Compass Accountants

Newsletter -June/July 2015

Helping you to shape your future… not just accounting for your past…

TaxAngles - For proactive tax planning

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The Missing Clauses

In order to process the Finance Bill 2015 through the parliamentary procedures before the recent election, certain clauses were deferred. It is likely that the deferred clauses will be reintroduced in the summer Budget, 8 July 2015.

As announced, George Osborne will present his first Budget of the new parliament on 8 July. The clauses that were deferred are:

- Tax exemption for travel expenses of members of local authorities.
- Consortium relief – the "link company" rules.
- Fuel duty incentives for aqua methanol.
- Exemption for trivial benefits in kind.
- Amendments to rules for the Enterprise Investment Scheme and Venture Capital Trusts.

Speculations about other matters that may be included in a post election budget are rife and may include:

- The announcement of an increase in Inheritance Tax exemptions for married couples passing on the family home, to a possible £1m, and
- Loss of higher rate tax relief for pension contributions

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What is your business staging date

Pensions' automatic enrolment is not going to go away.

Businesses have begun to receive notification of their staging date: the date on which pension arrangement under the scheme should be in place.

According to the Pensions Regulator's commentary on automatic enrolment:

"The law on workplace pensions has changed. Every employer with at least one member of staff now has new duties, including putting those who meet certain criteria into a workplace pension scheme and contributing towards it. This is called automatic enrolment. It's called this because it's automatic for your staff – they don't have to do anything to be enrolled into your pension scheme. But it's not automatic for you. You need to take steps to make sure they're enrolled."

The stages or tasks you will need to complete by your staging date include:

- Assessment of your workforce to see who is eligible.
- Provide a point of contact.
- Create an action plan.

This will include choosing a pension scheme or checking that your present scheme will qualify.

If you are still unsure what you should be doing, we would be happy to point you in the right direction. As we mentioned at the beginning of this article, this requirement is not going to go away.

Quote of the month…

The Night Circus
" how do you feel with a future not set in stone?"

By Erin Morgenstern

Reclaiming VAT input tax prior to registration

Once you have registered your business for VAT the first thing you should consider is the possibility of reclaiming input tax on purchases of goods and services prior to registration.

This article summarises the issues you will need to consider for the two categories: goods and services.

There's a time limit for backdating claims for VAT paid before registration. From your date of registration the time limit is:

- 4 years for goods you still have, or that were used to make other goods you still have
- 6 months for services.

You can only reclaim VAT on purchases for the business now registered for VAT. They must relate to your 'business purpose'. This means they must relate to VAT taxable goods or services that you supply.

You should reclaim them on your first VAT return (add them to your Box 4 figure) and keep records including:

- invoices and receipts
- a description and purchase dates
- information about how they relate to your business now

If your pre-registration purchases and other costs are significant, this facility can produce a reasonable cash flow benefit.

Please call if you would like our help to assess the possible claim you could make.

Attempts to defraud a liquidator punished by courts

A court order appointing a Provisional Liquidator was made by the High Court in March 2014 against Parkwell Investments Ltd, based in Wilmslow, Cheshire. The order removed the company's officers and appointed a Provisional Liquidator in their place to protect the company's remaining assets.

The company's officers then deliberately and knowingly acted in contempt of court by transferring £450,000 out of the reach of the Provisional Liquidator.

The funds are now very unlikely to be recovered, a point which presiding Judge Mr Justice Norris took into consideration when sentencing. He said the company officers' actions "were an affront to the rule of law and order".

Amran Munir, Ali Sami Farooq, and Saif Chaudhry were each sentenced to six months' imprisonment, of which three months is to be served in prison before being granted unconditional release. Unusually, the prison sentence was given in civil, rather than criminal, proceedings.

The individuals initially defended their actions but at the eleventh hour admitted to breaches of the court's order.

NIC Avoidance, late filing penalties, VAT MOSS

NIC avoidance

The employment allowance is designed to relieve the burden of class 1 NIC from small employers, so only one allowance can be claimed per employer or per group of employers. Distributing a large payroll into lots of connected companies doesn't permit the employer to claim more than one employment allowance.

However, that is exactly how the NIC avoidance scheme is supposed to work, which the BBC uncovered last week. An employment agency would set up dozens of companies each employing just a few low paid people, and claim the employment allowance of £2,000 for each company. It is a mystery as to how those micro-companies would not be "connected", as in practice they must be under the control of the same person or group of persons. The HMRC guidance on connected companies is quite clear.

HMRC has issued a statement about the NIC avoidance scheme as "Spotlight 24", which emphasises that they believe the scheme doesn't work. What's more any employers who have used the scheme to avoid paying NIC will be investigated, with interest and penalties applied as appropriate.

The promoters of the avoidance scheme should also expect to receive penalties as the scheme should have been notified to HMRC under the Disclosure of Tax Avoidance Scheme (DOTAS) rules. The initial penalty for not disclosing the scheme is up to £5,000 plus daily penalties of £600 for continued failure. The scheme promoter is also required to give the DOTAS registration number to the clients who used the scheme, and failure to do that attracts a penalty of up to £5,000 per client.

If you are approached by a firm to assist with a tax or NIC saving scheme, you need to be aware of the new rules that allow HMRC to monitor and penalise promoters of tax avoidance schemes (POTAS). A breach of those rules can result in a penalty of up to £1 million.

Late filing penalties

Where clients have received penalties for late filing of their tax returns, they may be delighted that those penalties will be removed, and assume you will work this magic for them. However, not all late filing penalties will be cancelled, as all of the following conditions must be met:

- the penalty must relate to the late filing of a 2013/14 SA tax return, not to returns for earlier years and not for returns relating to any other taxes;
- the 2013/14 SA return must now have been received by HMRC;
- the taxpayer (or you on their behalf) must appeal against the penalty notice and offer a reasonable excuse.

In previous years HMRC would examine every late filing appeal in detail. In most cases they would reject the appeal if the taxpayer's circumstances didn't fit within the narrow interpretation of “reasonable excuse” invented by HMRC. The new HMRC approach is to accept the taxpayer's reasonable excuse at face value and not spend time asking for more details, and certainly not take the matter to the Tax Tribunal.

This new HMRC policy was confirmed by Ruth Owen, HMRC's Director General of personal tax when speaking to the BBC's Money Box programme. However, at the time of writing there has been no statement published on the HMRC pages of GOV.UK about this change of practice.

It is clear that HMRC's resources are currently very stretched as millions of tax credit claimants are trying to renew their claims by telephone before 31 July. HMRC staff who normally answer the tax helplines have been switched to tax credit lines, and tax post processing is also slowing down.

If you claim tax credits we can guide you through the process to renew your claim online, but you first need to prove who you are by registering with the GOV.UK Verify service. To do this the claimant must hold a current UK passport and/or UK driving licence and have a mobile phone to receive a code by text.

VAT MOSS

New rules for applying local rates of VAT to digital services supplied across EU borders came into effect on 1 January 2015, but guidance on how to account for the VAT due under VAT-MOSS was released very late. A concession for UK traders who aren't VAT registered, to allow them to use VAT-MOSS without having to charge VAT to their UK-based customers, was issued almost at the last minute.

A second concession concerns the records required to determine where the customer is based. Small businesses are allowed to rely on the customer location information provided by their payment service provider (eg PayPal). This concession was announced as a temporary measure to apply to 30 June 2015, but it is now permanent for UK businesses who are not VAT registered.

The role of the tax agent in helping clients to comply with VAT-MOSS appears to have been added as an after-thought in the design of that system. As a tax agent Compass can't register you for VAT-MOSS, but we can submit VAT-MOSS returns on your behalf if we register as a VAT-MOSS agent .The first deadline for submitting a VAT-MOSS return was 20 April 2015.

If you are providing digital services you are likely to be invoicing electronically as well. Take a look at the new guidance on electronic invoicing in VAT Notice 700/63.

Finally if you are disgruntled about the VAT-MOSS regime, there may be light at the end of the tunnel. The EC has acknowledged in a report on the digital single market the administrative burden that VAT imposes, and has recommended there should be a common EU-wide VAT threshold to help small e-commerce businesses.

Is VAT recoverable on car derived and combi vans?

HMRC have issued a list of makes and models of car derived vans and combi vans which VAT registered businesses can use to determine if the VAT paid on the purchase can be reclaimed as input tax.

The issue is that VAT will normally be claimable in full on the purchase of a commercial vehicle. However if the vehicle purchased is a passenger car VAT is not recoverable unless it is used 'exclusively for the purposes of a business'. Generally cars are therefore VAT 'blocked' and no input VAT is recoverable.

The VAT guidance states:

'Motor car means any motor vehicle of a kind normally used on public roads which has three or more wheels and either:

a) is constructed or adapted solely or mainly for the carriage of passengers; or

b) has to the rear of the driver's seat roofed accommodation which is fitted with side windows or which is constructed or adapted for the fitting of side windows'

Whether or not a vehicle is commercial is not specifically defined but instead the definition of a car excludes:
vehicles capable of accommodating only one person or suitable for carrying twelve or more people including the driver

- vehicles of more than three tonnes unladen weight
- caravans, ambulances and prison vans
- special purpose vehicles such as ice cream vans, mobile shops, hearses, bullion vans and breakdown and recovery vehicles
- vehicles constructed to carry a payload of one tonne or more.

Many car derived vans are not cars for VAT purposes as they have no rear seats, have metal side panels to the rear of the front seats and a load area which is highly unsuitable for carrying passengers etc.

HMRC have issued the clarification due to developments in the car derived van market, as some vehicles with a payload of less than one tonne have 'blurred' the distinction between cars and vans.
If you would like help with this or any other VAT issue please contact us.

Secret VAT rule used against new traders

'*HMRC has changed its interpretation of a key VAT rule so that newly registered businesses are being denied VAT Refunds.*

What's more HMRC hasn't publically announced this change in practice, so tax advisers and taxpayers have been potentially over-claiming input VAT on new VAT registrations.

So what's changed?
When an established business registers for VAT it will already hold some stock and assets which will be used after the registration date in connection with its VATable sales. For the last 43 years, the trader has been able to reclaim all the input VAT paid on those goods, in his first VAT return, as long as these conditions are met:

- the goods were acquired in the four years before the date of registration
- the items are still held at the date of registration.

However, if you ring the VAT helpline you may now be told the trader can't reclaim all of the input VAT paid on those goods. HMRC says the input VAT should be reduced to take into account the use that has been made of the goods before the VAT registration date. There has been no change in practice for VAT reclaims on services, which must be provided in the six months before registration.

Example:

Ken has been a self-employed pest controller for many years. He registered for VAT with effect from 1 May 2015, at which point he held a van that cost him £24,000 on 1 May 2013, and equipment that he bought for £9,000 on 1 May 2012, both inclusive of VAT. He expects to use the van for eight years and the tools for five years.
Previously most VAT advisers would advise Ken to reclaim VAT of £4,000 in respect of the van and £1,500 paid on the equipment.

The new HMRC interpretation of EC VAT Directive 2006/112 article 289 (set out in VAT Input Tax Manual para 32000) is that as the van has been used for 2/8th of its life, just £3,000 (6/8 x 4000) of the input VAT can be reclaimed. For the equipment a similar calculation reduces the VAT reclaim to £600 (2/5 x1500).

Ken is obviously losing out by £,1900 of unrecoverable VAT.
Any taxpayer would be confused by the advice given by the VAT helpline, as that doesn't agree with the guidance given in the public VAT Notices 700 (at section 11) and 700/1 (at para 5.2). AccountingWeb member Littlelow was certainly puzzled by advice he got from the VAT helpline a year ago when he called about a very similar problem.
So when did HMRC change their practice and why?

HMRC apparently changed their practice from 1 January 2011, but it is not possible to confirm this as the record of updates to the VAT input manual only goes back to February 2012.

The UK law is set out in VAT regulation (SI 1995/2518) reg. 111, which doesn't mention the need to restrict input VAT in respect of the use assets have already been put at the registration date. However, Neil Warren writing in Taxation Magazine is convinced that the new HMRC practice is correct, when article 289 is considered.

Other VAT experts are not swayed by HMRC's reasoning. Wayne Neale, a leading VAT expert says "This is taxation by reinterpretation. In my view, HMRC has an extremely dubious reasoning for correcting a supposed 43 year error on pre-registration VAT."

He goes on to say "HMRC still require a taxpayer to declare full VAT on the sale of the assets which have been used for business and this quid pro quo has always been at the heart of the rules."

Contact Becky James at Compass if you need help.

Tax Diary
June/July 2015

1 June 2015 - Due date for Corporation Tax due for the year ended 31 August 2014.

19 June 2015 - PAYE and NIC deductions due for month ended 5 June 2015. (If you pay your tax electronically the due date is 22 June 2015.)

19 June 2015 - Filing deadline for the CIS300 monthly return for the month ended 5 June 2015.

19 June 2015 - CIS tax deducted for the month ended 5 June 2015 is payable by today.

1 July 2015 - Due date for Corporation Tax due for the year ended 30 September 2014.

6 July 2015 - Complete and submit forms P11D return of benefits and expenses and P11D(b) return of Class 1A NICs.

19 July 2015 - Pay Class 1A NICs (by the 22 July 2015 if paid electronically).

19 July 2015 - PAYE and NIC deductions due for month ended 5 July 2015. (If you pay your tax electronically the due date is 22 July 2015.)

19 July 2015 - Filing deadline for the CIS300 monthly return for the month ended 5 July 2015.

19 July 2015 - CIS tax deducted for the month ended 5 July 2015 is payable by today.

Contact us

For further information on any of the stories in this month's newsletter, or for any other matter that Compass Accountants can assist you with, please contact Jeff Walton on 01329 844145.