NELLEN NEWS

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Share Schemes Registration Deadline Approaches

The 6 July 2015 deadline for electronic notification to HMRC of all employee share schemes is fast approaching. Registration applies not only to "approved arrangements" such as EMI share schemes, but also unapproved schemes such as employee share options and purchase schemes for growth shares.

The consequences of failure to register are serious and in the case of approved schemes, the tax advantages could be lost. In addition, failure to file an annual return (online, and by 6 July) will lead to a fine.

This final deadline will complete the move to online filing for all share schemes. In the case of EMI options, the employer has been under an obligation since 6 April 2014 to make an online notification within 92 days of the grant in place of the old paper EMI 1 form.

The purpose of the new regime is that the annual online reporting requirement will now be matched with the scheme or plan that has been registered. Registration is a precursor to being able to file annual returns and EMI notifications online, and should be undertaken in good time in advance of the relevant filing date for these items.

Where a company has any unapproved scheme or arrangement in place, an annual return for 2014/15 is still required even if no "reportable events" (such as an award or exercise) occurred during the tax year itself. In such cases, HMRC guidance is to complete a "nil" return.

Transactions

A selection of transactions **NELLEN** has advised on in recent years:

- **Soundnet Limited,** one of Europe's leading suppliers of audio and visual content to 13,000 bars, clubs and other venues, on the sale of its shares to TouchTunes Interactive Networks Inc., the largest in-venue interactive entertainment network in North America.
- **Hardie Grant Publishing Pty Ltd,** a leading Australian book and magazine publisher, on its purchase of the share capital of Quadrille Publishing Limited, a UK based publisher of illustrated books and stationery.
- **NJJ Capital SA,** the private investment company of Xavier Niel (founder and controlling shareholder of Paris quoted Iliad SA), on its investment in Gaziano & Girling Limited, the UK luxury shoe manufacturer.
- **William Reed Business Media Limited,** the leading UK food and drinks business to business information company, on the purchase of the outstanding majority of the share capital in Harris International Marketing, the research based retail consultancy.
- **Evaluate Energy Limited,** the online provider of information and intelligence to the global oil and gas sectors, on the sale of a majority of their shares to a Canadian information company and an Australian investment company.

Top Picture: The Sainsbury Laboratory, Cambridge - Stanton Williams . Photo: Hufton + Crow ©

Pre-emption Transfer Provisions: Mind the Gap

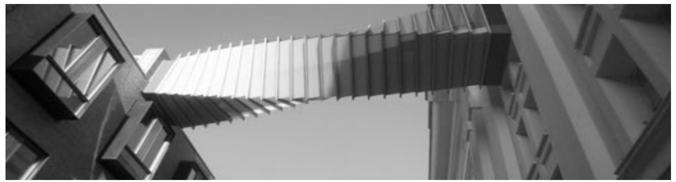
The colourful dispute involving the Barclay brothers for control of Coroin Limited, the owner and manager of The Connaught, Claridges and The Berkeley hotels, subjected the drafting of pre-emption provisions to intense legal scrutiny in the case of *McKillen v Misland (Cyprus) Investments Limited.*

The Barclay brothers' strategy was to gain control of Coroin. This included purchasing Misland, which then owned 24% of Coroin, from its Bermudan parent, A&A Limited.

The provisions in both the Shareholders' Agreement and the Coroin Articles contained the usual pre-emption wording that no shares in Coroin "*nor any interest therein* shall be transferred, sold or otherwise disposed of" except in accordance with the pre-emption procedures. However, the drafting did not extend to a transfer of shares or change of control of a corporate shareholder in Coroin, such as Misland.

McKillen argued that the intention of the Coroin founder shareholders was that the pre-emption procedures should apply to an outsider taking control of Misland and that the words "any interest therein" should be construed as including the *indirect* interest in Coroin shares that A&A had as Misland's parent.

The Court of Appeal rejected these arguments on the grounds that if the sophisticated founder investors of Coroin had intended a change of control provision of a corporate shareholder to be included within the pre-emption terms, they would have done so.



EIS Relief Continues To Be Extended

EIS remains one of the most attractive reliefs, allowing an individual to claim 30% tax relief on qualifying investments of up to £1m per year, and full capital gains relief if the investment is held for three years.

The 2015 Budget continued the trend of making EIS available to larger companies by allowing qualifying investments to be made in "knowledge intensive companies" with up to 499 full time employees. However, the gross asset test remains at £15 million before the investment and £16 million after the investment for all companies.

The 2015 budget introduced a total investment cap of £15m for any company or £20m for knowledge intensive companies but with the annual cap remaining at £5m.

Time Limit

It was always open to a qualifying company to raise EIS funds at any stage after it started trading. However, the 2015 budget introduced a time limit: companies must raise their first investment under EIS within 12 years of making their first commercial sale unless the amount of the investment is at least 50% of the company's annual average turnover over the previous 5 years.

Purpose - growth and investment

The 2015 budget clarified the test that the relevant shares must be issued in order to raise money for the purpose of a qualifying business activity. It specified that that the activity must be designed to "promote business growth and development". Using EIS funds to repay founder loans will disqualify the relief, as will artificial schemes which involve "disqualifying arrangements" designed to exploit the tax benefits.

Purchase of Own Shares

The purchase by a company of its own shares is a useful corporate finance strategy particularly if the tax criteria are met to enable the sale proceeds to be treated as capital for the seller.

The Companies Acts 2006 sets out the requirements that companies need to satisfy to purchase their own shares. But some relaxation of the requirements was made by secondary legislation in 2013, the principal one being to allow off-market share buybacks to be authorised by ordinary resolution. The changes also:-

- Allow a private company to authorise in advance multiple share buyback contracts in the case of buybacks connected with an employees' share scheme;
- Authorise private companies to pay in instalments for shares bought back where the buyback is for the purposes of, or pursuant to, an employees' share scheme;
- Permit private companies to finance buybacks (again only for the purposes of, or pursuant to, an employees' share scheme) out of capital, subject to the signing of a solvency statement and special resolution; and
- Allow private companies to buy back shares using small amounts of cash (not exceeding the lower of £15,000 or 5% of its share capital in any financial year) that do not have to be identified as distributable reserves, where there is provision in the company's articles allowing this. Where there is no provision in the articles, a special resolution of shareholders will be required.