



Francis Clark

TAX CONSULTANCY LTD

Tax Newsletter

I am pleased to inform you that Francis Clark has won the prestigious Lexis Nexis Tax Team of the Year award for 2009. We are naturally delighted at this recognition of our hard work and expertise and can only aim to improve and expand on what we have achieved so far. Our thanks go to everyone who has contributed to this success, including all of you who have made use of our services in the past, thus giving us the opportunity to develop our tax expertise.

Back to business, this is just one of several newsletters which we will be sending out over the next few months.

There are currently a lot of changes taking place to our tax system with capital allowances barely recognisable from the system of say 5 years ago, huge changes to investigations, HMRC beginning to flex its muscles over the new CIS introduced in 2007 and a new Offshore Disclosure ready to kick in.

You will already have received details of our new company, CIS Tax Advice Ltd, and a further newsletter will be sent out in a couple of months about CIS. Other topics to be covered in future newsletters are:

- Most Recent Status Cases
- New HMRC Compliance Regime And Powers
- New Tax Appeals Tribunals
- New Penalty Regime
- Capital Allowances Update

If anyone has any suggestions for topics to be covered in future newsletters, please get in touch with me.

Dave Williams
May 2009

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New Offshore Disclosure Opportunity

In the 2009 Budget the Chancellor announced the long expected second phase of the Offshore Disclosure facility.

Full details are still awaited but the new phase will commence in the autumn and run until the end of March 2010.

Many readers will have seen details in the press of banks and other financial institutions which have been required to provide information to HMRC about UK residents with funds invested overseas, and it is pretty clear that HMRC now has an enormous pool of information which has prompted phase 2.

I have recently met with the Offshore Group at Specialist Investigations (formerly SCI) and they were extremely pleased with the vast amount of information recently obtained from overseas, especially Liechtenstein. To quote one officer "these overseas banks in tax havens are crumbling one by one".

As with phase 1 it is anticipated that all irregularities with an offshore connection will be eligible to be brought within the initiative. Again, HMRC is likely to charge a fixed penalty for all cases where the Offshore Disclosure is accepted and this will be significantly lower than any penalty which would otherwise be charged. Under the last initiative, undeclared profits of a UK business which funded offshore bank accounts could be included within the Offshore Disclosure, which gave a very favourable result with a 10% fixed penalty.

We found with phase 1 that some readers found it helpful to use us to do this work either for them or working with them. We have four ex-HMRC investigators who will be happy to provide whatever assistance is required in ensuring that a full disclosure is made by the appropriate time limit. If you need help or just wish to chat about a particular issue, do give us a call.

Goodwill in Trade-Related Properties

HMRC have had a few problems with the capital asset known as 'goodwill'. Recently they have indicated a significant shift in their views on the matter.

HMRC has in the past argued that because the business that is carried on in trade related properties is usually largely or wholly incapable of being sold separately from the property, there is little or no 'free' goodwill. On the sale of a business operated from such properties, unless there were other separately identifiable intangible assets included in the sale, the whole of the purchase price would normally be apportioned to the property and chattels, it being argued that there was **no** goodwill.

This view is now being challenged by some taxpayers (particularly companies) seeking to maximise the amount of a purchase price apportioned to goodwill in order to maximise claims under schedule 29 FA 2002 (Intangible Fixed Asset Regime) and minimise the amount of SDLT payable.

The generally accepted view now is that if a business is sold as a going concern then the sale must include some element of goodwill, even if the sale is of a trade related property. The question to be answered is not whether goodwill exists but what is the value of that goodwill? That question has to be decided on the facts of each individual case. In some cases the value of the goodwill may be nominal but in some it may be substantial.

Traditionally goodwill has been subdivided into different types such as 'inherent goodwill', 'adherent goodwill' and 'free goodwill'. These subdivisions are no longer considered helpful, as they tend to cause confusion. 'Inherent' and 'adherent' goodwill are now not really regarded as goodwill at all as they form part of the value of the property asset.

HMRC now seem to accept this interpretation of the nature of goodwill. Their most recent statement on the matter is as follows:

"In the past HM Revenue & Customs (HMRC) have taken the view that it was unlikely that there would be 'free goodwill' of any significant value in businesses carried out from trade related properties (for example public houses, hotels, petrol filling stations, cinemas, restaurants, care homes etc) because the occupation and use of the particular, specially adapted, premises was usually essential and integral to the generation of the business income.

However, it is now acknowledged that when a business is sold as a going concern the sale price will reflect the combined value of the tangible assets together with the benefit of other business assets such as any contracts with customers, staff and suppliers, records of previous customers etc. Substantial value can be realised by combining the tangible and other business assets together for sale as a going concern but this enhanced value may be reduced if the assets are split and sold separately.

In the unusual event of this type of business being transferred without some form of property interest, it would be highly likely that the value otherwise achieved would be substantially diminished or removed. This is why such businesses are rarely, if ever, transferred without any form of property rights.

It remains important to recognise this distinction from most other businesses where there is no such reliance on a specific property interest and business goodwill can be readily sold and will be of value irrespective of the actual premises. Recently published articles in the professional press do not fully address this important distinction and appear to misinterpret some fundamental valuation issues.

There are a host of real and practical reasons why the assets in such premises cannot be actually separated without depreciating their combined value but ***HMRC now accept that for taxation purposes HMRC need to recognise the contribution that each asset [including goodwill] makes to the combined value...***

We have a team which specialises in the valuation of businesses and if you require any assistance in valuing or arguing over goodwill, please do not hesitate to contact us.

Extra Statutory Concession C16 – The End Of A Road?

Extra Statutory Concession C16 is frequently used to enable the striking-off of unwanted companies and distribution the net proceeds to the shareholders as a capital distribution. The concession essentially puts the members in the same position as if they had followed a formal liquidation route.

Without the benefit of the concession, the recipients of the funds (or other assets) remaining in the company would be taxed on an income distribution. This is because all distributions from a company to its shareholders are strictly treated as income in the hands of the shareholders – except a distribution paid in the course of the formal winding up of a company. Currently this would leave higher rate taxpayers with a net 25% tax liability on the funds distributed (after the offset of the notional tax credit), as opposed to an 18% liability – which could of course reduce to 10% if Entrepreneurs' Relief was available on the distribution. The CGT annual exemption would further reduce the tax charge if the distribution is treated as capital.

The current problem stems from a judicial review case (*Wilkinson*). The decision of the case meant that all Extra Statutory Concessions that have the effect of directly relieving a tax liability (as opposed to easing an administrative requirement) are, strictly, illegal as being *ultra vires* the HM Commissioners' powers. As a result all such ESCs must now be legislated for. Powers to include concessions in legislative form were introduced by the Finance Act 2008, and the first Order implementing some concessions was recently approved. Some ESCs are recognised as being more complex to legislate for.

A consultation document considering three concessions has been issued. The ESCs included are:

- B49 (on Capital Allowances – grants repaid)
- C10 (on Groups of Companies: Arrangements); and
- C16

The consultation document identifies various problems that HMRC sees in legislating for the concessions, and it is clear that HMRC is distinctly uneasy with attempting to legislate for ESC C16 for a number of reasons.

The appraisal of ESC C16 with a view to legislating it as it currently stands has led HMRC to believe that it would significantly increase the length and complexity of the legislation.

HMRC is also concerned that winding up is the normal (and statutory) process for a company to end its existence and it would be

inappropriate for HMRC to seek statutory backing for a practice which encourages companies to accept dissolution in preference to a formal winding up.

In addition, HMRC has concerns that ESC C16 has been and continues to be used for avoidance purposes.

It is not clear what HMRC regards as avoidance in the use of ESC C16, and by contrast what is regarded as legitimate use of the concession. It is however widely acknowledged that HMRC do have some issues with the current operation of the ESC – as is evidenced by the regular introduction of additional undertakings required of the shareholders in addition to those included in the formal concession.

Capital Gains Tax

All Roads Lead To Rome But Some Routes Are Prettier

The taxpayer lost an appeal, heard by the Court of Appeal, regarding his entitlement to Capital Losses.

Facts

Mr Underwood bought some land for £1.4m in 1990. The land fell in value. Mr Underwood had CGT liabilities and wished to crystallise the Capital Loss without fully disposing of the land.

He could not transfer the land to a connected person since any loss arising would be of limited use. So, he found an unconnected company (Rackham Ltd) that was prepared (for a fee) to acquire the land at its market value and allow the land to be 'parked' with them until Mr Underwood wanted it back.

The transactions to achieve this took place on 2 April 1993 – there was a contract for sale to the unconnected company for £400,000 and an option granted by the company allowing Mr Underwood to acquire the land back at the same price (£400k) plus 10% of the difference between this price and the actual market value (i.e. the fee). This contract for sale was never completed and the option was never formally exercised.

In November 1994 Mr Underwood entered into a contract (based on the terms of the option)

with the company to reacquire the property for £420,000 – this contract was never completed. On the same day he entered into a contract to sell the property to another company (Brickfields) that he controlled. It was accepted that the property was worth between £600,000 and £750,000 in November 1994. The contract was drafted showing the price as £600,000. This contract was completed.

Mr Underwood claimed a 1992-93 capital loss of £1.0m (£1.4m less £400k) that was unrestricted in use, on the basis that there were three transactions for CGT purposes:

- Mr Underwood to Rackham Ltd, April 1993, disposal value £400,000
- Rackham Ltd to Mr Underwood, November 1994, disposal value £420,000
- Mr Underwood to Brickfields Ltd, November 1994, disposal value £600,000

However there was only one conveyance: from Mr Underwood to Brickfields Ltd for £600,000. Rackham only ever received £20,000; being the difference between the amounts they agreed to buy and sell the property for.

HMRC took the view that there was only one contract for CGT purposes: the disposal by Underwood to Brickfields for £600,000. This generated a 'connected party' loss that could only be off-set against subsequent gains that resulted from transactions between the same connected parties (Underwood and Brickfields).

The Law

The relevant law that the parties referred to was TCGA 1992 section 28(1):

"... where an asset is disposed of and acquired under a contract the time at which the disposal and acquisition is made is the time the contract is made (and not, if different, the time at which the asset is conveyed or transferred)."

This rule has been held to be simply a timing provision, which deems a disposal and acquisition (once occurred) to take place at a particular time - the time the contract is made. The rule is intended to deal only with the question of fixing the *time* of disposal and not with the any substantive liability to tax. Whilst s28(1) contains no provisions to deal with what happens if the contract 'goes off' or fails to complete it has been held, in previous cases

(see *Jerome v Kelly* [2004] UKHL 25; and quoted with approval by the Court of Appeal in this case), that:

- there will be no disposal for CGT purposes; and
- nothing will be deemed to have happened;

at the time of a contract that is never actually completed.

This makes practical sense because it would be 'unjust' to charge CGT on the basis of the stated contract price when the property is in fact left with the vendor (the Court of Appeals' view).

Decision

The Court of Appeal upheld the original Special Commissioners' decision which dismissed Mr Underwood's case on the basis that Rackham Ltd never acquired any beneficial interest in the property (and thus Mr Underwood never disposed of it) under the agreements. Since no beneficial interest ever passed under the contract to Rackham Ltd, there was no disposal by Mr Underwood and no acquisition by Rackham Ltd "under the contract" within the meaning of TCGA 1992 section 28(1).

All that Rackham had done was turn an asset to account; the asset concerned was its contractual rights under the 1993 contract to acquire the property, and not any beneficial interest in the property itself (which it never held).

Discussion

Much was made of the essential nature of a contract for sale and the transfer of beneficial (or equitable) interests under such a contract. It is only when the beneficial interest in the property is fully transferred that a disposal can be said to have taken place (or completed). The whole process of the transfer of beneficial interest may not be smooth and can proceed in stages, the key for CGT is that it eventually reaches an end.

Generally, after contracts are signed / exchanged, up until the time of completion, a vendor becomes (in equity) a trustee for the purchaser (*Lysaght v Edwards* (1876)). Such a trustee has specific and particular duties and liabilities, in that the main purpose of the trust

is to impose duties on the vendor to preserve the property in the period between contract and completion. However, in *Jerome v Kelly* it was held that an uncompleted contract for the sale of land is neither the equivalent to an immediate, irrevocable declaration of trust nor the assignment of the beneficial interest in the land. Neither the seller nor the buyer has unqualified beneficial ownership of the land which is, in a sense, split between the seller and buyer on the *provisional* assumptions that specific performance of the contract would take place and that it would in due course be completed (if necessary by the court ordering specific performance). As a contract proceeds to completion the equitable interest could be viewed as passing to the buyer in stages: as title was made and accepted and as the purchase price was paid in full. This 'rule' could lead to odd outcomes: for example, in a case where the purchase price is paid *in full* prior to completion (if all other contractual requirements have been met) a vendor may become simply a *bare* trustee for the purchaser who effectively holds the full beneficial interest in the property at that point.

Comment

One of the judges in the Court of Appeal reached his decision "with some regret" because, as the report of the case makes clear, there were several ways that the transactions entered into could have been processed. And some of them could have achieved Mr Underwood's desired result. If all of the contracts had been fully implemented the tax result would have been quite different – although there would have been additional Stamp Duty liabilities to consider, which is why the solicitor processed the contracts and conveyance as he did.

Watch the legal form. Different routes to the same destination will often produce radically different tax consequences.

***Underwood v HM Revenue & Customs* [2008] EWCA Civ 1423 (December 2008)**

Disincorporation

Over the past few years the tax benefits for a small business from incorporation have been slowly whittled away. For some the relative straight-jacket of corporate rules and the marginal tax advantage now available may lead to the director(s) / shareholder(s) considering getting the business back out of the company. Disincorporation involves a transfer of the company's trade and assets back to the company's shareholder(s), either by way of sale or by way of distribution. The shareholder(s) then carry on the business as a sole trader or in a partnership.

There are a number of tax consequences of such a transfer for both the company and for the shareholder. Whilst there are a number of reliefs available to the individual to facilitate the transition on the way into a company, there is little assistance to avoid paying tax when disincorporating.

The Company

1. *Transfer Of Chargeable Assets*

Unlike incorporation, where S162 incorporation relief or s165 gift relief is available, if appropriate, to relieve chargeable gains on a transfer into a company, where the transfer is made from the company to the shareholder there is no similar relief. The company's disposal (whether by sale or distribution) of chargeable assets (e.g. property and 'old' goodwill) would be at market value for capital gains tax. Any gains arising could then only be relieved by the company's current period trading losses and current period and brought forward capital losses.

'Old' goodwill relates to a trade that was established or acquired before 31 March 2002. For 'new' goodwill any gain would be treated as a trading profit under the intangibles rules in schedule 29 FA 2002 and could then be relieved by current period and brought forward trading losses if available.

2. *SDLT on Property Transfers*

SDLT is chargeable at the applicable rate on the market value of any land and buildings transferred from the company. SDLT can be avoided if the property is transferred by distribution in the winding up of the company after the cessation of the company's trade. The gain arising on the transfer would then fall

into a post cessation accounting period for the company, however, meaning that any final period trading losses could not be used to offset the gain.

3. *Cessation Of Trade*

The transfer of the business means that the company ceases to trade and this will bring an end to the current accounting period for corporation tax, most likely advancing the due date for payment of corporation tax for that period.

If the company is loss making in the final period then these can be used against other profits of the same accounting period including against chargeable gains. Any remaining unutilised losses from the last 12 months of trade can then be carried back and set against total profits of the three previous years.

Trading losses that remain unutilised after all the above claims have been made are lost on the trade's cessation. Trading losses cannot be carried forward into the post-cessation period to be set against gains that may arise. Neither can they be transferred with the trade to the successor.

4. *Transfer Of Plant And Machinery*

There are a number of options here and the tax planner will have regard to the availability of unrelieved trading losses in the company (where a balancing charge on transfer could be absorbed) or the extent of any chargeable gain arising on other asset disposals (where a balancing allowance may be more valuable).

- a) A cessation of trade causes a deemed disposal of plant and machinery. This will create a balancing adjustment calculated with reference to market value.
- b) To avoid a balancing adjustment a joint election can be made (s266-267 CAA 2001) to transfer all plant and machinery at tax written down value on the date of succession.
- c) A more bespoke balancing adjustment can be manufactured by the company selling the plant and machinery to the successor. The disposal value is taken to be the actual proceeds of

sale under s61 CAA 2001, irrespective of the fact that the parties are connected.

Note that there are no FYAs or AIAs available in the year of discontinuance. The timing of capital expenditure around the time of disincorporation should be carefully considered.

For transfers of buildings on which industrial buildings allowances can be claimed, there is no balancing adjustment on the disposal. IBA's will still be available to the successor until 6 April 2011.

5. *Transfers Of Stock And Work In Progress*

Irrespective of the price actually paid on the transfer from the company to the shareholders, because of the connection, market value is used for tax purposes on this disposal.

Where market value exceeds the price actually paid and also exceeds cost, the two parties may jointly elect to use the higher of sale price and cost (s100 (1C) ICTA 1988).

6. *Close Investment Company Status*

Once the company ceases to trade, it is likely that it will become a close investment holding company. This will mean that any profits arising in the post cessation period will be subject to corporation tax at the full rate of 28%. This should be borne in mind where, for example, property transactions are being delayed to the post cessation period to be distributed rather than sold to save on SDLT.

The Shareholder

1. *Tax On The Business Transfer*

The business transfer can be undertaken either as:

- The disposal of assets in exchange for cash from the shareholders (either at or under market value);
- The disposal of assets with the amount left outstanding and owed to the company (either at or under market value);
- A distribution of the assets in specie to the shareholders.

A distribution of the assets in specie would seem to be the most straightforward approach. However, under this approach care needs to be taken to ensure that decisions regarding winding up of the company are made prior to the trade transfer. A distribution from the company is taxable on the shareholder either as a capital distribution (benefiting from an 18% tax rate and possibly entrepreneur's relief and annual exemption) or as an income distribution (currently taxed at 25% of the value distributed).

If the decision to liquidate or strike off the company is not made and recorded prior to the transfer of the trade to the shareholders then potentially there is a distribution of assets which may fall to be taxed under s209(4) ICTA 1988 as a dividend, meaning a 25% tax liability (for a higher rate tax payer) on the market value of the assets distributed.

A distribution of assets may be straightforward but it does not leave the company with any cash with which to pay its corporation tax liabilities. The shareholder may need to borrow funds in order to buy the assets from the company, which may prove difficult in the current economic conditions.

Where the disposal is for cash or loan but at undervalue then the excess of market value over the amount actually paid or payable may also be taxed as a distribution under s209(4) ICTA 1988 if the appropriate decision to wind up has not been recorded.

The amount paid and/or payable for the assets will constitute the company's post cessation assets. The cash available will first be required to settle any corporation tax liabilities of the company arising from the cessation. The balance can then be distributed to the shareholder(s) as part of the winding up of the company, along with any other assets that were retained post cessation (for example property where the SDLT charge on transfer is being mitigated).

If the company is being wound up by liquidation then the receipt of the distribution during liquidation by the shareholder will automatically be subject to capital gains tax on the value of the distribution. Where the company is wound up under s1003 Companies Act 2006 (successor to s652a), the distribution can, by concession, be taxed as a capital receipt also, subject to the

company directors and shareholders providing HMRC with certain assurances.

For disincorporations there is a risk that HMRC will assess the distributions made either in liquidation or on striking off as income distributions rather than capital under the Transactions in Securities anti-avoidance provisions in ITA 2007. They may take the position that where a business was incorporated to obtain a tax advantage, the subsequent disincorporation where the trade continues in the same hands as before is not carried out for bona fide commercial reasons. It is recommended that for disincorporations, clearance is sought, prior to the transaction, under s701 ITA 2007 in addition to clearance from the local Inspector for ESC C16 treatment where appropriate.

Subject to the above, a capital distribution made after 5 April 2008 may attract Entrepreneurs' Relief if all of the qualifying conditions have been met. The distribution must be made within 3 years of the trade ceasing otherwise the company is no longer a qualifying trading company. Where Entrepreneurs' Relief applies the effective rate of tax on the distribution will be 10% (where the gains are less than £1m and the lifetime limit of £1m has not been used elsewhere previously); where the relief does not apply, for example with investment companies, the capital gains tax rate will be 18%.

2. *Base Costs Of Assets*

For property and goodwill that have been transferred at market value to the sole trader/partnership then the capital gains tax base cost of these assets now acquired is the market value on the date of transfer.

For plant, machinery, stock and WIP the base cost of these assets will depend on whether any elections have been made and/or a specific sale agreement for the assets exists, but in the absence of these then market value would be the default base cost for these also.

3. *Self Employment Begins*

The sole trader/partnership members will need to register with HMRC as self employed within 3 months of the transfer date. Payments for Class 2 NICs will also begin.

Commencement rules will apply and depending on the date of commencement and

the date of the first accounts, profits may be subject to tax twice in respect of the early years. These overlap profits can be deducted on any subsequent change of accounting date or on a cessation of the trade.

If the succeeding unincorporated trade suffers losses in its first 4 years then these can be carried back up to 3 years against other income, which may include salary and dividends received previously from the company.

Other Issues

VAT

The transfer of the company's trade to a sole trader or partnership is the transfer of a going concern and therefore outside the scope of VAT, provided that the new trader registers for VAT. The company's VAT registration could be transferred to the sole trader/partnership instead.

Bona Vacantia

A company cannot distribute its share capital unless it is in formal liquidation. Previously where a company had a large issued share capital and applied for striking off rather than liquidation there was a danger that the Treasury could pursue the distribution of the share capital and recover this under the *bona vacantia* rules. Recent changes to the Companies Act means that private companies are now able to reduce share capital by special resolution and compliance with certain other conditions, repaying the share capital to the shareholders. The Treasury have also stated that it will not pursue any technically illegal distributions of share capital of less than £4,000.

So where there is a large issued share capital and striking off is preferred to liquidation, a first step would be to reduce the share capital by special resolution under the new Companies Act provisions to £4,000 or less and then to strike off the company.

Where a company is struck off, assets belonging to the company at the point of dissolution belong to the Crown and can be collected by the Treasury. Where the company has a loan to a participator then this may cause a delay in the striking off. If the loan is repaid or distributed more than nine months after the accounting period in which it

was made then the repayment of s419 tax is not given until 9 months after the accounting period of the repayment. If a striking off occurs before the repayment is received, the s419 receivable is technically then the property of the Crown.

Success has been known from informal agreements with the local Inspector whereby the value of the s419 repayment is included as a part of the final capital distribution to a shareholder and that shareholder is then named as nominee in the company's final CT600 for the s419 tax repayment that is due post striking off.

Conclusion

As with the incorporation transaction there are a number of tax issues to take into account when considering disincorporation for both the shareholder and the company.

Most notable is the potential for the distribution on the winding up of the company to fall foul of anti avoidance legislation and be subject to income tax rather than capital gains tax.

Another significant aspect of the transaction will be the transfer of property and goodwill that is likely to have appreciated in value and will therefore crystallise a capital gain on which the company will have to pay corporation tax. Other than current period trading losses in the company and current and brought forward capital losses, there are no reliefs available for these gains.

If the business was only incorporated in the recent past to benefit from the advantageous corporate tax rates, the tax cost of disincorporation may exceed all of the tax benefits that have previously accrued. The tax implications of the decision to unwind the company should be thoroughly assessed before any action is taken.

Pre Year End Tax Issues For Companies – Talking Points

The idea of this list is to provide a number of general points for discussion for a pre year end meeting/call. The points below are looking at ways of reducing the corporation tax liability/improving tax cash-flows by, for example, accelerating expenditure and CA claims where possible. This is tax-focussed so if the company has other priorities in respect of their final results (e.g. bank covenants, potential sale) then some of these points may not be appropriate. The italics in the right-hand column give an indication of the reason the question is posed.

1	Expected taxable profit? Expected turnover?	<i>Tax rate bands, associated companies, and instalment payment requirements. If losses, encourage quick completion of accounts and returns to carry back losses and secure tax repayments. Use of management charges.</i>
2	Has the company incurred in the past year or will the company incur in the next 6 months any substantial/exceptional expenditure? Is the company expecting to complete any substantial transactions prior to the year end?	<i>General tax implications of transaction, opportunities to defer income / accelerate expenditure, VAT implications of the transaction.</i>
3	Are there any fundamental changes planned or being considered? E.g. <ul style="list-style-type: none"> • Sale of company or its trade • Retirement of principals • Succession of share ownership 	<i>This may impact other aspects of the pre year end planning, for example if company to be sold would want to dress it up so would not look to defer income and accelerate expenditure.</i>
4	Is the company considering bonuses / dividends to its shareholders/directors in respect of this year's results? Have the tax effects of different methods of profit extraction been quantified at the company's current CT rate.	<i>Consider the tax impact of the decision and the tax cash flows.</i> <ul style="list-style-type: none"> • Bonuses • Dividends • Pension contributions • Rent • Interest • Royalties • EBT planning
5	Do any of the directors/shareholders owe the company money? If so how much?	<i>Are any repayments likely? S419 impact. Sale of assets into company to repay company and use up personal CG allowances.</i>
6	Does the company have any long-term debtors?	<i>Provisions – make them specific and collate evidence to support. VAT reclaims on bad debts over 6 months.</i>
7	Does the company have unsaleable/obsolete stock or has the NRV of some lines fallen below cost?	<i>Provisions – make them specific.</i>
8	Are the directors considering starting any new ventures in the near future?	<i>Consider starting the venture pre year end in the existing company to benefit immediately from losses in start up period.</i>

9	Does the company have leased property with dilapidations obligations?	<i>Dilapidations provision allowed for tax if FRS 12 compliant, i.e. quantifiable, constructive obligation. Look at how the provision has been calculated, professional assessment of costs and appropriate accrual of anticipated costs over time.</i>
10	Does the company have purchased goodwill? Has its carrying value been reviewed for impairment/ its useful life been reviewed?	<i>Accelerate the writing down of the asset, increase the tax deduction on post 2002 goodwill.</i>
11	Has the company paid for any repair/refurbishment work to property/equipment in the year? Has there been significant expenditure capitalised to L&B for property/leasehold improvements?	<i>Review of capital v revenue to maximise tax deductions.</i>
12	Has the company paid for any upgrades to its computer/software assets?	<i>Review for possible revenue deductions.</i>
13	Does the company have any plans to acquire plant/equipment in the near future?	<i>Accelerate purchase to pre year end to accelerate capital allowances claims. Ensure delivery by year end (unconditional obligation), care on the 4-month rule for payment.</i>
14	Are any recent asset purchases (this year or previous year) expected to be disposed of within 4 years of purchase? Have any bought last year already been disposed of or scrapped?	<i>Make SLA claims on these assets, to accelerate balancing allowances on their disposal/ scrapping. Ask for previous year as can repair that return.</i>
15	Does the company plan to acquire any property? If so what, how much, when?	<i>General tax planning for purchase, VAT implications, who should own, fixtures claims.</i>
16	Is the company considering bonus payments to employees (non-directors)?	<i>Bonus payments made quarterly, half –yearly or yearly are better than monthly bonuses from an NIC perspective, may save e'ee and e'er NICs</i>
17	Is the company planning for any redundancies? Will/can this decision be announced to staff prior to the year end?	<i>Redundancy provision will be allowable for tax if FRS 12 compliant, i.e. quantifiable, constructive obligation; means that decision must have been announced and staff members identified. Must also be paid within 9 months of year end.</i>
18	Does the company provide company cars to any directors/employees? Have the total costs (including tax effects) been measured against the most recent rates?	<i>Re-assess lease v purchase v mileage rates Impact of 2009 changes when new cars greater than 160g/km will have reduced WDAs.</i>

19	Are employer contributions to staff pensions up to date?	<i>Have to pay to obtain tax deduction.</i>
20	Does the company want to incentivise some or all of its employees?	<i>Salary sacrifice schemes for pension contributions, childcare vouchers, Site allowances - all saving NIC for e'ee and e'er Suggestion schemes – tax free reward Share ownership schemes – varied benefits EMI schemes.</i>
21	Does the company pay mileage rates to its employees for business mileage? At what rate?	<i>If below authorised rates, increase in lieu of salary increases, NIC free for e'ee and e'er, tax free for employee, tax deduction for company.</i>
22	Are the company's PAYE payments less than £1,500 pcm?	<i>Can move from monthly payments to quarterly payments.</i>
23	Is the company's turnover less than £150k p.a.?	<i>Look at the Flat Rate Scheme for VAT, may benefit the company.</i>
24	Is the company's turnover less than £1,350k p.a.?	<i>Look at the Cash Accounting Scheme for VAT, likely to improve company cashflow.</i>
25	Does the company use any 'consultants'/self-employed people on a regular basis? Has their status been suitably reviewed?	<i>Risks for NIC.</i>
26	Do the company's employees all have employment contracts?	<i>Employment law risks – should have them. Will help to clarify position on redundancy and any variations to contract that need to be made in economic downturn.</i>

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