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News

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P35 guidance

HMRC has issued the following guidance on completion of form P35 for this and previous years:

'Provisional figures: those employers to whom "IR35" applies

'For those employers to whom "IR35" applies, at page 78 of the CWG 2(2009) [see www.lexisurl.com/7zAhV] "Late payments of tax and NICs on deemed payments", we advise that if you are not able to calculate the actual amount of deemed payment for 2008/09, you may submit provisional figures on the P35 to be submitted by 19 May 2009, subject to certain criteria. One of the criteria in CWG2 was that you must make clear in a covering letter that the figures on the P35 are provisional.

'HM Revenue & Customs (HMRC) has now dropped the requirement to notify HMRC separately if the figures are provisional. Where part two of Question 6 on the P35 is answered "yes", HMRC will write to the employer later in the year reminding them that if their P35 figures were provisional, they must submit an amended P35 and make a balancing payment by 31 January following the relevant 19 May.

'Where HMRC does not receive an amended P35 and balancing payment by 31 January following the relevant 19 May, the original P35 submitted will be considered to reflect figures which the employer declares to be final and correct.

'Some employers have received letters from HMRC relating to the 2007/08 P35 reminding them of the need to send amended final details where provisional figures had been submitted. Unfortunately the trigger for these letters was a "yes" answer to part 2 of Question 6 rather than HMRC identifying those employers who had sent HMRC letters stating that the P35 included provisional figures. If recipients of the letters had originally included provisional figures on the P35 in accordance with the guidance in the CWG2, the assumption is that they will have submitted amended details by 31 January 2009. Recipients of letters who did not include provisional figures on their P35 should ignore the letter. HMRC confirms that answering "yes" to Part 2, Question 6 did not, and does not, indicate that figures on the P35 are provisional. HMRC apologises for the confusion and inconvenience caused.

'Meaning of "service company" in Question 6

> 'Guidance on how to answer Question 6 is in Employer Helpbook E10 (2009) [see www.lexisurl.com/NeEcq] in the section headed "Part 3 Checklist". Note that the answer to the first part of the Question 6 depends on whether the employer comes within the definition of "service company" in the E10 and whether the IR35 or managed service company legislation applies, or even whether or not the employer is a company. The two parts of Question 6 are not mutually inclusive so HMRC accept that it will be quite common for the first part to be answered "yes" and the second part "no".
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> 'HMRC accepts that direct reference at Question 6 on the P35 to the E10, which contains the explanation of how the question should be answered, would have caused less confusion. This will be addressed next year.'

Debt management

HMRC says that as part of its work 'improving how we manage debt collection in HMRC we are running a pilot to test the benefits and impact of working with private sector debt collection agencies. Many organisations, including other government departments, use debt collection agencies successfully to help them with debt recovery.

> 'The agencies will take some debts across a range of taxes covering both businesses and individuals. The agencies will be involved in "resolution work" only, and will not do any home or face to face visits or litigation work as part of the pilot. Before we transfer any debt to the agency we will send a letter to the debtor (your client) explaining what is about to happen and giving them a further opportunity to pay or reach an agreement with us. The security of customer data will be paramount for the pilot.
>
> 'The pilot will run for six months and be subject to a full evaluation and we would welcome your feedback and views on how it is working. To provide feedback or for more information please contact Anne Hassall by email [link at www.lexisurl.com/onvx8].'

Mexico

A Protocol (see www.lexisurl.com/Wo6ny) to the double tax treaty between the UK and Mexico was signed in Mexico City on 23 April 2009. The Protocol updates the Exchange of Information Article of the Convention to bring it into line with current OECD standards and practice. The Protocol also includes an Assistance in Collection Article to reflect the modern OECD approach and the UK's commitment as a signatory to the joint Council of Europe/OECD multilateral Convention on Mutual Administrative Assistance in Tax Matters.

There are also provisions relating to the taxation of dividends paid by property investment vehicles and to ensure that the new Mexican business tax is covered by the Convention.

The Protocol will enter into force once both countries have completed their legislative procedures. It will have effect for the exchange of information and the assistance in collection of taxes from the date of entry into force. It will have effect for the new Mexican business tax from 1 January 2008.

Vehicle Scrappage Scheme

HMRC Brief 31/09, issued on 14 May (see www.lexisurl.com/KJeSU) details the tax implications of the Vehicle Scrappage Scheme. It is understood that this Brief was considered ambiguous in part but that stakeholders have now agreed a path forward with HMRC.

Loan relationships

HMRC has published guidance (see www.lexisurl.com/1bTA8) on legislation in Finance Bill 2009 on late payments of interest between connected companies.

Land remediation relief

HMRC Brief 29/09, issued on 13 May (see www.lexisurl.com/bfCtu) announces the publication of draft guidance (see www.lexisurl.com/UcXDH) on the revised land remediation relief.

VAT increase called for

Professor Clemens Fuest, Professor of Business Taxation at Saïd Business School at the University of Oxford, has called upon the Government to introduce a 20% rate of VAT as a matter of urgency, for short-term economic recovery and medium-term growth. Increasing VAT to 20% would bring in an additional £12.5 billion annually compared to the 17.5 rate and as such reduce the budget deficit. Professor Fuest argues that the fiscal strategy announced in this year's budget lacks credibility, and that the revenue raised by the income tax increases is not only negligible alongside the annual budget deficit, but could damage growth. Supported by OECD findings, he describes how a VAT increase would be less harmful for economic growth than increases in income tax, National Insurance contributions or corporation tax. Professor Fuest will expand on this view in a forthcoming article in *The Tax Journal*.

Non-resident trusts

HMRC has issued guidance (see www.lexisurl.com/fxm5z) explaining the changes made by FA 2008, Sch 7, Part 2 to TCGA 1992, s 87 and Sch 4C and the supporting provisions, such as TCGA 1992, s 90.

Fellowship

In a rare accolade, one of the country's leading barristers in fraud and financial crime cases, **Jonathan Fisher QC** (pictured), has been appointed a Fellow of the Chartered Institute of Taxation and afforded the professional qualification of 'Chartered Tax Adviser', making him one of very few Fellows, if not the first, to come from a criminal background. The Institute invited Mr Fisher to apply for fellowship, mindful of the significant role he has played in tax investigation cases during his professional career. In addition to appearing as an advocate in many leading tax fraud cases, Mr Fisher is frequently involved in cases where tax issues arise in the application of the anti-money-laundering regime. Commenting upon his appointment, Mr Fisher says:

> 'I am delighted to accept this honour from the Chartered Institute of Taxation. The Government has become increasingly aggressive in its approach towards tax enforcement and the line between lawful tax avoidance and dishonest tax evasion has become blurred. The tax system must be developed in a manner which is fair to both Government and the taxpayer alike and the Institute plays an important

role in helping to achieve this goal.'

In a 20,000-word thesis written for the Institute, Mr Fisher strongly criticised the Government for using the anti-money-laundering disclosure regime to clamp down on lawful tax avoidance practices when under the terms of the law it is only cases of suspected dishonest tax evasion which need to be reported.

On the move

· KPMG's UK tax practice has made three appointments: Angus Wilson joins as a tax partner in the Infrastructure Tax Group from Babcock and Brown; Darren Mellor-Clark joins as Associate Partner in the Indirect Tax practice from UBS; and Lydia Simpson joins the Tax Legal Services practice as a Senior Manager from Nabarro LLP. Angus was European Head of Tax and acting European CFO at Babcock and Brown. Prior to joining Babcock and Brown in 2005, Angus worked with Big Four tax practices in Sydney, Australia. Darren has a particular specialism in the financial services arena. He was the Global Lead for VAT and Sales Taxes at UBS. Lydia's primary specialism is property-based taxation but she also has considerable general corporate tax experience and advises on a wide range of direct and indirect tax issues. She also has extensive experience in tax investigations and tax disputes.
· Grant Thornton UK has promoted Francesca Lagerberg (pictured) to Head of Tax. She will combine overall responsibility for driving the development of the firm's tax practice with her existing technical role as Head of the National Tax Office. Francesca will work closely with senior tax partners Phil Barrett, Eric Williams and John Loebl in the creation of the firm's strategic vision for the tax practice, which represents around a quarter of Grant Thornton revenue. She is a past Chairman of the Tax Faculty of the Institute of Chartered Accountants in England and Wales and currently chairs its Technical Committee, as well as sitting on the Council of the Chartered Institute of Taxation. She takes over from Rob Withecombe, who will leave the firm at the end of June to join Barclays Wealth.
· View current tax vacancies at www.taxation-jobs.co.uk.

Courses and conferences

· *The Tax Journal* Annual Conference 'The Future of UK Tax: Tax policy and practice in the changing economic climate', 24 June, £699 + VAT, venue London. LexisNexis (tel: 020 7347 3574) or contact the Editor at Alison.lovejoy@lexisnexis.co.uk.
· 'Comprehensive introduction to corporation tax, parts 1 to 3', 27 to 29 May, £520 + VAT per day, venue London. Quorum Training (tel: 0121 362 7690).
· 'VAT and overseas trade', 2 June, £649 + VAT (subject to discounts for multiple bookings at Croner courses), venue London. Croner (tel: 0845 082 1170).
· 'Developing a professional and profitable practice', 3 June, venue Birmingham. Federation of Tax Advisers (tel: 0113 274 8237).
· 'Taxation and corporate restructuring for companies in financial difficulties', 4 June, £399 + VAT, venue London. LexisNexis.
· 'Tax avoidance', 8 June, venue London. Oxford University Centre for Business Taxation (register at www.lexisurl.com/NmFJZ)