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UK200Group technical advisers

UK200Group specialist panels and forum comprises of skilled technical advisers who work independently or as part of a multi-disciplinary business team to achieve the best possible solution for members and their clients. Each adviser brings experience from the different disciplines of business strategy, corporate finance, insolvency & business recovery, forensic accounting & dispute resolution and taxation.

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Directors: Use of home as office – getting the paperwork right

A director / company owner (as an employee) working from home is not able to claim the same fixed costs that a self-employed person may claim. “Fixed costs” is a term introduced by HMRC to cover items such as mortgage interest, council tax and insurance. It is possible for self-employed people to claim a percentage of these in addition with additional costs such as consumables (e.g. light and heat).

HMRC allows employees working from home to claim a flat rate £3 a week to cover expenses. Given the level of this allowance it is unsurprising that many company directors do not charge this amount. However, it is possible for directors to use their homes to provide tax efficient office space by renting themselves a room. This would then allow them to offset the costs relating to the room or office against any rental income by following HMRC classification of fixed costs.

The advantage of paying rent from a company to yourself is that whilst it is taxable on you (less the various expenses) it is not taxable to National Insurance and therefore any payment to yourselves in this way will save both the employer's National Insurance of 13.8% together with the additional National Insurance charge of 2%.

An element of care is required when benefiting from this planning as it is important that correct documentation is put in place so as an individual does not affect their principal private residence exemption from Capital Gains Tax. To qualify for the exemption no proportion of the house can be used exclusively for business purposes.

We advise that you should establish a formal rental agreement between yourself and the company. This should grant the company non exclusive use of a (or a number of) room in your house. The non exclusivity within the contract enables yourself and your family to continue using those rooms for private purposes and also ensures that there are no Capital Gains issues when the property is sold.

The level of rent paid should be backed up by researching local serviced office rates and charging a comparable rate so that the arrangement is set up on a commercial basis.

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Rules tighten on company dissolution

ESC C16 allows companies to be wound up and struck off the Companies House register without the expense or delay of appointing a liquidator. The result is that distributions in contemplation of striking off are treated as capital payments, subject to capital gains tax, rather than dividends subject to income tax.

The case of *Wilkinson v IRC* [2006] STC 270 cast doubt on the legality of concessions and the plan is to put ESC C16 onto the statute book. A consultation document was issued in December 2010, containing draft legislation which capped the assets distributable under the new statutory rule at £4,000. The government is still chewing through the responses but is expected to introduce new legislation by way of Statutory Instrument in due course.

The proposed cap of £4,000 matches the value of share capital which the Treasury have, by concession, allowed to be distributed without giving rise to unauthorised distributions. Technically this occurs on a distribution of share capital without a formal liquidation, the assets then can be recovered by the Crown under the doctrine of *bona vacantia*.

HM Treasury Solicitor announced withdrawal of the £4,000 share capital concession from 14 October 2011. That means that if a company is struck off without formal liquidation, its share capital (of whatever amount) can now be treated as crown property. The work-around is to reduce the company's share capital to a *de minimis* level prior to striking off. Share capital reduction is now much easier under CA2006: it is no longer necessary to go to court to effect it. Consequently, if a company has significant capital levels, a reduction should be effected.

Despite the changes to the Treasury's position, the tax situation is unchanged. In fact, ESC C16 never referred to the company law points on share capital. Thus, for now, provided that the conditions set out in the concession are satisfied, the tax concession is unaltered and the amounts that can be distributed informally on a winding up are unlimited. There will be no retrospective application of any new legislation. It is possible, and always advisable, to apply for advance clearance, however.

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How to deal with an approach for your business

For the potential purchaser the unsolicited approach represents a great opportunity to secure a good business, for a reasonable price, without the extra transactional risk associated with a competitive bid - therefore although flattering to be approached, it is a more common occurrence than you might expect.

So upfront you have two initial choices – get a professional corporate finance adviser involved or not. Clearly I would advise on the first option but if you choose to manage this early stage of a transaction yourself this would be my advice.

- 1) Understand who has approached you – what is their motive, is it genuinely to make an acquisition? If it is can they afford you? Don't be afraid to ask them questions before progressing.
- 2) Don't rush to the next stage – your early actions will set foundations for the nature of negotiations to follow. Put simply, play hard to get and put the onus on them to make headway. Remember they approached you for a reason.
- 3) Put a confidentiality letter in place – I would expect the acquirer to be able to offer one, but it is your information and it should be on your terms.
- 4) Share information wisely – to the acquirer, no matter what confidentiality letter is in place, the information you share will be useful.
- 5) Always think about value – any information you share, especially any forecasts, can be held in evidence against you in later negotiations. Take time over the presentation of your numbers and make sure you have presented your business in the best possible light.
- 6) Never disclose any price expectation – they have approached you, it is for them to decide what you are worth.
- 7) If discussions are progressing do get professional advice. A corporate finance adviser will help you maximise your negotiating position, will assist in agreeing a deliverable transaction and ultimately increase the probability that the transaction happens.
- 8) If discussions cease, ask for the return of your confidential information or for an undertaking that it has been destroyed - most importantly part on good terms, there may well be a next time.

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What happens when things are not going so well

Corporate Finance and Mergers & Acquisitions are terms that generally go hand in hand, especially during boom times. But what happens when things don't go so well?

Well, we have seen a number of cases over the last few years where the owner managers have reached loggerheads and are undecided on the future strategy of the company. In the absence of a Shareholders Agreement, which should be in place for any company, it then falls on the owners to resolve this issue amongst themselves, which in stressful economic times can lead to greater heartache and disagreement.

The recession of the last couple of years and the current economic cycle are bringing new pressures on business and confidence, with some shareholders looking to take large risky decisions and others simply looking to ride the storm.

So what can you do when you reach this position?

We have dealt with a number of de-mergers over the last few years, which have all been implemented for the above reasons. There are a number of ways to achieve a de-merger and the circumstances in each situation need to be considered as there are a number of complex tax issues to consider.

In addition to the tax issues there are a whole raft of commercial issues that need to be considered, which are all found during acquisitions, e.g. property, employees, restrictive covenants, valuation (of separate divisions), fixed assets, customers etc.

There can be a lot of emotion in agreeing the terms of a de-merger between the parties involved, some would say it is very similar to a divorce, but in the long run if the business relationship has broken down, then it can save the business. The alternative might be that the business ends up in a downward spiral, which eventually leads to its downfall where no-one gets anything.

Certainly, the cases we have advised on have left the owners able to concentrate on taking their businesses forward, rather than continued infighting. This is certainly an alternative to a buy-out that should always be considered in such a scenario.

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The success of workplace and commercial mediation in solving disputes

Workplace mediation

Mediation can be tremendously effective in dealing with a range of issues in the workplace such as relationship breakdown, allegations of bullying and harassment, discrimination, personality clashes and communication problems. Compared with conventional methods of resolution, such as recourse to grievance and disciplinary hearings, a tribunal or litigation, mediation is far less procedural or adversarial and will almost always reduce delays, costs, stress and confrontation. It can be used to either avoid the formal disciplinary or grievance process, or even after litigation has commenced.

Irrespective of how skilled a director or internal HR manager is, it is often much easier for an external mediator/facilitator who is completely uninvolved in a situation to be considered impartial by both parties and to bring a new perspective to a problem.

In many cases, mediation can stop a difficult employee relations issue from escalating. It does not attempt to determine the rights and wrongs of the case, but identifies and focuses on real issues and creates 'win/win' options for resolution that satisfy the needs of both parties. The vast majority of mediations are successful, but in the event that the mediation does not work, the parties would then revert to following the usual grievance and disciplinary procedures.

The business case

The business case for workplace mediation is irrefutable. The Chartered Institute of Personnel and Development reported the main benefits of mediation as reduced stress, retention of valuable employees, reduction of grievances, avoidance of tribunal costs, reduction of management time spent handling grievances and disputes and reduced sickness absence.

One example is the Arcadia Group which implemented a mediation framework within its Topshop & Topman brand. According to Tina Earnshaw, the division's retail HR and L&D manager, mediation has "resulted in an 85% success rate and halved costs for the company, as the process took 6 1/2 hours rather than the average nine days of administration and management time spent on a typical behavioural grievance case".

Commercial and civil mediation

The UK Mediation market is growing strongly and the annual value of cases mediated is over £5bn.

It is estimated that by achieving early resolution of cases that would otherwise have proceeded to litigation, the commercial mediation profession will this year save the British economy around £1.4 bn pounds in lost productivity, management time and legal fees

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Dos and Don'ts of Report Writing

People often worry about writing reports for whatever reason and writing reports as an Expert and particularly for Court use fill people with dread. Report writing is a skill which can be indoctrinated and learned through experience. There are errors which probably we all know but they become inevitable since we cannot recall them at the right time when it is required the most. Whilst the substance and conclusions of any report may be that of the writer there are approaches which will help.

Structure

It is vital that any report should have structure and the structure will vary from report to report but above all remember it should be readable and understandable. Whilst frequently you may be writing about something technical or mundane do try to make your report interesting as this will make it easier for the reader – a boring report will work against you.

A report which has no structure will not flow and will rapidly, because it is difficult to read, become boring.

Errors

We are not talking about errors of fact here – though it is best not to have them! We mean errors in grammar, spelling and



simple fundamental things. Keep the tense of the report correct. A report with misspellings and mixed tenses gives an impression of an immature report writer.

Language

Consider your audience and ensure that you write in a language they will understand and follow. It should be kept in mind that a report is to make viewer or reader comfortable with the findings rather than confuse the reader concerned. Avoid long and complex sentences and paragraphs – these can frequently mean the reader struggles to follow them and therefore the report loses impact.

Length

Do not overemphasize a specific topic at length. The reader is more concerned with the facts and findings and they would

look for the data and analysis part of the report. Their focus will be more on the inferences, conclusions and on the probable solution suggested. A writer should keep a report specific, relevant and concise

Report writing is normally a serious piece of work so the format and approach should be formal and this is a good mnemonic.

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Are you an Entrepreneur or Enterprising Person?

Often people are heard to say that they are an entrepreneur, but all of the time they are working in their business and not on it. As a result they miss opportunities to grow and be successful.

There are five Realities that distinguish an Entrepreneur from an Enterprising Person.

1. An entrepreneur is an inventor that loves asking the question "What's missing in this picture?" Then answers it by inventing the missing piece that makes the picture whole. That missing piece is a new business and the business is the product - a unique business that stands out in the world of ordinary businesses and through its uniqueness captures the imagination of the people for whom it was invented.
2. While they may be more likely to guarantee success, entrepreneurs do not buy business opportunities, they create them. The passion of the entrepreneur is not to run a successful business that someone else has invented – but to invent a unique business that becomes successful. A true business opportunity is the one that the entrepreneur invents, not to work in, but to work on.
3. Invention is contagious. An Entrepreneur's passion comes not only from inventing a new business, but also from basking in the delight and accolades of the people as they experience that invention.
4. To the entrepreneur, the success of the invention, the business, is measured by growth. The faster the business grows – the more successful is the invention. Slow growth, or no growth, is not an option. The Entrepreneur creates businesses that thrive, not just survive.
5. An entrepreneur believes that everyone possesses the potential to be an entrepreneur. Learning to invent, to create, to conceive of an original idea is both:
 - a process of discovery and
 - the development of the patience necessary to develop one's skills through practice

All you need is a blank piece of paper and an interest to begin

So do you have the personality to be an Entrepreneur? Let's look at 4 dimensions of Entrepreneurial personality.

The Dreamer - Lives at the centre of the entrepreneur's heart and is so inspired, it's not "if", but "when and how". The Dreamer produces your "what"

The Thinker - manifests the Dreamer's vision. He asks the questions essential to formulating the business model: visually, emotionally, functionally and financially. The Thinker produces the "how".

The Storyteller - evokes excitement in other people for the idea by testing the reality of the idea. The Storyteller produces your "voice".

The Leader - assumes responsibility for moving your idea forward. The Leader produces your "reality"

If you are an Entrepreneur - then an accountant who is a specialist in strategy can support you to turn your "what" into the "reality"; if you are an Enterprising Person looking to be an Entrepreneur then they can also support your transformation.

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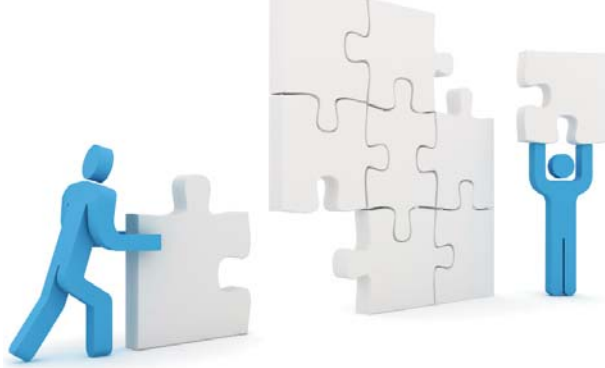
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Managing business through difficult times

In recent weeks the media have focused on the increasingly bleak prospects for the economy, the lack of growth and fears that the Governments austerity plans are not working. The Eurozone crisis continues, indirectly affecting the UK through the banking system and general lack of confidence.

The latest insolvency statistics show that during the third quarter of 2011 there was an increase in corporate insolvencies of 9% compared with the same three months of 2010. During this period 3,600 companies became insolvent with construction, retail, hospitality & leisure and property being the sectors that suffered the most.

With spending cuts beginning to take effect and consumer confidence falling as families seek to tighten their already firm belts, there is the real prospect that the economy faces a tougher time ahead than it did three years ago when the credit crunch started.

So what should your clients do to manage themselves through these difficult times?

To survive periods of economic stress, good management is essential and managers must plan for the future and keep on top of how their business is performing. They should ensure that they have up to date financial and management information and ideally should produce monthly management accounts and produce & review cash flow forecasts on an ongoing basis.

As the saying goes, "cash is king". Your clients should ensure that they invoice promptly and regularly and that they should not be afraid to chase customers for payment once agreed terms have been exceeded.

Encourage your clients to know their customer, establish credit limits and adhere to them. There can often be a conflict between the interests of the sales team and the interests of the credit control team when dealing with customers. However, it should be remembered that there is little profit to be made from a customer who doesn't pay.

Your clients should review their supply chain to ensure that they are getting the best prices and payment terms available and review their own terms and conditions to ensure that they

secure themselves in case their customers fail to pay. For example, what is the quality of their retention of title clause? Finally encourage your clients to take professional advice where appropriate and be proactive in managing their business.

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The issues relating to phoenix-style operations

Let's jump straight to it – phoenix companies have a bad reputation.

There have been reported instances where some directors have forced their company into insolvency in order to buy back the assets at a reduced price, whilst then absolving themselves of their responsibilities for the liabilities.

On occasions, under these circumstances, some directors have been prosecuted on the grounds of conspiring to defraud the creditors.

So-called "phoenix" companies arise where the assets of one limited company are moved to another legal entity "Newco" after "Oldco" has gone into insolvency, with Newco operating in the same sector.

Those acting on behalf of directors who may want to set up "phoenix companies" should be aware of how certain behaviour and actions will be construed by regulatory and/or prosecuting authorities.

Firstly it is important to understand that under the Enterprise Act 2002, unless a director or shadow director has first obtained the sanction of the court, or served formal notice on all known creditors of "Oldco", it is an offence for him to be involved in the management or formation of a phoenix company.

This restriction applies to anyone who was a director or shadow director of Oldco in the 12 months prior to it going into insolvent liquidation.



Critically bad intentions, and possible criminal conduct, may be presumed in respect of a phoenix arrangement where:

- the directors are serial abusers of the procedure
- the business or assets of the failed company were sold at lower than market value at a time when the company was unable to pay its debts
- prior to insolvency, the directors “milked” or otherwise diverted assets of the floundering company to the prejudice of its creditors

Importantly any transactions should be completed by an Insolvency Practitioner acting as an Administrator, Administrative Receiver or Liquidator which is considered to be independent and unlikely to be challenged.

Of course, this represents an extreme example. In reality, the position will not be so cut and dried, and each case will be judged on its own merits.

However it is imperative that agents advising clients should be aware of these key issues to prevent the directors of the phoenix company being personally liable for the new company’s liabilities.

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The Statutory Residence Test– 75 years in the making

In 1936 the Consolidation Committee recommended reform of the definition of residence for tax purposes. With unseemly haste, in June 2011 HMRC published the “Statutory Definition of Tax Residence” consultation paper.

For too long there has been uncertainty on the issue which has made it extremely difficult for individuals to plan their tax affairs. Some taxpayers, notably Mr Gaines-Copper, relied on HMRC published guidelines in IR20 only to be told that they had not established a “distinct break” from the UK and could not claim to be non resident. Interestingly there was no explicit requirement in IR20 for such a break to be established. Reform is long overdue.

The proposed Statutory Residence Test “SRT” will consist of three parts. Part A outlines the conditions under which an individual is conclusively not resident in the UK. If an individual falls within these provisions he or she is definitely not resident for the year in question regardless of their connections with the UK. Part A requires residence of the 3 previous tax years to be established so the old unsatisfactory approach to residence will still be relevant until 6 April 2015. In common with previous practice the Part A requirements are less onerous for those leaving the UK to work full-time abroad.

Part B outlines the rules under which an individual is conclusively resident in the UK, provided that none of the provisions of Part A apply.

Those whose tax residence can not be determined by Parts A or B will fall within Part C which establishes residence by reference to a person’s connections with the UK and the amount of time they spend here in a tax year. The more connections they have, the fewer the number of days they can be physically present here if they wish to be non tax resident.

The concept of a statutory definition of residence and the certainty it offers has been warmly welcomed by the profession. As John Whiting of the CIOT put it “We cannot have rules dating from the age of sail and Morse code and heavily dependent on HMRC’s views governing what happens in the 21st century”.

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Audit Exemption Rules in UK– Proposed Changes

Proposed changes to the audit exemption rules in the UK will particularly affect UK subsidiaries of International groups. Whilst many of these would themselves qualify for audit exemption as small companies (turnover below £6.5m, gross assets below £3.26m and average number of employees less than 50), under current UK legislation they are not eligible for audit exemption if they are part of an ineligible group, that is one which contains a quoted company or which itself exceeds the three criteria (or their gross equivalent). Clearly most groups large enough to have a UK subsidiary will exceed this criteria, and their UK subsidiaries will not therefore be eligible for audit exemption under the current legislation.

Under the new proposals audit exemption will be granted if the UK subsidiary itself satisfies the small companies criteria regardless of the size of the group. If these new proposals are approved, they will come into force from October 2012 year end. In order to take advantage of these proposals, it is necessary for the holding company to guarantee the debts of the UK subsidiary.

For the majority of these companies, which, if they were not part of groups, would be audit exempt under UK legislation, the audit requirement comes from the holding company. This may well be because the group accounts are subject to audit under the legislation of the holding company’s own jurisdiction. However, even if this is not the case, holding companies should be very mindful of the value of having an independent audit for an overseas subsidiary. In many cases the UK companies are essentially sales companies with no UK based directors, so the benefit of an external review of the financial affairs of the subsidiary is particularly valuable.

In addition, the auditors should be looking to add value alongside the compliance aspect of the audit by making recommendations to management which may result in cost savings and improved efficiencies. There may also be tax planning advantages to be gained, as the rules relating to international trade can be very complex, particularly bearing in mind transfer pricing legislation and the different rates of tax in different countries, so that the audit may become less of a burden and more of a valuable business and planning tool.

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Member listings correct as at December 2011