

newslines

A roundup of the news that affects you and your business

Autumn 2007

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The Companies Act 2006

Ten things for private companies to know about the new legislation

The Companies Bill received Royal Assent in November last year after a consultation process lasting eight years. The Companies Act 2006 replaces the Companies Acts 1985 and 1989 and has been designed to deregulate and reflect modern needs. Despite this it is the longest ever Act to have been passed by Parliament! The new Act has now become law and its provisions will be brought into force in stages by October 2008. The key areas of change for private companies are set out below:

1. Company Secretaries

There is no longer a requirement to appoint a company secretary. If one is appointed they will have the same rights and responsibilities as now, (from April 2008).

2. Directors

All companies must have a least one director who is an individual. Subject to this any legal person, including a company, can be a director. All directors must now be at least 16. Existing underage directors will cease to be directors from October 2008. Directors can file service addresses on the public record, with residential addresses held as protected information at Companies House, (from October 2008).

3. Shareholder Meetings

Private companies will no longer need to hold an AGM. Shareholders representing at least 10% of voting rights can demand a meeting, (from October 2007).

4. Decision Making

Written resolutions will become easier to use, requiring a simple majority, rather than all shareholders, (for ordinary resolutions) or 75% (for special resolutions) of eligible votes, (from October 2007).

5. Electronic Communications

If there is agreement from shareholders, e-mails and websites can be used much more than at present to communicate with members. A company's name, number, registered office and other particulars,

currently required to be displayed on business letters and other documents, must now also be provided on electronic documents, as well as on any company website, (from January 2007).

6. Articles of Association

Companies formed under the new Act can choose to have new streamlined default model Articles. Existing companies can also choose to take advantage of these new model Articles. There will be no requirement for companies to state their objects in the Articles or Memorandum of Association, nor will there be any need to specify the authorised share capital, (from October 2008).

7. Financial Assistance

The Act abolishes the prohibition on private companies providing financial assistance for the purchase of their own shares, although private company subsidiaries of public companies are still prevented from doing so, (from October 2008).

8. Accounts Filing Deadline

Private companies will have to file their annual report and accounts within nine months (previously ten) of their year end. The medium-sized group exemption from preparing consolidated accounts has now been removed, (from April 2008).

9. Capital Reductions

There is now a simpler solvency-based procedure to enable private companies to reduce capital without court approval requiring a statement by the directors passed by special resolution, (from October 2008).

10. General Compliance

There is very little that Companies have to do now, but they can take steps to take advantage of some of the deregulatory benefits of the Act.

For further information contact your usual Hillier Hopkins adviser or speak to Neil Rumsby on 01442 220754



Tax deadlines are changing

Legislation will be introduced in the 2007 Finance Bill giving different filing dates for paper and online self assessment tax returns for individuals, trusts and partnerships issued after 6th April 2008, relating to 2007/8 and subsequent years.

The new filing dates will be:-

- **31 October** for paper returns,
- **31 January** for returns filed online.

Following these changes:-

- Taxpayers who want HMRC to calculate their tax liabilities, must file the return by 31 October.
- The period for amendment of the return will continue to be linked to the 31 January deadline.
- There will still be a three-month period in which the return can be filed and amended where it is issued late.

The period during which HMRC can enquire into a tax return will, after 6 April 2008, be linked to the date on which the return is received by HMRC.

This change will apply to both self-assessment tax returns for 2007/8 onwards and to company tax returns for accounting periods ending after 31 March 2008.

The enquiry window will close one year from the delivery date.

Therefore where a return is received before the filing deadline the enquiry window will close at an earlier date than under current legislation.

For more information please contact Marie Cowen on 01442 220772 or email marie.cowen@hllp.co.uk

Children leaving home for University or College

Making regular gifts out of income is a common method of supporting your children through university but you may have already paid 40% tax on the income gifted. Instead you may wish to consider these tax-planning opportunities for students aged 18+ years: -

- Gifting capital for the students to invest in their own name to generate income. Such a gift could make full use of the student's personal allowance, lower & basic rates of tax and capital gains tax annual exemption.
- Using your spare capital to give an adult student funds to buy their own home near their university. They could then generate income by renting a room and, provided this is less than £4,250 per tax year, it will be tax-free. An additional bonus with property wholly occupied by students as their full-time or term-time residence is exemption from council tax. Assuming property prices continue to rise and the house is sold once studies are completed, any profit will be capital gains tax free, as the student will qualify for Principal Private Residence exemption.
- Gifting shares in your profitable dividend-paying family company. After the transfer, provided (1) you do not retain an interest in the shares gifted and (2) the student is not liable to higher rate tax. The student will not owe any further tax on the dividends paid to them (non-taxpaying students cannot reclaim the dividend tax credits.)

These opportunities involve making outright gifts to your children and this may not always be viable for a variety of reasons. If the above options are not suitable do not forget that each student can have income totalling £5,225 per annum before paying income tax.

Whenever considering any of these opportunities, you should always take professional advice.

For more information please contact Debbie Wilson on 01442 220710 or email debbie.wilson@hhllp.co.uk



Client Case Study

VAT recovery for Dacorum Council for Voluntary Services

During our normal audit work, our VAT review enabled Dacorum CVS to claim back a refund of £16,000 from Customs and Excise, not only for recent new sales and overheads but also tax from the previous two years.

As with most charities, Dacorum CVS have a mix of income sources including grants, sales of donated goods, and donations, to name but a few. These various incomes are split into business and non-business income, and vatable and exempt income.

Our VAT review showed that the split in the income had changed significantly during the past two years. A much larger portion of their services were now vatable. However, they were still only claiming a small proportion of the tax incurred because they were basing their claims on the previous split of income.

Our initial work highlighted the above change, and the potential to recover a larger proportion of the tax.

Alongside our tax reclaiming efforts, we also spent time with the Dacorum CVS accounting team to ensure that the maximum recoveries possible would be achieved in future years. Our continued



support will involve us making quarterly visits to check VAT calculations and checking for further changes, which may effect the recovery position. We will be carrying out an annual review to see if any further adjustments will be required and to make sure that Dacorum CVS continue to recover the maximum possible amount of tax.

The above is an example of the service we provide to many partially exempt clients. If you would like more details or an initial review of your own situation, please contact Robert Twyde on 01923 809410 or email robert.twyde@hhllp.co.uk

New joint venture with finance solutions team

All businesses need financial control if they are to be effective in managing their cash flow, resources, stock, and business transactions. However, most business owners and entrepreneurs dread dealing with the financial aspects of running a progressive and growing company. Their strengths lie in dealing with their clients, being a successful manager and leader, not trawling through the numerical nightmare of cash flows, invoices, forecasts, and tax details.

Newly formed company

Hillier Hopkins are embarking on a joint venture with a team of financial experts, including several experienced industry accountants, to provide a range of part-time financial and management accounting services to our clients and prospects on an outsource basis.

The newly formed company is called Hillier Hopkins Total Business Solutions, HH Total Business Solutions for short.

Service Solutions

Because we know that many business people do not have the desire, skills, or time to do the financial work themselves, or the resources to employ someone full time, we can now offer an efficient and affordable alternative.

"HH Total Business Solutions has played a vital role in the success of Civils Select. The level of service has been of top quality with expert opinions only a phone call away. Sharon Schofield one of the founding Directors has been a huge support to my business always ensuring the best interests of my company is always taken care of in a prompt and professional manner and allowing me to concentrate on the core fundamentals of my business."

Kevin Clancy – Director, Civils Select.

As often as you need someone to come in to deal with the financial administration of your business, one day a week, month or even quarterly, our team can provide you with a wide range of accounting support. From bookkeeper, to management accounting, to a part time Financial Director. We can do the same level of work as a full time employee, but you won't be paying full-time costs.

HH Total Business Solutions will be working either onsite at client's premises or externally. They will also spend time working out of our new Watford office.

Would your business benefit from more financial control?

If you would like to talk to one of the new team about these part-time support services, please contact Richard Malone at the Watford office on 01923 232938 or email richard.malone@hhllp.co.uk

Three cheers for common sense...but be cautious

The champagne corks went flying when towards the end of July the House of Lords declared that Geoff and Diana Jones had won their battle against HM Revenue and Customs (HMRC). The cheers were not just for them but for the thousands of husband and wife businesses which had been set up in a similar fashion. Many such businesses which are jointly run are structured to ensure that tax liabilities are reduced as far as possible. Commonly, salaries are kept at low levels and the balance of profits is paid out as dividends. HMRC had broadly argued that Geoff had made a gift of income to his wife and that he (already paying tax at the higher rate) rather than his wife (only paying basic rate tax) should bear the income tax on the dividends paid to her.

This ruling means that thousands of similar businesses will be saved from substantial additional income tax liabilities.

It remains to be seen whether or not this victory is likely to be short-lived. HMRC are known to be unhappy with the result and still determined that the bulk of the profits generated from such business activity should be taxed on the breadwinner. It may well be that a future budget will introduce anti-avoidance legislation to counteract this pleasing result. In the meantime, businesses run by husband and wife should continue to be structured in such a way so as to minimise income tax and national insurance liabilities.

Contrast that scenario with one where the legislation allows investors such as private equity firms to make substantial profits and pay a bearable tax rate of 10%. Yet these rules apply to anyone who owns shares in a business and sells those shares at a profit. Indeed, many business owners when confronted with an offer they cannot refuse automatically write down 10% as the maximum tax liability they will pay on

their profit. Sadly, this is not always the case and many have fallen foul of the conditions for achieving such a low rate of tax. If a qualifying trading asset is sold then maximum business asset taper relief (BATR) of 75% can be claimed which effectively reduces the capital gains tax (CGT) rate from 40% to 10%. If the asset does not qualify as a business asset then the maximum rate of taper relief (after 10 years) is only 40% thus reducing the effective CGT rate to 24%.

Many imagine that if the shares have been held for at least two years then they are home and dry. But the legislation says that the shares concerned have to be shares held in a trading company throughout the period of ownership (but not exceeding 10 years). It may well be that there were times when the company was an investment company or the activities were such that the company could not be treated as a trading company. HMRC will seek to deny relief as a trading company if more than 20% of the activities are not of a trading nature. So this could disqualify a company that was carrying on a trading activity but which also had an accumulated cash deposit representing past profits. An apportionment will need to be made if the company did not qualify throughout the period of ownership and this will reduce the relief available.

It has not always been the case that any holding of shares in a trading company could be treated as eligible for BATR. The rules have changed several times since 1998 and minority holdings have not always qualified for maximum taper relief.



The conclusion is clear. Private equity investors are not the only ones who may be able to reduce their effective CGT rate to 10% when shares in businesses are sold. Clearly there is substantial benefit to be gained if value can be accumulated within companies which are subsequently sold. Better to do that than to extract dividends year by year and pay income tax at a much higher rate. Yet there are many pitfalls for the unwary. The lesson is that a regular review is essential to ensure that profits are extracted in the most tax efficient way: there is no shortcut to planning in advance.

For more information please contact [david.nye](mailto:david.nye@hllp.co.uk) on 01442 220712 or email david.nye@hllp.co.uk



Aylesbury Vale Breakfast Briefing

Following the success of the West Herts Business Briefing, our Hemel Hempstead based networking event, we are delighted to announce our new networking event in Aylesbury and the surrounding areas called the Aylesbury Vale Breakfast Briefing. We will be sponsoring this networking event in conjunction with NatWest bank, Kidd Rapinet solicitors and the Bucks Herald.

The group will meet on the first Wednesday of every month at The Watermead, Watermead Village, Aylesbury. This networking event will be open to everyone and to keep you inspired and entertained there will be regular guest speakers, as well as the opportunity to network with the local business community on a monthly basis. The programme for each session will be as follows:

- 7.45 – 8.00am: Registration
- 8.00am – 8.30am: Breakfast (buffet style) and networking
- 8.30am – 9.00am: Presentation by guest speaker
- 9.00am – 9.30am: Networking
- 9.30am: Close

For further information or to join the mailing list, please contact Claire Macmillan on 01442 220753 or email claire.macmillan@hllp.co.uk.



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Time and timing

At the time of writing stockmarkets around the world have exhibited substantial volatility and have suffered significant drops in value. Long term readers of Newsline will know that I have written about market timing before and wealth management clients have already received updates on our view on this matter. Given the weight of media attention on this subject right now I must return to the tricky subject of volatility and second guessing the market.

It is tempting to believe that good asset managers buy the right stocks or the right markets somewhere near the bottom and sell out somewhere near the top. Their huge research departments analyse results, interim results, the derivative markets, investor sentiment and dozens of other variables and use this research to produce a net result for their clients that invests them in rising markets and pulls them out of falling markets.

Some individuals or organisations may be able to produce these results for clients. But it is only really useful to know this if we can identify these individuals or organisations in advance of their stellar performance. Sadly the weight of academic evidence suggests that the net result for clients is rather worse than if clients had merely stayed invested and further that it is incredibly difficult to predict in advance who is going to produce the out performance. These conclusions are based on the well developed larger publicly listed share markets. One of the reasons that net beating the market (after all charges) is so difficult is that these markets are reasonably efficient at pricing investments. In inefficient markets it is more plausible that individuals or groups of individuals may be able to achieve some information or analysis advantage.

There are two key factors that make market timing so difficult, and ultimately a technique that professional and institutional investors attach far less importance to than retail investors and speculators.

1) Charges

The costs of buying and selling assets are a significant factor in overall net returns. If a manager is regularly buying and selling either

individual securities or whole markets this is a significant cost disadvantage that must be countered by the success of the manager's actions to be successful. If we suppose that a manager can produce returns of say market +3% pa (a spectacular return), it is perfectly possible that the manager's total costs will also be 3%. This would leave the investor with just the market return despite the prodigious talents of the manager. Total costs of 3% per annum is not a ridiculously high figure – the annual management charges widely quoted in the UK exclude many costs including many trading costs and also market impact costs. A more detailed paper on this is on the website at <http://www.hillierhopkins.co.uk/wealth.htm>

2) The jerky nature of stockmarket performance

It is extremely easy to miss the upturns. Upturns tend to be very sharp and either immediately precede or follow downturns. This makes it unnervingly easy to miss the upturns. In the period 1991 – 2006 if an investor missed just the best 20 days the return that investor would have achieved over the period would have been 5.1% per annum instead of 10.6% per annum (FTSE All Share, all dividends re-invested, no allowance for costs). It is of course also true that had the investor missed the 20 worst days his return would have been hugely above the market return but we cannot find evidence that managers do avoid the down days. On average stockmarkets exhibit little real growth in three of every four quarters. Investors (as opposed to speculators) should therefore expect mediocre or poor results in three out of every four quarters. This is a painful truth. Those who cannot stomach the volatile nature of stock returns should not invest in stockmarkets.

What should investors do?

Very few of our wealth management clients have portfolios 100% invested in equities. It may produce the theoretical best returns over the very long term but the journey is just too rocky.

We recommend to clients that they retain a substantial cash buffer based on their anticipated cashflow needs. We then recommend that they invest in a portfolio of



poorly correlated assets – usually equities and fixed interest and often property and cash as well. Such portfolios are not immune from loss but unless all asset classes drop together our clients will be insulated from the worst of the drops such as the ones currently occurring. We use six model portfolios as building blocks for our clients and then tweak them to suit each individual client. Simulating these portfolios over the last 15 years shows that our “normal” portfolio lost money in 2 of the last 15 years – 2001 and 2002 but the losses were 4.98% and 13.92% respectively as opposed to the 100% equity returns of –11.72% and –24.85%.

The secret is to stay invested. Looking at the last 25 years investors lost money in international markets in 23.2% of 1 year periods (one month start intervals), 17.4% of 5 year periods but not once in 10 year periods.

Investors should also look at other factors – small companies versus large companies and low book to market versus high book to market and profit taking – but that's another article or three.

The secret, as Fidelity have been pointing out for years, is that time, NOT timing, is the key to investment.

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

[Sources: Fidelity research covering 01.02.1982 – 01.02.2007; Dimensional research covering 01.01.1956 – 31.12.2006; Performance Persistence in Mutual Funds by Professor D Blake University of London, Professor A Timmerman University of California - a paper commissioned by the FSA published in 2002.]

Better late than never?

As we have previously advised, HMRC introduced the Offshore Disclosure Facility (ODF) to encourage taxpayers to disclose previously undeclared interest arising on offshore accounts. HMRC subsequently stated that whilst the ODF could not apply to onshore sources of undeclared income, that if you approach your HMRC office and make a full disclosure with payment under the same terms as within the ODF, you could expect the same treatment i.e. a flat rate 10% penalty on the tax underpaid.

The deadline for registering your intention to make a disclosure under the ODF was 22 June 2007. So what happens now if you have not advised HMRC of your intention to disclose? The ODF is now closed and it is no longer possible to register. That said, it is still possible to make a disclosure in the normal way and we recommend that anyone who needs to should do so without further delay.

HMRC have advised that they intend to open investigations into taxpayers who are on their offshore database but have not registered for disclosure AND that the non-disclosure penalty will be at least 30%.

Under the normal disclosure rules that penalty is likely to be reduced if a disclosure is made before any investigation starts.

In summary -

- It is better to make a voluntary disclosure of undeclared income/gains – it reduces the penalty and greatly reduces your risk of prosecution;
- Under the normal rules it might be possible to negotiate a 10% penalty;
- Making the disclosure and paying the tax, interest and penalty by the ODF deadline of 26 November 2007 may make HMRC simply accept a 10% penalty;
- With offshore accounts especially - you are likely to be caught as HMRC's offshore database has been compiled by information supplied by the financial institutions.

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



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