

2015

SPRING NEWS

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MICHAEL LEONG AND COMPANY

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The seventh tax

How many different taxes do you and your business pay? We guess you pay at least six main taxes:

- business rates
- income tax
- corporation tax
- VAT
- national insurance
- capital gains tax

Other taxes may fall due when you buy shares or property, and when you die. There are also numerous customs duties and levies tied to purchases of cars, fuel, betting, insurance and air travel, to name but a few.

What do all these taxes and duties have in common – they all carry an extra optional charge: penalties.

HMRC can charge you a penalty when you are slow to comply with the deadlines for paying tax or submitting tax returns. Those penalties are normally imposed automatically with no human thought applied to the process. In this newsletter we explain how the number of occasions when “slowness” penalties can arise have ballooned in recent years – particularly for employers.

There are also new reasons for HMRC to hit you with a penalty, such as when you make a mistake on your tax return, or fail to tell HMRC that you are liable to register for a tax.

If you try to comply with a tax but do it wrong – such as filing a return on paper when you should file online, you can be charged a penalty for that. There are also VAT and excise wrong-doing penalties, which we explain further below.

Penalties and their sibling, interest, should be regarded as the seventh major tax. We are here to help you pay the right amount of tax and to avoid penalties and interest entirely. ●

Doing it wrong!

Did you know that HMRC can impose a penalty for issuing an invoice showing VAT when it is not due? This can happen where the business is not registered for VAT, but issues VAT invoices as if it were.

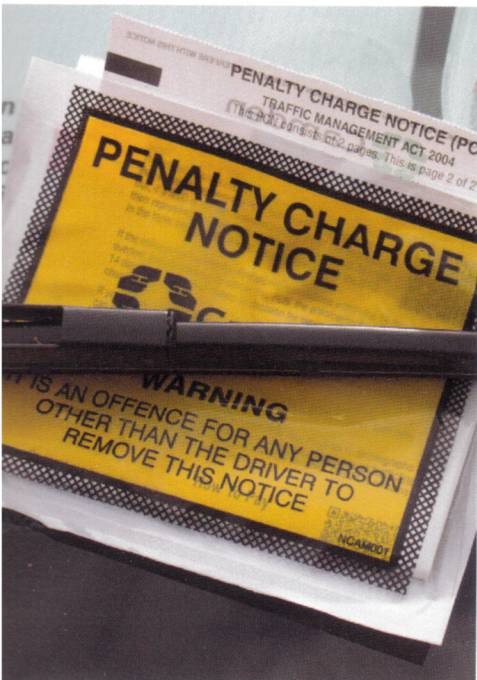
HMRC require the trader to repay any VAT erroneously charged and impose a penalty of 10% to 100% of that VAT. This can be a very large sum, as Ms Foy discovered when her company was hit with a penalty of £57,768.

Foy formed her company in November 2012 and applied online to be registered for VAT from 1 January 2013. However, the taxman had some questions about the application so called the mobile number given, and left a message for Ms Foy.

He also sent a letter and email to Ms Foy, neither of which she replied to. In spite of not receiving a VAT number the company charged VAT on its invoices until August 2013, when it applied again for a VAT registration.

Ms Foy's experience should be a warning to anyone who thinks they can ignore letters and phone calls from HMRC. When applying for VAT registration it is essential to include address and telephone details where you can be reached.

We can deal with HMRC's correspondence on your behalf, but they will not always copy us in to important letters, so please tell us about any HMRC letters or calls you receive. ●



Solicitors' tax disclosure

HMRC are now targeting solicitors to disclose any tax omissions or mistakes by 9 June 2015.

A solicitor can make a disclosure about their own tax affairs, or disclose about someone else's tax affairs where he or she has been appointed to a position such as director, company secretary, or executor.

HMRC will not publish the personal details of the solicitors who use this disclosure campaign, which could destroy a solicitor's reputation and livelihood. However, to secure this confidentiality guarantee the solicitor must make an accurate disclosure, and co-operate fully with HMRC if asked for any further information following the disclosure. ●

Avoid digital sales VAT mess

If you sell any sort of digital service over the internet (eg: e-books, music, photographs, software, games) you should be aware of the new digital services VAT regime that came into effect on 1 January 2015.

These VAT rules only apply if you sell digital services to private customers in other EU countries, in which case you must apply VAT at the rate due on your digital service in the country where your customer belongs. This applies to all of your digital sales to other EU countries - there is no VAT registration threshold for international sales of services.

To be frank these VAT rules are a nightmare for most small businesses. To comply you either have to register for VAT in every EU country you sell to, or register for VAT Mini One Stop Shop (VAT MOSS) in the UK and report all the international VAT charged through the HMRC website.

A better way is to avoid falling within the new VAT digital sales rules. There are two legal ways to do this:

1. Sell your digital services via an online market-maker that acts as your agent and makes the sale to the consumer. The market-maker should charge the relevant amount of VAT as part of the sale price and pay you the net proceeds less its commission. Be sure to check who is legally making the sale: you or the market-maker.

2. Include a significant amount of manual intervention in every digital sale initiated by a consumer in another EU country. For example set your system to block a cross border sale until a human has checked and authorised the customer's details, or provide an individually written email to each international customer.

We can help you find a route through the VAT MOSS mess. Let's talk about what your business needs to do. ●

Auto-enrolment exemptions

Auto-enrolment for pensions is a worry for many small businesses. The publicity says every employer must enrol their workers in a registered pension scheme, but there are workers and employers who are exempt from this requirement.

If the worker's earnings are below the trigger point, that person does not have to be included in auto-enrolment. The earnings trigger point for 2014/15 is £10,000 per year, equivalent to the personal allowance. The trigger points for earlier years were also set at the standard personal allowance.

However, for 2015/16 the trigger point for auto-enrolment is frozen at £10,000, it will not move up to £10,600 in line with

the personal allowance. This means you need to be careful about the level of salary you pay to yourself and family members employed by your company.

There is also an exemption from auto-enrolment for single-director companies which have no other employees. This only applies where there is just one person on the payroll, not the director plus a spouse, or any other family member.

If you are a one-man company you will receive a notice from the Pensions Regulator, telling you to start auto-enrolment from a certain date (the staging date), but you can claim exemption. We can help you with that. ●

Fit for work

When a key member of staff takes sick-leave it can be very expensive for your business. You are required to pay that person statutory sick pay (SSP) once he or she has been absent from work for four days. Also you can't reclaim any of the SSP paid for periods since 6 April 2014.

However, there is good news. From 1 January 2015 you can get a tax deduction for the cost of medical treatments that help your workers get back to work, and the first £500 of such treatment is tax and NI free for each employee.

To qualify for this tax-free treatment the staff member must have been absent from work because of sickness for 28 days or more, or be expected to be absent for at least that time. The treatment must be recommended in writing as part of an occupational health assessment undertaken by a healthcare professional, and it can include a range of interventions such as talking therapies

for stress conditions or physiotherapy for physical injuries.

One way to get an occupational health assessment for your employee is to apply through the website: fitforwork.org. That website also offers other advice for employers and employees about sickness absence. ●



CGT on second homes

Most people who live in more than one home concurrently know they can nominate one of those homes to be their "main residence", and hence be free of capital gains tax (CGT) for the period covered by that nomination.

Once made, the main residence nomination can be changed at will, and hence "flip" a particular home in and out of the CGT relief for key periods. A property that has been the main residence at any point in the period of ownership will also allow the last 18 months of ownership to be free of CGT. It is thus very important that the conditions for nominating a property are met in full.

From 6 April 2015 you will only be able to nominate a home as your main residence if:

- it is located in the same country in which you are resident for tax purposes; or

- you spend at least 90 midnights in the property in the tax year (or 90 days spread across all the properties you own in the country where the property is located).

If you are tax-resident in the UK but you want to nominate a property located in a country where you are not tax resident, you will have to meet the 90-day requirement for that overseas property. This condition will override any main residence nomination you have already made for that home.

Also from 6 April 2015 people who live outside the UK will have to pay CGT on gains they make on selling homes located in the UK. This will only apply to the gain accruing from 6 April 2015, but it could catch out British ex-pats who have retired abroad but who keep a home in the UK.

We can help you review which properties you can shelter from CGT, and which you may want to sell. ●

Sharing the caring

Here's another thing for employers to cope with - parents who want to share their parental pay and leave entitlements.

Where the parents are expecting a child to be born, or adopted, on or after 5 April 2015, they are now entitled to share the 52 weeks of maternity leave and 39 weeks of maternity pay or maternity allowance. You need to be ready to deal with claims from your employees, and to report the details of shared pay in RTI reports.

The parents generally have to give you eight weeks' notice of a period of shared parental leave, so you could receive such requests from now on. The shared leave can be taken at any time within a year starting with the date of birth or adoption of the child.

The parents need to self-certify that they both meet the following conditions



for shared parental leave:

- be employed or self-employed in Great Britain for 26 weeks in the 66 week period that ends with the week before the birth week; and
- have average earnings of £30 or more in at least 13 of those 26 weeks.

To qualify for shared parental pay the parent must also have earned an average salary of at least the lower earnings limit for the eight weeks prior to the 15th week before the expected birth date. That pay threshold must be met by both parents if the statutory pay is to be shared.

You don't have to check the facts supplied on self-certified claims but you must record the name and NI number of the other parent, who is sharing the leave/pay, to report to HMRC. ●

State pension changes

If you are due to reach state pension age (SPA) on or after 6 April 2016, you will receive the new "flat rate" state pension. People who start to receive their state pension before that date won't be affected by this change.

The maximum state pension payable for 2016/17 is expected to be £150 per week. But you may not receive that full amount, it depends on how many "qualifying years" you have accrued by the time you reach the SPA. A qualifying year is a full tax year of NI contributions or NI credits (or combination of these two).

Facts to note about the new flat rate state pension are:

- you will need a minimum of 10 qualifying years to receive any of the flat rate state pension;
- the full flat rate pension will only be

given where you have 35 qualifying years, the current maximum is 30 years;

- the SPA at 6 April 2016 will be 63 for women and 65 for men, but those ages are due to rise in later years.

If by 6 April 2016, you have built up an entitlement to the current state retirement pension that exceeds the maximum expected flat rate amount, you will receive that higher amount of state pension.

You can boost your state pension entitlement at any age by paying voluntary class 3 NICs. If you are due to reach SPA before 6 April 2016, you will also be able to buy additional state pension entitlement by paying class 3A NICs from 12 October 2015.

We can help you maximise your state pension by advising on the optimum salary to take from your company. ●

Online RTI appeals

The RTI system for PAYE has created 12 filing deadlines in the tax year instead of one end-of-year deadline. That means there are 12 chances of being late with a form, and 12 opportunities for HMRC to fine you for being late.

In fact the law normally allows you one late filing per tax year, so you can receive up to 11 late filing penalties for the RTI forms. These new penalties are being imposed for periods from 6 October 2014 for large employers (50 or more employees), and from 6 March 2015 for smaller employers (less than 50 employees). Although smaller employers are not granted the one penalty-free late filing for 2014/15.

The penalty notices for the quarter starting 6 October 2014 are beginning to arrive now, but HMRC are not sending copies to us as your tax agents, so please let us know if you receive a penalty notice.

There is a new online system to appeal against RTI penalties. The penalty notice includes an ID number to use to log the appeal online. We can do this for you, but we will need the ID number included on the penalty notice.

We also need to discuss the reasons for the late filing. If you have an acceptable excuse the penalty should be cancelled. ●

Flood defences

The winter of 2013/14 was the wettest winter over England and Wales for nearly 250 years, so it's not surprising that flooding occurred in many regions. If your business was affected you may want to prevent it happening again by contributing to the cost of local flood defences.

If you make a contribution in 2015 or later years to a flood defence project as "partnership" funding to match Government money, you can get a tax deduction for that contribution. ●

Partners at home

As a self-employed individual you can claim a fixed deduction from your taxable income, instead of calculating the actual cost of using your home for business purposes.

The monthly deduction varies from £10 to £26, depending on the number of hours you use your home for business in the month; from 25 to 50 hours, up to 101 hours or more. You don't have to provide any receipts to support that claim, you just need to make a note of the number of hours you work from home.

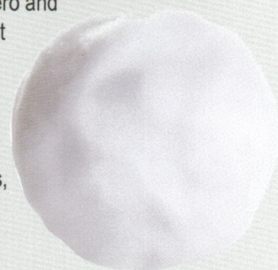
This simplification was brought in from 6 April 2013, but at that time the Government forgot to specify that the fixed deduction for use of home could be claimed by partners in partnerships as well as sole-traders. That is now being corrected, so partners will be able to claim the fixed deduction for use of home, but only from 6 April 2015! ●

A snowball's chance...

We are talking about the confectionary form of snowballs here, not the handfuls of compacted snow children throw around when the precipitation arrives in frozen flakes.

A confectionary snowball is a small dome of marshmallow coated in any combination of coconut, chocolate, sugar, cocoa or carob. The Tax Tribunal recently decided that this type of snowball is a cake, and thus should be zero-rated for VAT. Other confectionary such as chocolate bars must be standard-rated for VAT.

This may sound silly, but the difference between zero and 20% VAT is significant for the producers of such edible items. If you have any doubts about the VAT rate to apply to your products, please discuss them with us. ●



Incorporation and goodwill

When a business is incorporated the business owner sells all, or most, of the business assets to a company. This may include goodwill (i.e. reputation, customer relationships, value of continuing contracts), but valuing the goodwill of a small business is very tricky.

In the past the value of goodwill has sometimes been set on the high side to maximise the gain that arises in the hands of the business owner on the sale of the assets. The business owner then claims entrepreneurs' relief, which if all the conditions are stratified, results in a tax bill of only 10% of the net gain after deducting the £11,000 annual exemption.

The Government has now put a stop to this little game. For business disposals made on and after 3 December 2014, entrepreneurs' relief can't apply to a gain that arises on the transfer of goodwill to a company that is related to the seller.

Entrepreneurs' relief will continue to be available on the transfer of other assets on incorporation – just not on the gain relating to goodwill.

If you want to incorporate your business there are a number of tax reliefs that can be used to reduce or defer the gains that will arise. Our tax experts can help you decide which tax relief is best for you to use. ●

No need to panic

There has been some panic whipped up in the media about employers having to pay large sums of back-dated holiday pay to workers who regularly get paid for overtime.

In general holiday pay is calculated according to an employee's "normal pay", which has always been judged not to include overtime payments. However, in a recent Employment Tribunal the judge decided that guaranteed and non-guaranteed overtime should be included in the sum of "normal pay" on which holiday pay is based. The tribunal also determined that employees could make back-dated claims for unpaid holiday pay.

In response to this ruling the Government has changed the Working Time Regulations, so that paid holiday is not a contractual right and any underpayments of holiday pay cannot be pursued as a breach of contract in the civil courts.

Also from 1 July 2015 new regulations will limit claims of underpaid holiday pay to those amounts relating to a period of two years. There will be a six month transition period to allow claims for longer periods to be submitted where the claimant makes a claim within three months of the last perceived incorrect holiday payment.

So don't panic. Any demands for unpaid holiday pay are now capped, and have to be brought within a restricted period. ●

Use it or lose it

The employment allowance is worth up to £2,000 per tax year for each employer, but any unused amount can't be carried forward to another tax year. So it's a case of use or lose the allowance for 2014/15.

The employment allowance can only be set against employer's class 1 NIC due for the tax year, not against any other tax or charge. But that is not the impression you get when you read the GOV.UK page on the topic.

The confusion spread by the Government can be explained by comparing two companies which have one employee each:

Micro Ltd pays its employee £10,000, so has a total liability for employer's NIC of £282 for 2014/15. Micro will use £282 of its £2,000 employment allowance entitlement. Micro Ltd can't claim a tax

refund in respect of the unused allowance of £1718.

Smee Ltd pays its employee £26,500, so has to pay employer's class 1 NIC of about £213 per month. But Smee forgot to claim the employment allowance until month 10. The employer's class 1 NI for months 10 to 12 (£639) will be covered by the employment allowance.

Also Smee will have already paid class 1 NIC of £1917 for months 1 to 9. If Smee asks HMRC, £1391 of the NIC already paid (£2,000 – £639) can be refunded. Alternatively that refund can be set against other amounts of PAYE that Smee Ltd owes for 2014/15.

We can help you claim the employment allowance, and make sure any refund due is used in the most tax-efficient fashion. ●

Pot of gold

From 6 April 2015 anyone with a defined contribution (money purchase) pension scheme can extract all their pension savings from that scheme once they reach age 55.

If you are tempted to access your pension pot in this way, please think about the tax consequences. Under flexi-access drawdown, the first 25% of your pension savings can be taken as a tax-free payment, but the rest will be taxed at your marginal tax rate in the year you extract those funds.

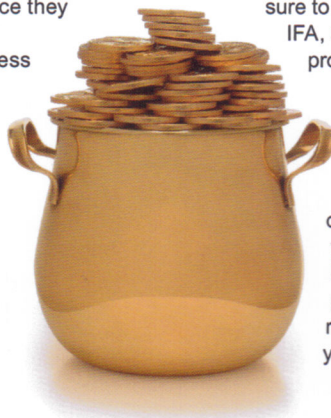
Taking out a large sum in one go may push you into the higher tax bands. If you extract more than 25% of the fund in 2015/16, you need to budget for the significant tax bill which will be payable by 31 January 2017.

What are you going to do with the money you extract from your pension

fund? You may need an income in retirement, so investing in some form of income-producing asset would be wise. Be sure to take advice from a qualified IFA, and beware of schemes promising high returns which could be scams.

Once you start to take money from your pension fund you will face restrictions on what you can put back in. To prevent you from recycling funds back into a money purchase pension scheme with tax relief on the contribution, your annual allowance will be restricted to £10,000.

Also once the funds are outside your pension scheme they become liable to inheritance tax at 40% on your death unless they are invested in shares, agricultural or business assets that qualify for relief from inheritance tax. ●



Excuse for late payment

If you pay your VAT late more than once in a year you will get a default surcharge. This starts at 2% of the VAT due, and rises every time you are late again (within 12 months) to 5%, 10% then 15%. This applies where your payment is even one day late!

One way to get out of the surcharge penalty is to claim you have a reasonable excuse for paying late.

Not having the funds to pay is generally not accepted as a reasonable excuse, as the Vatman thinks you should put aside the VAT element of the sale when the customer pays you. If the customer hasn't paid by the time the VAT is due, you are expected to borrow the funds needed from your bank.

In this age of 24 hour online banking it is difficult to prove you didn't have access to banking facilities.

Bews & Sons located in the Orkney Islands asked for a bank loan when a customer unexpectedly paid late. However, banking services in the Orkneys are limited and a bank manager on the mainland took a week to deal with the loan request. The Tribunal decided that Bews had a reasonable excuse for late payment, in view of the restricted banking facilities.

It is better to make sure you don't pay your VAT late at all. If you receive a warning letter from HMRC, don't ignore it – talk to us about how to minimise the risk of penalties. ●