

# Incorporation

The issue of whether to run your business as a company or a sole trade or partnership is an important decision. The cumulative effect of changes to the tax system over a number of years up to 2004 resulted in significant tax savings if a business were incorporated. Changes in recent years have substantially reduced these savings but, despite these changes, incorporated businesses still retain an advantage. In this factsheet, we summarise the relevant tax changes and show the potential tax savings available from operating as a company. In addition we consider other relevant factors including potential disadvantages.

## Tax Savings

The examples below give an indication of the 2006/07 tax savings that may be achievable for husband and wife who are currently in partnership.

| Profits:            | £30,000 | £50,000 | £100,000 |
|---------------------|---------|---------|----------|
| Tax and NI payable: | £       | £       | £        |
| As partners         | 5,680   | 11,680  | 28,576   |
| As company          | 3,787   | 7,587   | 20,313   |
| Potential saving    | 1,893   | 4,093   | 8,283    |

The extent of the savings is dependent on the precise circumstances of the couple's tax position and may be more or less than the above figures. The examples are computed on the basis that the couple:

- share profits equally
- have no other sources of income
- both partners take a salary of £5,035 from the company with the balance (after corporation tax) paid out as a dividend.

### *When might a company be considered?*

A company can be used as a vehicle for:

- a profitable trade
- buy-to-let properties.

## Summary of Relevant Tax and National Insurance Rates

### *Rate of corporation tax for small companies*

The corporation tax starting rate, introduced in 2000, has been abolished. Profits up to £300,000 are taxed at 19%.

### *National Insurance*

Increases in NI for employers, employees and the self-employed have added to the incentive to avoid these charges.

The rate of employees' NIC is 11%. In addition, a 1% charge applies to all earnings over the NIC upper earnings limit (which is £33,540 from 6 April 2006). The rate of NIC for the self-employed is 8%, and 1% on profits above £33,540 from 6 April 2006.

All NI contributions can be avoided by incorporating, taking a small salary up to the threshold at which NI is payable and then taking the balance of post-tax profits as dividends.

### ***Stakeholder pensions***

A new pensions regime was introduced from 'A' day which is 6 April 2006. Under the rules it may still be possible for a company to make significant pension contributions for a director/shareholder irrespective of the salary level.

## **Other Tax Issues**

It is all too easy to focus exclusively on the potential annual tax savings available by operating as a company. However, other tax issues can be equally, and in some cases more significant and should not be underestimated.

### ***Capital gains***

Incorporating your existing business will involve transferring at least some of your assets (most significantly goodwill) from your sole trade or partnership into your new company. This can create significant capital gains although there are mechanisms for deferring these gains until any later sale of the company. We will need to discuss in detail with you the most appropriate mechanism for your business.

Do you want to transfer all of your business assets to the company? It may be appropriate to retain personally a valuable property particularly if there is likely future capital appreciation.

Be aware that it may be possible to extract some tax-free proceeds from the company by transferring assets in a particular way. Typically the tax-free sum is currently at least £35,200.

### ***Stamp Duty Land Tax (SDLT)***

There may be SDLT charges to consider when assets are transferred to a company. Goodwill and debtors do not give rise to a charge, but land and buildings may do so.

### ***Income tax***

The precise effects of ceasing business in an unincorporated form, including 'overlap relief', need to be considered.

### ***Capital allowances***

Once again the position needs to be carefully considered.

## **Other Advantages**

There may be other non-tax advantages of incorporation and these are summarised below.

### ***Limited liability***

A company normally provides limited liability. If a shareholder's shares are fully paid he cannot normally be required to invest any more in the company. However, banks often require personal guarantees from the directors for borrowings. The advantage of limited liability will generally apply in respect of liabilities to other creditors.

### ***Legal continuity***

A company will enjoy legal continuity as it is a legal entity in its own right, separate from its owners (the shareholders). It can own property, sue and be sued.

### ***Transfer of ownership***

Effective ownership of the business may be more readily transferred, in comparison to a business which is not trading as a limited company.

### ***Borrowing***

Normally a bank is able to take extra security by means of a 'floating charge' over the assets of the company and this will increase the extent to which monies may be borrowed against the assets of the business.

### *Credibility*

The existence of corporate status is sometimes deemed to add to the credibility or commercial respectability of the business.

### *Pension schemes*

The company could establish an approved pension scheme which may provide greater benefits than self-employed schemes.

### *Staff incentives*

Employees may, with adequate safeguards, be offered an opportunity to acquire an interest in the business, reflecting their position in the company.

## **Disadvantages**

No analysis of the position would be complete without highlighting potential disadvantages.

### *Administration*

The annual compliance requirements for a company in terms of administration and accounting tend to result in costs being higher with a company than for a sole trader or partnership. Annual accounts need to be prepared in a format dictated by the Companies Act and, in certain circumstances, the accounts need to be audited by a registered auditor.

Details of the directors and shareholders are filed on the public register held by the Registrar of Companies.

### *Privacy*

The annual accounts have to be made available on public record - although these can be modified to minimise the information disclosed.

### *PAYE/Benefits*

If you do not have any employees at present, you do not have to be concerned with PAYE and returns of benefits forms (P11Ds). As a company, you will need to complete PAYE records for salary payments and keep records of expenses reimbursed to you by the company. Forms P11D may have to be completed.

### *Dividends*

If you will require regular payments from your company, we will need to set up a system for you to correctly pay dividends.

### *Transactions with the business owner*

A business owner may introduce funds to and withdraw funds from an unincorporated business without tax implications. When a company is involved there may be tax implications on these transactions.

### *Director's responsibilities*

A company director may be at risk of criminal or civil penalty proceedings eg for late filing of accounts or for breaking the insolvency rules.

## **How We Can Help**

There may be a number of good reasons currently for considering use of a company as part of a tax planning strategy. However as you can see from this factsheet, there are many factors to consider. We would welcome the opportunity to talk to you about your own specific circumstances.