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Business News Scotland

Welcome to our round up of the latest business news for our clients. Please contact us if you want to talk about how these updates affect your business. We are here to support you!

Shareholder Agreements for limited companies: What you need to know

When there are several shareholders, a new company is being formed, a shareholder wants to pass their shares or pass them to their children, someone is nearing retirement, or the company has borrowed money from a shareholder, issues can easily arise that jeopardise the continued success of a business.

Shareholder agreements are crucial documents that set out the rights and responsibilities of shareholders within a company. These agreements, which are often overlooked, have a significant influence in shaping the trajectory of a business and safeguarding the interests of both shareholders and the company itself.

In this article we look at the areas where a good shareholder agreement can benefit a business and its shareholders.

Defining rights and responsibilities

A good shareholder agreement clearly outlines the rights and responsibilities of each shareholder within the company. This includes details such as voting rights, dividend distribution, and obligations related to financial contributions or management responsibilities.

With these parameters established upfront, shareholder agreements provide clarity and can minimise potential conflicts and disputes among shareholders.

Mechanism for resolving conflicts

While business ventures start with all good intentions, almost inevitably disagreements can arise among shareholders on important business decisions or operational matters. Such disputes can end up paralysing a business and hold it back from reaching its potential.

Shareholder agreements typically include mechanisms for resolving conflicts, such as mediation, arbitration, or predetermined procedures for making decisions. Because there is then a structured framework for dealing with conflict, the agreement helps reduce the risk that a dispute could escalate to the point of disrupting the business.

Protection of minority shareholders

Shareholder agreements often include provisions designed to protect the rights of minority shareholders. Generally, decisions within a company are decided by

majority vote. Therefore, if a company has a single or a small group of majority shareholders, they are able to control all decisions made.

This may not be desirable in all scenarios, and actions could be taken that disproportionately benefit majority shareholders.

Therefore, an agreement may include provisions that ensure minority shareholders have a say in certain key decisions, and safeguards against certain actions that could unfairly disadvantage minority shareholders. The agreement can therefore promote fairness and equity within the company.

Keeping the company on track

The stability and direction of a company can be helped by a shareholder agreement. It might be used to establish guidelines for significant corporate actions, such as mergers, acquisitions, or changes in company structure.

The agreement might require certain decisions to be approved by a specified majority of shareholders and so prevent a single individual taking an action that might undermine the company's strategic objectives or corporate governance.

Succession planning and business continuity

The long-term sustainability of any business relies on changes in ownership or management being well planned for.

Shareholder agreements often address succession planning by outlining procedures for transferring shares, resolving disputes related to a transition in ownership, or specifying how a buyout must happen in the event a shareholder leaves or dies.

With the clarity and certainty these provisions can bring, a business is in a much better place to be able to continue with minimal disruption.

Confidentiality and non-compete clauses

A shareholder may decide to leave the company and set up on their own or move to a competitor. In this circumstance, a shareholder agreement can help to protect the company's confidential information and prevent shareholders doing something that might harm the business.

The agreement might include clauses that help safeguard the company's intellectual property, trade secrets, and competitive advantage. These can all help the company keep its market position and reputation.

In summary, a good shareholder agreement can provide a company with a comprehensive framework that helps it remain stable and fair while bringing long-term success to both the business and its shareholders.

Please talk to us if you need help in planning for an agreement. We can help with a list of key areas to consider, as well as with share and company valuations and putting the wishes of the shareholders into an agreement with a local solicitor.

Increase to small company thresholds

Thresholds based on a company's accounts and employee numbers determine whether a company is categorised as small or not. Being able to qualify as a small or medium sized business can cut red tape for a business with the reduced amount of both non-financial and financial reporting a small or medium sized business is required to do.

The Prime Minister, Rishi Sunak, has announced that there will be 50% uplift to the current thresholds that determine a company's size. The government expects that this will benefit up to 132,000 businesses.

The current thresholds were set by the EU, who recently uplifted its thresholds by 25%. However, following Brexit, the UK has greater freedom to set its own thresholds and so is opting for a larger increase.

It is intended that the new thresholds will apply to financial years that start on or after 1 October 2024.

The new thresholds mean that a company with less than £632,000 turnover will now qualify as a micro-entity. A small company will be one with turnover less than £15m, and the upper medium threshold will increase to £54m. Companies with a turnover above £54m will be classified as large.

If you want to know how these changes might affect your company, please call us and we will be happy to help you.

See: <https://www.gov.uk/government/news/prime-minister-to-announce-major-reform-package-to-boost-apprenticeships-and-cut-red-tape-for-thousands-of-small-businesses#:~:text=This%20includes%20increasing%20the%20number,and%20non%2Dfinancial%20reporting%20requirements.>

Employers – Are you ready for the new tax year?

The new tax year begins on 6th April and for employers running monthly payrolls, the March pay run will be the last of the 2023/24 tax year.

Some things you will need to make sure you do and when you need to do them are listed below:

- Send your final payroll report of the year to HM Revenue & Customs (HMRC). You may need to mark in your payroll software that this is the final submission for the tax year.
- Update your employee records before 6th April. This may include new tax code notices. If your software automatically updates tax code notices, then check these to make sure they are accurate.
- Update your payroll software. If you use a desktop application to run your payroll then it will need updating from 6th April or whenever your software provider tells you to do so. If you use browser-based software to run your

payroll then it is unlikely that you will need to run an update, but you should check.

- Give your employees a P60 by 31st May at the latest.
- Report employee expenses and benefits by 6th July at the latest.

If you need any help with your end of year payroll procedures or would like help or advice on preparing your report of employees expenses and benefits, please get in touch with us and we will be happy to help you.

See: <https://www.gov.uk/payroll-annual-reporting>

Major reforms to apprenticeships announced

The Prime Minister, Rishi Sunak, has announced reforms to apprenticeships that will enable up to 20,000 more apprenticeships and could be especially welcome news to small businesses.

With effect from April 1st, the government will pay the full cost of training for anyone up to the age of 21.

If you are a small employer this will mean that you no longer need to meet some of the training costs and may mean that taking on an apprentice becomes more viable.

Education providers will also benefit as they currently need to source funding both from businesses and the government.

Gillian Keegan, Education Secretary, commenting on the reforms said:

“Apprenticeships are a fantastic way for businesses to develop the skills they need, and these new measures will help more businesses and young people benefit from them.”

See: <https://www.gov.uk/government/news/prime-minister-to-announce-major-reform-package-to-boost-apprenticeships-and-cut-red-tape-for-thousands-of-small-businesses>

Have we heard the death knell for national insurance contributions?

The original concept for national insurance contributions (NICs) was as a part of social welfare reforms implemented by the government in the early 20th century. The idea being to establish a social insurance that provides financial protection and assistance to individuals and families when sick or unemployed, or in old age.

The National Insurance Act of 1911 required workers and their employees to start making contributions to a national insurance fund, which was to be used to finance various benefits.

The national insurance system has been further expanded and refined since then, but now in 2024 national insurance contributions could well be on their way out.

NICs was the hot topic of last year's Autumn Statement and this year's Spring Budget, with the rates for employee NICs and those charged on self-employed profits significantly cut. Class 2 NICs – a set rate of contribution paid by all self-employed businesses with profits above a certain threshold – has also effectively been abolished.

In the Spring Budget, the Chancellor, Jeremy Hunt, identified NICs on the earnings of the self-employed and employees as paying tax twice. He indicated that, when possible, the government would continue to cut national insurance.

This thought was further emphasised in a speech the Prime Minister, Rishi Sunak, gave last week at the 2024 Business Connect Conference. He said: "[The government's] long-term ambition is to simplify the system and end the double tax on work, by abolishing NICs."

After outlining the recent cuts, he concluded by saying: "We're not done yet. We'll make more progress towards abolition, in the next Parliament."

NICs therefore seem likely to be an ongoing topic in the run up to a general election, likely to be held in the autumn. This is perhaps the death knell for NICs, but also raises questions about how tax will be levied to offset a reduction to NICs.

If you need help optimising your tax strategies so that you pay the minimum of tax or national insurance, please talk to us. We will be happy to help you!

HMRC announces and then halts changes to helpline services

Last week, HM Revenue and Customs (HMRC) announced changes to its helpline services that will encourage people to go online first.

However, in a fast about turn, the very next day they halted these changes while they consider how best to help taxpayers make more use of online services.

The changes HMRC are proposing apply to Self Assessment, PAYE and VAT services. Feedback though suggests that there is still a significant number of people who are reluctant to deal with their tax affairs online.

HMRC are keen to pursue online services because of the cost savings they bring. They revealed that last year they received more than three million calls on queries that could have been carried out online, including on questions such as resetting an online password, getting a tax code, or finding out a National Insurance number.

The changes they are proposing include:

- Closing the Self Assessment helpline between April and September and directing callers to self-serve using online services.
- Opening the Self Assessment helpline between October and March for priority queries. Straightforward queries will still be directed to HMRC's online services.

- Opening the VAT helpline for 5 days each month ahead of the deadline for filing VAT returns. At other times, callers will be directed to use online services.
- The PAYE helpline no longer taking calls on refunds.
- Having HMRC advisers continue to be available to support those who cannot use online services or need additional support because of their health or personal circumstances.

Jim Harra, HMRC Chief Executive, said: “Making best use of online services allows HMRC to help more taxpayers and get the most out of every pound of taxpayers’ money by boosting productivity. ... However the pace of this change needs to match the public appetite for managing their tax affairs online.”

If you need any help in dealing with HMRC, please feel free to get in touch and we will be pleased to help you.

See: <https://www.gov.uk/government/news/hmrc-helpline-changes-halted>

New fining guidance published by the Information Commissioner’s Office

The Information Commissioner's Office (ICO) has released some new data protection fining guidance showing how it decides to issue penalties and calculate fines.

A consultation on the guidance took place last year and the new guidance provides greater transparency on how the ICO uses its power to fine.

The sections about penalty notices in the ICO Regulatory Action Policy are replaced by the new guidance.

The guidance sets out the infringements for which the ICO can impose a fine as well as the factors that the ICO will take into account when deciding whether to issue a penalty notice and in determining the amount.

It also sets out the five steps that the ICO take in calculating the amount of a fine. These are:

Step 1 - Assess the seriousness of the infringement

Infringements with a high degree of seriousness will have a starting point of 20% and 100% of the legal maximum. A medium degree of seriousness will start between 10% and 20%, and a lower degree of seriousness will have a starting point between 0% and 10%.

Step 2 - Account for turnover

Since the statutory maximum fine amounts apply to all organisations regardless of size, the ICO will consider the turnover of the organisation in question to see whether the starting point should be adjusted. The guidance sets out what adjustments would be made for varying levels of turnover.

Step 3 - Calculate the starting point

Based on the outcome of the first two steps, the ICO will then calculate what the starting point for the fine will be. The guidance provides a table of indicative ranges.

Step 4 - Consider aggravating and mitigating factors

The ICO will then consider if there are any aggravating or mitigating factors that would warrant an increase or decrease in the level of fine that has been calculated.

Step 5 - Any adjustments to ensure the fine is effective, proportionate and dissuasive

Finally, the ICO would consider the circumstances of the case to assess whether the figure arrived at is effective, proportionate and dissuasive as well as no more than the statutory maximum amount. An adjustment to the fine amount may be made as a result.

To review the guidance, please see: <https://ico.org.uk/about-the-ico/our-information/policies-and-procedures/data-protection-fining-guidance/>

Bank of Japan increases base rate for the first time in 17 years

Last week, the Bank of Japan raised its key interest rate to a range of 0.0%-0.1% from -0.1%. The move comes after increases in consumer prices have led to wage rises.

Official figures in Japan show that the core consumer inflation remained at the bank's target of 2% for January. However, due to rising cost of living, the biggest companies in Japan agreed to a 5.28% salary increase earlier this month. This move triggered the bank's decision to raise the base rate.

Whether the increase will directly affect your business will likely depend on whether it trades with Japan. However, interest rate changes can have an indirect effect on all businesses to the extent that they affect global economic conditions and so influence demand or shifts in consumer behaviour.

At this stage it is interesting to note that Japan was the last country to still have a negative interest rate - a negative base rate means that people have to pay to deposit money in a bank and so encourages people to spend their money instead. This indicates that nowhere in the world is immune to rising costs and inflation, and suggests that businesses need to continue to plan for rising costs in order to stay profitable.

See: <https://www.bbc.co.uk/news/business-68594141>

Car finance complaints being assessed by FCA

The Financial Conduct Authority (FCA) have said that they are assessing the extent of a pre-2021 problem with some car finance arrangements.

Prior to January 2021, some brokers were permitted by lenders to adjust the interest rates on the car finance they arranged for customers.

The rates were linked to the amount of commission that the broker received, and so typically a higher interest rate would mean a higher amount of commission for the broker. This was called a discretionary commission arrangement and naturally led brokers to increase the amount people were charged on their car loan.

The FCA banned this practice in 2021, however there has been a high number of complaints since then about loans that were arranged before 2021.

The FCA report that lenders and brokers are generally rejecting complaints and so they are now examining the issue.

They have also paused the 8-week response deadline that providers have to respond to complaints within. Providers will have until 25 September 2024, at the earliest, to respond.

This is because borrowing of this type is not covered by the Financial Services Compensation Scheme and due to the high number of possible complaints there is a risk of providers going out of business and complainants not getting back any of the money they are owed. Dealing with complaints in an orderly way should minimise this risk.

As a result, the FCA have also lengthened the time available to take a complaint to the Financial Ombudsman from 6 months up to 15 months.

For more details and what your next steps should be if you think you might be owed compensation, please see: <https://www.fca.org.uk/consumers/car-finance-complaints>