Give us the tools

HMRC have started a new initiative over the last year: the publication of what they call 'toolkits' on their website to help tax agents make sure their clients' tax returns are accurate and complete. They go through the main things that can go wrong in a return and prompt questions about whether the taxpayer takes steps to prevent mistakes.

For smaller businesses, the toolkits are probably over the top – working through them will take a long time, and could involve a significant cost in professional fees. But they have to be taken seriously because HMRC say that use of a toolkit will indicate 'reasonable care' in preparing returns – that protects you against penalties if there is an error.

They are aimed at tax agents, but taxpayers can use them as well – they paint a picture of what HMRC think usually goes wrong, so they give us a good idea of what HMRC look for when they are examining returns. That in itself is helpful. If you are worried about your accounting system and whether it meets the required standards, we'll be happy to advise you – with or without assistance from the taxman. ●

Car changes

Three changes to the tax charges on company cars happened on 6 April 2011. Many people will be affected by the lowering of the base point at which the '15% of list price' scale charge applies – last year the figure was 130g/km of CO_2 emissions, and this year it is 125g/km. Anyone whose company car has a rating from 130g/km to 229g/km will see an increase in their taxable benefit.

The other two changes affect fewer people. There has been for many years a cap of £80,000 on the list price used for taxable benefits, but this has been abolished. So someone with a company car which cost £200,000 is likely to see a large jump in the chargeable value from £28,000 to £70,000 (assuming it's at the maximum 35% level based on its CO_2 rating). By contrast, there has been a discount for gas, LPG-petrol hybrid and E85 ethanol driven cars, and this has been abolished.

The base figure for working out the taxable value of fuel provided for private use in a company car has also increased – from £18,000 to £18,800.

The tax consequences of having a company car can be complicated. If you want to be sure what yours costs – and if you want to know what the choices are, if you are thinking of changing vehicle – we can advise you. ●

It's off to work we go

As a general rule, you can't claim a tax deduction for commuting costs – only for travelling while you are actually doing the job. The problem is that some people work in more than one place, and some people reckon they are based at home – so what's commuting then?

In a recent case, an electrician successfully claimed that he had a business base at home, so all his travel to different building sites was 'on business'. HMRC argued that he didn't start work until he arrived, but the tribunal agreed with him – he had to have a business base where he could receive offers of work and make quotes, keep his records and keep his tools. As long as he had evidence to show that the travel actually took place, it was all a valid expense of his self-employed business.

A pipe-fitter who lived on the Wirral and worked for several years mainly in London won a similar argument, although the tribunal didn't allow his bed-and-breakfast costs – he had to sleep somewhere, so it wasn't 'wholly and exclusively for the trade'. That's unusually harsh, because usually accommodation is allowable on the same basis as travel costs.

If you want to know what expenses can be deducted – or want help in an argument with HMRC about them – we can advise you. ●

Easy terms

Class 2 National Insurance Contributions are paid by self-employed people at £2.50 a week. Years ago you stuck stamps on a card – now it's usually a monthly direct debit, but some people pay when the taxman sends a bill. The due date for those bills is moving to match the self-assessment tax deadlines – 31 January and 31 July – so if you pay that way, you'll notice a change. If you pay by monthly direct debit, you can ask to move to six-monthly instalments. If you don't, there will be a gap from April to July 2011, then the monthly payments will start again in August. ●

Mansion tax

Remember that the rate of Stamp Duty Land Tax on residential property costing over £1m has gone up to 5%. That's a whopping £50,000 on just over £1m, and a difference of £10,000 between a purchase price of £1m and £1 more (which triggers the higher rate on the whole lot, not just the extra £1).

There are helpful reliefs for SDLT at the moment for first time buyers and for zero-carbon properties, subject as usual to plenty of conditions. The most important thing is to remember the tax and factor it into your calculations – don't have a nasty surprise. ●

My e-mail's my bond

E-mail is quick and informal – but it can also create a contract, so be careful. A seller instructed several estate agents to market a house. One agent replied by e-mail explaining that it wanted sole agency rights for 18 weeks from a set date – that means that it would be entitled to commission even if a sale was arranged by a different firm. The seller didn't read the attached terms but replied 'that's fine'.

The Court of Appeal held that the exchange of e-mails was a binding contract. The seller didn't read the details but that was their fault – they shouldn't have agreed to something without doing so. They ended up paying the commission twice.

If you were sitting in the agent's office being presented with a bundle of papers and asked to sign something with 'contract' in large letters at the top, you might take more care – remember that an e-mail in your own home can be the same thing. ●

Out of time?

Some people get behind with their tax affairs. It happens. HMRC encourage them to file returns by issuing demands for tax. If the time limit for making corrections to the return has passed, the taxpayer may have no legal defence against the demand – even if they could show it was too big.

HMRC used to operate a concession called 'equitable liability' under which they wouldn't pursue their full legal right if they were satisfied the tax wasn't due and it wouldn't be fair to collect it. They have replaced it with a new statutory rule called 'special relief' from April 2011. There are conditions, but no time limits – it allows the taxman to take everything into account and only collect what's fair.

Ideally, everyone's paperwork is up to date – but if things have got out of hand, it's good to know that there is a relief of last resort. ●

This newsletter is written for the benefit of our clients. Further advice should be obtained before any action is taken.

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Thanks, but no thanks

At a recent meeting with tax advisers Dave Hartnett, the Permanent Secretary for tax, asked the profession to stop sending thank you letters. Apparently HMRC receive thousands of letters from accountants saying nothing more than 'thank you for your letter'. This clogs up their system so they'd rather we didn't, and they won't think we're rude.

It's perhaps surprising that people still take the time to be civil to civil servants, and less surprising that the civil servants don't have the time to appreciate politeness – that belongs to an age before cuts and fiscal crises. Sadly, some of those 'thank you' letters are probably sent because the accountant was surprised to find someone who could deal with a tax problem in a helpful and efficient way and wanted to show some gratitude. It's still normal for a great deal of HMRC post to wait in a pile for weeks before it gets dealt with – even if we have to jump to it and respond within strict time limits if they demand information from us.

Maybe we should send our thanks on Twitter. HMRC have recently posted a video on YouTube to explain the rules on penalties for getting your tax returns wrong. It's a shade over 10 minutes, but it's not likely to get top ratings. Never mind – it's good to see the taxman trying to communicate with their 'customers' (as they call us – not that we can take our business elsewhere, or claim that the customer is always right).

If you don't want to spend the time watching HMRC's film yourself, we'll continue to keep tabs on their announcements and tell you the most important changes – feel free to say thank you if you want! ●

Pension top-up

After different Chancellors have proposed very different regimes over the last two years, at last 2011/12 sees the introduction of the new pension rules. For most people, they won't make much difference – if you pay up to £50,000 a year in contributions to your pension scheme, you will generally get the same relief as before. If you – or your employer on your behalf – put in more than that, then you may suffer a tax charge.

Suppose you have received a windfall – an inheritance, say, or a big bonus – and you want to top up your pension. Or you have had a promotion and a pay rise, and the value of your final salary pension rights has jumped by more than £50,000. What then?

If you have paid less than £50,000 in the previous three years, you can use the balance to justify a larger contribution this year – as long as you were a member of a registered pension scheme in the earlier year as well. So you can't use this rule to start pension saving for the first time with a big lump sum, but you can use it to increase your contributions in a good year.

The changes to pension schemes over the last few years have been confusing. If you want advice about where the tax rules have ended up – on contributions and on benefits – we'll be happy to help. ●

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Be fair

If you have to dismiss an employee, it's crucial to be fair – otherwise they can appeal to a tribunal and claim compensation. Cases show that you need to have a procedure for dismissal and you need to apply it carefully – if you don't, you are likely to be found to have acted unfairly.

The tribunal takes into account the size and resources of the employer. In a recent case, the company's standard disciplinary process involved three warnings followed by dismissal. There was a mix-up – one of the three warnings should not have been issued, which meant that there should have been one life left when the worker was sacked. One tribunal ruled that the circumstances were enough to justify the sacking, but the senior appeal tribunal disagreed – this was a big company with a personnel department which was supposed to make sure that procedures were followed. The employee had been unfairly dismissed.

In good times you can hope that nothing goes wrong, but it's important to plan for the worst – and then follow that plan when the worst happens. ●

Never too old

The government has confirmed that the default retirement age of 65 will be scrapped from 1 October 2011. This means that 'retirement' will no longer automatically be a fair reason for dismissal – if the worker does not want to leave and take life easy, the employer will have to find another cause. To add double jeopardy to the employer's problem, age discrimination is also unlawful – making 'you are sacked because you are too old' doubly wrong.

This is one of the biggest changes in employment law of recent years. Every employer with workers nearing retirement age needs to review their procedures and take advice to make sure they won't end up in court. ●

Who's money?

What do you do if a customer overpays you? Of course, one answer seems most honourable – give the money back. If you are sure it doesn't belong to you, keeping it may amount to money laundering, so returning it would be the only legal action. But there may be reasons why that isn't possible, or there may be genuine uncertainty over whether you are entitled to the money. So what do you do with it in the accounts?

In a recent tax case, a company argued that 'it isn't really our money, so we shouldn't pay tax on it' – even though they had credited the overpayments to the P&L account. Years ago, a bloodstock agent won a

similar case because the partners in the firm undertook to refund money to anyone who could show that they had overpaid. But this was not the same situation: the company reckoned to keep the cash, and it was simply part of the trade.

If you are not sure what to do with overpayments – or other unusual receipts – we will be happy to discuss them with you. ●

The inspector calls

Since April 2009, HMRC have had new powers to inspect business records, and there are new penalties for failing to keep proper records. Now they have announced a trial of a new 'all in one' approach to carrying out their checks – they will look at all the taxes together, rather than possibly starting with a PAYE enquiry and moving on through VAT to corporation tax.

They say that this 'will improve customer experience and reduce costs as the check will only take as long as the risks and behaviours encountered dictate'. Being visited by HMRC is never likely to be a pleasant experience, but it will be a lot less pleasant if they consider that the 'risks and behaviours' justify an in-depth enquiry. It will be crucial to show that the business is doing its best to comply with its obligations, and is succeeding.

The trial of the new approach is running for 6 months in 10 different locations in the UK. The results will be used to fine-tune the approach, and it will then be rolled out everywhere from January 2012. If you are notified of an inspection – whether as part of the new trial or any other HMRC procedure – we are here to help and advise you. ●

All change?

So many of the tax rates have changed this year – personal allowances, corporation tax, NIC – that the combination of salary and dividends that was tax-efficient for taking profit out of a small company is likely to have changed. The business makes the money, and the shareholder-directors own it and want to spend it, but how they get their hands on it can make a difference of thousands of pounds.

Once you've decided on the right balance, it's important to make sure that the right legal form is used – if something is a dividend, it has to be paid out of distributable profits and approved by the directors; if something is salary, the company has to account for PAYE. If a payment has been made which doesn't clearly fall into one or the other, there could be trouble with the taxman.

If you want to know the best way to enjoy the fruits of your labour, we can crunch the numbers for you, and advise you on the right paperwork. ●

Chips with VAT?

In the UK, food sold in the course of catering is VATable. The law says that catering includes food sold to be consumed on the premises, and also hot takeaway food. The tax tribunal regularly has to listen to arguments about what's a hot takeaway.

Now a German case has gone to the European Court. In that grand arena, Manfred Bog argued that he wasn't 'catering' when he sold chips, hot dogs and popcorn to customers in a cinema – the level of service was so basic that he was really only selling food, which is charged at a lower rate of VAT in Germany. The Court agreed with him.

Not surprisingly, HMRC say this doesn't change things in the UK. The argument was about German rules, and the law's different here. Some people are making claims on the basis that the European Court has defined what 'catering' means and it doesn't include hot takeaways – as good Europeans, our law has to comply, and we have to zero-rate the same kinds of food that Germany lower-rates.

HMRC are not likely to give up on this – it'll be a bunfight in the Tax Tribunal. ●

Trade or no trade?

Income is usually taxed at higher rates than capital gains – so people often argue with HMRC that they have invested in something and made a gain, while the taxman says they are dealing in it and have made a profit. On the other hand, if you make a loss, the tax relief is usually better if it's incurred in a trade – capital losses can usually only be set against capital gains, and gains may not come along as often as income.

In a recent case, a taxpayer owned a number of properties, and she also ran a beauty salon. She had declared the income from the property as rent, which implied that the buildings would be investments. When she made a loss for a year, she moved the numbers to the self-employment pages of her tax return – claiming that she was really a property dealer, and she ought to be able to knock her 'trading' loss off her salon income.

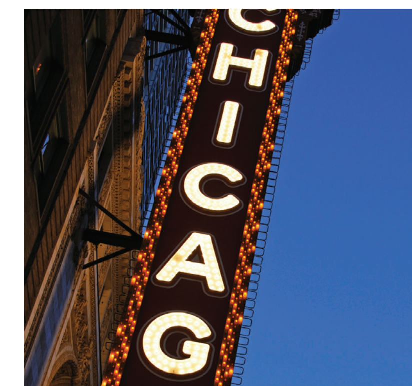
The tribunal looked at all the circumstances and decided that the first story was the true one – she had not really bought the properties with the intention of making a quick sale, but to hold them to generate income in the long term. She could only get relief for her current losses against future rental income – and if she sold a property, the gain or loss would be within CGT, not income tax. If she later sells the buildings at a large profit, she may find that decision has saved her a lot of tax.

Where something is on the borderline between income tax and CGT, we can advise you which side it's likely to fall – and also which side you want it to fall! ●

VAT's entertainment

Way back when, we were allowed to claim VAT on the cost of entertaining foreign customers, to encourage exports. That changed in the 1980s – all business entertainment has been disallowed since then. A recent case in the European Court showed that the UK wasn't allowed to tighten the rules like this, and if the VAT was allowable in the 1970s, it should be allowable now. HMRC have had to accept this and have changed the rules again.

They now say that entertaining an 'overseas customer' – someone from outside the UK or Isle of Man who might buy something from you – will give rise to input tax credit as long as it 'is of a kind and on a scale which is reasonable, having regard to all the circumstances'. HMRC seem to think that covers hospitality which is necessary for business purposes (such as sandwiches at a business meeting) but nothing that is lavish or purely for enjoyment, such as a theatre trip.



Maybe the courts will take a different view. After all, if 'the circumstances' are a £50m export order and your competitors in other countries put on some lavish hospitality, isn't it reasonable to do the same?

If you have foreign customers and you think you may be due a repayment for past expenditure or current expenditure, we will be happy to advise you. ●

No penalty!

If you want to tie someone down to a contract, it seems a good idea to put in a penalty clause. That'll show them! But a penalty in a contract can't be enforced – you can only claim for a realistic measure of the loss you suffer from the other side's failure to complete. You can put an estimate of that loss in the contract, but if the estimate's too high, it will be ignored by the courts.

In a recent case about a property purchase, the contract said the purchaser would have to pay 15% interest if they failed to produce the completion money on the due date. The judge said that could only be a penalty – base rates were 5.25% at the time, and the difference was too large to be a reasonable measure of a likely loss.

It's one of those quirks of law – if they'd pitched for a lower figure in the contract, it would probably have been followed. As 15% was too high, they'd have to argue about what it actually cost them to be short of the money for the time being. ●

Charity begins...

An individual left several bequests in his will, and the residue of his estate to the RSPCA. Normally the inheritance tax on an estate is paid out of the residue, but the RSPCA argued that the words of the will meant that the specific legacies to two friends and a brother should bear the IHT – and the charity should get more money. After going through the High Court and the Court of Appeal, the RSPCA won.

The judges ruled that the simplest reading of the will had to be followed, given that there was no other evidence of what the deceased wanted, and that supported the charity's view. The most important thing is to make your will very clear – some wills are complicated, but you ought to be able to understand yours and to be happy that it properly tells your executors what you want them to do. Otherwise the lawyers will argue for ever...

If you want to discuss the contents of your will, and what your exposure to IHT might be, we will be happy to advise you. ●

Too early, too late

If you get the tax point wrong on a VAT invoice, you can end up paying HMRC three months late – or you might claim input tax three months early. Until recently, the taxman would look at the mistake on its own, without taking the automatic correction into account, and might charge you a 30% penalty for carelessly understating your tax. This happened to a partnership which bought a property and claimed £33,750 in the wrong quarter. Because the figure was so big for their business, HMRC questioned it – which meant that they couldn't make an 'unprompted disclosure' and get the penalty cancelled. On appeal, the tribunal decided that the fine should be reduced to 7.5% – still over £2,500.

Maybe someone in HMRC realised that was very harsh, because they published a change in policy. Where an error simply reverses on the next tax return – whether it's VAT or any other tax – they will now base the penalty on 5% of the error for a year's delayed payment, rather than the full amount of the tax. For a trader on 3-monthly VAT returns, the penalty would be based on 1.25%. Even if the penalty on £33,750 was only mitigated to 15%, the normal level for a prompted disclosure, it would only be £63 (hardly worth collecting!).

HMRC have invited anyone who's had to pay a penalty in these circumstances to ask for their money back. If you think this affects you, we will be happy to help. ●

A cheap wind-up

When a company is wound up and struck off, the surplus assets are generally returned to the shareholders. If the company is put into a formal liquidation, that's clearly a capital receipt liable to CGT. If instead an informal – cheaper – dissolution is used, the distribution is strictly a dividend, subject to higher rates of income tax. For many years, HMRC have operated a concession which allows shareholders the best of both worlds – the informal striking-off procedure and the CGT treatment – as long as they are satisfied that all the company's tax liabilities are paid and there's no tax avoidance motive.

Recently, they suggested that they might turn the concession into law, and restrict it to cases where there was only £4,000 to pay out. That would be a major restriction, and the professional bodies have been arguing for a rethink. HMRC have agreed to look at this again.

Meanwhile, if you have a company that you don't need, we can tell you the tax and other consequences of winding it up. ●