UK200Group technical advisers

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infocus

UK200Group
technical advisers

UK200Group specialist panels and forum comprises 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 business strategy, corporate finance, insolvency & business recovery, forensic accounting & dispute resolution, taxation and international.

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UK200Group tax

Pensions: The Annual Allowance

HM Revenue & Customs realise that, following reductions of the annual allowance (AA) for pensions, more people should be declaring on their tax returns an annual allowance charge. It is important that a return of any charge is made to avoid the possibility of interest and penalties. A potential liability is not well known but HMRC do not accept ignorance as an excuse.

The AA, i.e. the maximum pension savings that qualify for tax relief, reduced to £50,000 from 6 April 2011. The use of the term savings is done purposely because, importantly, the provisions apply not only to defined contributions schemes but also to defined benefit schemes (final salary schemes). Just as importantly, it applies to all contributions made to a pension scheme and, therefore, includes employer contributions.

If contributions exceed the AA the excess is liable to a charge at marginal tax rates. For most people caught by this provision, that will be 40% or, perhaps, even 50%.

The AA can be more than £50,000 because it increases by allowances unused in the previous 3 tax years. For these purposes, the allowance for 2008/09 through to 2010/11 are taken to have been £50,000 (although, they were higher). A simple example is that, if pension savings were £30,000 for each of the years 2008/09 to 2010/11, the allowance for 2011/12 is £110,000 (£50,000 plus £60,000 brought forward).

To further complicate the position, the concept of a PIP (pension input period) and how pension savings are calculated for defined benefits scheme, come into it.

PIPs do not have to follow the tax year but have to be allocated to tax years, as the pension savings of a PIP have to be compared to the AA for tax years, to calculate if there is a charge. This is achieved, normally, by allocating the PIP ending in a tax year to that tax year, i.e., PIP to 31 December 2011 ends in and is the PIP for the tax year 2011/12.

If the scheme is a defined benefits scheme the measure of pension savings is the increase in projected pension benefits in the PIP, which could bear no relationship to contributions made.

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Tax activism

UK tax activism has increased. UK Uncut, a 2011 loosely organised group, protest against tax avoidance in the UK. They use social networking; advertising protests through Twitter, Facebook etc in order to quickly mobilise masses of people. Vodafone was targeted after it was revealed that it had avoided about £6 billion in tax, later striking a deal with HMRC to pay only £2 billion of this amount. The activist protest led to the shutdown of a number of Vodafone stores by protesters resorting to civil disobedience to achieve their aims. There is significant public sympathy and awareness which has led to increased crowds and participation at tax activist events over the last two years.

Following Vodafone, several other corporate organisations have equally been targeted by tax activists. These organisations include Topshop, RBS, Natwest, HSBC and Barclays bank as well as a number of others. The nature of protests and activist measures tend to vary but the sit-in strategy of successful protests such as Occupy Wall Street, have been used to target several corporate entities.

Even MPs highlighted situations where HMRC has apparently accepted large company tax compromises too easily. The public mood has increased the pressure for further restrictions on tax relief, and the 2012 budget proposals appeared to accommodate this with the aggregate tax relief cap. (In theory it means that 75% of a wealthy person's income remains taxable.)

There is an international dimension. Governments know wealth is mobile; however there is a developing trend to ensure that certain jurisdictions cannot encourage an inflow of funds by offering tax exemption for income from funds deposited in their territory. The OECD has encouraged exchange of information between jurisdictions and to weaken banking secrecy that may lead to tax evasion. Switzerland has become the primary target and America wants 11 Swiss banks to hand over their American client names.

Bilateral treaties have as standard an exchange of tax, but the goal is for automatic information exchange between countries fiscal authorities. For now, the standard is "information on request". A government can ask for specific data but the numbers of requests permitted are capped. The European Union has promoted cooperation between tax authorities by means of the agreement on mutual assistance in tax matters.

The arguments made by "taxtivists" would certainly reduce corporate value in the short term and listed companies increasingly have to think about the new reputational risks associated with tax planning. It is not inconceivable that multinationals will soon be giving breakdowns of tax payments and signing voluntary tax codes of conduct in order to demonstrate good citizenship in the tax arena.

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UK200Group tax

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UK200Group corporate finance

Bank-in crisis?

The government recently announced the establishment of a £20bn National Loan Guarantee Scheme (NLGS) which follows on from Project Merlin and the extended Enterprise Finance Guarantee Scheme. Each initiative was focused on attempting to get the banks lending to SME businesses. These initiatives and the decision by the Bank of England MPC to continue to hold interest rates at the artificially low rate of 0.5%, are obviously not providing the economic stimulus that would be expected.

Our experience is that rather than being deterred by the cost of finance which as stated, in the historical context, is still low, it is the banks that are being cautious and highly selective in the businesses they look to support. We have dealt with numerous businesses, which in the face of increasing pressure on cash flow from creditors, have to deal with reduced bank facilities and tighter financial covenants on mainstream overdraft facilities.

Against this backdrop of tighter financial pressure within the mainstream banking market, we are seeing innovation in the Asset Based Lending market. Historically the ABL market was seen as a lender of last resort, but over the past fifteen years this market has strengthened with the focus on delivering workable financial solutions.

The benefit of the ABL package over formal overdraft facilities is that the security position for the lender is improved, and this allows the institution to take a flexible approach when looking at risk. The ABL facility will fluctuate with the underlying assets and will mean that it may not be a suitable solution for every business, but with careful planning and management these types of facilities can provide the stimulus for growth.

Educated opinion leads us to believe that we are looking at another three years of economic challenges, and what is clear is that, as the banks continue to restructure many businesses will continue to face pressure on their facilities and in this climate each business should consider whether their existing facilities are fit for purpose.

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Growing your business

Growing a business is difficult at the best of times but even more so in difficult economic times like we are experiencing now. However, even in difficult economic times there are opportunities to engage in a business growth strategy.

Planning is an important part in identifying how growth can be achieved, and how it will be financed. A business plan is a key management tool for businesses adopting a strategy for growth and will assist in mapping out the future plan and performance of the business.

A business may achieve growth through organic or acquisition growth. Both organic and acquisition growth strategies may involve some form of diversification, typically moving into offering complimentary products or services to your customers, or moving into a new area altogether.

Organic growth may come from increasing your market share and/or by growth in the market in which you operate in. To have a strategy of organic growth you will have to differentiate yourselves from your competitors, maybe on price, reliability or on the quality of service. The opportunities to grow organically could come from the differentiators mentioned above or from competitors not surviving.

Acquisition is a common and key growth strategy of many businesses, and can have an immediate and significant impact on your business. A business acquisition can be beneficial for a number of reasons, including: increasing your market share of existing products or services; diversifying the products or services you currently provide; expanding your geographic coverage; inheriting quality and skilled workforce; and synergetic benefits by combining resources and costs.

Raising finance is often an integral part of a strategy for growth. The funding requirement could be short term working capital finance through to longer term acquisition finance. Raising any form of finance in the current economic climate can be difficult. However, there are usually finance solutions available that can assist you with your growth strategy.

The members of the UK200Group Corporate Finance Panel have a wide range of experience in advising businesses on their growth strategies and with raising funds to achieve this growth.

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Thinking outside of the box

It goes without saying that when producing a forensic accountancy report a detailed knowledge of accounts and tax is a given prerequisite. Experience drawn on many years of handling clients' affairs considerably helps when assessing a loss suffered by a claimant in your average personal injury claim.

The Forensic Accountant is trying to financially assess where the claimant would be if the event had not taken place. Unfortunately, human nature is such that, all too often, claims are inflated. There can also be a tendency to "brush over" matters that might reduce the claim.

When preparing a report the accountant needs to look at all available information not necessarily just financial information. I will give two examples:-

If available, I always ask for medical reports and skim read them. Why you may ask? When claimants talk to medical examiners they may let their guard down and provide valuable information that otherwise may not be forthcoming.

I had a case in which a claim was submitted for over £1m following a road traffic accident and subsequent injury to the owner of a paper mill. He claimed that this caused his business to fail. When examining the medical report it became apparent the claimant was worried about an insurance claim following a fire. No mention of a fire at any stage had been made by the claimant or his advisers. On further enquiry it became quite apparent that the road traffic accident had played no part in the demise of the business. Examination of the business records showed that failure of the business was entirely due to an under insured loss following the fire. The case settled for under £100,000.

In another case a taxi driver claimed he could not work following an accident and submitted a loss of earnings claim. An examination of his records showed a serious reduction in takings. However, on checking the recorded mileage on his service invoices in the period of incapacity the taxi had an increase in recorded mileage of over 30,000 miles. Needless to say explanations were sought and the case settled at a considerably lower level!

The lesson is to look at all available information when compiling your report. Accounts will usually be the basis of any report but do not forget to look at whatever else might be available.

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It could only be Forensic Accounting!

In which other area of accounting is 'locks and locksmiths' the main disbursement or a hammer and nails required? Forensic accounting of course!

My second child was one day old when I received notification that my name was included on a Writ of Sequestration, witnessed by Lord Irvine of Lairg, the then Lord High Chancellor. Luckily, one of our partners was able to fulfil the terms of this appointment, which I understand to be an unusual event, even in legal circles.

The defendant was in contempt of Court for not returning a child, G, to his mother. Under the Children's Act 1989, we were instructed to sequestrate the real and personal property of the defendant including two freehold properties, a boat currently in dry dock and a known bank account. We were also requested to ascertain the existence of other assets and to take possession.

Our powers to seize the assets meant that anyone who failed to co-operate would be in contempt of Court. We were able to raise monies on the assets but not to sell them without the Court's permission.

Our work included instructing a notice of termination on the assured tenancy of one of the properties and transference of legal title of the assets to the sequestrators. The 'indefinite' short hold tenancy, signed to a Miss R at a nil rent was outside the protection of the Housing Act, rendering it terminable by a notice to quit.

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forensic accounting & dispute resolution

Whilst I was changing nappies, my colleague spent three days on the South coast changing locks, checking insurance cover, the rental potential of the properties and securing all the assets including nailing the sequestration order to the yacht's mast!

The matter was further complicated by the arrival from the USA of the defendant's illiterate current wife, Mrs P, with their three week old baby. Understandably, Mrs P was soon to issue divorce proceedings.

The sequestration proceedings had the desired effect as the defendant and his son returned to the UK. One month after our work began, G was safely returned to his mother. Our costs were met with interest and we all returned to our bean-counter roles.

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UK200Group business strategy

Decisions, decisions...

One of the common situations where we all find clients ask for help is in making a major decision. But often they ask the wrong question, usually one requiring a yes or no answer. That is a tough question and needs information and analysis to make the right call - the work of a consultant or accountant.

For a coach or mentor it is seldom the right question though. Usually there are more options than just yes or no. Let's suppose the client is considering whether to buy a new machine for £100k. To buy or not is the obvious question. What we should do is encourage the client to think about all the options for that £100k. What else could they do with it? Recruit a new sales team? Open a new outlet? Develop a new product?

At first the client may think this is making the decision more difficult. This is where you must encourage them to be strategic. What are the factors relevant to what they are trying it achieve? Sales growth? Cost reduction? Strengthening the USP? Without a clear vision for the business for the next few years, these factors will be less obvious. List all the relevant factors and rank them for importance. Then give each option a rating against each factor (no higher than its ranking). The option with the highest overall score is probably the one that aligns best with their strategy.

Where you may surprise the client is by the number of other options they can come up with. Often we will find a better alternative than the original question. If the client continues to use consistent factors all their decisions should lead to a common strategic goal avoiding wasted time and resources pursuing the wrong choices. For many clients simply doing this exercise will lead into interesting discussions regarding future objectives and possible barriers to achieving them.

There are plenty of opportunities to add some real value to our client's business.

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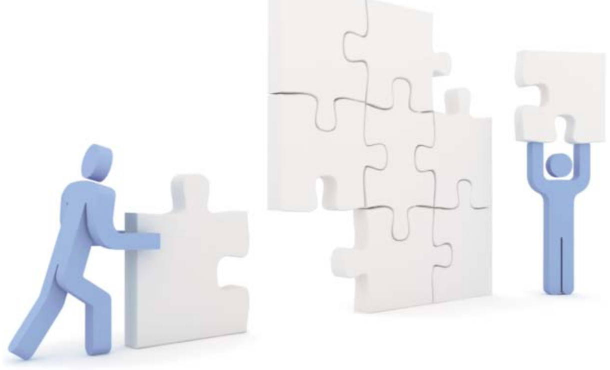

UK200Group business recovery & insolvency

Preferences

When a company is insolvent, one of the issues that can often catch directors out is preferring one creditor above another, causing problems for themselves and the creditor concerned should the company go into some sort of insolvency procedure.

I make no claim to be giving legal advice in this column (far from it), but rather I thought I would provide you with an indication of what might create an issue and what might not.

A preference occurs when something is done to someone which, in the event of the company going into insolvent liquidation, will put them in a better position than the position that they would have been in had that thing not been done.

That in itself would mean any payment made in the lead up to a liquidation. However, in addition to the above, there has to be a desire to prefer.

So, a director may be looking to trade the business out of trouble. However, a winding up petition arrives and the director decides to pay that creditor before anyone else. There appears no desire as such, just a commercial imperative. If the company is going to survive and trade out of a poor position, it cannot be wound up. In this instance, it may not be deemed to be a preference payment.

Proving desire can sometimes be difficult. However, if the person receiving the benefit is a connected party (or even the director themselves), desire is presumed and rebuttable, meaning that it is a "guilty until proven innocent" issue.

Note that the law does not refer to a payment either, just "something done". So if a creditor is not connected, but the director has given a personal guarantee and that creditor receives payment in full before any other creditor, something has been done to put the director in a better position that they were previously.

The big issue for directors at a time of financial crisis is usually the amounts owed to them personally. These sums can often be significantly more than outstanding to the general body of creditors. However, if these sums are repaid, it may well be deemed to be a preference.

In such a circumstance, my preference would be to go and seek advice from the professionals.

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UK200Group international

2012 Finance Bill – international announcements

The recently published 2012 Finance Bill contains some interesting announcements for those with international backgrounds or interests.

The Government began two consultations in Summer 2011. The first was on a statutory residence test for individuals and the second was a proposal to encourage investment in UK trading companies by UK resident non-domiciled individuals. The residence test has been shelved, probably until 2013 and, until then, we will continue to cope with the combination of statute, plenty of case law and HMRC guidance and interpretation to determine a person's tax footprint in the UK. The second consultation has moved forward into draft law.

Investment breaks for UK resident non-domiciled individuals

- From 6 April 2012, a UK resident non-domiciled individual will be able to use overseas income and gains to invest in certain qualifying UK companies without triggering a remittance. The exemption is without monetary limit.
- Qualifying companies are unlisted trading companies or a company which exists to make investments into such companies (opening up the possibility of collective investment companies for a number of UK resident non-domiciled persons). The company must be, or intend to be "substantially" trading (that means 80% of its activity must be trading, or intended to be so).
- The company has two years to commence its trade or in the case of investment companies, make a qualifying investment.
- Once remitted funds are brought to the UK, there is a grace period of 45 days to make the investment. The investment can be by way of shares or loan capital.
- It will be permitted for the investor to take a salary or fees from the company and to employ family members.
- A number of events might happen to the company, potentially bringing the remitted investment into tax:-
  - Sale of all or part of the company's shares
  - It ceases to be a trading company
- In those cases, the investor will have 45 days to take his original investment offshore to avoid a tax charge. Or he or she may reinvest into another qualifying company within that period of time.

If the law is passed as drafted, the relief will be a very attractive tool for those who wish to start up a UK trading business using overseas income or gains.

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Corporation tax in Jersey – revised rules

On the 1 January 2012, Jersey amended its corporate tax regime in order to satisfy the findings of a review undertaken by the EU Code of Conduct group and, in particular, the high level working party. They had concerns regarding Jersey distribution and attribution rules (ie deemed distributions to Jersey residents only). Jersey has decided that its corporate tax regime, which taxes businesses at 0% and financial services firms at 10% will stay in place, but with the removal of the deemed distributions (ie the distribution and attribution rules).

The EU stated that the distribution rules gave rise to harmful tax effects, despite the rules not necessarily being a business tax. Jersey's former Chief Minister stated "Maintaining tax neutrality in a simple and transparent way provides stability and certainty for businesses operating here and sends a clear signal that Jersey continues to provide a competitive tax system, which will safeguard the Island's future economic well-being."

The effect of these changes is that there shall be a cash flow shortfall, but that the overall tax take will not change. This is based on the principle that a shareholder will at some point in time need to extract the profits from a company, however, this may be many years down the line.

The changes are a welcome move as they provide stability to overseas clients, who are now assured of tax neutrality by operating in Jersey. Whether Jersey can maintain its tax intake and balance its books with these amendments remains to be seen, but one thing is for sure, Jersey will not make changes that will damage its attractiveness to international business.
To discuss these changes or the potential of using a Jersey company, please contact us.

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The geographic distribution of UK200Group chartered accountant and lawyer member firms has established, and is continuously building a strategic business support which can effectively service key industries throughout the UK.

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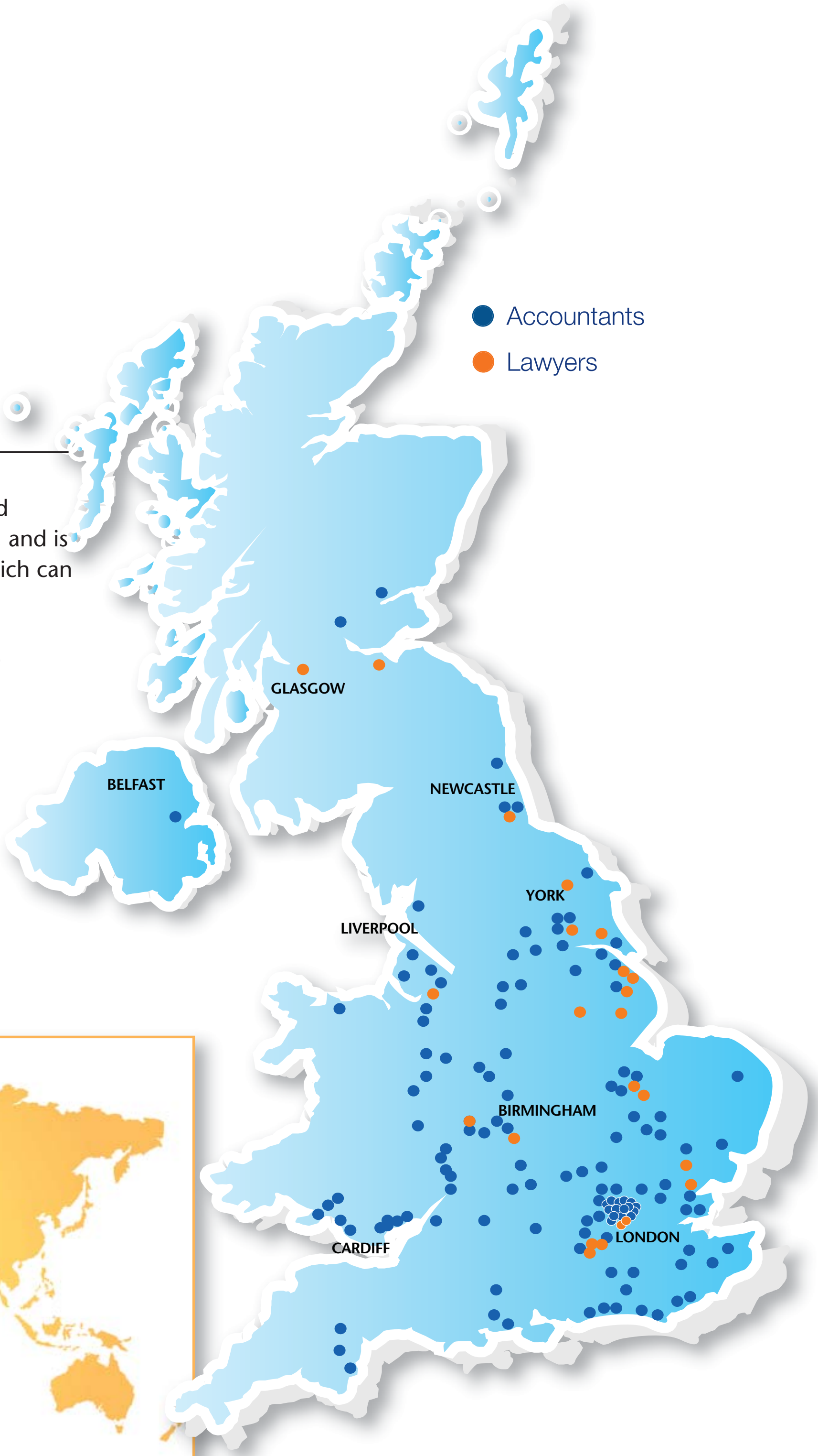

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For a full list of members visit:
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