

A G KELLY LTD - CHARTERED CERTIFIED ACCOUNTANTS

CLIENT BULLETIN

APRIL 2010

THE BUDGET

Last month's Budget contained few announcements that will be important to individual taxpayers or the small business sector. Tax and National Insurance contribution rates for 2010/11 had already been set by earlier Budget and Pre-Budget Reports and were merely confirmed. Furthermore, for anyone earning less than £100,000 a year, they are largely unchanged from 2009/10. It was also confirmed that the main rate of capital gains tax will remain 18 per cent for 2010/11 and the entrepreneurs' rate 10 cent, the only surprise being that the lifetime ceiling on gains qualifying for entrepreneurs' relief was doubled, to £2 million, with effect from 6 April 2010.

Capital allowances for machinery and vehicles

The Budget did however double, to £100,000, the annual ceiling on purchases of machinery and commercial vehicles which qualify for the 100% Annual Investment Allowance. The increased ceiling came into effect from 6 April 2010, or 1 April 2010 for companies. However, it is important to understand how this applies where the trader's or company's accounting year straddles those dates. This is best explained by way of an example:

A company makes up its accounts to 30 September annually. For the six months 1 October 2009 to 31 March 2010, the ceiling on expenditure qualifying for the Annual Investment Allowance remains £50,000. For the whole year 1 October 2009 to 30 September 2010, the maximum qualifying expenditure is calculated as follows:

Six months October 2009 to March 2010: 6/12ths of £50,000	£ 25,000
Six months April to September 2010: 6/12ths of £100,000	<u>£ 50,000</u>
Total	<u>£ 75,000</u>

Finally, suppose that in the six months to March 2010 the company had already spent £30,000 on purchases of machinery and commercial vehicles. In the six months to September 2010, further purchases of up to £45,000 would qualify.

Security for PAYE remittances

With effect from 6 April 2011, HMRC will be able to require employers to provide security against payment of monthly or quarterly PAYE remittances. This will only apply where the employer has a history of late or non-payment and will work in a similar way to the current requirement to provide security for VAT payments. It is likely to require an employer to lodge security, in the form of a cash deposit or a bank guarantee, for the next four months' or two quarters' remittances.

Value Added Tax

There are small increases in the registration and deregistration thresholds – with effect from 1 April 2010, registration is compulsory once annual turnover exceeds £70,000 (previously £68,000) and deregistration is permitted if the trader can show it is reasonable to expect that his turnover for the next twelve months will fall below £68,000 (previously £66,000).

Where a company car driver (including the director of a small private company) has his or her petrol or diesel for private motoring paid for by the company, three tax charges arise. First, there is an income tax benefit-in-kind charge payable by the employee or director – in most cases, the year-on-year increase, from 2009/10 to 2010/11, is more than 10 per cent. Second, there is an additional Class 1A National Insurance contribution payable by the company – this is calculated in the same way as the income tax benefit-in-kind charge, so again the year-on-year increase from 2009/10 to 2010/11 is typically more than 10 per cent. Thirdly, there is also a VAT scale charge payable by the company, which from 1 May 2010 will increase by between 12 and 20 per cent.

The recent increases mean that it is unlikely to be tax-efficient for a company to pay for fuel for private motoring unless the employee or director covers a high private mileage (overall mileage is irrelevant). The alternatives are:

- For the employee or director to pay for all the fuel used in the company car, but then claim a mileage allowance from the company for business journeys.
- For the employee or director to pay for all the fuel used, but then claim a proportion from the company (for example, if total mileage was 5,000 of which 3,000 was for business journeys, he or she would claim 3/5ths of the total expenditure on fuel).
- For the company to continue to pay for the fuel, but for the employee or director to pay a mileage charge to the company for private journeys.
- For the company to continue to pay for the fuel, but for the employee or director to reimburse the proportion of total fuel purchases attributable to private motoring.

For self-employed people, only the VAT scale charge applies, but the tax at stake can still be significant. Overall, the choice will not be easy to make, as the calculations are in fact more complex than the above brief summary might suggest, and one has to take into account not only the best tax outcome, but also the administrative practicalities. Nevertheless, we would recommend all clients running company cars to review their policies with our assistance, if they have not recently done so.

PAYE ADMINISTRATION FOR EMPLOYERS

Two major changes in the PAYE Regulations are about to come into force. Firstly, virtually all employers will be required to file their PAYE end-of-year Returns for 2009/10 and future years online – hitherto, online filing has been a requirement only for firms employing 50 or more people. The very few exceptions cover people with a genuine religious objection to using electronic communications and some (not all) employers of nannies, domestic staff or personal carers.

However, for this year only, there will be no penalty where an employer with five or fewer employees files a traditional paper Return. This means no more than five names on the Form P35, not the maximum number of people employed at any one time.

An employer with between 6 and 49 employees (again, counting every name on the Form P35) will be subject to a fine of £100 if he or she files a paper Return, rather than filing online. Where the employer has 50 or more employees, the fine for failing to file online will be at least £600, rising in stages to £3,000 where he has a thousand or more.

Any such fine will be levied in addition to any penalty due for late filing – the filing date for 2009/10 Returns is Wednesday, 19 May 2010, but in practice a week's grace is allowed. Thereafter the late filing penalty is £100 a month if the employer has no more than 50 employees, £200 a month if he has no more than 100 employees, and so on.

If you are filing online for the first time, it is more important than ever not to leave the job until the last minute, as the registration process includes waiting for HMRC to send you a User ID and Activation PIN by post, which typically takes up to a fortnight.

Please contact us if you need any help organising online filing, or would like us to file on your behalf.

New penalties where PAYE remittances are late

Secondly, there will be a system of penalties where monthly or quarterly PAYE remittances are not made on time. This will apply from the payment due for the month to 5 May 2010, or for the quarter to 5 July 2010. The level of the penalty will depend on the number of times a payment is late in a tax year:

Once only	No penalty
2, 3 or 4 times	1% penalty
5, 6 or 7 times	2% penalty
8, 9 or 10 times	3% penalty
11 times or more	4% penalty

The penalty will be charged not only on PAYE tax but also on:

- Employer's and employees' National Insurance contributions
- Student loan repayments deducted from employees' remuneration
- Tax deducted under the Construction Industry Scheme

The percentage is of the total paid late in the year, excluding the first late payment. So if the remittances for five months were paid late, the penalty would be 2% of the total remittances for the second to the fifth of those months.

Where remittances are made quarterly, there will be only four remittances for the year, and so the penalty will be capped at a maximum of 1%.

An important point to note is that penalty notices will not be issued until the end of the tax year (April or May 2011). HMRC say that they *may* issue a warning letter the first time a payment is made late, but they will not be issuing late payment notifications on a month-by-month basis. A liability may therefore accumulate over the year without being brought to the employer's attention.

However, an employer in temporary financial difficulties who has reached (and keeps to) a 'time to pay' agreement with HMRC's Business Payment Support Service will not be charged penalties on the late payment of any tax, *etc*, included in that agreement. Accordingly, it is important that an employer who foresees difficulties contacts the BPSS before the due date for the next PAYE remittance.

Where any payment is made six months late or more, there will be an additional penalty of 5% of that payment, rising to 10% if payment is a year or more late.

There will be a separate penalty system for Class 1A and Class 1B National Insurance contributions (on benefits-in-kind and PAYE Settlement Agreements respectively) – but note that as the new régime applies only to remuneration for 2010/11 and future years, Class 1A and Class 1B contributions for 2009/10 (due in July and October 2010 respectively) will not be affected. From 2010/11, the penalty will be 5% if payment is more than 30 days late, 10% if it is six months late, and 15% if it is a year late.

Construction Industry Scheme

Tax due under the Construction Industry Scheme is included in the late payment penalty régime outlined above (whether or not the contractor is also an employer). Otherwise, the PAYE changes outlined above do not apply to the CIS.

VALUE ADDED TAX

With effect from 1 April 2010, all traders (except those registered before 1 April 2010, with a turnover below £100,000) are required to file their VAT Returns online and pay their tax by electronic transfer. At the same time, new rules came into force to determine the time at which VAT payments made by cheque are received by HMRC – these apply even to small traders not required, under the new Regulations, to make their payments electronically. Shortly put, until now, a payment made by cheque has been treated as made on the day the cheque was received by HMRC. But in future, it will not be treated as made until cleared funds have been credited to HMRC's account – usually three working days after it is banked, but it may be longer. Thus if a cheque is posted first class on a Thursday and received and banked the following day (Friday), the payment will be treated as made the next Wednesday. If the due date was, say, Monday, the payment would count as late for VAT Default Surcharge purposes.

This newsletter deals with a number of topics which, it is hoped, will be of general interest to clients. However, in the space available it is impossible to mention all the points which may be relevant in individual cases, so please contact us for personal advice on your own affairs.