Challenging issues over 'aggressive' tax planning

FINANCE MATTERS

Steve Collins, senior partner and head of tax at Francis Clark LLP examines questions to have arisen around the issue of tax avoidance, exploring the legitimate need for business incentives and how tax loopholes could be tightened

Tax planning has hit a new challenge. Whereas tax evasion has always been illegal, tax avoidance has not. So long as your tax affairs are arranged in compliance with the law, there is no obligation to pay more tax than you have to. What has changed is a new 'ethically' based opinion that some tax planning is now deemed to be 'aggressive' and unfair but this does not take into account that the point at which tax is due or paid is determined by statute and not opinion.

Herein lies a very real cause for confusion. On the one hand, government policies including low rates of corporation tax, R&D incentives like the Patent Box and annual investment allowances which give 100% relief from tax, are designed to promote the UK as the most tax attractive state in the G20. On the other, we have public outrage at aggressive tax avoidance which is perceived as morally wrong despite being legal, and which could well deter inward investment from multi-nationals because of the collateral damage to their reputation derived from their tax planning arrangements.

On the one hand we have Google, Amazon and Starbucks insisting that their tax planning strategies fully comply with the law and, on the other, we hear Dr John Sentamu, the Archbishop of York, saying that tax avoidance is sinful and tantamount to robbery.

In between, the vast majority of businesses think the Government should stop moralising about tax and get on with amending the law to ensure that tax mitigation schemes that are currently deemed to be aggressive are outlawed. However, this comes with the risk of reducing the country's competitiveness.

So what's the difference between acceptable and unacceptable tax avoidance? My personal view is that acceptable tax planning involves managing your financial affairs to take advantage of statutorily available tax reliefs and incentives in the way that parliament intended. Unacceptable tax avoidance centres around contriving to take advantage of tax reliefs in ways that Parliament did not intend – in other words finding the clever loopholes to beat the system.

The difficulty is most people and most businesses are unable to identify which is which and consequently they run the risk of public disapprobation if they get it wrong. No two situations will ever be the same so there is no acceptable/unacceptable blueprint. However, expert professional advisors can offer guidance concerning acceptability based on experience and a long history of dealing with HMRC which will have accumulated respect and mutual understanding.

Last week the G8 summit tackled the problems of tax, trade and transparency agreeing to give automatic access to information on their residents' tax affairs and requiring shell companies that invest money anonymously to identify their effective owners.

Prime Minister David Cameron said: "You have to collect the taxes that are owed. That is only fair for companies and for people who play by the rules." Exactly so and the mutual cooperation between the G8 members announced in Northern Ireland will help identify wrongdoers and expose tax loopholes. But until there are specific changes in the law, don't expect global businesses to conduct their financial affairs where the tax regime is unfavourable while it remains perfectly legal to seek tax mitigation advantage elsewhere.

For further information: Steve Collins, Senior Partner, Head of Tax at Francis Clark LLP. Telephone: 01803 320100 Francis Clark has offices in Exeter, Plymouth, Salisbury, Taunton, Tavistock, Torquay and Truro. More information is available at www.francisclark.co.uk

Funding deal will back clothing brand's aim to double turnover

Helston-based organic childrenswear brand Frugi, has secured a £200,000 HSBC finance facility to support its sales growth, with the aim of doubling its turnover within the next two years.

The £3.2 million turnover company is already generating annual sales growth of between 35% and 40% a year.

It exports to 53 countries, with particularly strong sales in Germany, France and the US and plans to develop these markets further.

The new funding arrangement will enable the company to increase its stock to drive export sales.

Frugi co-founder Lucy Jewson said: "We already have a strong order book for our autumn and winter 2013 collection both at home and overseas."

The deal was led on behalf of the bank by Andy Lewis, HSBC senior international commercial manager.

Property Awards

Awards showcase a 'fantastic array' of regional landmarks

The Great Hall at Exeter University was packed with the movers and shakers of the Westcountry's construction and property industry this week, as the winners of the Michelmores Western Morning News Property Awards 2013 were revealed. **Becky Sheaves** reports

More than 350 people attended a gala black tie evening to celebrate the 11th annual Michelmores and *Western Morning News* property awards.

As well as being the venue for the awards, Exeter University itself scooped not one but two of the prestigious honours on offer. Its innovative £50 million student services building, The Forum, won **Building of the Year**. In addition, the university's new research and treatment centre into mood disorders won **Commercial Project of the Year (under £3 million)**.

Other winners were drawn from all over the South West, from a post-industrial regeneration project in Cornwall to a residential development for the elderly in Taunton.

The awards were hosted by former MP, government whip and housing minister Gyles Brandreth, now a well-known media personality. Mr Brandreth said that he was "heartened and genuinely moved" by what he described as the collaborative, innovative and far-sighted projects in the awards.

"In Westminster, we suffer from short-termism and can often rightly be accused of never looking past the next election. Here tonight we are seeing people dedicating themselves to projects which can take years to get off the ground. These wonderful developments are going to improve lives here in the South West for 10, 20 and many more decades into the future."

Mr Brandreth also said that the calibre of both the winners and the shortlisted projects were a testament to the vibrancy of the property sector in the South West. "Up in London, there is a tendency to dismiss the Westcountry as a place in the doldrums, where nothing exciting happens," he said. "This fantastic array of impressive developments most certainly shows this is not the case."

Winner of the prestigious **Building of the Year 2013** award was The Forum, University of Exeter. This £50 million building houses student services at the heart of the university campus, as well as library, study and retail space. Its architecture ties in with the existing university buildings, transforming both the student and visitor experience. This award was sponsored by Exeter recruitment company Girling Jones. "This impressive project will really help to put Exeter University on the map," said judge Peter Lacey, who presented the award.

Commercial Project of the Year (over £3 million) was scooped by The Life Centre in Plymouth and was sponsored by property developers Summerfield Developments. This new regional diving, aquatic and multi-sports centre was built at a cost of £37.6 million. In its first year The Life Centre has welcomed 1.3 million visitors, including many with disabilities, to try sports ranging from bowls to water polo. It is Olympic diver Tom Daley's training base, and was host to the National UK Diving Championships and the Olympic training camps for Lithuania, Spain, Canada and Mexico.

The award for Residential Project of the Year (41 units and over) was presented by Sir John Banham, who praised the winner, Trevithick View in Camborne. This development of affordable rent and shared ownership homes has been created on a derelict town centre site, formerly mining and industrial buildings. "This is the sort of project that should be built in every town in Cornwall and nationally too," said Sir John. The award was sponsored by design experts Nash Partnership.

In the category of **Commercial Project of the Year (with a value of less than £3million)**, the judges were deeply impressed with the quality of the entries. The overall winner was the Sir Henry Wellcome Mood Disorder Centre, Exeter University. This state-of-the-art building houses individual and group treatment rooms for conditions such as depression. The building layout is based on curves so that no room is perpendicular. The soft lines and finishes were purposely created to help comfort and relax patients visiting the centre. The award was sponsored by the Torbay Development Agency.

The **Heritage Project of the Year** award went to Heartlands, a restoration and regeneration development of a 19 acre disused mining site in Pool, Cornwall. Here, a wide range of derelict historic mining buildings, some on the 'at risk' register and all with Unesco World Heritage Status, have been restored. The site is now a popular and well-used visitor centre for cultural, commercial and community events. This award was sponsored by the financial institution Santander, a major UK mortgage provider.

The winner of Residential Project of the Year (40 units and under) was Cedar Gardens, Taunton. This development of attractive houses set in a landscaped environment is specifically designed for the downsizing over-55s market. Each has discreet features such as wider doorways to accommodate wheelchairs and stairs suitable for stairlifts, to allow older people to stay in their homes as the years go by. This award was presented by deputy editor of the *Western Morning News* Philip Bowern, who said that the judges appreciated the fact that a Blue Cedar home does not have a hint of the institutional home about it. "The panel felt that this sort of development is definitely what the retirement market is looking for," he said. The quantity surveying and construction consultancy Taylor Lewis Ltd were the sponsors of this award.

A family firm based in Torquay won the **John Laurence Award for the Professional Firm of the Year.** Property Agents and Chartered Surveyors, Bettesworths have been selling commercial property in the region for 70 years. Bettesworths successfully achieved 188 property transactions in 2012 throughout Cornwall, Devon, Somerset and Dorset representing an overall increase in their annual number of transactions of just under 30%. Architecture firm Stride Treglown sponsored this category.

The University of Exeter's Environment and Sustainability Institute, Tremough Campus, Falmouth was the winner of the **Eco Project of the Year** award. The Environment and Sustainability Institute (ESI) is a cutting-edge research centre into environmental change. It has been designed to the highest standards of environmental performance from design through construction to occupation. Midas Construction Ltd sponsored this category.

The panel of judges included marketing expert Angela Kilvington, architect Peter Lacey and marine engineer and former head of Devonport Dockyard Mike Leece. The chairman of the judges was the former chairman of the Confederation of British Industry Sir John Banham, who lives in Cornwall. Also on the panel were economist Kevin Butler, property developer Nick Hole, and *Western Morning News* editor Bill Martin.

"The judges faced a very difficult time selecting the shortlist and winners, often with considerable debate and often by the narrowest of margins," said Andrew Maynard, client services director of Michelmores.

"Their expertise, huge collective experience and profound professional knowledge ensures that there are never any foregone conclusions regarding these results as each entry is examined thoroughly and debated vigorously."

The chairman of the judges, Sir John Banham, said the standard of the award entries this year was impressive. "Despite the economic difficulties in recent years, we have seen some truly inspiring and far-sighted developments created here in the Westcountry.

"I was particularly struck by the fact that these achievements are often brought to fruition thanks to enormous determination and enthusiasm by the entrants."

Main picture: Building of the year 2013; The University of Exeter's Forum building. Heartlands, left, was Heritage Project of the Year. Above, Blue Cedar Homes collected the award for Best Residential Project (under 40 units)

Less stress to liquidate, despite the sad outcome

BUSINESS MATTERS

This week **Lisa Thomas**, an insolvency practitioner with Plymouth-based Neville & Co explores one of the most common insolvency procedures, used when a company is in 'terminal' decline

The main part of our work revolves around advising directors on the insolvency options for their companies and then holding their hand through whichever procedure is most appropriate in the circumstances.

Liquidation is one of the most common insolvency procedures used when a company is in terminal decline. A company can go into liquidation in two ways – either compulsorily being forced to by the court or voluntarily using an insolvency practitioner like me.

The voluntary procedure is known as a Creditors Voluntary Liquidation (CVL). Although called voluntary in the name it is not really something anyone in business sets out to do so I find the term voluntary a little misleading. It is termed voluntary because the directors and the shareholders decide to do it and are not forced to. A CVL is a process whereby the directors call a meeting of the shareholders and then a meeting of the creditors and seek approval to place the company into liquidation and appoint a liquidator. Usually those meeting are about two weeks away from when the directors sign the papers.

In that two-week period various things happen including the company ceasing to trade, all the staff are met and are all made redundant and we secure the premises and assets waiting until the meeting of creditors to approve the liquidation before any assets are sold.

Once appointed as liquidators we have several duties to fulfil. One key duty is to safeguard and then sell the company's assets. This usually consists of appointing professional agents to collect and sell the assets at auction. Sometimes assets do get sold back to the directors and creditors understandably feel aggrieved about this but if directors do want to buy back the assets they must be purchased at market value and must be paid for.

Another key part of our role as liquidators is to investigate what actually went wrong and file a report with the Insolvency Service. Sometimes this will lead to a director being banned from acting as a director in the future (up to 15 years) together with fines. In the worst cases directors may even get a prison sentence although this is fortunately quite rare.

Hopefully at the end of the liquidation process there are funds and we then distribute the proceeds to creditors in order of priority. More often than not the company's bank will have a debenture over the assets and will receive the first share of any available distribution. Any remaining money is then distributed to creditors equally.

Liquidation is not a happy ending but it can take a great deal of stress of the owners of a business. No one plans to fail but it happens. The pressure increases on all concerned as a business declines and the directors end up facing more and more problems; can they pay the staff this month, should they be ordering goods they may not be able to pay for, how quickly will HM Revenue and Customs send in a bailiff?

These are typical of the questions we answer at any initial meeting and the sooner someone who thinks they may need insolvency advice gets that advice the safer they are.

City's chamber of commerce and industry GAINs a new patron

Plymouth Chamber of Commerce and Industry has welcomed the Growth Acceleration and Investment Network as a new patron.

GAIN was founded by Plymouth University, Plymouth City Council and Tamar Science Park to accelerate the creation, growth and investment in high quality businesses to create wealth and jobs in the South West.

As one of the Chamber's nine patrons, GAIN will work closely with the Chamber and through its extensive network of member businesses and events to support entrepreneurship and business growth and to promote the city and the wider region.

David Parlby, chief executive, Plymouth Chamber of Commerce and Industry said: "This is a great pairing, as GAIN and the Chamber are both working to promote Plymouth as a fantastic place to start, nurture and expand businesses. In welcoming GAIN as a patron we will be even better placed to champion the city and its business community."

Professor Julian Beer, pro vice-chancellor at Plymouth University, one of GAIN's founding partners said: "We are very proud to be Chamber patrons."