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Business News

WINTER 2014

The campaigns continue

Since 2007, HMRC campaigns have collected over £596 million of tax from people using the opportunities to voluntarily declare previously undisclosed income and settle outstanding tax liabilities. A further £338 million has also been raised through a large number of follow-up activities together with a number of criminal investigations and convictions with custodial sentences for cheating the public revenues.

The latest campaigns include:

- The Credit Card Sales Campaign and
- The Second Incomes Campaign.

The Credit Card Sales Campaign is aimed at individuals or businesses that accept credit or debit card payments. It offers them an opportunity to bring their tax affairs up to date. As HMRC have access to information on all debit and credit card payments, they could use this information to identify those that may not be declaring all of their income.

The Second Incomes Campaign offers employees who have not declared additional untaxed income a chance to pay the tax they owe. Examples include: consultancy fees, providing training, organising parties and events, providing services such as taxi driving, hairdressing or fitness training.

Please contact us if these matters raise any concerns so that we can advise you.

RTI penalties on the horizon

Earlier this year, HMRC laid out their timetable for various changes to the PAYE compliance system:

- April 2014 - in-year interest on any in-year payments not made by the due date – this is already happening, although HMRC are not writing to affected businesses. Instead, the interest charge can be seen on the relevant tax ‘dashboard’.
- October 2014 - automatic in-year late filing penalties (see below).
- April 2015 - automatic in-year late payment penalties. Once again, the requirement to pay PAYE on time and penalties for not doing so is not new. However, the way that HMRC impose penalties for late payment has been very ad hoc and this is set to change.

RTI late filing penalties

The new penalties will apply to late RTI returns if a person fails, during a tax month, to make a return on or before the filing date. They cannot be liable to more than one penalty per tax month.

Employers can also be liable to one or more penalties in respect of extended failures i.e. a failure to make a return on or before the filing date which continues after the end of the period of three months beginning with the day after the filing date. This is 5% of any liability to make payments which would have been shown in the return in question.

Operation for 2014/15

HMRC have confirmed that employers with fewer than 50 employees as of 6 October 2014, or a new employer, will only face automated in-year penalties for late real-time PAYE returns from 6 March 2015.

Other employers who bring all their submissions for the period 6 April - 5 October 2014 up to date by 5 October will not face any in-year late filing penalties.

Once the penalty system begins an employer who, during a tax month, fails to make a return on or before the filing date will be liable to a penalty as follows:

- 1-9 employees - £100
- 10-49 employees - £200
- 50-249 employees - £300 and
- 250 or more employees - £400.

HMRC will send penalty notices by post each quarter in July, October, January and April.

Please contact us if you have any concerns regarding any of these PAYE issues.

Tax and the mis-selling saga

HMRC have published guidance on the tax treatment of compensation received by companies and other businesses in respect of mis-sold interest rate hedging products. The main purpose of the article is to raise awareness that such receipts are usually taxable.

The redress can be made up of three elements:

- basic redress
- compensatory interest
- consequential losses.

The basic redress is the difference between the actual payments made based on the mis-sold product and the payments that would have been made without the product.

Compensatory gross interest of 8% per year is then applied to the basic redress.

Consequential losses are losses suffered due to not having the use of the money that would otherwise have been available. In certain circumstances compensatory interest is also applied to these consequential losses.

HMRC state:

'The full redress payment is generally taxable for individuals, companies and partnerships. This is because you will have claimed tax relief for the payments as an allowable business deduction. So the payment should be treated as business income and you should reflect it in the business accounts.

You should treat the interest element as taxable as interest in the year you received it and show it as loan relationship income rather than as trading income.

Depending on your circumstances the bank may deduct tax from the payment.

Banks will be paying most redress payments as a single amount. You should account for this in the tax return for the tax year or accounting period in which the payment was made. You do not need to amend your previous years' tax returns.

If your bank is paying you in instalments you should include each one on your tax return for the tax year or accounting period you received it in.'

Whilst the above treatment will cover many standard business transactions HMRC acknowledge that there may be certain circumstances where the tax treatment of the payment could be different and even suggest that in fact it could be taxable as a chargeable gain. The precise guidance here is not clear and therefore if you do receive any of these types of compensation payments and are uncertain as to the correct reporting and tax treatment in your circumstances please do contact us for further assistance and information.

Don't get in a fix

Certain fixtures in buildings are treated in a special way for the purposes of claiming capital allowances. A fixture is an asset which is installed in a building so that it becomes part of that building or land in law.

Special legislation for fixtures was introduced in 1985 and, broadly, it lets allowances go to a person who incurs expenditure on the provision of a fixture, either on installation or by acquiring an interest in the building or land to which the fixture is attached, provided that allowances do not go to more than one person at the same time. Similar rules apply where a lessee pays a premium that is capital expenditure for a lease of land that includes a fixture.

The problem

HMRC felt that the rules were being abused. Sometimes this was due to clever planning and sometimes due to HMRC's poor systems. Consequently, the law was changed in two stages.

The new rules now apply where:

- a current owner incurs capital expenditure on acquiring a property containing fixtures from another person for the purposes of a business activity ('new expenditure')
- that other person, or a previous owner, is treated as having been the owner of the fixtures at an earlier time as a result of them incurring other expenditure (historic expenditure) for the purposes of a business activity and
- that other person, or a previous owner, was entitled to claim plant and machinery allowances in respect of the historic expenditure.

At their simplest, these rules therefore apply where one business buys a building from another business (although the rules can apply in wider circumstances).

No allowances are due to the buyer of the building if certain requirements are not met, the main two being the 'pooling requirement' and the 'fixed value requirement'.

The pooling requirement applies (from April 2014)

In simple terms, this is met if the past owner pools the relevant expenditure in a chargeable period beginning on or before the day on which the past owner ceased to own the fixture.

The fixed value requirement (from April 2012)

The 'fixed value requirement' applies where the past owner has made a claim in respect of the historic expenditure and has been required to bring the disposal value into their tax computations. In this situation, both parties have to make a joint election specifying what value both parties will use in their tax computations.

The consequences

What can be seen is that any failure of the above rules means that the buyer is prohibited from claiming allowances, which may be substantial. Therefore, if you are thinking of buying business premises, please do get in touch with us to check the position before you sign on the dotted line.

Judge DRDed

You may have heard that HMRC are proposing new rules on the Direct Recovery of Debts (DRD). HMRC recognise that:

'…there are concerns about the impact of this change on vulnerable members of society. We must ensure that there are strong safeguards in place so that this is only targeted at the truly non-compliant.'

HMRC estimate that:

- DRD will apply to around 17,000 cases a year
- the debtors affected have an average of £5,800 in tax and tax credit debts and
- around half of the debtors affected have more than £20,000 in their bank and building society accounts and ISAs.

The main safeguards before the DRD will apply are that:

- a taxpayer will have been contacted a minimum of four times about their tax debt (HMRC say nine times on average)
- the measures will only be applied where in excess of £1,000 of tax is due and unpaid
- the measures will never be utilised in such a way as to leave a taxpayer with less than £5,000 in their bank account. Regard will also be had to their regular pattern of expenditure over the previous 12 month period in considering whether taking the money would cause hardship.

The safeguards after implementation are that for 14 calendar days from the date of application of the measures, HMRC will not actually be given access to the monies. Instead, during that period, the monies will in effect, be blocked and the taxpayer will be able to make representations that:

- either a transfer of the money to HMRC would cause hardship or
- that the tax debt is not due.

If those representations are not accepted, the monies will be transferred to HMRC.

So it may not be as bad as you might have thought. We will keep you in touch with developments.

140 million work days lost!

It will probably not surprise employers that sickness absence across the UK is costly but some of the statistics are staggering. In fact nearly a million employees were absent from work for at least four weeks due to sickness absence each year between September 2010 and October 2013. It has also been estimated that employers face an annual bill of around £9 billion for sick pay and associated costs with the state spending around £12 billion a year on health related benefits plus £2 billion a year on healthcare and foregone taxes.

Following an independent review, various measures are being put into place by government to improve the position. The latest development is the new Health and Work Service known as 'Fit for Work' which will commence on a phased basis in late 2014 before being rolled out nationwide by May 2015.

Fit for Work aims to get employees back to work from sick leave, thereby improving business productivity and reducing the strain on state benefits. It will be available across Great Britain, with a unified brand and scope but will be delivered by The Scottish Government in Scotland. The provider for England and Wales was recently announced as Health Management Limited, a MAXIMUS company. The service will be paid for with the savings from the scrapping of the Statutory Sick Pay Percentage Threshold Scheme, which gave some financial compensation to employers faced with high levels of sickness absence and which was available until 5 April 2014.

How it will work

There are two elements, the first an occupational health assessment and the second, general health and work advice to employees, employers and General Practitioners (GPs) to help individuals with a health condition to stay in or return to work.

Once employees have been off sick for four weeks (or they are expected to be off for four weeks), their GP will be able to refer them for an assessment by an occupational health professional. If there is no GP referral, after four weeks, employees may be referred for an assessment by their employer. Following an assessment, a 'return to work' plan will be produced, with recommendations to assist employees to return to work more quickly and information on how to get appropriate help and advice. The plan may, for example, include recommendations for medical care, working from home or retraining.

A tax exemption is to be included within the arrangements of up to £500 a year for each employee on payments for medical treatments recommended by Fit For Work or an employer arranged occupational health service. We will keep you updated on any further developments as they occur.

Let's fly away

HMRC appear to continue to be on the attack as far as travel and subsistence costs of the self-employed are concerned. This is evidenced by some recent tax cases.

One of the most significant is that of a medical consultant, whom we have reported on previously, so this is a brief reminder. The consultant holds weekly out-patient sessions at two private hospitals, St Anthony's in Cheam and Parkside in Wimbledon. Although the Tribunal accepted that the consultant did do some work from home, it decided that:

- the taxpayer had places of business at Parkside, St Anthony's and his home
- as the taxpayer had other places of business apart from his home, his travel between home and those other places of business was not allowable
- although the taxpayer's travel between his home and Parkside/St Anthony's was between places of business, on general principles no deduction could be allowed in relation to that travel
- the taxpayer's travel between his places of employment with the NHS and Parkside/St Anthony's was undertaken to get him to and from his place of business and not in the course of carrying on his business.

Up, up and away

A more recent case involved a self-employed flying instructor and examiner who gave lessons and conducted examinations at two airports. The taxpayer claimed the cost of travel by car between his home and the airports in his return for 2006/07. HMRC decided that the taxpayer was not entitled to deduct his travel expenses as they were not wholly and exclusively incurred for the purposes of his business.

The taxpayer keeps his business records, as well as equipment such as charts and navigation equipment, at his home but does not have an office in his home. He uses a laptop for business purposes and might use it in any one of a number of rooms in his house.

The taxpayer's home address is that at which he is registered with the Civil Aviation Authority (CAA), which contacts him at that address. The taxpayer reads any new CAA materials in order to stay up to date as an examiner at home. His home telephone number is on the CAA website and people can contact him as a result of that but most of his work comes from recommendations by word of mouth.

The Tribunal found, once again, that although the instructor might have worked from home, he had places of business at the two airports where he met his students, taught them to fly and sometimes examined them as well as testing qualified pilots. The travel expenses claimed in respect of the journeys between his home and the airports were not incurred wholly and exclusively for the purposes of his profession as a flying instructor and examiner. These were also incurred as a result of his decision to live away from the airports at Bournemouth and Shoreham where he carried on his business.

So where does this leave the self-employed?

A number of points are clear from these cases:

- HMRC are actively targeting this matter. This is not just an issue for medical consultants and pilots but any self-employed person who 'works from home'.
- The historic cases set a high bar that some clients will not pass.
- The 'pain' of HMRC's adjustments may spiral backwards over several years due to the changes in case law on discovery.

So the moral appears to be to have a close look at travel and subsistence claims in the light of these recent cases and, perhaps, moderate claims going forward.

Entrepreneurs' Relief (ER) – are you an employee?

ER has been available since 2008 and the general rules are well known. The basic idea of the relief is that for qualifying disposals Capital Gains Tax will only be charged at 10% on gains of up to £10 million.

In the context of a shareholder in a company ER is available on a disposal of shares where throughout the period of one year ending with the date of disposal:

- the company is the individual's personal trading company and is either a trading company or the holding company of a trading group, and
- the individual is an officer or employee of the company or one or more companies which are members of the trading group

A personal company is where the individual owns at least 5% of the ordinary share capital representing at least 5% of the voting rights.

HMRC guidance states that in determining whether an individual is an officer or employee of the company depends on whether that person has an employment or holds an office. There are no specific requirements regarding the working hours or level of remuneration. The condition is simply that the individual should be an officer or employee.

In a recent Tribunal case an individual's claim for ER was denied by HMRC on the basis that they were not an employee at the date the shares had been disposed of. She had previously been an employee and had been on the payroll but was removed from the payroll prior to a sale to a third party. However, she continued to carry out the same duties as before and her argument was that her salary was effectively paid to her husband who continued as a director in the company.

The Tribunal accepted that the motivation for removing her from the payroll was to keep her out of sight of the potential purchaser because of their sensitivity to the employment of spouses of senior executives. They further accepted that her salary had been paid to her husband and allowed the claim. In this case then, a successful outcome but the issue of ensuring there is evidence of employment appears to be an area HMRC may want to verify.

As this is such a valuable relief overall attention to detail is vital. Contact us for further advice on this area if you have any concerns.