

RightFocus

Focussing on Legal Issues important to You

Join the Club!

At Toller Beattie we firmly believe in keeping you informed and up to date with developments in the legal field so you can better choose your path to the future. We'll be there to help and assist you when needed but we think it's part of our role to forewarn and forearm you – not just help you sort the problems out after the event!

To this end we run an Employment Club for business clients.

The club meets quarterly and is run by our employment expert Jon Dunkley. Its purpose is twofold. Primarily it allows us, through Jon and other colleagues, to keep you up to date with the latest legislation, regulations and Tribunal decisions. The secondary objective is to provide a forum for delegates to raise questions and issues and to share experiences and expertise both with us and with fellow members.

Club meetings are held at our premises in Queens House in Barnstaple from 8.30 am till 10.00 am approximately midweek. Membership is free but we ask for a nominal annual contribution to our incidental costs.

Recently we have expanded the Club by running a 'mirror' meeting in Bideford during an adjacent weekday. Members are free to attend at either venue, at their convenience.

If you are interested to know more please contact Jon Dunkley.

Toller Beattie
Queen's House
Queen Street
Barnstaple
EX32 8TB

01271 341000
www.tollerbeattie.co.uk



New tax legislation on the way for family firms

The outcome of the landmark 'Arctic Systems' case last July left husband-and-wife team Geoff and Diana Jones relieved that HM Revenue and Customs (HMRC) could not prevent them from reducing their tax and National Insurance bill by splitting the income generated by their business.

This followed a seven-year 'David and Goliath' struggle, during which HMRC questioned the validity of the Jones's arrangement, which saw the nearly £100,000-turnover business pay them a total of £11,000 in salary, splitting the remainder, minus tax and expenses, in dividends.

Now, however, family firms are anticipating changes to the legislation which may result in them paying more tax in future.

A Treasury statement released immediately after the House of Lords found in favour of Mr and Mrs Jones highlighted the need for fairness in taxation matters, saying: "This case has brought to light the need for the Government to ensure that there is greater clarity in the law regarding the tax treatment of income-splitting arrangements, which are used by some tax-payers to achieve an unfair advantage over others."

"The Government will therefore bring forward proposals for changes to legislation to ensure that the principle of fairness is maintained. The Government's intention is that genuine and commercial business arrangements will not be affected by this legislation and we will consult to ensure this is the case."

The new legislation is likely to be aired in the 2008 Finance Bill, leading the Institute of Chartered Accountants' Tax Faculty to call for reflection "before rushing to legislate".

According to Francesca Lagerberg, Chairman of the Tax Faculty's technical committee, "It appears the tax authorities will seek to separate out 'commercial' situations from those where they believe dividends are being passed to lower-rate taxpayers primarily to keep down the tax bill.

"The reality is that most businesses do not fall into such neat categories. There is a danger that rushed legislation will result in unworkable legislation, plunging thousands of taxpayers into yet more uncertainty about their tax position."

Even when basking in the immediate glow of victory, Geoff Jones spoke of his anger that the case had ever come to court, let alone dominated his life for seven long years.

Before new legislation is passed, ensuring the efficiency and legality of a family business's tax arrangements can be a complex and involved process. If you are concerned that your firm may attract the unwanted attention of HMRC inspectors, please ask to speak to one of our solicitors as well as your accountant.



How safe are your business premises?

Recent changes to the legislation on Fire Safety Assessments have made it more important than ever to regularly check the condition of equipment at your business. Not doing so could lead to an unwitting failure to meet your health and safety responsibilities, the penalties for which include fines and even imprisonment in the event of an accident that leads to a fatality.

The key factors to address are as follows:

- Gas equipment and appliances – it's advisable to have these checked every 12 months by a CORGI-registered engineer
- Portable electric equipment (anything with a plug, from kettles to photocopiers) – the law requires all such equipment to be maintained, including regular testing and examination
- Fixed electronic systems – under the Institute of Electrical Engineers' Wiring Regulations, fixed installations should be checked every five years – although there are exceptions including fire alarms and emergency lighting, which need to be tested more often.

Contact one of our commercial lawyers to discuss your health & safety responsibilities. In the meantime, it may be the right moment to check the competitiveness of your existing power suppliers. Visit www.uswitch.com to compare rates.

Protecting your business online

Worries about online crime are preventing significant numbers of small businesses from participating in e-commerce, despite the low-cost opportunities it offers for reaching new customers across the UK and the rest of the world.

This is the key finding of a report by the House of Lords Science & Technology Committee, which showed that only 18% of UK Small and Medium Enterprises (SMEs) are trading online.

The research suggested that fears of crimes like credit card fraud are placing important barriers in the way of further take-up. In addition, many businesses are concerned about less tangible threats to their reputation arising from the potential abuse of their assets online.

If your business would like to trade online but is wary of how to protect its intellectual property, uncertain of e-commerce procedures and unsure of the general requirements you would need to address, then please speak to one of our commercial lawyers for advice and recommendations.

Changes to bonus rules

A recent change in accounting rules altering the way HM Revenue and Customs (HMRC) looks at bonuses given to company directors is set to affect many smaller companies.

In the past it was usual to decide bonus levels based on draft year end accounts, which are normally available some weeks after the end of the financial year. Then, once the level of profit was known, the bonus would be decided and the appropriate accrual put in the accounts. Corporation Tax relief would then be obtained on the profits for which the bonuses were voted, provided the bonus was paid within nine months of the year end – this rule remains in place.

However, following this change a bonus can only be accrued if the company is obliged to pay it at the year end. You do not have to know the precise sum, but for it to be claimable against that year's profits you must declare the bonus before the year end.

A director receiving a bonus will become liable for PAYE when:

- the actual payment is made
- the director becomes entitled to the sum
- the payment is credited to the director in the company's books
- the amount of the bonus is fixed

As a result, in a typical situation where the setting of the bonus level is the first of these (for example at 10% of pre-tax profits) there is no PAYE liability until the figure involved is known. For a discussion of your company's bonus policy, please ask to speak to one of our commercial lawyers.



The not so cosy side of the Non-Executive Directorship

The popular wisdom may be that taking a Non-Executive Directorship is an easy way of making a little (or a lot) of money on the side. But dangers can lie in wait for the unwary, particularly if the business in question is facing a difficult financial situation.

Even if an appointment to the board is unofficial, if the person involved 'acts' as a director of the business – issuing instructions, advice or directions that the company usually acts upon – they are, for certain purposes, in the same position as its executive directors.

This means that in the event of business insolvency, such so-called 'shadow directors' may share the liabilities of other directors – including the requirement to make payments to the company's creditors. In a recent spectacular example, one shadow director was ordered to pay £850,000 plus compound interest to creditors when the business he was working with went into liquidation.

If you are considering a Non-Executive Board position with any business, please feel free to discuss the implications with one of our lawyers before making any final decisions.

Streamlined trade mark registration

It is now easier than ever to register a new product for trade mark protection, following amendments to the Trade Marks Act 1994 that came into force on 1 October.

This is because from now on, rather than objecting to an application on the grounds of a past similar marks, the UK IPO (formerly call the UK Trade Marks Registry) will give the applicant a list of such marks to which they can respond.

According to Lord Triesman, Intellectual Property and Quality Minister, "The new system will make it easier for businesses wanting to launch new products and protect them with UK trade marks. It will also help users by aligning the UK regime with the European system."

If you have developed a product or service that you would like to protect, please contact our team to discuss the best approach for you to take.

The OFT – considerably more powerful than you!

Most people go through life without ever worrying that they may receive a visit from the Office of Fair Trading (OFT). But this is probably because most of us know little or nothing about the extent of their not-inconsiderable powers.

In fact, OFT officials have sweeping rights to act whenever they feel that unfair uncompetitive behaviour may damage consumers at large.

In such cases, among other powers, they have the right to enter and inspect premises without a warrant, to demand the production and explanation of documents and to seize documents and goods with or without a warrant.

All they need is 'reasonable suspicion' that competition law has been or is about to be broken. It's a criminal offence to obstruct them in their duties – so if you have any concerns about your understanding of competition law, our lawyers will happily carry out an assessment of the current and planned position of your business.



For Business Clients

Company
Mark Roome
01271 341006
mark.roome@tollerbeattie.co.uk

Commercial Property
Robert Beattie
01271 341001
robert.beattie@tollerbeattie.co.uk

Business Leases
Gillian Jones
01271 341002
gillian.jones@tollerbeattie.co.uk

Employment
Jon Dunkley
01271 341021
jon.dunkley@tollerbeattie.co.uk

Charities
Robert Beattie
01271 341001
robert.beattie@tollerbeattie.co.uk

Planning
Rob Gross
01271 341010
rob.gross@tollerbeattie.co.uk

For Private Clients

Residential Property
Tony Coxon
01271 341017
tony.coxon@tollerbeattie.co.uk

Family & Matrimonial
Deborah Baker
01271 341007
deborah.baker@tollerbeattie.co.uk

Probate, Wills & Trusts
Philip Davies
01271 341016
philip.davies@tollerbeattie.co.uk

Personal Injury
Mike Kingman
01271 341018
mike.kingman@tollerbeattie.co.uk

Crime
Tim Hook
01271 34100
tim.hook@tollerbeattie.co.uk

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**TOLLER
BEATTIE**
SOLICITORS

Toller Beattie
Queen's House
Queen Street
Barnstaple
EX32 8TB

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Old (and young) dogs learning new tricks

It is now just over a year since the Employment Equality (Age) Regulations 2006 came into force, designed to ensure that no one in the workforce, young or old, suffers discrimination on account of their age.

To help mark the first anniversary, Jobcentre Plus commissioned some research among older and younger workers to help promote the benefits of a diverse age profile in the workplace.

The results make interesting reading, with everyone sampled recognising the main benefits of working with people of mixed ages. However, there were some particular highlights, most notably 40% of older workers saying that they believe their younger colleagues can teach them new skills.

Older people were also impressed by other features of their younger colleagues' working style, with nearly two thirds commenting on their ability to learn quickly, 61% admiring their flexibility and more than half feeling that they give them energy.

There is significant room for improvement in some areas, however, with just a quarter of older workers calling their younger co-workers 'reliable'.

On the other hand, a third of younger workers were grateful for their older colleagues' greater willingness to work anti-social hours. But the greatest quality that they feel they bring to the workplace is experience (94%), with reliability (66%) and understanding (64%) also featuring highly.

According to Jobcentre Plus Chief Executive Lesley Strathie, "The research shows that having the right balance of age and skills can bring numerous benefits to establishing a complete workforce for both employers and employees. Both older and younger workers appreciate and learn from the qualities each brings to the workforce."

This research reflects legislation which is designed to protect workers, benefiting employers in terms of workforce balance and performance. While the legislation has been in place for more than 12 months, however, there are still many employers who are uncertain of their responsibilities – we would welcome any request for guidance or perhaps to review your current recruitment and employment practices to ensure you comply with the Equality Regulations.

Reducing the tax burden

Research from the Britannia Building Society has shown that nearly half the adults in the UK (48%) are not only paying too much tax, but are also failing to do anything about it.

According to group Chief Executive Neville Richardson, part of the issue is that people are not taking advantage of tax-free savings products, such as Individual Savings Account (ISAs).

As Neville says, "It's a shame that many of those who are saving are unnecessarily being taxed twice – firstly on their income and then again on their savings. This means that 48% of adults are financially worse off by missing out on tax-free returns on their savings."

Reducing the tax we pay is, of course, about far more than simply investing in an ISA, although this can be an important element in achieving the most efficient result. The Britannia research is also conservative in comparison with other studies – IFA Promotion has claimed that 80% of Britons are overpaying, and earlier this year, the Money Week website listed 29 ways of reducing the tax you pay – not just immediately, but throughout your lifetime and even beyond.

Tax-planning pays dividends for everybody – please contact us to discuss effective ways of reducing your tax liability.



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Toller Beattie, Queen's House, Queen Street, Barnstaple, EX32 8TB.
01271 341000 www.tollerbeattie.co.uk