



## Buzzacott's Professional Practices Group Winter 2011 Update

In this edition:

- Salaried partners - employed or not?
- Personal tax - planning for 5th April
- SRA Accounts Rules 2011 - written policies you should have in place
- Unlock your overlap relief?
- How safe is your iPad?
- Buzzacott seminar - Pre Year End Round Up on 6 December 2011

### **Salaried partners – employed or not?**

The recent case of Williamson & Soden Solicitors v Briars seems to cast some uncertainty on the employment position of certain salaried partners in partnerships and LLPs.

The key test was whether the relationship between the parties changed at any time after Mr Briars became an employed salaried partner. The conclusion reached was that Mr Briars remained under the control of the equity partners and he did not cease to be employed despite changes to his remuneration so that it included a profit share.

Although the Tribunal did not consider whether Mr Briars had become a partner, the Appeal Tribunal considered this unlikely, despite the profit share, as there was no risk of loss, no management involvement and no supporting paperwork. As we have mentioned in previous newsletters, these appear to be the key matters to address when partnership is required.

We are not aware of HMRC challenge in this area but a combination of a partner taking a share of business risk and robust paperwork would help rebut a tax challenge.

## Personal Tax – planning for 5th April

With four months to go before the end of the tax year there is plenty of time to consider all tax planning opportunities.

Here are some ideas:

- Individual Savings Account (ISA) – for 2011/12 this is £10,680 for a stocks and shares ISA or £5,340 for a cash ISA.
- Capital Gains Exemption - where possible, realise capital gains to use your annual exemption allowance of £10,600 for 2011/12.
- Pension contributions – the rules on maximum relief available changed on 6 April 2011 and, in addition to being able to pay up to £50,000 gross this year, you may also have unused relief available from earlier years that you can bring forward and use this year as well. If you are a 40% taxpayer, the total tax relief available could therefore be significant and even more so if you have earned enough to lose your personal allowance or are a 50% taxpayer.
- Enterprise Investment Schemes – receive income tax relief at 30% on investments up to £500,000.
- Venture Capital Trusts – receive income tax relief at 30% on investments up to £200,000.
- Life Assurance based investments - allow an annual 5% withdrawal free of tax for 20 years (the surrender proceeds are, typically, then taxable in full as income).
- Personal Allowances – these taper away once your total income exceeds £100,000 and disappear altogether above an income level of £114,950 – income falling within this band is being taxed at 60% so consider making Gift Aid donations and/or Pension Contributions before 6 April

2011 to reduce your income below £100,000 again and effectively obtain 60% tax relief on the payments. Alternatively, if possible, consider deferring some income until after 5 April 2012.

## SRA Accounts Rules 2011 – written policies you should have in place

Outcomes-focused regulation places a greater emphasis on firms setting their own written policies and procedures to achieve the desired outcomes set out in the SRA Handbook. So, what written policies should you have in place and what should they include?



### Authorising withdrawals from client account

Firms should decide who is an “appropriate person” to authorise client money withdrawals. Consider whether they are sufficiently senior. It is unlikely that it will be appropriate in many circumstances to allow accounts staff to authorise withdrawals without approval from a partner or equivalent. It is also advisable to offer your FD or accounts staff the safety net of a partner signature in the case of large money transfers.

Electronic transfers (without written authorisation) are permissible subject to appropriate safeguards and these should be documented in the policy:

- Is there appropriate segregation of duties between those preparing payments and the manager authorising?
- Is there a clear and unalterable record of this authorisation (effectively an audit trail)?
- Where electronic passwords are used, are these unique to each user and changed regularly?

### Billing (when choosing to adopt electronic billing)

Under guidance note 17(ix) of the Accounts Rules 2011, electronic billing is permissible where the client has agreed that bills can be delivered electronically

(e.g. stated in the retainer). This provides firms with an opportunity to streamline procedures and speed up their working capital cycle. The firm’s written policy needs to state that the preferred method of billing is electronic and a central record of bills and other notification of costs must be maintained under Rule 29.15.

### Financial benefits received (e.g. commissions received)

In a departure from the prescriptive £20 de minimis limit under SAR 1998 for commissions received, this is now client money (Rule 12.2(f)) unless the firm can justify keeping it and has communicated

this in advance to the client. A written policy should consider fairness to the client especially if the firm intends to keep any portion of the money.

## Interest

Firms are required to set their own "fair and reasonable" policy on the payment of interest on client funds. This should be written and communicated to clients (e.g. retainer letter). Points to include are:

- The rate of interest used
- Whether it is based on an instant access account (or tied to base rate etc)
- Whether there will be a de minimis limit and on what this is based
- How interest will be calculated (e.g. at the end of the month?)
- On what the interest will be calculated (e.g. on linked or individual matters?)

Firms should also consider how their policy will stand up to scrutiny from the SRA and clients:

- How will the firm justify any change from the current £20 de minimis limit to existing clients?
- Should all client money be put in a general client account unless a client has specifically requested a designated deposit account (i.e. now that there is no distinction in the Accounts Rules between designated and general client accounts)?

Note that Reporting Accountants will need to consider the adequacy of the interest policy – another reason to put this in writing!



## Unlock your overlap relief?

Since the introduction of the 50% Additional Rate of income tax, there has been much greater discussion about unlocking relief but we know from discussions with clients that there is uncertainty about what this means.

Overlap profits are the profits that were taxed twice in your early years of self employment or partnership in your firm - unless your firm's year end is 31 March (actually between 31 March and 5 April), you will have them, meaning that you have cash on deposit with the Treasury.

In these straitened times most would like to release this cash, particularly as the tax was probably paid at 40% and could be returned at 50%.

Typically, overlap relief is given when you retire from your firm – the overlap profits reduce your profits for your final year, so that you get your money back. Not much opportunity here, unless you are planning your retirement.

However, overlap relief is also given on a change of year end and this is the issue at the heart of these discussions.

A change of year end to 31 March will give you full overlap relief, so why hasn't everybody done it?

- It may not be possible – if your

business has changed year end in any of the past five tax years you cannot make a change.

- The change will bring profits forward, so, if your profits are rising, this might be expensive.
- Your overlap profits may be less than current profits, in which case you are likely to increase your immediate tax liability.
- Different partners will have different profit profiles – older partners may have 'banked' their overlap profits at much lower levels than younger partners.

Overlap profits feel like a very poor investment and our currently higher tax rates create an impression that releasing that investment would be beneficial, but a careful analysis is needed to make sure that the release does not cost more than it saves.

We monitor our clients' overlap position and raise the matter when we consider it appropriate, but please contact us if you would like to discuss your position.



## How safe is your iPad?

The Data Protection Act (DPA) applies to the use and storage of personal data stored in electronic or organised paper filing systems by businesses and organisations. Personal data is any information from which a living individual can be identified - typically customers, clients and staff.

Any person or company that handles personal data is a data controller and is required to comply with the DPA.

The Information Commissioner "ICO" has powers to enforce the DPA which include requiring undertakings from data controllers and levying civil penalties of up to £500,000. A number of high profile cases (some with substantial fines) illustrate the ICO's determination to enforce compliance. Recently Oliver Letwin was found in breach of the DPA by disposing of constituents' letters in park bins. In another case a barrister lost an unencrypted laptop.

While organisations may ensure that the rules are followed in the office with computers and data sticks encrypted and paper shredded onsite, many of the breaches that attract the ICO's interest arise when data has left this secure environment such as fee earners working remotely and travelling with data.

Data controllers may also be responsible where data is outsourced to third parties. Unless the data controller is satisfied that both outsourced providers and/or employees adhere to the same rules outside the office, they may find themselves explaining why to the ICO.

## Buzzacott seminar: Tax Pre Year End Round Up

Tuesday 6 December 2011

Buzzacott invites you to a Tax Pre Year End Round Up specifically for professional practices.

For many, the financial year end is approaching and there are various other key events to keep in mind:

- 29 November Chancellor's Autumn Statement
- 31 January tax instalment
- 5 April tax year end

This seminar will concentrate on tax and financial planning from the perspective of firms and individuals, offering guidance on what to do in the run-up to the year end, pension planning and "housekeeping" from tax and accounting angles. It is particularly relevant for partners and finance directors in partnerships and LLPs, including those firms whose structure may feature a corporate partner or member.

For more information and to book go to :

[www.buzzacott.co.uk/events](http://www.buzzacott.co.uk/events)  
or email  
[marketing@buzzacott.co.uk](mailto:marketing@buzzacott.co.uk)

### The Professional Practices Group

Cliff Cooper

Partner and Head of Professional Practices Group

Email: [cooperc@buzzacott.co.uk](mailto:cooperc@buzzacott.co.uk)

Tel: 020 7556 1251

Alastair McQuater

Tax Partner

Email: [mcquatera@buzzacott.co.uk](mailto:mcquatera@buzzacott.co.uk)

Tel: 020 7556 1427

Richard Cobbold

Partner – Financial Planning

Email: [cobboldr@buzzacott.co.uk](mailto:cobboldr@buzzacott.co.uk)

Tel: 020 7556 1255

Claire Watkins

Associate Director

Email: [watkinsc@buzzacott.co.uk](mailto:watkinsc@buzzacott.co.uk)

Tel: 020 7556 1482

Sue Chadney

Associate Director

Email: [chadneys@buzzacott.co.uk](mailto:chadneys@buzzacott.co.uk)

Tel: 020 7556 1275

Shirley Ellis

Associate Director

Email: [elliss@buzzacott.co.uk](mailto:elliss@buzzacott.co.uk)

Tel: 020 7556 1463

John Bowman

Consultant

Email: [bowmanj@buzzacott.co.uk](mailto:bowmanj@buzzacott.co.uk)

Tel: 020 7556 1293

Alex Barker

Assistant Manager

Email: [barkera@buzzacott.co.uk](mailto:barkera@buzzacott.co.uk)

Tel: 020 7556 1449

Chloe Kusander

Tax Consultant

Email: [kusanderc@buzzacott.co.uk](mailto:kusanderc@buzzacott.co.uk)

Tel: 020 7556 1243