

# NEWSLETTER SEPTEMBER 2011

## VAT ON SALES MADE TO INDIVIDUALS LIVING ABROAD

If your business is registered for VAT in the United Kingdom and it sells items to private retail customers living abroad, it is important that you are aware of and adhere to the rules regarding such sales. At times these rules can be complex, but we set out a summary below:

### Customers living in other EU countries

- Sales made to private retail customers living in other EU countries are liable to UK VAT.
- Your business must keep records to monitor the sales to individual countries and if these reach what is called the individual country's "distance selling" threshold, your business must then register for VAT in that country and future sales will be liable to that country's VAT instead of UK VAT.
- The thresholds are set by each country and vary between 35,000 Euro and 100,000 Euro per calendar year.

### Customers living outside the EU

- Sales on these items are zero rated for VAT.
- It is important to comply with the "evidence of export" detailed requirements. (See VAT Notice 703 and paragraphs 3 and 6 in particular.)

### Invoices and publication of prices

- For retail sales to private retail customers there is no requirement to issue VAT invoices and no requirement to refer to VAT at all in correspondence or other documentation issued to potential and actual customers.
- Prices advertised to private retail customers can be stated without indicating whether VAT is included or not.
- Your business must maintain and retain clear internal records to identify the sales on which it has to account for VAT and to cross reference to the evidence of export for the zero rated sales.

Anomalies can, and do, arise in the case of retail sales made to private individuals living outside the UK. For example, if your business sells items to an individual living in the USA then no VAT will be charged, whereas if an identical item is sold to an individual living in France, then the item will be subject to UK VAT. So, if the item was sold for £100 plus VAT at 20%, the selling price to the customer in France will be £120 and £20 must be accounted for to HM Customs and Excise. However, if the same item was sold to the individual in the USA the business could either decide to adopt the same gross selling price of £120 and no VAT is due or it could reduce the gross selling price to £100. In the first case, of course, the business will make an additional profit of £20, but may run the risk of alienating its USA customers who realise that the additional profit is due to the differences in the VAT regulations.

## EMPLOYING STUDENTS

Many businesses employ students, either during their school, college or university holidays or on a part time basis during term time, eg as bar or restaurant staff. It is important that those who employ students in this way adhere to the requirements regarding the accounting for and, if necessary, the deduction of tax and National Insurance contributions.

Set out below is a brief summary of the requirements, but employers are advised to consult us before they make any payments to students should they require further advice or guidance.

### Employment outside holiday periods

If the student is employed at any time other than their normal holiday periods (or if the student works both during his or her holidays and at other times), then the employer must operate the normal PAYE procedures used for any other employee.

### Employment during holidays

If a student is employed solely during their normal holidays, eg summer or Easter, the employer may be able to pay the student without having to deduct PAYE, as long as their earnings remain below their Personal Allowance for the tax year

However, in the majority of cases, National Insurance contributions will still have to be deducted from the student's earnings.

In order to pay a student without deducting PAYE, the employer must obtain a form P38(S) and the student must fill in the declaration on the form as soon as they begin working.

There is an employer's statement on the form P38(S) which should be completed either when the student's period of employment ends, or at the end of the tax year if that date falls during the Easter holidays and the student continues working beyond it.

A new form P38(S) must be completed for each tax year that a student works.

**If a student's earnings exceed their Personal Allowance**

As soon as the student's earnings exceed their Personal Allowance, the employer must start deducting PAYE from any payments made to the student.

As soon as this happens, the employer must complete and submit a form P46 which shows the date when the student employee started work.

**If a student's earnings do not exceed their Personal Allowance**

Even if the student's earnings have not exceeded their personal allowance and so no PAYE has been deducted, (see above) a form P11 must be completed for any student whose pay has exceeded the National Insurance lower earnings limit.

**Students who have a student loan**

If an employee has a student loan to repay (a situation which is becoming more and more common), in the majority of cases the employer will have to make the necessary deductions from the student's pay.

**End-of-year forms P14 and P35**

At the end of the tax year, the employer must file a P14 for any student for whom it had to complete a P11 or equivalent record during the year, and include the relevant details on the form P35.

<b>NEW RIGHTS FOR AGENCY WORKERS</b>
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From 1 October 2011, under the Agency Workers Regulations, agency workers will be entitled to new employment rights. When an agency worker is on an assignment he or she will get some of the new rights from 1 October and the remaining rights after 12 weeks in the same job.

**The new Agency Workers Regulations**

The Agency Workers Regulations (the Regulations) will give agency workers an entitlement to the same basic employment and working conditions as if they had been recruited directly.

The Regulations mean that from the commencement of an assignment the agency worker will be entitled to use the workplace's facilities, and get information on job vacancies.

**Entitlements from day one**

From the commencement of each assignment, the agency worker will be entitled to access any shared facilities and other amenities or services which are provided by the person or organisation hiring the worker. Examples of shared facilities will include access to a canteen, a workplace crèche, toilet facilities and car parking.

In addition, the worker will be entitled to information about relevant job vacancies, but only in relation to the organisation where the worker is working.

**Entitlements after 12 weeks employment**

When the agency worker has been employed for 12 weeks in the same job with the same hirer, he or she will be entitled to equal treatment in relation to:

- pay
- holidays
- night work
- rest periods and breaks
- duration of working time

However, this does not mean that the agency worker will become a permanent employee of the hirer after 12 weeks.

Note that the Regulations are not retrospective and so any time spent on an assignment before 1 October 2011 will not count towards the 12 week qualifying period.

**Pregnant agency workers**

After completing the 12 week qualifying period, pregnant agency workers will be allowed paid time off for ante-natal appointments during an assignment

<b>CHILD BENEFIT – CHILDREN IN FURTHER EDUCATION</b>
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With many children over the age of 16 carrying on with their education, it is important that parents who have been receiving Child Benefit in relation to their children are aware of the rules regarding the entitlement to continued Child Benefit in certain situations.

The basic rule is that Child Benefit ceases after a child has attained the age of 16. However, parents are still able to claim this benefit after the age of 16 if the child is in certain types of education or training.

With regard to education, this must be full time “non-advanced” education and with regard to training, this must be “approved training”. Both these terms are explained below.

### **Education**

The following must apply in relation to education for Child Benefit to be claimed:

- The child must have started or been accepted for this type of education before their 19th birthday.
- It must be full-time education which is defined as, on average, more than 12 hours a week in term time.
- The education must relate to:
  - Tuition
  - Practical work
  - Supervised study
  - Taking exams

Not included in the 12 hours referred to above are breaks for meals or homework.

- The education must be “non-advanced” education, which will include:
  - GCSEs
  - A levels
  - NVQ/SVQ level 1, 2 or 3
  - BTEC National Diploma, National Certificate and 1<sup>st</sup> Diploma
  - SCE higher grade or similar

(Note that the above is not an exhaustive list and you should contact the Child Benefit Office to obtain further advice.)

- There are certain courses which are not regarded as “advanced” and these will include degrees, Diploma and Higher Education (DHE) and teacher training but, once again you should contact the Child Benefit Office if you are not sure whether the course is advanced or not.
- Correspondence courses will not usually be eligible courses, as the majority of such courses will not include 12 hours a week of supervised study.
- If the child is on a college-based sandwich course, Child Benefit may be claimed, provided that the education provided is full-time and non-advanced (see above).
- You are not able to claim Child Benefit if the child is on a work-based sandwich course, ie if the child is employed as a trainee or apprentice.

### **Education and training breaks**

Should there be a break in a child’s education or training, the parent must inform the Child Benefit Office. If there is a good reason for the break, Child Benefit can usually still be paid for a period of up to six months. Good reasons for a break could include:

- The child is ill
- The child is moving from one college to another
- Someone is ill or has died who is close to the child
- The child is pregnant

Remember that if the child takes a break and does not return to education or training, the parent may have to repay any Child Benefit received during the break period.

### **Contacting the Child Benefit Office**

If there are any changes to a child’s education or training that may affect Child Benefit, you should inform the Child Benefit Office as soon as possible. Changes could include:

- Stopping one course and starting another
- Starting a course of advance education
- Receiving less than an average of 12 hours education a week during term time

## SELF ASSESSMENT PENALTIES

HM Revenue & Customs (HMRC) is reminding individuals and businesses about changes which have been made to the Self Assessment penalties for late returns and late payments, which come into effect this autumn. Set out below is an extract from the HMRC website:

“The changes will affect Self Assessment returns for 2010/11, and all future financial years.

The new penalties for late Self Assessment returns are:

- an initial £100 fixed penalty, which will now apply even if there is no tax to pay, or if the tax due is paid on time;
- after 3 months, additional daily penalties of £10 per day, up to a maximum of £900;
- after 6 months, a further penalty of 5% of the tax due or £300, whichever is greater; and
- after 12 months, another 5% or £300 charge, whichever is greater. In serious cases, the penalty after 12 months can be up to 100% of the tax due.

New penalties for paying late are 5% of the tax unpaid at:

- 30 days;
- 6 months; and
- 12 months.

Interest will also be charged on top of these penalties.

The tax return deadlines remain unchanged – 31 October for paper and 31 January for online returns. The deadline for paying any tax due also remains the same at 31 January.”

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<sup>i</sup> *The articles in this newsletter are of necessity summaries of the topics covered. The publisher has taken all due care in the preparation of this publication. No responsibility for loss occasioned to any person acting or refraining from action as a result of any material in this publication can be accepted by the authors or the publishers. The publisher accepts no responsibility for the content of any material provided by third parties or for the content of any hypertext site referred to in this publication. The Publisher accepts no responsibility for the content of any website of other document referred to in this publication.*