

## Newsletter April 2008

This month sees the start of a new tax year. To set the scene for the new fiscal year we have included a reminder this month that "income shifting" has not gone away and we need to prepare ourselves for legislation in this area next year. Additionally we have outlined changes to Revenue powers, a reminder of the disqualification test for contractors, and changes to the filing deadline of limited company accounts with Companies House.

Our next newsletter will be published on Wednesday 7th May 2008.

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## Income Shifting

One of the more contentious items of legislation expected in the March Budget statement never materialised. The issue concerned the movement of income from one tax payer to another, the main objective being an overall reduction in tax payable. Typically it involved a husband and wife, or other connected parties for tax purposes, setting up a partnership or small company such that profits/dividends could be shared say equally. However the underlying commercial reality may be that one of the partners earns 90% of the profits. Income shifting legislation would allow the Revenue to redistribute the earnings of this sort of arrangement, such that taxable earnings were allocated on the basis of the underlying commercial activity, rather than the agreed share of profits or ownership of the business.

Although the legislation was not included in the March 2008 budget, this issue has not disappeared!

The Revenue have agreed to postpone implementation until 6 April 2009. During the next year there will be a period of consultation with interested parties, primarily the major accountancy and tax bodies, who will aim to inject some realism into the final shape of the legislation.

If you feel that you may be caught up in this ongoing debate we will be keeping you abreast of progress, or the lack of it, as the year progresses.

## Revenue Powers and Penalties

### Powers

From the 1 April 2009 HMRC will be aligning its powers across all taxes and duties. In a nutshell they will be able to exercise the following powers:

- a power to inspect records required under the record-keeping legislation - this restricts the existing VAT and PAYE inspections to statutory records and introduces a new power of inspection for direct tax;
- a power to require supplementary information which is relevant to establishing the correct tax position;
- a power to require third parties to provide information which is relevant to establishing a taxpayer's correct tax position;
- a power to visit business premises and to inspect records, assets and premises;
- removal of VAT and PAYE powers to undertake inspections at private homes without taxpayer consent;
- appeal rights against any penalty, and against information notices which have not been pre-authorised by an appeal tribunal;
- penalties for failure to allow an inspection and failing to comply with an information notice, including a tax-geared penalty which can be imposed by the new upper tier tribunals; and
- an updated criminal offence of destroying or concealing records requested under a notice authorised by a tribunal.

An additional power that has recently been granted to HMRC is the right to intercept phone calls - "bugging" powers! The Customs branch have always had this right, and it is now rolled out to investigations that involve all taxes. The powers were granted in the Serious Crimes Act 2007; the relevant implementation date was 15 February 2008.

### Penalties

The Budget March 2008 included provisions that will enable the Revenue to introduce a single penalty regime across all the taxes, levies and duties they administer.

The changes are likely to commence for all incorrect return periods commencing on or after 1 April 2009, where the return is due to be filed on or after 1 April 2010.

New penalties for failure to notify the commencement of a new taxable activity are expected to have effect for those that arise on or after 1 April 2009.

The penalty will be determined by the amount of:

- the tax understated,
- the nature of the behaviour giving rise to the understatement, and
- the extent of disclosure by the taxpayer.

The use of suspended penalties will be extended.

There will be no penalty where a taxpayer makes an honest mistake, but there will be a penalty of up to:

- 30 per cent of the tax understated for failure to take reasonable care;
- 70 per cent of the tax understated for a deliberate understatement; and
- 100 per cent of the tax understated for a deliberate understatement with concealment.

The measure will provide for each penalty to be substantially reduced where the taxpayer makes a disclosure (takes active steps to put right the problem), more so if this is unprompted.

- For an unprompted disclosure of a failure to take reasonable care the penalty could be reduced to nil.
- Where a taxpayer discloses fully when prompted by a challenge from HMRC each penalty could be reduced by up to a half.

### **Campaign on undeclared income from property**

HMRC launched a campaign earlier this year targeted at tax payers who have had income from property and have not declared it on their tax returns from 2001/02 onwards. The campaign is focused particularly on income from renting a room, buy to let income, and income from furnished holiday lettings.

If you by chance receive a letter from HMRC on this topic be sure to call us to discuss the matter further.

## **Construction Industry - automatic disqualification**

One of the more draconian aspects of the new CIS regulations is the power of HMRC to withdraw gross payment status if they consider that a contractor's circumstances have changed in a particular way.

Under the pre-CIS rules status would generally be reviewed at renewal date. Under the new rules if an inspector is of the opinion that a contractor's circumstances have changed so that if he applied now, he would not be granted gross payment status, then gross payment status may be withdrawn.

Obviously it is important to ensure that you stay the right side of the qualification process, in order that your gross payment status be maintained. The following compliance notes are quoted from a Revenue Fact Sheet on the topic:

"To pass the compliance test, you and any business partners (or your company and each of its directors) must, during the 12 months up to the date of the application, have done all of the following:

1. Completed and returned all tax returns sent to you.
2. Supplied any information to do with your tax that we may have requested.
3. Paid by the due dates:
  - all tax due from yourself or the business
  - all your own National Insurance contributions (NICs)
  - any PAYE tax and NICs due from you as an employer
  - any deductions due from you as a contractor in the construction industry.

When considering whether you have passed the compliance test, we will disregard, during the same 12 month period, any or all of the following.

- Three late submissions of the monthly return - up to 28 days late.
- Three late payments of CIS/PAYE deductions - up to 14 days late.
- One late payment of Self Assessment tax - up to 28 days late.
- Any employer's end of year return made late.
- Any late payments of Corporation Tax - up to 28 days late, including where any shortfall in the payment has incurred an interest charge but no penalty.
- Any Self Assessment return made late.
- Any failures classed as 'minor and technical' in relation to your obligations under the old Scheme, where these fall within the 12-month period up to your application."

If you do receive notification that your status has changed this can be appealed. Be sure to call us immediately.

## Companies Act changes from 6 April 2008

If you are involved in the management of a limited company, you may like to make a note of the following changes which apply from 6 April 2008:

### 1. Filing Accounts

For all private companies the filing deadline for delivery of accounts to Companies House has been reduced from 10 to 9 months. The change will apply to accounting periods beginning on or after 6 April 2008. For public companies the deadline is reduced from 7 to 6 months.

Qualifying companies will still be able to file Abbreviated Accounts.

### 2. Company Secretary

For private companies only, the appointment of a company secretary becomes optional from 6 April 2008.

- the choice to continue with an existing appointed secretary is optional,
- if you decide to dispense with an existing company secretary after 6 April, you will need to advise Companies House using form 288b,
- you will not need to amend your Articles of Association unless there is a specific reference to a company having a secretary,

From the 6 April it will be possible to have a sole director and no company secretary.

## Tax Diary April/May 2008

**1 April 2008** - Due date for corporation tax due for the year ended 30 June 2007.

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

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

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

**1 May 2008** - Due date for corporation tax due for the year ended 31 July 2007.

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

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

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

**19 May 2008** - The payroll forms P35 and P14s must be filed by this date - employers late in filing these forms may receive a penalty.

**31 May 2008** - Ensure all employees have been given their P60s.

**DISCLAIMER - PLEASE NOTE:** The ideas shared with you in this email 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.

Hobsons,  
Alexandra House, 43 Alexandra Street, Nottingham, NG5 1AY  
AND International House, Brunel Drive, Newark, NG24 2EG.  
Tel: 0115 962 1590.  
Web: [www.hobsons.biz](http://www.hobsons.biz)

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