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CHARTERED ACCOUNTANTS

NEWS UPDATE - 13 MARCH 2023

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HMRC sets its sights on hidden electronic sales

It wasn't that long ago that HMRC was paying particular attention to businesses understating large cash sales. Now, the decline of cash, especially since Covid-19, has led to a proliferation of software used to suppress electronic sales records.

An electronic sales suppression (ESS) tool manipulates electronic sales records to hide individual transactions, whilst producing a credible audit trail. For example, only one out of every four sales might be recorded, resulting in lower reported turnover.

Penalties, taxes and interest

A penalty can be charged for simply being in possession of an ESS tool, regardless of whether it is actually used to suppress sales. Possession doesn't just mean owning an ESS tool, as it also includes having access to, or even trying to access, an ESS tool.

For possession of an ESS tool, the initial penalty can be up to £1,000. A penalty of up to £75 a day will then be charged if possession or access to the ESS tool continues. The daily penalty is subject to a £50,000 maximum.

- HMRC takes a much harsher approach if a similar penalty has already been charged.
- The initial penalty will not be charged if – within 30 days of receiving the penalty notice – a taxpayer can satisfy HMRC that they are no longer in possession of the ESS tool.
- Similarly, the daily penalty ceases once HMRC is satisfied the taxpayer is no longer in possession of the ESS tool.

And of course, any VAT, income tax or corporation tax avoided will be payable, along with the appropriate interest and penalties. Typically, card payments for missing sales are routed through an offshore bank account, so it will be difficult to argue such sales suppression is not deliberate and concealed.

Clearly any software designed to facilitate the under reporting of sales is essentially a tax evasion tool as well and should always be avoided.

HMRC guidance on ESS can be found from the link below:

https://www.gov.uk/government/publications/compliance-checks-electronic-sales-suppression-ccfs68

Pay attention to tax codes

Most directors and employees will already have been issued a tax code for the 2023/24 tax year, and it is important to check the figures as a very large proportion of codes will be incorrect. If you've been subject to an error, this could mean a future corrective tax bill.

Common errors

A tax code will typically take into account allowances, allowable expenses, taxable benefits (those not payrolled) and untaxed income, so there is plenty of scope for error.

- Allowances: The code can often assume the incorrect level of income when it comes to the amount of available personal allowance.
- Allowable expenses: Deductions for subscriptions and professional fees will be based on what was claimed previously, yet these will invariably increase annually.
- Taxable benefits: For most benefits, HMRC will be unaware of any changes from the previous year.
- Untaxed income: Figures for bank and building society interest can be too high where, for example, an account has been closed.

Emergency codes

A particular problem can be the use of an emergency code. These can be applied if there is a change in circumstances, such as:

- A new job;
- Taking on an additional part-time job; or
- Starting employment after being self-employed.

The emergency code is used because HMRC will often not receive the employee's income details in time after the change. Although use of the code is temporary, it can cause a cashflow problem for the employee.

Those starting a new job should give the new employer their P45 as soon as possible. Those moving from self-employment should complete the starter checklist.

Checking and correcting codes

The easiest way a person can check and correct a tax code is by logging onto their personal tax account using their Government Gateway user ID and password. HMRC can be notified of any changes that affect the tax code, and employer details can be updated.

The starting point for checking or correcting a 2023/24 tax code can be found from the link below:

https://www.gov.uk/check-income-tax-current-year

New points-based penalties for late VAT returns

A new points-based penalty applies to late VAT returns for VAT periods beginning on or after 1 January 2023. The first monthly return to be affected was the one due by 7 March, with the first affected quarterly return due 7 May.

This new returns penalty regime joins the completely separate new penalties for late payments in replacing the old system of default surcharges.

The points-based penalty revolves around a points threshold and a compliance period. These vary according to the length of the VAT period:

VAT PERIOD	POINTS THRESHOLD	COMPLIANCE PERIOD
Monthly	5	6 months
Quarterly	4	12 months
Annually	2	24 months

Points threshold

All traders start on zero points, including those who are on a default surcharge. One penalty point is then charged for each late VAT return, even for returns with a nil liability or where a repayment is due.

- A £200 penalty is charged once the points threshold is reached.
- Subsequent late VAT returns after the threshold is reached also incur the £200 penalty.
- No penalty point is charged where a first or final VAT return is late.

Compliance period

If the penalty threshold has not been reached, points will expire after two years. However, once the threshold is reached, a trader has to submit returns on time throughout the compliance period for their points total to be reset back to zero.

For example, if a trader has submitted four consecutive monthly VAT returns late, then the £200 penalty will be charged for any subsequent late returns (the points threshold being reached). To reset to zero points, the trader must submit six consecutive returns on time.

The new regime for late returns does not penalise those who occasionally file late, but consistently late filers may find their points tally difficult to significantly reduce without clear-sighted guidance and planning.

HMRC guidance on the new penalty points system can be found from the link below:

https://www.gov.uk/guidance/penalty-points-and-penalties-if-you-submit-your-vat-return-late

Winding-up petitions on the rise in HMRC squeeze

With HMRC under pressure to collect more tax owed, it is moving away from the tolerance shown during the pandemic and back towards a normal level of debt enforcement activity. As a result, the number of company winding-up petitions being instigated by HMRC is rising rapidly.

HMRC's use of winding-up petitions to actively chase the money it is owed comes at the worst possible time as many companies struggle to cope with inflationary pressures, higher interest costs and reduced consumer spending. HMRC's aim is to recover tax owed from a company's liquidated assets.

Although the tax gap (the difference between the amount of tax that should, in theory, be paid to HMRC, and what is actually paid) has declined in recent years, it is still 5.2% or £32bn.

Time-to-pay arrangements

For a company experiencing difficulty paying its tax liabilities, the best way forward is to agree to a time-to-pay arrangement with HMRC. This avoids the possibility of a winding-up petition, although early engagement with HMRC is essential.

- An affordable, regular monthly payment will be agreed based on the specific financial circumstances of the company. A good approach is to not be overambitious with the monthly repayment value, so there is less chance of being unable to meet future payments.
- HMRC will want to know about the company's financial prospects (cashflow forecasts and budgets may be required), what efforts have made to raise funds, and what has been done to try and pay tax liabilities.
- The arrangement is designed to be flexible, so the monthly payment can be adjusted over time.

Prior to agreeing to a time-to-pay arrangement, HMRC may want to see company assets released, with the funds raised used to repay tax. This might mean selling vehicles, increasing business borrowing or directors putting personal funds into the company.

HMRC's guidance to paying a debt with a time-to-pay arrangement can be found from the link below:

https://www.gov.uk/guidance/find-out-how-to-pay-a-debt-to-hmrc-with-a-time-to-pay-arrangement

Bereavement benefits extended to unmarried couples

The eligibility for some bereavement payments has now been extended to unmarried couples, but there are two major caveats.

In 2021, just over one in five couples living together were cohabiting but not married or in a civil partnership. Despite the growth in cohabitation, the UK tax and benefit systems have an ambivalent approach to those individuals outside the two legal frameworks. For example, an unmarried couple's joint income is taken into account when considering Universal Credit claims, but they are unrelated individuals when it comes to inheritance tax.

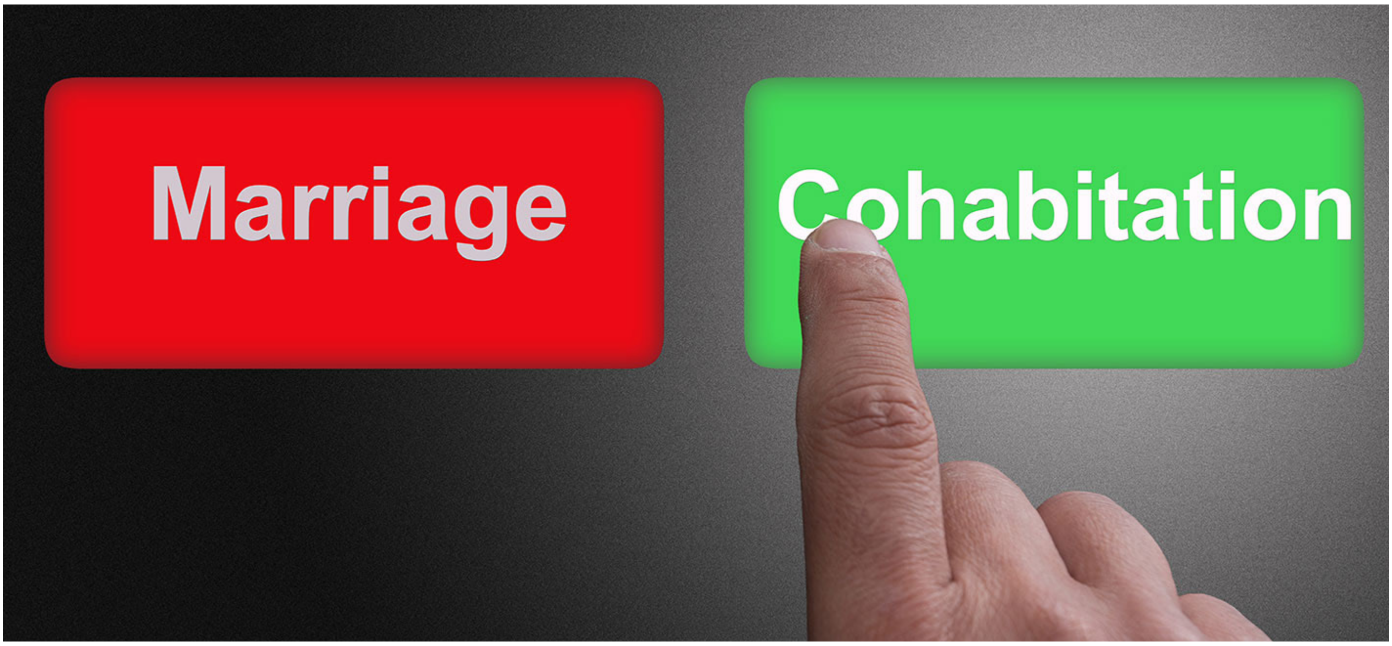
Two challenges to an example of this differential treatment made it to the courts several years ago. Both cases concerned bereavement benefits, which the law at the time restricted to surviving spouses and civil partners. In both instances, the government lost, but not because it was discriminating against unmarried couples. The courts' decision hinged on the unequal treatment of each couple's children, which fell foul of the European Convention of Human Rights.

Now three years after the second defeat, legislation is finally going to 'rectify' the original law. The revisions will mean that if one individual in an unmarried couple with dependent children were to die, the survivor would be entitled to the same higher rate of Bereavement Support Payment (BSP) as would be available to a surviving spouse or civil partner. The change will be backdated to 30 August 2018, when the Supreme Court gave the first ruling. The backdating will also cover entitlement to Widowed Parent's Allowance, which was replaced by the BSP for new claimants from 6 April 2017.

While the inclusion of some unmarried couples of BSP is welcome, it comes with two major caveats:

- It applies only to unmarried couples with dependent children, which includes cases in which the survivor is pregnant at the time of their partner's death. Unmarried couples who do not have dependent children remain excluded from BSP.
- The amount of BSP is far from generous. The higher rate of BSP was set in 2017 as a lump sum of £3,500, plus up to 18 monthly payments of £350. Unlike most other benefits, it has been unchanged since, so inflation has cut its value by nearly a fifth.

If you are cohabiting – or even if you are not – the BSP rules are a reminder of the inadequacy of the 'safety net' provided by the state in 2023. With this in mind, it's important to build your own safety net and protect your future financial circumstances.



Should you wish to discuss this News Update in further detail please contact BGM at: communications@bgm.co.uk