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business update

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New task forces to tackle tax dodgers

HMRC announced in May that it is introducing specialist teams which will undertake '…intensive bursts of compliance activity in specific high risk trade sectors and locations across the UK'.

HMRC stated that the first task force will initially focus on the restaurant trade in London and then the restaurant trades in Scotland and the North West.

Mike Eland, Director General Enforcement and Compliance, said:

'These task forces are a new approach which uses HMRC's resources to identify and tackle rule-breakers and evaders swiftly and effectively.

Only those who choose to break the rules, or deliberately evade the tax they should be paying, will be targeted. Honest businesses have absolutely nothing to worry about.

But the message is clear – if you deliberately seek to evade tax HMRC can and will track you down, and you'll face not only a heavy fine, but possibly a criminal prosecution as well.'

HMRC is planning a further nine task forces in 2011/12, with more to follow in 2012/13.

As part of this and other compliance activity measures, HMRC may use their power to request access to business premises to check business operations. Such visits can be arranged in advance or be unannounced. However, to quote HMRC guidance:

'The person whose tax position you are checking or occupier of the premises you wish to inspect has the right to refuse you entry. It cannot be overridden, so a person retains the right to refuse entry to their property even when an officer has a right to enter and inspect with Tribunal approval.'

If you receive any direct contact from HMRC, whether it is a telephone call or a visit, it is vital to retain control of what is happening. Please get in touch with us immediately if you have any such approach from HMRC.

Enterprise Zones relaunched

In Budget 2011, the Government announced the location of ten new urban Enterprise Zones within the following Local Enterprise Partnership areas:
Birmingham and Solihull, Leeds City Region, Derby and Derbyshire, Nottingham and Nottinghamshire, Sheffield City Region, Liverpool City Region, Greater Manchester, West of England, Tees Valley, North Eastern and the Black Country. In addition, London will have an Enterprise Zone and be able to choose its site.

Other Local Enterprise Partnership areas will compete for Enterprise Zones within their areas (another ten zones in total).

The Government is set to make a range of policy tools available to all zones including:

- up to a 100% business rate discount commencing April 2012. This could be worth up to £275,000 over a five year period for businesses that move into an Enterprise Zone by April 2015
- Government and local authority help to develop radically simplified planning approaches in the zones.

Further information including timetables can be found at www.communities.gov.uk/localgovernment/local/enterprisezones

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UK200Group
independent quality assured professionals

1 October brings
equality for agency workers

From 1 October 2011, after a certain period of time, workers supplied to a company (or to any entity) by an agency will become entitled to receive the same equivalent pay and basic working conditions as any directly employed employees doing similar work. In many cases, until now, agency workers have received significantly less pay than the entity's employees and have also not had entitlement to a number of other employee benefits.

This entitlement is to begin after a 12 week qualifying period. This 12 week period commences 1 October 2011 for existing agency workers. If the employer wishes to avoid any additional cost and chooses to end the agency worker's contract within 12 weeks, there will need to be a break of more than 6 weeks between assignments with the same employer. The regulations inevitably include comprehensive anti-avoidance provisions dealing with issues such as moving the agency worker to a different department to try to avoid the obligation!

The changes also mean that from 1 October 2011, agency workers have an entitlement to access employer supplied facilities such as canteens, car parking, transport services and childcare from the first day they work for the entity, though if there were a waiting list they would have to wait until the facility became available. There are also various provisions concerning pregnant workers and new mothers who, for example, would be entitled to attend antenatal medical appointments and classes after completing a 12 week qualifying period.

Where it is likely a temporary worker may benefit from the regulations, the agencies supplying the workers will require the hiring entity to provide information about pay and basic working conditions. The agencies bear the main practical responsibility for ensuring the appropriate comparability is achieved but obviously will pass on all relevant additional costs.

Breaches of the regulations, which could be committed either by the agency or the employer, may be dealt with by Employment Tribunals though the involvement of ACAS is encouraged prior to taking this step.

Comprehensive guidance of 51 pages was published in May 2011 by BIS (Department for Business Innovation & Skills) and is available on their website.

Residence - a test of three parts

The Government has published a consultation document on its plans for a statutory residence test (SRT) which aims to be transparent, objective and simple to use including the possibility of providing an interactive tool for individuals to self assess their status. The aim is to enable taxpayers to assess their residence status in a straightforward way. Furthermore, it will enable those who come to the UK on business, as employees or investors, to have a clear view of their tax treatment.

Tax residence has an important bearing on an individual's UK tax liability, especially if they have overseas income or capital gains. In most cases residents are liable to tax on some or all of their overseas income and capital gains. At present there is currently no full legal definition of tax residence, which means that the rules are unclear, complicated and seen as subjective. The definition largely rests on legal cases decided in the courts over a long period of time and is based on a world completely different from today's fast paced global environment. For many years there have been a number of appeals and test cases through the Courts involving some very high profile taxpayers with potentially millions of pounds of tax at stake. The current uncertainty for individuals about their residence status is seen as a deterrent to businesses and individuals investing in the UK.

The Government is also consulting separately on reforms to the taxation of non-domiciled individuals.

The SRT is set to be based on the amount of time an individual spends in the UK and the other connections they have with the UK.

The SRT will:

- determine tax residence for individuals not companies
- apply for the purposes of income tax, capital gains tax and inheritance tax
- not apply for non tax purposes and
- supersede all existing legislation, case law and guidance.

Part A of the test determines that an individual is not resident in the UK for a tax year if they:

- were not resident in the UK in all of the previous three tax years and they are present in the UK for fewer than 45 days in the current tax year or
- were resident in the UK in one or more of the previous three tax years and they are present in the UK for fewer than 10 days in the current tax year or
- leave the UK to carry out full time work abroad, provided they are present in the UK for fewer than 90 days in the tax year and no more than 20 days are spent working in the UK in the tax year.

If you do not fall within Part A of the test you would then need to consider Part B or Part C.

Part B of the test determines that an individual is resident for the tax year if they:

- are present in the UK for 183 days or more in a tax year or
- have only one home and that home is in the UK (or have two or more homes and all of these are in the UK) or
- carry out full time work in the UK.

Part C of the test only applies to individuals whose status is not determined by Part A or Part B. A number of factors are considered to be relevant to an individual's residence status but only when linked to the amount of time that person spends in the UK. Those factors are to include:

- family being resident in the UK
- accommodation – the individual has accessible accommodation in the UK and makes use of it at some time during the tax year (some exclusions will apply)
- substantive work in the UK – the individual does substantive work in the UK but not on a full time basis
- UK presence in previous year – the individual spent 90 days or more in the UK in either of the previous two tax years
- more time in the UK than in other countries.

These factors would then be combined with days spent in the UK on a scale basis to determine the individual's residence status. We will keep you informed of further developments as these proposals progress, but please do contact us if you require further information at this stage.

Company car troubles

Employer provided cars are a very common benefit offered by employers to employees in the UK. Despite repeated increases in the income tax and national insurance charges that employees and employers face, it is estimated that about one in ten cars on UK roads are company cars.

An employee is generally charged to tax on the provision of an employer provided car if:

- the car is made available by reason of the employment and
- without any transfer of property in the car.

So, a car that is bought by an employer which is then immediately sold at full cost to an employee will not fall within the above conditions as the employee is now the outright owner of the car.

However, consider the scenario where an employer leases a car and the employee ends up paying the rentals. Will the employee still face a tax charge on the benefit of having the use of the employer provided car as well as having to pay the lease rentals?

A case heard last year at the First Tier Tribunal considered this very issue. The company directors wished to acquire new Mercedes cars by leasing and established that it was cheaper to do so through the company. They were then advised that if they were charged by the company with all the costs of the leases, then the company was acting as nominee and there would not be a benefit. The contracts were in the name of the company only and signed by the directors respectively.

The company paid the leasing instalments each month. These were then charged against the directors' loan accounts in the company's accounts. In addition, all other costs were paid personally by the directors.

HMRC argued that there was a benefit on the provision of employer provided cars. The taxpayers' accountant argued that:

- the directors had acted as agents for the company
- HMRC should consider substance over form ie the directors had leased the cars, paid for them and were the registered keepers
- common sense dictated that as the directors had paid the costs of the cars in full it was nonsensical that there should be a tax liability.

The Tribunal agreed with HMRC that the cars had been made available by the company and as a result the directors had received a benefit. They noted that if the company had defaulted on the lease payments then the leasing company would have had recourse only to the company and not the directors.

In another recent case cars which were financed through hire purchase contracts in the name of the company were also determined as employer provided cars. The directors in this case had argued that the only reason the finance agreements were in the company name was due to an administration error by a company employee.

However, the Tribunal again agreed with HMRC that the cars were made available by the company and that assessable benefits arose.

It is clear that detailed care is required in relation to the structure of car provision to mitigate or avoid assessable benefits - so do contact us for further advice.

Self-employed -

travel expenses where is the base of operations?

If a self-employed person has a base of operations that is separate to their home, then the cost of travelling to and from that base to home will be treated as ordinary commuting and therefore will not be tax deductible.

However, where a person's base of operations is at their home then the cost of travelling between their home and the places where they work should be allowable.

Beware though that if any of these places become an established base of operations then HMRC would be likely to challenge that home was no longer the base of operations. It would appear that HMRC are paying more attention to this area as a number of disputes between them and self-employed persons have been presented over the last six months at the First Tier Tax Tribunal.

One case involved a taxpayer who sold fast food from Chelford Market. He had a trailer from which he operated and which was transported to the market. The taxpayer also traded at two shows in Blackpool and Kendall.

His trailer, together with stock and other items used in his business was stored in a unit which was about four miles from his home. Four days a week he attended the yard in order to clean and maintain his equipment. On market days he collected the trailer from the yard, transported it to the market and then returned it to the yard before he went home.

HMRC allowed his travel costs between his home and the yard but refused the costs of travel between home and the markets on the basis that the place of business was the market place.

The Tribunal agreed with HMRC that the place of business was the market place.

Another case concerned a self-employed electrician who carried out electrical work on sites at varying distances from his home. He argued that his home was the base of his work so that the travel expenses from his home to the sites were tax deductible.

HMRC argued that the base of operations was the sites he attended and not his home and sought to disallow the travel costs incurred.

The taxpayer emphasised the following:

- he did preparatory work at home as well as attending the sites
- all business records, tools and equipment were maintained at his office at home
- all correspondence was sent to his home address which was also shown on his public liability insurance policy.

The Tribunal concluded that the taxpayer had to have a base for his business and that the facts suggested that this was his home.

One final case concerned a taxpayer who was a self-employed pipe fitter in the petrochemical and brewing industries. He lived in Cheshire and worked for a company in London as well as a number of other places.

HMRC's argument was that the travel costs incurred between Cheshire and London were not allowable as they were the costs of 'ordinary commuting' between home and a base of operations.

The Tribunal, however, agreed with the taxpayer that his home in Cheshire was his work base as this was where he organised new work and that the travelling expenses were therefore allowable.

The number of recent cases on this area does appear to indicate that it is an area of HMRC interest so do get in touch if this is an area of concern.

Excuses Excuses!

Tax related forms including Self Assessment tax returns, VAT returns and Corporation Tax returns, whether filed online or otherwise, have to be filed on time. If the filing deadline is missed HMRC can and do impose automatic fixed penalties.

However, taxpayers can appeal against these penalties if they have a reasonable excuse. HMRC's published guidance is that a reasonable excuse is when an exceptional and unforeseeable event beyond the taxpayer's control has prevented them from filing the return on time.

What is reasonable?

A number of rulings at the First Tier Tax Tribunal (FTT) have recently refuted the view that a reasonable excuse is only applicable in exceptional circumstances. This is because the ordinary English words 'reasonable excuse' should be given their normal and natural meaning.

A stamp duty land tax example

A recent case concerned the imposition of a flat rate penalty of £100 for failing to submit a return of land transactions within 30 days of the purchase of a new property.

Immediately following completion of the purchase, the taxpayer's legal representative submitted the return together with a cheque for the requisite amount of stamp duty. Some six weeks later HMRC advised the representative that the form and cheque had not been received. The representative then immediately cancelled the cheque, submitted a new return electronically and paid the outstanding stamp duty by electronic transfer.

The taxpayer argued that they had a reasonable excuse as the original return must have got lost in the post and that their representative acted without unreasonable delay upon being advised that HMRC had not received the return.

Despite HMRC's arguments that there was no evidence of the form being posted within the time limit and that the representative had no internal processes to follow this up the FTT found for the taxpayer.

VAT returns affected

A further case concerned the imposition of a VAT surcharge in excess of £21,000 because a VAT return and the payment of the VAT were two days late. The financial director argued that due to a significant drop in revenue the business was being reorganised and a number of employees, including him, were faced with being made redundant. The threat of this preoccupied his mind and due to the stress and anxiety he was feeling, he submitted that compassionate circumstances could amount to a reasonable excuse.

The FTT looked at the underlying cause for the financial director submitting the return late and agreed that there was a reasonable excuse.

Lucky with PAYE

Another case concerned a taxpayer who believed his accountant was filing his end of year PAYE return whilst his accountant believed that the taxpayer would personally attend to this. As a result of the two getting their wires crossed the taxpayer was issued with a £400 late filing penalty.

The taxpayer appealed on the basis that a mistake of fact could amount to a reasonable excuse.

The FTT found that a mistake of fact is capable of amounting to a reasonable excuse and that the facts of this case meant that there was a reasonable excuse.

A HMRC victory

However, the cases do not always go in the favour of the taxpayer. Another case concerned a taxpayer who appealed to the FTT against the imposition by HMRC of interest and surcharges for the late payment of tax in relation to his 2006/07 and 2007/08 self assessment liabilities. The taxpayer accepted that his tax had not been paid on time, but argued that he had a reasonable excuse. He submitted that due to the removal by the bank of a substantial loan facility, he had to make a significant cash investment in his company to enable it to keep trading and avoid making a number of employees redundant. This, he argued, promoted enterprise and as his company was now 'beating the current economic trend and was very busy' he should not be penalised by these additional charges.

The FTT agreed with HMRC that the legislation precludes the insufficiency of funds as being a reasonable excuse but there is authority for finding that the cause of that insufficiency may constitute such an excuse. However, as they had not been provided with evidence that an actual insufficiency of funds prevented the taxpayer from paying his tax liability, there was no reasonable excuse. Furthermore, the payment of taxes is a statutory obligation which cannot be excused because taxpayers consider that the country would receive a greater benefit if they invested their money in other ways.

Clearly each case is unique and will be considered on its own merits, so if you feel that you may have a reasonable excuse against the imposition of a penalty contact us for advice on how to make an appeal.

Implementation of the Bribery Act 2010

At the end of March 2011, the Justice Secretary, Kenneth Clarke announced that the Bribery Act 2010 would finally come into force on 1 July 2011.

The new Act replaces, updates and extends the existing UK law against bribery and corruption. This important new legislation:

- introduces a corporate offence of failure to prevent bribery by persons working on behalf of a business. A business can avoid conviction if it can show that it has adequate procedures in place to prevent bribery
- makes it a criminal offence to give, promise or offer a bribe and to request, agree to receive or accept a bribe either at home or abroad. The measures cover bribery of a foreign public official and
- increases the maximum penalty for bribery from seven to 10 years imprisonment, with an unlimited fine.

The introduction into law of the new corporate offence of failure of commercial organisations to prevent bribery is an important development that essentially requires all businesses to consider the requirements of the new Act. This new corporate offence is coupled with a defence where, if the business can show that it had 'adequate procedures' in place to prevent bribery, it can be protected from committing the new criminal offence.

All businesses are expected to familiarise themselves with the statutory guidance and begin to assess the risk of bribery occurring in the business. The extent of any further action will be dependent on the results of this risk assessment. Please contact us for further information or guidance on this area.

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