

Brooks & Co

Chartered Accountants - Registered Auditors

Mid-Day Court
20-24 Brighton Road
Sutton Surrey SM2 5BN
Tel: 020 8642 8681
Fax: 020 8643 8640

Hampton House
High Street East Grinstead
W. Sussex RH19 3AW
Tel: 01342 317789
Fax: 01342 317087

www.brooksand.co.uk

Newsletter

Tabloid Trust

Welcome to our Autumn 2006 newsletter. The summer months are traditionally a time when new developments are few and far between but, on this occasion, there has been plenty to keep us busy. We have been learning more about the changes announced in the last Budget, preparing for new legislation about to take effect and taking the chance to review some old topics with common pitfalls.

The tabloid press made sensational headlines out of the Budget proposals on trusts and some amendments were perhaps inevitable. We review the latest position.

Other developments covered in this issue include age discrimination, the new form P46, the latest on the key tax case of Jones v Garnett and the hardening attitude of HMRC towards subcontractors in the building industry.

We hope you will find the newsletter useful and interesting and remember that, as always, we will be pleased to hear from you if you need any further advice on any of the topics covered.

Reclassifying Subcontractors: A New Hard Line

HMRC have begun to take a very hard line with the reclassification of subcontractors to employment status. The effects of this can be bad enough for a business but it now appears that HMRC are 'squeezing until the pips squeak'.

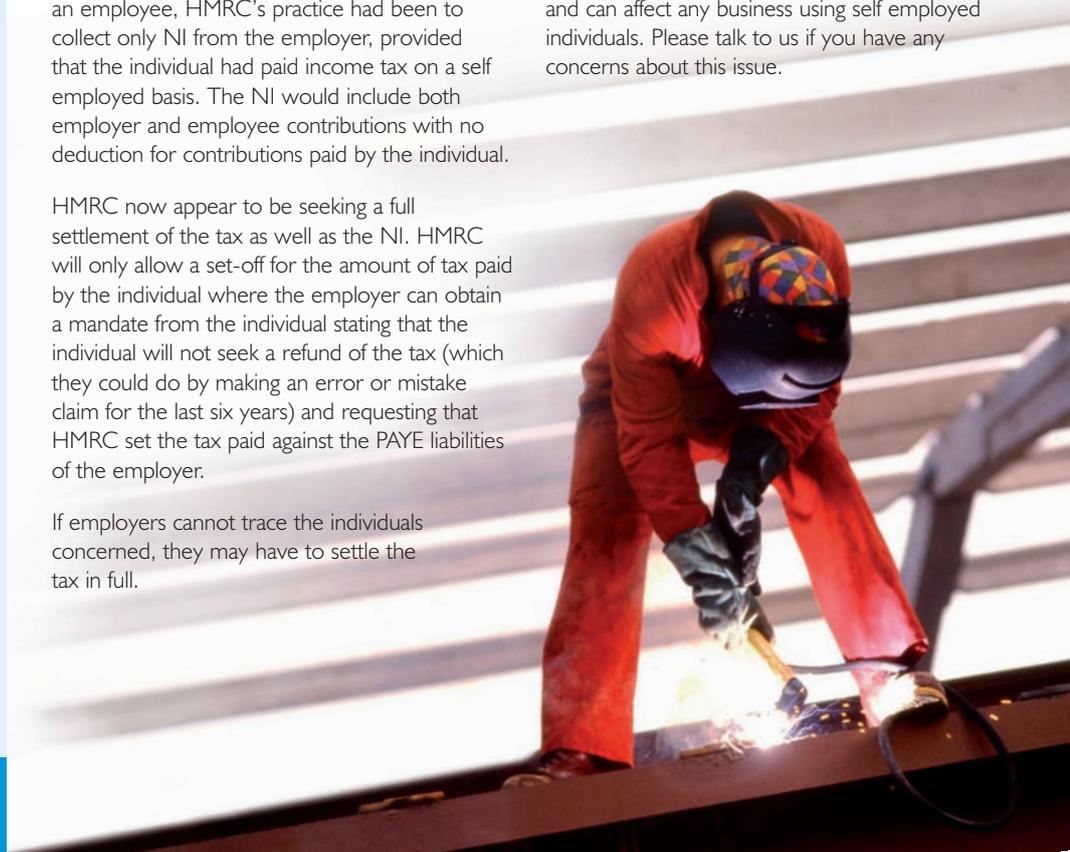
When an individual has been reclassified as an employee, HMRC's practice had been to collect only NI from the employer, provided that the individual had paid income tax on a self employed basis. The NI would include both employer and employee contributions with no deduction for contributions paid by the individual.

HMRC now appear to be seeking a full settlement of the tax as well as the NI. HMRC will only allow a set-off for the amount of tax paid by the individual where the employer can obtain a mandate from the individual stating that the individual will not seek a refund of the tax (which they could do by making an error or mistake claim for the last six years) and requesting that HMRC set the tax paid against the PAYE liabilities of the employer.

If employers cannot trace the individuals concerned, they may have to settle the tax in full.

Also HMRC appears to be pursuing all earlier years although the tax paid by the individual more than six years ago will be set off in the settlement because the individual cannot reclaim this.

The effects of reclassification can be serious and can affect any business using self employed individuals. Please talk to us if you have any concerns about this issue.



Tax Issues of Home Working

More than 3 million people work regularly from home - most being 'teleworkers', those relying on computers, telephone and broadband internet connections. What are the tax issues arising for the employee and the self employed?

Equipment provided by employer

If an employer provides equipment (furniture or computers) or supplies services (a telephone line or internet access), this would normally be a benefit in kind. These are exempt, however, where the only purpose is to enable the employee to work at home and private use is insignificant. Telephone and internet access must be a vital and central part of the employee's duties and the employer must be able to minimise private use.

Expense payments to employee

There is no tax charge where an employer reimburses an employee for any additional household costs incurred whilst working at home, for example for extra light and heat or insurance. Up to £2 a week may be paid without the need to keep records but more than this can be paid if there is evidence to justify the amount.

The homeworker must do some or all of their work at home with the agreement of the employer under a formal arrangement. No relief is given where an employee takes work home in the evenings.

Expense deductions

If an employee incurs expenses, tax relief will not be given unless the duties of the employment require the employee to work at home. Most employees who work at home are doing so by choice and they will not receive tax relief on these expenses.

If a homeworker travels to the employer's office, the cost will not be allowed unless trips are irregular or self contained - for example for a meeting. Business trips to other locations will normally be allowed.

Self employed

An expense is not usually allowable if it is part private, but a claim for "use of home as office" based on a reasonable apportionment of household expenses will normally be given to self employed taxpayers. This can be based on number of rooms or surface area and include costs such as rent, light and heat, insurance, council tax, water rates etc. HMRC expect to see that an identifiable part of the house is set aside for business use.

Two potential pitfalls

In some cases, business use of the main home may cause a capital gain to arise on sale and there may also be cases where business rates are payable. Please contact us for more information if you think you might be affected by these issues.



Age Discrimination

From 1 October 2006 the Employment Equality (Age) Regulations 2006 come into effect. These make direct discrimination, indirect discrimination, harassment and victimisation unlawful on the grounds of age. The following areas are covered by the legislation.

Recruitment and selection

It will only be lawful to specify a particular age where an employer can show it is objectively justified, such as fixing a maximum age for recruitment to reflect training requirements or when there is a genuine occupational requirement such as a young actor for a particular role.

Job adverts must avoid using language which might imply a desire for someone of a particular age, such as 'lively' 'young' or 'mature'.

With regard to recruitment only, the legislation does not apply for over 65s.

Service related benefits

Employers may continue to use length of service criteria to reward staff, but the period of service must not be more than

five years. A simple example would be where an additional day's annual leave is granted for each year of service. If the length of service criteria exceeds five years, it can still be used providing the employer can show that it is fulfilling a business need, for example as a motivator or a reward for loyalty.

Retirement

There will be a national default retirement age of 65, with lower ages having to be objectively justified on a case by case basis.

When an employer wishes to retire an employee of over 65 they will have to notify the employee

between six and twelve months in advance of the intended retirement date and tell the employee of their right to request to work beyond the retirement date. If such a request is made, it must be made by the employee no less than three months before the intended retirement date. All employers must consider such requests, meet to discuss it, and provide a response within a reasonable time frame. Provided the correct procedure is complied with there will be a presumption that a dismissal at or above the age of 65 is a planned retirement and there will be no right to claim unfair dismissal.

An employee aged 65 or over who is dismissed for any reason other than a planned retirement will have the right to bring a claim for unfair dismissal.

Right First Time

When taking on a new employee it is important to operate PAYE correctly; the last thing you want to do is upset a new employee by taking too much tax from their first pay cheque!

If the employee has a P45 from the old employer, all the details needed - their pay and tax deductions so far this tax year as well as their tax code and NI number - are given and things are simple.

However, some employees are unable to provide a P45 and they have to complete a P46. This form is used to determine the tax code to be operated.

The employee has to tick the box which describes their circumstances. This is used to work out the tax code to be operated.

A tick here will entitle the employee to the full personal allowance of £5,035 and a tax code of 503L. This means that they won't pay tax on the first £419 of pay each month (or £97 a week) and will be entitled to extra tax free pay of £419 for each month not worked so far this tax year. So someone starting work in October 2006 would not have to pay tax until their cumulative pay reached £2,514 (6 x £419).

A tick here means that the employee is taxed on each month's pay in isolation. Each month they get the first £419 of pay tax free.

A tick here means that tax will be paid on all pay at the basic rate (BR) of 22%.

A new box has been added to the P46 this year so ex students can advise their employer that they need to repay their student loans by payroll deduction. If this box is ticked then employers should start making the necessary deduction of 9% of their pay above a monthly threshold of £1,250.

Incidentally if you have an old stock of these forms make sure you throw them out and order some new ones.

Now a 'Stealth Tax' for Trusts!

Since Budget day there has been much lobbying of the Chancellor on the changes to trusts and some amendments have been made.

The changes announced were aimed mainly at Accumulation and Maintenance (A&M) trusts and Interest in Possession (IIP) trusts. Lifetime transfers into A&M trusts or IIP trusts have always been exempt from inheritance tax (IHT) if the settlor lived for the next seven years. These trusts have also not been subject to the periodic or exit charges suffered by other trusts.

The new rules will apply the treatment currently applying to discretionary trusts to both A&M and IIP trusts. So, in the future there will be:

- a chargeable transfer on entry with a lifetime rate of up to 20%;
- a periodic charge of up to 6% every ten years; and
- an exit charge when funds leave the trust between periodic charges.

The new rules apply from 22 March 2006 to new trusts and to additions of new assets to existing trusts.

Existing A&M trusts which provide that the assets in trust will go to a beneficiary absolutely at 18 retain the old IHT treatment. However, few trusts provide for this since 18 is widely considered to be too young. Therefore, one of the amendments to the legislation is that if a child becomes absolutely entitled to assets at or before the age of 25, rather than 18, then IHT charges may only arise for the seven years post age 18. If existing trusts modify the terms to provide for absolute entitlement between 18 and 25, the above concessions will also apply.

The old IHT rules for existing IIP trusts will run on until the interest in the trust property at 22 March 2006 comes to an end. Also, the current interest may be changed before 6 April 2008 and the old IHT treatment may be retained.

Trusts for disabled persons and certain trusts created on death for a child or which create a life interest are exceptions to the new rules.

If you created a trust before Budget day or have a Will which creates a trust on death, you may wish to contact us to see if it remains tax efficient or if you need to change the terms.

Arctic Systems

You may be aware of the tax case of Jones v Garnett – without doubt the most extensively reported tax case in recent years having widespread implications for husband and wife companies.

Mr & Mrs Jones each had one share in Arctic Systems. Mr Jones was the sole director and Mrs Jones company secretary and they drew small salaries of £7,000 and £4,000 respectively leaving large profits which were paid in dividends and thus shared half and half. Crucially, however, the revenue earning work was carried out by Mr Jones exclusively.

HMRC argued that Mr Jones had made a gift of income to his wife by arranging their affairs in this way and that this was caught by anti-avoidance legislation dealing

with settlements. If successful, HMRC could treat the dividends received by Mrs Jones as assessable on Mr Jones and consequently tax them at the higher rate of 40% instead of 22%.

The Special Commissioners found for HMRC (on a casting vote) as did the High Court but, on 15 December 2005, the Court of Appeal held that the anti-avoidance legislation on which HMRC sought to rely did not apply to Mr & Mrs Jones.

In March HMRC were granted leave to appeal to the House of Lords against this decision. It will be some months before the appeal is heard and a judgement is expected towards the end of the year. So watch this space!

Useful Tips for Popular Programs

In this new regular section we aim to provide some handy hints and tips on commonly used business programs starting in this issue with two simple, but rarely exploited, Excel features:

Vertical copying

Copying vertically can be performed with a double click, provided there is information in an adjacent column.

The stock database, in the worksheet below, contains over 300 stock records.

The formula in cell F2 (which calculates stock valuation by cost price) needs to be copied down for each stock record.

An adjacent column (E) has a sales price for each stock record, so it meets the rules for using double click.

Point your mouse onto the bottom right hand edge of the cell and you should see a black + (like the example below).

	A	B	C	D	E	F
1	Code	Description	Qty	CP	SP	CP Valuation
2	P1	1m Pipe	450	1.2	1.5	540
3	P2	2m Pipe	320	1.3	1.6	
4	P3	3m Pipe	220	1.4	1.7	
5	P4	4m Pipe	160	1.5	1.8	

Double click and the formula will be copied down until the first blank row in the adjacent column.

	A	B	C	D	E	F
1	Code	Description	Qty	CP	SP	CP Valuation
2	P1	1m Pipe	450	1.2	1.5	540
3	P2	2m Pipe	320	1.3	1.6	416
4	P3	3m Pipe	220	1.4	1.7	308
5	P4	4m Pipe	160	1.5	1.8	240

Concatenation

Concatenation simply means linking.

In the context of Excel, it means that it is possible to link a cell containing a formula with some text. For example if cell M30 contains the value 63459.987 then the formula:

="The balance at the end of the period is " &M30

Gives the result:

The balance at the end of the period is 63459.987

Using the Dollar command as follows:

="The balance at the end of the period is " &dollar(M30,0)

Gives the result:

The balance at the end of the period is £63,459

More text can be continued after the formula by using another &:

="The balance at the end of the period is " &dollar(M30,0)& " which is above budget"

Which looks like this:

The balance at the end of the period is £63,459 which is above budget

Company Cars Don't Have to be Expensive

'...50% of employers currently providing company cars were aware that list price and CO² (or at least pollution or fuel consumption in a more general sense) were the main determinants of tax and NICs liability on company cars.'

That 50% were *unaware* is worrying, but it doesn't mean that a car has to be an expensive perk. The

starting point to calculate the tax bill is the list price of the vehicle and not the price paid. List prices are recorded in popular car magazines. The exhaust emissions of the car are then used to find a percentage (see table), which is applied to the list price. This will give the value of the benefit of the car which will then be taxed.

Example

Brian has a company car throughout 2006/07. The car is a petrol car with a list price of £20,000 and has CO² emissions of 212 g/km. The relevant percentage is 29%, so the benefit is £5,800 (£20,000 @ 29%). If Brian is a higher rate taxpayer, his tax bill will be £2,320 (£5,800 @ 40%). The employer will be liable to Class 1A NICs of £742 (£5,800 @ 12.8%).

Company cars 2006/07 and 2007/08			Company cars
CO ² emissions (gm/km) (round down to nearest 5gm/km)	% of car's list price taxed	Fuel benefit (£14,400 x %)	<ul style="list-style-type: none"> For diesel cars add a 3% supplement, but maximum still 35%. This is waived for Euro IV diesels. For 2006/07, no waiver for diesels registered on/after 1 January 2006. Discounts apply to certain environmentally friendly cars. For cars registered before 1.1.98 charge is based on engine size. The list price includes accessories and is subject to an upper limit of £80,000. List price is reduced for capital contributions made by the employee up to £5,000.
up to 140	15	2,160	
145	16	2,304	
150	17	2,448	
155	18	2,592	
160	19	2,736	
165	20	2,880	
170	21	3,024	
175	22	3,168	
180	23	3,312	
185	24	3,456	
190	25	3,600	
195	26	3,744	
200	27	3,888	
205	28	4,032	
210	29	4,176	
215	30	4,320	
220	31	4,464	
225	32	4,608	
230	33	4,752	
235	34	4,896	
240 and above	35	5,040	

Fuel benefits

- The fuel benefit charge is proportionately reduced if provision of private fuel ceases part way through the year.
- The fuel benefit is reduced to nil only if the employee pays for all private fuel.

A 'dirty' car can be expensive but there are discounts for cleaner cars. If you would like to research emission levels and 'clean' cars, a good starting point is

www.comcar.co.uk

The computation of the benefit can become quite complicated. Please talk to us if you would like to know more about the tax efficient provision of company cars or would like help with calculating the benefits.

Puzzle

Complete the square with the letters of AUDIT so that no row, column or diagonal line contains the same letter more than once.

	D			A
	A			
				U
			I	
	T	?		

What letter must replace the question mark?

"There's nothing wrong with our personal finance software. You just don't have any money."

Solution: A