

# infocus





UK200Group specialist panels and forum comprise of skilled technical advisers who work independently or as part of a multi-disciplinary business team to achieve the best possible solution for members and their clients. Each adviser brings experience from the different disciplines of tax, corporate finance, forensic accounting & dispute resolution, business strategy, business recovery & insolvency and international business.

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## Key tax developments in Employee Share Schemes

### EMI gets better

For disposals on/after 6 April 2013 of shares acquired under Enterprise Management Incentive options ('EMIs') the CGT Entrepreneurs Relief ('ER') clock will start on the grant date (and not exercise). This means that the majority of EMIs, which are exit-driven, should confer ER where the options/shares have between them been held for 12 months or more.

### Marketable securities

The Office of Tax Simplification (OTS) has made some potentially far-reaching recommendations to the Chancellor.

These include a fundamental change to the taxation of employee shares – driven by the aim of removing 'dry' tax charges (i.e. before employees realise value from their shares). The proposals look to apply PAYE/National Insurance Contributions at acquisition if the shares are marketable and if not then when they subsequently become capable of being sold to a third party, subject to employees/employers electing otherwise. Acknowledging the seismic nature of the proposals, the OTS suggests legislation via Finance Bill 2015.

### Short term solutions

Other OTS proposals of potentially more immediate relevance include that:

- The PAYE accounting deadline be extended for employee share events from (the current) 14 days after the end of the PAYE month to 60 days
- The penal 'tax on tax' charge under s222 (a one-off charge arising if the employer fails to recover PAYE income tax from employees within 90 days) should be repaid if that tax is subsequently so recovered
- A tax-efficient shareholding vehicle be devised as an internal market maker and an alternative to costly offshore Employee Benefit Trusts and
- More pre-transaction valuations be agreed by HMRC to give taxpayers greater certainty. These include start-ups/using approved plan valuations (including EMIs) for subsequent unapproved acquisitions.

### And there's more

Despite being rejected by the Lords, the Government appears determined to push through its politically charged CGT free 'shares for employment rights' legislation. The Nuttall review also seeks to facilitate employee share buy-backs with proposals for purchases in instalments and/or out of capital.

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## The gift of the Seed Enterprise Investment Scheme

George Osborne gave a wonderful gift to small start-up businesses and his generosity seems to have gone unappreciated. By its very nature the onus is often on smaller advisers to identify opportunities and take the client through this relief. The Seed Enterprise Investment Scheme (SEIS) is a temporary measure running from 6 April 2012 to 5 April 2017. The selling points, with a value in brackets for £100 invested, include:

- 50% income tax relief for the investor (£50). This can be carried back but not before 6 April 2012
- Shares are CGT exempt after a 3 year period
- Capital gains deferral
- Where the gain arises in 2012/13 and is reinvested in an SEIS to 5 April 2014, that gain will be permanently exempted (up to £28).
- Income tax loss relief if it goes wrong (up to £25).

A further half gain reinvestment for gains after 5 April 2013 was announced in the Budget on 20 March 2013.

**As you see the total value of the tax relief (£103) can exceed the amount invested (£100)!** Suggested mental checklist would be:

- 1 Does the trade qualify?**
  - Land based activities (dealing, development) are excluded.
  - Check the list!
- 2 Is the shareholder structure OK?**
  - No shareholder wanting relief has more than 30% "interest", defined in various ways.
  - Directors can be shareholders, which is different to the Business Angel rules in the Enterprise Investment Scheme(EIS).
- 3 Is the trade new?**
  - Not a spin off from somewhere else?
  - Not an existing trade already started by one of the shareholders
- 4 Check the numbers:**
  - A. Individual annual cap £100k.
  - B. Company investment cap £150k.
  - C. Company gross assets cap £200k.
  - D. Maximum of 50 employees.
- 5 Avoid traps:**
  - A. Don't allow value to be returned to shareholders. For example purchases from shareholders of goodwill.
  - B. Avoid shareholder agreements whereby an existing shareholder can go over 30%.
  - C. Be careful with rights issues!
- 6 Paperwork:**
  - A. Do you want an advance assurance? Can be useful where trade does not fit in exactly.
  - B. SEIS 1 application form submitted once the company has been trading for 4 months.

Ensure clients are claiming when possible. It is easier than you think!

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## KEY

- |                                      |  |
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| <b>1</b> Capital Gains Tax           | <b>10</b> Tax Investigations                   |
| <b>2</b> Corporate Tax Issues, Sales | <b>11</b> Taxation of Owner Managed Businesses |
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## The benefits of corporate venturing

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Corporate venturing takes many forms. At its most basic it can be a larger company taking an equity stake in a smaller company often to invest in start up and growth companies in the same way as with a traditional venture capital firm. For example Unilever's Private Equity fund was established to fund high-growth, early-stage branded businesses in the food sector.

We have seen a number of situations of late where a full trade sale hasn't been appropriate for all shareholders and yet there have been reservations about a management buy out (MBO) yielding full value. Indeed, this has been before confronting the usual concerns or prejudice about working with venture capitalists, lengthy due diligence, deferred consideration etc, in an MBO process.

Corporate venturing can provide the benefits of a trade sale to vendors in terms of a transparent process, market value and reasonable warranties whilst capital upside remains for the management team. Perhaps the key advantage is being able to negotiate and work with an industry player who is more likely to understand the sector and be able to offer synergies than a conventional financier.

The process involves identifying and approaching a business partner in much the same way as with the buyer research in a trade sale process. There is additional complexity in that a deal needs to be reached between three parties but this is no different than with a conventional venture capitalist funded buy-out. The courtship will also involve persuading the incoming corporate partner of the merits of such a transaction and needs to establish the exit timeframe and valuation parameters of the management stake thereafter. Realistically these points will be agreed before the completion of the first deal because the corporate is likely to end up acquiring the remaining shares from management. A venture capitalist can park those aspects until they and management sell to a third party later on.

The key issues to be agreed in corporate venturing are the value of the exiting shareholder's stake, how the corporate will ultimately gain full control, value and timing of the

acquisition of management's stake and how the corporate and management work together during the period of partnership. This is no more difficult than in agreeing a venture capitalist backed deal and may even be more straightforward.

Traditional corporate venturing has appealed to high-growth sectors such as pharmaceutical or technology companies. It can be an interesting alternative corporate finance solution that meets the objectives of vendors and management who may wish to achieve synergies with a corporate, yet hold significant equity.

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## Cash to grow or cash to survive?

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When recently departing from a local airport for a much needed week in the sun, I seemed to be surrounded by children merrily transporting themselves around the terminal on the back of a 'Trunki'. This spectacle reminded me that even entrepreneurs with great business ideas find it difficult to convince potential lenders to part with their cash.

However, it is not only start up business that require funds. Established companies can find themselves in need of support for growth or perhaps more so recently, to see them through a difficult time.

There continues to be a range of funding sources which can be overwhelming, yet making the right choice is vital. Each option will involve business in some type of cost such as increasing personal risk, considerable interest rates or relinquishing a degree of control. Whichever funding is most suited to their business, the key to attracting investment is more than ever dependent upon how their business is perceived.

The prerequisite to obtaining funding for growth or acquisition is the presentation by a strong, skilled management team of a robust business model. It will take more than the numbers speaking for themselves to encourage investors.



In the game of survival, existing businesses need to pay far more attention to the requirements of their existing lenders. Breaching of covenants written into banking arrangements gives rise to higher pressure from financiers and can lead to increased pricing or withdrawal of facilities, so must be monitored regularly.

In addition, we all need to be aware that more businesses are using credit checks in an attempt to reduce the risk associated with trade credit. Publically available financial information must present the business in the strongest light. Maintaining shareholder funds and proper

presentation and categorisation of liabilities can make a huge difference to credit scores.

Overall, it is important to formulate a funding strategy and to present the business as financially sound. If all else fails, entrepreneurs could try their luck on Dragons' Den. Even if the response is a resounding 'I'm out', the publicity, as in the case of the 'Trunki', might just do the trick!

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## Professional negligence claims

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One of the main reasons for a change of professional adviser is that a client feels let down by his or her previous firm. Sometimes clients' annoyance is so intense that they are raring to take action to recover their losses and may look to you, as their new adviser, to help. What will your approach be?

If the client insists that a claim should be made, proper legal advice will be required. But one of the key issues is likely to be the quantification of any loss that the client may claim to have suffered. As an accountant you will be well qualified to assist. But one point sometimes overlooked is that in any negligence matter, the client will need not only to show a breach of a duty of care, but also that any loss foreseeably resulted from that breach. This can be particularly relevant where tax is concerned. For example, a client may well be very disappointed and upset to find after the event that a particular transaction gave rise to a tax liability of which no prior warning had been given (or even the existence of which had been expressly dismissed): but that of itself will not generally give rise to a claim against the adviser. To make a successful claim it will generally be necessary to show that if proper advice had been given the tax liability would not have arisen. Claims often fall down on that point: your task, as the new adviser, is to demonstrate that there is planning which, had it been implemented, would have resulted in avoidance or mitigation of the tax charge complained of.

If there is no such planning evidently available (even after taking advice from a tax specialist if necessary) the hard truth is likely to be that there is no claim to be made and your client should put it down to experience and move on. You may however feel the need to make a prominent note that you have just picked up a potentially litigious client and that your dealings with him or her may need to be managed and documented accordingly! Forewarned is forearmed...

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## Expert Determination – find a less costly and quicker solution

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Expert Determination is a contractually based form of dispute resolution in which an independent expert in the subject matter of the dispute is appointed by the parties to resolve the matter. The expert's decision is normally legally binding on the parties. Like all Alternative Dispute Resolution (ADR) processes, it is entirely confidential. Expert Determination is a method of resolving differences between contracting parties without having to resort to law and without the delay and expense normally associated with legal process.

Expert Determination is flexibly and ideally suited to multi-party disputes and matters of valuation and/or which are primarily dependent on technical issues e.g. valuation of shares, rent reviews, contract performance matters, insurance wording disputes, sales of goods disputes, fitness for purpose, boundary disputes, etc.

Expert Determination can also be used when there is no dispute, but a difference which needs to be resolved e.g. the valuation of a private business.

It is important to remember that the parties involved in the dispute should choose an Expert with relevant expertise and experience, as well as knowledge of the Determination process, because the Expert's decision is legally binding and has very limited scope to challenge. The Expert's decision can, however, be advisory and not binding. This is known as an Expert Evaluation and is often used to form the basis of a settlement.

### The process

The Expert Determination process is quite straightforward. All parties agree the exact wording of the question(s) to be determined by the Expert and provide such evidence as they think necessary. The Expert may request further evidence and then decide whether or not to deal with the matter on a 'documents only' basis or to hold a hearing and/or a technical examination. A preliminary procedural meeting may also be necessary to deal with some of the questions.

Once the Determination is completed, the Expert will issue his decision (the determination) in writing in accordance with the agreed procedures.





In summary, Expert Determination can prove to be a significant asset in resolving disputes. It is a contractual process between parties, non-judicial, quick, inexpensive, confidential and binding.

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## Business coaching – taking a shot at goal!

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A lot of my client work is done through coaching, and it has been a privilege to observe so many clients challenge themselves in my presence, and raise their game. The issues covered are extra ordinarily wide ranging, across all elements of business. Here are my top five reasons why that coaching works exceptionally for senior people:

### 1. Confidentiality

Coaching is private to the client. This allows coaches to get to the brutal truths. Self honesty is a pre-requisite for change. Such honesty is rarely achieved in non-confidential mentoring and performance review.

### 2. Self-confidence

My clients are successful, and yet they commonly lack self-confidence. This is usually in areas where they are challenged for improvement. Genuine confidence (implying realism and doubt are addressed) is crucial to success.

### 3. Pin-point accuracy

In training and mentoring it is hard to teach with “pin-point” accuracy. Clients either don’t know why they underperform or are shy to admit it. Coaching gives expensive people the time to work it out and perfect their application of classroom learning.

### 4. Openness

A coach will stay open to the root causes and be prepared to deal with whatever the issues are; it is commonly unscripted and approached without judgement. Causes can be stress and emotion, or technical. Often they are rooted in things outside of work, which, once fixed, leave clients ready to perform better at work.

### 5. Challenge and accountability

Openness and non-judgement do not imply a lack of drive. Stretching the challenge and keeping clients accountable for their actions is a key part of coaching.

Successful coaching takes time and is expensive. If the client has the right level of opportunity the return on investment is normally substantial. ‘Opportunity’ arises from the client’s ability to change, their potential influence and

market context. In the context of coaching, the client has to take the shots at goal, not the coach. Coaching will help them be in the best state of mind and at an optimum skill level to hit their goals when under the highest levels of pressure.

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## Team Ethos

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I have often looked at professional football managers and considered how they have gone about the business of building a team. In my own time I have built a few and over the years have subscribed to some basic ground rules. No large ego is near the top of the list, minimising lateral hires (ironically in my case) whilst building from the ground up the ethos and culture you want.

I am sure you can see the football analogy in the disruption to a team of big name signings and the home grown Academies for Excellence so I was interested when a Team Ethos paper landed on my desk purporting to be from the great man himself. No, not that one, as being a Gooner I am referring, of course, to the one & only Arsene.

It was written some years ago but whether in football or in business, knowing how a team becomes stronger can be an important contributor to overall success. When team members collectively stand for the same thing, each individual knowing their role and how they contribute to the business/team, marvellous things can happen.

In Arsene’s world (and mine) a team becomes stronger by:

- Displaying a positive attitude both on & off the pitch
- Everyone making the right decisions for the team
- Having an unshakeable belief that we can achieve our target
- Believing in the strength of the team
- Always wanting more – always giving more
- Focusing on communication
- Being demanding of yourself
- Being fresh and prepared to win



- Focusing on being mentally strong and always keeping going
- Believing in our identity and who we are, especially when playing away from home
- Sticking together
- Staying grounded and humble
- Enjoying and contributing to all that is special about being in a team, don't take it for granted.

I can see the same ethos being put in place in the England

Rugby squad at the moment and whilst I have faith that they will deliver marvellous things I have to admit that in respect of the Arsenal that marvellous thing will probably not include Champions League qualification, well, at least for this year anyway.

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## Jackson Reforms leave real question marks for Insolvency Practitioners

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The Legal Aid, Sentencing and Punishment of Offenders Act 2012, otherwise known as the Jackson Reforms received Royal Assent on May 2, 2012, with the majority of clauses coming into effect in April this year.

The Jackson Reforms originally came about because the senior judiciary had become concerned that the cost of civil justice in England & Wales had often become disproportionate to the issue.

However they have major consequences for the insolvency profession.

Under the Jackson Reforms, Conditional Fee Arrangements (CFA) and After the Event (ATE) insurance will not be recoverable from the losing side in any litigation.

A CFA is otherwise known as a 'no win no fee' arrangement, and provides that legal fees, excluding disbursements, only become payable if a case is won. ATE insurance is taken out to cover adverse costs if the case is lost.

For insolvency practitioners the Jackson Reforms sets out worrying changes to how CFAs and ATE insurance is recovered, which could affect unsecured creditors.

CFA's often result in very high costs where a case is won because the solicitors are entitled to uplifts over and above

their usual charge out rates. Creditors will lose out as insolvency professionals will have to pay these uplifted costs out of the win.

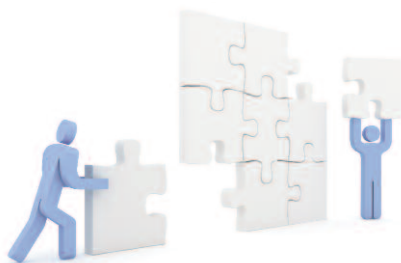
Thankfully, the Government, in its wisdom, has decided to delay the implementation of this aspect of the Jackson Reforms for 'insolvency proceedings' for two-years until 2015.

Until recently, however, it was not clear whether the delay would apply only to proceedings brought by liquidators, administrators or trustees in bankruptcy under the provisions of the Insolvency Act 1986, or whether it would apply more broadly to claims brought by companies that have entered into liquidation or administration under the Act.

It has now been confirmed that all these categories of claim will benefit from the delay.

As a member of an R3 working group that has campaigned for the delay, we are lobbying for the insolvency aspects of the Jackson Reforms to be made permanent so creditors in an insolvency proceeding do not lose out.

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## The UK offers an attractive base in Europe

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European businesses at the moment are looking closely at the UK as being a good market for them to operate in and to operate from. Obviously all businesses are looking at the opportunity of increasing their market by widening it to new markets and exporting to other countries but often hurdles are in the way. When trading business to business it is in many aspects much easier, as there tend to be a limited number of customers who have larger orders. In today's electronic and internet age with intermediation, we are seeing many historically B2B businesses becoming B2C.

I have helped a number of established German companies sell into the UK market as distant retailers (internet traders to you and I) without any physical presence in the UK because with today's logistics, delivering to UK customers direct from Germany is as easy as delivering within the UK itself. However, there are requirements for these companies to report within the UK and normally once established they will do this through a UK registered limited company. This way, it makes it easier to report the UK transactions etc,. Whilst there are certain registration and service address issues, none are onerous or expensive.

The other client type that I am seeing is the European based businesses (most frequently at the moment in France) that are looking at the UK as a better place to operate. This applies to businesses which have no particular need to be in any particular country - often trading internationally - who are looking at the UK as a more business friendly environment. The ability to form a company in the UK with non-UK domicile/resident shareholders and directors makes the process very easy. Whilst we may complain about red tape we are significantly better than many of our European neighbours. We have for a long time been an attractive base for North American businesses to set up and operate into Europe because of common language. As many Europeans are good English speakers and International trade is still mainly conducted in English, an English speaking base can be an advantage.

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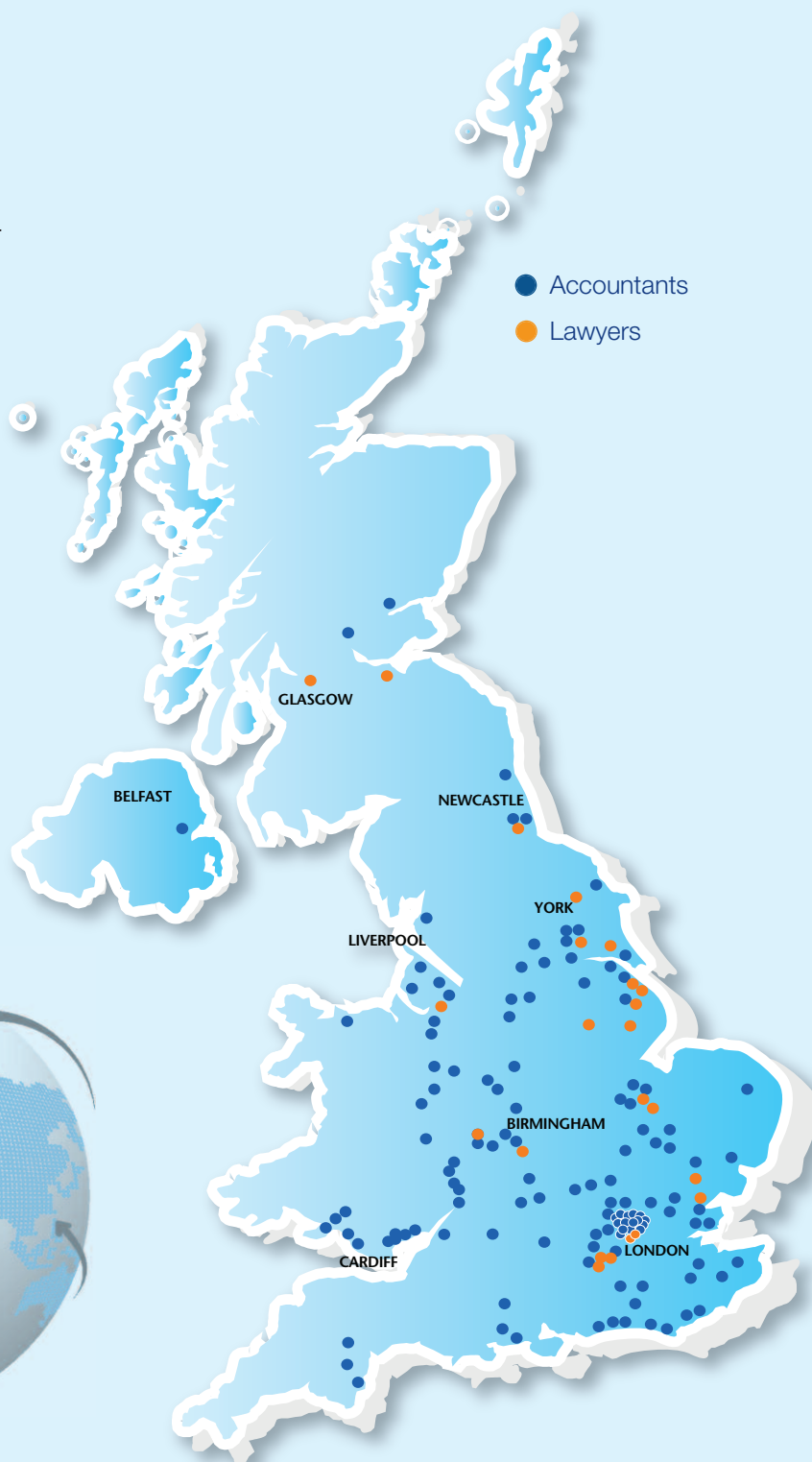
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