



Farrers 360 – Private Businesses



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It's not always easy to stay on top of industry and legal developments and trends. Our Farrers 360 bulletins are here to help and designed to be read on the move. They will contain three short articles, each of which can be digested in 60 seconds. We will deal with key issues facing our private businesses clients and provide legal updates and comment from our experts.

In this issue, Charlotte Black from our Tax team highlights key points for private businesses from the recent Budget. We will also look at two developments in the governance of businesses. First, Jo Connell in our Commercial Litigation team considers a recent case where the High Court pierced the corporate veil and held directors personally liable. Then, Employment associate Robert Lewis provides his key learning points from advising clients on handling allegations of sexual harassment.

I was at the London Stock Exchange Market Open Ceremony last week at the launch of "50 Leading Lights" (a campaign led by the Women of the Future awards showcasing kindness in leadership in businesses). We increasingly see the economy recognising the role of good governance in successful and profitable businesses – including privately owned businesses. I am sure that good governance will be an issue that we will return to time and time again.

Autumn Budget: Entrepreneurs' Relief not yet dead; looking ahead to April 2020

Entrepreneurs' Relief

The Chancellor resisted calls to abolish Entrepreneurs' Relief and opted instead to tighten up the rules. Measures announced in the Autumn Budget restrict the availability of this tax relief and some changes are effective immediately.

Quick recap

Entrepreneurs' Relief is a relief from Capital Gains Tax which lowers the top rate of tax from 20% to 10%. It operates on the disposal by individuals (and some trustees) of certain business assets, including shares in a 'personal company' (see below). Taxpayers have a lifetime allowance of £10 million of gains which can benefit.

To qualify for Entrepreneurs' Relief on a share disposal, the shares must be in a trading company (or trading group) and the individual selling or gifting of those shares must be an officer or employee of the company (or of a group company).

Changes

1. The new requirement is that the shares in question must not only entitle the holder to 5% of the company's voting rights, but also to 5% of its distributable profits and to 5% of the company's assets available on winding up.

- The effect of these extra requirements is to deny tax relief to shareholders with no substantive economic rights in the company other than on sale. Holders of so-called 'growth' or 'flowering' shares fall into this category, and unless they also own fully participating shares, the tax payable on their disposals will be double the level previously anticipated.

2. A further change is that for disposals of shares or business assets made on, or after, 6 April 2019, the eligibility conditions must be met throughout the two years prior to the disposal, (the current period is 12 months).

Casualties of this change will be individuals who acquired their shares or assets this year, expecting to sell next year. They must now choose between accelerating a sale (if their acquisition was pre-6 April 2018) or deferring it until 2020.

Looking ahead to April 2020

The Government announced the introduction of a digital services tax (DST) from April 2020. The DST will be a 2% tax on revenues, of certain digital services that are linked to the participation of UK users, where the revenues exceed £25 million. The DST would apply to groups that generate global revenues from in-scope business activities in excess of £500 million per annum.

The Chancellor also confirmed that the tax rules relating to “off-payroll working” (being the provision of services of an individual through an intermediary) in the public sector shall apply to large and medium-sized businesses in the private sector. From April 2020 the responsibility for operating these rules will shift from the individual worker and their intermediary company, to the entity which pays the worker's company. The effect is that businesses who engage workers caught under the rules will need to deduct tax at source through their PAYE systems. Draft legislation will be published next summer when more details will be available.



Charlotte Black
Associate

Directors' liability: High Court prepared to pierce the corporate veil and hold directors personally liable

Directors should be aware of a recent case which saw directors being held personally liable to a third party by virtue of their conduct, in circumstances where the primary liability would ordinarily have lain with the company of which they were directors. As such the court looked behind the protection offered by the “corporate veil” (ie the status of the company as a separate legal entity). Directors are now likely to face a serious challenge to any corporate veil defence if, like in this case, they have exercised control over a shell company in a way which caused it deliberately to breach its contractual obligations, in circumstances in which they are attempting to reap the shell company's benefits without meeting its obligations.

In this particular case, Michael Lloyd was the beneficial owner of a company, SHL, which owned the freehold over a large residential property which was his home. The leasehold interest in that property was held by another company, HHL, of which Michael's brother – Christopher Lloyd – was the sole director and shareholder. HHL engaged a building contractor, Palmer, to carry out significant renovation works to the home. All works paid for by HHL were funded by Michael, either via his own finances or by raising bank loans. However, Michael and Palmer fell out. Michael and Christopher agreed that Michael would prevent any further funding being available to HHL and replace Palmer with an alternative builder engaged by a separate company controlled by Michael. As a consequence, SHL was able to enjoy the benefit of the works carried out to the home, but HHL had no funds to pay Palmer for a significant proportion of those works. Any claim by Palmer for breach of contract could only be aimed at HHL, which was insolvent and so a poor litigation target.

Instead, Palmer sued Michael and Christopher. The High Court held that Michael was a de facto director of HHL and he had unlawfully conspired with Christopher to induce HHL to breach its contract with Palmer. As such, he was liable to Palmer for the

losses caused by HHL's breach of contract. Similarly, the Court held that Christopher had conspired unlawfully with Michael and – as he had served Michael's interests instead of discharging his fiduciary duties owed to HHL as a director – Christopher could not seek the protection of the corporate veil ordinarily afforded by HHL's separate legal personality and limited liability status. As such, Christopher was also held liable.

While this case was unusual in many ways, it nonetheless serves as a significant warning to those doing business via undercapitalised companies and hoping to rely for protection on the company's limited liability and separate legal personality. It may also provide a boost to innocent third parties hoping to hold to account those standing behind a company who are suspected of wrongdoing.

[Read the full article here](#)



Jolyon Connell
Senior Associate

One year from Weinstein: lessons from the workplace

A year ago, allegations of sexual misconduct against Hollywood film producer Harvey Weinstein first became public. The fallout from Weinstein, and the subsequent #MeToo movement, has put issues of sexual harassment in the workplace at the top of the agenda for many employers.

Robert Lewis, Associate, has advised six different employers during the past year on handling allegations of sexual harassment and summarises his key learning points as follows:

- Clarity – When an allegation is raised, all involved should understand what is going to happen and why.
- Early advice – There will usually be important decisions to make very quickly which will impact the rest of the process. Take legal advice early.
- Open mind – Until a decision is reached following a thorough investigation, employers should act as though all outcomes are possible and not pre-judge.
- Care – Ideally, all those involved (alleged victims, perpetrators and witnesses) should be offered support.
- Confidentiality – Be very careful about making assurances of confidentiality and anonymity as it can make a fair process very difficult to achieve.

- Communication – The process will almost certainly take longer than anyone expects. Good and regular communication with all involved can help avoid a serious breakdown in the working relationship.

Above all, employers should endeavour to keep a cool head and be empathetic and fair to all involved.

[Read the full article here](#)



Robert Lewis
Associate

View our approach for Businesses

Our focus is on **private businesses**, **family businesses**, **entrepreneurs** and **private investors**. We understand that successful businesses are run by dynamic and driven individuals and we make the effort to get to know both the individual and the business; the culture, the people and their plans for the future.

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