Sibbalds
CHARTERED ACCOUNTANTS

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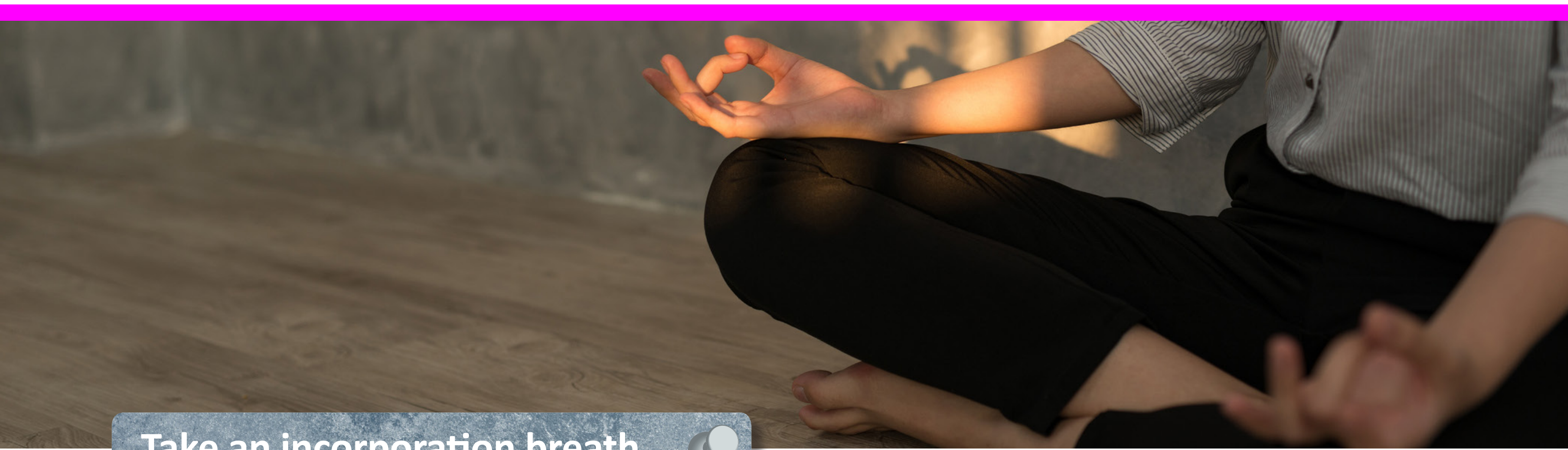

Take an incorporation breath

You may be in the process of deciding to shift your sole trader or partnership business across to a limited company. Based upon your circumstances it might be right for you. Why? Maybe because, going forward, for example, you can mitigate your tax liability or minimise the risk to your personal assets or enhance your credibility in the eyes of your suppliers and customers. If you reach the decision to incorporate and it is appropriate to do so, then great.

However, always take a breath and step back, as there are a number of important issues and implications to consider, along with processes to go through, before you get to the Promised Land. Failure to do so can cause repercussions further on down the line.

Let's take Joe, Mary and Martha. They are in partnership together but intend to incorporate their business. What sort of things should they think about, in conjunction with their trusted advisers?

Are there any legal restrictions within the partnership agreement to prevent them from doing so? What assets are they contemplating transferring over to the company? The answer to that can have capital gains tax, land transaction tax, income tax, VAT, capital allowances and potentially inheritance tax and national insurance implications, both at the time of incorporating and going forward.

Who's going to own the shares and in what proportion? What rights will be attached to these shares; for example, the right to dividends and voting? Do they want to draw up a shareholders agreement or have something put in the Company's Articles of Association or cross option agreements to deal with potential issues, such as one of them wanting to sell out or the death of a director shareholder or any other disputes which may crop up in the future?

What about the legal issues surrounding the transfer of employees to the company and their pension rights?

Do Joe, Mary and Martha understand the fact that they will be wearing a director's hat and not a partnership one going forward? Are they aware of the new legal responsibilities they are now obliged to take on?

What about the legal aspects of assigning supplier and customer agreements and the transfer of any asset finance or lease agreements across to the company?

How is it best to notify customers and suppliers of the change? What do they need to legally show on their emails, letterheads, website, invoices etc. going forward?

These are just some, definitely not all, of the issues which should be addressed before and during the incorporation process. So, stop and take a breath, it could save you time, money and hassle in the future.

Top tip:

We offer a full incorporation service which looks at whether or not it is the appropriate route to go down. Followed by covering off with you all the nuances and implications surrounding the incorporation itself. We can project manage the implementing of the incorporation process itself, ensuring that all the relevant action points have been completed.

Leaving the marital home

If you live in your family home throughout the whole time of ownership, any subsequent gain on sale is not liable for Capital Gains Tax. This is a special tax relief known either as Principal Private Residence Relief (PPR) or Main Residence Relief. Usually when a couple divorce or separate the family home stops being the main residence of the spouse who has moved out. If the property is subsequently sold or transferred to the spouse remaining in the property 18 months (9 months possibly from April 2020) or more after the leaving partner has left, **he or she could end up paying Capital Gains Tax on their part of the gain arising from the sale or transfer.** However, this can be avoided by the person who has left the family home **by making an election stating, that for tax purposes,** that property remains their 'main residence' until either the property is transferred to the remaining spouse or that person leaves the family home, whichever comes earliest. The potential downside of this election is, if the leaving spouse has moved into another residence, he or she cannot claim main residence relief on that property for the period covering the election on the previous family home. A cost analysis should always be carried out to see if the election ought to be made.

Transferring property between spouses/civil partners

At present, where there is a married couple or a civil partnership and only one person in the relationship owns their main residence, then, if that person transfers part or all of the property to their other half, the recipient spouse/civil partner will inherit the transferor's ownership history for capital gains tax purposes on a subsequent sale further on down the line. **It has to be their main residence at the time of the transfer, if not, the receiving spouse/civil partner will not inherit the transferor's ownership history.**

From 6th April 2020, this is going to change. From that date onwards, where one spouse/civil partner transfers a property to their 'partner', whether the property is or is not their main residence at the time of the transfer, the recipient spouse will always inherit the ownership history of the transferring spouse. The decision on whether to transfer the property, in whole or in part, prior to or post 6 April 2020, will depend upon the circumstances of each particular case. The capital gains tax consequences in the future could be significant if one fails to review this situation prior to this deadline.

Top tip:

If you have permanently separated or divorced then you should always revisit your Will and any Powers of Attorney you may have in place as a matter of course. Please contact us to look at all the tax ramifications.

A couple of contrasting examples...

Example 1:

Peter has owned a property in his sole name for the past 5 years which he has rented out throughout his ownership period. He has recently married Margaret and their intention is to now occupy this property as their main residence and sell it five years later. For one reason or another, he wants to transfer the whole of the property to Margaret.

If he does so prior to 6th April 2020 and immediately before they move into the property, any gain on the subsequent sale of the house would be completely capital gains tax free. If Peter does the transfer after 5 April 2020, then 50% of any gain could be liable for capital gains tax at a rate of up to 28%. The same outcome would be the case if Peter did the transfer prior to 6 April 2020 but after the couple had started occupying the property as their main residence. Based upon these circumstances Peter and Margaret might want to consider making the transfer prior to 6th April 2020 but before they occupy the property as their main residence.

Example 2:

Joe has owned and lived in his main residence for 5 years. He has just got married to Phoebe and moved in with her shortly after the wedding. For one reason or another, he is thinking of transferring 100% of his property to Phoebe. They intend to sell the property in around 5 years' time.

If Joe transfers the property before 6 April 2020 100% of any gain on sale would be liable to capital gains tax. If Joe waits until after 6 April 2020 then only 50% of the gain attracts a tax liability. Based upon these circumstances Joe and Phoebe would be wise to delay the transfer until after 5 April 2020.

Top tip:

Where you have a situation at present where one of you within a marriage or civil partnership own a residential property it makes sense to carry out a capital gains tax review prior to 6 April 2020. We would be happy to look into this for you. Lots of factors need to be taken into account such as past history, future intentions, each individual's tax position both from an income tax and capital gains tax perspective.

Foster Caring – What is the tax situation?

Being a foster carer is undoubtedly a tough but rewarding job. Some would say a vocation. Foster carers get an allowance which is intended to cover the cost of caring for a child. That allowance will vary depending upon the age of the child, the area in which the carer lives and which local authority or agency is paying them. In some cases additional fees may be paid over to the carer to recognise their particular skill or experience or even loyalty. How is all this income treated for tax purposes?

Normally a foster carer is regarded as self-employed and should therefore notify HMRC accordingly and complete a self-assessment tax return. The foster carer may be entitled to what is called Qualifying Care Relief (QCR) which can be set off against this 'trading' income.

This QCR is made up of two parts. Firstly there is a fixed amount of £10,000 (based upon a full tax year) for each household which cares for a child. On top of that there is a weekly amount for each cared for child (presently £200 for a child under the age of 11 and £250 for 11 and over).

If the QCR for that tax year is in excess of the income earned from foster caring, then there is no profit to tax. Sadly no loss to claim either. The QCR should then be claimed on the tax return.

Example overleaf...

For example:

Michelle is a foster carer for a 13 year old for a whole year and for a 7 year old for 12 weeks. Her foster income for the year is £24,000.

QCR is:

Fixed exemption =
£10,000 + Child 1 (52 x £250) + Child 2 (12 x £200) = £25,400

Michelle has taxable profit of nil.

If the foster carer's income is in excess of the QCR then they have two options. Option 1 is they can simply pay tax, Class 2 and Class 4 national insurance on the excess of the profit above the QCR. Option 2 is that they effectively disclaim the QCR and calculate the taxable profit after deducting the actual allowable expenses incurred in the year. In both cases, the carer could possibly find their normal tax free personal allowances and the national insurance exemption limits may cover that taxable profit.

Top tip:

Foster carers may be able to enhance their QCR if they incur additional exceptional expenses for looking after disabled or special needs children. They may also be eligible for a carer's credit to improve their national insurance records for state pension purposes. If you are a foster carer or are contemplating becoming one and would like us to review your situation please do not hesitate to contact us.

Don't forget to claim the VAT back

When businesses register for VAT for the first time, either voluntarily or because they have hit (or are about to hit) the VAT turnover threshold of £85,000, they often forget, or are simply unaware, that they might be able to recover, in whole or in part, VAT suffered by them on goods and services paid for prior to VAT registration.

Assuming the business has evidence to support the VAT incurred on goods purchased, it may be able to go back up to 4 years prior to registration to reclaim the VAT. These goods can be either stock or capital items and have to still be part of the business at the time of registration.

Likewise, a business can potentially go back up to 6 months to reclaim VAT incurred on services supplied to it. It's important that these services have not already been recharged out to its customers prior to registering for VAT.

Top tip:

The VAT rules are complex and it would make sense to carry out a VAT review to ensure that you are fully complying with them whilst maximising, where possible, the reliefs and VAT schemes on offer.

We are here to help

We can help you by ensuring that you're aware of the changes that will affect you, your family and your business. To find out more about the ways that we can help you, do not hesitate to contact us.

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