

HMRC penalties – a draconian new system

A new penalty regime is due to be introduced in April 2009, which will create a single penalty regime across all taxes currently administered by HM Revenue & Customs. The new system is likely to have numerous implications for your individual or commercial situation, most likely in the form of income tax self-assessment returns for 2008 and corporation tax returns for accounting periods beginning on or after 1 April 2008. Penalties for failure to register or notify HMRC that you are chargeable, including VAT registrations filed after 1 April 2009, ie. for VAT periods ending from March 2009 onwards, will be applied similarly.

The mechanics of the penalty regime

The new penalties will be determined by the amount of tax you have understated, the extent of your disclosure and based on a sliding scale of culpability.

Whilst there will be no penalties for innocent mistakes, there will be a behaviour based penalty, in addition to interest charges on the tax understated as follows:

- 30% for failure to take reasonable care;
- 70% for deliberate understatement; and
- 100% for a deliberate understatement with concealment.

As with the current regime, reductions are available on the penalties, depending upon your disclosure. For example, were you to make a full disclosure following a challenge from HMRC, each of the above penalties could be reduced by as much as 50%. Indeed, if you had made an unprompted disclosure of your failure to take reasonable care, the penalty could potentially be dropped completely. In order to

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Forthcoming deadlines

August

- ▶ **31** ▶ Deadline for submission of corporation tax self assessment returns for companies with a 31 August 2007 year end
- ▶ **31** ▶ Annual adjustment for VAT partial exemption calculations (May VAT year end)

September

- ▶ **30** ▶ Deadline for submission of corporation tax self assessment return form CT600 for companies with a 30 September 2007 year end
- ▶ **30** ▶ Business and personal planning need not be left until the end of the tax year – talk to us now about tax and financial strategies for you and your business
- ▶ **30** ▶ End of CT61 quarterly period

October

- ▶ **1** ▶ Due date for payment of Corporation Tax for small companies with period ended 31 December 2007
- ▶ **5** ▶ Deadline for individuals or trusts to notify the HMRC of chargeability to income tax or capital gains tax, if no tax return has been issued
- ▶ **14** ▶ Deadline for submission of forms CT61 and payment of income tax for qualifying payments made in the quarter to 30 September 2008
- ▶ **14** ▶ Instalment of corporation tax due for large companies with 30 June 2008, 30 September 2008, 31 December 2008 and 31 March 2009 year ends
- ▶ **19** ▶ Tax and Class 1B NIC due on 2007/08 PAYE Settlements arrangement
- ▶ **19** ▶ Quarterly PAYE payment date for small employers

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- ▶ **31** ▶ Deadline for submission of corporation tax self assessment return form CT600 for companies with a 31 October 2007 year end
- ▶ **31** ▶ Deadline for submission of VAT returns for the quarter to 30 September 2008
- ▶ **31** ▶ Deadline for submission of the 2008 Tax Return (hard copy)

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determine the level of reduction that will be given on a penalty, HMRC will give consideration to a number of factors. Firstly, they will assess whether or not you informed them of the error. They will also factor in any help you gave them in calculating the amount of extra tax due, and whether or not you gave them access to your records in order for them to check the figures.

For Class 2 National Insurance Contributions the new rules, and the above behaviour based penalties, replace the current fixed penalty of £100 for any notifications that were made more than three months after you had started self-employment.

Furthermore, if HMRC issue an understated assessment, in the absence of a return, and you do not take reasonable steps to disclose the under-assessment within 30 days, you may also be liable to incur a penalty, as above.

Suspension of penalties

There are situations under which a penalty may be suspended for up to two years; generally where it can be proven that you merely failed to take reasonable care. Conditions may be imposed on the suspension, however, requiring you to make changes or improvements in order to avoid the mishap recurring, and you will be put on notice of good behaviour. In addition, HMRC would consider your general compliance quality, the level of your disclosure and the nature of the inaccuracy before deciding to suspend the penalty.

To discuss the implications of possible penalties on your individual situation, please contact your local UHY Hacker Young partner for further information. ◀

Roy Maugham – tax partner, London

Changes for non-doms – where are we now?

In the last issue of Tax Update we discussed the proposals for the taxation of non-domiciled individuals (non-doms) set out in the 2007/08 Pre-Budget Report. The months that followed have been a rollercoaster ride for those with a keen interest in this subject, but the detail of the new regime for the taxation of non-doms – effective from 6 April 2008 – is now more or less known, and is summarised here.

The remittance basis

Non-doms have historically been able to take advantage of 'the remittance basis', being taxed on non-UK income and gains only to the extent that the amounts concerned have been remitted to the UK. This is in contrast to 'the arising basis' under which worldwide income is taxed as it arises. From 6 April 2008 if you are a UK-resident non-dom and wish to take advantage of the remittance basis you will be required to pay a special tax charge of £30,000 for each tax year unless:

1. you have been resident in the UK for less than seven of the previous nine tax years; or
2. you are aged 17 or under at the end of the year; or
3. your unremitted foreign income and gains for the year does not exceed £2,000.

How the system will work

The £30,000 charge for adoption of the remittance basis will be payable via the self-assessment system, ie. on 31 January following the end of the tax year in question. If paid direct from an offshore source the £30,000 will not itself be regarded as a remittance. The £30,000 is a tax charge rather than, as originally suggested, a fee and it should therefore be available for offset under some Double Tax Treaties. It will attach to particular items of income or gains and it will be possible to remit these tax-free, but only if all other foreign income and gains have been remitted and taxed. If you have not previously completed tax returns you will need to ask for one if (a) you wish to claim the remittance basis ie. you do not qualify automatically, or (b) if you have offshore income or gains that will now be subject to UK tax. It will be possible to opt in and out of the remittance basis, allowing the benefits of paying the £30,000 to be assessed on a year-by-year basis.

If you choose to pay the £30,000 you will be able to use the remittance basis in the same way as those listed at (1) to (3) above. ▶

However, with the exception of those who have less than £2,000 of unremitted income or gains, all remittance basis users will lose both their personal allowances and their CGT annual exemption.

The old loopholes

Remittance basis users will generally find that many of the loopholes previously present in the system have been closed. Income will no longer escape tax simply because the source was closed in an earlier year, nor will it be possible for gifts of income or gains made to your immediate family members offshore to be remitted tax-free. New rules will apply such that property and services derived from foreign income and brought into the UK will be treated as a remittance. Interest payments on new offshore mortgages will also be caught.

Offshore trusts and companies

The changes affecting non-doms who have settled or benefit from offshore trust and company structures do not go as far as first feared. Nevertheless, they have turned what was already a difficult area into one that will require even more careful planning and some very complex calculations.

If you are a non-dom settlor of an offshore trust you will continue to enjoy an exemption from the normal settlor charge in respect of the trustees' capital gains, regardless of whether or not you claim the remittance basis. However, non-dom settlors and beneficiaries will now have the gains realised by an offshore trust (or subsidiary company) assessed upon them to the extent that they are matched with capital payments made to them. The matching process is complex, but essentially those who receive a distribution from an offshore trust, or enjoy a benefit such as an interest-free loan or rent-free occupation of a property, are likely to find themselves with a tax liability. The trustees of any offshore trust will have an opportunity to elect for the 're-basing' of their assets as at 6 April 2008 such that values at that date form the starting point for computing the capital gains to be matched with subsequent capital payments made to non-dom beneficiaries.

This article is merely a brief review of a very complex subject. You should consult your UHY Hacker Young partner not only if you are considering claiming the remittance basis for 2008/09, but also if you are switching to the arising basis and declaring worldwide income and gains for the first time, or planning to remit foreign income and gains that have arisen in earlier years. ◀

Mark Giddens – trusts & estates partner, London



Capital gains tax – entrepreneurs' relief

As reported in our 2008 Budget brochure, the reform of capital gains tax (CGT) to a single rate of 18% is now to become two rates; with a 10% rate applying to certain gains up to an individual's lifetime allowance of £1 million.

Alternatively, trustees can claim this relief, provided there is a qualifying beneficiary with an interest in the business in question. Unfortunately, such relief reduces the beneficiary's lifetime limit of £1 million. This new relief is being referred to as entrepreneurs' relief. Some of the implications of this relief on various individual, business and partnership situations are addressed in this article.

Which disposals will qualify for entrepreneurs' relief?

Entrepreneurs' relief will apply to qualifying disposals, on or after 6 April 2008, of the following:

- all or part of a trading business carried on by the individual as a sole trader or partner;
- assets of the individual's or partnership's trading business following the cessation of the business;
- shares in (and securities of) the individual's personal trading company (including a holding company of a trading group); and
- assets owned by the individual and used by his or her personal trading company or trading partnership.

This relief will reduce qualifying gains by ▲

4/9, meaning that tax charged on the remainder at 18% has the effect of a 10% rate on that gain (eg. gain £90,000 x 5/9 = £50,000 x 18% = £9,000).

What impact will entrepreneurs' relief have on:

A trading business

As a sole trader or partner disposing of the whole or part of your business, you are required to have owned it for at least 12 months in order to qualify. A qualifying business would encompass a trade, profession or vocation, including the commercial letting of furnished holiday accommodation in the UK. If instead the business ceases and the assets formerly used in the business are sold within three years of the date of cessation, relief will also be available. Assets held as investments by such businesses will not qualify.

Shares

When disposing of shares (or securities) in a personal trading company, or the holding company of a trading group, you will qualify if:

- you are an officer or employee of the company or group, and
- you hold at least 5% of the ordinary share capital and voting rights.

The one year qualifying period of ownership ends with the date of sale, or if earlier, the cessation of trade. In the latter case, a disposal within the three years still qualifies.

Associated disposals

If you qualify for relief on a disposal of shares or partnership asset, relief is also available for an associated disposal of the ▲

related assets, eg. premises owned by you, but used by the business. However, this will be denied if the asset is provided at a market rent. For full relief to be obtained the asset must be provided rent-free.

Deferred gains

Transitional relief will be available for gains realised before 6 April 2008 and deferred under the 'paper for paper' rules, including qualifying corporate bonds (QCBs). You will be eligible for this relief if your original disposal gave rise to the gain deferred, which would have qualified if entrepreneurs' relief had been in force at the time.

Additional relief for your spouse or civil partner

In light of the above information, we would suggest that a spouse or civil partner, who works in the business, should own at least 5% of the shares in order for them to also benefit from an additional lifetime allowance of £1 million. If necessary, you have the option to transfer further shares to them shortly before the sale, without the need for your spouse to own the extra shares for the whole twelve month qualifying period; merely the 5%. Although there is no minimum age limit to qualify for entrepreneurs' relief, in many cases the employment/ office condition may be an effective barrier for those under 18.

To discuss the implications of entrepreneurs' relief on your individual situation, please contact your local UHY Hacker Young partner. ◀

Roy Maugham – tax partner, London

Salary sacrifices

As previously reported in issue 23 of Tax Update, employers are increasingly offering salary sacrifice as an additional incentive to remunerating staff, in an effort to remain competitive within the recruitment market. Salary sacrifice allows your staff to save on both income tax and National Insurance Contributions (NICs), while you are seen as a progressive and appreciative employer. Some of the options and implications of salary sacrifice are addressed in this article.

The mechanics of salary sacrifice

Salary sacrifice allows your employees to forego part of their salary in return for the provision of some form of non-cash benefit. Your employees are then only subject to income tax and NICs on their income minus the salary sacrifice. However, it is important to note that the benefit may still be taxable under the benefits code.

While there are many salary sacrifice options, some of the more popular examples include:

- child care vouchers
- additional employer pension contributions
- purchasing extra holiday
- work related training courses

Wider implications

There are further implications of salary sacrifice which need to be considered including:

- the loss of future state pension and benefits;
- the impact on tax credit awards; and
- compliance with the national minimum wage legislation.

HMRC requires the package to be agreed and detailed in your employees' terms and conditions before they start to receive the earnings and benefits. We generally advise that these benefits come into effect with the annual review of staff salaries. ▲



Company cars as a salary sacrifice arrangement

With HMRC continually increasing the tax on car benefits, cars often feature in salary sacrifice arrangements. However, care needs to be exercised particularly when the vehicle concerned is a leased vehicle. In a recent case, an employee had paid back the full monthly rental amount on a leased vehicle, but it was deemed that a benefit still arose because the lease charges were less than the scale benefit produced by the CO₂ rating.

To discuss the implications of salary sacrifice for your business, please contact your local UHY Hacker Young partner for further information. ◀

Roy Maugham – tax partner, London

Reclaim overpaid tax now

HM Revenue & Customs (HMRC) recent decision to cut the time limit on claims for rebates of overpaid tax from five to just four years could leave you unable to reclaim potentially large amounts of tax if you do not file your claim on time.

The Finance Act 2008, which received Royal Assent on 21 July 2008, amends the Taxes Management Act 1970 so that HMRC will only have to repay overpaid tax from the previous four years instead of five. Unfortunately, this change is weighted in HMRC's favour; HMRC will often still be able to recover underpaid tax for longer than the four-year limit by alleging negligent behaviour.

Currently 44% of tax repayment claims go back six years with the average claim being £1,963 for the six year period.

As HMRC does not proactively inform you when you have overpaid your tax, it can take years for overpaid tax to come to your attention if you have not sought proper advice, potentially losing you thousands. If you think you may have overpaid tax in the last five years, now is the time to act – the changes are expected to be effective from 1 April 2010. Contact your local UHY Hacker Young partner for further advice. ◀

Rob Durrant-Walker – manager, York



VAT round-up

The following is a summary of recent VAT issues to hit the news:



Following on from a hectic 2007, with its seemingly endless stream of VAT changes, many had hoped for a quieter 2008. Unfortunately, 2008 has begun at exactly the same frenetic pace with decisions from the Courts and consultations from HMRC resulting in numerous significant changes that are likely to impact upon your company's VAT affairs. The following is a summary of a number of recent changes:

Filing your VAT returns

Of importance to all VAT registered businesses, the office to which you should file your VAT returns is changing in relation to VAT returns for periods ending 31st July 2008 onwards. HMRC are expected to make further announcements, however, new pre-paid envelopes should be issued with the July VAT returns. Online filing procedures should be unaffected.

Charities' non-business activities

Charitable organisations typically have quite complex VAT affairs, with business and non-business activities as well as partial exemption calculations to worry about. The distinction between business and non-business is crucial, particularly when seeking VAT relief for cost of building works, with savings to be made when activities are defined as 'non-business'. In several recent cases before the Courts, HMRC challenged the non-business status of a number of charities. HMRC not only lost, but caused the definition of non-business to be widened considerably. Previously, granting a lease on property was considered a business activity for VAT purposes, even if very little profit was made, because such an activity conformed to the 'supply and consideration' view of VAT. However, where such a lease was deemed not to make a profit but simply to recoup costs, or the tenant occupied the building for the appropriate non-business purpose, the Courts have ruled that ▲

the non-business VAT reliefs can apply in some circumstances. All such not-for-profit organisations should review their VAT affairs accordingly; there is the potential for considerable VAT to be saved.

Staff hire concession

With effect from 1 April 2009, the staff hire concession is finally to be withdrawn after many years; potentially having serious implications for businesses that are unable to reclaim all their input VAT. For example, in the case of an agency invoicing £100 for a temporary worker of which £20 is the commission element, currently, VAT is charged only on the £20. From 1 April 2009, however, VAT will be due on the full £100, a 500% increase. The health, education, charity and financial services sectors are likely to be primarily affected so should review their use of temporary staff to prepare for the change next April.

Voluntary disclosure limits

The long-standing £2,000 VAT disclosure limit, where errors below this level can be adjusted on the next VAT return, is to be increased for VAT periods beginning on or after 1 July 2008. The new limit, above which a written disclosure is required, will be the greater of £10,000 or 1% of turnover in the VAT return period, to a maximum of £50,000. For example, a business with net outputs in the period under £1 million has a £10,000 limit while a business with net outputs in the period of £3 million has a £30,000 limit. Businesses in excess of £5 million net turnover in the period are capped at £50,000 VAT.

Tribunal reform

The Ministry of Justice is currently undertaking a consultation on the reform of the Tribunal system across all taxes and other disciplines. The new regime is due to come into effect in 2010. Whilst most of the recommendations are worthwhile, the proposals on Costs are worrying. The current system has allowed many smaller taxpayers to seek justice on VAT matters with the ability to claim Costs if they win, whilst HMRC do not generally claim Costs should the taxpayer lose. In reaction to Ministerial instructions to save money, a no-Costs regime is proposed for the first tier of Appeals, with the taxpayer having the power to opt into a Costs regime for higher Appeals. In other words, the Costs regime will be even on both sides irrespective of the vastly different sizes of the taxpayers' and the State's pockets. It is feared that even taxpayers with strong cases will be put off by the likely cost implications of running an Appeal. Although there is an expectation that the professional fee insurers will be looking to fill the gap in due course, you should continue to speak to your advisers if you have any disputed VAT issues.

VAT on fund management

Fund management services have generally been subject to VAT, with the exception of one or two specific fund types which were previously exempt. Following a landmark decision of the European Court in JP Morgan Claverhouse, it was found that the UK Government had interpreted the exemption too narrowly. As a consequence, the exemption has been widened to include the management of investment trust companies. Following this decision, many other types of investment fund are also considering whether the exemption now has wider application, and further challenges to the UK treatment are expected in due course. Affected companies or investors should contact their fund managers. ◀

Simon Newark – VAT partner, London

Tax relief on cars

The general rate of capital allowances has been reduced from 25% to 20%, with special arrangements based on CO₂ emissions to be applied to the tax relief for cars.

The 100% relief for certain low emission cars was due to end on 31 March 2008, however this has been extended for a further five years until 31 March 2013, but with the CO₂ emission targets for cars reduced to 110g/km or less.

Leased cars

Leased cars will also become subject to this special arrangement. If the car lease was entered into before 1 April 2008 it will become subject to transitional rules, preventing any restriction on the rental for cars retailed at over £12,000 with emissions between 110g/km and 120g/km, until the expiry of the original lease. From April 2009, the restriction of lease rentals for cars with a CO₂ emission of 160g/km or more will now become ▲

15% of the rental, rather than the current formula based on the extent to which the retail price exceeded £12,000.

Currently the 25% writing down allowance (max £3,000 pa) will continue, but from April 2009 the writing down allowance will become 10% (max £1,200 pa) for cars with a CO₂ rating above 160g/km, and 20% (max £2,400 pa) for cars with CO₂ ratings between 110g/km and 160g/km.

Inevitably the new rules will encourage regular renewals with the temptation of obtaining the balancing adjustment upon disposal.

If you are about to purchase or enter into a lease arrangement on a car, or fleet of cars, you are advised to review the carbon emissions information, in light of the above changes, before doing so. Please contact your usual UHY Hacker Young partner for further information. ◀

Roy Maugham – tax partner, London

Company cars: changes to advisory fuel rates from 1 July 2008

HMRC has announced that as of 1 July 2008, their advised fuel rates for company cars will be updated as set out in the table below.

Engine Size	Petrol		Diesel		LPG	
	New	Previous	New	Previous	New	Previous
1400cc or less	12p	11p	13p	11p	7p	7p
1401cc to 2000cc	15p	13p	13p	11p	9p	8p
Over 2000cc	21p	1p	17p	14p	13p	11p

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