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NEWSLETTER MAY 2007

NEED TO TAKE ADVANTAGE OF THE TAX AMNESTY? THE DEADLINE IS APPROACHING

Some of our readers will be aware that the government has recently created an offshore tax amnesty which is known as the "Offshore Disclosure Facility". However, it would appear that many people are not be aware that the amnesty, which commenced on 17 April this year, also applies to **onshore** disclosure. The following is an extract from H M Revenue & Customs (HMRC) website which gives an overview of the amnesty.

"HMRC has recently obtained information about holders of offshore accounts from a number of banks and has obtained similar details through the European Savings Directive.

There is nothing wrong with holding an offshore account as long as you pay any tax due on the money deposited in it, and on the interest from it. If you have done this you do not need to use the Offshore Disclosure Facility.

We want to encourage those with unpaid tax and duties to pay what they owe. Therefore, we are introducing the Offshore Disclosure Facility to help them get their tax affairs up to date.

Scope of the Offshore Disclosure Facility

The facility is open to those who hold or have held an offshore account, either directly or indirectly, that is in any way connected to a loss of UK tax and/or duty.

For a limited period you can come forward and make a full disclosure of all undeclared liabilities, not just those connected with an offshore account. You can make a personal disclosure or one on behalf of another."

As will be seen from the above extract, HMRC has concentrated on offshore accounts and the interest received from such accounts. However, provided you make disclosure to the tax authorities before 22 June you will receive the same treatment for onshore accounts and interest as for offshore accounts.

After you have made full disclosure and made the appropriate payment of outstanding tax and interest, HMRC will acknowledge your disclosure and payment and will let you know by 30 April 2008 if your disclosure has been accepted.

Of course, you rarely get something for nothing and the term "amnesty" is perhaps a little misleading. You will, of course, still have to pay any tax and interest that is due, for up to 20 years, which could prove somewhat expensive if you have failed to disclose details of accounts for a number of years. You will also have to pay a 10% penalty. However, this could represent quite a saving as the usual penalty is 100%.

If you have forgotten to declare details of either offshore or onshore accounts and interest, it is worthwhile looking at this amnesty sooner rather than later. You should remember that 22 June is the deadline for notification to HMRC of your intention to disclose.

In addition, there is the potential problem, as often happens, that different tax inspectors interpret and deal with such schemes in different ways. Indeed, it has been reported that some tax investigators have not been provided with details about the scheme. For this reason we would strongly advise that you approach us first so that we can deal with your disclosure in the most efficient way and can record and monitor its progress.

It is interesting to note that, in relation to the amnesty for offshore accounts, to date less than one thousand individuals have made contact with H M Revenue & Customs, despite the fact that approximately one million letters have been sent out by banks to customers with offshore accounts.

END OF THE MANAGED SERVICE COMPANY?

For many years up to 250,000 freelance workers and contractors have taken advantage of providing their services through the vehicle of a limited company in order to save as much as 30% in tax and national insurance liabilities. These companies, known as a managed service companies, are set up by a service provider who, for a small fee, pays the worker by means of dividends as opposed to a salary, thus reducing tax and NIC. The worker effectively becomes a shareholder in the company. As he or she is paid by means of dividends, tax is only payable on the dividends received at 19% and there is no NIC payable.

For some time, H M Revenue & Customs have attempted to target such companies, but with limited success.

All this is now changed. In his March Budget, the Chancellor announced that from the start of this tax year (6 April 2007) managed service companies will have to pay tax and NIC at the same rates as those levied through the PAYE scheme on ordinary employees. It is estimated that by reducing or extinguishing managed service companies, the Treasury will benefit by an additional £1.5 billion of revenue.

If you are being paid through a managed service company it is important that you contact this company without delay to establish exactly what they intend to do. You will then have a number of options, as follows:

Invoice the business for whom you carry out your work. You can either do this as a sole trader (ie an unincorporated business) or via your own company. If you do this as a sole trader then you will have to pay the usual tax rates although your NIC rates will differ. If you register a company to do this and operate a PAYE scheme you will pay both tax and NIC at the same rate as any other employer and you should remember that your company will also have to pay employer's NIC

Note that some organisations that employ freelance workers or contractors will not want to pay you as an individual and may insist on dealing with you through a company.

You could register a limited company and operate it as a personal service company and pay yourself a dividend instead of a salary. However, there can be potential problems with H M Revenue & Customs as you will have to prove that you are "self-employed" in order to operate such a company. This may prove difficult if you only carry out freelance work for one organisation which effectively controls what you do, and where and when you carry out your work.

NEW RULES FOR DIRECTORS

The Companies Act 2006 (the Act) received Royal Assent in November last year but is being introduced over a period of time, culminating in October 2008.

Whilst those who operate companies may not have to take action with regard to some parts of the new legislation for some time, it may be worthwhile giving thought now to certain changes, especially some of those that may affect company directors.

The Act will introduce changes in relation to who can be a director of a company and what age that person has to be. These regulations will be introduced from 1 October 2008 when Part 10 of the Act comes into force. There are two points to consider:

- Every company will have to have at least one director who is a "natural person", ie an individual. This does not mean that a company cannot have one or more incorporated bodies as its directors, provided that at least one director is an individual.

In the case of existing companies that have one director that is a corporate body, this entity will have to resign when the regulations come into force, unless an individual is appointed as a second director.

- There will be a minimum age of 16 years for a person to be a director. A company will be allowed to appoint a person under the age of 16 to be a director provided that the appointment does not take effect until that person achieves the age of 16.

In the case of directors who are under 16 at the date when the regulations come into force, they can no longer be directors but the company does not have to inform the Registrar of Companies by submitting a statutory form relating to the resignation (but it can if it so wishes). Instead the Registrar is given powers to remove the individual from the register at Companies House based on other information, eg details held at Companies House as to the age of directors.

BEEN OVERCHARGED BY YOUR BANK? DON'T GIVE UP

For what must seem to them like a lifetime, banks have suffered a particularly poor press when it comes to accusations of overcharging their customers – and rightly so. We hear of numerous instances where banks have charged exorbitant, and many would argue punitive, charges when a customer has exceeded his or her overdraft or borrowing limit by just a few pounds.

The financial press has been urging customers to fight back and challenge their bank if these situations occur and indeed in a number of cases where banks have been challenged, the customer has received recompense rather than the bank having to go to court.

However, a recent court decision involving a customer of Lloyds TSB has been welcomed by the bank as a victory for their stance and has come as a blow to other customers who are seeking redress.

In the case in question, a Lloyds TSB customer brought an action against his bank to reclaim £2,545 in fees and interest levied by Lloyds for the customer going over an agreed overdraft limit. It was argued that sometimes more than £30 was levied when the customer went over his limit.

However, in the Birmingham County Court, the judge ruled that the customer had failed to satisfy the court that he had grounds to recover the charges.

Naturally, the bank feels that its actions are vindicated although the customer is still considering an appeal. Lloyds stated that “We are pleased with the ruling. The court has agreed with us that these are charges for a service and not default fees.”

If you feel that charges levied against you by your bank are excessive, don't be put off by the decision in this case which is thought by many to contradict a number of earlier decisions. In addition, it should be noted that as this case was heard in the county court, it cannot set a precedent for other courts.

Although the cost of going to court may seem expensive, the threat of doing so may persuade your bank to repay some or all of their charges, despite the result of this case. In addition, it should be noted that the Office of Fair Trading is still investigating the whole subject of bank charges.

An alternative to going to court, and a much cheaper route, is to contact the Banking Ombudsman, although this might take time in view of the backlog of claims that are waiting to be considered.

Finally, we would ask readers who wish to pursue a claim against their bank to be wary of doing so through claims management companies, whose advertisements will often be heard on television and radio. Although many of these companies operate a no-win, no-fee policy, a number of them will charge up to 25% of any payout received. A recent announcement has been made that the newly formed Ministry of Justice will be investigating the way in which these companies operate.

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