Safehands Accounting Ltd

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financial UPDATE

Owner/manager companies hit for six

The new dividend taxation reforms

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Using social media for business

What your staff say about your business on social media can affect its reputation. But what can you do if disaffected employees post derogatory comments on personal Facebook pages or Twitter accounts in their own time?

The Employment Appeal Tribunal (EAT) decided recently that an employee who posted negative and abusive comments on a social media site was fairly dismissed. But the case highlighted the challenges employers face where employees' postings – often made with little thought – may instantly receive wide public exposure.

In the recent case of ***British Waterways Board v Smith*** (BW), the employee, Mr Smith, had made offensive comments about colleagues on his personal Facebook page. He also indicated that he had drunk alcohol during a week he was on standby, which was not allowed, although he later denied he had actually done so. BW had a social media policy that expressly forbade "any action on the internet which might embarrass or discredit BW (including defamation of third parties, for example, by posting comments on bulletin boards or chat rooms)".

The disciplinary hearing found that the remarks could have undermined the confidence that other employees and the public had in BW, and that Mr Smith's breach of the social media policy, as well as apparently being under the influence of alcohol, amounted to gross misconduct, meriting dismissal.

Mr Smith claimed he had been unfairly dismissed. The EAT clarified that Facebook postings by employees made on personal computers could result in disciplinary action if they mentioned their employer or their work.

This case and the earlier EAT decision in ***Game Retail Ltd v Laws*** confirm that the normal legal principles of unfair dismissal apply to cases involving social media, and whether a particular dismissal is fair will depend on the facts. Relevant considerations include the nature and seriousness of the alleged misuse and any actual or potential damage to the employer's business.

But the most important factor will be whether the employer had a social media policy that its staff were aware of. Such a policy should set out clear guidelines to employees on what they can and cannot say about the organisation and be cross-referenced to its bullying and harassment policy. It could helpfully include examples of unacceptable conduct and the penalties that might be imposed. Employers should review their policy frequently as social media evolves. Please contact us if you would like advice on formulating a policy.

A different type of campaign

The latest campaign from HM Revenue & Customs (HMRC) has a different focus to its predecessors. It is aimed at employers who have not complied with national minimum wage (NMW) requirements rather than at tax avoiders.

As a reminder, this year's rates of NMW are:

Age	From 1 October
21 and over	£6.70
18 to 20	£5.30
16 or 17	£3.87
Apprentices under 19 or in first year	£3.30

Since May, the penalties for non-compliance have increased substantially and are now charged according to the number of people employed. For each employee, the penalty is 100% of the underpayment up to a maximum of £20,000. Arrears are calculated according to a formula that uses the current rate of NMW.

For example, for ten weeks during June to August 2015, an employee was incorrectly paid the apprentice rate of £2.73 for 35 hours of work a week, rather than £6.50 which is the rate for people aged 21 and over. The weekly underpayment is £131.95, which is then uprated by 6.70/6.50 (the current correct rate divided by the rate that should have been paid at the time). The total arrears are therefore £1,360.10, which is also the amount of penalty. In addition, employers could find themselves publicly 'named and shamed' which would not be good for business if it were picked up by the local press.

Employers can avoid penalties and adverse publicity by making use of the NMW campaign, although of course it will still be necessary to pay any arrears.

There are several areas where it is easy for employers to make mistakes:

Apprentices should be paid the apprentice rate even if they are young and inexperienced. There is no reduction for any in-house training. If an apprentice is 19 or over, the apprentice rate only applies for the first year. Where an apprentice initially starts work on a normal contract of employment before starting an apprenticeship, the appropriate age-related rate should be paid for that period. Being trained in-house does not count as an apprenticeship unless there is an actual contract of apprenticeship or a government training arrangement.

Deductions for items required for work, such as uniforms, are taken into account when calculating the NMW. Therefore, pay after such deductions should amount to the NMW. However, voluntary deductions, such as for meals, can be ignored.

Tips cannot be included in the new NMW calculation even though they are taxable.

Training required by the employer counts as working time for NMW purposes. The time spent travelling to attend training also counts if it is between the workplace and the training. It doesn't matter if the training is outside normal working hours.

The campaign does not have a fixed deadline, but given the generous terms offered, it would be wise to make use of it as soon as possible. HMRC can be expected to ramp up their NMW enforcement once the campaign ends, typically targeting low paying sectors such as hair and beauty salons. Even if you are currently paying the correct rates of NMW, you need to look back for six years to be safe.

If you think you have underpaid employees, the first step is to notify HMRC. This signals your compliance commitment and will forestall any investigation being started. Within two months of notification, it will be necessary to check back for six years and disclose the results to HMRC. This is necessary even if no errors or underpayments are identified. Finally, any arrears should be paid to employees, with tax and NIC underpayments made good through PAYE. Please get in touch if you need help with the process.

Owner/manager companies hit for six

The new basis of taxing dividends, which will come in from 6 April 2016, is particularly targeted at company owner/managers who draw profits as dividends rather than as salary in order to avoid paying NICs.

The existing 10% tax credit is to be replaced by a tax-free dividend allowance of £5,000 for basic, higher and additional rate taxpayers. Once the allowance is exceeded, dividends will be taxed at:

- 7.5% within the basic rate band.
- 32.5% within the higher rate band.
- 38.1% within the additional rate band.

The overall effect of these changes will be to increase the rate of tax on dividends above the tax-free allowance by 7.5% compared with current rates. And the allowance is not quite as generous as it could be, because it counts towards the basic and higher rate bands, effectively acting as a nil-rate band. So it's not really a tax allowance in the usual meaning of the phrase.

Owner/managers typically draw a small amount of director's remuneration to preserve their entitlement to the state pension and take the remainder of their drawings as dividends. Most will see a substantial increase to their tax bills from 2016/17 onwards compared with this year.

Take a company with profits of £50,000 of which the owner/manager draws £8,000 as remuneration and a further £33,500 as dividends. Using estimated 2016/17 rates, the overall tax and NICs will go up from £8,900 in the current year to £10,312, an increase of £1,412. The extra tax cost gets even worse as the level of dividends increases. So with profits at £100,000, salary of £8,000 and dividends of £73,500, the tax will go up from £28,900 to £32,937 – an increase of £4,037 for 2016/17 compared to 2015/16. The problem is doubled where spouses or civil partners run a company together.

Despite the changes, the dividend route will continue to be far more tax efficient than taking director's remuneration.

The big question is, however, whether incorporation will still be worthwhile. Using estimated 2016/17 NIC rates, the total tax and NICs will be £12,632 for a self-employed person with profits of £50,000. The total will be £33,632 where profits are £100,000. The incorporated figures look slightly better because a small amount of profit is retained in the company. So incorporation can still have a tax advantage, and the saving would be greater if some profits were retained. Another benefit of incorporation is that even

> You might want to think about taking dividends before 6 April 2016

if profits fluctuate, the level of drawings can be kept constant – maybe within the basic rate band.

Apart from retaining profits, there is no easy way of avoiding the new tax rates. However, it might be possible to mitigate their impact:

- An owner/manager could charge a commercial rent for company use of an office space in their home – rent is not subject to NICs.
- Interest could be charged on a director's loan account with the company, especially if the owner/manager can make use of the £1,000 tax-free savings allowance.
- It might be possible to run a small section of a business on a self-employed basis alongside a company. Class 4 NICs are avoided if profits are kept below the lower limit, and although class 2 NICs will probably be payable, these may be abolished.
- Another possibility could be using the dividend allowance of a partner or adult children by bringing them in as shareholders.

So incorporated businesses should probably remain as they are, at least for now. But the decision is no longer so clear cut for unincorporated businesses that might be thinking of incorporating – especially when the simplicity and cost savings of being unincorporated are taken into account. And of course dividend tax rates could be increased in the future.

You might want to think about taking dividends before 6 April 2016. Apart from pre-empting the tax increase, doing this may increase your loan account with the company so that it can pay you more interest in the future. This is a new and complex area, so if you need advice then please get in touch.

Care cost cap on hold

Currently, you pay care costs if your assets exceed £23,250 – including your home should you need residential care. After a long period of gestation, a cap on care costs for the over 65s was due to be introduced from April 2016. This would have capped lifetime costs at £72,000, and raised the assets threshold to £118,000. However, the changes might now have been deferred until April 2020, and many think they might be abandoned at some point. The cap would not have applied to costs in excess of a council set rate or to the food and lodging aspect of residential care.

Capital v revenue expenditure

Knowing whether business expenditure is revenue or capital is essential to the preparation of correct accounts and tax returns, but it is sometimes difficult to decide what is the right treatment. HM Revenue and Customs (HMRC) has recently updated its guidance on the most common errors.

First the basics: revenue expenditure is deductible in computing taxable profits; capital expenditure is not deductible, but it may qualify for capital allowances. Currently up to £500,000 a year of capital expenditure on plant and machinery (not cars) qualifies for the annual investment allowance and is deductible in full. This allowance will fall to £200,000 a year from 1 January 2016. Capital expenditure that is over the limit, and also the cost of buying most cars, qualify for writing down allowances at 8% or 18%.

Identifying revenue costs

Establishing the precise nature of expenditure is therefore essential. The key is to keep full and accurate records of each item of expenditure, what it is for and the circumstances in which it was incurred, especially where it is part of a bigger project. This will allow identification of all revenue costs that arise in conjunction with capital expenditure so that they can be deducted correctly. Conversely – and this is what concerns HMRC – we will be able to ensure your tax return does not claim any impermissible costs.

Refurbishment of property is one area that HMRC looks at carefully. The general rule is that the cost of repairs is revenue expenditure, but improvement and alteration are treated as capital costs. Work on a building may include both types of expenditure, so your records need to be detailed enough to make an apportionment, and to determine the nature of capital expenditure so that the correct rate of writing down allowance can be claimed.

Legal and professional fees are another area that can attract HMRC attention. The cost of acquiring an asset or other advantage of enduring benefit to the business is capital, but many people also overlook the fact that the cost of an unsuccessful attempt to acquire an asset is also capital. Such abortive expenditure cannot be added to the cost of any asset and so it may be charged to the profit and loss account. However, it is not deductible as revenue expenditure, nor can it qualify for capital allowances.

Also featured in HMRC's updated guidance are the costs connected with the structure of a company or partnership, including incorporating a sole trader business. Such costs are treated as capital costs, but expenditure on recruiting a new partner is generally revenue. Training courses for a proprietor or partner are capital if their purpose is to acquire new skills, but they are revenue items if the aim is to update expertise that they already have.

Whether the cost of acquiring a computer software licence is revenue or capital depends on the expected useful economic life of the software. Under two years economic life and it is a revenue cost, but if it is more than two years, the expenditure should be capitalised. A sole trader or partnership will then be able to claim capital allowances, but for a company it may fall within the intangibles regime. Expenditure on website development also requires careful analysis.

We can help you categorise your expenditure correctly so please contact us.

Tax-free childcare is now expected to launch from early 2017

It should have already been in place, but development was delayed pending a legal challenge claiming the use of outsourced services breached EU procurement law. Existing employer-supported childcare voucher schemes can accept new entrants until the tax-free childcare is launched, and employers will be able to continue with existing schemes as long as they wish.

With the new scheme, both parents must be working and, unlike employer-supported childcare, the scheme will be open to self-employed parents. Parents with more than one child and high childcare costs will benefit under the new scheme.

No more wear and tear

Landlords of residential property may justifiably be feeling somewhat hard done by right now.

If the restriction to tax relief for interest and other finance costs coming in from 6 April 2017 was not enough, the government is also going to reform how individual and corporate landlords account for the costs incurred in improving and maintaining their properties. The change is set to start from 6 April 2016 (1 April 2016 for companies), although it is currently subject to consultation. The proposal is to replace the wear and tear allowance for furnishings with a new replacement furniture relief. This new relief is similar to the renewals basis which was available until 2013.

The wear and tear allowance is 10% of the rent received, although the rental figure is reduced for any costs that would normally be borne by the tenant but paid by the landlord. For the deduction to be available, a property must be furnished to a level that a tenant could move in and live without having to provide anything apart from their food and clothing. The wear and tear allowance therefore has several inconsistencies:

- If a property is let partly furnished, the allowance is not available.
- It is given regardless of whether any expenditure is actually incurred.
- The higher the level of rental income, the higher the allowance. So similar properties in different parts of the country attract different levels of allowance, although the landlords incur the same expenditure.

Under the new rules, with replacement furniture relief, landlords will only be able to deduct the costs actually incurred on replacing furnishings – the initial cost of furnishings does not qualify for relief. However, it will not be necessary for a property to be fully furnished. Landlords will be able to claim a deduction for the cost of replacing furniture, furnishings, appliances and kitchenware provided for the tenant's use, such as:

- Movable furniture or furnishings, such as beds or suites
- Televisions
- Fridges and freezers
- Carpets and floor coverings
- Curtains
- Linen
- Crockery or cutlery

There are a couple of restrictions to the amount that can be claimed. Firstly, relief is reduced by any proceeds from selling the old asset that is being replaced. Secondly, relief is not given for any cost that represents an improvement. For example, if a washing machine is replaced with a washer-dryer, only the cost of an equivalent washing machine will be allowed rather than the cost of the washer-dryer.

The relief does not cover the replacement of fixtures that are integral to a property. This is because these are already allowed under the existing property repair rules, which cover such items as baths, washbasins, toilets, boilers and fitted kitchen units. Furnished holiday lettings are also unaffected because they receive relief through the capital allowances regime.

If you are renting out partly-furnished property, the new relief will definitely be beneficial for you. However, following the removal of the renewals basis, some landlords of partly-furnished property will have moved to a full-furniture basis and they will probably now not be able to fully recover the costs involved with this. If you are planning to refurbish a rental property in the near future, it could pay you to wait until the expenditure qualifies for replacement furniture relief from April 2016.

If you let property that qualifies under the furnished holiday letting rules, in future you will need to be more careful than ever in ensuring the property continues to qualify. Otherwise you will find yourself subject to the restrictions that are being introduced for normal residential lettings. We are here to advise you.

Property taxation reforms

The good news is that the rent a room tax relief limit will increase from £4,250 to £7,500 from 6 April 2016.

The relief applies where you rent out a room or rooms in your main residence. However, this is still not quite enough to cover the average monthly room rental in London of nearly £700, but only a small excess is left taxable.

The other news is not so good. From 6 April 2020, relief for interest and other finance costs will be restricted to the 20% basic rate. There will be a gradual introduction so the restriction will apply to a quarter of finance costs for 2017/18, half for 2018/19 and three-quarters for 2019/20.

In most cases, landlords will have used the finance to buy the let property, but it could also have been used to fund major repairs or furnishings. The restrictions will also apply to fees incurred when taking out or repaying mortgages or loans.

Apart from trying to raise rents to cover the tax cost, other solutions are somewhat more drastic. Anyone who owns property outright without finance is not affected by the changes, so if you have a portfolio of properties you might be able to sell some in order to reduce or completely repay mortgages.

A company structure will avoid the finance costs restriction, but generally comes with other tax complications – although it may suit a new entrant to the buy-to-let market. Many may just sell up.

You have until 6 April 2017 to plan, and as always we are here to help.

Tax calendar 2015/16

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 January 2015 for year ending 31 March 2014.

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.

November 2015

2 Submit employer forms P46 (car) for quarter to 5 October

December 2015

31 Deadline to submit 2014/15 tax return online to have unpaid tax of up to £3,000 (more if earnings are £30,000 or more) collected through the 2016/17 tax code.

January 2016

1 Annual investment allowance falls from £500,000 to £200,000.

14 Due date for CT61 return for quarter to 31 December 2015.

31 Submit 2014/15 self-assessment tax return online. Pay balance of 2014/15 income tax and CGT plus first payment on account for 2015/16.

February 2016

1 Initial £100 penalty imposed where the 2014/15 tax return has not been filed or has been filed on paper after 31 October 2015.

2 Submit employer forms P46 (car) for quarter to 5 January 2016.

March 2016

1 Initial £100 penalty imposed where the 2014/15 tax return has not been filed or has been filed on paper after 31 October 2015.

31 Last few days to use any pension, CGT and IHT annual allowances and exemptions and to invest in an ISA in 2015/16

Safehands Accounting Ltd

Safehands Accounting Ltd
St George's House
29 St George's Road
Cheltenham
Gloucestershire
GL50 3DU

Tel: 01242 517889
Mobile: 07900 900853
Email: andrewjamieson@safehandsaccounting.co.uk
Web: www.safehandsaccounting.co.uk

Andrew Jamieson