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Count(s)	Word(s)	Char(s)	Char(s) (WS)
Section 1	**1389**	**6932**	**8303**
Section 2	**770**	**3401**	**4274**
Section 3	**954**	**4375**	**5316**
Section 4	**1484**	**6983**	**8900**
Section 5	**655**	**2939**	**3634**
Section 6	**996**	**4680**	**5663**
Total	**6248**	**29310**	**36090**

Answer-to-Question-_1_

To: Martina Cowley
From: Tax Manager
Date: 11 November 2020
Subject: Trainers - UK Tax and NI Considerations

Hi Martina,

Thank you for getting in touch. I would be happy to advise on the tax and National Insurance (NI) considerations for the trainers engaged via Coach Ltd.

To give you an overview, there are some further requirements to be met by public authorities where services are provided by individuals via their own personal service Company. There is also further requirements where an individual is engaged on a self-employed basis. I have outlined these requirements below.

Personal Service Companies (PSC)

From April 2017, there was a change in the IR35 rules which govern the tax and NI treatment of PSC workers for public authorities. These rules moved the responsibility for determining the status of the PSC worker from the PSC itself to the public authority. The responsibility to deduct tax and NI on invoice payments also moved from the PSC itself to the party who pays the invoices, in this case Coach Ltd.

Looking firstly at the assessment, this should have been carried out by Overbridge Local Authority prior to the start of the contract with the result provided to the individual workers and Coach Ltd. As this has not been carried out, a risk lies with the Overbridge Local Authority where there has been incorrect treatment applied to the invoice payments to the individuals.

The purpose of the assessment is to ultimately confirm if it hadn't been for the PSC being in between the worker and the local authority, would the individual have been considered an employee based on their agreement and working practices. It is important to note however there is no legislative definition of employment status and instead it is defined based on the facts and circumstances together with relevant case law. A status is however not considered definite unless ruled by the courts.

I have outlined below the factors which must be considered under an employment status assessment and the position for the UK trainers based on the information provided.

• Control
Where an individual is in business on their own account, they should hold ultimate control over how, when and where they complete the works they have entered into a contract for.

From the information provided, the trainers utilise the authority's materials and the sessions are scheduled based on the authority's timetable which suggests that the trainers have little control of the works, implying employment.

• Mutuality of Obligation
Where an individual is in business on their own account, they should not expect additional work to be offered by their clients following the end of a contract nor should they be obliged to accept any additional work.

From the information provided it is not clear if any mutuality of obligation exists here.

• Provision of own Equipment
Typically an individual operating their own business in their own right should own the relevant equipment to fulfill contracts they enter into.

Based on the information provided, we know that the trainers are provided with equipment by the authority, therefore suggesting employment.

• Right of Substitution
Typically an individual operating their own business in their own right should be entitled to provide a substitute to complete any works that they are unable to for any reason. This is not something you would see under an employment arrangement.

For the trainers, we know that they are not entitled to provide a substitute to carry out any workshops thus suggesting employment.

• Right to terminate the contract
Where an individual is engaged with an authority under their own PSC or as a sole trader, both them and the party they are engaged with should be entitled to terminate the contract without prior notice. This is not what you would expect of an employment arrangement where a notice period would be required by each party.

We have not been provided with any information as to the termination clause of the agreement with the workers.

• Financial Risk
An individual operating their own business should be at a heightened financial risk than an employee as any remedial works should be completed at their own cost. Further to this, invoices may be withheld and paid in longer windows under a business to business agreement.

We have not been provided with any information as to the agreement with the workers surrounding any inadequate works. We do know however that the workers are paid on the last working day of each month which would mirror that of an employment

relationship.

• Opportunity to profit
An individual operating their own business should be able to profit from any works they are completing.

As we know that the agency has agreed a fixed day rate with the workers, this gives little opportunity to profit.

• Number of paymasters
It is expected that an individual who is in business on their own account would work for a number of different clients and not just 1 as you would expect of an employee.

We do not have information to determine if the workers are working for clients other than the local authority.

• Integration to the business
Where an individual is employed by a business, they would be integral to that business being included as part of organisation charts and attending staff events. This is not something you would expect of an individual in business in their own right.

We do not have information to determine if the workers would be integral to the local authority.

Based on the information above, it is clear that the arrangements with the workers are far more akin to an employment arrangement and as such they should have been provided with an 'inside' IR35 status determination prior to the commencement of their work. This should have also been passed to Coach Ltd as the 'fee-payer' to allow them to make arrangements for operating PAYE on invoice payments.

For the purposes of operating PAYE, Coach Ltd should have calculated the taxable amount by taking the total invoice value,

deducting any expenses which would have been allowed had the worker been an employee and deducting VAT. This should have been included within the monthly FPS submissions with the relevant amount of PAYE paid to HMRC by 22nd following the end of the month with the wider PAYE bill.

The workers should have also been provided with a payslip showing the deductions taken from their invoice value with only the net amount paid to them.

Self-Employed Individuals

Similar to outlined above, where a self-employed individual is engaged with a Company the engaging Company has an obligation to determine their employment status looking at the same factors outlined above.

Although the self-employed individual was providing a service to the local authority, Coach Ltd is ultimately the engaging Company and they should have carried out an assessment of their employment status. If the individual was considered a 'deemed employee' they should have been paid via PAYE with deductions taken from their invoices.

Further to this, the individual would have been covered by employment law points such as holiday pay, statutory payments and pension. This is not the case however where individuals engaged via a PSC are considered 'inside' IR35.

Next Steps

In line with the above, we would recommend that steps are taken now to ensure the individuals are captured through payroll each month with PAYE deducted from their invoices.

With regard to the backdated position, for the PSC workers, the

local authority will be liable for the underpaid liabilities on the basis there was a failure to complete their status assessments to identify the PAYE liability. This disclosure should be made to HMRC as soon as possible by Coach Ltd with a recharge made for the liabilities due.

As there has been a failure, penalties will also become due. Assuming this was purely a careless error the maximum penalty will be 30% of the underpaid tax and NI. This could however be reduced to nil or suspended by up to 2 years depending on the wider circumstances.

With regard to the self-employed individual, they should also be included within the disclosure however the responsibility for any liabilities due and penalties will remain with Coach Ltd.

I trust the above is clear but if you would like to discuss further, please let me know.

Kind regards
Tax Manager

--------------ANSWER-1-ABOVE---------------

--------------ANSWER-2-BELOW---------------

Answer-to-Question-_2_

As the awards will be provided by Toriq Inc directly to the employees and will not be provided by the UK franchise Best Motors World Ltd, these will be considered third party benefits. In line with the below advice, these amounts should be disclosed to HMRC by Toriq Inc under a taxed award scheme after the end of each tax year. This scheme should be agreed with HMRC up front.

Under this scheme, the total cost of the benefits will be reportable on a grossed up basis in a similar way to a PAYE Settlement Agreement. Toriq Inc will be required to submit form P35 showing the total liabilities due by 19th May following the end of each tax year with form P440 submitted by 6th July following the end of the year detailing the awards given.

Toriq Inc will be liable for the taxes due, however the UK Company being the employer will be responsible for the Class 1A NIC due.

Further to the above, all higher rate employees who have received an award should be provided with form P443 showing the total value of the awards and the amount of tax paid on them. If there is any basic rate employees who request a copy of form P443 should also be provided with it.

Quarterly Awards

As this award will be given by way of a non-cash physical item, this will be considered a benefit for tax and Class 1A NIC. In this case, the cost of each award including tax and NIC assuming

the individuals are higher rate taxpayers will be as follows;

Cost of Award	1,000	
Tax due @ 40%	400	
Grossed up tax due	£666	(400 x 100/60)
Class 1A NIC @ 13.8%	£229.91	((1,000 + 666) x 13.8%)
Total cost to Toriq Inc	**£1,666**	
Total cost to UK Co.	**£229.91**	

Looking at this on an annual basis assuming 50 awards are provided 4 times each year, the cost to each company will be as follows;

Toriq Inc	£333,200	(1,666 x 50 x 4)
UK Co	£45,982	(229.91 x 50 x 4)

Annual Awards

Typically, where a Company hosts an update meeting for employees relating to the business plans, this may be considered genuine business and therefore not reportable as a benefit.

However, in this case, we know that the employees are being provided with this event partially to reward their success and the event is being provided overseas at a ski resort, it is likely that HMRC would view the entertaining element as out weighing the business purpose and therefore look to impose a charge to tax on the cost.

Based on the cost per head, the annul cost including tax and NIC assuming the individuals are higher rate taxpayers will be as follows;

Cost of event	100,000	(5,000 x 20)
Tax due @ 40%	40,000	
Grossed up tax due	66,666	(40,000 x 100/60)
Class 1A NIC @ 13.8%	22,999.91	((100,000 + 66,666) x 13.8%)
Total cost to Toriq Inc	**£166,666**	
Total cost to UK co.	**£22,999.91**	

Cash Bonus

On the basis this is a cash payment being made by the Company, this will be considered employment income provided through a third party and disguised remuneration. This is on the basis the following conditions are met;

- There is an arrangement in place which relates to an existing employee
- The arrangement is a means of providing recognition in respect of the employees employment
- The third party has taken a relevant step by paying a sum to an employee
- It is reasonable to suppose that in essence the steps has been taken in connection with the arrangement that is in place

As a result, the UK company, being the employer will be required to report the amount via payroll with PAYE applied at source. This will see employees liable for tax and NI on an amount they will have already received in cash. Assuming the Company is unable to fully deduct the liabilities due from the employee's pay for the month in which the bonus is paid, the Company will be required to cover the excess.

This should then be recovered from the employee within 90 days from the end of the tax year in which the liabilities were paid

to prevent a further charge arising. Alternatively, the Company may wish to agree a loan arrangement with the employees in respect of the liability covered by the Company which in line with the value being below £10,000 will not give rise to any tax charge regardless of if it is not repaid within 90 days from the end of the tax year.

--------------ANSWER-2-ABOVE---------------

--------------ANSWER-3-BELOW---------------

Answer-to-Question-_3_

To: Kerry Taylor
From: Janette Voss
Date: 30 October 2020
Subject: Riku Tanaka UK Payroll

Hi Kerry,

Thank you for your recent email. I would be happy to advise on the treatment of Riku's Japanese earnings in the UK.

Overview

As we know that Riku is UK tax resident, this means by default he is liable for UK tax on his worldwide income for the year.

However, as he is a non-UK domiciled individual, he main claim to be taxed on the remittance basis. This allows for any foreign income received may be exempted from charge to UK tax to the extent it is not remitted to the UK. On the basis Riku's foreign income is more than £2,000, he will be required to make a claim for this treatment via a self-assessment UK tax return as this only applies automatically for individuals with overseas income of less than £2,000.

Alongside the above, individuals who are in their first 3 years of UK resident will be eligible to claim overseas workday relief should they carry out part of their duties overseas. This allows for relief against UK tax on 100% of their income applying and instead the UK looks only at the earnings relating to their UK

duties. As we know that Riku has been living in the UK for 5 years, he will not be eligible for this relief.

Further to an individuals overseas income being removed from charge to UK tax where it is not remitted to the UK, a claim for the remittance basis will remove the individuals entitlement to UK personal allowance and annual exemption. An assessment should therefore be carried out ahead of a claim being made to establish if it is beneficial or not.

Where no claim for the remittance basis is made, the individual will be taxable in the UK on the arising basis, being all of their worldwide income as and when it arises.

Dual Contract

Looking at Riku's employment arrangement, you have advised that he is employed under two separate contracts; 1 for his overseas duties with the Japanese company and another for his UK role with the UK company. This will be considered a dual contract arrangement.

Typically this will allow for the contract relating to the overseas duties to be exempt from charge to UK tax under the remittance basis, however this is only where all duties under the contract are carried out overseas and the roles under each contract are separately identifiable.

As we know that Riku has carried out some employment duties in the UK under this contract and his role under each contract is a senior member of the sales team, we must consider the impact this will have on the dual contract arrangement and if any liability to UK tax will arise.

Under anti avoidance provisions, a dual contract arrangement will not qualify for remittance basis where the following applies;

• The individual has both a UK and overseas employment at the same time
• The UK and overseas employer are the same entity or associated entities
• The UK and overseas employment are related to each other
• The foreign tax rate applicable to the overseas employment is less than 29.25%, being 65% of the UK additional rate band.

Looking at Riku's position, it is reasonable to say that the first 3 points outlined above apply. In respect of the last point, if you could please confirm the rate at which Riku's income is taxed in Japan we can confirm if this applies or not.

Assuming condition 4 above is met, this will mean that all of Riku's earnings under this Japanese contract will be liable for UK tax on the arising basis. In order to operate this, the UK company will be deemed as Riku's employer and as such responsible for operating PAYE on 100% of his income across both contracts.

In respect of his liability in Japan, we may turn to the reciprocal agreement in place between the UK and Japan. Looking at Article 4, this states that an individual who is employed in Japan and works between both the UK and Japan will only be liable for tax in the location in which the earnings relate to. While this will exempt Riku's Japanese employment income from charge to UK tax, this relief will not be available under PAYE and instead a claim must be made on Riku's self-assessment tax return after the end of the tax year.

Should any Japanese liability remain on his earnings relating to his UK duties, relief should be claimed in Japan under the treaty with a refund obtained.

Social Security Considerations

In respect of Riku's social security position, this must be considered under the agreement in place between the UK and Japan. Typically an individual will only be liable for UK NI where they are considered ordinarily resident of the UK, which on the basis Riku is has been living in the UK for 5 years will be the case.

However on the basis his overseas employment is with the Japanese Company, it is likely that he will be liable for Japanese social security on his earnings relating to that contract. In respect of his UK duties under the contract, looking at the treaty, providing he was assigned to work in the UK for a period of less than 5 years by the Japanese company under his overseas contract, he will remain liable for Japanese social security on this income.

In line with the above, the UK company should only operate tax on his overseas earnings under PAYE.

I trust the above is clear, but if you have any further queries, please let me know.

Kind regards
Janette Voss

--------------ANSWER-3-ABOVE---------------

--------------ANSWER-4-BELOW---------------

Answer-to-Question-_4_

To: Francis Lee, Managing Partner - Gorman & Rajani LLP
From: Susan Smith
Date: 17 October 2020
Subject: Gorman & Rajani LLP - HMRC Review

Hi Francis,

Thank you for your recent email. I would be happy to review and advise on if the salaried members legislation will apply to any of the LLP members.

Overview

To give an overview, this legislation looks to treat any members of an LLP as if they were an employee for PAYE purposes. This legislation will apply where the following conditions are met;

• Condition A: It is reasonable to expect that 80% of the member's share of the profits of the LLP is disguised salary
• Condition B: The individual does not have a significant influence of the LLP
• Condition C: The individuals capital contribution to the LLP is less than 25% of the disguised salary amount

These conditions must be considered on an individual basis and where they are all met in respect of an individual, the LLP would be responsible for operating PAYE on their disguised remuneration payments when they are paid in the same way as is done for employees.

I note that you have mentioned there are 3 groups of LLP members and so I have outlined the position below of each based on the information you have provided.

Leadership Group

You have advised that the Leadership group is ultimately responsible for the key decisions surrounding the LLP's future direction covering any acquisitions, disposals, budgeting, forecasting, investments and future partner admissions.

In line with this, it is clear that these individuals all have significant role influence on the LLP itself and as such condition B outlined above would not be met.

As a result, regardless of if the other conditions are met, the legislation will not apply to the Leadership Group and as such the LLP will have no PAYE obligations over their payments received. We would expect HMRC to agree with this position as part of their review and not look to take any action in respect of this.

Divisional Heads

You have advised that the Divisional Heads are one of the groups which the Leadership group delegates the running of the management of the LLP to. This group is responsible for the running of their respective business lines covering marketing spend and new employee hires subject to the guidelines and budget laid down by the Leadership group.

In line with the above, as this group solely deals with their own business line and do not contribute to the overall management of the LLP, making key decisions for the affairs of the LLP, it is likely that condition B outlined above will be met.

As such, we must also consider conditions A and C.

Looking at condition A, we know that the divisional heads are paid drawings monthly in equal installments. For the year to 31 March 2019, these drawings make up approximately 77% of the groups income. The remaining 23% was made up of the discretionary allocation which is made each year.

As the discretionary allowance is based on the profit of the business and the amount paid is determined by the seniority of the member and their personal/teams performance, this will be considered disguised salary along with the monthly drawings on the basis these are paid in recognition of the members work each month in line with their agreement with the LLP and they are not required to repay them at any point.

In line with the above, Condition A will also be met.

Lastly, for condition C, this requires the member's capital contribution to the LLP to be less than 25% of their disguised salary amount. From the information provided you have confirmed that the members are only required to contribute 10% of their drawings which we know is less tan 25% of their disguised salary.

Therefore condition C is also met.

As a result, the Divisional Heads will be subject to the salaried members legislation and the LLP should have operated PAYE on their drawings and discretionary allowance in the month in which they were paid.

I would therefore expect HMRC to pick up on this as part of their review and look to recover the backdated liabilities from the LLP in respect of PAYE which should have been applied throughout the year.

Based on the figures provided, each Divisional Head will be considered an additional rate taxpayers and not entitled to any UK personal allowance on the basis their income for the year was in excess of £150,000. In line with this, I have calculated below the liabilities which will become due;

Total Payments	3,900,000
Tax due; (allowances multiplied by 15 for each individual)	
(37,500 x 15) @ 20%	112,500
(112,500 x 15) @ 40%	675,000
3,900,000 - (112,500 x 15) @ 45%	995,625
	1,783,125
EE NI due; (allowances multiplied by 15 for each individual)	
0 to (8,632 x 15) @ 0%	0
(8,632 x 15) to (50,000 x 15) @ 12%	74,462
(50,000 x 15) to 3,900,000 @ 2%	63,000
	137,462
ER NI due; (allowances multiplied by 15 for each individual)	
0 to (8,632 x 15) @ 0%	0
(8,632 x 15) to 3,900,000 @ 13.8%	520,331
Total Liability Due	**£2,440,918**

While the above outlines the liability which should have been deducted and paid under PAYE, on the basis the individuals have reported and paid tax and Class 4 NIC via their self assessment tax returns, HMRC should offset these payments against what is due. In line with this, the liability due by the LLP should be as follows;

Total Liability as above	2,440,918
Less: Tax Paid via self-assessment	1,783,125

Less: Class 4 NI Paid;	
(8,632 x 15) to (50,000 x 15) @ 9%	55,846
(50,000 x 15) to 3,900,000 @ 2%	63,000
Liability due by LLP	**£538,947**

Junior Members

On the basis these individuals do not have any responsibility for the operation and management of the LLP, it is clear that condition B will be met.

Furthermore, as they are paid drawings and a discretionary allowance in the same way as the Divisional Heads above, they will also meet Condition A and C.

Therefore the salaried members legislation will also apply to them and the LLP should have operated PAYE on their payments made.

I would therefore expect HMRC to pick up on this as part of their review and look to recover the backdated liabilities from the LLP in respect of PAYE which should have been applied throughout the year.

Based on the figures provided, each Junior Member will be considered an higher rate taxpayers. They will also not entitled to any UK personal allowance on the basis their income for the year was in excess of £125,000. In line with this, I have calculated below the liabilities which will become due;

Total Payments	20,250,000
Tax due; (allowances multiplied by 150 for each individual)	
(37,500 x 150) @ 20%	1,125,000
(112,500 x 150) @ 40%	6,750,000
20,250,000 - (112,500 x 150) @ 45%	1,518,750

	9,393,750

EE NI due; (allowances multiplied by 150 for each individual)

0 to (8,632 x 150) @ 0%	0
(8,632 x 150) to (50,000 x 150) @ 12%	744,624
(50,000 x 150) to 20,250,000 @ 2%	255,000
	999,624

ER NI due; (allowances multiplied by 150 for each individual)

0 to (8,632 x 150) @ 0%	0
(8,632 x 150) to 20,250,000 @ 13.8%	2,615,817

Total Liability Due	**£13,009,191**

While the above outlines the liability which should have been deducted and paid under PAYE, on the basis the individuals have reported and paid tax and Class 4 NIC via their self assessment tax returns, HMRC should offset these payments against what is due. In line with this, the liability due by the LLP should be as follows;

Total Liability as above	13,009,191
Less: Tax Paid via self-assessment	9,393,750
Less: Class 4 NI Paid;	
(8,632 x 150) to (50,000 x 150) @ 9%	558,468
(50,000 x 150) to 20,250,000 @ 2%	255,000
Liability due by LLP	**£2,801,973**

Final Points

As the payments made to the divisional heads and junior members will be considered salary, these amount together with the employer class 1 NIC due will be deductible in arriving at the profits for the LLP for the year. Action should therefore be taken to adjust the profits accordingly.

Further to the above, the LLP will also be liable for apprenticeship levy on the payments which should have been treated as salary. On the basis the PAYE bill is already over £3million, the additional amount due in respect of the divisional head and junior staff income will be £120,750 (20,250,000 + 3,900,000 x 0.5%).

Going forward, the LLP should ensure these individuals are captured through payroll with PAYE deducted from their income each month and paid to HMRC long with the wider employee PAYE bill.

If you would like to discuss the above further, please let me know.

Kind regards
Susan Smith

--------------ANSWER-4-ABOVE---------------

--------------ANSWER-5-BELOW---------------

Answer-to-Question-_5_

To: Darren Goodge
From: Helena Trent
Date: 2 November 2020
Subject: PAYE Coding for Gianluca

Hi Darren,

Thank you for your email. As requested I have provided some advice below in respect of Gianluca's PAYE code.

Firstly, it is important that the Company continues to operate the code K309 M1 on the basis this is the most recent code issued by HMRC. Should any change be made to this that is incorrect, this will give rise to a PAYE failure by the Company with HMRC potentially looking to recover any under payment from the Company.

I can see from the information you have provided surrounding the code operated to Gianluca when he started employment and the completion of the expat new starter checklist that this is correct. It is also correct that the Company subsequently applied the new tax codes issued by HMRC.

Looking at the code that Gianluca is on now, this is allocating him no personal allowance and is in fact increasing the amount of income he is liable to pay tax on under PAYE. This is as a result of the benefits that he has received which I have considered further below.

In respect of the Company car provided to Gianluca from 15 April 2020, this will have been included in his tax code following submission of the P46 car. Based on the fact he only received the car from 15 April 2020 and the annual car benefit is £4,590 his taxable benefit for the 2020/21 tax year will be £4,401 (4,590 / 365 x 350).

In order to allow for the correct tax to be paid on this income during the year, HMRC will process this as an adjustment to his tax code.

Looking at the benefits he received from his previous employer, these should be removed from his tax code going forward. This is on the basis that he is no longer receiving the benefits from them and as such is not liable to pay tax on them. Based on the tax code he is currently on, it appears that these amounts are included within his code and as such Gianluca should contact HMRC to request that they are removed.

As you have advised that Gianluca prepared a tax return for 2019/20 reporting all of his income and benefits, assuming any liability due was settled to HMRC by 31 January, there should be no adjustment through his tax code for any under payment for 2019/20. If however Gianluca opted for his liability to be collected through his tax code, assuming the total liability was less than £3,000, this will be included in his code on a grossed up basis to allow for the correct amount of tax to be paid to HMRC.

Based solely on the Company car that Gianluca will receive for 2020/21, I would expect his tax code to be issued as follows;

Personal Allowance	12,500
Less: Car Benefit	4,401
Revised Personal Allowance	8,099

Tax code 809L

In order for this to be updated and any irrelevant adjustments removed from his code, Gianluca will be required to get in touch with HMRC directly to discuss his position and request that his code is updated. Only after a revised code has been issued by HMRC should the company make any change to his payroll record.

With regard to refunds of overpaid tax based on incorrect codes, assuming HMRC issued Gianluca's updated code on a cumulative basis, his year to date tax figure will be updated in the first payroll month that his new code is applied with any refund adjusted for and given in year.

If however his new code is issued on a month 1 basis, no refund will be available until after the end of the tax year when Gianluca has completed his self-assessment tax return.

I trust the above is clear, but if you have any further queries please let me know.

Kind regards
Helena Trent

--------------ANSWER-5-ABOVE---------------

--------------ANSWER-6-BELOW---------------

Answer-to-Question-_6_

To: Malcolm & Rachel Brown
From: Alex Smith
Date: 11 November 2020
Subject: Employee Share Ownership

Hi Malcolm, Rachel,

Thank you for getting in touch regarding the proposed transfer of your share holdings to the 20 employees of Tasty Wedge Ltd. I would be happy to advise on how this will be achievable and the associated tax implications.

Disposal of your shares

Firstly, you will be required to dispose of your shares back to the Company which will generate a disposal for you both.

On the basis the business is unquoted, the sale of your shares will be for the benefit of the trade, you have both held your shares for at least 5 years, you will reduce your interest in the Company by more than 25% and will not be connected with the Company thereafter, this will be treated as a capital gain for you both and liable for capital gains tax.

As you have stated that you don't mind payment for the shares being deferred, you should consider if it would be possible to pay any capital gains tax due in installments.

If you require any further advice on this, please let me know and

I will direct you to my colleague in the private client department.

Employee Ownership Trust

Moving onto the potential for the Company to operate an Employee Ownership Trust, this will be possible where the following conditions are met;

• The trust itself must have a controlling interest in the Company
• Any property settled on the trust may not be applied other than for the benefit of all eligible employees on the same terms
• The Company controlled by the trust must be a trading Company or the principal company in trading group/

Based on the information you have provided, the above conditions will be met and as such this may be an option that you wish to go down. However under this option, employees will not ultimately hold their own independent share in the company and instead this will be jointly owned by all employees (trustees) of the trust.

As part of this trust, there will be additional benefits available to employees as outlined below;

• Certain bonus payments made to employees may be exempt from income tax, providing no more than 2/5 of all employees and officeholders are connected with officeholders and all employees are eligible to participate with their bonus paid on the same terms.
• Relief from capital gains tax on disposals of shares leading to a controlling interest in a company being held by the trust
• Inheritance tax relief available in respect of property disposed of to a qualifying trust

There may however be further tax implications on employees in

respect of this arrangement which I would recommend advice is sought on.

Other Potential Arrangements

Aside from the above, the Company may wish to implement a share scheme for employees. This would allow employees to own a portion of the business personally.

As the Company is not listed, there will not be any tax advantageous schemes available to employees, however shares may be awarded at a discount which I note is something you have expressed you would like to do. I have therefore only considered the options available to Tasty Wedge Ltd below.

Non Tax Advantaged Scheme

By implementing a non-tax advantaged scheme, the Company would be able to grant the right to acquire shares in the Company to employees at a discount without any charge to tax on initial grant. When the shares are subsequently exercised however, a charge will become due on the difference between the market value and the price paid.

On the basis the shares are unquoted they will not be considered readily convertible assets and as such it would be the employee's own responsibility to report the income and pay the associated tax liability under self-assessment.

When the employees subsequently sell the shares, they will be considered as having made a capital disposal. This will give rise to a chargeable gain equal to the proceeds received less any amount paid for by the employees and any amount already charged to income tax. This would be reportable by the employees in the year the disposal is made.

As part of this, the Company would be required to register the scheme with HMRC and submit annual returns by 6th July each year reporting all chargeable events.

Share Awards - Nil or Partly Paid

Alternatively, the Company may wish to purely award the shares at a price lower than market value.

In this case, the employees will be treated as having a notional loan equal to the amount of the shares still to be paid for. Where the loan exceeds £10,000 with no interest charged, this will give rise to a taxable benefit in kind for the years in which it is outstanding with the benefit value calculated with reference to HMRC's official rate of interest for that year. The calculation will be based on the average method looking at the value of the loan at the start and end of the tax year however if the precise method, which looks at the value of the loan each day, gives a lower benefit value, this may be elected for.

Any taxable loan benefit will be reportable on the employee's P11D following the end of each tax year.

If the notional loan is subsequently written off by the Company, this will become chargeable as employment income via PAYE on the employee that it is written off in respect of.

As above under a non-tax advantaged scheme, on subsequent disposal of the shares, employees will be liable for capital gains tax on the chargeable gain which will be equal to the proceeds received less the actual amount paid for by the employees.

I trust the above gives you some options to think about. If you would like to discuss any of the above points further, please let me know.

Kind regards

Alex Smith