Nabarro
Chartered Accountants

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DANGER: VAT REGISTRATION

VAT is probably the most dangerous of all the taxes for a small business, firstly because it is charged on turnover, not profit, so any mistakes can be expensive; secondly because most penalties are tax-geared; and thirdly because there are very tight deadlines for providing information to HMRC - a trader certainly cannot leave it all for his accountant to sort out at the end of the year.

There are dangers both if you are not yet registered for VAT, and if you are:

If you are not already registered for VAT

The basic rule is deceptively simple - you must register as soon as your 'taxable supplies' exceed the registration threshold, currently £79,000 a year. The first point to watch is that 'taxable supplies' include sales of goods and services that are VAT zero- rated, as well as those which are subject to VAT at the 20% standard rate or 5% lower rate. However, you do not have to count sales of capital assets used in your business. For example, a jobbing builder would have to total his charges to customers, but would not have to include the sale of his truck or cement mixer. Broadly speaking, then, unless you are making any VAT-exempt sales, your 'taxable supplies' for VAT registration purposes will be the same as your turnover for ordinary accounts purposes.

The second point is that the registration threshold is not necessarily £79,000 for your accounts year, it is £79,000 for the twelve months to the end of any calendar month. So it is essential to keep a month by month check on your cumulative taxable supplies for the last twelve months. It is of course entirely within the rules to limit your trading to avoid going over the registration threshold - a lot of small hairdressers close for an extra day a week for this reason.

Otherwise, the registration application should be submitted within 30 days of the end of the month in which the twelve-month rolling total of taxable supplies first exceeded £79,000. If it is not, a penalty will be charged, usually of between 15% and 30% of the net VAT payable for the period from the date the business should have been registered, to the date it was in fact registered.

If there is a 'spike' in taxable supplies, so that they go over £79,000 for one twelve month period, but are likely to be less than £77,000 for the next, HMRC may (not necessarily will) agree that the business need not be registered. But you have to ask. If you take a chance and the VATman finds out, the business will be registered from the date it should have been registered until you in fact apply to deregister, with VAT payable on your sales, plus a penalty, for the whole of that period.

By the way, HMRC will not agree to allow a business to remain unregistered if the reason that taxable supplies in the coming year are likely to be less than £77,000 is that the proprietor intends to take an extended holiday.

If you are already registered for VAT

Obviously, you have to make your quarterly or monthly Returns on time, and pay the tax. All traders are well aware of that. Less obviously, a wide range of changes have to be notified within 30 days of their taking place. These include any change in the registered, legal or trading name of the business, its principal place of business, or its main business activity. If the business is carried on by a partnership, the admission of a new partner or the retirement of an existing partner must be notified, as must as any changes in personal details, such as a partner's private address or name (for example, if a woman changes her name on marriage).

However, it is fairly unlikely that HMRC will in practice charge a penalty for failing to notify any of the above changes, at least in the case of an innocent error or oversight which does not lead to any loss or late payment of tax. The real danger is that a change may take place which means that the existing registration should be cancelled and the business re-registered. The most common examples are where:

- A trader (or a partnership) incorporates his (their) business, as a company or a Limited Liability Partnership (LLP).

- A sole trader takes on a partner (even where the new partner is, for example, his wife).

- All but one of the partners withdraw from a business, leaving that business to be carried on by the last remaining partner as a sole trader. For example, this could happen where a married couple carried on business in partnership, one died, and the other continued the business as a sole trader.

Here, HMRC's practice is to charge a penalty for failing to register the 'post-change' business. Their starting point will be to charge a penalty equal to 15% to 30% of the net VAT payable for the period from the date the change took place to the date it was finally notified - even if that VAT was in fact paid, on time, under the existing registration for the 'pre-change' business. It is usually possible to negotiate that penalty down, but frankly it is a situation far better avoided by deregistering and re-registering within the 30 days allowed.

To avoid VAT problems - which can be disastrously expensive - we would strongly advise that you 'think VAT', watch your turnover if you are not already registered, and keep us informed about changes in the structure or ownership of your business.

IT ALL COMES OUT IN THE WASH!

It is often not appreciated that an employer can pay his employees tax free allowances for the cost of washing or dry cleaning clothes they are required to wear for work. However, this applies only where the clothes count either as 'protective clothing' or as 'a uniform'.

Protective clothing means items such as overalls, gloves, boots and helmets, which the employee has to wear in order to be able to work safely. However, HMRC does not accept that warm clothing for working in exceptionally cold conditions is 'protective', or that high visibility clothing necessarily qualifies.

A uniform can be ***either*** clothing that anyone would recognise as workwear for a particular job, such as a nurse's uniform, ***or*** clothing on which the employer's name or business logo is prominently displayed. In the latter case, it is not sufficient for the clothing to be in corporate colours, or for the employer's name to appear on a clip-on badge, or on a label sewn inside a jacket, *etc*. There must be a label sewn on the outside. Each item of clothing is considered separately - thus if a shop assistant is required to wear a matching jacket and skirt, but only the jacket displays the employer's name, then only the jacket will count as a 'uniform' for tax purposes. (And they say tax doesn't have to be taxing . . .)

The tax rules for cleaning expenses are the same whether the employer provides the protective clothing or uniform, or whether the employee has to buy his own. The employer can either reimburse against receipts for the amount actually spent (for example, where clothes are dry cleaned) or pay a flat rate cleaning allowance of up to £60 a year (£5 a month), for example where overalls are washed at home.

If the employee earns less than £8,500 a year, such payments are simply not taxable. However, these days that will apply only to part-timers and some apprentices. Otherwise, strictly speaking the payments should be reported as reimbursed expenses on Forms P11D and the employees should claim corresponding deductions. In practice, it will be more convenient to agree a 'dispensation' with HMRC - shortly put, if HMRC are satisfied that the payments qualify to be made tax free under the above rules, it will agree that they need not be reported on Forms P11D.

In any case, payments made by the employer to reimburse the cost of cleaning qualifying protective clothing and uniforms are not subject to employer's or employees' National Insurance contributions.

Workwear provided by the employer A related point is the tax position where an employer provides workwear for his employees. If this qualifies as 'protective clothing' or 'a uniform' under the above rules, the same tax and NIC treatment applies as for cleaning expenses - namely that the employer should include it as a benefit-in-kind on the employee's Form P11D, unless a dispensation is agreed, but no National Insurance contributions will be due. If the clothing is given to the employee, the reportable amount is the cost to the employer, but if the clothing remains the employer's property, an amount equal to 20% of the cost should be reported each year the item is worn.

PROTECTING YOUR RETIREMENT PENSION

At present, the basic rule is that both men and women have to pay National Insurance contributions for 30 years in order to qualify for a full Retirement Pension. However, National Insurance credits may be due - for example for periods when the individual was not working but caring for a young child - and these count towards the 30 year target.

A major change is that the Government has decided that, for people who reach State Pension age on or after 6 April 2016, the requirement will be increased to 35 years' contributions paid or credited. This will affect men born on or after 6 April 1951 and women born on or after 6 April 1953.

To help people who will now have to pay more contributions than they expected to qualify for a full pension, the Government has extended the time limit for paying voluntary contributions, for all years from 2006/07 to 2015/16, until 5 April 2023. Also, the rules governing the surcharge for contributions paid late have been amended, so there will be no disadvantage in delaying payment for these years, providing payment is finally made by 5 April 2019.

This will allow a period of grace for individuals to review their overall contribution position and plan for payment of any additional contributions required.

A final point to watch is that the Pension Age Calculator on the GOV.UK website should not be used to calculate State Pension age for people born after 5 April 1960 because it has not yet been updated to incorporate the latest changes. We are however able to calculate the date for you.

NATIONAL MINIMUM WAGE AND APPRENTICES

From 1 October 2013 the National Minimum Wage will rise from £6.19 to £6.31 an hour. The Development Rate (for 18- to 20-year-olds) will rise from £4.98 to £5.03 and the rate for 16- and 17-year-olds from £3.68 to £3.72.

However, enforcement work this year is likely to focus on apprentices, as the Government has expressed its concern that many employers either misunderstand the NMW rules for apprentices, or choose to ignore them. Failure to pay the appropriate rate is, apparently, particularly common in retail businesses such as hairdressing.

Part of the confusion is that there is an 'apprentice rate' of £2.65 an hour, rising to £2.68 on 1 October 2013. However, this applies only if the apprentice is aged 18 or less, or is in the first year of his or her apprenticeship. If the apprentice is aged 19 or more, and has completed his or her first year, he or she is entitled to the Development Rate if aged 19 or 20, or the full rate if aged 21 or more.

In view of the Government's intended focus on this area, we would recommend all employers of apprentices to check that they are in fact paying the appropriate NMW rate.

This newsletter deals with a number of topics which, it is hoped, will be of general interest to clients. However, in the space available it is impossible to mention all the points which may be relevant in individual cases, so please contact us for personal advice on your own affairs.

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