

Question 1

1)

Members of the Association of Taxation Technicians are required to take the duty of care as expected of a person with that knowledge, skill and experience. This would apply to all members of a professional body.

2)

The activities regulated by the Financial Services and Markets Act 2000 are:

- The dealing and arranging of investments
- Deposit taking
- Safe keeping and administration of assets
- Managing investments
- Investment advice
- Establishing collective investment schemes
- Computer based activities dealing in investments for instructors

A person may be able to carry out regulated activities if he/she is authorised to do so or is exempt. If they are not it is illegal and proceedings can be taken against them. A person must be authorised by the FSA or a DPB (designated professional body) e.g. Institute of Chartered Accountants. The Chartered Institute of Taxation is not a DPB. They must be authorised or exempt.

3)

There are strict principles that need to be adhered to under data protection (Data Protection Act 1998)

- The information must be obtained and kept lawfully
- The information must be obtained for a specific purpose and held for that purpose only
- The information must be kept up to date
- The information should only be kept for as long as required
- The data should be accessible to the individual on request
- The information must be kept and stored safely and securely
- People who deal with the information must have adequate training or liability for misuse could lie with the employer.

Question 2

Miss G Steven
1 Somewhere Place
Leeds

Our ref: RH/ATT
Contact: 0113 000 0000
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10 May 2007

Dear Gloria

Setting up a business and employment advice

Further to your enquiries into setting up a business and the employment of a secretary/assistant, I can advise you as follows:

Initially the business will need to be registered with the registrar of companies. Dependant on the scale of the business formalities such as a trading certificate, Memorandum of Association and Articles of Association may be required, however as you are setting up as a sole trader these will not be required. You must advise HM Revenue & Customs so that you are registered for self assessment and must inform NICO (National Insurance Contributions Office), as further contributions are made for the self employed. When deciding whether to trade from home or rent separate premises the following must be considered:

- If working from home, check insurance and legal documents to ensure the nature of work is permitted.
- Business rates may also be payable.
- If renting you must check that the lease allows the nature of work to be carried out there and insurance needs to be again checked.
- A survey is advised or advice from a professional regarding the premises for business purposes.
- Must check there are no environmental or planning permission restrictions.

For employment, an employment contract needs to be negotiated either verbally or written. Within 1 month certain details need to be completed and submitted including the following:

- Name & address of employer
- Name & address of employee
- Agreed notice
- Terms of employment – whether fixed period
- Salary
- Benefits

You must also consider tax. This is deducted via PAYE and must be collected and paid.

In order to raise finance the best option would be a loan from a bank. Larger companies usually have shareholders who raise capital through the purchase of shares or debenture holders

For a loan you will need to have a good business plan with profit forecasts to the bank. The bank may request that the business is run in a certain way or may hold an asset e.g. business premises as a guarantee for a loan.

As the business is risky and you as a sole trader have unlimited liability, your assets and possessions may be at risk. This could only be avoided by incorporation to a limited liability company. You will therefore need to consider what creditors, tax liabilities, are due on closing down the business as the creditors will have an entitlement. Any loans and rent will need to be paid. On leases these will need to be covered up until the contract or lease is reacquired.

If you have any further queries please do not hesitate to contact me.

Kind regards,

J. Smith
Tax Adviser

Question 3

The following clause would be recommended to be included in a will:

1. The Executors and Trustees – They should be named in the will in order to obtain probate to distribute the estate and be a trustee. This way the estate can be distributed as the deceased would like.

2. Legacies – There are different types of legacies that can be left e.g. specific legacies, general legacies, gifts of the remainder etc. These should be included as required.

3. A clause to revoke previous wills & codicils – this will prevent any previous wills being looked into.

4. Specific legacies & Pecuniary legacies (land & buildings) – this should be left either in a trust, however specific IHT planning should be taken into account to use the nil band rate.

5. Directions for burial – instructions can be left for burial or cremation as the deceased would wish.

6. Guardians – guardians should be named for minors. Especially the case for the unmarried father as he does not automatically become the guardian. An unmarried mother should consider this.

7. Mini discretionary trust – again the trustees should be named and property could be left this way. For IHT planning the use of the nil band rate needs to be considered.

8. Administrative provisions – this should include such provisions as the power to continue a business, the power to insure, the power to advance income and capital etc.

9. Other provisions – the power of the legal professional to charge.

Question 4

The Directors
Harmony Ltd
1A Place
London

our ref: RH/ATT
10 May 2007

Dear all,

Further to your recent enquiry preceding the set up of Harmony Ltd I would like to advise you of the following in relation to Company Secretaries and the meetings that should be held.

Company Secretary

The company secretary is also known as the chief administrative officer of the company. Initially to become a company secretary no prerequisites are required in terms of qualifications. This may be different depending on the requirements of the company and if the company were to become a PLC (Public). The role of the company secretary would include the following:

- Issuing of shares
- Filing the annual return and other documents, for example the resolutions passed, to file at Companies House (usually within 15 days).
- Arranging meetings
- Ensuring accounts are filed on time.
- If written resolutions are passed to ensure it is signed by all members.
- To ensure that notice is given to the required members before a meeting
- Ensuring audits are carried out if required dependent on the size of the company.

The company secretary is in a position of trust (fiduciary duty) and is therefore required to carry out his/her work with a duty of care and to a standard expected of him/her. There are some statutory provisions on the role of a company secretary which I will advise you on in further detail when a company secretary has been found.

The two meetings that should be held are an AGM (Annual General Meeting) and an EGM (Extraordinary General Meeting). For a Plc an AGM is required every year within 18 months from incorporation and not less than 15 months between them. A 21 day notice period is required.

In an AGM you will be required for a Quorum of members to attend, this will normally be included within the Articles of Association. The nature of the business will normally be in relation to the production and audit of the accounts, the appointment of auditors, the removal and addition of directors and the discussion and voting of any special, ordinary, extraordinary, elective resolutions. Usually the accounts will be provided to the members before the AGM.

Only members who holding voting shares (ordinary not preference shares) will be entitled to attend and vote at the meeting, however notice must be given to all members. Notice must also be given to the auditors, who also have a right to attend.

An EGM is usually called for by the directors or by shareholders who hold more than 10% of the shares. Nature of the meeting will normally be to dispense of an AGM, changes to the accounts, to discuss interim dividends which are distributed by the directors, removal of a director.

The removal of a director can also take place in an AGM. The removal of auditors will be discussed and new auditors to replace will be announced within the meetings. A proxy can be sent to attend and vote at a meeting on behalf of a member.

Shorter notice can be given of meetings but this must be agreed by all members.

If any resolutions are passed they must be filed with Companies House usually within 15 days.

If you require any further information please do not hesitate to contact me.

Kind regards,

J. Smith
Tax Adviser