journal

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Dividends versus salary for director-shareholders – the new rules

The new dividend tax rules have reduced the benefit of paying dividends instead of salary for many shareholder-directors, but dividends still have advantages.

Since 6 April 2016, dividends no longer come with a 10% tax credit. Instead, all individuals receive a dividend allowance so that the first £5,000 of dividends are taxed at 0%. They then pay 7.5% on dividends that fall within their basic rate band, 32.5% in the higher rate band and 38.1% in the additional rate band.

These tax rates on dividends are lower than the income tax rates on earnings, but that's not the whole story. Salary payments reduce the company's corporation tax liability, but paying dividends does not. On the other hand, salary carries liability for national insurance contributions (NICs) – avoiding NICs remains one of the main attractions of dividends.

Individual circumstances

The difference that the new dividend tax rules will make to shareholder-directors will depend on their circumstances. It's important to look at the overall tax cost of paying a shareholder from the view point of both the individual and their company. A key variable is the amount taken as dividends compared with salary and bonus. Remember that salary/bonus is taxed before dividends so your salary/bonus is set against your personal allowance first before your dividends are subject to tax.

For example, a shareholder-director takes a salary of £50,000 and has £40,000 of company profit available to fund a bonus or dividend on top. This person will pay no tax on the first £5,000 of their dividend and then 32.5% on the remaining £35,000, because their salary alone puts them into higher rate tax.

- **Salary:** £40,000 of profit would fund a salary of £35,149 after employer's NICs, which after 40% tax and 2% employee's NICs leaves a net salary of £20,386.
- **Dividend:** the company could pay a dividend of £32,000 after deducting 20% corporation tax. The first £5,000 would be tax free and then £27,000 would be taxed at 32.5%, leaving £23,225.

Some owner-directors take an annual salary of £8,060 to avoid

employee's NICs, and draw the rest of their income as dividends. This is still worthwhile but the new rules for taxing dividends will hit them harder. After the first £5,000 tax-free allowance, they will now pay 7.5% on the dividends that fall within the basic rate band, compared with no tax previously because the dividend tax credit used to cover the basic rate tax liability. The higher rate for dividends remains at 32.5%, but there is now no tax credit to reduce it. In most cases, there is still a saving compared with salary, although it is marginal at the additional rate of tax.

The dividend allowance is valuable and it will generally be worthwhile paying shareholders dividends of up to £5,000. Spreading shares among family members will add to the benefit. Remember, however, that companies affected by the personal services company rules (IR35) will be limited in what dividends they can pay.


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Retained profits

Another way of saving tax is to leave profits in the company if you do not need to withdraw them immediately. Retained profits are subject only to 20% corporation tax and provide the company with working capital. You might be able to withdraw profits in a year when you are taxed at a lower rate. Alternatively, if you come to sell the company, they might end up being reflected in the value of the company's shares and, in effect, be subject to capital gains tax at 10%.

One of the most efficient ways of benefiting from company profits is to make pension contributions as they are usually fully deductible in calculating the profits subject to corporation tax.

The best option in each case depends on several factors, so please come to us for advice tailored to your needs.

Swings and roundabouts on employment allowance

The employment allowance was set at £2,000 for the first two years of its existence. For 2016/17, the allowance has been increased to £3,000. So you can reduce the amount of your employer class 1 national insurance contributions (NICs) payable to HM Revenue & Customs (HMRC) by this amount throughout the year.

The employment allowance is targeted at businesses that support employment, and for 2016/17 will cover your NIC cost of employing four adult full-time workers earning the national living wage for those aged 25 or over.

However, the allowance has never been available for employing someone for personal, household or domestic work, such as a cleaner, nanny or gardener. However, it can be claimed by employers of care and support workers. What's more, from 6 April this year, you no longer qualify if you are the director and only paid employee of your company.

Qualifying employment

This will not make too much difference if only a low level of remuneration is taken, with profits mainly withdrawn as dividends. However, the situation may be more serious for contractors who, regardless of whether or not the IR35 rules apply, often take a much higher level of remuneration. The after-tax cost of losing the full allowance for 2016/17 is £2,400.

Just having employees or another director is, in itself, insufficient to continue qualifying for the allowance. You will only qualify if your earnings from the company are high enough to be subject to employer NICs. This means that an employee's weekly earnings have to be at least £156 (£676 monthly), while a director needs annual earnings of £8,112.

The full allowance of £3,000 will be available provided you qualify at some point during 2016/17. But a word of warning if you think that simply employing your spouse or partner for one week is good enough: you cannot qualify for the employment allowance as a consequence of avoidance arrangements.

By contrast, employing a seasonal worker for one or more weeks would be fine, provided their earnings are high enough. HMRC also gives the example of a person who is the only UK-based employee of an international company. When it comes to the employment of a spouse, partner or family member, the employment needs to be genuine; in particular, HMRC will be less likely to query long-term arrangements.

Get in touch with us if you are uncertain about your status.

Looking good for capital gains tax

The capital gains tax (CGT) measures announced in the March Budget are generally good news for investors.

Tax rates

For 2016/17, the higher rate of CGT has been cut from 28% to 20%, with the basic rate dropping from 18% to just 10%. If you are sitting on investments that have, for example, increased in value by £100,000, then the tax cost of selling them has just been cut by £7,112. The increase in the difference between income tax and CGT rates will make investing for capital growth, rather than income, even more attractive.

However, the CGT rates for property investors and landlords remain unchanged at 18% and 28%.

External investors in trading companies

Gains that qualify for entrepreneurs' relief are taxed at a flat rate of 10% subject to a £10 million lifetime limit. Relief has now been extended to external long term investors by the introduction of what is effectively a separate investors' relief. However, the qualifying conditions are far from straightforward. Shares must be:

- Newly issued, and have been acquired by subscription for new consideration wholly in cash – and the issue and subscription must be for genuine commercial reasons;
- In an unlisted trading company or an unlisted holding company of a trading group;
- Issued on or after 17 March 2016; and
- Held for a continuous period of three years starting on or after 6 April 2016.

For the investors' relief, the external investor must not be an employee or an officer of the company. Investors' relief comes with its own separate £10 million lifetime limit, running in parallel with the entrepreneurs' relief limit. Gains qualifying for investors' relief benefit from the 10% tax rate.

If the investor transfers shares to a spouse or civil partner, the transferee will be treated as if they had subscribed for and acquired the shares at the same time as the transferor.

The requirement that shares must be issued on or after 17 March 2016 means that investors' relief is of no benefit to existing shareholders. And you cannot get round this by simply swapping your existing shares for new shares because of the new consideration requirement. However, should you decide to add to an existing shareholding and then make a partial disposal, shares qualifying for investors' relief will be treated as disposed of in priority to non-qualifying shares.

What's under the Panama hat?

The revelations in early April about offshore companies and investment funds based in Panama have turned the spotlight on tax avoidance and evasion, as well as secret financial dealings in general. We can be sure that HM Revenue & Customs (HMRC) and other regulatory authorities will be scrutinising the data carefully.

There are several reasons why people hold funds offshore and it is not illegal to do so. You might hold one or more foreign currency bank accounts offshore because you have business or a property abroad. Offshore banking might make managing your affairs simpler or help protect you from exchange rate fluctuations.

An investment in an offshore life assurance bond makes sense for some people. Typically, the bond is registered in a jurisdiction with a favourable tax regime. Although potentially higher tax could arise when an offshore bond is cashed in, compared with an onshore bond, the investor might have retired abroad by then and might no longer be subject to UK tax, or might be only a basic rate taxpayer.

What is essential is that all income and gains are fully declared. A strategy that relies on HMRC not finding out is not legitimate tax planning but tax evasion. It's illegal and the penalties are high – up to 200% of the tax due. The penalties are lower if a person makes a voluntary disclosure to HMRC rather than waiting for HMRC to catch up with them.

A political issue

For political leaders caught up in the allegations, a desire to limit reputational damage has led some politicians to publish their personal tax returns. The right to privacy of personal financial details, such as salaries, has long been protected in the UK, but that could change. In Norway, Sweden and Finland everyone's income and tax details are published every year and are available online.

The UK might not go that far, but anonymity can no longer be guaranteed. No security barriers are 100% effective and there is growing international cooperation and information sharing to identify tax compliance risks and agree collaborative action.

Even if the UK does not go as far as the Scandinavian countries, calls for greater transparency might result in new disclosure requirements for trusts or share ownership. In the long run there might be no hiding place.

If you are not sure of your tax position, we can help you.

New lower exemption for employee shareholders

The take up of employee-shareholder status has been somewhat lower than the government hoped for. And the recently introduced restriction to the amount of capital gains tax (CGT) exemption is certainly not going to help.

The basic idea is that an employee-shareholder receives tax-advantaged shares in exchange for giving up certain employment rights. The employee-shareholder must receive shares in their employing company with a minimum value of £2,000, with these shares free of tax and national insurance contributions. There is no upper value for the shares which can be acquired, but the excess value over the £2,000 limit is taxed as earnings. The employee-shareholder then benefits from a CGT exemption on the disposal of up to £50,000 worth of shares. The shares are valued at the time they are received by the employee, and the exemption would previously have applied regardless of their increase in value – even if sold for millions of pounds.

However, the amount of exemption is now subject to a £100,000 lifetime limit where shares are acquired under an employee-shareholder agreement entered into on or after 17 March 2016. Any past or future gains arising from prior shareholder agreements do not count towards the £100,000 limit. For example, an employee sells £50,000 worth of these employee-shareholder shares with a gain of £250,000. If the employee-shareholder agreement was entered into before 17 March 2016, the £250,000 gain would be exempt from CGT. If the agreement was later, £150,000 of the gain would be taxed.

Although employee-shareholder style contracts have not been widely used by rank and file employees, they have been more popular for start-ups with high growth potential (so-called gazelle companies). The CGT exemption has been particularly attractive to key employees and directors because they could enjoy the growth in share value in a tax-efficient manner. Such employees would probably not be worried about the loss of some employment rights. Unfortunately, the lifetime limit now reduces the attractiveness of the employee-shareholder regime, even taking into account the reduction in the higher rate of CGT from 28% to 20%. Arrangements may no longer be cost-effective where they involve complex share structures.

A new approach to retirement saving

The new Lifetime ISA (LISA), which was announced in the March Budget and will be available from April 2017, will be a very attractive proposition. The LISA could even be a forerunner of future pensions.

Age: LISAs can be opened by anyone over age 18 but under the age of 40. This compares with the upper limit of age 75 to invest in a pension. Funds in a LISA can then be used for retirement at age 60, rather than the current age 55 for pensions.

Investment limit: You will be able to save up to £4,000 a year into a LISA, and, until age 50, contributions will be topped up with a 25% government bonus, meaning that £5,000 is actually invested. This is equivalent to benefitting from basic rate tax relief and will come without any earnings requirement. That should be particularly attractive for non-earners given that the equivalent pension limit is £3,600. Higher/additional rate taxpayers will obviously benefit more by making pension contributions.

Flexibility: Pension savings are tied up until age 55, but savings within a LISA can be withdrawn at any time. You will lose the bonus (and any interest or growth on it) and also be charged a 5% penalty, but it could be a useful option in an emergency.

Choice of investments: Qualifying investments in a LISA will be the same as for a cash or stocks and shares ISA, although not quite as wide ranging as permitted for a pension.

On retirement: This is where a LISA comes into its own because withdrawals from age 60 are tax free. In contrast, only 25% of a pension fund can be taken tax free.

If you are self-employed, using a LISA for retirement saving will be particularly appealing. You can always run a pension scheme in tandem to benefit from higher tax relief in those years when you have more income. A pension scheme will also be a better option once the LISA top-up stops at age 50.

But be warned: a LISA is unlikely to be a good choice if you have a pension where you benefit from employer contributions.

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