

Penalties - Beware

Many people are living in cloud cuckoo land because they have misunderstood the latest announcements about penalties.

Self-assessment returns penalties

HMRC says that it will not challenge a self-assessment late filing penalty in cases where -

- The taxpayer has actually filed their return (if later than it was due); and
- The taxpayer has a reasonable excuse for not filing their tax return on time; and
- The taxpayer appealed the penalty notice within the time limit.

Remember HMRC will automatically generate a penalty on receipt of a late tax return. The taxpayer has 30 days to lodge an appeal to HMRC (it or a tribunal may accept a late appeal on a discretionary basis, again depending on whether the taxpayer has a reasonable excuse for making a late appeal).

A reasonable excuse must run from the date you failed to do something until the date you actually did it. Do **not** think all penalties have been waived and sit back and do nothing.

Real Time Information PAYE penalties

Penalties for RTI PAYE came into force from -

- 6th October 2014 for employers with 50 or more employees.
- 6th March 2015 for employers with fewer than 50 employees.

If you receive a penalty find out why you got it to make sure that it cannot happen again. If the information required has been supplied, **and** you had a reasonable excuse for late submission, and the delay was trivial, make sure you appeal.

Do not do nothing. Small penalties for a repeated trivial offence can quickly become large for subsequent continuing trivial offences. You must know why you were late and work to make sure that you can keep to deadlines in the future.

PAYE deadline has passed – comply now if you are already late

- Benefits in kind forms P9D, P11D, P11D (b) for 2014/15 must be completed.
- Provide employees with 2014/15 benefits information.
- PAYE settlement agreements must be finalised for 2014/15.
- Details of redundancy packages during 2014/15 worth more than £30,000 must be notified. ■

Who will be a Scottish taxpayer?

Guidance has been published on how HMRC will interpret some of the terms which define a Scottish taxpayer in the Scotland Act 2012. The definitions focus on where the individual lives not where they work. Someone with more than one residence will need to count the days they spend in Scotland. If they spend more days in Scotland they will be a Scottish taxpayer. The count is for the year to 5 April each year and the test is more days in Scotland than England. The Scottish rate of income tax takes effect from 6 April 2016. ■

VAT at reduced rate on energy saving materials

The Court of Justice of the EU has just ruled that a reduced rate for supplies of services of energy saving materials, regardless of the housing concerned and the people living in the housing could not be considered as adopted for reasons of social interest and that the letter of the directive 'as part of a social policy' was not being complied with.

These confusing words really mean that the Court agrees with the commission that the UK's reduced rate on energy saving materials is in breach of the VAT directive.

We now have to see how the Government will react. It may decide that only social housing tenants can be provided with energy saving materials. It will need to find a more efficient way of promoting energy saving materials through direct subsidies.

It is almost a certainty the current VAT reduced rate for the installation of energy saving materials will go. ■

Salary sacrifice - HMRC guidance

If you operate any sort of salary sacrifice scheme for your employees it would be sensible to read the HMRC guidance on salary sacrifice schemes updated in May 2015.

www.gov.uk/salary-sacrifice-and-the-effects-on-payee

It is particularly important to know that salary sacrifice can never reduce an employee's cash earnings below the National Minimum Wage rate.

Employers operating salary sacrifice for non taxable travel and subsistence allowances should keep in contact with those accountants who set up any arrangements to ensure that they are still valid – this is an area where change may be announced in the budget on 8th July. ■

Spotlight - Employment allowance scheme reported by the BBC

You may have heard or read reports that a recruitment company has been caught out promoting a scheme to abuse the Employer's NICs allowance. HMRC has published a new anti-avoidance Spotlight list including, "Employment Allowance Avoidance scheme - contrived arrangements caught by existing rules".

Scheme promoters Anderson Group was caught on tape by the BBC making a pitch to a staff agency that it could save substantial NICs by engaging its workers through hundreds of newly formed small companies. They told prospective scheme users that they could save themselves their entire employer's NICs liability. A payroll company would take over employment of staff; it had already set up hundreds of small companies in order to group together employees and claim the allowance of £2,000 per year for each company. The ex-employer was then invoiced for the services of its staff, avoiding substantial NICs.

Technically this scheme does not work as there are anti-avoidance rules contained in the original legislation which catch the arrangements. In any case, HMRC's view is that this type of scheme is notifiable under the Disclosure of Tax Avoidance Schemes (DOTAS) rules. Anyone who comes within the meaning of a promoter for such a scheme who has failed to notify it under DOTAS could be liable for a fine of up to £1million.

If anyone offers you something 'clever' to avoid NICs always seek a second opinion. These schemes frequently do not work legally and can cause you heavy accountancy expense to defend them. ■

New advisory fuel rates for company car drivers apply from 1 June 2015

These rates apply from 1 June until further notice. Advisory fuel rates are set by HMRC. Employers can use these rates to reimburse company car drivers for business fuel. These amounts also apply for VAT purposes, but employers can only reclaim input VAT if the employee supplies a receipt. ■

Engine Size	Petrol	Diesel	LPG
1400cc or less	12p		8p
1600cc or less		10p	
1401cc - 2000cc	12p		9p
1601cc - 2000cc		12p	
Over 2000cc	21p	14p	14p

Request for help - urgent new CIS site needs testing

Have you received a CIS penalty recently? Have you attempted to appeal online using the HMRC appeal site? If so, please give Liz Bridge a call on 020 8874 4335. If you receive a penalty in the next two months and use the online site to appeal can you report back to Liz Bridge on how easy or difficult the site was (1) to get into and (2) to use. Email: Liz@thetaxbridge.com ■

Important case for those with old, large CIS penalties under appeal

CJS Eastern v HMRC [2015] UKFTT 579 concerned late filing penalties in the Construction Industry Scheme. The First Tier Tribunal (FTT) explored its powers to reduce both fixed and month 13 penalties. The Company failed to file returns under CIS for the years 2008/09, 2009/10 and 2010/11.

The FTT decided that:

- Following the Upper Tribunal's decision in HMRC v Boshier [2013] UKUT 579 TCC it has no power to reduce fixed penalties unless they are wrongly calculated or charged.

- A month 13 penalty is capable of reduction (TMA 1970 section 100(2) (b)). It found that it was excessive: it amounted to 50% of the company's annual profits in its best year.

Comment

A useful judgment for anyone with an appeal relating to penalties issued under the pre Finance 2008 regime. Penalties for late returns filed from October 2011 onwards fall within Schedule 55 FA 2008. ■

If you have any questions regarding any of the issues raised in this edition of Newsline please contact Liz Bridge.

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