



# NIXON WILLIAMS

## NEWSLETTER

SPRING 2010

### ON THE WAY IN

#### **PAYE penalties for late payment**

Penalties are to be introduced for PAYE from 6 April 2010 where payment is late. The liability to a penalty will be based on a totting up procedure depending on the number of defaults during a tax year. A penalty will not be levied for the first default and may then be charged depending on the number of defaults on a rising scale from 1 to 4%.

Further, any tax which is still unpaid six months after the due date, may incur a further penalty of 5% and a further 5% can be levied after 12 months.

Please contact us if you require further advice on these matters.

### SPREAD THE WORD...

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#### Conditions:

1. The 12 month period will commence with the first referral received after 01/03/10
2. The referral fees are paid when the client has started paying their regular fees by standing order or direct debit.
3. Your details must be either detailed on the new client's application form or been referred by you prior to them becoming a client.

### LEAKY UMBRELLA?

Over the past few weeks we have seen several umbrella companies face financial difficulties and in some cases total collapse.

Clearly the uncertainty is a worry for anyone whose money is tied up within one of these companies. Involving another layer in the handling of your income clearly adds to the risk, and any risk that you can remove will be a wise decision.

The business model of an umbrella company should be quite straight forward; the umbrella generally receives funds from an agency and then pays this over to the contractor after the deduction of fees. In theory the funds should be safe, although recent news suggests that this is not always the case.

Enhanced retained earnings are often advertised by umbrella companies due to the use of "dispensations" and other doubtful expense claims. It is entirely possible that umbrella company's financial problems have arisen after a HMRC inspection and the successful challenge to flawed expenses. The resulting enormous tax bill would be a challenge to pay.

Problems continue to appear on the horizon for umbrella companies. The Government has launched a consultation into expenses paid by umbrellas, although the consultation does not close until 6th May 2010 – the expected date for

the General Election, as a result the decisions will be made by the next Government.

We are also aware that HMRC's Special Investigation unit are actively looking at certain umbrella companies, so the latest problems with umbrella companies are unlikely to be the last we will hear about it in 2010.

In conclusion, although umbrella companies are easier to use, this convenience does have a price, not just in terms of more tax payable but also that the future is uncertain.



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CIMA

# FACILITATING FUNDING

In the Pre-Budget Report of 9 December 2009, the Chancellor announced an extension to the Enterprise Finance Guarantee scheme (EFG) which was originally due to end on 31 March 2010. The announcement stated that a further £500 million of new bank lending is to be guaranteed between 1 April 2010 and 31 March 2011.

## How does it work?

The scheme aims to facilitate bank lending to viable businesses which are generally otherwise unable to secure funding, due to the lack of a track record or collateral. Guarantees are provided by the government to commercial lenders who participate in the scheme, to the extent of 75% of the loan. Loan amounts can range between £1,000 and £1 million and there are now more than 35 participating lenders.

## Who is eligible?

The scheme is aimed at small businesses with the definition of small being generously defined as enterprises with up to £25 million annual turnover.

Most sectors of business are eligible although there are restrictions in certain sectors including agriculture, banking, insurance, finance and transport.

## What can it cover?

The guarantee aims to cover the following types of lending:

- new term loans (with terms of between three and ten years)
- refinancing existing term loans, where the loan is at risk due to the deteriorating value of security or where for cash flow reasons, the borrower is struggling to meet existing loan repayments
- conversion of an existing overdraft into a term loan to meet working capital requirements
- guarantee on invoice finance facilities to support an agreed additional advance on a SME's debtor book. This will supplement the invoice finance facility already in place.
- guarantee on new or increased overdraft borrowing for the SMEs experiencing short term cash flow difficulties.

## What does it cost?

In addition to regular capital and interest payments to your lender, and any arrangement fees which they may charge, a premium is payable to the Department for Business, Innovation and Skills.

The premium is equivalent to two per cent per annum on the outstanding balance of the loan, assessed and collected quarterly in advance throughout the life of the loan.

For further information please contact us or visit [www.berr.gov.uk/whatwedo/enterprise/finance/efg/page37607.html](http://www.berr.gov.uk/whatwedo/enterprise/finance/efg/page37607.html). The site includes a list of lenders and restricted business sector areas.

# RINGING THE RIGHT TONE

The provision of a phone for business use is an essential modern tool but it is important to avoid the tax traps...

For a number of years Mr Enterprise was employed in a management position and had always been provided with a mobile phone by his employer for personal and business use which he understood was a tax free benefit. When he set up his own company he entered into a new one year mobile phone contract early in April 2009. The contract was taken out personally but as 85% of his usage would involve business calls, he simply put the monthly bills through the company. Over the tax year 2009/10 the total payments made by the company amounted to £1,200.

Imagine his surprise to learn that there is a taxable benefit which should be included on his form P11D. As a higher rate tax payer this would result in an initial income tax charge of £480, before a claim is made to offset the business expense element. In addition both he and his company as his employer will also have to pay Class 1 National Insurance as it is the settlement of a personal bill.

## What went wrong?

When directors and employees take out contracts with suppliers in their own name and then the employer settles the liabilities arising - this is treated as taxable irrespective of the nature of the expense. The taxable amount should then be recorded on form P11D. However, for NIC purposes, it is treated as cash earnings and not as a benefit. This means that Class 1 NIC is due by both the employee and employer rather than Class 1A NIC by the employer only.

In the alternative situation, where the employee settles the bill initially but is then reimbursed by the employer, the payment should be included on the payroll, and will therefore be subject to PAYE and Class 1 NIC.

These rules apply in any situation where the employee/director pays personal bills and is reimbursed by the employer or where the employer settles the personal bills direct and not just in relation to mobile phones. Other examples could be home phone costs, internet or private medical cover.

## Putting it right

In relation to the mobile phone provision Mr Enterprise should arrange his next contract so that it is between his company and the supplier to ensure that for 2010/11 there are no tax or NIC charges. This is because the provision of a mobile phone by an employer in this way is a tax free (and NIC free) benefit. Only one such contract is tax free for each employee.

## What about employer provided home phones?

Where a home phone is provided and the employer is the subscriber, the provision of any private benefit is generally taxable (unlike a mobile phone). In this case the whole cost incurred should be treated as a chargeable benefit (this includes line rental) less any costs made good by the employee. The individual can then make a tax claim for any business calls necessarily incurred to reduce the amount actually taxable.

For NIC however, unless all private costs are made good then Class 1A is due on the whole cost incurred by the employer even if the individual subsequently claims a deduction for the business element. This is clearly wasteful and should be avoided. This can easily be done by ensuring that directors and employees pay their own home phone costs and are reimbursed for business calls only. This may be achieved by posting the expense to a directors' current account where in credit.

As you can see this is an area where tax and NIC can be unintentionally incurred so please contact us to review your position on these areas.





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## UNSAFE OFFSHORE?

You may be aware that HMRC have been attacking Offshore Tax Schemes and at The Royal Court of Justice, HMRC were successful in claiming that the retrospective collection of taxes is lawful!

Effectively, HMRC can now go backwards (as far as 1987) and retrospectively apply a piece of tax legislation which will affect thousands of contractors who are using or have previously used an offshore tax scheme as a way to reduce taxes.

This recent news further confirms that contractors must think carefully before using any offshore schemes as a way of avoiding UK taxes.

Many of the promoters boast their schemes are lawful and legitimate, supported by some counsels' opinion. Thus far, this has been of no comfort to the numerous taxpayers approached by HMRC.

The old saying, 'if it sounds too good to be true, then it is too good to be true', is a useful rule to apply by anyone who is tempted by the promoters of tax avoidance schemes. They should come with a warning – 'Using this scheme may damage your bank account'!

A simple google search under "BN66" will provide further warnings on these schemes.

## YEAR END

The end of the tax year is nearly with us (5th April 2010) and we wish to ensure that your company meets the deadlines for filing the PAYE Annual Returns. We therefore have to work to strict deadlines for submitting your information to us.

You will be aware by now that you should send invoices/bank statements & expense claim forms to us each month. This has not changed – we still do require this information to enable us to act for you.

WE MUST RECEIVE THE FOLLOWING DETAILS BY 09/04/10

1. Copy invoices to cover to the end of March 2010 – if you invoice mid-month to mid-month, then a part invoice will only be required if you will be paid again prior to 06/04/10.
2. Expense claims to cover to 31/03/10

3. Bank Statements to 31/03/10 – do not worry if you cannot provide this in time, this is not essential by 09/04/10, but will be needed as soon as you can.
4. We will now file the returns online for you (after we have issued the March payslip) as online filing of the PAYE annual returns is now compulsory.

Please note that if we do not receive the above details by the 09/04/10, we cannot guarantee that the deadlines as specified by HMRC (detailed below) will be met.

PAYE/NIC will be due by 19th April 2010 (22nd if paying online) – interest will be incurred on late payments.

P35/P14's are due by 19th May 2010 (P11d's by 06/07/10) – fines of £100 per month will be levied for late returns.

# AS THE HOLIDAY COMES TO AN END.... WHAT GAIN?

The tax treatment of Furnished Holiday Lettings (FHL) has been advantageous for many years but the rules are set to end in April 2010.

## What are FHL?

The FHL rules essentially cover the commercial short term letting of residential holiday accommodation in both the UK and the European Economic Area. Until now, a FHL business has broadly qualified as a trade (providing qualifying conditions are met). This is generally more beneficial for tax purposes compared to the tax treatment of an ordinary property investment business. This will not apply from 6 April 2010 for individuals (1 April 2010 for companies).

The changes will impact in two key areas:

- the calculation of the taxable income from the continuing property letting business and
- the treatment of any capital gains arising on the disposal of the FHL business.

This article only considers the main capital gains tax aspects but please do contact us if you need further information or wish to discuss the impact on taxable income.

## Capital gains tax reliefs for the individual

When an individual disposes of a qualifying FHL business, the gain may be eligible for Entrepreneurs' Relief (ER). Where the conditions for ER are met, the relief reduces gains up to £1

million, per individual, per lifetime, so that only 5/9th of the gain is chargeable to tax. This relief does not apply to disposals made by companies but may apply to shares in companies.

The FHL business will be treated as ceasing on 5 April 2010 and will be treated as a property business. This means that generally from 6 April 2010 a FHL business will no longer qualify for ER. However, the relief will still be available on the sale of any assets comprised in the business provided:

- the asset was used in a FHL business in the 12 months to 5 April 2010 and
- the disposal (for example by sale) occurs before 6 April 2013.

### Example

In June 2009 Edward sold a FHL business which consisted of a Welsh holiday cottage for a gain of £72,000. He has not previously used any of his ER entitlement so the gain is reduced by 4/9th to £40,000.

If instead, the property was not sold until June 2011, but continued to be let after 5 April 2010 as furnished rental accommodation, the subsequent gain would still be eligible for ER.

postponed, where on the disposal of a trading asset such as a property, the proceeds are reinvested in certain replacement trading assets. The relief is available whether the replacement asset is for use in the same trade or a different trade, provided the person carrying on the trade is the same. It is particularly useful for company disposals which do not qualify for ER.

When FHL cease to be a trade on 5 April 2010 (31 March 2010 for companies) then subsequent acquisitions and disposals of properties used in such businesses will no longer generally qualify for this relief. However, as the assets are trading assets until that time, any gains on disposals from the 6 April 2010 (or 1 April for companies) may be partly eligible for relief.

### Example

Bounce Ltd sells a property which had always been fully used in a FHL business on 1 September 2010. It had been owned for 10 years. All the proceeds are reinvested in a property for its main catering trade. The gain is £50,000. The asset is treated as non trading for the last 6 months of the 10 year ownership which represents 5% of the gain but the remaining 95% may still be eligible for relief.

## What about deferring any gains?

Another CGT relief which applies to trading assets is replacement of business assets, known as rollover relief. This is available to companies and individuals. This allows a gain to be

To ensure that any reliefs still available can be maximised, it will be essential to consider the timing of disposals and that all other qualifying conditions are met. Therefore please contact us to discuss how we can assist you on these business changes.

# AND FINALLY...

This is my regular spot where I will deal with a question from a client.

## I understand that I now have to file my VAT returns online, what do I need to do?

From 1st April 2010, all businesses with an annual (VAT exclusive) turnover of £100,000 or more must file their VAT returns online. Also any businesses registering for VAT on or after 1st April 2010 will also have to file online, whatever it's turnover.

Filing online is a much simpler way of submitting your VAT returns, we are able to complete the return online on your behalf and advise you of the amount to pay across to HMRC. We would also recommend that you set up a direct debit to pay your VAT across each quarter, giving you an extra few days before they request payment.

We are able to file all clients VAT returns online on their behalf and are planning to register all of our clients. You should have received an authorisation code from HMRC and this needs to be sent to your Account Controller.

We have found this to be quite straight forward and I am confident you will see the benefit, however if you have any further questions please contact your Account Controller to go through this with you.

I hope this helps.

Alan Williams

