Safehands Accounting Ltd

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financial UPDATE

Dealing with workplace disputes

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R&D tax relief

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Your company could be eligible for tax relief on 225% of some of its expenditure, yet many business owners are unaware of this, or believe they cannot qualify.

Relief at 225% means that most such companies paying corporation tax at 20% will benefit from a tax saving equal to 45% of the research and development (R&D) expenditure.

R&D tax relief is available to companies that carry out projects aimed at advancing knowledge or capability in a field of science or technology, but such research can encompass more than you might think.

Work on innovating, improving or developing a product, service or process may be eligible, provided it seeks to advance knowledge by resolving general scientific or technological uncertainty. The project must be related to the company's trade or a trade the company intends to start up subject to the results of the R&D. There is no minimum expenditure to qualify for R&D tax relief and the company does not need to have an R&D department or operate in any particular business sector.

Providing the project meets the conditions, a company can claim tax relief on revenue expenditure incurred in carrying out R&D including the cost of staff, materials, utilities (power, water, fuel), and computer software. Capital R&D expenditure qualifies for a 100% first year capital allowance. There are special rules for companies that subcontract their R&D.

Relief at 225% is available to small and medium-size companies (SMEs), whereas large companies can claim relief at only 130%. For this purpose, an SME is a company with fewer than 500 employees with either an annual turnover of £100 million (about £80 million) or less, or a balance sheet not exceeding £86 million, and generally not part of a larger enterprise. All companies qualify for the 100% relief on capital R&D expenditure.

An SME that is not yet profit making can claim a payable tax credit of 14.5% for revenue expenditure incurred from 1 April 2014, instead of the tax relief. Before that date, the rate was 11%. That means every £1,000 spent results in a cash credit of £326.25 (14.5% of 225% of £1,000).

However the legislation is complex and you are likely to need specialist advice. Please contact us if you wish to discuss this.

Proposals for trusts affect tax planning now

If you are planning to set up a trust, add funds to an existing trust or have a will that establishes a trust on death, then HMRC's proposed changes to the inheritance tax (IHT) treatment of trusts mean you might have to rethink your planning.

The changes affect the way that IHT applies to most trusts (also called settlements) with some limited exceptions. Trust assets are subject to an IHT charge every 10 years, and there can also be an exit charge when capital is paid out to the trust beneficiaries. The calculation of these charges is quite complicated and the changes are partly designed to simplify this.

HMRC is also concerned about the ability of individuals to set up multiple trusts during their lifetime, with each trust then benefiting from a nil-rate band of £325,000. Establishing a new trust every seven years is one straightforward way of achieving this. If the process is started at an early age, such a strategy of making a gift into a trust of £325,000 every seven years could remove a substantial amount of assets from a person's estate.

For example, a couple aged 40 could remove £3.25 million between them by age 75, saving some £1.3 million in IHT. Although making outright gifts can achieve the same end result, the trust route gives more control and flexibility over the gifted assets. More complex tax planning involves the use of 'pilot' trusts. These are set up with a nominal sum, often on consecutive days, and funds up to £325,000 are then added at a later date.

HMRC's proposal is that each individual should have only one nil-rate band for trusts or settlements during their lifetime. This will be separate from their personal nil-rate band, although it will be the same £325,000 amount. The settlor will be responsible for making an election that sets out how they wish to allocate their settlement nil-rate band between the trusts that they have set up. For trusts created on death, the election will be made by the personal representatives.

The new rules will apply from 6 April 2015, but they will only affect new trusts that have been created after 6 June 2014 – the publication date of HMRC's consultation document about the taxation of trusts. The rules will also apply where property or funds are added to an existing trust. Existing trusts made by 6 June 2014 will retain the nil-rate band available to them under the previous rules, but they will benefit from the new simplified way in which charges are calculated.

Because the new settlement nil-rate band is only relevant for trusts, the changes will not really affect your personal IHT position. So if you are planning to set up just one new trust and then no more, you will not lose out as a result of the changes. The overall result might even be beneficial because a full settlement nil-rate band will always be available to the trust.

But you will have to be very careful if you add property or funds to an existing trust, because any addition may be treated as a separate fund. You will also need to take care if you use up your settlement nil-rate band during your lifetime, and then create a trust under your will.

The changes are not definite – just a consultation, as things stand – but the proposals seem very likely to be included in next year's Finance Act.

Beware of phishing

Most people are astute enough to ignore dubious emails purporting to be from their bank and asking for details of their account. Bogus HMRC emails, however, offering a tax refund can catch some people out – particularly if they are actually due a refund.

The aim of such 'phishing' emails is to obtain bank account or credit card information, and HMRC has warned of a recent surge in their use. Be particularly careful of links to what looks like the homepage of HMRC's website, and of course do not download any attachments. Remember - HMRC only contacts customers who are due a tax refund by post, never via email.

Early conciliation can avoid the costs of going to a tribunal, and may be a very quick solution

Dealing with workplace disputes

Employees who intend to take a grievance to an employment tribunal must now first notify the Advisory, Conciliation and Arbitration Service (Acas) in most cases.

The idea is that pre-claim conciliation will reduce the number of workplace disputes ending up in court. Early conciliation started by the employee effectively stops the clock on the time limit for presenting a claim to an employment tribunal. The conciliator has one month to achieve a settlement, although discussions can be extended for a further 14 days where there is a prospect of settlement.

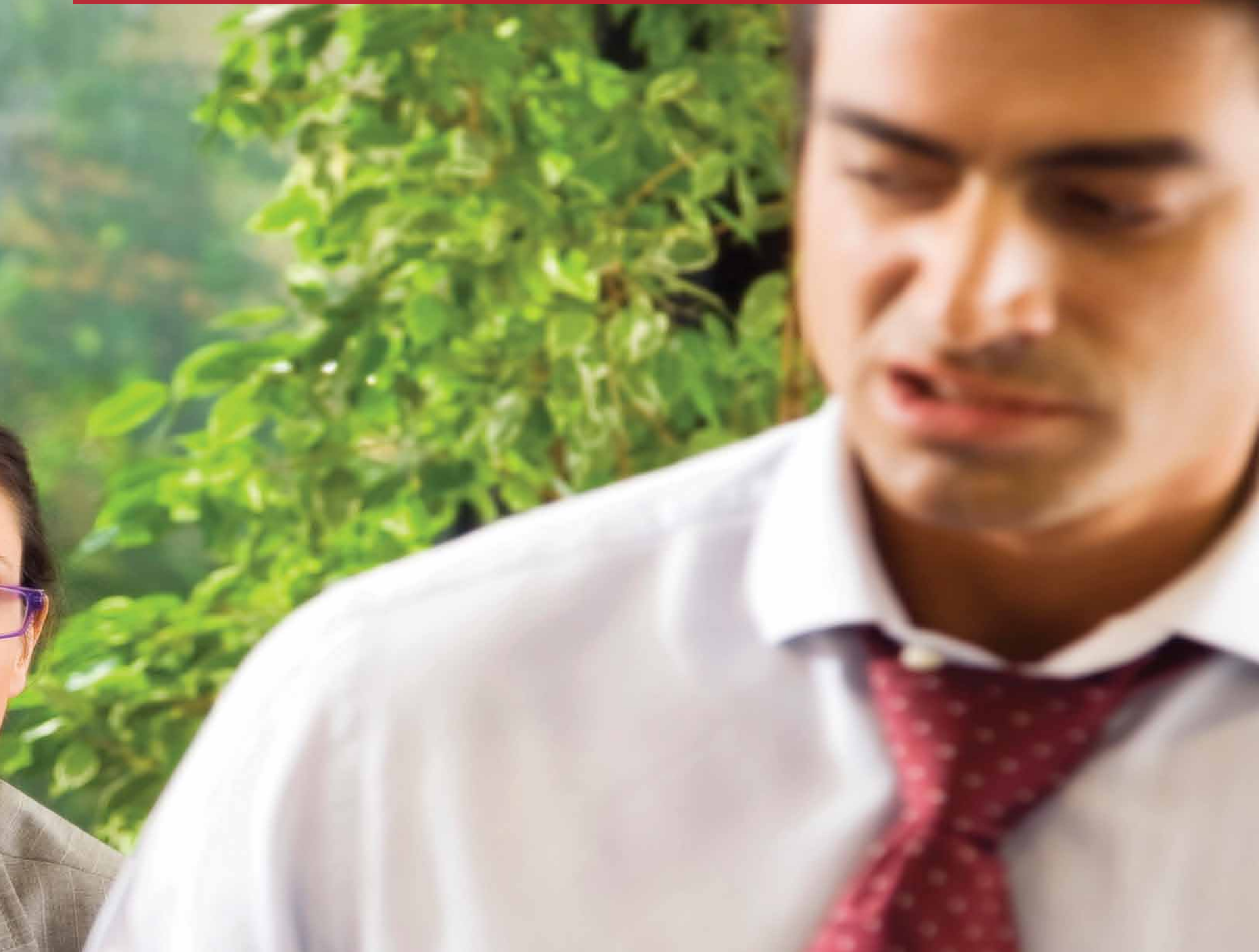
Early conciliation is free. It can avoid the costs of going to a tribunal, and may be a very quick solution. There is also the prospect of restoring trust where an employee stays, and the agreed outcome might, for example, include an apology – something that is not possible at a tribunal. And if conciliation fails, discussions are confidential and cannot be used in subsequent proceedings.

However, the early conciliation form submitted by the employee only contains employee and employer details, and does not ask for information about the nature of the dispute. Also, participation by both parties is voluntary, so conciliation will only proceed if they agree.

The optional nature of the process means that the employer may remain unaware of the grievance, and even if they are contacted by Acas, there may be insufficient information to make an informed decision about whether to proceed with early conciliation.

If a grievance ends up being decided by an employment tribunal, the employer will normally have to pay their own costs, even if they win. However, the tribunal can order an unreasonable claimant to pay the costs, and there have been some recent decisions on this issue – with mixed results for employers.

In *Kapoor v The Governing Body of Barnhill Community High School,* the employee was found to have lied to a tribunal in pursuing a discrimination claim, but this did not automatically constitute unreasonable behaviour. The employee's appeal against the costs award therefore succeeded.



In contrast, in the case of *Vaughan v London Borough of Lewisham*, costs were awarded against an employee because her discrimination and whistle blowing claims were found to have been misconceived. It made no difference that the employee was unrepresented in court, and that the employer had not put her on notice that she would be liable for costs if the claim continued.

Tribunal fees to lodge a claim or an appeal were introduced in July 2013, and employers normally have to reimburse these fees where decisions go against them. In *Portnykh v Nomura International plc*, the employer had to reimburse fees even though the appeal was only broadly successful and the employee lost on a few minor points. The fact that the employee had acted unreasonably was considered irrelevant because this had made no significant difference to the conduct of the case.

This case also provided some useful guidance on the application of the 'without prejudice' rule. The basic principle is that a 'without prejudice' conversation undertaken with the intention of resolving an employment dispute is inadmissible in any subsequent proceedings. Nomura tried to have the conversations with the employee admitted as evidence by arguing that there was no dispute at the time they took place. This argument was rejected because Nomura had already announced its intention to dismiss the employee for misconduct. There can still be a dispute for this purpose even if there are no imminent proceedings or no specific complaint has been raised. Negotiations over a settlement agreement will often fall within the 'without prejudice' regime.

We are here to advise should you need help.

Disputed tax – removing the cash flow advantage

It used to be the case that a tax avoidance scheme could provide a cash flow advantage because payment of disputed tax was postponed until the case was resolved. However, this advantage was removed once the Finance Act 2014 received Royal Assent on 14 July. Users of schemes covered by the DOTAS (disclosure of tax avoidance schemes) rules or counteracted under the GAAR (general anti-abuse rule) will now have to make an upfront payment of any disputed tax. There is no change to the tax liability itself, but the removal of the cash flow advantage will further reduce the incentive to use such schemes.

Pensions – is now the time to make contributions?

Should you put more into your pension scheme? Everyone with earnings should revisit this question following this year's Budget proposals for greater flexibility in accessing pension savings. The main changes are due from April 2015, but there have also been important relaxations this tax year.

The attractions of saving in a registered pension scheme are considerable. For example, you benefit from full tax relief on contributions; there is more or less tax-free growth within the fund and you can eventually draw up to 25% of the accumulated fund tax-free.

One of the disadvantages of contributing to a registered pension scheme is that you cannot normally access your pension savings until age 55. There have also been restrictions on how you can draw the income from your pension, but these are now being relaxed considerably following the announcements in the spring 2014 Budget.

From April 2015, it will still be possible to take 25% of your pension fund tax-free from the age of 55, but under the proposed new rules, the aim is that you should then have broadly unrestricted access to the rest of your accumulated pension funds. It will still be possible to buy an annuity to secure a guaranteed lifetime income and this might well continue to be the best solution for many people. But it will become easier and generally less expensive to use other approaches.

The income you can draw is subject to income tax – but not national insurance contributions. So drawing excessive amounts from a pension fund could generate unnecessarily large tax liabilities that it might be possible to avoid or reduce by taking withdrawals spread over several years.

While investments remain in a pension fund, you can buy and sell them and accumulate income without paying any UK tax. It is only when you draw them out that you pay income tax on them. So it will generally make sense to only take income from the pension when it is needed for expenditure, or possibly for some individuals in years of unusually low taxable income.

The increased attractiveness of pension investment has arrived just after a reduction to the limits on how much you can contribute. The maximum tax-efficient annual pension investment for an individual is now £40,000 (previously £50,000) and the lifetime allowance is £1.25 million, down from £1.5 million before 6 April 2014.

Another change is that the age at which savers can access their pension funds will increase to 57 in 2028 and is then due to rise at the same pace as the state pension age. This will affect people now aged around 41 or less.

Your pension planning should also take into account the possibility of further changes. A new Government might limit tax relief on pension contributions to the 20% basic rate or perhaps a 30% flat rate for all – proposals that have often been aired recently – and reduce the lifetime and annual allowances.

All this makes 2014/15 a good year to consider maximising your pension contributions, if your savings have not exceeded the lifetime allowance. You can generally carry forward your unused annual allowances for up to three years. These were £50,000 in the three years before 2014/15.

So, for example, someone who has made pension contributions of £20,000 a year since 2011/12 could invest tax efficient contributions up to £130,000 in 2014/15, provided they have at least that amount of earnings in the year. This sum consists of £40,000 for 2014/15 and the unused £30,000 for each of the three previous years.

Tax relief on your travel expenses

Virtually everyone who is self-employed incurs travel costs, but it may sometimes be hard to decide whether these expenses are allowable for tax.

Unfortunately, there is no detailed guidance from HMRC about such travel expenses, and instead we have to look at what the courts have decided. The latest decision does little to help matters.

The cost of a self-employed person travelling from home to their place of work is not normally allowed as an expense, and it makes no difference if they keep their business records, materials, tools etc at home. In the case of *Newsom v Robertson (1952)*, a barrister worked part-time at home when the courts were sitting and full-time when they were not. Travel between home and his chambers was disallowed on the basis that the chambers were the base of operations. And because travel costs are disallowed, so are incidental costs such as car parking and congestion charges. However, travel costs to and from home are allowed as home is your base of operations, and you travel to a number of different temporary work locations. In the case of *Horton v Young (1971)*, a self-employed bricklayer was successful in claiming travel costs between home and various temporary building sites.

The essential point is that the nature of the trade or profession must be itinerant and there should be no predictability about the place of work.

The upper-tier tribunal decision in the recent case of *Doctor Samadian v HMRC (2014)* reinforced the above principle. The doctor was employed full-time at two NHS hospitals, and he was also in self-employed private practice working from an office at home. He saw his private patients at consulting rooms that he hired at two private hospitals, and also visited patients in their homes. HMRC did not dispute the deductibility of travel between the two private hospitals, between the private hospitals and a patient's home, and between home and a patient's home.

The dispute concerned travel between the doctor's home and the private hospitals, and also between the NHS and the private hospitals, and in both cases the decision was in HMRC's favour.

Although home and the private hospitals were all places of work, the doctor was not considered to be itinerant, and his attendance at the private hospitals was regular and predictable.

The decision means that a deduction for the cost of travel to another place of business will only be allowed in very exceptional circumstances.

HMRC's second incomes campaign

HMRC's second incomes campaign is targeted at employees who have additional income from working for themselves.

This latest campaign is an opportunity for taxpayers to disclose any additional tax due on such additional incomes.

The second incomes campaign has no fixed deadline and will be open for some time, unlike similar previous HMRC actions of this kind. There is also no incentive in the form of a reduced penalty for disclosure. However, voluntary disclosure is always treated more leniently compared with the position where it is HMRC that discovers a taxpayers error.

Once the campaign closes, HMRC will use any information in its possession to come down hard on those it believes have something to disclose but have failed to do so.

HMRC is targeting a wide range of spare-time activities. You might be trading by making and selling craft items, or you could be selling goods from a market stall or at car boot sales. Personal services on which HMRC is focusing include taxi driving, hairdressing or fitness training. Maybe you receive fees for consultancy, or are paid for organising parties and events. Of course the tax liability might be much lower than expected once allowable expenses are deducted.

Anyone wishing to take advantage of the campaign must initially notify HMRC of their intention, and they then have four months to calculate and pay what is owed. Any other undeclared income, such as investment income or chargeable gains, must be disclosed along with the second income. We will, of course, be happy to help.

Tougher lending rules for mortgage borrowers

New mortgage lending rules have recently been introduced by the Financial Conduct Authority (FCA).

You may now face tougher checks whether you are buying a new home or remortgaging. Buy-to-let mortgages, however, are generally unaffected.

The development of the mortgage market review has been a lengthy process, starting with a discussion paper in 2009. The FCA finally introduced the rules with effect from 26 April this year.

The new rules require lenders to verify your income in all cases, rendering self-certified mortgages a thing of the past. The lender will also have to take account of your committed and basic household expenditure to ensure that you can afford the mortgage repayments. Previously, lenders generally used income multiples to establish the maximum loan they were prepared to advance, but this is no longer the key criterion. As well as making sure you have enough disposable income to repay the mortgage at current interest rates, lenders also have to consider the impact on repayments of possible future interest rate rises over the next five years and whether borrowers will still be able to afford them. Although interest-only mortgages are still permitted, there must be a credible strategy for repaying the capital – the intended future sale of the property is unlikely to be a satisfactory approach.

It may take some time for things to settle down, with even the FCA criticising lenders for an over-zealous application of what are its own new mortgage lending rules.

Tax calendar 2014

Every month

1 Annual corporation tax due for companies (other than large companies) with year ending nine months and a day previously, e.g. tax due 1 July 2014 for year ending 30 September 2013.

14 Quarterly instalment of corporation tax due for large companies (month depends on accounting year end).

19 Pay PAYE/NIC and CIS deductions for period ending 5th of the month if not paying electronically. Submit CIS contractors' monthly return.

22 PAYE/NIC and CIS deductions paid electronically should have cleared into HMRC bank account.

Month end Submit CT600 for year ending 12 months previously. Last day to amend CT600 for year ending 24 months previously.

File accounts with Companies House for private companies with year ending nine months previously and for public companies with year ending six months previously.

October 2014

1 National minimum wage rates go up (£6.50 per hour for 21 & over).

14 Due date for CT61 return for quarter to 30 September 2014.

31 Deadline for 2013/14 self-assessment return if filed on paper.

November 2014

1 Submit employer forms P46 (car) for quarter to 5 October 2014.

December 2014

30 Last day to submit 2013/14 tax return online to have unpaid tax of under £3,000 collected through the 2015/16 PAYE code.

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