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Compliance under Stamp Duty Land Tax (SDLT)

In an earlier issue we gave you a basic understanding of the new Stamp Duty Land Tax (SDLT). This is a brief guide to the new Compliance regime that is built into SDLT, highlighting the changes in procedures and policies.

Previously stamp duty was a charge on documents and there was no legal obligation to have documents stamped. However, if they were not, they could not be used in a variety of situations such as registration of title to land and civil court action.

In practice, stamp duty was 'voluntary' and the compliance regime that existed comprised of the ability to refuse to stamp documents in certain circumstances.

SDLT introduced on 1 December 2003 is a 'process now, check later' system, requiring the completion and submission of a land transaction return (and payment) to our data capture centre in Netherpton, for transactions in land and buildings in the UK, completed on or after 1 December 2003.

SDLT has brought a modern, comprehensive compliance framework to stamp duty, for the first time mirroring enquiry provisions already in place for other taxes administered by the Inland Revenue. In common with those other taxes the responsibility for completing the form correctly lies with the purchaser. Practitioners may need to draw their clients' attention to this and to the part of the form where the purchaser can indicate that they want their agent copied in on any subsequent correspondence from us.

Random and risk based enquiries

A small selection of SDLT returns are selected for review. Some enquiries will be selected at random and others will be selected on a risk basis. The overwhelming majority of transactions are accepted and certificates issued without an enquiry.

Enquiry Window

We have a fixed time that we can start an enquiry- this is known as the enquiry window and is a period of 9 months:

- after the filing date (the date on which the return is due), if the return was delivered on or before that date;
- after the date on which the return was delivered, if the return was delivered after the filing date;
- after the date on which any amendment was made by the purchaser.

Enquiries will also be conducted into self-certificates given to the land registries.

Tax Bulletin is also available on the Inland Revenue Website at www.inlandrevenue.gov.uk/bulletins

Any enquiry will start with a letter to the purchaser, with a copy sent to their professional adviser if they have completed the correspondence box on the return (SDLT 1). At the end of the enquiry a letter closing the enquiry will be issued to the purchaser and copied to their professional adviser, again where the correspondence box has been completed (question 59 on page 5 of the SDLT 1).

Interest and penalties for late delivery / incorrect completion of returns

SDLT returns are due within 30 days of the effective date of the transaction. For the majority of transactions the effective date is the date of completion of the transaction, whether or not this is evidenced by a document. However if a contract is substantially performed before completion, the date on which substantial performance takes place is the effective date. Broadly substantial performance is the point at which:

- payment of the whole, or substantially the whole, of consideration other than rent (in practice, and unless the circumstances are unusual, we will accept that 'substantially the whole' means not less than 90%); or
- the purchaser is entitled to possession of the property; or
- the first payment of rent is made.

If the filing date is missed a penalty or penalties will be imposed.

If the SDLT owed is paid late, interest will also be charged.

When penalties are imposed, how much are they?

Fixed penalties

If we don't receive the SDLT return or any payment of the SDLT due within 30 days of the effective date of the transaction (the filing date) but within three months of the filing date, a £100 penalty will automatically be levied. In all other cases, a £200 penalty will be automatically charged.

NB. Under the special arrangements that currently apply, we will forego late filing penalties for SDLT returns and any payment of the SDLT due that have been submitted more than 30 days but not more than 40 days after the effective date of the transaction. More details of these arrangements can be found on our website at <http://www.inlandrevenue.gov.uk/so/sdl-admin.pdf>

If we find something wrong with an SDLT return during an enquiry

As well as imposing penalties for the late submission of a SDLT return, a penalty may be due if we find something wrong with an SDLT return.

We can only seek penalties for incorrect SDLT returns if SDLT is understated and the error was due to negligence or fraud.

When calculating any penalty we will take into account:

- the extent to which anything that was wrong was voluntarily disclosed;
- the help we receive in concluding our enquiries; and
- the seriousness of the errors or omissions.

We should be informed about any relevant matters when we work out what penalty to charge.

General

We will try to agree a settlement by contract on the amounts of tax, interest and penalties that are due. If agreement cannot be reached, we may formally determine the penalty we think is appropriate.

If an SDLT return is more than a year late we can impose a tax-based penalty of up to the total amount of tax due on the SDLT return.

When a penalty has been imposed

If a penalty is imposed we will send out a formal notice.

The penalty is due for payment at the end of the period of 30 days beginning with the date of the notice. Interest is charged on penalties paid late.

When a penalty notice is received

If not already done so, we advise that customers should do what is necessary to send in their SDLT return as soon as they can, to avoid further possible penalties. They should also pay the penalty on time, to avoid an interest charge.

Appeals against penalties for late returns

The main ground of appeal is where customers think they have a good reason why they did not send back their SDLT return in time. The law says that the only good reason is that a customer had **or there is** a 'reasonable excuse' for not meeting the deadline and that after the reasonable excuse ceased, the customer sent back the SDLT return 'without unreasonable delay'. Appeals are made to the General or Special Commissioners, who are independent tribunals. The procedure requires a notice of appeal to be sent to us. This enables us to consider whether we agree there is a reasonable excuse. If we do, there is no need for the Commissioners to consider the appeal.

If a customer intends to appeal we must be given a notice of appeal, in writing, within 30 days of the date of the penalty notice. Appeals can be made in the form of a letter or using the form we send with each penalty notice.

Payment of penalty if an appeal is being made

To avoid any interest charge, we advise that customers may want to pay the penalty even if they are appealing against it. If the penalty is paid and the appeal succeeds, we will repay the penalty and pay interest for the period from when the penalty was paid until we repay it.

If the appeal succeeds

If the appeal succeeds so that the customer does not have to pay the penalty, then obviously no interest is payable on the penalty that was determined in the notice, because the penalty itself is treated as if it were never determined.

If the appeal does not succeed

If the appeal does not succeed and the penalty has not been paid while the appeal was being considered, interest will be charged from after the end of the period of 30 days, beginning with the date of the notice, until the day the interest is paid.

Discovery enquiries

We also have the opportunity to go back to a transaction that is outside the 9-month enquiry window. This is known as a 'discovery' enquiry. A discovery enquiry happens when it becomes clear, (through third party information or otherwise), that not enough SDLT has been paid on a land transaction and, broadly, the reason for that is either that the customer (or certain people connected with him) has acted negligently or fraudulently, or that we did not have enough information before the end of the enquiry window to know that the customer ought to have paid more SDLT.

Further information

Further information on any of the points raised above can be obtained on the Stamp Taxes website at www.inlandrevenue.gov.uk/so or by telephoning the Stamp Taxes Enquiry Line on **0845 6030135**. The Enquiry Line is open between the hours of 8.30am to 5pm (Monday to Friday). Calls are charged at the local rate.

Shortly, a leaflet on penalties for the late submission of SDLT returns will be available.

Other leaflets we produce that customers might find useful are:

- COP 1 Putting things right - how to complain
- COP24 Stamp Duty Land Tax enquiries
- COP25 Stamp Duty Land Tax-enquiries into companies and partnerships
- SD1 Enquiries into land transaction returns.

The National Insurance Contributions and Statutory Payments Act

The National Insurance Contributions and Statutory Payments Bill was introduced in the House of Commons on 27 November 2003 and received Royal Assent on 13 May 2004. The Act has 5 measures. The first two measures will make the administration of National Insurance simpler when employers reward their employees with security based earnings. The three other measures help bring the National Insurance, Statutory Payments and equivalent tax regimes closer together. All these measures should make the administration of National Insurance less burdensome for both employers and individuals. This article gives a brief outline of the changes that are being made.

Extending the ability of the employer to recover primary National Insurance Contributions (NICs) from employees' share based earnings

The Social Security Act (1998) introduced legislation which allowed employers and employees to enter into written agreements allowing the employer, when making payment of the share based earnings, to retain or sell shares equal to the employee's NICs liability. Prior to the National Insurance and Statutory Payments Act this could only be done where:

- An employee had ceased employment and the payment of share based earnings was made after they left the employment but in the tax year of cessation; or
- An employee had received share based earnings and was ceasing employment in that tax year, and the employer was unable to recover the NICs from the employee's subsequent monetary earnings.

The Act has now extended this and the new legislation will now allow written agreements for the withholding of shares and other securities to be entered into for:

- All employees, including those in continuing employment, irrespective of whether the recovery could be made from the employees' subsequent monetary earnings;

- Employees who receive security based earnings in the year after they have ceased employment, as well as the year that they left.

All earnings that come under the definition of “securities” defined at Section 420 of the Income Tax (Earnings and Pensions) Act 2003 as amended by Schedule 22 to the Finance Act 2003 can be included. This definition of securities covers shares, company loan stock, Government gilts and a number of specialised financial instruments. It does not include such things as cash, cheques and leases. This will be set out in regulations following Royal Assent.

Regulations also govern how and when recovery can be made. To keep red tape to a minimum the regulations will only state that the employee has to have given prior written consent for the employer to withhold or sell an amount of securities equal to the employee’s NICs liability. There is no set form that this has to be made on. The agreements can be entered into at any time up to the day that the earnings arise. It may therefore be possible for employers who, for instance, granted share options to an employee before this legislation came into force to make recovery by withholding shares. As long as the employee gives his/her written consent, and this consent was given after the legislation came into force but before the earnings were paid this method can be used.

The extension of the ability to recover from non monetary earnings does not impinge on the ability of the employer to recover the primary NICs that they have paid on the employee’s behalf from their future monetary earnings. Statutory Instrument 2003 No. 1337 removed the limits on the amounts that could be recovered per pay period, and extended the time limit for recovery to the following tax year after share based earnings had been paid. This was subsequently amended by Statutory Instrument 2004 No. 770 which allowed this extension for all security based earnings. If employers prefer to recover by this method then they can continue to do so.

Detailed guidance on these changes to legislation will be made available shortly on the Employee Share Schemes pages of the Inland Revenue website.

Extension of Joint Agreements and Elections to convertible and restricted shares

Joint elections and agreements for National Insurance contributions were introduced in 2000 to allow the transfer of some or all of the employers’ National Insurance liability (the “secondary liability”) arising on share option gains to the employee, with the employee’s agreement. Prior to the introduction of this facility, employers granting share options to their employees faced difficulties in accounting for the unquantifiable secondary NICs liability that arises when the option is exercised. These difficulties discouraged many employers from using share options to motivate and reward

staff. When an employer and employee enter into a joint NICs election, the legal liability to pay the secondary NICs transfers from employer to employee. This removes the need for the employer to provide for the unquantifiable secondary liability in their accounts. Alternatively, employer and employee may enter into an agreement that the employee will reimburse the employer for the cost of the secondary NICs liability, but legal liability remains with the employer. This facility has proved popular, with over 1900 requests for approval of NICs elections submitted to the Inland Revenue to date.

More recently it was brought to our attention that employment-related awards of restricted and convertible shares can also expose the employer to an unquantifiable future NICs liability. This is because awards of such shares are subject to NICs liabilities when certain events arise after the time of award (“post-acquisition chargeable events”). Typically these events include the lifting of restrictions applying to the shares, thus increasing their value to the employee, or conversion of the shares into other more valuable shares.

The new legislation extends the existing joint election and agreement facility to restricted and convertible shares. As a result, employers awarding such shares to employees are able to ask those employees to bear the cost of secondary NICs liabilities arising after the employee acquires the shares.

Employees who agree to bear the secondary NIC liability arising on share option gains are entitled to an income tax relief on those gains, equivalent to the amount of employer’s NICs they pay. The Finance Bill 2004 includes a measure proposing to extend this tax relief to employees who agree to bear secondary NICs liabilities arising on restricted and convertible shares.

In addition, statutory instruments will soon be laid before Parliament to:

- amend the National Insurance Regulations applying to joint NICs elections, so that they reflect the extended scope of this facility; and
- set the date from which this measure in the National Insurance Contributions and Statutory Payments Act will take legal effect.

Detailed guidance on these changes to legislation will be made available on the Employee Share Schemes pages of the Inland Revenue website following Royal Assent of Finance Bill 2004 (<http://www.inlandrevenue.gov.uk/shareschemes/index.htm>)

Recovery of National Insurance Contributions

The measures relate to the approximately 3% of National Insurance contributions which are not collected through the PAYE and SA systems and to which the provisions governing the recovery of tax debt do not apply. Mostly these are the flat rate Class 2 contributions paid by the self employed, but they also include some Class 1A and Class 4 contributions which are not collected with tax. The current differences between the provisions governing the recovery of tax and those governing the recovery of contributions make it impracticable for the Inland Revenue to take a single recovery action where a person has both tax and contributions debts. The measures are designed to overcome this obstacle by:

- aligning the 30 day period of notice currently required under section 121A of the Social Security Administration Act 1992 for distraint action to recover contribution debt in England and Wales, with the 7 day period of notice which Inland Revenue guidance specifies for the recovery of tax under section 61 of the Taxes Management Act 1970;
- aligning the 30 day period of notice currently required under section 121B of the Social Security Administration Act 1992 for application for a summary warrant to recover contribution debt in Scotland, with the 14 day period of notice required for the recovery of tax debt under section 63 of the Taxes Management Act 1970 and procedures for the recovery of debt generally under the Debt Arrangement and Attachment (Scotland) Act 2002; and
- replacing the current provisions of section 115A of the Social Security Administration (Northern Ireland) Act 1992 which provide for contributions debt in Northern Ireland to be recovered by the Enforcement of Judgements Office, with provisions which allow the Inland Revenue to levy distraint in Northern Ireland on the same basis as in England and Wales.

The changes will come into effect later this year.

Alignment of Officers' Information Powers

Inland Revenue powers to investigate National Insurance cases are contained in section 110ZA of the Social Security Administration Act 1992. These powers are considerably wider than those for tax and include a power to enter premises and examine (interview) persons on those premises as well as a power to compel the production of documents and information. We are now correcting this misalignment by removing the power of entry and examination and applying the section 20 TMA information powers to National Insurance.

This will allow the Inland Revenue to ask both primary and secondary contributors to provide documents and information about their liability for National Insurance. The Inland Revenue can also ask third parties to provide documents which are relevant to the contributions liability of another. But these requests must be made under a formal notice which needs the consent of a Tax Appeal Commissioner before it can be issued.

At the same time we are also introducing a regulation making power which will allow us to introduce powers to inspect SSP and SMP records on the same basis as we can currently inspect PAYE records.

Civil Penalties for Statutory Sick and Maternity Pay

Employers' failures to meet their obligations under Statutory Sick and Maternity Pay schemes are dealt with by a series of minor criminal offences. This is out of step with the compliance regimes that exist for tax, NICs, tax credits and the Statutory Paternity and Adoption Pay schemes. This Bill introduces a better and more proportionate response to employers who attempt to avoid their obligations by introducing a civil penalty system for the non-compliant which is identical to that introduced in the Employment Act 2002 for Statutory Paternity and Adoption Pay.

Commencement of the measures in the Act

The two measures enabling employers to choose how to meet their NICs liability when security based earnings have been paid will be commenced as soon as possible following Royal Assent of the Bill. Normal timing conventions indicate that this will be around two months after Assent.

The measures on distraint will also be introduced on the same timescale. We will ensure that proper notification is given for those affected, so that no one will be caught out unwillingly.

The measures which introduce the new officers' powers and the new compliance regime for statutory payments will commence in the tax year beginning 6 April 2005 to allow time for guidance for staff and employers to be issued on the new provisions.

Contact Details

Should you have any questions or queries on this article please phone Chris Davis on 020 7438 7823 or email him at Chris.Davis@ir.gsi.gov.uk.

Increase In The Special Rates Of Tax For Accumulation And Discretionary Trusts

There are special tax rates that apply to the income of trusts that can accumulate income or pay it out at discretion, as set out in S686 ICTA 1988. On 6 April 2004 the rate applicable to trusts (RAT), which applies to trust income apart from dividend type income, went up from 34% to 40%. The dividend trust rate, which applies to dividend type income, went up from 25% to 32.5%.

The new RAT of 40% also applies to the capital gains of accumulation and discretionary trusts and interest in possession trusts from 6 April 2004.

Discretionary income payments from trusts after 5 April 2004

A trust that makes discretionary income payments to beneficiaries should take the increased rates into account when making net payments to beneficiaries after 5 April 2004. Trustees' tax at the end of the year will be higher and consequently there will be less net income available to pay to beneficiaries.

The new RAT also means that discretionary income payments to beneficiaries should carry a tax credit at the rate of 40% instead of 34% after 5 April 2004, even if the income out of which the payment is made was taxed only at 34% or 25% in the hands of the trustee. This tax credit has to be covered by the amount in the trustees' tax pool. If there is a shortfall, the trustees have to pay additional tax.

The tax pool

When trustees make discretionary income payments to beneficiaries they have to ensure that they have paid enough tax to cover the tax credit at the RAT. Trustees therefore need to keep a record of tax payments known as the 'tax pool'.

The tax pool consists of tax paid by the trustees on income they have received, and tax deducted at source, for example by banks or building societies on interest. It does not include non-payable tax credits, such as the tax credit on dividends.

When the trustees make an income payment to a beneficiary the tax pool balance is reduced by the tax credit at the RAT on that payment. See example 1.

If the tax in the tax pool is not enough to cover the total tax credits needed for the payment to beneficiaries the trustees must pay the difference in their Self Assessment tax return for the year under S687(2)(b) ICTA 1988. See example 2.

See examples 3 and 4 for the effect of dividend income on the tax pool.

Example 1

Trustees of a discretionary trust pay £600 income to the sole beneficiary after 5 April 2004. There is a tax credit at the RAT of £400 for the beneficiary, who is treated as receiving £1,000 income, from which £400 has been deducted.

The balance on the trustees' tax pool is £500. That covers the tax credit for the year, and reduces the tax pool balance to £100. The trustees have no more to pay.

Example 2

As in example 1, but the balance on the trustees' tax pool is only £200. The tax pool balance is reduced to nil and the trustees must pay tax of £200 to cover the tax credit.

Example 3

The total income arising to trustees of a discretionary trust is a net dividend of £900 (tax credit £100). The trustees are chargeable at 32.5%, which is partly covered by the 10% non-payable tax credit.

	£	£	£
Dividend received	900		900
Plus non-payable tax credit	100		
Income	1,000		
Tax at 32.5%	325	325	
Less non-payable tax credit		100	
Tax payable by trustee under S687(2)(b)		225	225
Net income after tax	675		675

The trust now has net income of £675 (net dividend of £900 less tax paid of £225). Only £225 goes into the tax pool because the £100 dividend tax credit is not payable.

The trust pays the whole of the net income of £675 to the beneficiary. The tax credit of 40% on that net payment is £450 (gross amount of £1,125 at 40%).

There is nothing in the tax pool brought forward from the previous year and there is no other income on which tax has been paid, so the tax pool of only £225 will not cover the tax credit of £450 on the payment made. The trustees would be liable to an extra charge of £225 under S687(2)(b) ICTA 1988, but they have no income to fund it.

Example 4

As in example 3. But instead of paying out the net income of £675, the trustees want to calculate the maximum amount they can pay using the income available.

	£	£
Net income after tax	675	
Add tax in tax pool	<u>225</u>	
Total amount to cover payment to beneficiary and tax credit at 40%	900	
Tax credit at 40%	360	360
Less tax paid in tax pool		<u>225</u>
Tax payable by trustee under S687(2)(b)	<u>135</u>	
Net payment to beneficiary	<u>540</u>	

So if the trustees are relying on the dividend income to fund both the payment to the beneficiary and the section 687(2)(b) liability, they have sufficient funds to release only 60% of the actual dividend, i.e. £900 x 60% = £540.

The trustees pay total tax of £360 to the Inland Revenue: £225 tax on the dividend received and the additional £135 under S687(2)(b). The payments of £540 to the beneficiary and £360 to the Inland Revenue are covered by the £900 dividend income.

Advising beneficiaries of payments and tax credits

Trustees can use form R185 (Trust Income) to advise beneficiaries of income payments and tax credits. When using form R185 (Trust Income) to record discretionary income payments, enter in box 7.1 the actual amount paid, in box 7.2 the amount of tax treated as deducted at the RAT, and in box 7.3 the total of the amounts in boxes 7.1 and 7.2. See example 5.

Example 5

Discretionary income payment in tax year 2004-2005

The discretionary payment to the beneficiary is £600. Enter 600 in box 7.1, 400 in box 7.2, and 1,000 in box 7.3.

Gratuities and offerings - The Social Security (Contributions) (Amendment) Regulations 2004

The Social Security (Contributions) (Amendment) Regulations 2004 (SI 2004 No 173) (the regulations) were laid before Parliament on 30 January 2004 and came into force on 23 February 2004. The regulations are available on the Inland Revenue's website at www.inlandrevenue.gov.uk/practitioner/legislation. They amend paragraph 5 of Part 10 of Schedule 3 to the Social Security (Contributions) Regulations 2001 (SI 2001 No 1004) (SSCR).

The regulations were not introduced in time to include guidance about their effect in the new booklet (E24) 'Tips, Gratuities, Service Charges and Troncs: A guide to Income Tax, National Insurance contributions, National Minimum Wage issues and VAT', which was published in February 2004. Later editions of the booklet will be updated to reflect the changes made by the regulations.

This article explains the effect of the regulations on payments of, or in respect of, gratuities or offerings made to, or for, the benefit of earners. Throughout the article "earners" includes directors and employees.

Purpose of amendments

Paragraph 5 of Part 10 of Schedule 3 to the SSCR has been amended to exclude from the disregard in paragraph 5, gratuities or offerings made by a:

- person connected with the secondary contributor, or
- trustee holding property for any persons who include, or any class of persons which includes, the earner.

There is no intention for the regulations to change the long-standing position with regard to the treatment of 'tips' paid to staff working in service industries (restaurants, hotels, etc).

Payments not disregarded from earnings

Where payments cannot be disregarded, they must be added to any other earnings paid in the same earnings period, and Class 1 NICs liability should be calculated in the normal way in relation to the total figure.

Connected persons

A person is connected with the secondary contributor if his relationship with the secondary contributor, or where the employer and secondary contributor are different, with either of them, is as described in subsection (2), (3), (4), (5), (6) or (7) of section 839 of the Income and Corporation Taxes Act 1988 (ICTA 1988). For example, the following are connected persons:

- wives, husbands, relatives;
- a company connected with another company, if the same person has control of both.

Where a payment of, or in respect of, a gratuity or offering:

- is paid by a person connected with the secondary contributor, and it is
- made in recognition of personal services rendered to the connected person by the earner or by another earner, and
- the amount is similar to that which might reasonably be expected to be paid by a person who is not connected, or
- the person making the payment does so in his capacity as a tronc-master,

providing one of the following conditions is satisfied, the payment can be disregarded from earnings, so that no Class 1 NICs liability arises.

The conditions are that:

- the payment is not made, directly or indirectly, by the secondary contributor, and does not comprise or represent sums previously paid to the secondary contributor; or
- the secondary contributor does not allocate the payment, directly or indirectly, to the earner.

Examples

Example 1 provides a scenario where payments cannot be disregarded from earnings.

Examples 2 and 3 provide scenarios where payments can be disregarded from earnings.

Example 1

- On 1 March 2004 ABC Limited established an offshore Employee Benefit Trust (EBT). The beneficiaries included ABC Limited employees and directors. The trustees had absolute discretion over the trust funds.
- In April 2004 ABC Limited paid £1 million to the EBT trustees.
- In early May 2004 ABC Limited determined that in recognition of their hard work during the last 12 months employees should receive payments ranging from £10,000 to £150,000. The company's remuneration committee determined the amounts by reference to each of the employees existing salaries, length of service with ABC Limited and the increase in sales attributable to each employee.
- On 20 May 2004 ABC Limited asked the trustees if they would make the payments to the employees using the funds previously settled in the trust.
- On 24 May 2004 the trustees considered the request by the company and paid the amounts to the employees.

Are the payments gratuities or offerings?

This will depend on the facts of each case, but for the purposes of this example only, assume the payments are gratuitous. This does not represent a public statement of the Inland Revenue's views that such payments are in fact gratuitous.

Can the payments be disregarded from earnings?

No - The payments are made by trustees holding property for employees.

Example 2

Chris Jones runs a restaurant. He employs a number of staff including waiters.

Chris' wife has a meal in the restaurant and pays £3 cash to the waiter for his services. The waiter retains the tip for his own enjoyment.

Can the tip be disregarded from earnings?

Yes - Although Chris Jones' wife is connected to the secondary contributor by virtue of section 839(2) ICTA 1988, the payment:

- is not made directly or indirectly by the secondary contributor, i.e. Chris Jones, and
- does not represent sums previously paid to Chris Jones, and
- is made in recognition for personal services rendered to her by the waiter and is similar in amount to that which might reasonably be expected to be paid by a customer for the waiter's services.

Example 3

Raj Singh owns a restaurant. He employs a number of staff including waiters. For the purposes of operating a tronc the waiters appoint Raj's brother Dev as the troncmaster. All cash tips are collected by the waiters from the customers and paid into the tronc. At the end of each day Dev divides and distributes the tips equally amongst all the waiters.

Can the tips be disregarded from earnings?

Yes - Dev is related to Raj Singh so is connected to the secondary contributor by virtue of section 839(2) ICTA 1988, but the payment:

- is not made directly or indirectly by the secondary contributor, i.e. Raj Singh, and
- does not represent sums previously paid to Raj Singh,
- is made by Dev in his capacity as a tronc-master.

Position before 23 February 2004 - Payments made by a person connected with the secondary contributor or a trustee

Where a payment of, or in respect of, a gratuity or offering is:

- made by a person connected with the secondary contributor or by a trustee, and
- the payment is made directly or indirectly by the secondary contributor, and is allocated by the secondary contributor directly or indirectly,

that payment cannot be disregarded from earnings for Class 1 NICs purposes.

Where a payment of, or in respect of a gratuity or offering is:

- made by a person connected with the secondary contributor or by a trustee, and
- the payment is not made directly or indirectly by the secondary contributor and does not comprise or represent sums previously paid to the secondary contributor, or
- is not allocated by the secondary contributor directly or indirectly,

that payment can be disregarded from earnings for Class 1 NICs purposes.

Whether a payment:

- is, or is in respect of, a gratuity or offering, and or
- is allocated and or made directly or indirectly by the secondary contributor,

will depend on the facts.

Correction to Paragraph 43 of the Stamp Duty Land Tax – Group Relief article in Tax Bulletin 70

Section 54(4) FA 2003: exception from the connected company charge on a winding up

43. Section 54(4) FA 2003 provides the third case of exception from the deemed market value rule in section 53 FA 2003. The exception applies to the distribution of assets on the winding up of a company, as long as the subject matter of the transaction or an interest from which that interest is derived, has been the subject of a transaction in respect of which a claim to group relief was made by the vendor. It is not the Inland Revenue's intention that section 54(4) should be prevented from applying where a group relief

claim was made by the vendor but recovered under paragraph 3 of Schedule 7 either at the time of or before the effective date of the transaction.

miscellaneous

Online Filing and Electronic Payment Handbook

We have put together a detailed handbook about online filing and electronic payment for employers and agents.

Do it online: Online filing and Electronic Payment Handbook includes:

- the background to online filing
- how to register for PAYE Online for Employers
- sending a complete Employer's Annual Return
- how to use our online services
- electronic payment
- penalties
- information for agents and software developers.

Every employer with 50 or more employees was sent a copy last month. Letters we sent with the handbook were addressed to the Payroll Manager.

Small employers (fewer than 50 employees) already have our other much shorter guide, *Do it online - Your guide to filing PAYE returns and paying electronically*, which gives them all the basic information they need. But they may also find the handbook useful, especially if they use a payroll agent or want to know more about registering for online services and using the secure mailbox.

A copy of the handbook is at www.inlandrevenue.gov.uk/employers/doitonline.pdf and on the Employer's CD-ROM 2004 (Budget edition). Paper copies of the handbook and the shorter guide are also available from the Employer's Orderline on 0845 7 646 646.

Legislation changes

The legislation for online filing and electronic payment is part of the Income Tax (PAYE) Regulations 2003 (SI 2003 No. 2682) from April 2004. This replaces the legislation introduced in October 2003, so the references quoted in the last edition of the Working Together are now out of date.

The full list of amended references for:

- making a return
- filing online
- getting a tax-free payment
- splitting a payroll, and
- paying electronically

are on page 51 of the handbook.

Revised Boards Directions setting out the approved methods of electronic communications for sending information online and making payments electronically came into effect from the 5 April 2004. The directions cover PAYE, and Student Loan Deductions as well as electronic payment and apply to information sent or received by both employers or their representatives. The full text is at www.inlandrevenue.gov.uk/ebu/hc01_04_04paye_directions.pdf.

Changes to form P35 for 2004-05

Working Together 16 gave details of how employers can send their 2004-05 return in parts. The design of the 2004-05 P35 will be changing to include an extra box to show the number of P14 parts an employer is sending. Employers sending the P14s and P35 in one go will also need to use the new version of the P35 from 2004-05. A pdf version will be on our Internet site in the summer.

The P35(MT) for Electronic Data Interchange or magnetic media users will be replaced by the new version of the P35 from 2004-05.

A different version of the P35 must be used for employers who cease in 2004-05, which can only be sent on paper. A copy of this P35 is at www.inlandrevenue.gov.uk/ebu/pnforms.htm. Cessation returns can be sent online from April 2005. 'Large' or 'medium'-sized employers will face a penalty for not sending the cessation return online. And small employers will get the tax-free payment if they file their cessation return online.

Agents

We only send employee information (like P6s and P9s) to one payroll agent for each employer's PAYE reference, whether sent online or by paper. Sending a return in parts does not change how employers need to manage employee information sent by us.

We ask for authority from a client (in this case an employer) that an agent can act for them. We get that authority either on a form 64-8 or an FBI2 where they are using the PAYE

Online for Employers Internet service or where the employer uses the 'Add Agent' function online. (See www.inlandrevenue.gov.uk/efiling/payefbi2.pdf for a copy of the FBI2.)

Some employers use more than one agent to help them with payroll. A payroll agent might deal with staff wages, and a company's accountant handles the directors. Or the monthly paid staff are dealt with by a different payroll agent from the weekly paid staff.

Employers using more than one agent need to nominate one of them to get employee information from us. That nominated agent would be responsible for sending information on to anyone else helping the employer with payroll. Agents getting the information online may need a facility to download messages from their secure mailbox and send them on. Employee information can be transferred from the mailbox as a .csv (comma separated value) file direct to payroll software without needing to enter the details manually. Or the employer could decide to get the details on paper.

Employers need to think about whether confidentiality prevents their nominated agent from getting information for all employees. If it does, the employer could ask us to send the employee information to them instead and pass it on. But if an agent is already getting the employee information online for them they must arrange with Electronic Business Unit for this to stop. This would not stop agents from sending us information for the employer.

Splitting their PAYE scheme might be the best way to manage information sent from us. An election to do this must be made by the start of the tax year on a form P350. This will mean extra returns at the year-end. Dispensations and PAYE settlement agreements will only be renegotiated for new references when there is a change to what is already in place.

Employers are still responsible for ensuring the integrity and privacy of employee data whatever way of managing employee information they choose.

This only covers payroll. We will carry on talking to other agents on things other than payroll, if we have the authority. So we would write to the company's accountants about Corporation Tax if we had a 64-8.

Remember that you must register and enrol for online services to send or receive information for your clients online. Go to www.ir.gov.uk/efiling/help/agentreg.htm for more.

Count of employees 2004

We decide whether an employer is 'large' 'medium' or 'small' for online filing by counting all the employees for each PAYE reference every year (see Tax Bulletin 69 for more). We plan

to make the count of employees for 2005-06 online filing on the 24 October 2004. The date will be confirmed closer to the time.

A similar article appeared in the May 2004 edition of Working Together.

Specialist teams to Deal with Inward Expatriate Employees

The report on the Review of Links with Business (published November 2001) recommended that the Revenue, supported by input from multi-national businesses, should develop a statement of good practice for handling enquiries into expatriate taxation. This statement of good practice was published in Tax Bulletin 65 (20 June 2003).

As we took forward this recommendation, one of the issues we considered was our organisational arrangements for inward expatriate employee work. We already had a number of teams specialising in this work. However, the degree to which the work was concentrated varied across the country. Also, there were differences between the teams in the extent to which they were involved in processing, customer service, personal enquiry work and employer compliance.

We consulted with representatives of large businesses and tax advisers. Our proposal to reorganise this work into a few specialist teams, carrying out the same functions in a consistent way, received widespread support. These specialist teams are now operational.

Who will the teams deal with?

Where the employer has a dedicated PAYE scheme for its expatriate employees then a specialist team will deal with that PAYE scheme and all the individuals in that scheme.

Many multinational employers do not have separate, dedicated PAYE schemes for their expatriate employees. But where such an employer tells us that it regards any employee as on assignment or secondment to the UK, then a specialist team will deal with that individual's tax affairs.

We are also using our own systems and records to identify other customers for the specialist teams. They will generally be people who come to work wholly or mainly in the UK for multinational businesses on terms and conditions of employment (or under arrangements) that are different from those which would normally be available to someone who was recruited in the UK to work for a UK-based employer.

We recently wrote to employers we identified as having these employees. However, we may not have identified all concerned. We are inviting employers who think they may be

affected to contact us – if they haven't already heard from us. There has been a brief article about this in the most recent Employers' Bulletin and we would welcome the help of professional advisers in encouraging employers to contact us where appropriate.

Where are the teams based and how do we contact them?

The specialist teams are organised regionally so your contact telephone number depends on where the Inland Revenue PAYE office for the employer concerned is based:

Southern England	023 9285 8343 (based in Portsmouth)
Central England } Wales }	01978 297809 (based in Wrexham)
Northern England (West) } Northern Ireland }	0161 261 3398 (based in Salford)
Northern England (East)	0191 490 3843 (based in Gateshead)
Scotland	0131 519 7194 (based in Edinburgh)

Please do not use these telephone numbers for calls that are not about inward expatriate employees or related employer issues, as this will block others from using this service.

Full postal addresses can be found on our Internet site – use the "contact us" link at the top of the home page and then the "Look up one of our Specialist Offices" link.

A small team based in London will support the other five teams by carrying out some Employer Compliance review work with a London connection.

How else can we help?

For individual employees who are dealt with by an Expatriate team, it would be very helpful if you could ensure that completed Self-Assessment Returns are sent direct to the Expatriate team.

A similar article appeared in the May 2004 edition of Working Together.

Statement of Good Practice for Large Business Office, Corporation Tax Enquiries and Employer Compliance Reviews

The Large Corporates Forum has produced a statement of good practice for consistency of approach by both large businesses and the Large Business Office in the handling of enquiries made by the Large Business Office.

The Statement shown below is also available in the 'Businesses & Corporations' section of the Inland Revenue website (www.inlandrevenue.gov.uk) under 'Large Business Office', 'Good Practice'.

It is good practice if:

- The correct point of contact is identified.
- The timing of enquiries takes account of work pressures.
- A realistic timeline/timetable is agreed.
- Both Parties keep each other informed about progress and responses are made timeously.
- There are regular short meetings to review what's outstanding and agree priorities.
- Enquiries are worked efficiently e.g. clear & comprehensive but reasonable request for information & documents (not piecemeal).
- The Customer fully discloses relevant facts.
- In the course of the enquiry the Revenue explains why further information is needed.
- The Customer communicates the commercial background.
- The Revenue understands the commercial background.
- Proper account is taken of commerciality and materiality.
- Proper account is taken of the impact on all customers in significant areas.
- Technical arguments are clearly explained.
- The customer is treated consistently & fairly compared with other customers.
- Both parties are courteous.
- Both parties are pragmatic.

Want an even better business?

Then look no further than the new Business Link website

The Inland Revenue is not just committed to helping UK businesses successfully manage their taxation and payroll responsibilities, but to helping them succeed in every aspect of their business.

Taxation is only one of many areas in which businesses must interact with government. Regulations affect aspects of a business as diverse as working environments and exporting products or services abroad.

In order to make it easier and quicker for businesses to interact with government on a range of issues the Inland Revenue has been working at the forefront of developing a new government website, businesslink.gov.uk.

This new Business Link website is dedicated to helping businesses achieve their ambitions, whether these be finding additional funding, reducing the time spent on rules and regulations or taking a new product or service to market.

The Inland Revenue played a crucial role in developing the site, along with other government departments such as the DTI and UK Trade and Investment. Information provided by us on taxation and payroll lies side by side with information for businesses from a range of other government departments on the site, enabling businesses to obtain the support and information they need from a single source.

How www.businesslink.gov could help your business

Boost your growth - businesslink.gov.uk has brought together an easy to use searchable database of over 2,500 Government funded products ranging from grants and soft loans to consultancy support to help you build your business. There is also a training directory with over 500,000 courses, events and seminars to help you acquire any skills you or your people may need.

Spend less time on rules and regulations - The site brings together for the first time in one place all of the information and guidance on the rules and regulations that may affect your business. Written by business people, but endorsed by Departments across Government, you will be able to understand what applies to you and how best to manage the impact on your business.

Simplify your people management – Find out to how to simplify the management of your payroll and HR through simple guides and tools.

Should you need to talk to someone, Business Link also has a telephone advice line and a network of business advisors who can help you identify and find the solutions that are right for your business. Its offline service is operated locally through a network of 45 offices. Each office is run by people with experience of running a business locally who understand the needs and concerns of businesses in their area.

Consultants at each office work to help businesses identify opportunities and problems within their business, and determine what support is required. They can then put businesses in touch with experts with the correct experience and knowledge to help implement these solutions. To find out more simply call 0845 600 9 006 or log on to www.businesslink.gov.uk.

Prosecutions

The Inland Revenue has a policy of selective prosecution involving the most serious cases across the whole range of the tax system. The Board sees this as an important part of its strategy to deter tax fraud and evasion. As part of the wider publicity for this strategy, details of Revenue Prosecutions are occasionally published in Tax Bulletin.

Anil Kumar

Anil Kumar a 49 year old Tax Consultant and father of four from Letchworth Hertfordshire has recently been sentenced to four years in prison for cheating the public revenue. The charge related to a scheme (The Stax Scheme) that was marketed as allowing clients to gain access to funds “locked” in Occupational and other Pension Schemes.

The Stax scheme for obtaining cash from pension funds was used by 96 clients. The total amount of the transfer value was £16,553,550. The Stax scheme was advertised as enabling clients to access monies ‘locked’ in tax approved pension schemes. Approved Pension Schemes are operated by employers and other providers and are intended to provide long term benefits after retirement. Pension funds receive tax-free contributions from the member, and sometimes the employer. In addition, income and gains of the fund are not liable to tax.

Following information received from the Occupational Pensions Regulatory Authority (OPRA), Inland Revenue investigations led to the successful prosecution. Stax was a partnership of Anil Kumar and Peter Rumball, which operated from late 1997 until 2000. Peter Rumball, who was named alongside Kumar, left the UK to go to the Philippines in 2001. A warrant for his arrest is still outstanding.

The scheme involved obtaining transfer payments from client’s pension funds to the pension funds of companies controlled by Stax. These pension funds then bought ‘E U

annuities' on behalf of the clients. The clients were then able to obtain loans, which would never, in practice, be repaid from the annuity issuer. In a later development the money was transferred to Jersey based trusts for the benefit of the client's family.

The later development of the scheme used a Swedish Sparkassa, something like a Credit Union, as the annuity provider. Evidence in the case showed Anil Kumar had purchased this Sparkassa for £10,000 which he paid in cash in 1998.

This dishonest scheme earned its promoters more than £2 million in fees charged to clients and proceedings will be taken to confiscate as much of this as can be traced.

In passing sentence, Judge Byers remarked:

"It is often said that this type of crime is a victimless crime but those who indulge in this type of dishonest activity steal from every citizen in the UK. Those who were persuaded to use the scheme paid fees and many now face liability to Income Tax on the sums transferred."

The tax loss as a result of this scheme is £5.5 million.

Anybody who is tempted to use a scheme that offers savings and access that seem too good to be true should be very cautious. Any adviser should be especially cautious before recommending such a scheme to his clients.

Inland Revenue Investigator Peter James commented:

"The Inland Revenue will continue to seek to prosecute those who promote dishonest schemes for the evasion of tax. This may result in a custodial sentence. We will also seek repayment of the tax loss. The sentencing reflects the seriousness of the offence."

There are specific rules in Income Tax legislation charging to tax monies obtained from pension funds other than as approved benefits (broadly those that may be taken on retirement).

In his summing up, the Judge gave special praise to the investigating officer for his encyclopaedic knowledge of the case and the clarity of his presentation.

The Inland Revenue Audit and Pension Schemes Services Helpline - 0115 974 1600 is available to deal with enquiries and concerns about proposals to access pension funds.

Individuals contribute to an Occupational Pension Scheme whilst in employment, additional contributions are made by the Inland Revenue. The fund is held and invested by the fund holder with a view to providing benefits after retirement

(depending on the rules ICTA 591 onwards). In certain circumstances (usually after age 55) a 'draw down' of a proportion of the fund can be taken. Under no circumstances can the whole of the fund be made available to the employee-punitive tax charges will apply.

Freedom of financial investment means that the taxpayer can elect to move his accumulated fund between Pension Schemes Office approved companies.

OPRA is the independent UK regulator of work-based pension schemes. Established on 1 April 1996 by the Pensions Act 1995, OPRA became operational on 6 April 1997. Its primary role is to look into breaches of the Pensions Act 1995 and related legislation. OPRA has the power to investigate pension schemes considered to be at risk. It also has the power to work together with other regulators and government departments such as the Inland Revenue, in providing information where that information would enable the regulator to carry out its duties.

OPRA's leaflet '**Don't risk Losing your Pension**' highlights the risks of pension liberation schemes to trustee and scheme members and is available on www.opra.gov.uk or ordered from the OPRA helpline - 01273 627600.

John Fidler & Marie Till

A former Inland Revenue employee who is currently serving a 4 year jail sentence for his part in a repayment fraud was hit with a confiscation order for £154,654.59 at Liverpool Crown Court recently.

42 year old John Fidler from Huyton was jailed at Liverpool Crown Court in February after pleading guilty to the fraud which netted £257,586. There were a number of accomplices including a colleague at the Bootle Merseyview Inland Revenue office, Marie Till.

Following an adjourned confiscation hearing at which the trial Judge HHJ Clifton ordered Fidler to supply documentary evidence, the full hearing took place on 6 April 2004. Having heard Fidler's evidence, HHJ Clifton determined the benefit that Fidler had obtained amounted to £260,154.59. The judge decided that part of the proceeds had been used, for example, to pay school fees, leaving the figure of £154,654.59 as representing Fidler's realisable property. The Confiscation Order was therefore made in that sum.

Failure to pay that confiscation within 12 months will result in a further 2 years prison sentence in addition to the 4 years already being served by Fidler.

HHJ Clifton stated that he believed money or proceeds of the offence is salted away out of reach.

At the first confiscation hearing Marie Till was ordered to pay £2,154.20 and another co-defendant, Christopher Robinson £3,749.32. Default sentences of 35 days and 70 days apply if these sums are not paid.

John Fidler and Marie Till were both employed as Band E1 Revenue Officers at the Bootle Merseyview Tax Office in The Triad, Bootle. Fidler joined the department in 1979, Till in 1988. The fraud which involved the setting up of false computer records and the issuing of repayment cheques, took place over a four year period between November 1997 and October 2001.

The eight outside accomplices were: Christopher Robinson, David Navis, Monica Manning, Robert Culshaw, Lorraine Kelly, Anthony Curran, Ronald Hagen and his son, Stephen Hagen.

Robinson and Monica Manning were both jailed for 9 months, Navis, described by the judge as "not of good character" was jailed for 8 months. Culshaw, Curran and Stephen Hagen were all handed the maximum of 240 hours community punishment and ordered to pay compensation to the Inland Revenue of £1000 each. Lorraine Kelly was given a 50 hour community punishment order and a 2 year rehabilitation order, Ronald Hagen was ordered to do 200 hours community punishment.

The case was investigated by the Inland Revenue Boards Investigation Office, a branch of the Special Compliance Office based in Nottingham. It was brought to trial by the Inland Revenue Solicitors Office.

Inland Revenue Statements of Practice and Extra-Statutory Concessions issued between 1 April 2004 to 31 May 2004

Extra Statutory Concessions

There have been no Extra Statutory Concessions for this period

Statements of Practice

Number	Title	Date of Issue
1/2004	Stamp Duty Land Tax: Disadvantaged Area Relief	20/05/2004

You can get copies of SPs and ESCs by telephoning 020 7438 4266.

CONTENT

The content of Tax Bulletin gives the views of our technical specialists on particular issues. The information published is reported because it may be of interest to tax practitioners. Publication will be six times a year, and include a cumulative index issued on an annual basis.

- You can expect that interpretations of the law contained in the Bulletin will normally be applied in relevant cases, but this is subject to a number of qualifications.
- Particular cases may turn on their own facts, or context, and because every possible situation cannot be covered, there may be circumstances in which the interpretation given here will not apply.
- There may also be circumstances in which the Board would find it necessary to argue for a different interpretation in appeal proceedings.
- The Bulletin does not replace formal Statements of Practice.
- The Board's view of the law may change in the future. Readers will be notified of any changes in future editions.
- All the names referred to in this Bulletin are imaginary and have no relation to real persons, living or dead, except by coincidence

Nothing in this Bulletin affects a taxpayer's right of appeal on any point.

Letters on any article appearing in Tax Bulletin should be sent to the Editor, Mr Shell Makwana, Room G7, New Wing, Somerset House, Strand, London, WC2R 1LB or e-mail Shell.Makwana@ir.gsi.gov.uk. We are sorry though that neither he nor our contributors will normally be able to enter into correspondence about Tax Bulletin or its contents.

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