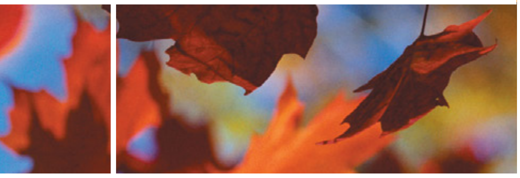
2013 AUTUMN NEWS



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Called to account

The Commons Public Accounts Committee has campaigned to highlight tax avoidance by big businesses who don't 'pay their fair share'. Sadly, the PAC's approach is very blunt and sometimes misguided. Headlines and soundbites may unfairly tarnish people who are doing nothing wrong. For example, the PAC chair, Margaret Hodge MP, criticised the Duchy of Cornwall (the main source of income of the Prince of Wales) for not paying corporation tax. It's not a company, so it doesn't pay that tax. You may be a royalist or a republican, but the Prince pays income tax as he should, just as Mrs Hodge does on her salary.

Meanwhile, HM Revenue & Customs are also countering tax avoidance and tax evasion. Let's be very clear about the difference, which the MPs sometimes blur: avoidance uses the law, usually in a way that wasn't intended by the people who wrote it, to reduce tax. Tax evasion involves dishonesty, for example by simply declaring less income than the true figure.

Anyone caught evading taxes will be charged penalties and may be prosecuted. HMRC are constantly running campaigns to encourage evaders to put their affairs in order, and to seek out those who fail to do so.

Those who use artificial avoidance schemes have to be prepared to tell the truth to HMRC, and may find themselves arguing in court about whether the arrangements work. These arguments may take years – this summer saw decisions against the taxpayer in relation to schemes implemented in 2002 and in 2005. HMRC would rather not spend their time in court, so they have recently published a warning to discourage people from trying it on: 'Tempted by tax avoidance?' explains what they are likely to object to, and tells you why you shouldn't get involved in the first place.

If the PAC, the press and HMRC leave you wondering what tax planning is acceptable – whether you should pay corporation tax even though you are not a company – we'll be happy to give you a calm and objective explanation of what works and what doesn't, and what might end up in years of legal wrangling. That's something worth avoiding! •

A degree in tax saving?

Funding a student through university is an expensive undertaking. Where the student's family owns a business it may be tempting to employ the student in the business during holiday periods, and pay them a scholarship while they attend university. This can be a risky strategy for the parent.

There is a tax exemption for scholarship income which applies up to a cap per academic year (currently £15,480). However, that doesn't prevent the scholarship income paid to the children being taxed as an employment benefit on the parent.

This was the trap Mr Kutcha fell into. His business paid scholarships to his two sons and applied the tax exemption. However, the taxman proved in court that the scholarships for his sons were provided because of his employment (not the sons' employment). As a result the company had to pay Class 1A NICs on the scholarship amounts, and Kutcha senior was taxed personally on the amounts paid tax-free to his sons.

It is possible for a business to set up a formal scholarship scheme, under which no more than 25% of the scholarships funded are linked to employees' employment within the business. Scholarships can also be paid to remoter relatives such as nieces or nephews who are not in the definition of 'family', as long as those remoter relatives are not also members of the employee's household. But HMRC may still argue about the reason for paying the grant.

In short, trying to be too clever may put you bottom of the class. We can help you get the answer right.•

Going to work, or working on the go?

As a self-employed worker you may visit your customers to provide a service at their premises. This could apply to a range of professions such as hairdressers, cleaners, and gardeners but also medical professionals who work at private clinics. The miles you drive to reach each of your customers from your business base are used to calculate the amount of travel expenses you can claim in your business accounts.

That works out well if you keep good mileage records. But can the taxman still query your travel expenses? Recently he has argued that even where the business is based at your home, that home-office can't be treated as the starting point for travel when so much time is spent at particular customers' premises that they become effectively separate bases as well.

The taxman has agreed that travel between customers is allowable, so the mobile hairdresser or cleaner who travels to several customers each day should be able to claim the majority of their travel expenses. However, travel from the home-office to say one private clinic and back home again is in question.

This doesn't mean you should stop claiming the cost of travelling to customers, but to head off any challenge in the future, you should record details of every business-related journey: where it started, number of miles and the reason for the journey – who you were visiting. Using an estimate of your total business mileage for the year is no longer an acceptable method of calculating your travel expenses.

You should also make a note of the time you spend at your home-office on your business, such as preparing estimates, chasing debts or writing reports. We can help you set up a system to provide the necessary records. ●

Fixed protection 2014

The lifetime allowance for tax-favoured pension funds will be reduced from £1.5 million to £1.25 million on 6 April 2014. We described the background to this change in pension law in our Summer 2013 newsletter. If you apply for 'fixed protection 2014', you can keep the benefit of the higher limit, subject to restrictions on further contributions to the fund.

The online form to apply for fixed protection 2014 is now available. We can help you complete it, and submit it on your behalf. However, you first need to contact your pension scheme administrator get an up-to-date value of your pension fund. ●

Workers' rights?

The Government thinks owning shares makes employees feel more involved in the business, which leads to happier and more productive workers – so happy that they will be willing to give up key employment rights in return. Do you want to offer your workers that choice?

To get the free shares, the employee must sign an 'employee shareholder' contract under which they forgo all of the following rights:

- compensation for unfair dismissal, apart from when this is automatically unfair or relates to anti-discrimination law;
- request time off for studying or training;
- request flexible working; and
- statutory redundancy pay.

Employees must also give 16 weeks' notice (instead of 8 weeks) when returning from maternity or adoption leave.

In return the employee must be issued with at least £2,000 (and up to £50,000) worth of shares in the employing company. When the individual sells those shares any gain arising is completely exempt from capital gains tax. But the first £10,900 of any gains made per year is exempt from capital gains tax anyway.

Shares worth £2,000 can be awarded to an employee free of income tax and NIC. Any value above £2,000 is taxable and is subject to income tax and NIC.

You can't take advantage of this scheme to award free shares to yourself or family members if you already control 25% or more of the company.

Please talk to us if you are interested in implementing this scheme, as the tax and employment law aspects are complicated. Also the employees will need to take independent advice before signing away their employment rights. ●

Repairs or improvements

Is your commute to work a game of 'dodge the pothole'? Whether the road is public or private property, repairs will be always be necessary, and sometimes nothing less than a complete new surface will fix the problem.

The decision to patch or resurface your own roadways has a significant effect on tax bills, as the cost of repairs will qualify for a tax deduction. But where the work amounts to an improvement or a complete renewal of the asset, that cost cannot be deducted immediately. Capital expenditure on improvements or renewals is denied a tax deduction until the property is sold.

Capital allowances can be claimed for the capital expenditure incurred on plant, machinery or certain fixtures to buildings, but not for the cost of laying roads or for the structure of buildings. There are special rules for buildings used for research and development projects.

The taxman frequently challenges the cost of repairs shown in accounts, particularly where the sum expended in one year is large. However, HMRC has recently released new guidance on repairs and improvements, which confirms that the resurfacing of a road can be a repair that qualifies for a tax deduction.

There are still many grey areas which can be argued to be one side of the capital/repairs line or the other. Discuss your property expenditure plans with us, and we can help you decide if the cost will be tax deductible. ●

When I'm 64, will I still... pay NI?

Every UK taxpayer is required to pay national insurance contributions (NICs) only until he or she reaches state pension age (SPA).

The cut-off date for class 4 NICs (paid by the self-employed on profits) is the end of the tax year in which the taxpayer attains state pension age, as class 4 is assessed on an annual basis. Class 2 and class 1 NICs are assessed on a weekly or pay-period basis, so the stop-date for those classes is the pay period or week in which you reach your SPA.

But what is your personal SPA? This is no longer the same age for all men or all women. The SPA for women is gradually being moved up from 60 to 65. Women who are reaching 60 this year have a SPA of 64 or more.

Once the SPA is aligned for men and women at 65, it will move to 66, and then onwards and upwards. There is a draft law passing through Parliament right now which will increase the SPA for men and women to 67.

If you are female, self-employed and aged over 60, check your SPA on the online state pension age calculator before signing your tax return. Don't assume that the tax return software has used the right SPA date for you when calculating the class 4 NICs you are due to pay for the tax year. ●

Bring me sunshine

If you have solar panels on your roof, you probably pay a bit less for your electricity – and you probably sell some to your power company. A recent European Court ruling has held that you could be regarded as being 'in business' for VAT purposes – your own personal utility company.

The case was about an Austrian who wanted to deduct the VAT in the cost of buying the equipment. The judges ruled that he had a contract that would produce income regularly over an indefinite period, and that had all the hallmarks of a business – he could deduct input tax, and then account for output tax on his income.

HMRC in the UK have yet to comment on this. If you aren't already VAT-registered, you won't have to on account of small sales of electricity because you won't reach the threshold of £79,000 a year. But if you are already registered for some other business, HMRC could decide that you have to bring home generation into the VAT account.

We'll be keeping a weather eye on this. ●

Whose house is it anyway?

Buy-to-let property can provide a useful source of income, especially in a family where there is one main earner and a spouse who pays lower rates of tax. If the rental income from the let properties is assessed on the lower earner, the family as a whole will pay less tax – the saving can be in the thousands. However, it's important to get the legal position right.

Where a married couple (or civil partners) have purchased a buy-to-let property in their joint names, the net income from the property must be reported in equal shares – 50:50 – on each of their tax returns.

The property can be owned in a different ratio: say the wife owns 90% and the husband 10%. In that case, the income can be split in that ratio. But to do so, you have to make a declaration on HMRC's Form 17. If you don't, the income will still be taxed equally.

You can't just pick any ratio for tax – the proportions must reflect the underlying beneficial interests in the property, and capital gains on a future sale will be split in the same way.

If you declare rental income from joint property on your tax returns in a different proportion (not 50:50) without a Form 17 declaration, you will be open to penalties and interest for errors on the tax returns – even if the ownership is not equal.

This is what happened to Mr & Mrs Koshal. Although they declared all of the income from their let properties on their tax returns, they hadn't filed Form 17, and they should have reported everything as equal. They had to pay more tax, plus interest, and they were charged 30% penalties for getting it wrong.

If you own property jointly with your husband, wife or civil partner, we'll be happy to help make sure you are paying the right tax – and let you know if you could pay less. ●

Offsetting debts

For deaths that occur on and after 17 July 2013 there is a change in how the value of the deceased person's estate is calculated for inheritance tax purposes (IHT). We outlined this new law in our Summer 2013 newsletter.

Previously any debt owed by a person on death was deducted from the total value of the estate, unless it was a mortgage attached to a specific building or piece of land. If money is borrowed on or after 6 April 2013 to acquire an asset that qualifies for a special tax relief – examples are business assets, woodlands or agricultural property – the debt must first be set off against the value of that asset before applying the relief. Any excess loan remaining after that set-off can be deducted from the value of the rest of the estate.

This change may increase the value of your estate which will be subject to IHT. If you haven't had a look recently at how much the taxman would think you are worth – and how much IHT you are exposed to – we can crunch the numbers. ●

RTI: Route To Insolvency

Real Time Information (RTI) is creating all sorts of problems with reconciling PAYE payments, and employers are receiving demands to pay PAYE which is not due.

Say you pay statutory maternity, paternity, or adoption pay to an employee. As a small business you can normally recover those statutory payments by offsetting against the PAYE you are due to pay over to HMRC. Under RTI the PAYE you deduct from employees is recorded on the full payment submission (FPS) and the statutory payment recovery is shown on the employer payment summary (EPS).

You need to record those recovered amounts on every EPS you submit for the entire tax year, or the computer at HMRC will forget you have offset those amounts and demand the apparently unpaid PAYE.

Another cause of unexplained PAYE debts is where HMRC has added a 'specified charge' to your PAYE account. This happens when you have apparently not submitted an FPS or EPS for the previous tax month. The specified charge is set at 1/12th of your PAYE liability for 2012/13. The charge can be cancelled if you submit an EPS or FPS for the tax month required.

HMRC should send you a written notice of the specified charge, but this has not been happening to date.

If you receive a call from the HMRC's debt management team demanding payment for unpaid PAYE, ask the caller to demonstrate how the debt arose. Also ask if written notice has been served for any specified charge, as required by the PAYE regulations. These questions should hold off the attack dogs long enough to help you get up to date with your RTI submissions. ●

It's all in the timing

If you are planning to work abroad for a year or more, and want to minimise the UK tax due on your overseas earnings, you need to plan your departure date from the UK very carefully.

We know this is not always possible, but if you can stay out of the UK for a full tax year, that helps to make you 'not resident' in the UK for that year. If you are not resident for tax purposes, you are generally not taxed on your overseas earnings.

There are many factors to consider when determining whether you are tax resident in the UK or not, and new restrictions this year on the tax savings you can achieve while you are away. We will need to talk through your particular circumstances. You should also complete form P85 on your departure to reclaim any tax you have overpaid in the UK. ●

Who do they think they are?

In the past we have had cause to complain about the behaviour of HMRC's debt management and banking department (DMB), whose job it is to collect unpaid tax. Aggressive letters and calls to taxpayers are not uncommon, and collectors may refuse to deal with your tax agent even where a signed authority is place with HMRC.

HMRC has responded by improving the communication between the tax offices and the debt collectors. Now the debt collectors should have up-to-date tax debt figures, so should not be chasing tax which is not due or has already been paid.

HMRC are no longer using bailiffs employed by third parties to physically collect tax debts. If someone turns up on your doorstep demanding payment of tax, you can ring 0300 200 3862 to check whether he is a genuine HMRC employee. Also call us without delay. ●

Options open?

If you buy a property on which the vendor has 'exercised the option to tax', you generally have to pay VAT on top of the purchase price – and, to rub salt in, that puts up the Stamp Duty Land Tax. In some cases, though, the purchaser's intended use overrides the option, and there's no VAT. Sometimes the vendor needs to get a certificate from the purchaser; sometimes it's enough just to 'be informed' of the intention.

In a recent case, a charity bought a redeveloped property for use as a residential children's home – a 'relevant residential purpose' (RRP) that would cancel the developer's option. But the charity changed its mind, and used the property as its head office – if that had been the intention at the time of sale, the developer should have charged VAT.

The developers had treated the sale as exempt, and had paid back to HMRC all the input tax they had recovered on their costs by virtue of the option. Then HMRC came back wanting output tax on the sale. The trouble was, there was nothing in writing to show what the buyer had told them – the only contemporary record suggested a director had thought the option was cancelled simply because the buyer was a charity (which is wrong).

The tribunal accepted that, on the evidence, the charity had probably told the vendor that it intended to use the property for RRP. The output tax wasn't due.

If you are buying or selling a property on which the option to tax has been – or may have been – exercised, you need to proceed with care. We can advise you on what to charge and what records to keep, and when you need a certificate.

VAT's in store?

From 1 October 2012, the law was changed to exclude rental of a 'self-storage' unit from VAT exemption. Previously, it could be regarded as a 'licence to occupy land' in some circumstances, and no VAT needed to be charged. Anyone renting out storage units should now be charging output tax, if their total income is over the registration threshold.

HMRC have published an information sheet to help people understand the new rules. Never believe a Chancellor who says he'll make tax simpler! Some of the questions could make your head spin – for example, 'What if I supply a space which could be used for storage, but is being used for a different purpose?'

It's not bedtime reading for everyone, but it's essential reading for anyone letting out space which might be used for storage! If you're not sure about the VAT liability of any income, we'll be happy to advise you. ●

Ringing the changes

More HMRC helplines now have numbers beginning 0300, which should be cheaper for most callers. The full list can be found on the HMRC website; the most frequently used new helpline numbers are:

VAT enquiries	0300 200 3700
VAT online helpdesk	0300 200 3701
NI enquiries for employees and individuals	0300 200 3500
NI enquires for the self-employed	0300 200 3505
Stamp duty land tax	0300 200 3510

The previous 0845 numbers will continue to work for about 18 months. ●

VAT on holiday lets

If you stay in a hotel, you pay VAT. If you rent holiday accommodation, it's VATable under a similar rule – but the UK registration threshold of £79,000 a year means that many owners who rent out their holiday homes don't have to charge VAT.

There are two catches. First, if a foreign resident owns a UK holiday home, a change on 1 December 2012 means that they no longer benefit from the £79,000 threshold. Someone who 'belongs outside the UK' but makes supplies of UK land will have to register immediately. It's possible to avoid this by using a UK-based agent to manage the lettings – then you are treated as 'belonging in the UK' and you are entitled to the threshold. But if you manage it yourself from abroad – VAT will be due on the rent.

The second catch relates to UK residents with holiday homes in other countries. Even before the recent changes to thresholds for 'non-established persons', many EU countries had much lower thresholds than the UK, and some have no threshold at all. So anyone who lets out a holiday home in another member state should take local advice about the VAT treatment.

After which... you may need a holiday! ●

Make your claim preCISely

Companies who are registered as sub-contractors under the construction industry scheme (CIS) can set-off the CIS tax deducted from their invoices against the PAYE and NICs they retain from employees' wages. If the CIS tax is greater than the PAYE deductions made in the tax year, a repayment must be claimed from HMRC.

In an attempt to improve their CIS tax repayment service, HMRC have listed their top tips for successful CIS repayment claims. Some of the less obvious points are:

Make sure that the UTR number for the company and its name are correctly shown on all enclosed documents.

Send the CIS deduction statements for the right tax year, not for any other period.

Where the company is also a contractor, all its CIS returns (forms CIS300) must be up to date before it can claim a repayment of CIS tax.

If a business was incorporated during the tax year of the claim, do not submit deduction certificates for periods before the incorporation.

If the company has other tax repayments due to it, say for corporation tax or VAT, detail those amounts and supply supporting documentation with the CIS repayment claim.

We can help you prepare all the documents you need for your CIS repayment claim, and guide you through the process. ●