

## Hart Shaw

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Registered to carry on audit work by the Institute of Chartered Accountants in England and Wales

# HART SHAW

Chartered Accountants & Business Advisers

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# Money Matters

## The tax year end is nearly here...

### ...are you going to make the most of it?

We can advise on CGT and IHT planning to maximise reliefs.

### ...or will you be too busy filling in forms for employees to think about yourself?

We can help you with Payroll year end procedures.

### ...or are you still catching up with last year's tax year end?

If you missed the 31 January deadline and didn't file last year's return we can help you file it as soon as possible!

To find out more about how we can help, please contact Steve Vickers, Tax Partner, on T: 0114 251 8850, or email: [steve.vickers@hartshaw.co.uk](mailto:steve.vickers@hartshaw.co.uk)



## SPRING 2012

# PAYE pain

In April 2010 HMRC introduced new style penalties for the late payment of PAYE, certain National Insurance Contributions and Construction Industry Scheme payments. The liability to a penalty is based on a totting up procedure depending on the number of defaults during a tax year.

A penalty is not levied for the first default and then rises as follows:

- up to three defaults - 1% of the total amount of those defaults
- four to six defaults - 2% of the total
- seven to nine defaults - 3% of the total and
- ten or more defaults - 4% of the total.

If any tax is unpaid six months after the penalty date, then a penalty of 5% is levied and a further 5% can be levied after 12 months.

HMRC may send a warning letter if a business does not pay on time for the first time in a tax year – then again, they may not!

Unfortunately, the penalty system is not automated and HMRC did not review the position until after the end of 2010/11. As a result it could be 18 months or more down the line before penalties are imposed in some instances.

A number of cases have now appeared through the Tribunal system and it is clear that HMRC are taking a hard line.

The major let out is if the business can show that there was a reasonable excuse for the late paid PAYE



and that the PAYE was paid as soon as possible after the excuse ended. The rules specifically exclude cash flow difficulties as a reasonable excuse unless attributable to events outside of the taxpayer's control. Recent cases have held that:

- the lack of warning from HMRC of the build up of the penalty was not a reasonable excuse
- the failure of nine specific clients leading to cash flow difficulties was a reasonable excuse, as the business was doing all that it could to collect in its debts and to renegotiate its facilities with its bankers
- a change in payment terms by the company's only customer which caused the company severe cash flow difficulties and which took a significant period of time to resolve was a reasonable excuse.

The message is clear. If there is any problem with paying over PAYE and similar payments, contact HMRC in advance and try to negotiate time to pay. Do not wait for the bad news to appear.

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# Swiss rolled-over

In a deal made between HMRC and the Swiss authorities, the funds of UK taxpayers in Switzerland will face a one-off deduction of between 19% and 34% to settle past tax liabilities.

From 2013, a new withholding tax of 48% on investment income and 27% on gains applying to those who have not previously told HMRC about these assets will be charged. However, the new charges will not apply if the taxpayer authorises a full disclosure of their affairs to HMRC.

The agreement also includes the following:

- an anti-abuse clause to prevent Swiss banks promoting avoidance
- a programme of audits, overseen by a new UK-Swiss joint commission, to ensure that banks are complying with their obligations
- that Switzerland will collect data on the destination of funds withdrawn from the country following the announcement of this agreement and will pass this to the UK.

However, the deal is not the end of matters as it does not necessarily cover all past tax arrears. Effectively, people have four options:

- make a full disclosure to HMRC but there is no guarantee of non prosecution and no mention of the level of penalties that may be due
- retain anonymity and authorise the 'one-off payment'. The threat of discovery by HMRC and potential future prosecution remains

- disclose via the Liechtenstein facility, which does protect from prosecution, or
- withdraw all funds from Switzerland but risk prosecution and penalties of up to 200% of the tax if invested in certain other overseas jurisdictions.

For any help in this area, please get in touch with your normal contact.

## P11D pitfalls

Trying to get all benefits correctly treated on a P11D can be a minefield but there are several common areas which HMRC will focus on. We look at a few of these below.

### Business and staff entertaining

Business entertainment is not an allowable deduction for a business. This means entertainment (including hospitality of any kind) provided by a person, or by a member of his staff, in connection with a trade carried on by that person.

However, staff entertainment is a legitimate business expense except where:

- the provision of staff entertainment is incidental to its provision for customers, or
- the expenditure is not wholly and exclusively for the purposes of the employer's trade.

As an allowable business expense, staff entertainment should instead, unless specifically exempted be included as a benefit on form P11D and so taxed on the employee. Alternatively, arrangements can be put in place for inclusion in a PAYE Settlement Agreement. Specific exemption is available for staff annual functions which do not exceed a total amount of £150 annually per person.

### Disallowance or benefit?

The difference in establishing whether entertainment is staff or business related is critical to the tax impact and explains why HMRC are likely to check this area for correct treatment.

If it is business entertainment, the disallowance on a small company only creates additional tax of 20%, whereas tax on an employee benefit could be as high as 50% plus 13.8% employer National Insurance Contributions (NIC).

### Company credit cards

Credit cards are often troublesome. Commonly, it is the directors who have the cards and all sorts of private expenditure can find its way onto the bills.

Detailed reviews of credit card statements are required, not merely sample checks to identify all private payments and to ensure that they have been correctly treated for income tax and NIC purposes.

### Subsistence

It is very common for employers to reimburse expenses for subsistence when employees are away from the office. HMRC often use a rule of thumb that expenses are only allowable where the employee is away from the office for more than five hours and the journey is more than five miles away. A problem can arise particularly in larger organisations where employees do not need to claim travel expenses as the employer has arranged the tickets or transport on the employee's behalf. In these situations, HMRC may state that they are unable to identify where the individual was and, therefore, they may treat the reimbursed expense as being taxable.

They may also seek to tax subsistence payments where no related mileage claim is submitted. It could, however, be the case that the employee travelled in a car with a colleague who has claimed mileage. It will be clear from this that sufficient narrative should be given on the expenses claim form to show where the employee was located.

So, clear policies and procedures will always help save tax. Are yours fit for purpose? Contact us for help.

## Associated companies?

The issue of associated companies is an old chestnut but HMRC still continue to make money in this area, purely because the rules are widely drawn. If companies are associated, they have to share the corporation tax limits between them and this can push some or all of the companies into higher rates of taxation.

Potentially, all worldwide companies which are commonly controlled are associated. In particular, this includes any companies owned by spouses, lineal descendants, lineal ancestors, brothers and sisters. Control means any form of direct or indirect control and many people know that they have to consider rights held by shares or votes.

What is not so commonly understood is that loan creditors can also be a form of control, for example, who is entitled to the majority of assets in a winding up? A recent case illustrates the potential issue.

Company 1 was controlled by the father of the family. Company 2 had been set up as a property development company but could not get finance from the banks. The father owned some shares but did not own Company 2 outright. However, he personally lent a large amount of money to Company 2, meaning he would be entitled to the majority of assets in a winding up due to the loan balance and so the two companies were classed as associated.

This loan creditor point can apply to both personal lending and inter-company debt, so care must be taken when looking for finance.

The major problem is spotting other companies controlled by other family members in the first place, so if you think we might not be aware of any of your family members' business interests, please do let us know. None of us like unpleasant surprises!



# Giving taxpayers time to pay

Individuals and businesses have to pay their tax on time and HMRC have a legal duty to ensure that this happens. Whilst the vast majority do pay on time HMRC are aware that in the current economic climate many people and businesses are struggling to make ends meet, and this includes paying their tax on time.

HMRC helps individuals and businesses with short term financial difficulties by offering them Time to Pay arrangements using the Business Payment Support Service. HMRC have recently issued a briefing note reminding us about how these arrangements are intended to operate.

The briefing makes reference to the fact that any taxpayer facing difficulty in making a tax payment is potentially eligible to apply, although the vast majority of applicants have been businesses, including the self-employed. Furthermore, the sooner that people contact HMRC the better, as every case is considered on its own merits although some simple conditions need to be met. These include:

- convincing HMRC that an applicant is genuinely unable to pay their tax on time
- ensuring that they will be able to keep up with the tax payments they are offering to make
- the ability to pay other tax bills as they arise.

Up to June 2011 some 440,400 Time to Pay arrangements had been made since its launch involving tax in excess of £7 billion.

It is critical that an agreement is made before any penalties or surcharges become due as HMRC will generally not charge these under such arrangements. However, interest is still charged on outstanding tax.

The briefing comments on recent reports in the press that HMRC have tightened up on Time to Pay arrangements. HMRC state that this is not the case and they continue to apply exactly the same criteria that they have always applied with more than 80% of applicants still being approved. However, they point out that there has been an increase in the proportion of applications who do not meet the criteria as mentioned above. They give an example of businesses which have had a succession of Time to Pay arrangements or which have failed to keep up with the terms of a previous arrangement which might indicate an unviable business rather than a business with short term difficulties.

Time to Pay arrangements therefore can be valuable but are only a temporary bridge for those businesses and individuals with cashflow difficulties.

Please contact us if we can assist you in making such an arrangement or if you require other cashflow advice for your business.

# Tax credits: challenge and change

HMRC are required under the 2010 Spending Review settlement to significantly reduce spending and increase tax revenues. Tax Credits and Child Benefit affect working and non-working families alike and are specific headline areas that continue to attract attention. This is due to both the level of expenditure involved and because they potentially affect many individuals. As a result, HMRC are now charged with making expenditure reductions in Child Benefit, tax credits and other welfare benefits of £8.3 billion over the four years from 2011/12 to 2014/15.

Specifically, the planned changes have been outlined as:

- a reduction of almost £2.5 billion from changes to Child Tax Credit (CTC) and Working Tax Credit (WTC) entitlements from 2011/12
- a reduction of £5.5 billion through the withdrawal of Child Benefit from higher rate taxpayer families from 2013 and
- a £300 million saving from using Real Time Information to inform the calculation of tax credit payments from 2014, thereby reducing the level of in-year overpayments which need to be recovered.

Further, HMRC are also committed to reducing losses arising from errors and frauds in tax credits by £2 billion a year.

## HMRC's challenge

As well as the entitlement changes detailed below, HMRC will need to make alterations to its administrative systems for checking entitlements and making payments. This is because reducing errors and overpayments is considered critical to the challenge of achieving these significant cost reductions. In particular, a recent House of Commons Public Accounts report drew attention to the levels of debt arising from overpaid tax credits which has risen year on year since its introduction in 2003/04.

It stated:

'Tax credit debt stood at £4.7 billion at the end of March 2011. The Department's campaign to collect £550 million of newly established tax credit debt has met with limited success, with only £170 million collected or cleared after five months. It estimates that £1.7 billion of new tax credit debt will be generated in 2011/12 and that the overall level of debt could increase to £7.4 billion by 2014/15 without further intervention.'



The report also indicates that £1.1 billion of old tax credit debt, some dating back to 2003/04 has recently been written off but clearly there may be resistance for any such repeat action of this kind if expenditure targets are to be met.

## Tax credit changes 2012/13

A number of changes affecting entitlement to tax credits were implemented for 2011/12.

However, further and arguably more significant changes commence from 6 April 2012 and it will be critical that claimants are aware of the more significant of these to avoid loss of entitlement or be faced with demands for repayments. A summary of the key changes are as follows:

- the period for which a tax credit claim and certain changes of circumstances can be backdated will be reduced from three months to one month
- a disregard of £2,500 will be introduced in the tax credits system for in-year falls in income
- the separate threshold for tapering the family element will disappear altogether
- there is to be an increase in the joint weekly working hours requirement for WTC for couples with children from 16 to 24 hours, with one partner working at least 16 hours, and
- the 50 plus element will be removed from the WTC.

In addition most rates are frozen for 2012/13 with the exception of certain disability elements of WTC and the child element of CTC.

If you require more information about how these changes may affect you for the new tax year 2012/13 please get in touch with your normal contact.

# Sponsorship - tax deductible or not?

Sponsorship can be a useful tool in promoting a business. Commercial sponsorship often involves some form of advertising of the business name and products. Association with popular events or persons can enhance reputation, goodwill and public image with resulting commercial benefits. This often includes links with sporting or cultural events such as:

- corporate packages – advertised on the club/venue website
- sponsor opportunities to individual productions, players or races
- longer term commitments e.g. sponsoring a football club.

Businesses will be keen to ensure that the cost of sponsorship is tax deductible in arriving at taxable profits. However, the costs will not be allowable where they are:

- capital expenditure
- expenditure not wholly and exclusively for business purposes, or
- expenditure which is specifically disallowed for tax purposes such as entertaining costs.

An example of the latter could include the hospitality element of a corporate sponsorship package.

## Capital expenditure

Capital expenditure may include assets such as cars or racehorses. However, a contribution to a permanent exhibit could be disallowed if it was considered to be of enduring benefit to the business. Depending on the nature of the capital expenditure it might at least be possible for the business to instead make a capital allowances claim or if a company a claim for relief under the intangible assets rules.

## Non business purpose

Expenditure which is not wholly and exclusively for business purposes because there is also a non-business purpose is not allowable. This is an area which can cause difficulty because of the perception of what sponsorship actually means. At one end of the spectrum, sponsorship can be of a charitable or philanthropic nature such as supporting the arts. Expenditure on this would not normally be wholly, let alone exclusively, incurred for the purposes of the sponsor's business. At the other end of the spectrum, sponsorship could amount to pure advertising or pure public relations. In this situation the quid pro quo for the sponsorship payment will be, for example, the advertising facility and no more.

HMRC guidance gives details of other examples of non-business purpose including:

- circumstances where the sponsored person is a relative or close friend of the business owner or
- circumstances where the business owner has a personal involvement in the sponsored activity (such involvement often pre-existing the sponsorship).

A recent case concerned a company involved in the construction industry that, over a four year period spent nearly £400,000 on sponsorship fees on rally cars. It just so happened that the owner of the company had previously been a rally car driver and competed in vehicles owned by the sponsored business.

The Tribunal agreed with HMRC that the lack of commerciality in the transaction inferred that the sponsorship was not wholly and exclusively for the purposes of the trade and was therefore not allowable.

If this is an area of interest please contact us for further information to ensure your business maximises its allowable business expenditure.

# A game of location?

Following the establishment of 24 new Enterprise Zones (EZ) in 2011 the Government has now announced that selected zones are to benefit from 100% First Year Allowances (FYA) on qualifying plant and machinery.

## What's to play for?

The advantages of being labelled an EZ designated area have so far been limited to a business rates discount package, and promised assistance with simplified planning and superfast broadband access. However, the Government also indicated that they might offer enhanced capital allowances in limited cases and proposals on this have now been made.

The proposals apply to expenditure on certain plant and machinery for use primarily in an EZ area specifically designated at the time the expenditure is incurred. 100% FYA means the ability to deduct capital expenditure in full for tax relief purposes. This may be attractive, given that in general businesses may only qualify for 100% relief on the first £25,000 of expenditure from April 2012 onwards.

## The winners

There are 6 locations which have been selected for these proposals. They are the designated assisted areas within the Black Country, Humber, Liverpool, North Eastern, Sheffield and Tees Valley Enterprise Zones.

## Exclusions

Only companies within the charge to corporation tax will be able to qualify for these FYA. Care will also need to be taken as there are a number of exclusions. These are:

- certain companies 'in difficulty'.
- selected industries are excluded such as agricultural production, fisheries, coal and steel.
- expenditure on transport and transport equipment for the freight and air transport sector are also to be excluded though not other qualifying expenditure for such undertakings.
- expenditure taken into account for another State aid grant/payment is also excluded.

## Elite squad conditions

The other key conditions include the following:

- expenditure must be incurred in the five year period from 1 April 2012 to 31 March 2017 inclusive
- expenditure must relate to a new business, expansion of business or a new activity relating

to a fundamental change of business product or service provided

- plant must be new, unused and cannot be replacement expenditure of existing plant.

If this is an area which interests you and you require further guidance on eligibility please do contact us.

