

2128 Relief for post-cessation expenditure

A specific relief is available to individuals for certain types of post-cessation expenditure. These include expenses connected with remedying or paying compensation for defective work or supplies, collecting debts, and debts which go bad. Relief is given by way of a reduction of income (and, where appropriate, chargeable gains) for the tax year in which the expense is paid. Such expenditure must be incurred within seven years of the cessation of trade, and a claim for the relief must be made within 12 months from 31 January following the end of the tax year in which the payment is made (in line with other claims under self-assessment). If a claim is made, certain connected receipts (mainly to do with insurance receipts) are specified as being taxable under the existing post-cessation receipts legislation (see 662).

HMRC have stated their views of a number of issues in their *Tax Bulletin*. In particular, professional indemnity insurance premiums for work undertaken in the course of the business are now almost always allowable (this supersedes HMRC's earlier view). The new relief exists alongside the rules already on the statute book for post-cessation receipts and expenses. Those rules provide that any loss or expense which would have qualified as a trading deduction had the business not ceased is relieved against post-cessation receipts; however, where the deductions exceed the post-cessation receipts for a tax year, the excess can only be carried forward and relieved against any post-cessation receipts arising in later years (see 662). Where an expense qualifies for sideways relief under the new rules as well as for carry-forward under the provision described above, the new rules thus take priority.

Finance Act 2012 contains a measure designed to prevent post-cessation trade relief from being available where a payment or event for which relief is sought arises from relevant tax avoidance arrangements. The new rules apply to events occurring on or after 13 March 2012.

Legislation: FA 2012, s. 9; ITTOIA 2005, s. 250, 349–352

Other Material: www.hmrc.gov.uk/thelibrary/briefs.htm

Tax Reporter: ¶262-750

ADMINISTRATION

RETURNS AND INFORMATION GENERALLY

2200 Notice of liability to income tax

Every person who is chargeable to income tax (or CGT) for any tax year and who has not received a notice requiring a tax return (see 2225) must notify HMRC that he is chargeable within six months after that year if he has not already been requested to make a tax return. However, the penalty only becomes due to the extent that he does not settle the liability by

the following 31 January: i.e. there is a four-month period in which HMRC might issue an assessment on which he could pay the tax and avoid penalties.

The above notice must specify each separate source of income except sources excluded, broadly, by reference to deduction of tax at source where no liability will arise to a rate other than basic or lower rate. The notice must be given to an officer of the Board, and failure to give notice will render that person liable to a penalty not exceeding the tax due under late assessments, i.e. the taxpayer may end up paying double the tax due on undisclosed income (see 2299).

A taxpayer will not generally be in a position to know by the end of the time-limit for notifying chargeability (5 October) whether a PAYE code change will be made to collect outstanding tax. HMRC will accept that an individual does not need to notify chargeability in respect of P11D items if he has received a copy of the P11D and is satisfied that it is correct and complete (and is not aware that it has not been submitted); he is not relieved of his responsibility to notify chargeability in relation to other items even if he is aware that the employer has submitted information in some form to HMRC.

Legislation: TMA 1970, s. 7

Other Material: SP 1/96, *Notification of chargeability to income tax and capital gains tax years 1995–96 onwards*

Tax Reporter: ¶180-700

2203 Return forms

A 'return' includes any statement or declaration under the Taxes Acts, but is generally taken to refer to the response to a statutory request by an inspector (or the Board) for information. HMRC may prescribe the format in which returns must be made and often issue specific forms. Computer-produced returns may be approved by HMRC in certain cases following written application.

A tax return is the term generally used to refer to the document issued by the tax inspector, instructing the person who receives it to furnish him with information about his (or, in certain cases, other persons') income for that year. It is delivered to the usual or last-known address of that person. Those who have property income or income from a trade, profession or vocation will have to complete an income tax return each year.

A HMRC statement clarifies the position regarding the use of schedules in making personal tax returns. Schedules (i.e. unofficial statements or forms) have always been acceptable as documents supporting entries in an official return form. HMRC will also accept returns where the declaration of accuracy and completeness on the official form is signed but which is otherwise answered generally by overall reference to attached schedules.

A return must in HMRC's view strictly be signed by the person liable to make it (see 2209). Signature by an attorney is accepted in cases of illness or old age if a copy of the general or enduring power has been sent to HMRC. Following an agreement with the Court of Protection, repayment claims for amounts less than £1,600 may be signed by the next of kin, provided the incapacitated person's income is less than £800 for claims of more than that amount.

Legislation: FA 1999, s. 133; TMA 1970, s. 115A, Sch. 3A

Other Material: SP 5/83, *Use of schedules in making personal tax returns*; SP 5/87, *Tax returns: the use of substitute forms*; SP 1/97

Tax Reporter: ¶184-250

2206 Internet filing

Individuals are able to file self-assessment returns via the Internet. It is also possible to send attachments with online returns.

Employers have been able to submit certain PAYE forms and returns voluntarily via the Internet for some years. Electronic filing of PAYE returns will, however, be compulsory for all but certain employers by 2011. To encourage employers to switch to electronic filing sooner rather than later, HMRC have been offering financial incentives.

Electronic filing of PAYE returns became mandatory for large employers (i.e. businesses with 250 employees or more) from April 2004. Mandatory electronic filing of certain returns has been extended with effect from 13 August 2009, from those employing 50 or more employees to all employers (SI 2009/2029). For 2010–11 and subsequent years the provisions on e-payment notices have been amended so that large employers (except certain excluded employers) are required to make their monthly payments electronically in all cases.

From 2011–12 all but certain excluded employers are required to file in-year forms (P45 and P46) online.

Legislation: FA 2003, s. 204; FA 2002, s. 135, 136; FA 2000, s. 143 and Sch. 38; *Income Tax (Pay As You Earn) (Amendment) Regulations 2010* (SI 2010/668); *Income Tax (Pay As You Earn) (Amendment No. 2) Regulations 2009* (SI 2009/2029); *Income Tax (Pay As You Earn) Regulations 2003* (SI 2003/2682), reg. 190, 209

Cases: *ZXCV Ltd v R & C Commrs* (2008) Sp C 706

Other Material: HMRC Brief 15/07: *PAYE Update*; *Tax Bulletin*, Issue 73 (October 2004); Inland Revenue press release, 16 February 2000

Website: www.hmrc.gov.uk/inyear/index.htm

www.hmrc.gov.uk/online/

www.hmrc.gov.uk/payefile-or-pay/fileonline/

Tax Reporter: ¶185-950

2209 Persons liable to make returns

If income is received in any tax year, the person receiving that income, whether on his own behalf (individuals) or on behalf of others (trustees), must make a return. The persons who must make the returns include:

- individuals (see 2225);
- partnerships (see 2243);
- trustees (see 2249);
- personal representatives, e.g. executors (see 2246);
- employers (see 2237);
- EEIGs (see 2252); and
- agents (see 2255).

2212 Informing the authorities of a new business

Unlike some jurisdictions, an individual starting in business in the UK on their own account does not generally need permission to do so. Exceptions to this general principle apply when entry to the sector concerned is regulated, either by government (such as the medical profession) or by professional institutes.

When an individual begins to carry on a trade, he has a duty to inform HMRC that he is chargeable to income tax. Failure to do so will render him liable for a penalty of anything up to the amount of tax for which he is liable in respect of income from the relevant source for that year. This applies both where an assessment is made by an officer of HMRC and where there is a self-assessment, and is on the basis of the tax unpaid at the 31 January following the year of the failure.

Notification to HMRC will cover income tax, National Insurance contributions and VAT matters.

Legislation: TMA 1970, s. 7; FA 2008, Sch. 41; *Social Security (Contributions) Regulations 2001* (SI 2001/1004), reg. 87

TYPES OF RETURN

2222 System of returns and payment under self-assessment

The system of self-assessment normally requires returns from individuals, trustees, partnerships etc., by 31 January following the tax year. Tax returns for 2007–08 onwards made on paper must be filed by 31 October. This date is the same for taxpayers who want HMRC to calculate their tax liability (30 September for earlier years). The present filing date of 31 January remains for returns filed online. HMRC have significant power to specify in the return form and in the accompanying guidance notes the necessary information, accounts

- friendly societies (see Tax Reporter 805-200ff.);
- industrial and provident societies (see Tax Reporter 805-450ff.);
- charitable companies (see Tax Reporter 805-950ff.); and
- companies carrying on a mutual business (see Tax Reporter ¶806-800ff.).

ADMINISTRATION AND COMPLIANCE

4300 Introduction

In recent years, the move has been towards a harmonised system for the administration of taxes including with regard to HMRC powers, record-keeping obligations and penalties. The new powers extend to corporation tax in most cases and commentary can be found at 11000ff. Commentary on compliance and administration issues of relevance to companies only follows.

4305 Duty to give notice of chargeability

The duty to give notice in relation to a company coming within the charge to corporation tax is dealt with by FA 1998, Sch. 18, para. 2. In relation to such accounting periods, a company chargeable to corporation tax for an accounting period that has not received a notice to deliver a return is required to give notice within 12 months from the end of the accounting period that it was so chargeable. From 1 April 2010, penalties are provided for by FA 2008, Sch. 41 (see 12120). Prior to 1 April 2010, tax-gear penalties applied where the tax due in relation to the accounting period in question remained unpaid 12 months after the end of the accounting period.

FA 2004, s. 55 introduced an additional and more burdensome rule with effect for accounting periods beginning on or after 22 July 2004. After this date, a company is obliged to give notice to HMRC of its coming into charge to corporation tax. A company will come into charge to corporation tax either at the beginning of its first accounting period or at the beginning of any subsequent accounting period that does not immediately follow the end of a previous accounting period, for example when a company begins to trade after a period of dormancy. A company must notify HMRC of its chargeability to corporation tax within three months of the beginning of the relevant accounting period. The notice must be in writing, it must state the date that the accounting period began and it must also include within the notice the information as prescribed by *Corporation Tax (Notice of Coming within Charge – Information) Regulations 2004* (SI 2004/2502), reg. 2.

Where a company has a reasonable excuse for not fulfilling its obligation to give notice to chargeability within the three months from the beginning of the accounting period, so long as the company gives notice as soon as the excuse has been resolved, then the company will not be regarded as having failed to comply with that obligation.

Prior to 1 April 2010, failure by a company to notify HMRC of its coming into charge to corporation tax could have resulted in penalties being levied against the company. An initial penalty of £300 could have been levied in the event of such a failure and a further £60 per day

could have been levied for each day the failure continued after the day on which the initial £300 penalty has been levied. Where a company had notified HMRC of its chargeability to corporation tax but had done so in a way that was fraudulent or negligent thus resulting in incorrect information appearing on the notification, the above penalties of £300 and £60 were increased to £3,000 and £600 respectively.

FA 2008, Sch. 41 (see 12120) has removed with effect from 1 April 2010 the old penalty regime which applied where a company failed to notify its coming into charge to corporation tax under FA 2004, s. 55 but has not extended the new Sch. 41 penalty regime to such a failure. It is assumed that this is an oversight by the parliamentary draftsman.

Legislation: FA 1998, Sch. 18, para. 2; FA 2004, s. 55; FA 2008, Sch. 41; *Corporation Tax (Notice of Coming within Charge – Information) Regulations 2004* (SI 2004/2502), reg. 2

4310 Company tax return

A notice to make a company tax return must specify a period to which it relates. If a company accounting period ends during, or at the end of, the specified period, a return must be made for that period. Separate returns are required for each such accounting period within the specified period. If no accounting period ends during a specified period, but one begins (e.g. where a company first becomes chargeable to UK corporation tax), a return is required for that part of the specified period immediately before the accounting period began. If a company is outside the scope of UK corporation tax throughout the period, a return for the whole period is required. In any other case, no return is needed.

Return to include a self-assessment

Any company tax return must include a self-assessment of corporation tax due based on the information, etc. in the return, taking into account any reliefs or allowances (and including amounts due on close company loans to participators (see 4040) and on controlled foreign company profits (see 4713ff.) for the return period).

Accounts required in case of Companies Act companies

Where a UK-resident company is required to prepare accounts for *Companies Act 2006* purposes (or Northern Ireland equivalent Orders), a company tax return may only require such accounts (together with annexed documents and information) as are required to be prepared under the Act (or Order).

In June 2010, HMRC issued guidance on the form of accounts that need to be submitted with the company tax return. This is available on HMRC website at www.hmrc.gov.uk/ct/company-accounts.pdf.

Filing date

The normal filing date, where a company produces annual accounts, is twelve months from the end of the company's accounting period. However, there are special rules to accommodate

long periods of account (which include more than one accounting period) and for cases where the notice requiring a return is delayed. Thus, the filing date is the later of:

- twelve months from the end of the period to which the return relates;
- for long periods of account that are less than eighteen months long, twelve months from the end of the period of account;
- for long periods of account over eighteen months, 30 months from the start of the period of account; and
- three months from the date on which the notice requiring a return was served.

Example

A Ltd prepares accounts for the 12 months to 30 September 2011, and receives a notice to make a return for this period. If the notice was issued on 22 October 2011, the filing date would be 30 September 2012. For the purposes of the three-month rule (above), HMRC assume that a notice which is served by post will be received four working days after it is issued.

Example

A Ltd prepares accounts for the 12 months to 30 September 2011, and receives a notice to make a return for this period. If the notice was issued on Friday 30 July 2012, it would be deemed to be received on Thursday 5 August 2012, and the filing date would be 5 November 2012.

Claims and elections to be included in returns

Generally, all elections and claims for relief or credit that can be made for a specified period must be made in the company tax return. (Time-limits for claims, elections, etc. are unaffected by this provision: see 4375.) This includes making a claim, election, etc. via an amendment to a return (see below). Certain claims can only be made by being included (via amendment, if necessary) in a return. These are claims:

- (1) for group relief;
- (2) for capital allowances;
- (3) to repay income tax because a company is exempt or excluded from liability to income tax; and
- (4) to tax credits (unless the company is exempt from corporation tax completely or exempt from corporation tax regarding everything bar trading profits).

In (4), tax credits subject to the payment on account rules for insurance companies carrying on pension business are excluded.

Amendment and correction of returns

A company may amend its tax return at any time within 12 months of the filing date. HMRC can specify the form that an amendment must take and can require any reasonable statement or information in support of the amendment to accompany it.

HMRC can, by notice, correct any 'obvious errors or omissions' in a return. These include errors of principle, arithmetic or otherwise. The normal time-limit for such corrections is nine months from the date the return is submitted; however, if a correction is needed following a company's amendment to a return, the time-limit is nine months from the date the amendment was made.

A company may amend a return that has been corrected by HMRC, within the normal time-limit for amending returns, so as to reject HMRC's correction. If this time-limit has expired, a HMRC correction can be rejected by the issue of a notice, to the officer who made the correction, within three months of date that the correction was made.

Conclusiveness of return

Once an amount in a return can no longer be altered, whether by the company itself or by HMRC, it is regarded as conclusive for the purposes of tax payable for another accounting period of that company, or the tax liability for any accounting period of another company.

See above and the ensuing paragraphs in this chapter for the various ways in which a company's return may be altered.

Time limit for enquiries

For accounting periods ending after 31 March 2008, the enquiry window for most returns delivered by, or on, the filing date will close 12 months from the day on which HMRC receive the return (see 11321). For example, if a return for an accounting period ended 30 June 2008 is received by HMRC on 26 January 2009, the enquiry window will close on 26 January 2010, i.e. 12 months after delivery.

For accounting periods ending on or before 31 March 2008, the enquiry window for returns filed early closed 12 months from the statutory filing date, which was normally 12 months after the end of the accounting period (see 11322).

Penalties

For penalties in relation to returns, see 4385.

Legislation: FA 1998, Sch. 18, para. 2–16 and 88; *Corporation Tax (Notice of coming within charge – Information) Regulations 2004* (SI 2004/2502)

Other Material: www.hmrc.gov.uk/ct/company-accounts.pdf

Tax Reporter: ¶811-600ff.

4315 Compulsory electronic filing of corporation tax returns

Electronic filing is mandatory for corporation tax returns delivered after 31 March 2011 for accounting periods ending after 31 March 2010, subject to exceptions for companies which are in administration or liquidation and to transitional arrangements applying with regard to smaller charities. It should be noted that no exemption is provided for solvent dissolutions where the company seeks informal striking off or enters a Members' Voluntary Liquidation (MVL) although HMRC have published guidance on how the rules will be applied in such cases.

The return must be provided in iXBRL (inline eXtensible Business Reporting Language) format using either the filing product provided by HMRC on its website or commercially available software that meets all the relevant requirements (details of which can be found on HMRC's website; see below). The company's computations and accounts must also be submitted in iXBRL format (a joint filing service with Companies House is available). Other information included as part of the return must be sent as PDF files.

HMRC have published guidance on how it will manage the transition to compulsory online filing and on what counts as a reasonable excuse for failing to file on time. HMRC agreed in June 2012 to retaining the MTLs (minimum tagging list) and not moving to full tagging. There will therefore be no changes at April 2013. The full HMRC statement is available at www.hmrc.gov.uk/ct/ct-online/file-return/xbml-tagging-120531.pdf.

Legislation: *Income and Corporation Tax (Electronic Communications) Regulations 2003* (SI 2003/282); *Directions under regulations 3 and 10 of the Income and Corporation Taxes (Electronic Communications) Regulations 2003* (SI 2003/282)

Other Material: www.hmrc.gov.uk/efiling/ctsoft_dev.htm (HMRC guidance on how it will manage the transition to electronic filing); www.hmrc.gov.uk/ct/ct-online/flow-diagram.pdf (flow diagram incorporating links to other guidance); www.hmrc.gov.uk/efiling/ctsoft_dev.htm (details of suppliers of software); and www.hmrc.gov.uk/ct/mvl-guidance.pdf (guidance on how the rules apply with regard to solvent dissolutions)

Tax Reporter: ¶811-770

4320 Preservation of company records

The records that must be maintained and retained by a company in support of its company tax return are wide-ranging and extensive. Records (or the information contained within them) of the amounts and nature of receipts and expenses, including all purchases and sales of stock, where relevant, together with supporting documents in the form of receipts, vouchers, contracts, deeds, books and accounts, are included.

For commentary on the rules applying from 1 April 2009, see 12405. Before 1 April 2009, the records that had to be kept must have been preserved for six years from the end of the period for which it may have been required to make a return. If a notice to deliver a return was issued within the six-year period, the records must have been preserved beyond the six-year period until either any enquiry into the return was completed or, in the absence of an enquiry, HMRC no longer had the power to make an enquiry into the return. If a notice to deliver a return was issued after the end of the six-year period, all extant records that would have assisted in the making of the return must have been preserved, again, until either any HMRC enquiry was complete, or, in the absence of an enquiry, HMRC no longer had the power to make an enquiry into the return.

Where a company fails to keep and preserve the records needed to enable it to deliver a correct and complete CTR for the requisite period, or fails to produce documents when required to do so, it may be liable to a penalty (see 4385).

Legislation: FA 2008, s. 115 and Sch. 37; FA 1998, Sch. 18, para. 21 and 22

Tax Reporter: ¶812-100

PAYMENT OF CORPORATION TAX

4325 Due date for payments

Corporation tax is due on the day following nine months after the end of the accounting period to which it relates.

Example

A company prepares accounts to 30 September each year. In respect of its accounting period ending 30 September 2011, tax is payable by 1 July 2012.

If the 'tax payable' is then exceeded by the total of any 'relevant amounts previously paid' (as stated in the relevant company tax return), the tax will be repaid. The 'tax payable' is the amount computed in accordance with FA 1998, Sch. 18, para. 8.

'Relevant amounts previously paid' are any of the following, so far as relating to the accounting period in question:

- any amount of corporation tax paid by the company and not repaid;
- any corporation tax refund surrendered to the company by another group company;