Autumn 2013 Issue 20

# WatsON

Accountants • Business Advisors

# ZERO HOUR CONTRACTS

**What is all the fuss about?!**

Zero hour contracts are typically drafted to maximise flexibility for the employee and the employer. Used appropriately, zero hour contracts are an efficient way for employers to manage their staff and time respectively. In theory, the employer has access to many employees at any one time who are keen to work, the downside is - the employee has the ability to accept or decline the work as they see fit.

But recent case law and commentary on the subject is starting to question at what point a zero hour contract begins to entitle the employee to more than just the option to work. For example, when does an employer become legally or contractually responsible for the employee in terms of healthcare, maternity, sick leave and holiday entitlement?

Case law has determined that should the arrangements between an employer and employee be one that encompasses a mutual obligation then, regardless of what the zero hour contract states, that employee may be afforded certain contractual rights and statutory protection. The mutuality of obligation is just one of the key points to create an employer/employee relationship - specifically the obligation for an employer to provide work and pay in return for the employee accepting the work and performing the services.

It is very difficult for an employer to pinpoint exactly when mutual obligation arises. However, it was determined during a recent tribunal (Pulse Healthcare v Carewatch Care Services) that it was the repetition and assumption of work that indicated the mutuality of the relationship. The care services offered the same shifts at the same times under the same conditions, which the employees readily accepted. The zero hour contracts were set subsequently aside and the reality of the mutual obligation arose.

All employers that attempt to engage staff on zero hour contracts should be mindful of the potential inference that can be drawn from a mutuality of obligation. You should ensure that the employee is made aware that the employer is under no obligation to offer work. Likewise, there is no obligation on the employee to accept the work, if offered.

Despite the increased use of zero hour contracts, the longevity of these contracts going forward may be in doubt as both trade unions and politicians are calling for their abolition!

## Contents



## Our Services

- BUSINESS DEVELOPMENT SERVICE
- CORPORATE STRATEGY SERVICE
- OUTSOURCED MANAGEMENT ACCOUNTS
- TAXATION
- ACCOUNTING & AUDIT SERVICES
- PAYROLL
- IT SUPPORT
- LITIGATION SUPPORT
- COMMERCIAL BROKING & ADVISORY SERVICE

## Contact us


watson associates
ACCOUNTANTS • BUSINESS ADVISERS

**HAILSHAM**

**30-34 North Street, Hailsham, East Sussex, BN27 1DW**

**Phone : (01323) 842 119**

**Fax : (01323) 442 826**

**BRIGHTON**

**Lace House, 39-40 Old Steine, Brighton, East Sussex, BN1 1NH**

**Phone : (01273) 926 119**

**Fax : (01273) 926 826**


# RESEARCH & DEVELOPMENT

**The Government's introduction of tax relief for 'Above The Line' credit**

Following the Government's March 2012 consultation on 'Above The Line' credit, it has since implemented the measure. Mainly for the use of large company Research & Development (R&D) it is also available for SMEs (Small & Medium Enterprises) who are unable to claim SME R&D tax relief but meet conditions for large company R&D relief, for expenditure incurred on or after 1 April 2013, giving claimants the option of either claiming the 'Above The Line' credit or claiming tax relief for enhanced expenditure (but not both).

| CORPORATION TAX RATES | FULL RATE |
|---|---|
| From April 2013 | 23% |
| From April 2014 | 21% |
| From April 2015 | 20% |

The repayable 'Above The Line' credit is set at a rate of 49% for oil & gas ring fence businesses and 10% for other businesses. The higher rate for ring fence businesses takes account of the expenditure supplement available to those businesses where a claim is made for R&D tax relief under the existing regime.

For the period from 1 April 2013 to 31 March 2016 a company will be able to choose whether to claim 'Above The Line' credit or make a claim for R&D tax relief under the current provisions. However if it makes a claim under the new provisions, it will not be able to go back to claim the old provisions for future periods. The 'Above The Line' credit has the added advantage for companies making a loss in that it may be possible to surrender the credit for a repayment (something previously only available to SMEs under the SME R&D tax relief provisions). For expenditure incurred on or after 1 April 2016 the only form of large company R&D tax relief available will be relief under the 'Above The Line' credit regime.

The amount of repayment may be deferred for those companies with low staffing costs incurred on qualifying R&D activities. The credit will be repaid as follows:

- Firstly against the company's Corporation Tax liability for the period.
- Any balance remaining is only potentially repayable if it does not exceed the amount of PAYE and NIC liabilities in respect of staffing costs on qualifying R&D expenditure. If there is any balance available, then this can be offset against a Corporation Tax liability of the company for an accounting period other than the current one. If the balance remaining that is potentially repayable is reduced to nil then the reduction is treated as an R&D expenditure credit of the next accounting period.
- If there is a balance of credit remaining after the previous step this may be surrendered to a group company and used to settle any Corporation Tax liability of that group company that relates to the same proportion of a common accounting period.
- If no group relief is claimed or there is a balance remaining, the said balance is treated as a profit and the amount repayable is calculated net of the appropriate rate of tax (main rate if a non ring fence company and the main rate and supplementary charge if a ring fence company). This reduces the maximum refund to approximately 7.7%.
- This 'repayable amount' (net of tax) should then be used to settle any other sum payable to HMRC (for example VAT, other PAYE & NI costs etc).
- Any balance remaining after that is repayable in cash to the company, as long as it is a going concern.

In the period between April 2013 and March 2016 it will be necessary to consider whether it is more appropriate to claim under the new provisions or stick to the old (i.e. current) provisions. The old provisions do not provide for a repayment of large company R&D tax relief.

# PENSION REFORM - AUTO ENROLMENT

**The Seven Steps to Preparing for Auto Enrolment - Step 2**

Following the Summer 2013 issue of WatsON wherein we drew your attention to the forthcoming Pension Reform plans, here we highlight STEP 2 of the Seven Steps you will need to follow to prepare for auto enrolment.

## THE SEVEN STEPS

1. Know Your Staging Date
2. **Assess Your Workforce** - *in this issue*
3. Review Your Pension Arrangements
4. Communicate the Changes to all Your Employees
5. Automatically enrol your eligible job holders who are not already active members of a qualifying pension scheme
6. Register with TPR and keep records
7. Contribute to your employees' pensions

*PLEASE NOTE THAT **QUALIFYING EARNINGS INCLUDE**:*

- *SALARY/WAGES*
- *COMMISSION*
- *BONUSES/OVERTIME*
- *STATUTORY PAYMENTS AND OTHER PAY COMPONENTS THAT COULD BE CONSIDERED AS EARNINGS*

*PLEASE ENSURE THAT YOUR PAY COMPONENTS ARE SET UP CORRECTLY ON YOUR PAYROLL SOFTWARE TO ENSURE THAT THE PENSION CONTRIBUTION IS CALCULATED TAKING ALL THE QUALIFYING EARNINGS INTO ACCOUNT.*

## SEVEN STEPS TO PREPARE FOR AUTO ENROLMENT

### STEP 2
### ASSESS YOUR WORKFORCE

You will need to assess your workforce on your staging date (this only applies to employees engaged under a contract of employment or a contract of services - it does not need to be a written contract!). You do not need to include self employed workers. It is your responsibility as the employer to assess your employees and put them into one of the categories below:

- **Eligible jobholder** - *an employee aged between 22 and state pension age (SPA), working or ordinarily working in the UK under contract and having qualifying earnings in the relevant pay reference period that are above the earnings trigger.* **Workers that fall into this category must be automatically enrolled.**
- **Non eligible jobholder** - *an employee aged 16 – 74, working or ordinarily working in the UK under contract, having qualifying earnings in the relevant pay reference period but below the earnings trigger* ***or*** *aged between 16 and 21, or state pension age and 74 and working or ordinarily working in the UK under contract and having qualifying earnings in the relevant pay reference period that are above the earnings trigger.* **These employees are not eligible for auto enrolment but have the right to 'Opt In'**.
- **Entitled Worker** - *an employee aged 16 to 74, working or ordinarily working in the UK under contract and not having qualifying earnings in the relevant pay reference period.* **These employees have the right to 'Opt In'**.

The qualifying earnings and earnings trigger will change each PAYE year. Please refer to the TPR website http://www.thepensionsregulator.gov.uk/employers/automatic-enrolment-earnings-thresholds.aspx for current figures.

# LOANS TO PARTICIPATORS

**Changes to Rules in The Finance Act 2013**

Up until March 2013 it was possible to avoid certain rules surrounding loans to “relevant persons” of a close company.

The ‘Loans to Participator’ Rules only affect close companies, which are those under the control of five or fewer participators (principally shareholders) or any number of directors who are participators. They are designed to deter companies from transferring value (for example by extending loans) to individual participators in the company, or associates of such participators, without incurring a tax charge. Subject to exceptions for certain loans or advances, the tax charge arises on the company where the amount transferred is outstanding more than nine months after the end of the accounting period in which the loan or advance was made. The charge is equivalent to 25% of the amount of the loan or advance.

Until 20 March 2013 it was possible to circumvent these rules by arranging for:

- replacement loans that in effect repaid and re-advanced the loan so a charge didn't arise; or
- routing the loan or advance through other entities (such as certain partnerships and trusts) so that the charge was otherwise avoided. Some of these strategies were quite widely used.

## ACTION POINTS FOR THOSE AFFECTED

All close companies should be considering the following action points:

- Reviewing any finance arrangements with partnerships, LLPs and trusts which have partners, members, trustees or beneficiaries who are participators or their associates;
- Reviewing control procedures over loans or advances to participators and their associates;
- Considering whether any arrangements involving the extending of a benefit to a participator or their associate are caught by the new anti avoidance.

When assessing any actions, consideration will need to be given to the general anti abuse rule (GAAR) which became operative for tax arrangements entered into on or after 17 July 2013.

The Finance Act 2013 has expanded the scope of the rules to deal with this avoidance, setting limits on the tax effectiveness of recycling loans and loans or advances to a wider range of entities. As well as catching arrangements with a tax avoidance purpose, these changes could well have an impact on arrangements that do not have a tax avoidance purpose.

Please get in touch with us for a wider discussion of the potential impact of these changes and (if the close company is involved in a partnership) further changes that will affect partnerships.


# SUCCESSION PLANNING FOR FAMILY BUSINESSES

**Family Trusts - A tax efficient planning tool for your business**

With careful planning, shares in family trading companies are able be passed on to future generations without incurring charges to Inheritance Tax (IHT) or Capital Gains Tax (CGT), whilst allowing current owners to maintain effective control of the business.

## FAMILY TRUST FOR BUSINESS ASSETS

Although there are capital tax advantages in using trusts to hold shares in family businesses, there are also important non tax benefits. These benefits include:

- allowing the donor to give away shares whilst retaining a measure of control by acting as trustee.
- the assets remain protected in trust.
- possible provision of a lifetime income for one beneficiary (e.g. spouse) while retaining the capital for the benefit of other beneficiaries.
- flexibility in relation to the underlying assets and can allow changes in benefit to take place without having to formally change the ownership of the shares.

## CAPITAL GAINS TAX

When the gift of shares is to a trust which is not settlor interested (i.e. the settlor is not included as a beneficiary), it is possible to defer a tax charge on accrued capital gains in full ("holdover relief"). In addition:

- there will be no restriction where the company owns chargeable non business assets as the relief applies to all assets.
- further holdover relief may also be claimed if the shares are subsequently distributed out of the trust into the hands of beneficiaries.
- a charge to CGT will only arise on a future disposal of shares by the beneficiaries.
- any CGT analysis should also take into account Entrepreneur's Relief which would potentially reduce the tax rate on gains made by the beneficiaries from 28% to 10%. Individuals are now entitled to an Entrepreneur's Relief lifetime allowance of £10 million of qualifying gains.

## GIFTS OF SHARES INTO A TRUST

***Inheritance Tax (IHT) Exemption - Business Property Relief (BPR)***

Normally, the transfer of assets into a discretionary trust triggers an immediate IHT charge at 20%. However, where the necessary conditions are satisfied, relief from IHT is available on the transfer of relevant business property.

Business property comprising "any unquoted shares in a company not listed on a recognised stock exchange" qualifies for 100% business property relief for IHT purposes, once the shares have been held for two years.

When considering whether or not shares in a business qualify for BPR it is important to consider the following points:

- BPR is only available to trading companies. Shares of a company do not qualify for BPR if the business of the company "consists wholly or mainly of dealing in securities, stock or shares, land or buildings or making or holding investments".
- BPR will be restricted to the extent that share value is attributed to "excepted assets".
- Where land and buildings or other assets are used by the company but owned by a controlling shareholder, BPR will only be available at 50%.

Obviously this is only an outline of one of the options available to the family run business. For more detailed information please give us a call!

STAFF ROOM

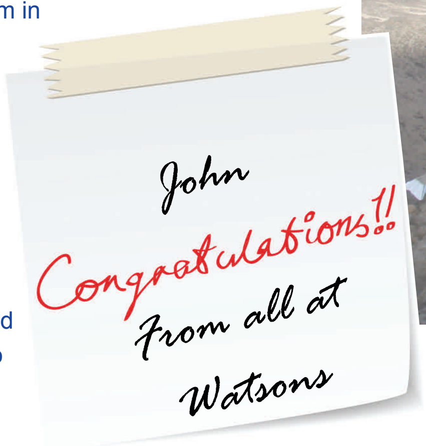
# JOHN IS ON TOP OF THE WORLD

**John Males challenges himself in a climb for charity**

Finally after a year of waiting Partner, John Males, completed his climb to the summit of Mount Kilimanjaro!!

*John "It was the most amazing and exhausting thing I have ever done in my life!"*

Standing 5,895m above sea level it is Africa's highest free standing mountain. Wanting to benchmark his 40th birthday, John combined his challenge with raising money for BLESMA (British Limbless Ex Servicemen's Association) after his cousin lost both legs and an arm in Afghanistan. Delighted with the support, he has raised over £2,500 with some very generous donations from clients, colleagues and friends.




John funded the trip himself so 100% of any donations will go direct to the charity. If you would still like to donate, please do so at www.justgiving.com/john-males.

# NEW MEMBERS OF THE WA TEAM

STAFF ROOM

**A warm welcome to our new staff members**

Over the last few months we have had the good fortune to be able to add to the Watsons team!

Here are a few new names which you may have contact with from time to time, may we introduce you to:

**Alex Heal -** Accounts
**Elicia Norvell** - Receptionist
**Hannah Petz** - Trainee Accountant
**Sarah Wilson** - PA to Geoff Slater
**Susan Harffey** - Accounts Manager

We are delighted to have the new members of the team on board - this now brings our numbers up to 45!


All of the Partners at Watson Associates are committed to recruiting and training qualified staff at all levels and would encourage anyone interested in pursuing a career in accountancy to contact us.

## Dates for your Diary

| | |
|---|---|
| **1 October 2013** | Due date for payment of Corporation Tax for period ended 31-12-2012 |
| **31 October 2013** | Last day to file 2013 paper Tax Return |
| **1 January 2014** | Due date for payment of Corporation Tax for the period ended 31-3-2013 |
| **31 January 2014** | First Self Assessment payment on account for 2013/2014 |
| | Capital Gains Tax payment for 2012/2013 |
| | Balancing payment for 2012/2013 Income Tax/Class 4 NICs due |
| | Last day to file 2013 Tax Return online |
| **2 March 2014** | Last day to pay balance of 2012/2013 tax and Class 4 NICs to avoid automatic 5% surcharge |
| **March 2014** | Budget speech by Chancellor of the Exchequer |
| **31 March 2014** | End of Corporation Tax financial year |