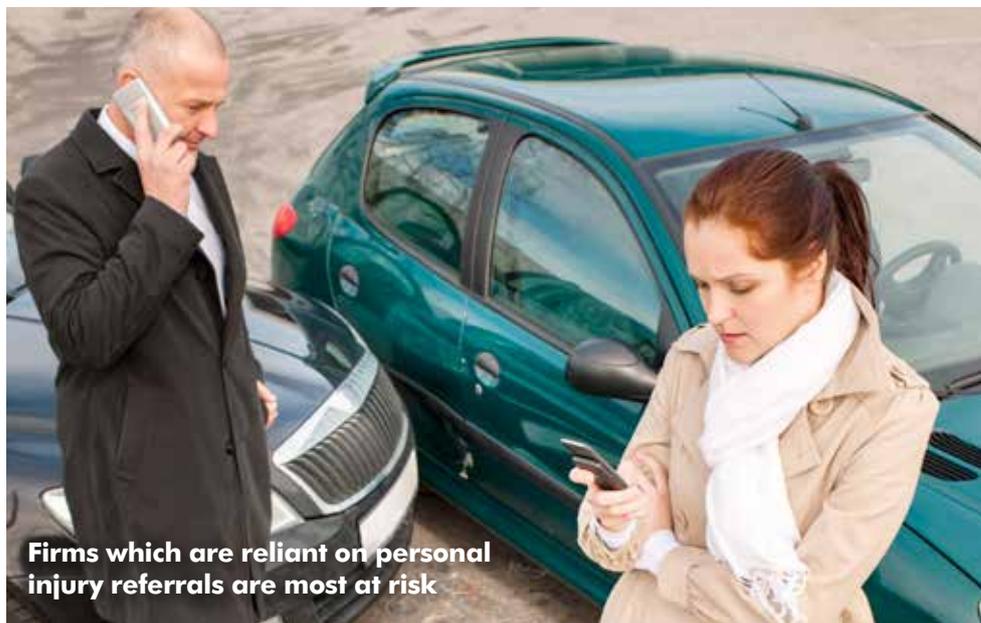


the firm

A legal sector publication brought to you by Moore and Smalley Chartered Accountants and Business Advisors



SRA finalises wording for referral fees ban



Firms which are reliant on personal injury referrals are most at risk

According to the Law Society website, the Solicitors Regulation Authority (SRA) board met on 23 January 2013 to finalise the SRA Handbook's wording on the referral fee ban, which is expected to come into force for personal injury claims at the start of April 2013. The ban will affect solicitors, claims management companies and insurers.

When is there a payment for a referral?

The referral fee ban prohibits payment and receipt of referral fees in all personal injury cases. Where there is a referral of a matter, or an arrangement for another person to provide services, a payment will be prohibited to the extent that it relates to that individual matter.

What is the effect of the ban on firms?

Firms which are reliant on personal injury referrals are most at risk. Furthermore, there is going to be a decline in the personal injury market in the next few years due to changes to the costs regime. This is not going to impact firms immediately if they have bought in work prior to April 2013. However, we do recommend that firms have taken reasonable

steps to assess their business plans if the ban goes ahead as planned.

How will the SRA monitor referral fees?

The SRA has not yet confirmed how it intends to monitor referral fees as the strategy is still in draft.

Since 6 October 2011 when the SRA released its new handbook, one of the main objectives was to enable firms to take responsibility for their own compliance with legal and regulatory requirements. The SRA expect firms to comply, although in reality it is more likely that they will see attempts to "get round the ban".

Marketing company

Firms may choose to outsource their marketing function to an independent company. To avoid the payment for a referral the marketing company would charge a monthly fee to manage and service the advertising and marketing for a panel of solicitors. The lawyers are then referred clients, but they are not paid for on a case by case basis.

Alternative Business Structures

Alternative Business Structures (ABSs) will allow external non-lawyers to invest in businesses offering reserved legal services and allow them to share the management and control of the business with lawyers.

ABSs could do the work previously carried out by two separate companies in the personal injury marketing chain, removing the need for a referral fee to be paid. Many claims management companies have already taken this step and set up in business with the personal injury lawyers to provide the in house service.

This may seem like an attractive option to get round the ban but be aware that the application to become an ABS will be scrutinised. Models which suggest an intention to continue as more than one business, with referrals being made between them, may not be licensed if the SRA believes the referral arrangements will be unlawful. Applicants will need to demonstrate that they are truly operating as one entity and not breaching conduct rules for generating new clients.

Timescales and next steps

The SRA planned timescales and next steps are shown below.

| | |
|---|-------------------|
| Code changes to be approved by SRA Board | 23 January 2013 |
| Changes to Regulatory Framework approved by LSB | Mid February 2013 |
| Final version published | Early March 2013 |
| Implementation of ban | April 2013 |

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Preparing for the year end

As we are fast approaching the end of the tax year, it is important to review the different ways business owners can reduce the tax they pay on business profits, as well as ensuring they receive the most income personally.

In this article, Louise McDuff interviews tax partner, Rachel Marsdin, and financial planning director, Laurence Kelly who discuss the potential ways partners, shareholders and directors can save tax and plan ahead for 2013/14.

Rachel, what are your recommendations in terms of tax mitigation?

For business owners, it is important to look at how you can save money through the capital allowances scheme. If you are planning to spend money on plant or machinery soon, it is worth purchasing the kit before the year end. This will allow tax relief to be claimed in this financial year.

Business owners may also want to think about accruing for employee bonuses. However they would need to make sure these are paid within nine months of the year end.

From a shareholding perspective, if you run your business through a company you want to look at what dividends you are taking out of your business before the tax year end. Firstly, to make sure you are using up your basic rate band, but also to make sure you aren't taking excess dividends out of the business. If you earn over £50,000 then child benefit will be affected and there could be a clawback by way of an extra tax payment due next January.

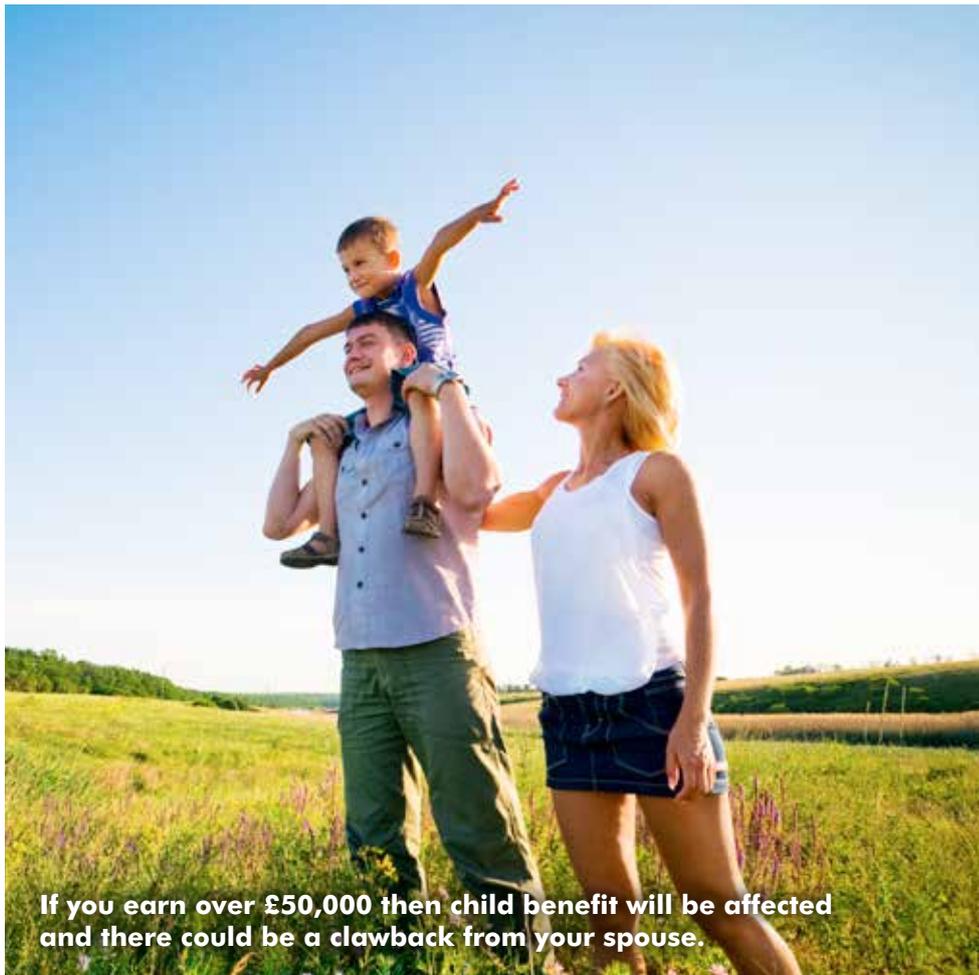
Finally, you need to ensure you are not going into the 50 per cent tax rate band this year. If possible wait a few months and pull your money out after the 6th April and pay the 45 per cent tax rate not 50 per cent.

Laurence, what is there from a financial planning perspective?

It is really pensions, pensions and pensions.

There have been many changes to pension legislation recently but it is still possible to get significant amounts into your pension plans, from either a personal point of view or a company point of view.

From a personal perspective, you will receive



If you earn over £50,000 then child benefit will be affected and there could be a clawback from your spouse.

tax relief at your highest marginal rate on those contributions.

From a company perspective, the company will receive corporation tax relief on those contributions.

For example, while the limits have been reduced to £50,000 per annum, there is something called 'carry forward' which will enable you to carry forward unused relief from the previous three years. This means that you can pay up to £200,000 if you have sufficient scope and the funding, to do so.

So the answer is that you need to make sure you use your pension allowance up.

Rachel, we have talked about the potential tax savings a business can make, what about the personal affairs of the directors?

If you are thinking about buying or selling

shares, or if you have other assets you are looking to sell, make sure you utilise your capital gains tax exemption. This currently stands at £10,600 and it is worth using because it really can accumulate over the years to give you tax free gains.

Another area to consider is, if you are kind enough to gift to charity, whether you want to bring gift aid donations forward into the current tax year. This will secure the tax relief at the higher rates now, rather than wait a year and have the possibility of a lower rate.

Laurence, what about the personal affairs from a financial planning point of view?

From a personal perspective look at Individual Savings Accounts (ISAs). The current limit that individuals can pay in each year, tax free is £11,280. Since their introduction in 1987, people who have contributed to them every year have accumulated large funds.

These funds are tax free, instantly accessible in most cases, and don't have to be put on your tax return. While it might appear to be a modest amount, if you have a partner then you can both pay into one each which would save over £22,000 each tax year. This soon builds up large amounts with some of our clients having savings of hundreds of thousands of pounds in very tax efficient portfolios. So it is definitely a case of using your ISA allowance if you can.

If you would like more information about either of these topics, please do not hesitate to contact us.



Since ISAs were introduced in 1987, people who have contributed to them every year have accumulated large sums of tax free funds.

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The roles and responsibilities of a COFA

Unlike the COLP, the COFA can be a non-lawyer and the role can be performed by a manager or an employee. However, the responsibility they will have means it should be someone of sufficient seniority.

They need a good understanding of SRA Accounts Rules and general financial matters. Typically this would be the person performing the finance director role, or in a smaller practice it may be the head cashier or practice manager.

Responsibilities of the COFA

The primary responsibilities are to ensure compliance with SRA Accounts Rules, record any failures, and report significant failures to the SRA. Meanwhile, secondary responsibilities include the efficient running of the finances and the financial regulatory compliance of the practice.

How to ensure compliance

The COFA needs access to all accounting records and should make regular checks on accounting systems and client file and ledger reviews. They also need to ensure the reporting accountant has prompt access to records and that breaches of SRA Accounts



Rules are remedied promptly, as well as monitoring, reviewing and managing risks to compliance with SRA Accounts Rules.

How can the COFA record failures?

To keep a record of all breaches, the COFA will need to put systems in place to:

- Capture all breaches
- Monitor overall compliance
- Assess effectiveness of systems
- Mitigate against risk of further breaches
- Comply with the duty to report

What does the COFA have a duty to report on?

The COFA should report significant breaches to the SRA that are 'material' because they form a pattern. It must be noted that immediate remedy does not remove the possible need to report.

When deciding on materiality of a breach the COFA should look at the detriment to clients, the extent of loss of confidence in the firm, the scale of the issue, and the overall impact on the firm, clients and third parties. Even trivial breaches should be recorded and reviewed to ensure they don't form part of larger problem.

Secondary responsibilities

The COFA should also consider whether the following systems and processes, suggested by the SRA, have been implemented:

- Clearly defined governance arrangements
- Appropriate accounting procedures
- Appropriate authorisations of client account payments
- Undertakings given only when needed

- Checks on new staff and contractors
- Basic regulatory deadlines not missed
- Systems for monitoring, reviewing and managing risk
- Issues of conduct given weight in decision making
- File reviews
- Supporting development and training staff
- Obtaining necessary approvals for managers, owners, COLP, COFA
- Duties to clients and others fully met, even with staff absences

The checklist above will form a key part of the compliance plan.

What liability does the COFA have?

The COFA is not personally liable for breaches, but could be liable for failing to ensure compliance. There is potential for regulatory action to be taken against the COFA if they fail to meet their responsibilities.

The COFA must have authority to report to the SRA and firms should implement

a contingency plan in the event of COFA absence. Seven days notice to the SRA is also required for any COFA changes.

Moore and Smalley is running some half-day COFA workshops in April and May, if you would like further information please do not hesitate to contact me.

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