

NEWSLETTER SEPTEMBER 2014

VAT AND PROMPT PAYMENT DISCOUNTS

Businesses which currently offer prompt payment discounts (PPD) to their customers need to be aware that there are some changes ahead to the rules.

Currently under UK law VAT is payable on the net amount after deducting the discount, whether or not the customer takes advantage of the PPD and pays promptly.

For example if you sell some goods for £1,000 plus VAT and offer 5% discount if the customer pays within 10 days then VAT is charged at 20% on £950 being £190, rather than 20% of £1,000 which is £200. Even if the customer takes 30 days to pay and therefore does not qualify for the PPD, the amount due will be £1,190.

This rule regarding PPD is in the process of being changed and from 1 April 2015 VAT will be due on the amount the customer actually pays. So using the above example if the customer fails to take advantage of the PPD he would need to pay the full £1,000 plus VAT of £200.

The business making the supply will have to issue a credit note to account for the PPD where this is taken up. So using the same example if the customer takes up the discount then the credit note would be for £50 plus £10 VAT.

Apparently PPD have been widely used by suppliers of telecommunications and broadcasting services and so the use of PPD to reduce VAT due has already been blocked in those sectors from 1 May 2014. This applies where the customer cannot recover the VAT charged.

If your business currently offers PPD you may need to change your invoicing procedures from 1 April 2015 and the Government are going to consult on the implementation of the change. We will keep you informed of the details of the changes as and when further detailed guidance is made available.

HOLIDAY PAY LAW

The CBI are warning that employers are facing the risk of significant additional costs, potentially 'billions of pounds', from employment tribunals challenging the normal calculation of holiday pay under the Working Time Regulations (WTR).

In the UK holiday pay is currently calculated on the basis of a 'week's pay' which is based on basic salary and excludes payments such as working allowances, expenses, overtime, commission and bonus payments as these payments relate to specific work done by an employee whilst performing their duties of employment.

A recent European Court of Justice (ECJ) judgment redefined holiday pay to include an allowance for commission, even though commission is paid on sales made and the employee would not have delivered those sales whilst on holiday.

If liabilities on holiday pay are backdated then employers may face huge liabilities for holiday pay arrears.

Katja Hall, CBI Deputy Director-General, said:

'Backdated claims on holiday pay could lead to bills of millions of pounds for each business, and ultimately threaten their very existence.'

'Businesses that have done the right thing and fully complied with UK law suddenly face the threat of substantial additional costs. And the companies most at risk are in vital sectors for our economy, such as manufacturing, construction and civil engineering.'

'Moving the legal goalposts in this way is unacceptable. Although most businesses believe we are better off in a reformed EU, there is a real danger of expansive decisions being made by the European Court of Justice on the UK labour market. As part of an EU reform programme, this has to be addressed and it's time to put a stop to back-door EU employment law being made.'

'We need the UK Government to take a strong stand and do all it can to remove this threat. Otherwise we face the very real prospect of successful firms in this country going out of business, with the jobs they provide going too.'

Cases on commission and overtime are currently in progress and we will keep you informed of developments. Meanwhile the CBI is calling for the Government to use its powers under British law to limit the retrospective liability UK employers face.

NMW CONSULTATION

The Low Pay Commission (LPC) has launched a National Minimum Wage (NMW) consultation which runs until 26 September 2014. The LPC would like to hear from individuals and organisations affected by the NMW, including employers of low-paid workers including those involved in sectors such as retail, hospitality, social care, cleaning and hairdressing and focuses on the particular impact of the NMW on young people.

To find out more on the consultation visit the link below. If you would like any advice on the payment of the NMW please do get in touch.

EXTENSION TO FLEXIBLE WORKING RIGHTS

The right to request flexible working has been extended to all employees with at least 26 weeks' service from 30th June 2014. Before this change in the law, only employees with children aged 16 or under (17 or under if the child is disabled) or those acting as carers had the right to request flexible working.

Employers are required to consider requests and deal with applications in a 'reasonable manner' as the previous statutory procedure for dealing with flexible working requests has been abolished.

Employers do not have to accept an employee's request as there are a number of legitimate reasons for turning down a flexible working request, including the burden of additional costs to the business and an inability to recruit additional staff.

PAYE MESSAGES FOR EMPLOYERS

HMRC will shortly start alerting employers where their records show that they have failed to make their PAYE or Construction Industry Scheme payments in full by their due date.

HMRC review the payments after each monthly (or quarterly) payment deadline has passed. Shortly after that, HMRC will issue a late payment Generic Notification Service (GNS) message to employers and contractors if they believe they have an underpayment of £100 or more for the month or quarter.

The messages will state:

'HM Revenue & Customs (HMRC) records show you did not make full payment on time. If you have not already done so, please bring your payments up to date and ensure future payments are made on time and in full. Paying on time and in full is important as otherwise you may be charged in-year interest and late payment penalties.'

'If you had no PAYE payment to make because you didn't pay any employees during this tax period, you should let HMRC know by sending an Employer Payment Summary (EPS) for this tax period.'

'To see why HMRC have issued this notice, please check HMRC Tax Dashboard or PAYE Online which provides details of your payments and PAYE charges.'

Employers should:

- submit an EPS as instructed, if appropriate
- ensure that they pay their PAYE in full and on time in future.

If you would like any help with PAYE matters please do get in touch.

ZERO HOURS CONTRACTS AND EXCLUSIVITY CLAUSES

Zero hours contracts are those where the employer does not guarantee to provide the worker with any work and pays the worker only for work actually carried out. The Government estimates that some 125,000 employees are on such contracts.

Some employers argue that they are an important tool to enable a business to maintain flexibility to deal with fluctuations in demand whereas some employee groups claim that businesses use them to avoid giving workers the status of 'employee' and eligibility for the full range of employment rights.

The Business Secretary, Vince Cable, has announced that employers hiring workers on zero hours contracts will no longer be able to compel staff to work exclusively for them. These 'exclusivity clauses' will not be permitted in contracts and will therefore give workers the freedom to take employment elsewhere. The ban on exclusivity clauses will be contained in the Small Business, Enterprise and Employment Bill.

The Government considers zero hours contracts have a place in the labour market but that the use of these contracts needs tightening up to protect employees from employers who misuse the contracts.

GUIDANCE ON CHANGES TO VAT FILING RULES

The majority of businesses have to file their VAT returns online. HMRC have issued guidance on changes to VAT rules which introduce additional exemptions to the requirement to file VAT returns online. The changes, which came into effect at the beginning of July 2014, allow business owners that satisfy HMRC that it is 'not reasonably practicable' for them to use the online system to submit 'paper' VAT returns.

HMRC will also be able to approve telephone filing as an alternative method of electronic filing in certain circumstances.

If you would like any advice on VAT issues please do get in touch.

PENSIONS REGULATOR USES FORMAL POWERS OVER AUTO ENROLMENT

The Pensions Regulator (TPR) has issued the first quarterly bulletin which details how many times it has needed to use its formal powers to ensure employers comply with their automatic enrolment duties.

The first of the new quarterly bulletins shows the regulator had used its powers on 23 occasions up until the end of June this year. The powers listed include the ability to carry out inspections and to issue statutory notices including fixed penalty and escalating fines.

Executive director of automatic enrolment Charles Counsell said:

'Employers and the pensions industry are understandably interested to know how and when we use our powers. To date the vast majority of employers are complying with their new workplace pension duties without the regulator needing to use our enforcement powers.'

'I believe this is a testament to the success of our proportionate, risk-based approach to compliance and enforcement. We target our resources where they will maximise compliance and work with employers to help them comply with their duties.'

'We have provided the tools and assistance that large and medium employers need to ensure millions of workers didn't miss out on the pension contributions they are entitled to. On a small number of occasions, when our intervention has not resulted in the required outcome, we have used our powers to help to ensure employers comply with their duties.'

If you would like specific guidance, help or advice on how to deal with your auto enrolment obligations please do get in touch.

PENSION SCAMS

HMRC and the Pensions Regulator (TPR) are publicising the availability of revised leaflets which warn people of the consequences of pension liberation scams.

HMRC are advising that individuals with pension savings continue to be targeted by unscrupulous companies encouraging them to access their pension savings early. Options are given for personal loans, cash incentives and one-off pension investments to encourage people to invest in these pension scams. Pension savers involved in these pension liberation scams face significant tax consequences. HMRC has worked closely with TPR on publishing a revised set of leaflets highlighting the serious downsides of pension scams. The leaflets provide guidance on what trustees and scheme members can do to reduce the risk of becoming involved in these scams, and the tax impact of releasing pension funds early using these types of arrangements.

HMRC WARN OF INCORRECT RTI LETTERS

HMRC have warned that incorrect RTI letters have been issued. The full statement reads:

'We are aware that a batch of RTI 201 letters has been sent to employers and agents in error, containing incorrect information about overpayments. Any employer or agent receiving one of these letters in August should please ignore it. Those wishing to check their tax position can do so on the Business Tax Dashboard. We are very sorry for any inconvenience caused.'

If you would like any help with payroll issues please do get in touch.

HMRC TO ISSUE PENALTIES FOR LATE SUBMISSION OF PAYE RETURNS

In the latest Employer Bulletin HMRC are warning that employers' who fail to submit their PAYE submissions, Full Payment Submission (FPS) or where appropriate Employer Payment Summary (EPS) on time will face penalties. The penalties are being introduced from October 2014.

Penalty notifications will be issued on a quarterly basis.

Please do get in touch for advice on PAYE matters.

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