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Tax E-News

Welcome to our monthly newswire. We hope you find this newsletter informative and please contact us to discuss any matters further.

September 2020

NOTIFY HMRC OF OVERCLAIMED CJRS "FURLOUGH" GRANTS WITHIN 90 DAYS

The calculation of Coronavirus Job Retention Scheme grants has proven to be complex, particularly as HMRC frequently changed the rules and the method of computation. Consequently, many errors have arisen and need to be corrected. The latest Finance Act requires employers to notify HMRC within 90 days where it turns out that they were not entitled to receive the furlough grants and there is a penalty for failure to notify them.

HMRC has said that it will be lenient in relation to genuine mistakes, and that penalties will be charged only in cases of deliberate non-compliance.

NUMEROUS FRAUDULENT CJRS CLAIMS IDENTIFIED

HMRC's CJRS fraud reporting portal had received over 2,000 reports of wrongful claims. Examples of such wrongful claims include;

- Claiming furlough payments for staff who are continuing to work
- Furloughing staff but asking them to work "voluntarily" on an unpaid basis.
- Claiming furlough payments for "ghost" employees, and those who left employment before 19 March 2020.
- Not passing on the full amount of furlough pay to staff.
- Failing to account for PAYE tax and NIC in relation to furlough payments

HMRC also have the power to transfer CJRS penalties to the directors of an insolvent company if their company does not pay them. We therefore suggest that employers should check the accuracy and validity of their CRJS claims as a matter of priority, and ensure that any inaccuracies or errors are disclosed to HMRC as quickly as possible. We can of course assist you in checking claims.

COMPANY VANS WERE MOTOR CARS

The Court of Appeal have now ruled on the tax status of certain vehicles provided to employees of Coca Cola. The court has upheld the HMRC view that vans with windows and a second row of seats behind the driver are not goods vehicles but motor cars for benefit in kind purposes.

Consequently, the income tax and national insurance payable by employee and employer is significantly higher than if the vehicles had been classified as goods vehicles.

The income tax legislation defines a "goods vehicle" as *"a vehicle of a construction **primarily suited** for the conveyance of goods or burden of any description…"*

At the Tax Tribunal it was decided that modified VW Kombi vans failed this test whereas modified Vauxhall Vivaro vans did fall within the definition of goods vehicles.

It has now been determined that the Vauxhalls should also be taxed as motor cars for P11d benefit in kind purposes. This means that where the vehicle is available for private use the taxable benefit will be based on the original list price multiplied by a percentage based on the vehicle's CO2 emissions.

The decision means that employers may need to reconsider providing such vehicles. They may also need to rectify the P11d reporting in respect of earlier years and we await further guidance from HMRC.

What is also particularly confusing, and thus difficult for businesses to deal with, is that the benefit in kind rules are not the same as the rules for recovery of input VAT and it would be useful if there was a common definition for tax purposes.

VAT DEFINITION OF "MOTOR CAR"

For VAT purposes the definition of a motor car has been amended several times over the years.

The current definition states: "Motor car" means any motor vehicle of a kind normally used on public roads which has three or more wheels and either:

a) is constructed or adapted solely or mainly for the carriage of passengers; or

b) has to the rear of the driver's seat roofed accommodation which is fitted with side windows or which is constructed or adapted for the fitting of side windows;

There are a number of exceptions to this rule: notably vehicles constructed to carry a payload of one tonne or more, i.e. double cab pick-ups such as a Toyota Hilux.

MTD FOR VAT TO BE EXTENDED TO ALL VAT REGISTERED BUSINESSES IN 2022

Since 2019, the vast majority of VAT-registered businesses with a taxable turnover above the VAT threshold (£85,000) have been mandated to keep digital VAT records and send returns using Making Tax Digital (MTD)-compatible software.

From April 2022 these requirements will apply to all VAT-registered businesses.

It has also been announced that MTD for Income Tax Self-Assessment (ITSA), which was originally intended to start in 2018, will finally be introduced from April 2023 for unincorporated businesses and landlords with total business or property income above £10,000 per year.

Most businesses will have 2 years to prepare and test the service voluntarily prior to its introduction.

CERTAIN PROPERTY BUSINESS OWNERS ARE LIABLE TO CLASS 2 NICs

Class 2 National Insurance Contributions (NICs) are currently paid at the rate of £3.05 per week by self-employed earners. A person who is liable to Income Tax on the profits arising from the receipt of property rental income will only be a self-employed earner for NICs purposes if the level of activities carried out amounts to **running a business.**

HMRC have recently issued clarification which states that in order for a property owner to be a self-employed earner, their property management activities must extend beyond those generally associated with being a landlord which include, but are not limited to, the following:-

- undertaking or arranging for external and internal repairs
- preparing the property between lets
- advertising for tenants and arranging tenancy agreements
- generally maintaining common areas in multi-occupancy properties; or
- collecting rents.

The HMRC guidance suggests that the ownership of multiple properties, actively looking to acquire further properties to let, and the letting of property being the property owner's main occupation could be pointers towards there being a business for NICs purposes.

A landlord will also be a self-employed earner if any of their activities amount to a trade for Income Tax purposes. This could include, for example, receiving income from other services provided to tenants.

DIARY OF MAIN TAX EVENTS SEPTEMBER / OCTOBER 2020

Date	What's Due
1 September	Corporation tax for year to 30/11/19 unless pay by quarterly instalments
19 September	PAYE & NIC deductions, and CIS return and tax, for month to 5/9/20 (due 22 September if you pay electronically)
1 October	Corporation tax for year to 31/12/19 unless pay by quarterly instalments
5 October	Deadline for notifying HMRC of chargeability for 2019/20 if not within Self-Assessment and receive income or gains on which tax is due
19 October	PAYE & NIC deductions, and CIS return and tax, for month to 5/10/20 (due 22 October if you pay electronically)

Please contact a member of our team if you would like to discuss any of the issues raised.
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