

CAPITAL GAINS TAX CHANGES – HOW WILL IT AFFECT YOUR BUSINESS?

The new Chancellor of the Exchequer, George Osborne has produced his first budget with some relief for entrepreneurs who run their own businesses.

The main rate of Capital Gains Tax has been increased to 28% from 18% and although an increase was expected this was a little lower than some commentators anticipated. Prior to the budget, there was speculation the rate would realign Capital Gains Tax with Income Tax and increase to 40% or even 50%.

The new rate of Capital Gains Tax will only apply to higher rate tax payers and is on any chargeable gains that exceed the basic rate threshold for Income Tax which is £37,400, thus the income and chargeable gains are being combined for the purpose of calculating the total chargeable gain. If however there is a chargeable gain where income falls within the basic rate threshold, this will be taxed at 18%.

The good news for entrepreneurs is that with regards to Capital Gains Tax the increase in the budget for entrepreneurs relief increased from £2 million to £5 million for sales of shares in Private Limited Companies. This means that if a disposal qualifies for entrepreneur's relief, the first £5 million of the gain will be subject to 10% capital gains which would give a saving of £240,000.00 for a £5 million disposal carried out under the new increased limit, as compared with transactions carried out prior to the changes.

Higher rate tax payers will pay a Capital Gains Tax rate of 28% and will be worse off than before the changes. The new rate of tax will also hit individuals selling second homes and investments that do not qualify for entrepreneur's relief. For further information please contact Colin Rodrigues on 01384 216840.



PERFECT MATCH FOR DATING AGENCY DEAL

Attractive Partners, one of the UK's leading personal introduction agencies, has changed hands in a match making deal overseen by our firm.

The dating agency has been bought by Manex Leisure which has ambitious plans to grow the business organically and through further acquisitions. Liz Fogarty, the founder and previous owner of Attractive Partners will be staying on in the business.

Based in Alcester near Evesham, Attractive Partners employs 18 staff and has an active database of 6,000 clients including a number of high net worth professional individuals. A member of the Association of British Introduction Agencies, the firm offers a truly personal introduction service for professional men and women using a confidential selective process which internet dating sites are unable to offer.

Since its formation in 2003, hundreds of people have found happiness through Attractive Partners which has built a reputation as one of the most successful professional introduction agencies in the UK.

Clients pay a one off membership fee which includes a telephone interview or face to face meeting with one of Attractive Partners' personal consultants, telephone number 01789 400 677. As well as through its head office in Alcester, the business attracts clients from throughout the UK, with dedicated contact phone lines for people living in the north and south of the UK.

Under the new ownership Attractive Partners will be headed up by Ben Charlton who runs Manex's leisure division. Commenting on the purchase, Ben said: "Attractive Partners has built an enviable reputation for the personal approach it takes to helping its clients find companionship and long term relationships. We intend to build on these strengths and are looking forward to working with Liz whose experience and understanding of the introduction agency business is invaluable."

Colin Rodrigues of our firm added: "We were delighted to have played a lead role in bringing this deal to a successful completion. The acquisition is a great fit for Manex which is an entrepreneurial company with ambitious growth plans for the future."



Photo caption: Liz Fogarty (foreground), sales director, Attractive Partners celebrates the perfect match with Ruth Coleridge, solicitor, and Ben Charlton, managing director, Attractive Partners.

DEALS DIARY

<p>April 2010</p> <p>SM SEALS LIMITED a Hydro Electric seal manufacturer</p> <p>Sale of Shares</p> <p>Hawkins Hatton LLP acting for the Seller</p>	<p>April 2010</p> <p>THURNHAM INVESTMENTS LIMITED</p> <p>Purchase of Business of a contractor for retailers including Next and Argos</p> <p>Hawkins Hatton LLP Acting for the Purchaser</p>	<p>April 2010</p> <p>CHILDRENS CARE HOME BUSINESS</p> <p>Purchase and Reorganisation</p> <p>Hawkins Hatton LLP acting for the Company</p>
<p>May 2010</p> <p>REFRACTORY CONTRACTING BUSINESS</p> <p>Purchase of Shares</p> <p>Hawkins Hatton LLP acting for the Purchaser</p>	<p>May 2010</p> <p>INTERNATIONAL DEFENCE CONTRACTING BUSINESS</p> <p>Buy back of Shares</p> <p>Hawkins Hatton LLP Acting for the Company</p>	<p>June 2010</p> <p>ATTRACTIVE PARTNERS LIMITED</p> <p>Purchase of Shares</p> <p>Hawkins Hatton LLP acting for the Purchaser</p>
<p>June 2010</p> <p>SALE OF TUBE MANUFACTURING BUSINESS</p> <p>Sale of Assets</p> <p>Hawkins Hatton LLP acting for the Seller</p>	<p>June 2010</p> <p>HEATHFIELD GROUP LIMITED</p> <p>Sale of Shares</p> <p>Hawkins Hatton LLP acting for the Seller</p>	<p>June 2010</p> <p>COMPUTING BUSINESS</p> <p>Re-organisation</p> <p>Hawkins Hatton LLP acting for the Company</p>

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HAWKINS HATTON APPOINT NEW COMMERCIAL PROPERTY PARTNER

Our firm has appointed a new partner to head up the commercial property team.

Tim Clark joins as commercial property partner from Shakespeare Putsman Solicitors where he was an associate in the firm's Birmingham office.

In his new role Tim will be responsible for developing our commercial property activities working closely with corporate partner Colin Rodrigues and managing partner Harminder Sandhu.

Originally from Staffordshire and now living in Harborne, Tim studied law at the University of Birmingham before going on to gain a masters in property law at Oxford University. During his time at Oxford he became a scholar and postgraduate tutor in property law, producing a thesis in land law which is due to be published shortly.

A well known figure in the Midlands real estate market over the last decade, Tim started his career in Staffordshire and has previously worked at national law firms Cobbetts and Clarke Willmott in Birmingham.

During his career Tim has been involved in a diverse range of commercial property transactions, including within the development and property finance sectors, working on funding deals for both commercial and residential transactions. He has also gained extensive experience of acting for landlords and tenants in the industrial, retail and telecommunications sectors, and providing corporate support through sale and leaseback schemes, acquisitions and disposals.

Commenting on his appointment he said: "I'm joining a corporate law firm at an exciting time in its development and am looking forward to bolstering the commercial property offering by supporting existing corporate activity and winning new clients within our core Midlands market. Hawkins Hatton has developed a reputation for first class partner led services and I'm confident I can help the firm grow further by bringing additional experience to the team."

Corporate partner Colin Rodrigues said: "Tim is an established player within the sector who regularly lectures on commercial property matters to the construction industry. His appointment will further strengthen the firm's offering to the business sector and demonstrates our commitment to providing the highest levels of professional services to our clients."



Photo caption: Tim Clark (left), commercial property partner and Colin Rodrigues (right), corporate partner.



We would like to say congratulations to Alan Read and the team who completed the Three Peaks Challenge conquering all three peaks in 24 hours, and all in aid of a good cause, Acorn's Children's Hospital. Alan's business, Altek Midlands Environmental Services Limited is working closely with the charity in improving the family unit. Congratulations from Hawkins Hatton.

WHEN THE GOING GETS TOUGH IT PAYS TO TALK LEASE OPTIONS

As economic tensions in landlord-tenant relations look set to remain, many business tenants have struggled on, giving little thought to restructuring their leases and reducing operating costs. Tim Clark, Head of Commercial Property, considers some of the options which could provide an opportunity for both landlords and tenants to mutually benefit.

So some economists believe the austerity measures facing Britain could even trigger a dreaded "double-dip." From a tenant's perspective, premises will still be "over rented," where cost per square footage is too high. For the landlord, there will be lingering fears over tenant insolvency with little chance of rental growth at the next review date.

There could however be a golden opportunity for parties to sort out their differences, begin with a clean slate, and modernise their leases so that they truly reflect market conditions. Taking a conciliatory approach could well be far more prudent than getting embroiled in litigation over unpaid rent!

"Re-Gearing" Leases

A "re-gearing" arrangement could fit where sub-letting or assignment is simply not an option. In a typical scenario, the tenant would surrender the break clause, but the existing rent would be reduced. By removing the break clause, the landlord guarantees income for the remainder of the term and, by substituting an open market rent review for a fixed/index-linked formula, improves the prospects of an uplift in rent at the next review. The landlord may also want to extend the term of the lease.

There are several mechanisms by which this can be achieved. A deed of variation is required solely to remove the break clause, revise the rent and alter any other terms of the existing lease. If the term of the lease is to be extended, there are two options. The existing lease may be surrendered and replaced by a new lease (incorporating new rent, review provisions and the longer term.) Alternatively, and in addition to the deed of variation, the parties will enter into a future lease (called a reversionary lease,) that will come into effect when the existing lease expires.

From the tenant's perspective, replicating the old lease with the new would probably be a tactical disadvantage, as a more favourable outcome is likely to be achieved in a tenant orientated environment. As for the landlord, if the lease was an "old tenancy" (granted before 1 January 1996,) the tenant is already "on the hook" for the full duration of the term, and by surrendering the existing lease a valuable covenant may be lost.

That said, all current disputes in the new lease can be "put to bed," or at least regularised. What about removing that worrying personal guarantee clause (agreed to innocently when the market was buoyant,) or dealing with the timing of reinstatement of alterations, the terms of future underletting, and maybe a "deal" over dilapidations?

Assignment and Subletting

It is a well-rehearsed ground that a landlord will usually be required to grant consent, not to be unreasonably withheld. However this potential tenant "exit strategy" has lost much of its appeal today due to the lack of supply of potential assignees/sub-tenants. In either scenario, it is important to remember that the tenant is going to remain liable to the landlord in the event of transferee default, at least for a limited duration.

Moreover, existing leases often contain provisions preventing sub-letting at a lower rental level than that provided in the existing lease, the landlord not wanting other tenants using the sub-tenants low rental as a comparable in open market rent reviews. By adopting the strategy of "re-gearing" leases, above, and converting an existing open market review into a fixed/index-linked formula, there may be scope for the new lease to allow subletting at lower rents, thereby increasing the flow of potential sub-tenant, and making sub-letting a more marketable option to the tenant.

Virtual Assignment

A modern "arrangement" whereby there is no actual assignment of the lease or change in occupancy, but a tenant transfers the economic obligations and benefits under a lease to a third party. As for the tenant, the premises no longer appear on the balance sheet, and the then need to gain landlords consent to an assignment is successfully circumvented.

On the other hand, landlords are likely to be very wary, as they know nothing of the covenant strength of the additional party. Watch this space – alienation provisions may be tightened up to prevent such arrangements!

"Going Dark"

As a "last gasp" interim strategy, the tenant shuts down operations but continues to honour the rent. The tenant sheds operating costs, but may face a landlord's action to forfeit if the lease contains a "keep open" clause, although in today's market forcing the tenant out is likely to be pointless.

Again adopting the alternative strategy of "re-gearing," above, is likely to be a more attractive proposition than "going dark," giving parties a wonderful opportunity to reconfigure their relations in a truly modern lease.

With sensible negotiation by your advisors, you'd be surprised how accommodating those tenant and landlord discussions can be.

For further information please contact Tim Clark on 01384 216840