



# private client | year end tax planning for business owners

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## loss of personal allowance

Individuals who have earnings over £112,950 will from 6 April 2010 lose their tax free personal allowance. Where earnings are between £100,000 and £112,950 the allowance will be tapered, reducing by £1 for every £2 over £100,000. This means the marginal rate of income tax on taxable income between £100,000 and £112,950 will effectively be 60%.

There are various ways to mitigate this 60% rate of tax by advancing income into the 2009/2010 tax year or increasing reliefs post 6 April 2010.

## the 50% tax rate

The start of the new tax year (6 April 2010) sees the increase in the higher rate of tax to 50% for those earning over £150,000 and the loss of the personal allowance for those with income over £112,950. There are a number of potential ways to mitigate the effects of these tax rises including:

## employees and directors

- dividends might be brought forward to be paid in the current tax year, that is before 6 April 2010. The rules require that in order for a dividend to be accepted as paid before 6 April 2010 it must actually be paid before that date which means either paid out of the company's bank account or credited to a loan account. In either case, the accounting entries must be correctly processed before 5th April.

The dividend must be supported by the appropriate paperwork, including a Board minute authorising the dividend and a tax voucher specifying the date and amount of payment and the associated tax credit.

A dividend can be waived by shareholders to reduce the amount of income they receive from the company. In order to be effective the waiver must be made before the dividend has accrued. Care needs to be taken because HMRC may seek to challenge a waiver, if it gives rise to an element of "bounty", on the basis that it constitutes a settlement for tax purposes.

Management accounts may need to be produced to support the fact that the company has sufficient reserves to pay the dividend.

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- bonus payments to be paid in respect of profits earned in the current tax year could be paid before 6 April 2010 in order to ensure that the bonus is taxed at the lower marginal rate in the current tax year
  - employee share schemes which afford a capital return to employees on a sale of their employee shareholdings (taxed at CGT rates of currently 18%) are made significantly more attractive with the rise in marginal rates of income tax
  - salary sacrifice, if successful, in exchange for a non-taxable benefit (for example pension contributions) would reduce the liability to tax at the 50% rate. A salary sacrifice happens when an employee gives up a right to a future bonus or element of salary, it cannot be retrospective. This is made effective by a change in the contract of employment where the employee permanently, or at least for a tax year, gives up part of their contractual pay. The contract of employment can be varied either by a new contract or a letter agreeing the changes. Preferably legal advice should be taken as it is a contractual matter

### self employed individuals and partners

- incorporation can potentially save up to 22% of tax being the difference between the 50% additional rate and the corporation tax rate of 28%. This differential may be greater when account is taken of the effect of NIC and the benefit of the small companies' rate of corporation tax
- change of year end can be considered if you have an accounting year-end other than 5 April (or 31 March). The benefit of this would be that you are moving profits from the 50% rate of tax due next year to the current lower rate of 40%
- corporate partner (or member in the case of an LLP) could be an option for partnerships for whom incorporation is inappropriate with the view of profits being sheltered at lower corporation tax rates
- deferring claims such as for income tax loss relief and capital allowances until after 5th April should be considered

### equalisation of income between spouses

- income splitting encompasses the situation where shares in a company are held by one spouse and all the value is added by that individual's spouse. An example would be where a wife owns shares in a company through which the husband conducts his business. The House of Lords held in the "Arctic Systems" case that the dividends would be treated as income of the spouse who owns the shares because it fell within an exemption for 'outright' gifts between spouses. HMRC have twice deferred introducing legislation to deal with this although it remains clear that they consider income splitting to be "unacceptable and unfair"
- equalisation of income ensures that both spouses utilise their personal allowances and lower rates of tax which is normally achieved by transferring cash or other assets between spouses to bring about equalisation

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## reduce income

- pensions tax planning at its simplest entails ensuring that, if you have “relevant income” in 2009/10 and 2010/11 of less than £130,000, you pay as much pension as possible as the relief available to you is restricted only by the amount of your earned income. If your “relevant income” is in excess of £150,000 then you should ensure that you pay up to your available limit which is normally £20,000 but could be up to £30,000. Due to the complexity of the new rules and the anti-forestalling provisions we suggest that, if you plan to do anything other than this, you contact us for advice
- gift aid payments made to charities under the gift aid scheme reduce the tax payable at the higher rates of tax. This will not affect the tax that can be claimed by the charity

These courses of action could have other implications (including non tax matters) and therefore it is important for your circumstances to be reviewed prior to any action being taken.

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**haysmacintyre, Chartered Accountants and tax advisers, comprises 24 partners and 160 staff based in Holborn, London. It provides high quality auditing and assurance, business and personal taxation, corporate finance, financial planning and other business support services.**

**Around 50% of the firm’s business is within the corporate sector – small and medium sized enterprises, many of which are in the property, media and entertainment, technology, sports and business services sectors. The firm acts for a number of listed companies and assists new companies raise initial funds on the capital markets and through private equity. 35% of the firm’s business is for charitable and not for profit organisations and the remainder is for professional practices and private individuals – whether senior executives, entrepreneurs or those with significant land or wealth at home or overseas.**

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