

# Tax Newsletter



## New Penalty Regime

Returns or other documents in relation to VAT, PAYE, National Insurance, Capital Gains Tax, Income Tax, Corporation Tax and the Construction Industry Scheme for return periods starting on or after 1 April 2008 that are due to be filed on or after 1 April 2009 will fall within the new penalty regime for errors on returns and documents.

Under the new regime:

**If a taxpayer can demonstrate to HM Revenue & Customs ('HMRC') that they have taken reasonable care to get their tax right they will not be penalised if they make an error**

**If they do not take reasonable care errors will attract penalties, and higher penalties if the error is deliberate**

**Disclosing errors to HMRC early will substantially reduce any penalty due.**

Penalties can be charged where a document is given to HMRC that contains an inaccuracy that leads to an understatement of a liability to tax, a false or inflated statement of a loss or a false or inflated claim to repayment of tax. The inaccuracy must be careless, deliberate, or deliberate and concealed.

Penalties can also be charged where tax has been under-assessed due to a failure to make a return, or where an error has been discovered but the taxpayer has not taken reasonable steps to inform HMRC.

Penalty charges will generally be based on the additional tax due as a result of correcting the error (known as potential lost revenue) and will be calculated as follows:

**No penalty if a taxpayer submits an incorrect return but can demonstrate that they had taken reasonable care to get their tax right. However, if the taxpayer later discovers the error but does not take reasonable steps to inform HMRC, the inaccuracy will be treated as careless.**

**The penalty is up to 30% of the potential lost revenue if the error is careless.**

**The penalty is up to 70% of the potential lost revenue if the error is deliberate.**

**The penalty is up to 100% of the potential lost revenue if the error is deliberate and concealed by the taxpayer.**

There can be a substantial reduction in the level of penalty charged, but only for an unprompted disclosure of errors by a taxpayer, i.e. where the taxpayer making the disclosure has no reason to believe that HMRC have discovered or are about to discover the inaccuracy or under-assessment.

Further reductions can be given based on the quality of the disclosure. Three elements of disclosure by the taxpayer will be considered when calculating a reduction:

- **Telling HMRC about their error**
- **Helping HMRC work out what extra tax is due, and**
- **Giving HMRC access to their records to check their figures.**

Whether a taxpayer has taken 'reasonable care' will be viewed in the light of their abilities and circumstances. For example, the same level of knowledge or expertise will not be expected from a self-employed and unrepresented individual as would be expected from a large multi-national company, and a higher degree of care will be expected over large and complex matters than for simple straightforward ones.

Every person is expected to make and keep sufficient records for them to provide a complete and accurate return. HMRC believes it is reasonable to expect a person who does not understand a tax issue to take care to check the correct tax treatment, or to seek suitable advice from HMRC or a tax professional.

A new concept of suspended penalties is being introduced. It is intended to support those who try to meet their obligations by giving them time to improve their systems, which will help them to avoid penalties for inaccuracies in the future.

Only a penalty arising from failure to take reasonable care can be considered for suspension. Suspension conditions will be agreed and set and if they are met the penalty will be cancelled. If they are not met the penalty will become payable. The period of suspension can be up to two years.

Although it will be several months before penalties under the new regime will begin to be applied, you should take steps now to ensure that record keeping is of a standard that illustrates that you are taking reasonable care, thereby minimising your exposure to penalties in the future.

## Changes to the VAT Option to Tax

The VAT option to tax rules changed on 1 June 2008.

Supplies of land and buildings are normally exempt from VAT and an option to tax has the effect of rendering such supplies

standard-rated for VAT purposes, with the taxpayer having the ability to recover any VAT incurred in making those supplies.

The main changes are as follows:

- **New rules providing that an option to tax affects land and buildings on the same site, with transitional rules, and ability to exclude new buildings from the scope of an option to tax.**
- **New certificate for buildings to be converted to dwellings etc and new ability for intermediaries to disapply the option to tax.**
- **New certificate for land sold to housing associations.**
- **New rules for ceasing to be a relevant associate of an opter.**
- **Extension to the 'cooling off' period for revoking an option to tax.**
- **Introduction of automatic revocation of the option to tax where no interest has been held for 6 years.**
- **Introduction of rules governing the revocation of an option to tax after 20 years.**
- **Revised definition of occupation for the anti-avoidance test including new exclusion for automatic teller machines.**
- **Introduction of a new way to opt to tax (a real estate election).**

If you have any options to tax in place or require further information please contact us.

## Company Cars – Advisory Fuel Rates

From 1 July 2008 the following rates can be used in respect of business journeys in company cars when reimbursing employees who pay for their own private fuel:

Engine Size	Petrol	Diesel	LPG
1400 cc or less	12p	13p	7p
1401cc to 2000cc	15p	13p	9p
Over 2000cc	21p	17p	13p

HMRC are now looking more closely at employers where they have returned P11Ds with cars but no fuel.

Detailed records must be kept, of all private mileage, especially when a fuel card is used and the employee reimburses the company for private mileage at the approved rates.

HMRC believe that it is virtually impossible for an employer to demonstrate that ALL private fuel has been reimbursed by the employee.

If this is not dealt with correctly, by the employer, it could lead to additional Tax and National Insurance Contributions being payable to HMRC if they believe that the employees are not reimbursing ALL their private mileage. If this is the case fuel benefit will be applied to the employees.

HMRC are going back up to 6 years, when this is discovered, so it can be very costly for the employer if not dealt with correctly at the time.

## Changing Personal Allowances

As most of you are no doubt aware, after the public outcry over the increased tax liabilities of lower paid taxpayers as a result of the abolition of the 10% tax band, the Government announced an increase in personal allowances, together with a reduction of the basic rate tax band.

These changes will take effect from 7 September 2008 and will be backdated to 6 April 2008.

The basic personal allowance will increase by £600 from £5,435 to £6,035 while the basic rate tax band will reduce from £36,000 to £34,800.

These changes will not affect higher rate taxpayers.

If you are an employer you will need to update employee tax codes with an L suffix and ensure that your payroll software has been properly updated, and that you have obtained the updated tools, tables and guidance from HMRC.

## National Minimum Wage

From 1 October 2008 the National Minimum Wage rates will be as follows:

Workers aged 22 and over	–	£5.73 per hour
Workers aged 18-21	–	£4.77 per hour
Workers aged 16-17	–	£3.53 per hour
Accommodation Offset	–	£4.46 per day (£31.22 per week)

## Self Assessment Tax Returns

There is a new filing deadline of 31 October for paper self assessment tax returns

This new deadline applies for the tax year just ended on 5 April 2008 and so the first deadline is 31 October 2008.

If you file online the deadline is still 31 January.

**If you have any queries regarding any of the above, or any other tax issue, please do not hesitate to contact us.**

## Contact Details:

For further information on any of our services please contact:

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