Bourne & Co
Accountants For Life

Burton Office: 01283 568912
Derby Office: 01332 340159
www.bourneandco.com

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 was incorporated. Changes in recent years have reduced these savings and the government has moved to discourage small businesses from incorporating by increasing the tax rates for small companies. In this factsheet, we summarise the relevant tax changes and show the potential tax savings currently available from operating as a company.

This factsheet calculates the position for 2010/11 using the current rates of tax and NI. The government has proposed changes to the rates of tax and NI for 2011/12 which will impact on the potential tax savings.

In addition we consider other relevant factors including potential disadvantages.

Tax Savings

The examples below give an indication of the 2010/11 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	5,146	10,746	26,338
As company	3,900	8,100	18,920
Potential saving	1,246	2,646	7,418

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 £5,715 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

Profits up to £300,000 are taxed at 21% from 1 April 2010.

National Insurance

The rate of employees' NIC is 11%. In addition, a 1% charge applies to all earnings over the NIC upper earnings limit (which is £43,875 from 6 April 2010). The rate of NIC for the self-employed is 8%, and 1% on profits above £43,875 from 6 April 2010.

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.

Pension provision

As an employee/ director of the company, it should be possible for the company to make significant pension contributions to a registered fund irrespective of the salary level, provided justifiable under the wholly and exclusive rule. For further details of the tax position of pension provision for individuals see the factsheet on personal and stakeholder pensions.

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. Any gains which are chargeable may qualify for Entrepreneurs' relief, which means that gains up to £1 million (£2 million from 6 April 2010 to 22 June 2010) are charged at 10% rather than 18%. From 23 June 2010 the £2million limit is increased to £5 million. An outline of this relief is included in the factsheet, Capital Gains Tax. However its availability will depend on various factors and will require detailed discussion.

Bourne & Co
ACCOUNTANTS FOR LIFE

Burton Office: 01283 568912

Derby Office: 01332 340159

www.bourneandco.com

Incorporation

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. Please do not hesitate to contact us.

Burton Office: 6 Lichfield Street Burton-on-Trent DE14 3RD • Derby Office: 3 Charnwood Street Derby DE1 2GY