bates weston
TAX ADVISORS

COMPANY TAX PLANNING

SURVIVAL GUIDE IN THE COVID-19 CRISIS

1. **CASH IS KING** – Maximise the use of tax reliefs available to help with cashflow.

- R & D – Any business which carries on projects which seek to advance science or technology should qualify. Provides additional corporation tax relief of £130 for every £100 of qualifying costs and potential cash back credits of 14.5%.
- Capital Allowances – Ensure your current year capital allowance claims are maximised and your expenditure is accelerated where possible to utilise the £1m Annual Investment Allowance limit for expenditure up to 31 December 2020. Consider historic claims on commercial property or prior year claims to ensure maximum allowances are obtained.
- Patent Box – provides a lower rate of corporation tax for profits earned on patented inventions.
- Structural Building Allowance – provides relief for expenditure on new commercial property constructions at an increased rate of 3%.
- Loss carry back claims – a loss realised in a chargeable accounting period can be carried back 12 months which can generate refunds of tax previously paid. Consider preparing accounts and tax returns early or shortening accounting periods to crystallise the loss and carry back sooner to generate cash refunds.

2. **STRUCTURE IS KEY** – In the changed market, is the current structure of your business appropriate now circumstances and performance may have changed?

- Appetite for drastic change is unlikely but asset protection is more important than ever before and it may be that certain parts of the business or investment activities should be separated. Hive-ups and hive-downs can be considered as a tax efficient solution to achieve this.
- Performance in certain sectors has also boomed providing expansion and acquisition opportunities, have you outlived your current structure and a group is more appropriate? The tax consequences of the structure of any acquisitions are key. For example, any acquisitions of property could be achieved through a holding company where it could be acquired away from the trading activities.
- Speak to us to ensure your structure is tax efficient and to make sure any changes are implemented without surprise tax charges.

3. REORGANISE TO SURVIVE WHERE NECESSARY

- Restructuring to dispose of a loss-making part of the business may be necessary. Hiving down part of the business into a subsidiary could be a feasible solution and provided a group has been in existence for more than 12 months it is possible to dispose of the business free of tax.
- Restructuring to separate out an investment part of business from trading activities into a completely new group, for example, by way of demerger to protect the investment value and assets may also be feasible.
- Similarly, if the uncertainty and increased risks has resulted in shareholder disputes and the need to split the business into separate ownership is the only way forward to overcome the deadlock, a demerger may be the resolution to achieve this without a charge to tax.
- Conversely, it could also be necessary to merge separate businesses into one group to ensure that the transfer of assets and sharing of resources can implemented but it is vital this is done in the correct way to prevent unexpected tax bills.
- There are extensive reorganisation and restructure tax provisions which can be applied to ensure that the business is restructured without incurring a huge tax bill.

4. PRIORITISE ASSET PROTECTION

- Consider the insertion of a holding company above your trading company to move assets from the trading company up into the holding company away from any downturn in trade or if there is an existing holding company structure in place then ensure that asset protection measures are considered to utilise the current structure for these purposes.
- It is also an option to consider the use of trusts and Personal or Family Investment Companies for personal asset protection.

5. EMPLOYEE RETENTION

- There is less focus on recruitment but more emphasis on retaining current employees.
- Non-cash incentives such as tax advantaged share structures e.g. Enterprise Management Incentives (EMI) or a Company Share Option Plan (CSOP) are aimed at retaining and rewarding staff without the cashflow impact of bonuses.

6. DIRECTOR AND SHAREHOLDER REMUNERATION STRATEGIES

- Where the coronavirus job retention scheme leaves directors unsupported and the declaration of dividends which will impact reserves may be avoided, there will be an increased move towards loans to shareholders but the s455 tax charge and benefit in kind implications of this solution shouldn't be overlooked.
- Consider reviewing current share structures and remuneration strategies to ensure maximum tax efficiency for you and your business. If it has not been considered previously, it may now be time to consider family succession plans or interspousal arrangements, provided they are fully commercial.

7. KEEPING A WATCHFUL EYE ON TRADING STATUS

- Investment in property or listed portfolios while markets have dropped to supplement turnover may see increased investment income being received, but it is important to bear in mind the trading status of the company for capital gains tax and inheritance tax purposes.
- Ensure the balance isn't tipped towards the company being defined as an investment company for tax purposes otherwise valuable tax reliefs may be lost.

8. TAX PLANNING FOR THE END

- An external sale may be less likely but has the current situation focused the minds for accelerated retirements? Management Buy-Outs or a company purchase of own shares may provide tax efficient solutions for an exit where third party sales are impossible. The structure here will be key to ensuring the transaction is one subject to capital gains tax not income tax.
- It is also an option to formally liquidate and access Entrepreneurs' Relief on the capital disposal (now limited to £1M) but only if there is no intention to carry on the same or similar activities within 2 years otherwise the 'anti-phoenixing' anti-avoidance could result in an unforeseen income tax bill.
- Where third party sales are happening, we're seeing an increase in the drive towards fast completion but in the rush to get the deal done tax advice should never be overlooked. It is crucial to ensure the drafting of the SPA and structure of consideration are appropriate otherwise you could be paying thousands more in tax.
- Finally, if the worst is to happen and companies collapse or loans become irrecoverable, there are tax reliefs available such as share loss relief, the corporate rescue exemption and relief for loans to traders that shouldn't be forgotten as they provide the silver lining to the cloud.

Our tax team stand ready to help you with any aspect of tax planning. For more information, please do get in touch.

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