

Seasonal news



Howzat?

The system for appealing against HM Revenue & Customs' decisions on most tax matters changed radically on 6 April 2009. It's always been possible to debate a point with them by correspondence or in a meeting, but now there is the opportunity to require them to carry out an independent review. This means a different officer must consider the case and either confirm or modify the decision within a statutory procedure and a time limit of 45 days. It will be interesting to see how HMRC cope with this – it puts them on the spot to justify their position, or to meet a taxpayer's arguments, within a set timescale.

If the review is unsatisfactory, or if a review is unlikely to help, it's still possible to appeal to a Tribunal. There is a new court structure for tax and VAT appeals – the old General and Special Commissioners and VAT Tribunals have gone and been replaced by a First-Tier and an Upper Tribunal. It's too early to say what practical difference this will make to appeals, but we are assured that the new system will improve on the old.

If you receive a tax decision that you want to dispute – whether it's an assessment, a demand for information, or an instruction to treat a transaction in a certain way – we can help you decide how to take your argument forward.

Penalties

From April 2009 HMRC have a new set of penalties for people who make errors in returns. There is a new language to get used to: 30% for "careless" mistakes, 70% for "deliberate but not concealed" errors, and 100% for "deliberate and concealed" errors – what used to be called dishonest conduct. The penalties for direct taxes – income tax, corporation tax and CGT – used to be 100% for negligence or dishonesty, which would then be mitigated to a smaller figure for the seriousness of the offence and other factors, so the end result may be similar. The penalty for careless VAT errors has potentially doubled – the old rate was only 15%.

The good news is that an error that isn't careless doesn't get penalised at all. If the tax return is wrong, the average taxman may say that's got to be careless – but you might have followed a court decision that was later overruled on appeal, or you took a reasonable line on the basis of professional advice and later decided to revise it.

If you make any sort of error, there is the opportunity to mitigate the penalties by disclosing the mistake to HMRC so it can be corrected. A full, unprompted disclosure should remove the 30% penalty completely. Failing to deal with something that you know about may move a careless error into one of the higher categories.

Some people are worried that HMRC will use these new penalties to extract more money than before from long-suffering taxpayers. Until we have some experience of how they operate the new system, we won't know. In the meantime, it's important to take care – and to take steps to correct any errors that you find. If you want advice on how to steer clear of penalties, or if you are worried that HMRC might levy one on you, we are here to help.

Tax-free checkup

Normally putting "tax" and "check-up" together is enough to make anyone ill – blood pressure, palpitations, chest pains; the Inspector asking awkward questions and making unreasonable demands. But HM Revenue & Customs are human after all: they have confirmed that employees can be given free medical check-ups by their employer without incurring a benefit-in-kind, even if check-ups aren't available to all staff on the same terms.

This is a sensible rule that allows, for example, employees who use computer screens to be given regular eye-tests. It's not supposed to extend to treatment, though – that's still a taxable benefit.

Making allowances

One of the Budget measures intended to boost business was the temporary introduction of first year allowances on plant and machinery at 40%. They keep changing the rules, but the current rate of tax depreciation is 20% a year on most assets, so you get two years' worth of relief at once on anything you buy in the year starting 1 April 2009 (companies) or 6 April 2009 (income tax traders).

Except... you already get 100% relief on the first £50,000 of plant and machinery bought in a year. So this change only helps you if you spend more than that. If you are planning large expenditure on plant, it's worth thinking carefully about the timing to make sure you get the best relief. We can work out the numbers for you.

Hope on the Horizon?

Can you remember a more turbulent year than this? Daily job losses, with unemployment at a 14-year high of 2.38 million; and banks lurching from government bail-out to big bonuses. What next?

Small businesses are of course suffering too, barely benefitting from last December's VAT-cut, and many being used as an unofficial "free credit" facility by late-paying customers.

Meanwhile, the swine-flu pandemic has reached our front doors, and as for the "barbecue summer" we were promised – forget it!

But there is a glimmer of hope. The Bank of England has recently suggested that the worst may be over: we might see the beginnings of economic recovery later this year or in early 2010.

Meanwhile, society is adapting along with the economy. Brits are abandoning the Costas and rediscovering the English countryside – tents and wellies are now essential! Values and aspirations are returning to the basics rather than the extras.

At The Paris Partnership, we recognise that adapting is key to survival. We have helped our clients through start-up, profit, expansion, economic downturn and subsequent new directions, guiding them towards emerging markets and fresh opportunities. We have also kept our overheads down and our processes streamlined, so that you still get great value from us – as well as the unique, personal Paris Partnership touch!

We don't have a crystal ball, but we can promise that whatever comes your way, we can help you to cope with it with minimum upheaval.

Enjoy your summer,

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The articles contained in this newsletter are of a general nature and should not be acted upon without specific advice relevant to your circumstances.



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Minimum requirement

This year, the National Minimum Wage (NMW) marks its tenth anniversary. The legislation was originally brought in to prevent employers from deliberately or unwittingly supporting the black market; and of course, having everyone on the payroll ensures that National Insurance contributions and income tax payments flow consistently into the Revenue's coffers.

The NMW initially covered workers aged 18 or over and, in 2004, was extended to 16- and 17-year-olds as well. From October 2009, this younger age-group will receive £3.57 an hour, 18-22 year-olds will be entitled to £4.83 an hour, and workers aged 22+ will be paid £5.80 an hour.

(As a side note, apprentices aged under 19 and/or in their first twelve months of training are not covered by the NMW.)

HM Revenue & Customs have been carrying out an increased number of inspections in recent times to ensure that the laws regarding NMW are not being flouted. They also expect to see valid and current Contracts of Employment to ensure that workers are not being exploited, either physically or financially.

It is worth noting that, with the exception of Company Officers, all staff need to have a valid contract stating their duties, hours of work and remuneration – so if your spouse or children are in any way involved in your business, even in a nominal capacity, make sure your paperwork supports it!

If you are in any doubt as to what is required to comply with the law, ask us – we can help to make sure everything is in order.



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Pot and kettle

Cabinet ministers often lump together tax evasion and tax avoidance in the same sentence – both mean that the Exchequer misses out on tax that “ought” to be paid. They ignore the fact that evasion is a crime involving dishonesty, while avoidance is a matter of following the rules – very carefully, and sometimes artificially – to make sure that the tax bill is no bigger than it needs to be.

Now it seems that half the MPs, including senior ministers, have been following the rules – not always very carefully, but sometimes artificially – to make sure that their expenses claims are as high as possible. Will there be any reduction in denunciation of tax avoiders? Or is Parliament an embarrassment-free zone?

There is a very serious point: reading about the dubious practices of our lawmakers may tempt people to stretch the rules themselves. “If MPs are just going to spend it on themselves, why should I pay all that tax?” But HM Revenue & Customs have new powers to investigate and penalise people who pay too little tax, and “I was only doing what my MP did” will not be a defence. Don’t sink to their level!

Meanwhile, we know that big tax increases are on the way, and some of them have already arrived. This newsletter explains some of the new rules that you may need to be aware of. If you want to know how to follow them carefully and minimise your tax legally, we are here to help.



A fine mess...

You might remember that, in our last issue, we mentioned the new, sharply increased fines being levied by Companies House against private limited companies, LLPs and PLCs who submit their accounts late. Filing even one day late will cost your company £150 – our table below shows how this escalates as the months progress.

So when you get a letter from us a couple of months after your year-end, please don’t throw it to one side and think we are being over-keen – our keenness is to prevent your hard-earned money from going to the Revenue unnecessarily!

How late are the accounts delivered?	Penalty for a Private Company (previous fine in brackets)	Penalty for a Public Limited Company (previous fine in brackets)
Up to one month	£150 (£100)	£750 (£500)
More than one month but not more than three months	£375 (£100)	£1500 (£500)
More than three months but not more than six months	£750 (£250)	£3000 (£1000)
More than six months but not more than 12 months	£1500 (£500)	£7500 (£2000)
More than 12 months	£1500 (£1000)	£7500 (£5000)

Dividend rules, OK?

Small companies often pay their shareholder/directors a regular amount each month which represents a dividend out of profits rather than a salary. The advantage is that dividends aren’t subject to PAYE and NIC. You settle up any higher rate tax under self-assessment at the end of the tax year.

The problem is that you can only pay dividends if there are profits in the company to do so. You also need cash to pay a dividend, but in a downturn it’s possible to run out of profits before you run out of cash – not least because the corporation tax the company owes is not payable until 9 months after the end of the period. So you could continue paying what you paid last year, then find out that it was too much.

Sorting that out can be painful. The extra payment might be regarded as a loan, and you’ll have to pay it back to the company – you may also pay income tax on the benefit of having a cheap loan. If you want to keep it, you’ll have to recharacterise it as salary, and then the PAYE and NIC will all be wrong. It’s much better to see the problem coming and try to avoid it. That requires some budgeting – not necessarily in detail, but at least to assess whether the profit and loss account can support the current level of dividends.

If you want help deciding what profits you can take out of your company and how best you can do it, we will be happy to advise you.

Good times, bad times

Remember how it was before the recession? Businesses making profits, paying tax? Ah, those were the days...

If you are making losses now, you can claim the loss against the profits you made in the past and get some of that tax back. Normally you can only go back one year, which is no good if your business has gone from profit through break-even to loss – you didn’t pay tax for the break-even year so you can’t get any back.

The Chancellor has extended the carry-back rule to three years for losses made in accounting periods which end in the two years from 24 November 2008 to 23 November 2010, but only for a loss of £50,000 in each period. If your losses are more than that, you have to apply the normal rules to the excess – one year carry-back, or carry-forward and hope to set them against profits in the future.

You can also defer the payment of last year’s tax as it falls due if you expect to make a loss in the current period that you will then carry back – you won’t have to wait until after the period has finished when you can prove that you’re making a loss. If you are making losses, reducing your tax bills is hardly a silver lining – but we can at least help you to get the best result.



Your good stealth

Mr Brown attracted criticism for introducing “stealth taxes”. At least Alistair Darling was open about it: the top rate of income tax will go up from 40% to 50% on 6 April 2010 for people earning over £150,000 a year.

There are still hangovers from the Brown approach, though: the rules are more complicated than they surely need to be, with personal allowances to be taken away from those earning £100,000 a year, different rates for dividends and for other income, and the impact of NIC on earnings but not on anything else. So it will be possible next year to have a marginal tax rate of 61% if your income is just over £100,000, and it is likely to be 51% if you earn more than £150,000.

This was one of the Chancellor’s more popular Budget moves – popular, that is, with people who earn less than £100,000. If you are affected by the increases, or if you hope to earn more in the future, there are things you can legitimately do to reduce the impact. For example, you might want to earn a bit more this year, paying 40%, and a little less next year. Although you would pay the tax a year early, you would pay much less. We can suggest a number of ways to move taxable income from one year to another.

Dates for your Diary



- 31.10.09** NEW earlier filing deadline for PAPER tax returns for 2008/09. (Online filing can still be done up to 31 January 2010).
- 31.01.10** 2009 Tax Return to be filed online, or £100 fine.
Balancing payment of income tax and capital gains tax 2008/09.
First payment on account 2009/10
- 28.02.10** 5% surcharge on any 2008/09 tax remaining unpaid.

Ready or not...

HM Revenue & Customs seem to be playing hide-and-seek with people who have undeclared cash in foreign bank accounts.

First they persuaded the courts to give them access to bank records. Then they decided it would be better to get people to come forward, so in 2007 they introduced a “disclosure facility” – that meant that anyone who came forward with full details of cash held abroad and where it came from could pay their tax and only suffer a 10% penalty. We were told that anyone who didn’t take the opportunity would then be pursued with the full rigour of the law.

Now we are told that there will be another disclosure “opportunity” that will start in the autumn and run for a limited period. Presumably anyone who takes this chance after turning down the last one will have to pay more than 10% – but then, we suppose, they really will get heavy with anyone who is still hiding.

If you have an offshore account, it’s worth making sure that it’s being treated properly for tax. If it is, it’s useful to be able to prove that to the taxman. If it isn’t, it’s important to put things right. We can help.