

# SHIPSHAPE

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# The long and winding road

*The height of summer is supposed to be the "silly season" where nothing particularly earth-shattering ever happens. Not any more.*



You don't have to be Rupert Murdoch or a weather forecaster to have found the past few months gloomy. To borrow from another song, it's been a cruel, cruel summer. The phone hacking saga and allegations against News International refuse to go away. Meanwhile, there have been more deep-seated economic problems clouding the business environment,

And if policymakers in Europe and America don't get a grip on their debt crises we can be sure of fresh turmoil in the global economy.

## It's raining again

Back in Blighty, the summer spelled the end as we know it for a number of our high profile retailers. There are now vacant shops in almost every

In the longer term, inflation and interest rates may rise to reduce the real value of sovereign debt, but the recovery looks too fragile at the moment for this to even be considered.

## Back to life, back to reality

Whilst it's impossible to ignore the economic forecasts and tempting to dwell on the summer's more dramatic events, as we get back to our desks perhaps it's time to get back to basics and focus on more immediate business and financial matters. It's essential, as always, to stay in control of finances, keep abreast of new developments and maintain some flexibility in your planning. Perhaps it's time to focus on what you can do, rather than being distracted by factors outside your control.

Finally, at Shipleys we'll soon be entering our 75th year (not me personally!). Watch this space for more on how we will be marking this landmark in our history.

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with the euro facing renewed problems and the US deficit hitting the headlines again. August saw the most widespread civil disorder the UK has seen in decades. And to cap it all, even our prime minister had to cut his holiday short.

## Riders on the storm

Despite Greece's latest bailout package agreed between eurozone finance ministers, the country is still seen as close to defaulting. Should it happen, what would it mean for the other struggling European economies and, ultimately, for the euro?

Now is not the time for us to be smug about not joining the single currency – Europe is Britain's biggest trading partner, so whatever happens to the euro will have an impact on business here.

high street. The majority of Habitat stores have gone into administration along with Thorntons, Focus and home fittings company Homeform, the owner of brands including Moben, Kitchens Direct and Dolphin. Meanwhile electrical retailers Comet and Dixons have reported huge losses. Banks' share prices remain volatile.

Recent figures show that growth has been much slower than Government forecasts and now the Chancellor is being called on from some quarters to reduce the 20% VAT rate in an attempt to stimulate growth. Likewise, while some believe that the continued low interest environment is hindering the economy, for many businesses these low rates allow them to survive. And what are the prospects for Britain's economy as the austerity measures take effect?

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## Shipshape by email

To receive future copies of Shipshape by email, please send your details to Clare Schorah at [schorahc@shipleys.com](mailto:schorahc@shipleys.com)

# Lifting the lid on UK trusts

## Can of worms or box of tricks?

**UK trusts or settlements have historically been used to preserve the estates of the wealthy, and often for reasons other than tax – despite the views of successive governments.**

### Wealth preservation

Parents may be keen to pass on assets to their offspring, but they may have reservations about putting significant sums of money at their children's disposal – for any number of reasons. For example, the intended recipient might be a minor or only just out of their teens. Even if they are older, they may have no track record of adequately managing their finances or perhaps they are going through a difficult divorce.

### Tax advantages

Although the rules were tightened up in 2006, opportunities remain. Life interest settlements created before 22 March 2006 enabled donors to reduce their exposure to inheritance tax. The transfer of assets to the trust was a potentially exempt transfer, provided the donor survived for seven years after making the gift. In turn, because the assets in the trust were included in the IHT estate of the life tenant not the donor, the value of the donor's estate liable to IHT was reduced.

Before March 2006, accumulation and maintenance trusts (often referred to as 'grandchildren's trusts') were also widely used, particularly by donors whose own children were already adequately provided for and who wanted at least some of their

interest settlements and accumulation and maintenance trusts and, subject to surviving for seven years afterwards, no IHT would arise on the estate of the person making the gift.

### March 2006 changes

Since 22 March 2006, gifts to these trusts have been treated as chargeable lifetime transfers. So, if gifts and transfers in the previous seven years exceed the IHT nil-rate band, IHT is payable at 20% on the excess, with more IHT due if the donor dies within seven years. Furthermore, IHT may be payable every ten years (at not more than 6%) and when property leaves the trust.

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“ ...the rationale and logic behind the creation of trusts remain and there are still good opportunities available.”

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Many settlements have been created with a life interest to the beneficiary, enabling them to benefit from the trust income while providing some protection for the underlying assets.

assets to skip a generation. This resulted in potential IHT savings, for both the donors and their children, who would not have to hold the asset in their estate for IHT purposes. Donors were able to benefit recipients not yet old enough to receive or hold assets in their own name, with income accumulated in the meantime or perhaps used to fund school fees.

At this time, there was no limit on the amounts that could be held in life



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## Current trust planning opportunities

Although the number of new trusts has reduced noticeably, the rationale and logic behind the creation of trusts remain and there are still good opportunities available.

### Nil-rate band

Lifetime trusts can be created up to the value of the nil-rate band (currently £325,000), with no IHT payable on this amount. If both spouses make gifts, the nil-rate band doubles to £650,000. For those with substantial estates and suitable assets, gifts up to the nil-rate band might be made again after seven years.

### Gifts out of income

There is no IHT liability on gifts into lifetime trusts made out of income, as long as it is made on a regular basis and leaves the settlor with enough income to maintain his or her usual standard of living, even if the settlor dies within seven years.

### Business Property Relief

If shares in a family trading company are transferred and 100% of Business Property Relief is available, then for IHT purposes, there is no limit on the value which can be put into trust. If the donor retains these shares in the estate and BPR is still available on

death, there is no IHT payable. If the company were to be sold however, and the potential donor is instead holding substantial cash sums, IHT is likely to be payable.

It is therefore worth considering transferring part of the shareholding into trust now (without limit on the value), so that when the company is sold the proceeds are outside the donor's estate. If the shares are sold first and then cash is given to the trust, only the nil-rate band limits will apply.

### How we can help

In certain circumstances, trusts can protect family wealth, and not just from the taxman. Our trust specialists can help you identify how trusts may benefit your own family or, if you are already involved with a trust, assess whether it is still meeting its objectives and that the administration costs are reasonable.

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## Meet the expert: Tony Mitchell



Shipleys principal, Tony Mitchell, is responsible for the day-to-day running of our trust team in London. Higher tax rates and ever-more complex legislation mean that our highly specialist expertise in this area is in greater demand than ever. Tony has more than 25 years experience delivering specialist trust advice, administering estates and day-to-day administration for wealthy families and offshore entities.

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# Companies Act: Does your company need new articles of association?



**The Companies Act 2006 was implemented in stages and all of its provisions now apply. The Act introduced new model articles of association, leaving many companies unclear about whether they should make changes or just carry on as before. So, do you need to adopt these new articles?**

## **The new articles**

The new articles reflect the changes in the legislation, which modernised company law to take account of technological advances and the way companies are used and operated today.

Most people agree that the new model articles are more logical. However, some feel that the language used is not as clear as it could be and that, despite its length and the interpretation notes, some gaps remain. And, of course, because it is a new Act, there isn't much case law and only a small number of precedents.

Overall though, it's a step forward. Companies formed through Shipleys use the new model articles, with additional provisions intended to address some of the issues that have emerged.

## **Why adopt new articles?**

Some companies will want to adopt the articles under the new Act because there is a particular 'trigger' event that brings them to attention, for example, a restructuring, merger, demerger or

acquisition. Others will want to take advantage of some of the 'ongoing' benefits it offers, such as the ability to send and receive notices and/or forms of proxy by email or other electronic means. Those companies that find themselves regularly referring to the articles are likely to fall into this group – as will those who thrive on admin! The rest may simply wait until a particular issue arises that would be more easily dealt with under the new Act and adopt new articles at that time. In the meantime, old articles based on the 1985, 1948 or earlier Acts can continue to be used, with no requirement to change.

with much larger penalties, which are even more severe for repeat offenders, so you might need to get together the information to prepare your statutory accounts earlier than in previous years.

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“ Some will want to take advantage of some of the 'ongoing' benefits it offers, such as the ability to send and receive notices and/or forms of proxy by email or other electronic means.”

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## **Can I carry on as before?**

Not quite. There is no requirement to change to the new articles, but under the new Act, shorter deadlines have been introduced for filing accounts with the Registrar of Companies. This affects all companies.

Public companies now have six months rather than seven from the year-end to file, while other companies have nine months rather than ten. These new deadlines are backed up

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*If you have any queries, speak to your usual Shipleys contact.*

# Holiday rental property Tax rules tightened



Let property which qualifies for tax purposes as a furnished holiday letting (FHL) has enjoyed advantageous UK tax treatment for a number of years. Unfortunately the UK rules did not comply with EU law, and as a result they were temporarily extended for 2009/10 to cover property anywhere in the EEA (EU countries plus Iceland, Liechtenstein and Norway), but were then due to be abolished altogether.

In June 2010, however, the Government said it would not repeal the FHL rules. Instead, the tax advantages from April 2011 are not quite as wide ranging (in particular the option to set FHL losses against total income to reduce your overall tax bill has gone). From next April it will be harder to qualify for them, but they remain potentially very valuable. The main advantages are explained below.

## Capital gains

Furnished holiday lets can benefit from business asset rollover relief. This means that if a gain arising when a property is sold or given away is re-invested in a replacement asset, tax on the disposal can be deferred until the replacement is sold. The replacement does not have to be another holiday let; a range of qualifying business assets are allowed, so it could be a completely unrelated new business.

FHL property may also qualify for entrepreneurs' relief, under which the effective rate of capital gains tax on

sale of the property can be reduced from 28% to 10%.

Other capital gains advantages include relief for gifts of business assets, relief for losses on loans to traders and exemptions for disposals of shares by companies with a substantial shareholding.

## Income tax

FHL profits are calculated slightly differently from normal rental income and capital allowances (for depreciation) and landlords' energy saving allowance are both available.

Losses sustained in UK FHL businesses can still be set against UK FHL profits. But losses from FHL businesses carried on elsewhere in the EEA can't be set against UK profits. They may only be relieved against FHL profits carried on elsewhere in the EEA.

## Inheritance tax (IHT)

A property which is let out but does not qualify for FHL will be included in an individual's estate for IHT (40% on death). However, IHT business property relief might be available if the taxpayer is actively involved in the business, meaning that no tax is payable on the value of the property. Unfortunately, the level of service the proprietor needs to provide to qualify for BPR is often impractical.

## Pensions

FHL income counts as earnings for the purposes of obtaining income tax relief on pension contributions.

## Averaging

A landlord may elect to average the letting periods of two or more of his properties and the 70/105 day rule can be relaxed in some circumstances.

## To qualify as an FHL

- The FHL business must be carried on commercially, and with a view to a profit.
- The total periods of 'longer term occupation' (a letting to the same person for longer than 31 continuous days) must not exceed 155 days during the relevant period. The relevant period is normally the tax year.
- The property must be available for commercial letting as holiday accommodation to the public for at least 140 days (210 days from 6 April 2012) during the relevant period.
- The property must be commercially let as holiday accommodation to members of the public for at least 70 days (105 days from 6 April 2012) during the relevant period. A letting for a period of more than 31 days to the same person is not a letting as holiday accommodation for the purposes of this condition.

# Changes afoot

New tax-filing penalty regime and consultation on a range of new measures

## Penalties for late tax returns

Make sure you don't get caught out by changes that HMRC has made to penalties for late tax returns.

As usual, there are fines for tardy returns – for the financial year to 5 April 2011, paper returns should be filed by 31 October this year, and online returns by 31 January 2012.

However, in previous years there has been no penalty to pay on a late return if no tax was outstanding or if any tax payable had been paid in full. That is has now changed. The new penalties are shown below:

**1 day late:** £100 – even if you have no tax to pay or have paid the tax you owe.

**3 months late:** £10 a day to a maximum of £900 – as well as the fixed penalty above.

**6 months late:** £300 or 5% of the tax due, whichever is the higher – as well as the penalties above.

**12 months late:** £300 or 5% of the tax due, whichever is the higher – as well as the penalties above. In serious cases it may be up to 100% of the tax due.

HMRC may consider some excuses for late returns to be reasonable, such as loss of documents through theft, fire or flood; life-threatening illness; the death of a partner; lengthy industrial action by Royal Mail; and issues with the online service. If you think you have a reasonable excuse, tell HMRC as soon as possible – don't wait until you receive the penalty. However, our advice is to try to file on time!

## Fuel rates

Advisory fuel rates for 'company cars' have changed with effect from 1 September 2011. Details are available on the HMRC website.

## Foreign currency bank accounts

These are currently assets for CGT purposes, with limited exceptions. Every deposit is an acquisition and every withdrawal a disposal, to be translated into its sterling equivalent. This treatment is to cease with effect from 6 April 2012. Ideally the balances on any such accounts showing a loss against cost in sterling terms should be realised before that date, but if possible realisation should be deferred if showing a gain.

## Other tax changes under consideration

There has been talk in recent times of integrating income tax and national insurance, but no further details have been released.

The Government has, however, announced a number of tax change consultations, of which several are likely to be effective from 6 April 2012. The most noteworthy cover tax residence, domicile, foreign currency bank accounts, venture capital schemes, equitable liability and mineral royalties. Of these perhaps the most interesting concerns the proposals which are intended to give certainty to an individual's tax residence status. A digest of the proposals is available under 'current issues' at [www.shipleys.com](http://www.shipleys.com). We will keep you posted.

## Domicile

There should be some simplification with effect from 6 April 2012. In the Budget it was proposed that non-doms adopting the remittance basis may, from that date, remit to the UK previously unremitted overseas income and gains tax-free if invested in suitable businesses. It is also proposed that tax exemption is to be available if the proceeds of sale in the UK of an object representing unremitted overseas income or gains are taken out of the UK within two weeks of receipt.

## Overseas holiday homes

Employers who have paid Class 1A National Insurance Contributions on an employee's beneficial occupation of an overseas holiday home (now retrospectively tax-exempt) may claim a refund. See [www.hmrc.gov.uk/thelibrary/tax-payee/nics-refund-holiday-homes.htm](http://www.hmrc.gov.uk/thelibrary/tax-payee/nics-refund-holiday-homes.htm)

## Junior ISAs

From November 2011 there will be a new form of ISA for children under 18, which may be invested in cash or stocks and shares. Parents and others will be entitled to add funds to a child's ISA up to a maximum of £3,600 per annum, which can be accessed by the child at 18. The child must be UK resident and have been born either before September 2002 or after 2 January 2011. Child Trust Funds were available in the intervening years, and the amount that others may add to these will be increased to £3,600 per annum.

## VAT News

### Salary sacrifice

HM Revenue & Customs (HMRC) recently announced a policy change that will affect the VAT treatment of salary sacrifice arrangements from next year.

At present, salary sacrifice arrangements are not treated as payment for the supply of goods or services and are therefore not subject to VAT. However, from 1 January 2012, this will change and VAT will apply at the appropriate rate.

The VAT rate depends on the nature of the underlying goods or services. Childcare vouchers, for example, will be exempt from VAT, so the employer will be part exempt and may need to restrict input VAT recovery.

Further details are available under 'current issues' in the resources section of our website ([www.shipleys.com](http://www.shipleys.com)).

### Golf

In HMRC's view the green fees that members' golf clubs charge are VAT exempt for members, but not non-members.

The Bridport and West Dorset Golf Club challenged this view and a tribunal agreed that fees for non-members should be exempt.

HMRC is appealing the decision but, in the meantime, affected clubs should consider submitting a protective claim for the refund of overpaid VAT.

### Shooting

Another tribunal win for the taxpayer confirms that shooting syndicates organising their own shooting on land owned by a third party are not making supplies of services, so have no obligation to register or account for VAT.

### Filing

We can now confirm that it will be compulsory for all VAT-registered businesses to file VAT returns online from April 2012.

### HMRC's old bank accounts

HMRC has confirmed that its old Bank of England accounts have now been closed. Businesses should use its Citi bank accounts to ensure payment reaches HMRC safely. Visit HMRC's website for details: <http://www.hmrc.gov.uk/payinghmrc/vat.htm>.

### Italian VAT numbers

Any business involved in making intra-EU supplies of goods or services will be aware of the need to collect VAT numbers from business customers (e.g. for compiling EC Sales Lists).

HMRC recently confirmed that changes to the Italian VAT registration system mean that any Italian VAT numbers issued before 24 February 2011 are no longer valid. Affected businesses should contact their Italian customers and ask for confirmation of their new VAT number.

### Smoking

Anybody who has ever tried to enter the UK via ferry from Belgium or France with a year's worth of cigarettes will know that customs officers tend to view such large quantities of cigarettes as commercial and are likely to seize them unless they can be convinced otherwise.

Customs use 'minimum indicative levels' to help determine what quantity of tobacco may be considered for personal use. These are currently set at 3,200 cigarettes and 3kgs of hand-rolling tobacco. From 1 October 2011, these figures will reduce to 800 cigarettes and 1kg respectively, which will make it considerably more difficult to convince customs officers that the tobacco is for personal use.

## Funding support announced for enterprise zones



The Government recently announced the locations of 11 new enterprise zones, adding to those announced in the Budget to bring the total to 22. Financial support for businesses set up in the zones through local enterprise partnerships includes:

- enhanced capital allowances for plant and machinery, in a limited number of cases where there is a strong manufacturing focus, giving an upfront cash flow benefit
- Tax Increment Finance (borrowing against future increases in business rate receipts to help fund the development of infrastructure) to support the long-term viability of an area
- UK Trade & Industry support for inward investment or trade opportunities in an enterprise zone.

By April 2012, local authorities will have the power to discount business rates for specific businesses within a zone. And by April 2013, new funding arrangements will allow local authorities to retain business rates and deliver Tax Increment Finance.

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*For further information about any of the above topics, please speak to your usual Shipleys contact or our VAT team.*

Paying less tax:

# strategies for entrepreneurs



**Having worked doubly hard in the current economic climate, entrepreneurs will want to protect their hard-earned money from the clutches of the taxman as far as possible.**

With income tax at effective rates up to 60%, and extracting profit from your company resulting in tax in excess of 50% (26% corporation tax plus tax on dividends at an effective rate of 36.1% for most), what opportunities are there to reduce your tax liabilities?

First there is the normal pre-year end tax planning that everyone should consider. Examples are making pension contributions, gift aid payments, sheltering income where it is in the effective 60% bracket, and investing in tax-efficient investments such as Enterprise Investment Scheme shares and Venture Capital Trusts. At the other extreme, more drastic options include moving abroad!

So is there anything in between? There are other types of tax shelter available, but HM Revenue & Customs is likely to look at them very closely, so they aren't to everyone's liking.

## Use of trusts

Some in the business fraternity have used the top-up pension rules to make payments into a type of trust known as an Employer Financed Retirement Benefit Scheme (EFRBS). Others have used the employee benefit rules to make a payment into an Employee Benefits Trust (EBT).

Both these vehicles could make loans to directors or employees, enabling the funds to be put in

the hands of the individuals. The argument was that the payment by the company was for the benefit of the director or employee and was, therefore, corporation tax-deductible and the subsequent loan from the trust was not subject to PAYE and NIC. Nor was it a dividend subject to tax for higher-rate taxpayers.

However, such loans from an EFRBS, EBT or similar vehicle made after 9 December 2010 now fall foul of the new 'disguised remuneration' rules introduced in the Finance Act 2011. So what is available?

## Approach with caution

Companies that set up EFRBSs or EBTs prior to 9 December 2010 may be wondering what to do with the funds within such vehicles. There may be planning opportunities here on how best to invest the funds.

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“ There are other types of tax shelter available, but HM Revenue & Customs is likely to look at them very closely, so they aren't to everyone's liking.”

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Certain new tax mitigation opportunities have surfaced recently. The general idea is to still make use of an EFRBS or EBT as part of the structure, but claim to avoid the disguised remuneration rules.

There are no guarantees that these shelters can achieve the benefits claimed by those promoting them. They are certainly not for the faint-hearted and HMRC may ultimately test them in court, as demonstrated in

some recent cases.

Extreme care needs to be exercised in examining these new tax structures. Documentation is critical – a number of the tax cases in which HMRC has succeeded against the taxpayer have involved documentation that was found to be less than perfect.

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*We would strongly recommend that you speak to your usual Shipleys contact first if you are considering a tax scheme of this type.*

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## New European role for Nancy



Shipleys' principal and VAT guru Nancy Cruickshanks has been elected chair of the Board of AGN Europe Ltd, which oversees the activities of the European region of AGN International.

Nancy's appointment reflects our longstanding support of and active involvement in AGN and the European region in particular. Her election reflects the high regard in which she is held by other AGN members and her valuable work on AGN's annual tax surveys and a prestigious new LexisNexis tax publication.

AGN's latest European tax surveys are now available at [www.agn-europe.org](http://www.agn-europe.org). The objective of the salary taxes survey, for example, is to establish how much of an employee's gross salary is left after income tax and social security charges. It also calculates the employer's social charges, allowing comparison of the cost of employment to an employer.

*For further information and full survey results, visit the AGN Europe website, [www.agn-europe.org](http://www.agn-europe.org).*

## In the press

Mike Luckett has written articles for Surrey Business News on the importance of good business records in light of HMRC scrutiny and how the Budget has affected businesses.

## Protection against tax enquiries for our clients

Enquiries by the tax authorities are on the rise as the Government attempts to plug the so-called "tax gap". Smaller companies are an easy target for HM Revenue & Customs and the penalty regime for incorrect tax returns is increasingly harsh. This is where our fee protection service comes in.

In return for a fixed annual fee, we will deal with any HMRC enquiries, rather than charging you for the time spent on your affairs on a normal basis. This means that in the event of an enquiry, we will deal with it on your behalf without you having to worry about the cost of our fees (up to £100,000).

Any tax, penalties, interest or surcharges payable as a result of the enquiry are your responsibility and are not included. The service only covers our fees for handling the enquiry for you.

Fee protection is not compulsory, but might be worth considering if you think you might be targeted as part of HMRC's crackdown.

## Shipleys' online resources – don't miss out



Regular users of our website will have noticed a fresh look and feel. We've updated the site to make it clearer and easier for users to find their way to the wealth of useful online tools, resources and publications that can assist them in their lives and business, as well as to information on our clients, services, people and offices. Well worth taking a look at the site, if you haven't already.

## Private client award for Shipleys

The firm has received an award for excellence from Private Client Practitioner as a top 25 accountancy firm.





## Capital gains tax

# Welcome relief?

### The extension of entrepreneurs' relief is good news for entrepreneurs looking to sell their business. But beware the pitfalls...

The headline rate of capital gains tax (CGT) for middle and high earners has increased, but so too has the lifetime limit for entrepreneurs' relief.

In 2008, the lifetime total was £1m. Today, it's £10m. This means qualifying gains charged at an effective CGT rate of 10%, generate a potential tax saving of £1.8m compared to £80,000 when the relief was first introduced.

Entrepreneurs' relief is available to individuals (and some trustees) on the disposal of all or part of their business, the assets of the business after it has ceased trading, and shares in a trading company. There are, however, some potential pitfalls.

#### Potential pitfalls

First, it is crucial that either "whole or part" of the business is sold. Selling individual assets is not enough and, if they are to be sold, it might be best to cease trading first.

Second, assets used by a company and owned personally by one or more

of the shareholders can, in principle, qualify for entrepreneurs' relief.

But the relief will be restricted if rent is being charged. Payment for using assets before 6 April 2008 is acceptable, but anything after that will result in a loss of relief.

The same considerations apply to assets used by a partnership and owned personally by one or more partners.

#### Scope for family businesses

Employees of a trading company who own at least 5% of the ordinary share capital qualify. This gives family companies plenty of scope for planning.

Since there is no minimum number of hours that an employee is meant to work, any employment will suffice – although, to be on the safe side, it ought to have proper

#### Don't forget:

In all cases, the qualifying conditions must have been met for a minimum of 12 months, ending on the date of disposal or date of cessation.

#### In summary

Entrepreneurs' relief is potentially very valuable, but to get the most out of it, planning is essential. In short, there is no such thing as too much advance notice of a possible sale.

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“ Entrepreneur's relief is potentially very valuable, but to get the most out of it, planning is essential.”

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commercial substance. Officers of the company, such as directors and the company secretary, also count.

**Detailed advice should be obtained before taking action, or refraining from taking action, as a result of information in this newsletter.**

Shipleys LLP is not authorised by the Financial Services Authority but we are able in certain circumstances to offer a limited range of investment services because we are licensed by the Institute of Chartered Accountants in England and Wales. We can provide these investment services if they are an incidental part of the professional services we have been engaged to provide.