

Hobsons : Newsletter July 2008

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The newsletter this month includes an update on the new H M Revenue & Customs powers; the effect of charging rents and claiming the new CGT entrepreneurs' relief; new filing details for limited companies and limited liability partnerships, and finally new mileage rates effective from 1 July 2008.

Our next newsletter will be published 5th August 2008.

HM Revenue & Customs' new powers!

The Finance Act 2008 brings together a number of issues that are going to affect your future relationship with H M Revenue & Customs.

In the past regular visits have been restricted to a VAT audit and possibly a payroll check. Additionally inspectors may have picked up on areas of concern in your annual tax return and launched a formal aspect, or full enquiry into your affairs.

The Finance Act 2008 takes this whole process to a new level!

In future you will be penalised if HMR&C believe you have not taken reasonable care in preparing any information (accounting or otherwise) that underpins any return made to them. It is likely that any under-declared tax that is discovered will be subject to a penalty approaching 30%, and if HMR&C can prove negligence or fraud this could rise to 100%.

The way in which these errors will be discovered are set out in changes to HMR&C's legal powers to investigate your returns. It is envisaged that an officer of HMR&C might begin a compliance check in respect of any of the relevant taxes for one or more of a number of purposes. These include checking that:

- a tax return, amendment to a return or claim is correct;
- statutory record keeping requirements are being met;
- tax has not been underpaid or over-claimed; or
- any issues concerning possible tax avoidance are considered.

Accordingly you can expect that future visits by tax officers will take an interest in the care that has been taken to keep proper accounting records. In particular how these records affect your VAT and payroll returns.

Access to information.

HMRC have included changes to the law in the Finance Bill 2008 that would give them rights regarding access to records that underpin your returns.

Accordingly there is to be no right to appeal against HMRC seeing records.

Another interesting development recognises the use of computers in storing relevant data. HMRC are quoted as saying:

"An authorised person may, at any reasonable time, obtain access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been used in connection with a relevant document."

This would provide officers of HMRC access to any computer which has been used in connection with the accounting records (including supporting documents) required of the taxpayer. This is a new development, as normally taxpayers would expect HMRC to have access to the records themselves, but not the computers on which the records have been prepared or maintained. The practical implications of this are significant.

You may want to ensure that no critical business information is kept on the same computer as the accounting records, so that risk of breach of confidentiality, or even business disruption, is kept to a minimum should HMRC require access to the computer during the course of an enquiry.

Visits will be made in-year to check that the record keeping provisions are being complied with during the accounting period, and given the significant concern expressed about the quality of accounting records by HMRC and the impact on tax take, this is likely to be the main HMRC compliance contact that small businesses will have in the coming years.

What to do?

For most businesses the new rules will have effect for accounting years ending 31 March 2009. Therefore the records that you are presently updating for this period of account may be open to inspection. Can we suggest you contact us if you are interested in a formal review of your accounting and related administration systems, in order to minimise any possible financial consequences of future HMR&C visits.

Selling business property previously rented

Many business owners have bought commercial property that has been fully or partly occupied at various times by their trading concerns, and rent may have been charged for the use of the property; either the property owner has been paid rent by his business, or by other third parties.

This article discusses the way in which the new capital gains tax rules apply to the disposal of these properties on or after 6 April 2008.

As you may remember, all taxable capital gains are now subject to a flat 18% tax charge. There is one notable exception. If a disposal qualifies as the sale of a business asset you may be able to claim entrepreneurs' relief. If you can claim, the first £1m of qualifying lifetime disposals are subject to tax at the reduced rate of 10%. Generally speaking the disposal of a business property should qualify for entrepreneurs' relief as long as it is sold in conjunction with the sale or cessation of the business, or within 3 years of that date.

Obviously, if you have purchased a property for the purposes of running your business you may feel that this relief will be available to you when you sell the property. Unfortunately the position of certain property owners, particularly those who have charged rent to their business, may not be so straightforward.

The issues that affect the availability of entrepreneurs' relief when commercial property has been rented to a business, are complex and certainly beyond the scope of this article to fully explore. However, we have highlighted below the fundamental difference between a disposal by a sole trader and a disposal by a partner or company shareholder.

1. **Sole traders** are treated differently to partners and owners of limited companies. If you are a sole trader there would be no commercial or tax purpose in charging your business rent for the use of your property - both property and business are in your name. There could be circumstances where part of the property has been let to a third party. However as long as part of the property is in use by the owner's business when the property is sold, a claim to entrepreneurs' relief should be effective; at least to some extent.
2. **Partnerships and limited companies.** If a partner or shareholder has purchased a property and made this available to the business for a rental payment, the CGT position on disposal is more complex. If rent has been charged by the owner to the partnership or company, a claim for entrepreneurs' relief on sale may be precluded.

A final point. Relevant legislation has not yet completed its passage through Parliament. The Treasury are aware that a sale of a business property prior to 6 April 2008, that would have

qualified for taper relief, may not now qualify for entrepreneurs' relief; purely due to the rental payments issue. There is therefore a possibility that there may be some relaxation of the rules in any amended legislation.

If you are contemplating a sale of this type of property please contact us before completing the sale in order that we can help you organise contracts in the most tax efficient way.

Companies house filing and other changes

Filing deadlines:

Companies with accounting periods beginning on or after the 6 April 2008 should note the following changes to the filing deadlines with Companies House.

1. **Private companies and LLPs** - the delivery deadline has been reduced by one month from 10 to 9 months.
2. **Public companies** - the delivery deadline has been reduced by one month from 7 to 6 months.

Consequential changes include:

- Full calendar months for filing periods have been introduced. Where the accounting period ends on a month end date the accounts filing period will end on a month end date. (Except for the first accounting period)
- Qualifying companies can still file abbreviated accounts.

Late filing penalties, private companies:

(Penalties for public companies are shown in brackets)

The penalties shown below apply to late filing of accounts on or after 1 February 2009.

- Not more than 1 month late, penalty £150 (£750)
- More than 1 month but not more than 3 months late, £375 (£1500)
- More than 3 months but not more than 6 months late, £750 (£3000)
- More than 6 months late, £1500 (£7500)

If company fails to file on time for two successive years, the penalties are doubled in the second year.

Company secretary

From 6 April 2008 private companies can chose whether they wish to have a company secretary or not.

If you decide to dispense with a company secretary's appointment you will need to:

- Notify Companies House using the appropriate form.
- Amend the company's articles of association. (Only necessary if the articles specifically require that company has a secretary.)

A company can now have a sole director and no company secretary.

Please note that from 1 October 2008, if you do keep your company secretary, they will be able to file a service address for the public record.

Changes to fuel rates from 1 July 2008

From 1 July 2008 the Revenue have published new mileage rates that company car users can use to calculate the fuel cost of running their vehicles for private purposes. If this private element is repaid to employers the employees will avoid the penal car fuel benefit charge. The new rates are:

Engine size:

- 1400cc or less: petrol 12p, diesel 13p, LPG 7p.
- 1401cc to 2000cc: petrol 15p, diesel 13p, LPG 9p.
- Over 2000cc: petrol 21p, diesel 17p, LPG 13p.

Employers can also use these rates to calculate the VAT input tax on fuel included in staff mileage claims - employers will need to retain fuel receipts from staff to prove the fuel was purchased. (Obviously, it is unlikely that staff will have receipts that exactly match the fuel element on their claim forms. Receipts should cover the same time period and be sufficient to cover the VAT claimed.)

Tax Diary July/August 2008

1 July 2008 - Due date for corporation tax due for the year ended 30 September 2007.

6 July 2008 - Complete and submit forms P11D return of benefits and expenses and P11D(b) return of Class 1A NIC's.

6 July 2008 - Deadline for submission of new Tax Credit application for 2008-2009, if you want to secure a full years claim.

19 July 2008 - Pay Class 1A NIC's (by 22 July 2008 if paid electronically).

19 July 2008 - PAYE and NIC deductions due for month ended 5 July 2008. (If you pay your tax electronically the due date is 22 July 2008)

19 July 2008 - Filing deadline for the CIS300 monthly return for the month ended 5 July 2008.

19 July 2008 - CIS tax deducted for the month ended 5 July 2008 is payable by today.

1 August 2008 - Due date for corporation tax due for the year ended 31 October 2007.

19 August 2008 - PAYE and NIC deductions due for month ended 5 August 2008. (If you pay your tax electronically the due date is 22 August 2008)

19 August 2008 - Filing deadline for the CIS300 monthly return for the month ended 5 August 2008.

19 August 2008 - CIS tax deducted for the month ended 5 August 2008 is payable by today.

DISCLAIMER - PLEASE NOTE: The ideas shared with you in this newsletter are intended to inform rather than advise. Taxpayers circumstances do vary and if you feel that tax strategies we have outlined may be beneficial it is important that you contact us before implementation. If you do or do not take action as a result of reading this newsletter, before receiving our written endorsement, we will accept no responsibility for any financial loss incurred.

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