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Making Tax Digital: first challenges for VAT registered businesses

HMRC's estimates of the number of businesses who are able to submit their VAT returns directly by using third party software are inexact, but it seems that the vast majority (somewhere between 87-92% of businesses) submit their VAT via HMRC's portal. The main problem being difficult adjustments required and/or the need to combine data from several sources. Do you collect the figures for your VAT return from your accounting software package and then go into VAT online via your Government Gateway and manually enter the figures on your VAT return? If so, read on....

Making Tax Digital (MTD) becomes compulsory for all VAT registered businesses from April 2019 whilst for Corporation Tax it has been deferred until 2020.

Looking at the statistics as they are, nearly 87% of VAT registered businesses now need to start considering how to adjust their record keeping and software requirements ahead of the 2019 deadline. Any changes will need to accommodate MTD requirements for other taxes such as Corporation Tax, but as these haven't yet been determined by HMRC this is proving challenging. Brexit also represents a massive challenge for any business with cross border activity.

Clarity is needed as soon as possible if businesses are to be ready by April 2019 which is now less than 18 months away. You **must** talk to your accountants and software suppliers. ■

Corporation Tax

- It has been mandatory since 2011 for most companies to file Corporation Tax (CT) returns online using XBRL.
- HMRC have advised that many returns are still not in the correct format.
- From 1 November 2017, any returns with accounts or computations that are not in iXBRL format will be rejected, unless special exceptions or dispensations apply.
- HMRC have asked that information that is already included in the iXBRL submission is not duplicated in a pdf attachment or covering letter as this will slow down processing of the return.

Most accountants preparing CT returns submit them for clients but if you submit your own accounts check now that you are using the correct format. ■

Car or van? VW Kombi v Vauxhall Vivaro

In *Noel Payne, Christopher Garbett, Coca-Cola European Partners Great Britain Limited v HMRC [2017] TC06082* the First-Tier Tribunal (FTT) had to decide whether the VW Kombi and the Vauxhall Vivaro were cars or vans for the purpose of assessing employee benefits.

A "goods vehicle" for the purposes of section 115(2) Income Tax (Earnings and Pensions) Act 2003 ("ITEPA"). Section 115(2) is "a vehicle of a construction primarily suited for the conveyance of goods or burden of any description...."

There are special rules to value the employment benefit of a Company Car or Company Van if provided by an employer.

- Coca-Cola provided a VW Kombi 1, a Kombi 2 and a Vauxhall Vivaros for its technicians.
- Both had a dual capability of carrying passengers and sufficient payload for carrying cargo.
- HMRC had adjusted the employee's PAYE coding notices for car benefit and assessed the employer for Class 1A NICs.
- Employees and employer appealed to the First Tier Tribunal on the basis that all the vehicles were vans.

Expert witnesses listed the vehicles' various characteristics in great detail. HMRC also noted (although this was not a VAT case and so had no direct relevance) that there were three factors which the tribunal took into account when looking at the differences between cars and vans in VAT cases: comfort of the seats, windows and, whether the seats curtailed the use of load space in the loading area.

The tribunal took a broader approach and used their own version of 'the duck test': Does it look like a duck? Walk like a duck? Quack? Factors considered in deciding what was a van included driver seat height, base model for the vehicle, seating and cargo space. Looking at the overall characteristics of each type of vehicle they decided that the VW was more like a mini-bus and the Vauxhall more of a van.

The rational reasoning behind this decision will be useful for future cases however, this is only a FTT decision and sets no legal precedent. But be careful to check what vehicles you are treating as vans. ■

Simple Assessment

From September 2017, HMRC have started to use information obtained from other sources as the first step in the Simple Assessment program. ■

PAYE

- HMRC have reiterated that employers must check that address details are up to date particularly if they have employees who are living in Scotland for most of the tax year
- Student loan thresholds are increasing from 6 April 2018:
 - Plan 1 loans threshold will rise to £18,330 from £17,775.
 - Plan 2 loans will rise to £25,000 from £12,000. ■

Auto-enrolment pensions

From 1 October 2017 the automatic enrolment duties will begin for new employers on the day the first member of staff starts work. ■

VAT

VAT Notices that have been updated:

- 48: Extra Statutory Concessions
- 700: The VAT guide
- 700/50: Default surcharge. ■

Personal credit card payments to HMRC will stop in January

HMRC have advised that from 13 January 2018, they will not longer be accepting payments from personal credit cards and this method of payment will no longer be available.

HMRC's hand has been forced due to a change in EU law, which prohibits merchants (including HMRC) from recharging credit card fees to payers. As HMRC is only allowed to accept credit card payments on the basis there is no cost to the public purse, this new law will mean HMRC cannot accept credit card payments from the date the law changes.

As the date that the change arises is before the end of January, this may unexpectedly catch out people who are waiting to closer to 31 January 2018 to make their payment. If you want to pay the tax due on 31 January with a credit card, you **must** pay prior to 13 January. Corporate, business and commercial credit cards are not affected and debit card payments will still be allowed. ■

Shift in VAT treatment on search fees

In *Brabners LLP v HMRC [2017] UKFTT TC06093*, the First-Tier Tribunal (FTT) found that the charge to clients of search fees by a law firm were not disbursements as they are part of the overall service of conveyancing and VAT should be charged.

This case deals with the common practice of conveyancers and how they charge customers for search fees. This decision could lead to a drastic shift in how law firms charge for search fees. They may well charge VAT on search fees from now on. ■

Unpaid salary is salary

In *Ventura UK Ltd v HMRC TC06028*, the First Tier Tribunal (FTT) considered whether a credit to the director's loan account in respect of salary had been paid and so should be subject to PAYE.

The tax point for salary is found in s18 of ITEPA 2003, and is the earliest of:

1. When payment is made on account of earnings.
2. When the employee becomes entitled to payment of or on account of the earnings.
3. For directors (whether they were directors at the time):
 1. When the sums are credited in the accounts or records.
 2. If determined by the end of the period to which they relate, the end of that period.
 3. If determined after the end to the period to which they relate, the date they are determined.

At the end of each year the chairman was voted a fee of £16,000 to be paid when the company had sufficient funds to repay loans he had made.

- Fees were credited to his loan account.
- The taxpayer argued that these were not genuine accruals, and that no obligation to pay would arise until the company had the funds to pay.
- The taxpayer put through a prior year adjustment (PYA) to reverse the accruals once HMRC made a challenge, intending that the fee was "no longer" payable.
- HMRC contended that the accounts were properly prepared, showing a true and fair view, under the Companies Act 2006 and hence, the PYA was incorrect.

The FTT found that:

- The chairman was "clearly entitled to receive the annual fees"
- He "could have called in the loan or otherwise enforced the debt"
- PAYE was, therefore, due in each of the years in which the annual fee was accrued

It took the view that the PYA did not successfully reverse the charge to tax and NI. The chairman could absolve the company of its debt to him, but not its debt to HMRC. Take care to apply PAYE to all fees paid to employees and directors. ■

If you have a query relating to any of the items featured in newsline please contact Liz Bridge.

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