BUSINESS UPDATE

Winter 2010

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'Time to pay' woes

Since 2008 HM Revenue & Customs (HMRC) has provided the 'Time to Pay' (TTP) scheme, a rapid response service to businesses that need more time to pay their tax liabilities. Since then, the qualifying conditions for TTP have been tightened up considerably.

Sometimes the guidelines for this scheme are misunderstood, leading to businesses being refused a TTP arrangement when one should otherwise have been granted. There is a myth that TTP cannot cover Pay As You Earn (PAYE) liabilities; in fact it can. If the PAYE due is less than £10,000 and it can be paid within 12 months, HMRC should grant TTP. Larger debts or longer payment periods will be referred to a senior HMRC officer.

If the PAYE liability relates to the 2010/11 tax year, there could be a penalty for late payment. Unfortunately, the PAYE computer that issues penalty warning letters does not record that a TTP arrangement has been set up.

Do not ignore a warning letter, because you may have to pay the penalty if you cannot meet your agreed instalment plan under your TTP arrangement. Reply to the warning letter, setting out:

- The date you requested TTP.
- The PAYE months included in the arrangement.
- The agreed payment amounts and dates.

All contractors in the construction industry scheme (CIS) have their tax records regularly reviewed to see if they still qualify for gross payment status. If the CIS computer finds that you have failed to pay your tax on time, your gross payment status is withdrawn. The CIS computer will not know if you have a TTP arrangement, so any late payment of tax will be marked as a failure. You need to appeal in writing within 30 days against the withdrawal of gross payment status, and your appeal should include all the details of your TTP arrangement, as listed above.

Another problem with TTP is caused by the debt management computer in the Tax Collector's office. This computer has been known to issue distraint (or in Scotland 'poinding') notices to businesses that have agreed TTP for their tax debts. If you receive a distraint or poinding notice you need to take action immediately, or you could have your goods seized by a bailiff or Sheriff's Officer. Please contact us without delay if any of the above situations apply to you.


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PAYEment in the post ...

HM Revenue & Customs' (HMRC's) new Pay As You Earn (PAYE) computer has started to reconcile the PAYE records for every employee for the tax years 2008/09 and 2009/10. This is why Royal Mail is busy delivering millions of PAYE tax calculations (form P800) to taxpayers.

If you have not received a P800 form, don't panic because you may not need one. If you complete a self-assessment tax return form, all your tax liabilities are reconciled on that form so you do not need a P800.

If you do receive a P800, check the information against your forms P60 and P11D, which detail your total pay and benefits for the tax years concerned. Contact HMRC immediately on the number shown on the form P800 if you find an error.

You should receive a cheque for the repayment within a few days if the tax calculation shows an overpayment. There is no need to supply any further details to HMRC to get this repayment. Please *do not* respond to emails or phone calls asking for your bank details, because such calls or emails are almost certainly part of a scam.

There will be nothing to pay immediately if the tax calculation shows underpaid tax. Where you owe less than £300 for either the 2008/09 or 2009/10 tax year, the amount due will be deleted from the PAYE computer so you will not have to pay.

The tax will be collected through the PAYE system if you owe up to £2,000 for the two tax years. In early 2011 you should receive a PAYE code (form P2) that sets the tax due against your allowances for 2011/12. As a result, you will have slightly more tax deducted from your earnings in each month to 6 April 2012.

HMRC will ask you to make payments starting in 2011 if you owe more than £2,000. However, if you will have difficulty in paying the amount due, whether this is more or less than £2,000, you can ask to pay over a period of up to three years.

Where you can prove that HMRC ignored information relating to your tax affairs for more than 12 months after the end of the tax year, you may be able to avoid paying any tax due. This procedure is called Extra Statutory Concession A19, but you need to make a special claim for this to apply. We can help you with this, so contact us for more information.

Did you know that the minimum wage increased to £5.93 an hour for workers aged 21 and over from 1 October 2010? Previously, this highest rate only applied to workers aged 22 and over. The new rate for workers aged 18 to 20 is £4.92 an hour, and for those aged 16 and 17 it is £3.64 an hour. Lower hourly rates apply to younger workers. An apprentice minimum wage of £2.50 an hour has been introduced for apprentices under 19 and for older apprentices in their first year of apprenticeship.

The pensions shake up: not over yet

The Government has made some important announcements on pensions which will have a widespread impact.

In April 2010, several major changes were made to the basic state pension, but the new Government has many other reforms on which it is either consulting or preparing legislation:

- **State pension age (SPA)** In October the Government announced that the SPA for men and women will rise to 66 from April 2020, earlier than previously planned. As a result, the phasing-in of a SPA of 65 for women will also be accelerated between April 2016 and November 2018.
- **Inflation adjustments** Many increases for public sector pensions, private sector final salary schemes and state pensions have traditionally been linked to movements in the retail prices index (RPI). In the small print of the June Budget, the Government announced that for state and public sector pensions it would generally be switching over to the consumer prices index (CPI) from April 2011. A subsequent Department for Work and Pensions announcement revealed that the same revision would be applied to statutory increases for private sector final salary schemes – both during and before retirement.
- **Annuitisation** The June Budget moved from age 75 to age 77 the point at which private pension funds must be used to buy an annuity or switched to an alternatively secured pension (ASP). The Treasury has since issued a consultation paper on scrapping the requirement to buy annuities altogether, abandoning the largely unused ASP and reforming the income withdrawals rules. Changes are now likely to come into effect from April 2012.
- **Tax reliefs** In October, the Government announced revised restrictions on the tax relief available on pension contributions, designed to replace the current special annual allowance from April 2011. The new regime cuts the annual allowance – the effective limit for tax-relieved pension contributions – from £255,000 to £50,000 per tax year, albeit with some scope to carry forward unused allowances.

So what do all these changes mean? Experts already estimate that there is a yawning gap of over £1,100 billion between most people's expectations of what they will get in retirement and what they will actually receive.

As we have always advised, it is never too early to begin saving for retirement and to review all your pension options. The nearer you are to retirement age, the less time and fewer options you have to take any necessary remedial action. Otherwise, as one commentator has put it, you have to consider a 'triangle of compromise': saving more now, working for longer, or retiring on less money.

Did you know that if a company car is classed as a pool car, then the employees who drive that car are not taxed for any private use? To qualify, a car must be used for business journeys by more than one employee, and any private use must be incidental. The car must not be used by one employee to the exclusion of other employees, and it should not normally be kept overnight at an employee's home. HM Revenue & Customs suggests that a business should keep mileage records to prove these conditions have been met. This is not compulsory, but the business must be able to show that the car is not used exclusively by just one employee.

Property letting traps

While the buy-to-let boom is over, recent trends may be leading many reluctant homeowners into the rental market. The latest signs from the housing market suggest that we may be heading for another slowdown, if not an actual double dip. Recent research by More Than Business concludes that, if there is a second housing downturn, as many as 10% of homeowners may be forced to let their existing properties and downsize.

Letting produces an income, of course, and allows homeowners to hold on to their properties with the hope that things will improve. First-time landlords, however, need to be aware of the potential traps and their legal responsibilities towards tenants and third parties. More Than's report lists eight points worthy of consideration:

- **Electric and gas appliances –** Landlords must ensure the safety of electrical installations and have gas appliances checked annually.
- **Energy performance certificates (EPCs)** – These have been a legal requirement since October 2008. They must be provided to tenants free of charge before the contract is signed.
- **Damage deposits** – Since 2007, landlords letting their property under an assured short-hold tenancy (the most widely used form of lease) have been legally required to place tenants' deposits in one of three approved tenancy deposit protection schemes. Failure to do this may result in a court action against the landlord for three times the amount of the deposit.
- **Tenants' rights** – Landlords should make sure they become familiar with tenants' rights as well as their own. For instance, landlords may not enter a let property without the tenants' permission.
- **Tenants' references** – Landlords should run credit and reference checks on prospective tenants, to make sure they are fit and proper persons and will be able to pay the rent.
- **Fire regulations** – The property must comply with fire-safety standards with respect to furniture and furnishings, and be supplied with extinguishers, fire alarms and fire exits.
- **Insurance** – Standard owner-occupier insurance policies are not adequate for letting. Special landlord policies are needed.
- **Lease or contract** – The most frequently used lease or rental contract is the assured short-hold tenancy.

We should add a ninth point: homeowners who did not originally contemplate letting and have a mortgage will require the mortgagor's consent to let their property. In the current economic circumstances, this ought not to be unreasonably withheld.

On your bike – but by the rules

Cycling is a popular pastime, so the Cycle to Work scheme that allows employers to provide their employees with tax-free bicycles is enjoying widespread favour. Unfortunately, some employers are not operating the scheme quite as HM Revenue & Customs (HMRC) intended.

The Cycle to Work scheme enables employers to buy or hire bicycles to lend to their employees for a defined period. The use of a bike is a tax-free benefit. Some employers want to recover the cost of providing a bike and may consider offering the scheme only to employees who are prepared to give up part of their salary through a salary sacrifice arrangement.

One of the key conditions of the Cycle to Work scheme is that it must be available to all employees, and this condition may not be met if the scheme cannot be used by certain low paid employees. By law, such employees cannot have their pay reduced to below the national minimum wage rate.

The second mutation of the scheme is when the employee buys the bike from the employer at the end of the loan period – this is quite a common arrangement. However, HMRC believes that where there is an automatic transfer of the bike to the employee at the end of the loan period, the conditions for the Cycle to Work scheme do not apply and no tax exemption is therefore available.

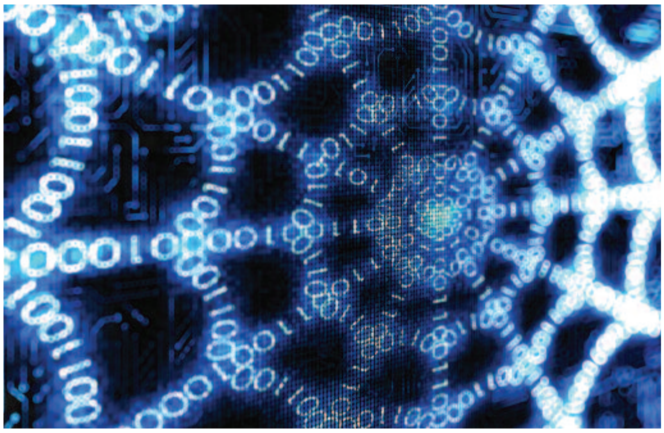
A further problem is how to establish the market value of a cycle at the time it is sold to an employee. If the employee pays the employer less than market value for the bike, the difference between the amount paid and the full value will be taxed and subject to national insurance.

HMRC has now provided guidance on the valuation of second-hand bikes based on the age of a bike and its original cost. Remember, bikes provided under the Cycle to Work scheme are only tax-free if they are used mainly by employees for commuting and work-related business.

Did you know that if a company car is treated as a pool car, the drivers are not taxed on any private use? To qualify as a pool car it must be used by more than one employee for business journeys, with only incidental private use. Other employees should not be excluded from using the car, and it should not normally be kept overnight at an employee's home. HM Revenue & Customs suggests the company should keep mileage records to prove these conditions have been met. This is not compulsory, but the company must show that the car is not used exclusively by one person.

A tangled worldwide web of VAT

If you buy 'adwords', or other adverts on Google or Facebook, check you have the VAT treatment correct. Advertising provided by those companies is sold from their bases in Ireland and the USA respectively, so for VAT purposes it amounts to an international service.



Your business should not be charged VAT on the cost of international services. Instead, if you are VAT registered, you must apply the reverse charge mechanism for VAT. This means you add UK VAT at the standard rate to the cost, and add the gross cost to both your purchases and sales for the period. The net effect for you should be zero, unless your business makes VAT exempt sales.

Check that your accounting software correctly accounts for the VAT added under the reverse charge mechanism, and adds the full cost to both sales and purchases.

If you have paid Irish VAT on Google adverts, this may be because Google does not have evidence that you are a business. You can reclaim this erroneously charged VAT from Google Ireland Ltd. But you cannot reclaim the Irish VAT on your own VAT return, or through the international VAT refunds system, because that VAT should never have been charged.

Your company, your bank?

You may be tempted to take a loan from your own company, but this can create tax charges for you and the company:

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- Where a loan exceeds £5,000, you will be taxed on notional interest of 4% a year, unless you actually pay interest at or above that level to the company.
- The company has to pay tax of 25% on any of your loan outstanding more than nine months after the company's year end. This tax is repaid once the loan has been repaid or written off.

To clear the loan the company could vote you a dividend, but that dividend must be legal, otherwise HM Revenue & Customs (HMRC) may treat the payment as a further loan. All shareholders with the same class of shares must receive the same amount of dividend per share. A shareholder can waive their entitlement to the dividend, but there must be enough cash available to pay your dividend plus any waived dividends.

To pay a legal dividend it is not sufficient just to write 'dividend' on the cheque stub or against the accounting entry in your loan account with the company. The directors must first determine whether there are enough profits available to pay the dividend.

If the accounts for the previous year show a profit, the directors can recommend that any profits, which are not required for future investment, are paid out as a dividend to the shareholders. If the company has made a loss in the previous year, this must first be covered by the current year's profits. The directors' decisions should be recorded as a formal board minute, so if HMRC ever asks, you can prove the legality and timing of the dividend.

The company should prepare dividend vouchers for each shareholder showing the payment date, total dividend due, and tax credit attached. The dividend may be paid by cheque or electronic transfer, or as an accounting entry to reduce your loan outstanding to the company. However the dividend is paid, the accounting entries or payments should be completed as soon as possible after the decision to pay a dividend is taken.

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