for you, please provide details of all benefits and reimbursed expenses received by employees and directors during the year ended 5 April 2008. To ensure the forms are completed by the due date, please let us have this information as soon as possible.

Employee benefit services

Reporting requirements for pay and benefits have become much more difficult in recent years.

At Hillier Hopkins we can guide you through the legislative minefield and help you design and administer suitable remuneration schemes tax effectively.

The areas in which we can provide expertise include:

- Designing and implementing incentive schemes.
- Enterprise Management Incentives (EMI).
- Year-end reporting of share options and other benefits.
- Establishing benefits and expenses policies and securing HMRC dispensations.
- Advice on company car schemes or alternatives.
- PAYE and National Insurance advice
- Flexible benefits schemes.

For more information please contact your usual Hillier Hopkins contact or Liam Henry on 01442 220785 or email liam.henry@hhlpl.co.uk.

Update on the Companies Act 2006

Eight years in the making, 1300 sections and 16 schedules, the Companies Act 2006 is the largest single piece of legislation ever enacted in Britain.

The provisions are being introduced over a number of years and the latest part of the Act to be introduced became effective from 6 April 2008 and primarily affects the content, audit and filing of company accounts.

Here is a round up of these important changes, which are all effective for **accounting periods starting on or after 6 April 2008**. This effectively means company accounts with years ending 30 April 2009 onwards, but may apply to earlier period ends where there is a short accounting period.

Filing Accounts at Companies House

The filing deadlines are being reduced by a month, thus allowing private companies just 9 months (public companies 6 months) from the end of the accounting period. At the same time, penalties for late filing will increase by up to 300%, so the Government is evidently taking this issue seriously. For example, accounts filed between one and three months late will attract a penalty of £375, while for anything over three months it will be £750, rising to £1,500. And should the accounts be late two years in succession, the penalties are doubled.

Accounts for Members

Directors still have a duty to circulate copies of accounts. Private companies are no longer required to hold an AGM, so are no longer required to send out annual accounts prior to a general meeting. Instead, they must send out annual accounts to members by the earlier of (i) the date the accounts are submitted to Companies House and (ii) the due filing date.

New Thresholds for Small and Medium-sized Companies

The limits that define small and medium-sized companies and groups are increased, as set out in the table below.

(1) Individual Company Limits	New small company limits	Current small company limits	New medium-sized company limits	Current medium-sized company limits
Turnover not more than	£6.5m	£5.6m	£25.9m	£22.8m
Total assets not more than	£3.26m	£2.8m	£12.9m	£11.4m
Number of employees not more than	50	50	250	250

(1) Group Limits	New small group limits	Current small group limits	New medium-sized group limits	Current medium-sized group limits
Net turnover not more than	£6.5m	£5.6m	£25.9m	£22.8m
Gross turnover not more than	£7.8m	£6.72m	£31.1m	£27.36m
Net total assets not more than	£3.26m	£2.8m	£12.9m	£11.4m
Gross total assets not more than	£3.9m	£3.36m	£15.5m	£13.68m
Number of employees not more than	50	50	250	250

In the above table, "net" is after eliminating balances with other group companies, while "gross" includes all assets.

There are transitional provisions for determining the size of a company or group. In essence, if a company or group would have qualified as small or medium sized under the new rules in the two years beginning before 6 April 2008 then it will qualify as small or medium-sized for the year beginning on or after that date.

Audit thresholds

The requirement to have a statutory audit is changing in line with the above thresholds. A company will require an audit only if its turnover exceeds £6.5m (currently £5.6m) or its assets exceed £3.36m (£2.8m).

Medium-sized groups to prepare group accounts

Medium-sized groups are no longer exempt from preparing group accounts. We shall be contacting any client companies affected by this to explain the implications of this change.

Turnover disclosure in abbreviated accounts of medium-sized companies

Medium-sized companies filing abbreviated accounts are now required to disclose turnover, however they are still exempt from the requirement to provide the particulars of turnover.

Company Secretaries

With immediate effect, a private limited company is no longer required to have a company secretary, although it may continue to have one by choice.

For more information please contact your usual Hillier Hopkins contact or email info@hhlpl.co.uk.

The Credit Crunch

"A bank is a place where they lend you an umbrella in fair weather and ask for it back when it rains" – or so the saying goes. This seems very true today as the banks are using every flimsy excuse under the sun to refuse credit facilities to small businesses. Loan fees have risen and the demands for security over business and personal assets are being made more frequently.

If your business needs funding to expand you may have to look further than your local bank. It is worth considering whether your business could qualify for a grant from the local regional development agency (RDA) or even the EU. We can help you investigate these options.

One of the schemes the RDAs promote is the Small Firms Loan Guarantee Scheme (SFLG). This is a bank loan, but 75% of the amount borrowed is guaranteed by the Government department: BERR (formerly the DTI). You have to pay a premium of 2% of the outstanding capital per year to access this guarantee, but the lender is not permitted to ask for a personal guarantee, which is a big plus. They may however ask you to pledge some of your business assets such as stock or equipment. The amount of the loan can be anything from £5,000 to £100,000. But if your business has been established for at least two years you can borrow up to £250,000.

Another source of funding can be rich individuals, sometimes called business angels. They do exist, but generally want some sort of tax incentive to invest in your business. The tax scheme used to invest directly in small companies is called the Enterprise Investment Scheme (EIS). The business angel must purchase new shares in your company and keep them for at least three years. They get tax relief at 20%, and possibly a deferral of capital gains made on a sale of another asset. You need to be prepared to reduce your control over the business slightly in return for a medium to long-term investment of funds. We can help you through the steps of issuing EIS shares, as this must be done correctly to achieve the tax relief desired.

Where the level of funding you need is relatively modest you could ask family and friends to invest in your business. By giving them new shares in your company in return for cash, your friendly investors will benefit from the increase in value of the company if it is sold at the height of its success. On the other hand if things go wrong your fellow shareholders may be able to claim a loss to set against their other income. Most trading company shares will qualify for this tax relief, but not all, so we need to discuss whether your business model would qualify.

When money is tight it makes sense to gather in as much cash as quickly as possible, and restrict your outlays. Can



you encourage your customers to pay more quickly, by giving small discounts or just chasing them promptly? See if you can negotiate longer payment terms with your suppliers. Where you need new equipment, leasing or hire purchase may be more expensive in the long term, but if you can't borrow to fund the purchase outright it can be a practical option.

Finally look at your projected tax payments. Unincorporated business pay income tax on account on 31 January and 31 July based on the profits of the previous year. If your profits are falling you should reduce the next payment on account due in July. Ask us for advice before the tax payment date arrives and we may be able to negotiate a reasonable solution with the Collector of Taxes.

For more information please contact your usual Hillier Hopkins contact or email info@hhlip.co.uk.



Capital Gains Tax (CGT) for Individuals and Trusts

Capital Gains Tax (CGT) was first introduced back in 1965 with a flat rate of 30%. From 6 April 2008 we are nearly back to where we started, albeit the flat rate is now 18%. Indexation and taper relief have both been abolished.



The main losers under the new CGT regime are: -

- Those liable to tax at lower/basic rate only; and
- Those who qualified for Business Asset Taper Relief (BATR).

BATR was introduced 10 years ago to help encourage investment in businesses and associated assets by reducing CGT on the sale of qualifying assets to 10%. After a

huge outcry at the proposed 80% hike in CGT, the introduction of entrepreneur's relief (ER) was announced: - 'The first £1 million of lifetime gains that qualify for relief will be charged to CGT at an effective rate of 10%'.

This seemed like good news for business investors but the draft legislation indicates that there are big differences (and some real anomalies) in what qualifies for ER compared to what qualified for BATR. The following disposals are not likely to qualify for ER under the new rules: -

- The sale of business premises where the owner has been receiving rent;
- Part disposals of business assets (e.g. selling one shop of a chain of shops);
- Commercial property rented to unassociated business/company; and
- Sales of unquoted company shares where the shareholder is not an employee/director nor holds 5% of the voting rights.

The draft legislation is silent on many key points and we suspect there will be many adjustments before the Finance Bill is



enacted but business investors should not assume that they will benefit from 10% CGT. Please seek advice if you are thinking of making a disposal.

The CGT regime for companies is unchanged.

For further information contact Debbie Wilson on 01442 220710 or email debbie.wilson@hhlip.co.uk.

Buy To Let Properties

Over the last few years there has been an increase in the number of people buying property to let. The prospect of owning property, which will increase in value over the long term, has been an attractive alternative to or addition to the traditional pension fund.

It is well reported that according to Government statistics there are a large number of rental properties that have not been notified to HMRC. They are now in the process of tracing landlords who are not declaring their income or gains on disposals of let property through sources such as letting agents records and the Land Registry.

Very often second and subsequent properties are heavily mortgaged which can mean that initially there is little or no surplus rental income, which leads some people to believe that there is nothing to declare to HMRC.

For mortgage interest to be allowable, the funds must be for the purchase of the let property, but need not necessarily be secured

on that property, or borrowed at the time of purchase. You should however discuss this with your tax adviser.

However, only the interest element of the mortgage repayment is an allowable deduction from the rent received when calculating the taxable income.

If the mortgage is an interest only mortgage the repayments should be allowable in full, but if the mortgage is a repayment mortgage whereby some of the repayment is capital, not all of the mortgage payments will be allowable.

Anyone starting a rental business must notify HMRC by 5th October following the end of the tax year in which the rental commences. Failure to do so can result in a penalty charge.

If you have any questions regarding the letting of property, please contact Marie Cowen on 01442 220772 or email marie.cowen@hhlip.co.uk.



Shaken and stirred - Bonds killed off?

Following the recent changes to the Capital Gains Tax (CGT) regime the relative attractiveness of holding investments in investment bonds has declined. There has been a lot of press comment on this subject, much of it incomplete. I aim here to sum up the main issues and offer some guidance.

1) First the terminology.

The terms investment bond and insurance bond are pretty much interchangeable in the UK. But do not confuse these vehicles with corporate bonds or (most) building society bonds which have rules that are very different from insurance bonds. The correct technical term is single premium non-qualifying life insurance policy.

2) What has changed?

Gains on insurance bonds are taxed as income (when they are taxed). This means that the highest total rate of tax an investor can suffer is 40%. Until 5 April 2008 capital gains were taxed at between 10% and 40%. Following the budget capital gains are taxed at 18%.



3) How does it affect me?

You might pay more tax than you need to even if the same underlying assets are held by the investment vehicle. In summary many clients should review whether insurance bonds are still a good choice for their circumstances.

A little more detail

The position is complex. The sums are tedious and generic advice is dangerous. The issue is in fact certainly not brand new.

Each investor's starting position should be to decide what they wish to achieve with their investments. Then following a structured process investors should arrive at an ideal asset allocation - x% in large UK equities, y% in gilts and so on. The final part of the process is to decide how to hold these assets. Often the choice is between an Open Ended Investment Company (OEIC - a structure very similar to a unit trust) and an insurance bond. (There are however many other vehicles.)

The first rule is that if the underlying asset is only available as an OEIC, insurance bond or something else then do not let the relative tax treatment alter your fundamental investment decisions. For instance if a particular fund you wish to buy is only available as an insurance fund then buy the insurance fund.

If we assume that the underlying asset is available held in a variety of vehicles then undertake some analysis to decide which is the best vehicle for you. The fuller version of this article on our website contains a more detailed comparison table, but for now let's cut to....



The bottom line

Most clients will be better off holding unit trusts rather than insurance bonds. Utilising the annual CGT exemption is far more significant than wrestling with the detail of internal insurance bond taxation. UK insurance bonds will become materially less attractive. Most wealthy clients should hold both vehicles. Wealthy clients should hold enough assets in OEICs to (hope to) use their annual CGT allowances, and should consider whether further amounts could be held in a bond. My preference is for an offshore rather than an onshore bond to allow near gross roll up. Many trusts should use bonds in preference to unit trusts - the tax position can be favourable, the administration is more straightforward and assignation with no tax charge is extremely useful.

If your portfolio consists largely of insurance bonds a review is a good idea. However do not assume that it is best to switch in all cases. Your goals, the underlying investments and the tax treatment are all important factors.

For further information contact Ben Sherwood on 01442 220713 or email ben.sherwood@hhlip.co.uk.



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