client briefing

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Bird Simpson

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The Bribery Act comes into effect • The cost of NEST opt-outs • HMRC leaps into action • What goes up must come down • Paying tax up front

This newsletter is for general information only and is not intended to be advice to any specific person. You are recommended to seek competent professional advice before taking or refraining from taking any action on the basis of the contents of this publication. The newsletter represents our understanding of law and HM Revenue & Customs practice as at August 2011.

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The Bribery Act comes into effect

The Bribery Act 2010 came into force on 1 July, and there was immediate speculation that it might be used in relation to the phone hacking scandal.

The Act creates the new offences of offering or receiving a bribe, bribery of foreign public officials, and failing to prevent a bribe being paid on an organisation's behalf. In other words, simply offering or agreeing to accept a bribe is sufficient to be guilty under the Act. This is likely to cause the most problems, because it makes an organisation liable for bribes made by people associated with it, even if the organisation was unaware of their behaviour.

The wide ranging definition of 'associated persons' includes employees, agents, subsidiaries and contractors. To be an offence, the aim of the bribe must be to influence the recipient in their official role to secure a sale or a business advantage.

Fortunately, an organisation will have a defence in law if it can show that it has established 'adequate procedures'. The guidance explains that these procedures need only be proportionate to the organisation's size and nature.

A very small organisation may be able to rely on oral briefings, but larger bodies may need extensive written communications. However, size is not the only determining factor and some smaller organisations may face significant risks.

The Ministry of Justice guidance to the Act makes it clear that reasonable hospitality to meet, network and improve relationships with customers is a normal part of business; it is not the intention of the Act to make corporate hospitality a crime.

What can you do to avoid falling foul of the Act? The first step is a risk assessment across your organisation. The Act applies wherever the bribery takes place, so obviously the risk for an organisation trading solely in the UK is less than if you rely on third party agents to represent your organisation in negotiations with foreign public officials.

Next, consider what changes are required to your policies and procedures. It might mean inserting specific conditions prohibiting bribery in the terms of engagement for associated persons, especially those involved in countries with a reputation for corruption. It should be made clear that any suspicion of bribery must be reported.

Then you should review your organisation's hospitality policies to ensure that there are strict guidelines on the level of hospitality that can be offered and accepted. Staff training is essential. The policies should be regularly monitored and top-level management needs to be involved in both formulation and review.

The guidance also recognises that it will take time to apply new procedures retrospectively to existing associated persons. However, many small and medium-sized organisations may not yet be aware of how the Act affects them. Penalties are severe and include up to ten years' imprisonment and unlimited fines.

Organisations that operate solely within the UK should not have too many problems complying with the Act, but organisations that trade overseas may well find that behaviour that may be considered perfectly acceptable elsewhere has now become criminalised.

The cost of NEST opt outs

The new system of employee pensions, generally called auto-enrolment, will lead to significantly higher payroll costs for many employers, as well as much more administration.

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The new system is being introduced in stages starting in October 2012 for the very largest employers and then gradually in stages over the following four years. Smaller employers with fewer than 50 staff will be gradually brought into the new scheme over a two-year period starting in August 2014. The key aspects of the scheme are as follows.

Employers will automatically have to enrol 'jobholders' with qualifying earnings into either an occupational pension scheme or a personal pension scheme. Virtually all salary and other earnings will qualify for these purposes. The threshold for automatic enrolment will be the income tax personal allowance (currently £7,475). Lower paid jobholders will be able to opt in if they wish.

The total contribution from October 2017 will be a minimum of 8% of qualifying earnings, with lower percentages in the earlier years. The employer contribution will be a minimum of 3% and the employee minimum 4%, with another 1% from tax relief. At 2011/12 values, the earnings band is £5,715 to £43,875 and applies to jobholders aged between 22 and 75.

Employers will be able to choose one or more schemes for auto-enrolment, one of which could be the new National Employment Savings Trust (NEST). This is a large registered defined contribution occupational scheme. It is designed to appeal to employees who do not have access to an employer-sponsored scheme. NEST members will have an annual contribution limit of £4,200.

Jobholders will be able to opt out of their employer's pension scheme, but only after they have been automatically made a member. The administrative cost and hassle of the opt-out process may be substantial for employers.

Employees will have one month to opt out by contacting the scheme. They will then be put back in the position they would have been in if they had not joined the scheme. This may involve refunding any contributions taken after automatic enrolment into the scheme. If they opt out after the month, they may have to be given a preserved pension.

There is automatic re-enrolment of jobholders every three years, so those who had previously opted out would be automatically re-enrolled three years later. The employer will have to bear the cost of the whole process.

HMRC leaps into action

HM Revenue & Customs (HMRC) has been given substantial funding with the aim of raising an additional £7 billion each year – so unsurprisingly it has been very busy with a wide range of initiatives.

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A new approach for HMRC is the use of task forces for an intensive burst of activity targeting specific business sectors and locations where there is a high risk of tax evasion. The first task force focused on the restaurant trade in London, with Scotland and the North West to follow. The most recent task force tackles VAT abuse in London's fast food outlets, with nine further task forces planned for 2011/12.

The latest software makes it very easy for HMRC to compare the tax returns of different businesses, and to identify those that appear not to be doing so well.

HMRC is following up the Plumbers Tax Safe Plan with the VAT initiative, aimed at businesses that are trading above the VAT turnover threshold of £73,000, but are not VAT registered. HMRC is writing to more than 40,000 businesses to make them aware of the initiative. Businesses have until 30 September to notify HMRC of their intention to take part, and VAT registration is then required by 31 December. A penalty of just 10% is likely to be charged on VAT that is paid late.

It has been estimated that last year HMRC investigated more than 9,000 inheritance tax valuations. Many estates are only subject to tax because of the value of the deceased person's home, and it is often a family member who takes on the task of administering the estate. With a 40% tax rate, it can be tempting to value property below its true worth. However, an undervaluation of, say, £25,000 will mean additional tax of £10,000 and a penalty of up to 100%. It is therefore advisable to obtain several valuations and to have property professionally valued.

Finally, in an effort to collect tax as quickly as possible, HMRC has been sending letters to taxpayers informing them that HMRC will be collecting and selling their goods in lieu of outstanding tax. However, in many cases nothing is actually owed or payment plans have been already been agreed. So if you receive such a letter, contact us immediately.

What goes up must come down

Hardly anything ever stays the same in the tax world, and that is particularly true for capital allowances.

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Only last year the annual investment allowance (AIA) limit was increased from £50,000 to £100,000, but next April it will be reduced to just £25,000. Also, the rate of writing down allowance for expenditure not qualifying for the AIA will go down from 20% to 18%. For special rate expenditure, such as features integral to a building, the rate will fall from 10% to 8%. What can you do if your expenditure exceeds £25,000?

- Bring forward planned capital expenditure to benefit from the £100,000 limit. However, be careful if your year end is not 31 March (company) or 5 April (unincorporated business), as the limit will be time apportioned.
- Buy equipment that is 100% energy efficient, as this qualifies for a 100% deduction.
- Maximise the benefit of the £25,000 limit – for example, by spending £25,000 each year rather than £50,000 one year and nothing the next.
- Identify capital expenditure with a life of less than two years. HM Revenue & Customs normally accepts that such expenditure can be deducted in calculating taxable profits. This will often be the case for computer software.
- Identify expenditure that will fall in value and will be sold or scrapped within a few years. Although there is no immediate benefit, you can elect to claim tax relief for the full loss in value over the life of the asset. Most computer equipment will fall into this category, especially now that the cut-off point has been extended from four years to eight.
- Consider leasing assets rather than buying them, as leasing costs can normally be deducted in calculating taxable profits. However, tax is only one consideration when making such a decision.

There are no longer any allowances for industrial buildings. You should therefore identify any integral features included in the cost that qualify as plant and machinery. Examples of qualifying items include heating and ventilation systems, cookers, washing machines, refrigeration and sanitary ware and alarm systems.

However, unless such items fall within your AIA limit, writing down allowances will only be given at the special rate. If you are buying a second-hand building you can make an election to determine how much of the sale price relates to integral features.

Please get in touch if you wish to discuss your capital expenditure plans. The constant changes make it even harder than usual to keep on top of this complex area of tax.

Paying tax up front

The tax authorities are turning the screw yet again on tax avoiders with a range of new measures that could affect a number of taxpayers.

A few taxpayers exploit the cash flow advantage of retaining tax during a dispute with HM Revenue & Customs (HMRC) over liability. These disputes may go on for several years. The return on the money earned in that period may well exceed HMRC's interest rates. The Government is consulting on proposals to remove these cash flow benefits from those who use 'listed' high risk tax avoidance schemes.

HMRC proposes that users of a 'listed' tax avoidance scheme will have to disclose the use to HMRC. If, in due course, it is found that the scheme does not work, an additional charge would be payable on the underpaid tax. This charge would reflect the amount underpaid and the length of the delay, thus removing the cash flow benefit of using the scheme. It could be avoided by paying the tax 'on account' upfront. HMRC would repay if it lost any subsequent litigation.

Another way in which HMRC hopes to collect tax earlier is through the disguised remuneration legislation. The new rules came into force on 6 April 2011. They apply to rewards that are earmarked for employees or made available to them in some other way, by a third party, which is usually an employee benefit trust (EBT) but could be some other vehicle. Tax and national insurance contributions will be charged under PAYE on the money or the benefit for the employee, for example, through a loan.

Many businesses have genuine commercial EBTs and similar arrangements with no tax avoidance intentions. HMRC has now confirmed that generally they should not be affected, although the position can be complicated.

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HMRC is offering firms that have used EBTs and similar arrangements the opportunity to resolve outstanding enquiries without recourse to litigation. It intends to write before the end of August to all employers and companies with open EBT enquiries. If firms do not respond to the opportunity by 31 December, HMRC will deal with enquiries formally. Please contact us for further information.

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50% tax rate on the way out?

The Chancellor and the Business Secretary have recently indicated that the 50% tax rate will only be temporary.

So, if your income currently exceeds the £150,000 threshold, what measures can you take in the interim to avoid paying more tax than is absolutely necessary?

If you are an investor

There are several ways for you to shelter your investment income. For example, the annual investment limit for cash individual savings accounts (ISAs) is quite low at £5,340, but the maximum you can invest in a full ISA this year is £10,680.

Also, NS&I recently reintroduced its five-year fixed-interest savings certificates. The interest rate is only 2.25% (equivalent to 4.5% for a 50% taxpayer), and you could invest in indexed-linked certificates as well. You might also consider postponing investment income by rolling it up within a UK or offshore life assurance bond.

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If you are a director or an employee

Pension contributions will benefit from 50% tax relief; so the cost of adding £10,000 to your pension fund would be just £5,000. This year, the annual maximum amount of pension contributions that qualify for tax relief is £50,000. However, you might also have unused relief from previous years that you could make use of this year.

If you are self-employed

You are also in a position to make pension contributions, but you may also have scope to plan your taxable profits. The 50% tax saving could make it attractive to spend money on new capital investment, such as new IT equipment.

If you run your own company

You are probably in the best position to avoid 50% tax because you can control how you deploy your income between yourself and your company. One straightforward approach could simply be to retain profits in the company, although if you retain too much cash in the company, you might jeopardise your capital gains tax entrepreneurs' relief.

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