

working *together*

issue 24

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Withdrawal of Local Office Banking Facilities

In the last issue of Working Together we advised you that the implementation date for removal of local office banking facilities had changed as a consequence of feedback we had received.

Local Offices will retain their existing banking facilities for a month after the 6 February, but no longer. This will allow the new arrangements to settle in. We will continue to ask customers to pay at Post Offices and banks.

Where exceptionally, a customer is unable to pay at a Post Office or bank, we will offer advice about the different payment methods available to them.

There is information about the methods of payment we offer on our website at: www.hmrc.gov.uk/howtopay.

To find your nearest Post Office or check opening hours, please phone the Post Office Helpline on 08457 223344 or use the "Post Office Finder" on their website at www.postoffice.co.uk

2005-06 Tax Returns

From 6 April 2006, the 2005-06 Tax Returns will be available to view on the HM Revenue & Customs website, www.hmrc.gov.uk, via the individuals and employees, Self Assessment link. You can however view the changes in advance by visiting the Practitioners Zone and then the Software Developers quick link. These are draft versions, which are provided for software and substitute form developers to create their products.

The main changes for 2005-06 are

- We have revised the Main and Short Tax Returns and Guidance Notes for Married Couples Allowance, following the introduction of the Civil Partnership Act 2004 and consequential tax legislation changes.

- We have revised the Foreign Pages and Notes for Special Withholding Tax, which came in to effect on 1 July 2005 under the European Union Savings Directive.
- We have revised the guidance at Question 13 of the Main Tax Return Guide for benefits received where your client owned or contributed to the acquisition of property (pre-owned assets).
- We have revised the Self Employment and Partnership Notes and Partnership Tax Return Guide for income received from contracts for professional or other services, (for accounting periods ending on or after 22 June 2005), following the change in the accounting guidance on service contracts. This new guidance, issued by the Accounting Standards Board, is included in Urgent Issues Task Force Abstract 40 (UITF 40).
- We have revised guidance throughout for Alternative Finance Products, to ensure that alternative finance receipts and payments are taxed in the same way and to the same extent as interest.
- We have changed the guidance for partnerships, where trading accounts have not been prepared to an accounting date falling in the Return year.
- We have introduced a standard rate band for trustees who pay tax at the rate applicable to trusts.
- We have added boxes on the Trust and Estate Tax Return and Trust and Estate Capital Gains Tax Pages for trusts with vulnerable beneficiaries.

Pilot of a New Design of the Individual Tax Return

From April 2006, we are carrying out a trial of a new design of the Main Tax Return. Around 10,000 taxpayers, whose affairs are dealt with by West Yorkshire and Craven Area, will be involved. A small number of these taxpayers will be represented, and advisers who deal with West Yorkshire and Craven may find that some clients are sent a new style form, instead of the current 2005-06 Main Return.

Self Assessment Tax Return Guides

Copies of the

- SA1000 - Self Assessment Tax Return Guide (including the Short Tax Return)
- SA1001 - Self Assessment Partnership Tax Return Guide
- SA1002 - Self Assessment Trust and Estate Tax Return Guide

incorporating related forms, notes and helpsheets are produced and issued on an annual basis, as a service to tax advisers and HM Revenue & Customs staff.

For 2005- 06 we will be using the adviser details held on the Self Assessment system for bulk-mailing purposes. We will send one copy of these guides to any adviser with more than 5 clients on the Self Assessment database. If you previously ordered extra copies then we will do our best to send you the correct number. If you have requested "top up" guides, these should be with you **within 28 days of your initial delivery**.

If you need further copies after your supplies have been delivered, please place your order **after 16 May** via e-mail to: www.hmrc.gov.uk/contactus/staustellform.htm

If you cannot e-mail us, you can either

- fax your order to the SA Orderline on 0845 9000 604, or
- telephone the SA Orderline on 0845 9000 404.

When contacting the SA Orderline, you will be asked for your Agent Code number, as we are unable to authorise further copies without it. It can be found on the Clients' Account Information sheets, which are sent to you in June and December each year.

Please tell us how many copies of each of the three guides (Individual, Partnership or Trust) are required and the full address of where they are to be sent.

HM Revenue & Customs Offices do not hold any copies of the SA Tax Return Guides for issue to tax advisers. However, if you find that the name and address details shown on the distribution are incorrect or if there is a duplication, please contact your Local Office and ask them to correct the details held for you.

Penalty Culpability in Aspect Enquiries

We have heard of some agents expressing surprise that we are seeking penalties on additional tax liabilities arising in aspect enquiries into Self Assessment Returns. The legislation does not distinguish between different types of enquiry but in practice we organise our work by using two categories: Full Enquiries covering the whole Return and Aspect enquiries covering one or more aspects of the Return but falling short of the whole Return.

Agents' concerns centre on those Aspect cases in which we seek a penalty because the Return is incorrect and do not allege fraud. For example penalties sought under Section 95 Taxes Management Act 1970 (TMA70) or Para 20 of Sch 18 Finance Act 1998. These penalties arise where the taxpayer delivers a fraudulently or negligently incorrect Return.

Penalties form an integral part of our approach to improving tax compliance. These penalties have been in place for many years and are little different for pre-SA years.

Where additional tax is due and we seek a penalty for a negligently incorrect Return, the maximum penalty is the amount of the tax difference.

The legislation sets out the maximum amount of the penalty but we will usually seek a penalty of less than that, in an amount that is "...correct or appropriate." (TMA70/S100(1)). We do this in line with the Department's policy on abatement of penalties. Each case is considered on its individual merits in order to calculate the appropriate penalty.

We start with the statutory maximum penalty figure. We then reduce that by giving abatements for the degree of disclosure and co-operation from the taxpayer during the enquiry and also by considering the seriousness of the offence, i.e. the amount of the error (size) and the degree of negligence that caused it (gravity).

To enable consistency of approach throughout the country our Enquiry Manual paragraph EM6050 onwards gives guidance to officers on how to compute these abatements. This manual is available to the public on the HMRC Internet site at www.hmrc.gov.uk/manuals/emmanual/index.htm

There has been no change in the Department's policy of seeking penalties for negligence, and in both Aspect and Full enquiries exactly the same principles apply to establishing culpability. We have always considered penalties in cases ranging from serious fraud down to a minor degree of negligence. Equally, where we do not see some negligence by the taxpayer we do not seek penalties.

Negligence includes carelessness or lack of reasonable care and can encompass basic errors in the Return. Even if, an agent is acting we expect a taxpayer to check their Return before they sign it (to the extent of their awareness or ability to understand). If they do not exercise that reasonable care it cannot be said that they can have a reasonable belief that the Return is correct and complete.

The Code of Practice we issue at the start of each Self Assessment enquiry contains reference to penalties that may arise. We continue to educate our staff on issues around culpability and we have created training courses for staff dealing with Aspect enquiries in both Corporation Tax and Income Tax cases. Advice is given by Tax Administration Advice, Stockport on individual cases and improved guidance in the Enquiry Manual, particularly at EM 5140.

Corporation Tax - CT600 (2005)

HM Revenue & Customs have now completed the 2005 changes for the company tax return forms CT600. That is, apart from the Supplementary Pages CT600I which are under review again following the change to the rate of the supplementary charge for ring fence trades announced on 5 December. There will be no other changes to the company tax return forms until autumn 2006. HM Revenue & Customs will announce any necessary further changes after the Chancellor's next Budget statement.

The main company tax return form CT600 now takes account of capital allowances and balancing charges for the renovation of business premises (BPRA) in Enterprise Areas. BPRA will apply once State aid approval has been granted. That approval had not been given at the time this article was prepared for publication. There was to be a news item on the HM Revenue & Customs website when the decision was received.

There is a new box on the main form CT600 for ring fence corporation tax, and Supplementary Pages CT600I will change to take account of the amendment to the Instalment Payments Regulations for ring fence profits. These changes came into force on 13 April 2005 and affect large companies engaged in oil extraction activities, or with oil rights, in the UK or its Continental Shelf.

The contact numbers shown on page 2 of Supplementary Pages CT600E for Charities and Community Amateur Sports Clubs (CASCs) have changed. For help with the calculation of restriction of relief on non-qualifying expenditure, charities can ring 0151 472 6051 or 6062. CASCs who need help with the calculation of restriction of

relief can call 0151 472 6048 or 6062. The general helpline number for both charities and CASCs remains 08453 020203.

The advice on page 1 of Supplementary Pages CT600J covering the disclosure of avoidance schemes has been clarified. You should use a separate form AIU4 if the notifiable arrangements are connected with employment, or a separate form AIU3 for any notifiable arrangements not otherwise notified to HM Revenue & Customs.

As a result of feedback, including that from a local Working Together meeting, HM Revenue & Customs have also updated the CT600 Guide to improve advice on entries for associated companies and tax calculations as well as the changes for capital allowances and instalment payers. In particular, advice has been restored for the associated companies box 39 (and 40/41). This now clarifies that you only need to complete this box if the company claims to be charged at the starting rate or the small companies' rate on any part of its profits, or it is claiming marginal rate relief.

HM Revenue & Customs publish updated company tax return forms on the Internet as soon as they are ready and often before printed copies become available through the Orderline. The current forms to use, including any newly published, are always available from our website.

Penalties and Article 6 of European Convention on Human Rights

King v UK (European Court of Human Rights, Application No 13881/02) confirmed that our penalties for negligence under S95 Taxes Management Act 1970 (TMA70) are subject to Article 6 of the European Convention on Human Rights (ECHR). As a result we now accept that all (direct tax) penalties having a statutory maximum of 100% of the tax difference or tax unpaid are subject to Article 6. We do not however concede that Article 6 applies to any other type of (direct tax) penalties.

Examples of the types of penalties subject to Article 6 are TMA70/S95, TMA70/S93(5) and Finance Act 1998/SCH18/Para 20. In practical terms there should be little difference to enquiries because our guidance and procedures have reflected an approach that is compliant with Article 6 since September 2002 (Enquiry Manual paragraph EM1362 et seq.).

Although the Court confirmed the penalty charged in Mr King's case we were criticised for the delay in making a formal penalty determination. Article 6 guarantees the

taxpayer "...the right to a fair and public hearing within a reasonable time." And on the facts of this case a 9 month time gap between the underlying tax assessments becoming final and the formal penalty determination being issued, was considered to be a breach of Article 6 for which Mr King was awarded part of his costs.

The Court recommended that we should, in appropriate cases seek to have appeals against tax assessments and penalty determinations heard at the same Commissioner's hearing. As a consequence our guidance has been amended so that if it is not possible to settle tax by agreement, and a contentious Commissioners hearing becomes necessary, we would make a penalty determination so that both appeals could then be listed for the same hearing.

And should the taxpayer be dissatisfied with the rate of progress towards finalising matters they will be specifically told when the enquiry is opened (EM1551 and 1554), and reminded when we indicate penalties may be sought (EM1362) of their right to apply to the Commissioners to close the enquiry.

Employer Compliance Reviews are not covered by the Self Assessment rules but we are nonetheless taking the opportunity to amend the Employer Compliance Handbook, where appropriate, to correspond with the above guidance.

Recording Deferment of Class 4 NI Contributions on the SA Return

From 6 April 2003, customers with deferment of Class 4 National Insurance Contributions (NICs) are required to pay Class 4 NICs with their tax at a rate of 1% on all profits above the Lower Profit Limit.

Some customers with deferment have not noted their Return for the relevant tax year. Because deferment has not been noted on the Return, Class 4 NICs have been paid at the full rate of 8% instead of the 1% rate that should have been paid.

Deferment of Class 4 NICs can only be granted by Deferment Services, who will send confirmation details on form CA2703 ("Granted Deferment of Liability for Class 2 and Class 4 National Insurance Contributions"). Deferment Services will assess and collect any **deferred** Class 4 NICs.

Can we remind customers with deferment that they should tick the deferment box on the Return, but **only** when form CA2703 has been received from Deferment Services, and **only** for the tax year to which the form CA2703 refers.

SA Online for Agents - Frequently Asked Questions

How does my client sign the Return and do I have to keep a paper copy?

We recognise that agents have their own processes and mechanisms for dealing with their client's Returns. Agents should make a copy of the Return and ask their client to approve it. As technology is rapidly evolving in this area we have not been prescriptive about the form of the copy return - it could be an electronic or paper copy; or in the form of the client's signature - it could be an electronic or "wet" signature.

My client has approved the Return but made some minor changes. The IRMark number on the Return changed when I updated the details on my software. Do I need to get approval from my client again, before I submit the Return?

The IRMark is a 32-character number that your software produces on completion of a Return that uniquely "fingerprints" the content of the Return. Changing any content of the Return will result in a new unique number being generated. We re-calculate the IRMark on receipt to confirm to you that what you have submitted is what we have received.

Our requirement is that the client has confirmed the Return is correct and complete to the best of their knowledge and belief. It is the agent's decision as to what records they keep to show that the client has approved what was finally submitted.

How can I send additional information such as computations with the Return?

We would recommend you use the "white space" boxes on the Return to provide any additional information. This data is captured automatically on receipt and is immediately available to our staff.

Where the Tax Return guidance asks for documents to be sent in with the Return or the "white space" is not suitable, you can submit the Return online and post the paper documents to the relevant Tax Office separately no later than one month after the Return is filed.

As reported in previous issues of Working Together, we are working with tax software vendors and tax advisers on a service which could support electronic attachments to online Returns. We will keep you informed through Working Together.

How Do I Sign Up?

Please click on the link at: www.hmrc.gov.uk/ebu/ebu1.htm

Large Processing Office Working Together Meetings: Email Window

In Working Together issue 21 we told you that 2 weeks prior to each Large Processing Office (LPO) Working Together meeting an email window would be opened. The email window has now been opened on a permanent basis. This facility provides an opportunity for all agents who have dealings with the LPOs to be involved in the consultation. If you are interested in being involved, please send your issue/comments to us via the email window (link below).

The next LPO Working Together meeting is being held on 22 February. Once finalised, all future dates will be published on the Working Together pages on the HMRC Internet. You can also find more background information on this page:

www.hmrc.gov.uk/workingtogether/news/lpo.htm

Local Working Together - Contact Details

The WT Local Office contact details are published on the WT pages of HMRC Internet at:

www.hmrc.gov.uk/workingtogether/ad_list.htm

We are receiving feedback from an increasing number of local representatives advising that the contact details are being used for non-WT queries. The contact details provided are not for general enquiry purposes but solely for issues relating to WT.

If callers use these numbers for anything other than a WT query the caller will be re-directed to an alternative contact point. Details of how to contact HMRC can be found at:

www.hmrc.gov.uk/menus/contactus.shtml

Agent Authorisations and HMRC Business

Since the creation of HM Revenue & Customs, we have been working to bring our procedures and forms together to give our customers a more joined up service. The 64-8 was the agent authorisation form for ex-Inland Revenue business. Agents acting for clients on VAT matters have usually completed a separate "letter of authority" and sent that to Customs and Excise. The 64-8 form has recently been rebadged along with others as part of an exercise to introduce the HMRC logo. Its wording now indicates that it will cover "any matters within the responsibility of HMRC". Unfortunately the rebadging exercise has overtaken work we had planned to improve form 64-8 and associated procedures. We apologise for any practical difficulties this may have caused. We are urgently working on a redesign of the form that will make the terms of the authorisation clear and also provide agents with a choice of the HMRC services the authorisation is (or is not) intended to cover. Following the merger it is clear that the form 64-8 cannot cover every eventuality – for example there are transactions now within the remit of HMRC that require specific authorisations (e.g. Customs declarations, goods importation, Stamp Duty Land Tax). The redesigned form 64-8 will specify the matters that the authorisation will cover including Corporation Tax, Self Assessment, PAYE for individuals, PAYE for Employers, Tax Credits and probably, VAT. We expect this redesigned form to be available in the next couple of months.

In the meantime we would ask that existing procedures are used in VAT cases where authority to disclose is sought by an agent. We fully appreciate that this is not an entirely satisfactory position but would ask that you bear with us for a short while longer to enable us to work through the practical implications of the changes to form 64-8. We are committed to streamlining the authorisation process and we hope that the form redesign will not only provide a range of options that better suit the needs of HMRC customers but also help speed processing times overall. HMRC staff have been alerted to the potential problems and have been asked to resolve any individual issues in a pragmatic manner. We have recently introduced an online authorisation service for Self Assessment, Corporation Tax and PAYE for Employers which allows agents to set up client authorisations without the need to submit paper 64-8s. This service has been designed in co-operation with agents and the Working Together partners to provide an alternative means of setting up and maintaining client authorisations. There will be more details about this soon.

Receipts for Returns - "Reasonable Evidence"

In December 2005, HMRC confirmed that Enquiry Centres would no longer be able to issue receipts for Self Assessment and company tax returns delivered by hand to local offices, as the Department wishes to concentrate its available resource in an effort to ensure that all returns are logged correctly, when received.

The professional bodies reluctantly accept HMRC's resourcing issues, but in view of the legal deadlines for filing of tax return forms and consequences of delays beyond 31 January SA filing date, taxpayers and agents nevertheless have a need for evidence of delivery. It is also essential, in view of the repercussions arising from the issue of an incorrect penalty notice.

Following feedback from agents, HMRC has accepted that mistakes may still be made, and have therefore issuing guidance to their staff that, in the event of an agent challenging a penalty notice on the basis that the return had in fact been lodged, they should accept any reasonable evidence the agent has that the return was filed on time.

In order to satisfy the requirement for "reasonable evidence" to be held by the agent, the professional bodies recommend the following

- that each batch of returns to be hand delivered to HMRC should be accompanied by a list, date stamped for the relevant date of delivery, and listing the name and UTR of each return in the batch, and
- that each entry on the list should be checked back to the returns by a senior member of staff (for example, a manager), and this individual should sign the list to indicate that this has been done, and
- that in all firms other than sole practitioners, each list should then be checked and countersigned by, for example, a Partner
- that a sole practitioner should mark the items clearly as having been checked, and sign to this effect
- that a copy of the list (signed and dated) should be retained in case of subsequent problems, and
- that a copy of the signed and countersigned list should also be attached to each batch of returns handed in at HMRC Enquiry Centres.

At a recent meeting of the Working Together Steering Group, HMRC confirmed that the “audit trail” generated above will normally be accepted as “reasonable” evidence of delivery. Members should also be aware that Royal Mail offers an online “Track and Trace” facility with its Special and Recorded Delivery services. HMRC recommends that returns should be filed by Internet, as an online acknowledgement will be produced automatically.

VAT Annual Accounting Scheme

From 1 April 2006, the turnover threshold for the Annual Accounting Scheme will rise to £1.35 million pa. The scheme, part of a package of measures aimed at reducing the VAT burden on small businesses, involves the business making just one return per year, paying the tax due in nine equal monthly instalments and one rounding payment when the return is submitted. Businesses using the Annual Accounting Scheme thus make savings on their costs of complying with VAT obligations and can budget for predictable tax payments, both of which businesses tell us they need. We estimate that about 1.1 million VAT registered businesses will be eligible to join the scheme from 1 April.

Further details can be obtained from a new leaflet, to be released soon, or by contacting the National Advice Service on 0845 0109000.

Working Together Publication - New Search Facility

We have introduced a search facility to enable you to find articles more easily in our back issues. You can find this at: <http://www.hmrc.gov.uk/workingtogether/search.htm> This will replace the A-Z list of articles, which we will withdraw in due course.

editorial

Working Together is a partnership between HM Revenue & Customs (HMRC) and CIOT, ICAEW, ACCA, ICAS, ATT and AAT.

Letters on any article appearing in this publication should be sent to the editor, Greig Rattray, Working Together Team, 5S South West Wing, Bush House, London WC2B 4RD or email Greig.Rattray@hmrc.gsi.gov.uk or your professional body.

Back issues of these can be downloaded from our featured area on the HMRC website:

www.hmrc.gov.uk/working-together/publications/index.htm

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contact details

One of the key objectives of Working Together is to improve two-way communication between HMRC and tax advisers. If you have any comments please contact the HMRC Working Together Team, or your Professional Representative (contact details are below). If you are contacting your professional body, please make clear that your comment is about Working Together) or via your local Working Together Group.

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