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Ashmole & Co

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Newsletter

Lowest paid to get a boost

The National Minimum Wage (NMW) is a minimum amount per hour that most workers in the UK are entitled to be paid. The rates are reviewed each year by the Low Pay Commission (LPC) and from 1 October 2012 increase as follows:

- the main rate for workers aged 21 and over will increase to £6.19 (currently £6.08)
- the 18-20 rate will remain at £4.98
- the 16-17 rate for workers above school leaving age but under 18 will remain at £3.68
- the apprentice rate, for apprentices under 19 or 19 and over and in the first year of their apprenticeship will increase to £2.65 (currently £2.60).

The cost of ignoring the changes

Since April 2009 HMRC have been able to charge penalties on those employers found to be in breach of the NMW rules.

Penalties may be levied on employers where HMRC believe underpayments have occurred. The penalties range from £100 to £5,000 with 50% prompt payment discounts for employers who settle within 14 days of notification.

Any penalty payable is in addition to arrears owed to the workers. In serious cases of non-compliance, the employer may even be tried in a Crown Court and in those cases the fines are unlimited.

If you have any queries on the NMW please do get in touch.

AUTUMN 2012

Are you getting credit?

Research and development (R&D) by UK companies is being actively encouraged by Government through a range of current tax incentives.

The incentives are only available to companies and include:

- an increased deduction for R&D revenue spending and
- a payable R&D tax credit for companies not in profit.

The R&D revenue relief increases the amount a company can obtain tax relief on to more than the normal 100% revenue deduction. This relief is 225% for expenditure incurred by a small or medium-sized enterprise (SME) on or after 1 April 2012. Large companies are subject to a different regime not considered here.

The first essential matter to determine is whether HMRC would accept that the particular activities constitute R&D. The second is making sure the relevant tax rule conditions are met, the most important being:

- the expenditure must be from a qualifying revenue category and not be capital expenditure
- the R&D does not have to be undertaken in the UK
- the spending must not be incurred in carrying out activities contracted to the company by another person (however a slightly different form of R&D tax credit may apply)
- the expenditure must not have been met by another person (if the R&D project is funded in whole or part by 'State aid' such as a government grant, none of the spending on that project can qualify for R&D tax credits).

The relief in operation

Neuf Ltd is an SME and incurs qualifying R&D expenditure during the year to 31 March 2013 of £100,000.

Assuming Neuf Ltd is profitable it will be able to claim a deduction in respect of its R&D expenditure of £225,000. This will reduce its corporation tax liability by £45,000 (assuming a 20% rate), giving the company effective relief on the actual expenditure of 45%.

If, on the other hand, Neuf Ltd is making losses, the £225,000 attributable to the R&D expenditure can either be carried forward for relief against future trading profits or converted into a payable R&D tax credit. The rate of conversion is currently set at 11% so this would generate a payment to the company of £24,750 (£225,000 x 11%) which equates to 24.75% of the original expenditure.

If this is something that you would like to discuss in more detail, please do get in touch.

GADZOOKS!

You may have read that the Government is trying to help small charities with fundraising. This is through a new scheme, the Gift Aid Small Donations Scheme (GASDS).

The suggestion is that from April 2013, charities that receive small cash donations of up to £20 will be able to apply for a Gift Aid style repayment without the need to obtain Gift Aid declarations for those donations. Donations under a 'payroll giving' scheme are excluded.

The amount of donations on which the new repayment can be claimed will be capped at £5,000 per year, per charity. At the present basic rate of 20%, this will provide the charity with up to £1,250. In order to qualify, charities will need to have been recognised by HMRC for Gift Aid purposes for at least three years, have been operating Gift Aid successfully throughout that time and have a good tax compliance record.

The scheme will differ from Gift Aid in a number of ways. The key points are:

- there will be no documented link between the donor and the payment
- charities (also Community Amateur Sports Clubs (CASCs)) must meet certain conditions in order to become eligible to make claims under the GASDS, including having a, recent, track record of making Gift Aid claims
- claims will be based on the tax year from 6 April
- claims must be made within one year of the end of the tax year in which the small donations are collected
- the amount of claims that can be made will be limited to a maximum of £5,000 of small donations for all CASCs and most charities
- charities and CASCs must continue to make Gift Aid claims if they wish to make a claim under GASDS
- charities and CASCs must bank the small donations in a bank branch physically located in the UK and
- gifts are not deductible when calculating an individual's income for income tax so, taxpayers will not be able to claim tax relief on the donations.

We will keep you informed of how this progresses over the next few months.

Penalty for pensioner

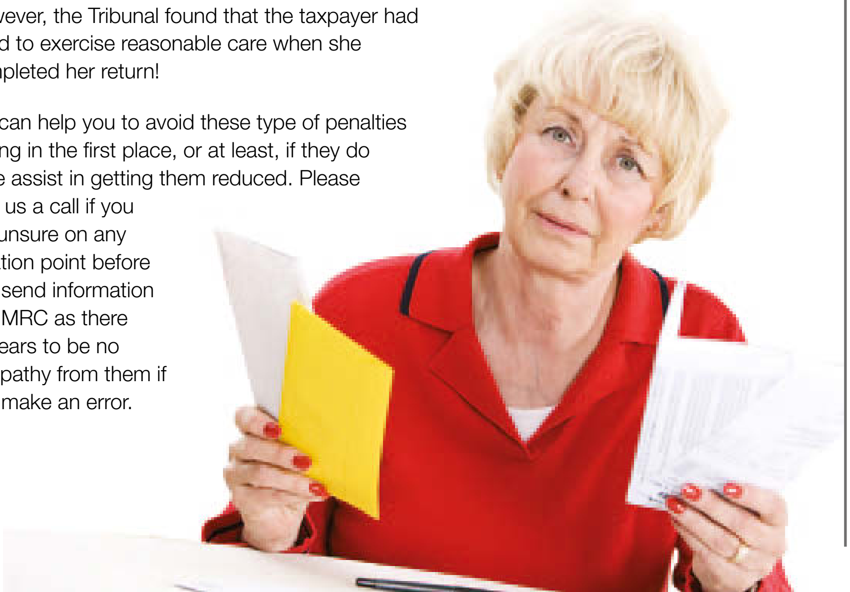
New style penalties were introduced, broadly, from April 2009 for 'errors in tax returns' and apply right across the different taxes. If the error arises due to a lack of reasonable care by the taxpayer, the maximum penalty is 30% of the lost tax but this may be reduced to 15% for a 'prompted disclosure' or 0% for an 'unprompted disclosure'.

It has become clear that HMRC are taking a tough stance on carelessness for example, not doing what a reasonable person would have done in the same position.

In a recent case, an elderly lady was assessed for a penalty of £257.58 for a careless (albeit innocent) inaccuracy. She had attempted to do her own tax return and set a loss on income from property against her total income, which is not allowed. HMRC refused this and charged a 15% penalty for careless behaviour.

The lady argued that this was the first time she had filed a tax return online and, as the system had accepted her tax calculation and issued a tax refund, she assumed that all was in order. As a result, she believed that the issue of the penalty was harsh and unjust. However, the Tribunal found that the taxpayer had failed to exercise reasonable care when she completed her return!

We can help you to avoid these type of penalties arising in the first place, or at least, if they do arise assist in getting them reduced. Please give us a call if you are unsure on any taxation point before you send information to HMRC as there appears to be no sympathy from them if you make an error.



Show me the money!

HMRC have always been sceptical about the source of monies introduced into businesses. If you cannot prove the source, HMRC may argue that the monies were 'fiddled' and should be taxed.

A recent case highlights the matter. The taxpayer argued that the source of £25,000 deposited in his account was a loan from a friend in New Zealand to buy a camper van and that his mother gave him £5,000 for the same purpose.

HMRC concluded by default that the amounts were undisclosed earnings as the taxpayer had been asked for evidence of the source of these deposits and had failed to provide it.

The Tribunal found that the taxpayer did not have records to support all of the figures used in the calculation of his tax liabilities in the tax year under enquiry. He admitted that he did not invoice all of the work that he did and had no proper business records to support the figures that he had given in his tax return. The Tribunal determined that, in such circumstances, HMRC were not required to accept the taxpayer's unsupported claims in relation to the source of the deposits. The burden of proof was on the taxpayer to establish the correct amount of tax due. Without this evidence the tax was payable.

Therefore if you are making or receiving any family loans or gifts, we recommend you keep a paper trail, as this could be your only defence against an unexpected tax bill.

Company car or is it a company van?

An employee who by reason of their employment, is provided with a company car will generally (though not in all cases) pay more tax on the benefit than an employee who is provided with a company van. However, distinguishing between a car and a van may not be an easy ride as evidenced in a recent tax case.

The individual concerned was employed as a mobile technician and was provided with a Land Rover Discovery 4 2.7 TDV6 GS Auto by reason of his employment. He objected to a HMRC decision that this should be taxed as a car and not as a van as it had been specially modified to carry engine components and tools for his job.

Specifically, the entire boot area was filled with racking and tool boxes which were bolted to the structure of the vehicle. In addition, the rear seats could not be used as seats as extra tool boxes had been securely fixed over them. The modifications also included additional lighting, electrics and special control systems. So what is a car?

A car for tax

Tax law states that a car is a mechanically propelled road vehicle which is not:

- a goods vehicle
- a motor cycle or
- a vehicle of a type not commonly used as a private vehicle and unsuitable to be so used.

And a van is…

A van is a mechanically propelled road vehicle which:

- is a goods vehicle and
- has a design weight not exceeding 3,500 kilograms and which is not a motor cycle.

A goods vehicle means a vehicle of a construction primarily suited for the conveyance of goods or burden of any description.

Journey's end

The employee accepted that the Land Rover was a mechanically propelled road vehicle and that it was not a motor cycle, invalid carriage or a vehicle of a type not commonly used as a private vehicle and not suitable for such use.

The Tribunal found that although the Land Rover supplied may have become primarily suited for the conveyance of goods or burden this was as a result of the modifications, which had been made to the vehicle so as not to fundamentally alter its structure, and not because it was "of a construction" for such a purpose. On this basis they were not able to find that the Land Rover Discovery was a goods vehicle.

Avoiding the cost

The case illustrates that HMRC continue to be vigilant on the issue of whether directors and employees are provided with a company car. This is an area where caution is needed if the aim is to ensure tax bills are minimised, so please contact us for advice in structuring transactions in this area.

What a wind up

There seems to be a common misconception that businesses which do not pay over their PAYE and National Insurance Contributions (NIC) can just wind up and leave these taxes unpaid but this is not quite true. There have been rules in place for many years which in broad terms allow HMRC to:

- pursue an individual personally where tax and NIC has not been deducted from their earnings and
- pursue a culpable officer of a company for all outstanding Class 1 NIC.

The big change over recent years is that HMRC are actually using these powers, whereas for many years they had been very lax.

In simple terms, HMRC should not generally pursue an individual employee for underpaid tax deductions and NIC unless there is evidence that the individual misled the employer or knew that the employer had deliberately failed to deduct the relevant tax. Rather, they should first consider whether the employer has operated PAYE with reasonable care.

However, information in a recent case appeared to indicate that HMRC do not always follow this course of action. The taxpayer concerned was working at three jobs in parallel. In respect of one job, the taxpayer stated that his employer always paid in cash less the tax and never provided payslips, despite the taxpayer's requests. When HMRC concluded that the taxpayer had underpaid tax for two years of £2,300, they pursued him personally.

The Tribunal made the point that to the extent that the tax shortfall arose from this employment, he should be protected from an assessment for the underpaid tax because he did not receive his wages 'knowing that the employer wilfully failed to deduct the amount of tax which should have been deducted from those payments'.

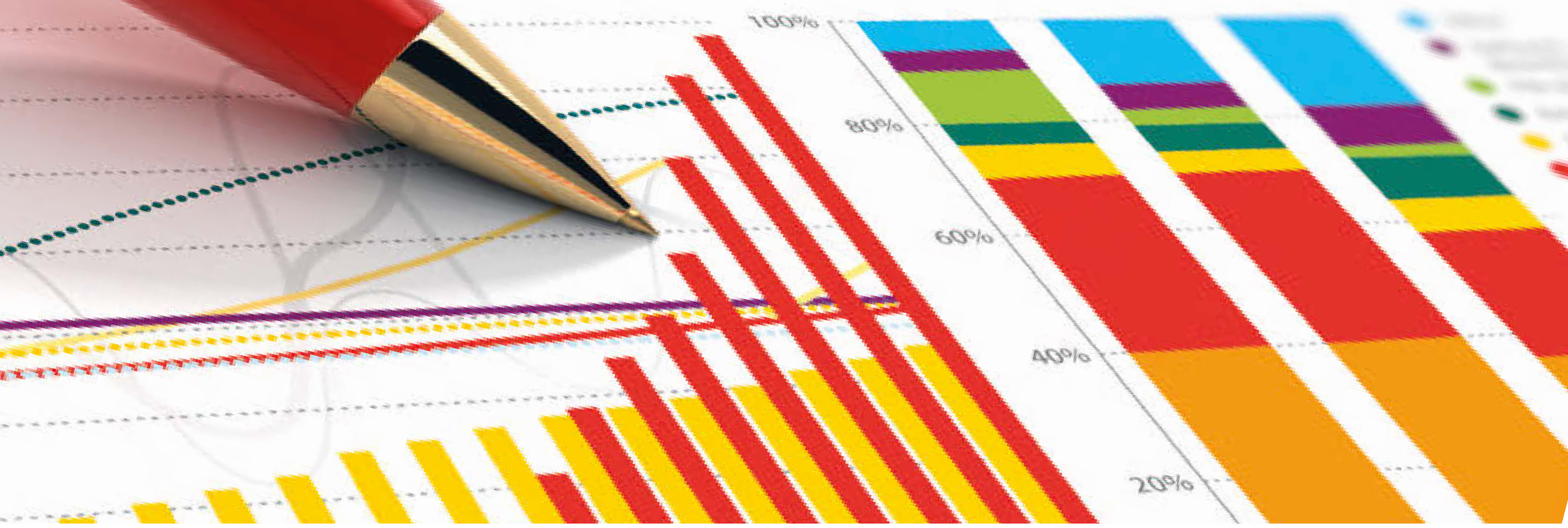
Directors and personal liability

There have also been a number of recent cases where former directors have been pursued for outstanding NIC. A recent case considered a company which, throughout the period of trading, made no payments of PAYE or NIC to HMRC although the records showed that Class 1 NIC was deducted from employees' wages and that net wages were paid to employees. As a result HMRC used their statutory powers and assessed the directors personally on £40,306 each!

One particular director appealed on the basis that the failure to pay was not attributable to any fraud or neglect on her part but the Tribunal found that she and fellow directors were aware of the obligation to account for NICs and PAYE and failed to do so:

'We found as a fact that as a director of the company, and indeed Head of Finance, the appellant had a statutory duty to ensure that the company met its obligations and that her failure to do so was negligent.'

If you and/or your business are having any difficulties paying monies over to HMRC, it is far better to negotiate with them before real problems occur. If we can be of any help to you in this area, please do get in touch.



Investment incentives to inspire

The Enterprise Investment Scheme (EIS) and the Venture Capital Trust Scheme (VCTs) are designed to encourage private individuals to invest in smaller high risk unquoted trading companies. The EIS requires an investment to be made directly into the shares of the company. VCTs are quoted investment companies, whose shares are traded on the London Stock Exchange.

Both have detailed rules concerning qualifying investors, shares, companies and trades and advice would need to be taken to ensure these conditions are complied with. Here is a reminder of the key tax breaks associated with these schemes.

Enterprise Investment Scheme (EIS)

There are three reliefs currently available for investments in an EIS:

- income tax relief on investments up to £1 million per annum
- a capital gains tax (CGT) deferral relief
- CGT exemption on the disposal.

Income tax
Income tax relief of 30% is available on investments in newly issued qualifying ordinary shares. An investor's tax liability is reduced by 30% of the amount invested provided it does not exceed the investor's tax liability for the tax year.

A claim can be made to carry back the tax relief to the previous year subject to the overall investment limit for the previous year (£500,000 for 2011/12). This will be useful where there is insufficient income tax liability in the current year. To retain the income tax relief shares generally have to be held for three years.

CGT deferral relief
Capital gains on the disposal of any chargeable asset can be deferred where the gain is invested in EIS shares. The deferred gain will become chargeable when the EIS shares are disposed of but can be triggered in certain other situations.

To be eligible for deferral, a gain must be matched with an investment in EIS shares issued within one year before, or three years after, the gain accrues.

Capital gains and losses
Where qualifying shares are held for three years, then on disposal any capital gain will generally be exempt. Alternatively, where shares disposed of generate a loss, the loss is allowable, but is reduced by the income tax relief claimed.

Seed Enterprise Investment Scheme (SEIS)

This is a new separate 'junior' version of the EIS scheme designed to promote investment in new trading companies. It has been introduced with effect from 2012/13 for qualifying individual investors. As for the main EIS scheme there are detailed rules concerning qualifying investors, companies and trades.

There are three reliefs available for investments in the SEIS:

- income tax relief on investments up to £100,000 per annum
- CGT exemption on the disposal
- CGT reinvestment relief.

Income tax
Income tax relief is given at the rate of 50% on investments in newly issued qualifying ordinary shares even if the individual is not a 50% tax payer. An investor's tax liability is reduced by 50% of the amount invested and cannot exceed the investor's tax liability for the tax year. To retain the income tax relief, shares generally have to be held for three years.

A claim can be made to carry back the tax relief to the previous year subject to the overall investment limit for the previous year. This will be useful where there is insufficient income tax liability in the current year. Note though that investments made in 2012/13 cannot be carried back to the previous year.

Capital gains
Where qualifying shares are held for three years, then on disposal any capital gain will generally be exempt. Alternatively, where shares disposed of generate a loss, the loss is allowable, but is reduced by the income tax relief claimed.

CGT reinvestment relief
Gains made on the disposal of any chargeable assets in 2012/13 where an investment is made in the SEIS scheme will be exempt from CGT. This means that for every £1 invested, £1 of any gain is exempted from CGT, saving up to 28% tax. This is subject to an overall maximum of £100,000.

Venture Capital Trusts (VCTs)

There are three reliefs currently available to investments in a VCT:

- income tax relief on investments up to £200,000 per annum
- exemption from income tax on dividends
- CGT exemption on the disposal of shares.

Income tax
Income tax relief of 30% is available on investments in newly issued qualifying ordinary shares. An investor's tax liability is reduced by 30% of the amount invested provided it does not exceed the investor's tax liability for the tax year. No carry back facility is available and these shares have to be held for five years to retain the income tax relief.

Dividend exemption
Individual investors are exempt from income tax on dividends in respect of ordinary VCT shares whether acquired from a new issue or second hand.

CGT exemption
Disposals of VCT shares (both those acquired when new and second hand acquisitions) are exempt from CGT. There is no minimum ownership requirement to qualify but losses are not allowable. No deferral relief is available.

If these schemes are of interest to you, do contact us for further detail and advice about the requirements to be met to achieve the tax incentives available.