

NEWSLETTER JANUARY 2011

CHANGE TO THE VAT RATE

As all our readers will be aware, the standard rate of VAT increased from 17.5 per cent to 20 per cent on 4 January 2011. It is important that all businesses that are registered for VAT are aware of the regulations governing the change to the VAT rate. Set out below are extracts from advice given by HM Revenue & Customs relating to certain aspects of the rate change. Please contact us if you require further advice.

“Sales that span the change in rate

There are special rules for sales which span the change of rate. If you provided goods or services before 4 January 2011 and raised a VAT invoice on or after that date you can choose to account for VAT at 17.5 per cent. You don't need to tell HM Revenue & Customs (HMRC) if you do this.

Services you started before 4 January 2011 but finished afterwards

If you started work on a job before 4 January 2011 but finish afterwards you may account for the work done up to 3 January 2011 at 17.5 per cent and the remainder at 20 per cent. If you choose to do this you will have to be able to demonstrate that the apportionment is fair.

Continuous supplies of services

If you provide a continuous supply of services, such as leasing of photocopiers, you should account for the VAT due whenever you issue a VAT invoice or receive payment, whichever is the earlier. You must charge 20 per cent on invoices you issue and payments you receive on or after 4 January 2011. You may, if you wish, charge 17.5 per cent on the services you provided in the period up to 3 January 2011 and 20 per cent on the remainder. If you choose to do this you will have to be able to demonstrate that the apportionment is fair.

VAT invoices raised or deposits received before 4 January 2011 for sales you make afterwards

If you issued a VAT invoice or received prepayment before 4 January 2011 for goods or services which you provide on or after that date VAT will normally be due at the 17.5 per cent rate. In certain circumstances VAT is due at a rate of 17.5 per cent on the date of issue of the VAT invoice or receipt of payment before 4 January 2011 and a supplementary charge of 2.5 per cent then becomes due on the 4 January 2011.

Special VAT schemes for small businesses

Cash Accounting Scheme

If you use the Cash Accounting Scheme you will need to be able to identify payments received on or after 4 January 2011 that relate to supplies made before that date. VAT at a rate of 17.5 per cent will be due on these payments.

Annual Accounting Scheme

Your instalments will not be affected by the change in the standard VAT rate.

Flat Rate Scheme

The flat rate percentages have been re-calculated to reflect a standard rate of VAT of 20 per cent. The new rates apply from 4 January 2011 until further notice.

You can choose to operate the Flat Rate Scheme if your VAT exclusive turnover does not exceed £150,000. This turnover figure is VAT exclusive so it is not affected by the change in the standard rate of VAT.

From 4 January 2011 you must leave the Flat Rate Scheme if your income (including VAT) exceeds £230,000. However, if your income exceeds this threshold because of a one off transaction and you expect that your income will fall below £191,500 in the next year you can ask to remain in the Flat Rate Scheme. Your request must be made in writing.”

THE TAX TREATMENT OF TIPS AND GRATUITIES

Introduction

There are many businesses whose employees receive tips or gratuities from customers of the business. Examples of such businesses will include pubs, restaurants and hotels. For these businesses it is important that any such receipts are dealt with correctly so far as the rules relating to PAYE and National Insurance Contributions (NICs) are concerned. This article summarises the more important regulations.

There are a number of criteria which will determine how any receipts by employees must be dealt with. These are as follows:

- Was the receipt from a customer made voluntarily?
- Was the receipt from the customer levied in the form of a compulsory service charge, eg a service charge automatically included on a restaurant bill. (This will apply whether the charge is included in the total without being shown separately or shown separately on the bill and added to the total.)
- Was the tip or gratuity received by the employee directly from the customer?
- Was the tip or gratuity distributed to the employee by his or her employer?

The basic rules are as follows:

Receipts levied by means of a discretionary or compulsory service charge and paid to the employer

If a business adds a compulsory service charge to a customer's bill or leaves it to the customer to add a service charge and then distributes this service charge to one or more employees, then the business must deduct both PAYE and NICs from the charge. The employer must do this whether the employer distributes the money directly to the employee or whether the distribution is made through what is known as a "tronc" which is a system for distributing tips and gratuities and which is operated by a "troncmaster" (see later in this article).

Tips etc received directly by the employee

Often a tip is made directly to the employee by the customer. This is common in restaurants where the bill does not include a compulsory service charge and any such payment is left to the discretion of the customer. In many instances, the customer will pay the bill and then give a separate cash payment to the employee as a tip.

In these cases the employer does not need to deduct PAYE or NICs and it is the responsibility of the employee to declare these receipts to the tax authorities.

However, if a tip is received directly from a customer by an employee but the employee then gives this to the employer, then it is the responsibility of the employer to account for PAYE and NICs when these tips are ultimately distributed to one or more employees.

Tips and gratuities distributed by a tronc

First of all we need to define a "tronc". A tronc is an arrangement whereby tips, gratuities and service charges are pooled and then distributed to employees by a person known as a "troncmaster".

If a business decides to operate a tronc it must inform HM Revenue & Customs (HMRC) as to who the troncmaster is. This will enable HMRC to set up a PAYE scheme for the tronc.

EMPLOYMENT LAW – CHANGES TO COME?

It has been reported that there are likely to be changes made to the redundancy laws in the none-to-distant future, and in particular the creation of a new "employers' charter" which will allow businesses to dismiss employees during the first two years of their employment without running the risk of the employee bringing an action for unfair dismissal. At present a business can only dismiss an employee in the first year of employment to avoid an action being brought.

In addition, it is proposed that in order to reduce the number of vexatious unfair dismissal claims being brought, employees will have to pay a fee when lodging an employment claim. (It is assumed that, should the employee be successful in his or her claim, the fee will be reclaimable, either from the authorities or the business.)

The Government is also set to review employment law in relation to smaller businesses, as the present legislation is considered to be too stringent.

One particular area which is lined up for reform concerns statutory sick pay (SSP) with the length of time that a business must at present pay SSP likely to be reduced.

HOLIDAY PAY – GETTING THE CALCULATIONS RIGHT

One of the least understood aspects relating to employment is that relating to the rules governing holidays and holiday pay. Indeed, in practice, these rules often account for many of the disputes between employers and employees. This article attempts to summarise the main points relating to holidays and holiday pay.

Rights to paid holidays

Most employees have the right to a minimum number of days of paid holiday. These holidays are called "statutory holidays".

The right to statutory holidays applies to fulltime and part time workers, agency workers and casual workers and this right will apply regardless of the age of the worker (except for children under school leaving age) and the length of time they have been employed.

From 1 April 2009 every worker has the right to 5.6 weeks of statutory holiday a year (the “statutory minimum”).

However, the number of days holiday are pro-rated down depending on how many days you work a week. So, if you work a five day week you can take 28 days holiday (5 x 5.6). If you work, say, 3 days you are entitled to 16.8 days (3 x 5.6). Note that you can't take more than 28 days even if you work more than a five day week.

Your contract of employment may give you more than the statutory minimum but can never give you less.

The holiday (or leave) year

A holiday (or leave) year is a period of one year within which the employee receives his statutory holiday entitlement. Each business can choose its own holiday year and the most common are either year commencing 1 January or year commencing 6th April (to coincide with the tax year)

If the employer and employee have not agreed on the starting date of the holiday year then the starting date will be 1st October each year for employments that started on or before 1st October 1998 and the date the employee started work for employment that started after 1 October 1998.

If the employee starts work part way through the holiday year, his entitlement to holidays is pro-rated according to how many days he works in the holiday year.

Bank and public holidays

A rule that many employees (and indeed employers) are unaware of is that employees have no automatic right to bank or public holidays, with or without pay, although the employee's contract of employment may and usually will give such rights. If the contract of employment says nothing about bank and public holidays then the employer can:

- Require the employee to work these bank or public holidays.
- Give the employee the bank or public holidays but not pay them. In this case the employee still retains the right to his or her statutory holiday entitlement.
- Give the employee the bank or public holidays with pay and count them towards the employee's statutory holiday entitlement.
- Use a combination of any of the above.

When holidays can be taken

An employee can choose when to take his holiday, provided that the correct notice is given to the employer (see below). However, the employer can refuse to agree to this request, once again provided that the correct notice is given.

Similarly, the employer can force an employee to take his holiday at certain times, once again provided that he gives the correct notice.

The law does not state the maximum amount of holiday that can be taken at any one time, although the contract of employment (if any) may do so.

Notice of holidays

The length of notice an employee must give to his employer will be determined by any contract of employment. In the absence of a contract the notice given must be at least twice as long as the holiday the employee wants to take.

An employer can stipulate when an employee must take a holiday. The length of notice required is at least twice as long as the length of the holiday the employer wants the employee to take.

An employer can refuse to let an employee take a holiday. To do this he must give the employee notice which must be at least equal to the length of the holiday requested.

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