client briefing

Winter 2010

Bird Simpson

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This newsletter is for general information only and is not intended to be advice to any specific person. You are recommended to seek competent professional advice before taking or refraining from taking any action on the basis of the contents of this publication. The newsletter represents our understanding of law and HM Revenue & Customs practice as at October 2010.

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PAYEment in the post...

On behalf of HM Revenue & Customs (HMRC), Royal Mail is delivering millions of Pay As You Earn (PAYE) tax calculations (form P800) to taxpayers.

The reason for this is that HMRC's new PAYE computer has started to reconcile the PAYE records for every employee for the tax years 2008/09 and 2009/10. Previously these reconciliations were done manually, and the work fell very behind.

It will take weeks to issue these forms and you may not receive a letter immediately, if at all. You should not receive a form P800 if you normally complete a self-assessment tax return, because all your tax liabilities are reconciled on your annual self-assessment form.

If you receive a form P800, check the information against your other tax papers, e.g. P60 and P11D, that detail your total pay and benefits for the tax years concerned. Contact HMRC immediately on the number shown on the form if you find an error.

Beware the scammers

Normally the tax reconciliation will produce an overpayment of tax, in which case you should receive a cheque for the repayment within a few days.

You do not need to supply any further details to HMRC to get this repayment.

Please *do not* respond to emails or telephone calls asking for your bank details in connection with a tax repayment, because such calls or emails are almost certainly part of a fraudulent scam.

A recurring error?

If you are due a tax repayment it may be because you were not given all the tax allowances due to you. Check whether the same mistake occurred in earlier years.

There will be nothing to pay immediately if the tax calculation shows underpaid tax. Where you owe less than £300 for either the 2008/09 or 2009/10 tax years, the amount due will be deleted from the PAYE computer, so you will not have to pay.

The tax will be collected through the PAYE system if you owe up to £2,000 for the two tax years. In early 2011, you should receive a PAYE code (form P2) that sets the tax due against your allowances for 2011/12. As a result, you will have slightly more tax deducted from your earnings in each month to 6 April 2012.

HMRC will issue a payment request if you owe more than £2,000 and they will ask you to make payments starting in 2011.

However, if you will have difficulty in paying the amount due, whether this is more or less than £2,000, you can ask to pay over an extended period of up to three years.

Extra Statutory Concession A19

Where you can prove that HMRC ignored information relating to your tax affairs for more than 12 months after the end of the tax year, you may be able to avoid paying any tax due.

This procedure is called Extra Statutory Concession A19. You need to make a special claim for this to apply, and we can help you with this and any other aspect of your tax affairs.

Pensions shake up: not over yet

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In April 2010, several major changes were made to the basic state pension, but the new Government has many other reforms on which it is either consulting or preparing legislation:

- **State pension age (SPA)** In October, the Government announced that the SPA for men and women will rise to 66 from April 2020. As a result, the phasing-in of a SPA of 65 for women will also be accelerated between April 2016 and November 2018.
- **Inflation adjustments** Many increases for public sector pensions, private sector final salary schemes and state pensions have traditionally been linked to movements in the retail prices index (RPI). In the small print of the June Budget, the Government announced that for state and public sector pensions it would generally be switching over to the consumer prices index (CPI) from April 2011. The Department for Work and Pensions later announced that the same revision would be applied to statutory increases for private sector final salary schemes – both during and before retirement.
- **Annuitisation** The June Budget moved from age 75 to age 77 the point at which private pension funds must be used to buy an annuity or switched to an alternatively secured pension (ASP). The Treasury has since issued a consultation paper on scrapping the requirement to buy annuities altogether, abandoning the largely unused ASP and reforming the income withdrawals rules. Changes are now likely to come into effect from April 2012.
- **Tax reliefs** In October, the Government announced revised limits on the tax relief available on pension contributions, designed to replace the current special annual allowance from April 2011. The new regime cuts the annual allowance – the effective limit for tax-relieved pension contributions – to £50,000 per tax year, albeit with some scope to carry forward unused allowances.

Experts estimate that there is a yawning gap of over £1,100 billion between most people's expectations of what they will get in retirement and what they will actually receive.

As we have always advised, it is never too early to begin saving for retirement and to review all your pension options. The nearer you are to retirement age, the less time and fewer options you have to take any necessary remedial action. Otherwise, as one commentator has put it, you have to consider a 'triangle of compromise': saving more now, working for longer, or retiring on less money.

Property letting traps

The buy-to-let boom is over, but recent trends may lead many reluctant homeowners into the rental market. The latest signs from the housing market suggest that we may be heading for another slowdown, if not an actual double dip. Recent research by More Than Business concludes that, if there is a second housing downturn, as many as 10% of homeowners may be forced to let their existing properties and downsize.

Letting produces an income, of course, and allows homeowners to hold on to their properties with the hope that things will improve. First-time landlords, however, need to be aware of the potential traps as well as their legal responsibilities towards tenants and third parties.

More Than's report lists eight points worthy of considering:

- **Electric and gas appliances** – Landlords are legally required to ensure the safety of electrical installations and have gas appliances checked annually.
- **Energy performance certificates (EPCs)** – EPCs have been a legal requirement since October 2008. They must be provided to tenants free of charge before the contract is signed.
- **Damage deposits** – Since 2007, landlords letting their property under an assured short-hold tenancy (the most widely used form of lease) have been legally required to place tenants' deposits in one of three approved tenancy deposit protection schemes. Failure to do this may result in a court action against the landlord for three times the amount of the deposit.
- **Tenants' rights** – Landlords should make sure they become familiar with tenants' rights as well as their own. For instance, landlords may not enter a let property without the tenants' permission.
- **Tenants' references** – Landlords should run credit and reference checks on prospective tenants, to make sure they are fit and proper persons and will be able to pay the rent.

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- **Fire regulations** – The property must comply with fire-safety standards with respect to furniture and furnishings, and be supplied with extinguishers, fire alarms and fire exits.
- **Insurance** – Standard owner-occupier insurance policies are not adequate for letting. Special landlord policies are needed.
- **Lease or contract** – The most frequently used lease or rental contract is the assured short-hold tenancy.

We should add a ninth point: homeowners who did not originally contemplate letting and have a mortgage will require the mortgagor's consent to let their property. In the current economic circumstances, this ought not to be unreasonably withheld.

Your company, your bank?

You may be tempted to take a loan from your own company, however such a loan can create tax charges for you and the company:

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- Where a loan exceeds £5,000 you will be taxed on notional interest of 4% a year, unless you actually pay interest at or above that level to the company.
- The company has to pay tax of 25% on any of your loan outstanding more than nine months after the company's accounting year end. This tax is repaid once the loan has been repaid or written off.

To clear the loan the company could vote you a dividend, but that dividend must be legal, otherwise HM Revenue & Customs (HMRC) may treat the payment as a further loan.

All shareholders with the same class of shares must receive the same amount of dividend per share. A shareholder can waive their entitlement to the dividend, but there must be enough cash available to pay your dividend plus any waived dividends.

To pay a legal dividend it is not sufficient just to write 'dividend' on the cheque stub or against the accounting entry in your loan account with the company. The directors must first determine whether there are enough profits available to pay the dividend (that is, it is the retained profits plus the current year profits to date that are relevant).

The directors can recommend that any profits which they consider are not required for future investment be paid out as a final dividend to the shareholders.

The directors' decisions regarding the payment of a dividend should be recorded as a formal board minute, so if HMRC ever asks, you can prove the legality and timing of the dividend payment. Sufficient profits will be proved by having either accumulated profits or interim accounts.

The company should also prepare a dividend voucher for each shareholder, showing the amount of dividend payable, the tax credit attached, and the payment date. The dividend may be paid by cheque or electronic transfer, or as an accounting entry to reduce your loan outstanding to the company.

However the dividend is paid, the accounting entries or payments should be completed as soon as possible after the decision to pay a dividend is taken. We can help you with this process, but it is important that the decision to pay the dividend is made well in advance of any cash being paid out of the company.

On your bike – but by the rules

Cycling is a popular pastime, so the Cycle to Work scheme that allows employers to provide their employees with tax-free bicycles is enjoying widespread popularity. Unfortunately, some employers are not operating the scheme quite as HM Revenue & Customs (HMRC) intended.

The Cycle to Work scheme enables employers to purchase or hire bicycles to lend to their employees for a defined period. The use of a bike is a tax-free benefit. Some employers want to recover the cost of providing a bike and may consider offering the scheme only to employees who are prepared to give up part of their salary through a salary sacrifice arrangement.

One of the key conditions of the Cycle to Work scheme is that it must be available to all employees, and this condition may not be met if the scheme cannot be used by certain low paid employees. Such employees cannot by law have their pay reduced to below the national minimum wage rate.

The second mutation of the scheme is when the employee buys the bike from the employer at the end of the loan period – this is quite a common arrangement. However, HMRC believe that where there is an automatic transfer of the bike to the employee at the end of the loan period, the conditions for the Cycle to Work scheme do not apply and no tax exemption is therefore available.

A further problem is how to establish the market value of a cycle at the time it is sold to an employee. If the employee pays the employer less than market value for the bike, the difference between the amount paid and the full value will be taxed and subject to national insurance.

HMRC has now provided guidance on the valuation of second-hand bikes based on the age of a bike and its original cost.

Remember, bikes provided under the Cycle to Work scheme are only tax-free if they are used mainly by employees for commuting and work-related business.

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‘Time to pay’ problems

HM Revenue & Customs (HMRC) provides a rapid response to businesses who request time to pay their tax liabilities, under a scheme known as ‘Time to Pay’ (TTP).

However, the scheme guidelines are sometimes misunderstood. One myth is that TTP cannot cover PAYE liabilities: in fact it can.

Unfortunately, the PAYE computer that issues the penalty warning letters will not know you have set up a TTP arrangement. Even though you may have a TTP arrangement, you could receive a penalty for late payment if the PAYE liability relates to 2010/11.

If you receive a penalty warning letter do not ignore it; you may have to pay the penalty if you do not meet your agreed instalment plan under your TTP arrangement.

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Reply to the warning letter, setting out:

- The date you requested TTP.
- The PAYE months included in the arrangement.
- The agreed payment amounts and dates.

All contractors in the construction industry scheme (CIS) have their tax records regularly reviewed to check that they qualify for gross payment status. Your gross payment status is withdrawn if the CIS computer finds you have failed to pay your tax on time. The CIS computer will not know if you have a TTP plan, so any late payment of tax will be marked as a failure. You need to appeal in writing within 30 days against the withdrawal of gross payment status, and your appeal should include all the details of your TTP agreement, as listed above.

Another problem with TTP is caused by the Tax Collector’s computer. This computer has been known to issue distraint (or, in Scotland, ‘poinding’) notices to businesses that have arranged TTP for their tax debts. If you receive a distraint or poinding notice you need to take action immediately, or you could have your goods seized by a bailiff or a Sheriff’s Officer. Please contact us for help and further information.

Bird Simpson & Co
144 Nethergate
Dundee DD1 4EB
Tel 01382 227841
Fax 01382 202622
Email admin@birdsimpson.co.uk
Web www.birdsimpson.co.uk

Partners
John L Hope CA
I Philip Garland BSc CA
Murray AC Dalgety BAcc CA
Neil S Young MA CA
Ruth JP Gillis FCA

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