



Incorporation Considerations

The following Guidance Notes are designed to bring to your attention some of the key issues that you will need to consider prior to incorporation. It is not meant to be an exhaustive list of all matters that may arise as all businesses differ, but rather an aide memoire prior to any subsequent planning meetings with us.

- Do you understand the meaning of incorporation? You will become a director and shareholder of the company and the company will have to file accounts and an annual return (with a fee of £15) at Companies House. These accounts, although abbreviated and show little detail, are publicly available. A detailed leaflet explaining about Limited Companies and directors responsibilities can be found at <http://www.companieshouse.gov.uk/about/pdf/gba1.pdf>
- Directors have duties that include the responsibility to ensure that proper accounts are prepared and, as far as possible, to keep the company solvent.
- Company Accounts are more complicated and time consuming and therefore more expensive to prepare.
- Company records need to comply with Company Law.
- Who are to be the directors?
- It is possible to have a single director company but if there is to be a company secretary, this must be a different person.
- Who needs to earn a wage or receive income?
- You will need to decide who will own the company and understand the possible capital gains tax implications of transferring the business to the company.
- What assets will be transferred to the company?
- Does the current business have any goodwill?
- Is stamp duty payable by the company on the acquisition of these assets including any goodwill?
- A sale purchase contract will need to be drafted for the business transfer.
- A Partnership dissolution agreement will need to be drafted if a partnership is being incorporated.
- You will need to understand what share ownership means and who is to receive dividends.
- You will need to decide on a company name and check if this is available.
- You may also wish to check that a domain in the same name is available for a future website.
- Consider the level of your ongoing profits and the amount you will need to draw from the company for personal use. This is a crucial part of the tax planning strategy.
- How many staff does the business have? A new PAYE or CIS scheme will need to be set up.
- You will become an employee and will need to consider the benefit in kind legislation. Few company employees have company vehicles these days due to benefit in kind tax costs. You will need to log any business trips and claim reimbursement from the company for business mileage.

- Confirm that the 'IR35 rules' will not be an issue. The IR35 rules can apply where the business owners or directors provide personal services for a small number of customers. This will mean that the company will not have the advantage of paying out tax-efficient dividends. If you have been treated as self-employed in the past then IR35 should not usually be a problem. If you are unsure have a look at this link <http://www.hmrc.gov.uk/ir35>
- Your pension provider will need to understand the proposed change to your self employed status.
- The timing of the incorporation needs to take into account any overlap profits which are being brought forward.
- If you are VAT registered the company will probably need to be registered also. Consider transfer of going concern issues particularly on property.
- You will need to change your business letterhead so that it complies with company law.
- You will need to consider when the company's year end is going to be. In addition to the tax considerations it may be that certain times of the year are inappropriate for the company year-end (e.g. busy periods).
- Current customers and suppliers need to be notified.
- Sale contracts and supply agreements will need to be transferable. Will your current customers or suppliers have a problem with this?
- You will not wish to give personal guarantees for company debt. Will any of your suppliers require a personal guarantee from you?
- Does the current business trade under a licence? Will a new licence be required and what will be the costs?
- Will you need to meet new more stringent regulations after transferring the business to a new legal entity? If so what additional costs would this incur?
- HP/Lease or similar loan agreements (where applicable) will need to be transferred.
- Insurance companies will need to be notified for all policies.
- DVLC will need to be notified and log books changed for vehicles being transferred.
- A new mobile phone contract in the name of the company may be required. In this way, all calls (business and private) and rental charges can be paid for by the company and no tax charge will arise. If the agreement remains in the name of the individual, however, then only the business calls can be charged to the company (via the monthly expense claim).
- A business bank account will need to be opened once company has been incorporated.
- Any withdrawals should be by way of salary or dividend or repayment of a loan if the company owes you money.
- Agree a realistic implementation date.
- Consider all additional costs as well as potential savings.

Prepared by David Parkes AFA
Blue Box Accounting

Tel 01427 810322
Email enquiries@blueboxaccounting.co.uk
Website www.blueboxaccounting.co.uk

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