



### E-Update: April 2009

This month Robert looks at the question of what payments can be made to partners for secretarial services....a very topical issue in view of the recent media furore over MP's abuse of their expenses.

#### Dear Colleague,

The main benefit to business proprietors making a payment to a cohabiting partner, regardless of their relationship status or gender, is that the payment increases the couple's joint after tax disposable income. This is achieved because the business gets tax relief on the payment (worth 28% or 48%+) whilst the recipient either pays no tax or less than the business proprietor would have paid. As normal, to qualify for tax relief the payment must be "wholly and exclusively" for the business. In addition the duties and services claimed by the business must be:

**1) duties and services that have actually been performed.**

The recipient must have had the time and capability to carry out the duties e.g someone in full time employment or at college could not claim to be a business secretary.

**2) at a rate not more than the 'market rate'**

This is not unreasonable, but when considering the times and short notice at which some duties and services must be carried out, it could be impossible to find anyone other than a cohabiting partner to do it. regardless of the rate of pay.

**3) actually paid**

This is a principle established in case law.

The employment status of the service provider can be crucial to the allowability of the payment as a business expense. The following are typical:

#### Employee

This is the simplest status, that of a casual employee. The main disadvantage is that they are subject to PAYE and therefore maximum benefits accrue when the pay is below the Lower Earnings Limit (£4,680), and they have tax free personal allowance to off-set against the payment, or the tax that they would pay on the payment is less than the business proprietor would pay.

#### Self-employed

This avoids PAYE and Class 1 National Insurance but to qualify as self-employed certain other criteria need to be present, in particular that the service should be provided to other businesses and not just to one in particular This status would only work if the cohabiting partner did actually operate as a business with other customers apart from that of the cohabiting partner.

#### Partner

This has the disadvantage of un-limited liability, unless a LLP (Limited Liability Partnership) is formed.

#### Director

This will only be relevant to a substantial business, given the administrative burden. Please contact me direct for more help and advice regarding this.

**Robert Bradley**

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