

CHANCERY MANAGEMENT NEWS UPDATE

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On This Day In Previous Years

1512 Michaelangelo's Sistine Chapel paintings were first exhibited.

1870 The United States Weather Bureau began its operation.

1979 The First Lady Mamie Eisenhower died at Gettysburg Pennsylvania.

1985 Phil Silvers comedy actor (Sgt Bilko) dies in his sleep aged 73.

Statutory redundancy Pay Increased Thursday 1st October 2009

Effective 1st October 2009 Statutory Redundancy was increased to £380 per week.

HM Revenue & Customs (HMRC) Compliance And Enforcement

According to recent press releases and articles the business plan for HMRC in 2009-2010 revealed that its budget in total is £4 billion out of which £1 billion will be used for compliance and enforcement.

In a climate where the total tax take is diminishing the Government is looking at ideas and ways to increase tax receipts and has decided that their main target area is to invest in more compliance and enforcement.

The most lucrative area for compliance and enforcement (these used to be known as PAYE audits), from an HMRC perspective is employer compliance especially since the Chancellor Gordon Brown changed the rules and moved the goalposts.

There is not enough space to provide all the changes that were made to vastly increase the tax liability to the employer but a very good example is one of the major changes to the rules on expenses.

Prior to the changes made from 2003 and 2004 it was generally up to an employer to decide on a commercial basis what was to be included as a genuine business expense and what should be excluded as a business expense.

If, for example, an office based employee worked until quite late in the evening, lived a considerable distance from the office and was expected to be back in early in the morning, the employer could consider that an overnight stay in a local hotel was appropriate and was a legitimate company expense. However, under the new rules, that type of expense is now considered a benefit. Therefore, if an employer has a compliance and enforcement visit from HMRC and has included such items on a fairly regular basis their unexpected tax liability could prove to be a considerable burden for the employer and a very lucrative exercise for HMRC.

This is because HMRC will calculate such items as follows. Say the total hotel expenses found by HMRC came to £1,680 including VAT. The liability would be calculated as £1,680 divided by 60 multiplied by 100 equating to total gross pay in the sum of £2,800 if the employee was a higher rate taxpayer. If the employee was a lower rate taxpayer it would be calculated as £1,680 divided by 80 multiplied 100 equating to £2,100. If there is more than one employee at different rates of tax HMRC would calculate the liability separately using the relevant rates of tax. Composite rates are not allowed. The total liability in the examples above would be:

Example 1 £2,800 x 12.8% employer National Insurance £358.40 + employee tax £1,120, total £1,478.40

Example 2 £2,100 x 12.8% employer National Insurance £268.80 + employee tax £420, total £688.80

In addition to the liability HMRC will add interest from the date the funds were due and in addition if the employer does not co-operate with the compliance and enforcement team by disclosing such items HMRC can impose up to 100% of the total liability in penalties. In any event HMRC will impose some penalties in respect of the employer defaulting in the first place.

This is just one example showing the severity of possible liabilities.

HMRC compliance teams have extraordinary authority and powers which include:

Obtaining information and documents.

Inspecting the business.

Copying and removing documents.

Appealing against information notices

Applying interest and penalties

The probability of having a compliance inspection usually depends on the size and complexity of the business, the type of business and the most deciding factor, the risk criteria.

The approach to employer PAYE reviews now known as compliance and enforcement visits has changed dramatically over the last fifteen years. HMRC used to carry out very detailed visits that could result in working on the employer premises for up to seven days sampling things such as purchase invoices petty cash and other items to ensure such documents were for the company or organisation and not for the director or other individual.

Whilst such items are looked at, compliance and enforcement visits these days are much shorter but much more targeted, thorough and sophisticated. They are also considerably less accurate and rounded up in favour of HMRC.

HMRC used to aim for at least one PAYE review, as they were originally known, once every six years. However, HMRC later realized that this was not necessarily the most cost effective way of using its resources and its staff.

As stated above HMRC now use risk criteria to make decisions as to whether it is worthwhile to carry out a compliance enforcement visit on a particular employer. Therefore, there are several types of employer that may never receive a compliance visit and other types that will have frequent visits depending on the type of industry and what HMRC find on that particular organisation during an inspection.

Even when HMRC think the employer is running the type of industry that they consider lucrative in terms of collecting considerable additional revenue, they will in most cases carry out an employer review by sending a very thorough questionnaire to assess how the employer manages the business, the internal controls, the different types of employee they have and the type of payments they make to the extent that will assist them in deciding whether a compliance enforcement visit is appropriate and to the extent of such a visit.

If an employer receives a questionnaire it is not a viable option to answer the questions incorrectly whether that be by a conscious decision to do so or by an innocent error, because the consequences can be dire.

This has been a major shift in policy so they do not spend unnecessary time going through thousands of receipts to find one or two minor errors that have occurred.

Apart from the type and size of business the employer is running what other indicators could result in catching the eye of HMRC resulting in a compliance enforcement visit?

Late or inaccurate end of year returns such as forms P14, P35, P11D, P11DB, Directors PAYE and National Insurance.

Regular late payment of tax and National Insurance.

The length of time from the last review.

Poor past compliance history.

Irregularities in company accounts.

Benefits shown on an employee self assessment tax return but not reported by the company.

An employer is put into one of three categories by HMRC. These are low risk, medium risk or high risk.

The other changes HMRC have made are the different departments it has now created. Compliance and enforcement visits used to take place from the area office dealing with the company PAYE. More recently HMRC have developed specialist departments such as specialist expatriate complex tax teams, compliance and enforcement offices that specialize in certain industries, offices that only deal with the private sector and offices that specialize in the public sector.

These teams are now very sophisticated.

The three main HMRC compliance groups now are:

Large and complex business compliance enforcement teams dealing with businesses with turnover over £33 million.

Small and medium enterprises considered neither large or complex.

Public bodies that are complex due to their size

If you have a compliance and enforcement visit pending and would like some advice or assistance in limiting any potential liability or if you would like to know how to avoid or limit the risk of a compliance and enforcement visit please contact your payroll manager.

Employing People From Overseas

National Insurance Contributions

The National Insurance categories when people come from abroad are usually one of three

People from the European Economic Area (EEA)

Other countries that the UK have a reciprocal agreement with covering social security contributions or a double contributions convention

Countries that are not EEA countries and do not have any agreement with the UK regarding social security. These countries are usually known as rest of the world countries (ROW)

People from the EEA must pay social security within the EEA and therefore if they are working here but intend to return to their country of origin and wish to continue paying social security in their own country they will not be subject to National Insurance within the UK provided they have an E101 certificate. If a certificate E101 is not forthcoming then National Insurance must be deducted.

People coming over to the UK from a country that has a reciprocal agreement with the UK will normally be liable to National Insurance unless they produce a certificate from that country to show that they are continuing to pay social security in that country.

Countries in the EEA are: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Gibraltar, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Republic of Ireland, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland and the UK being England, Scotland, Wales, and Northern Ireland. People living in the Isle of Man are usually treated as living in the UK.

Countries with which the UK has a full reciprocal agreement covering both National Insurance and benefits are: Barbados, Bermuda, Guernsey, Israel, Jamaica, Jersey, Mauritius, Philippines, Turkey, USA and the Federal Republic of Yugoslavia including Serbia and Montenegro/Bosnia-Herzegovina/Croatia and Macedonia.

Countries with which the UK has a Double Contributions Convention which covers National Insurance liability but does not contain a provision for benefits are Canada, the Republic of Korea and Japan.

The UK also has reciprocal agreements which are benefit related and do not contain a provision for National Insurance agreements with Canada and New Zealand. The insurability of workers coming to the UK from New Zealand will come under UK domestic legislation while those from Canada will come under the separate DCC as above.

Statistics of the Month

Men in the financial sector take home an average bonus five times the size of their female colleagues. £14,554 for men compared with £2,875 for women. Women in the City also earn 39% less basic pay than men. Source: The Daily Telegraph.

One in three teenage girls in the UK has suffered sexual abuse from a boyfriend and one in four has experienced violence in a relationship. Nearly ninety per cent of girls aged thirteen years to seventeen years have been in an intimate relationship. Source: NSPCC/Bristol University.

There has been a 33% increase in alcohol related cases seen by A&E departments in England since 2005. Source: NHS.

Quotations of the Month

A little inaccuracy sometimes saves tons of explanation.

News is what somebody somewhere wants to suppress.

You will do foolish things, but do them with enthusiasm.

If the highest aim of a captain was to preserve his ship he would keep it in port forever.

In time of difficulties we must not lose sight of our achievements.

Money is not everything but it does keep the children in touch.

Good Health is merely the slowest rate at which one can die.

Source: The CML Collection.

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