

technically speaking

HMRC

Indirect tax returns: correction of errors

In line with the 2007 Pre-Budget Report commitment to deliver tax simplifications and to ease the administrative burden placed on businesses, changes to the correction of errors on indirect tax returns are due to come into place for periods commencing on or after 1 July 2008. The indirect taxes covered are:

- VAT – Value Added Tax
- IPT – Insurance Premium Tax
- APD – Air Passenger Duty
- LFT – Landfill Tax
- CCL – Climate Change Levy
- AGL – Aggregates Levy.

While these changes apply to the indirect taxes listed, most businesses will only be affected by the changes relating to VAT.

VAT returns: correction of errors

Before the changes, only net VAT errors of £2,000 or less could be adjusted in the next VAT return. Correction of errors above this limit had to be notified to HMRC, either by submitting a voluntary disclosure or completing form VAT 652.

The detail relating to the £2,000 limit can be found in Regulation 34(3) of the VAT Regulation 1995 (SI 1995/2518).

As the Finance Bill 2008 has yet to be enacted, no Statutory Instruments are currently available detailing the new threshold.

new threshold

The new voluntary disclosure threshold is set to increase from £2,000 to the greater of £10,000 or 1% of turnover, capped to £50,000 for periods commencing on or after

1 July 2008. This is of significant benefit to businesses as it will reduce some of the administrative costs associated with the correction of VAT errors. To view the budgetary changes, please see HMRC's Budget Notice 75 at www.hmrc.gov.uk/budget2008/bn75.pdf

There will be recourse to submit voluntary disclosures for errors below this new threshold (as was the case before). This may be utilised for more complex VAT issues or to obtain a VAT refund earlier as submission of a voluntary disclosure does not have to wait until the next VAT return.

new penalty regime

HMRC has introduced a new tool on its website to help you understand the new penalty regime. These 'awareness learning' pages can be viewed at www.hmrc.gov.uk/about/new-penalties/NPA/HTML/NPA_menu.html

income tax changes announced

The Chancellor has announced changes to personal income tax allowances. The change will increase the personal allowance threshold by £600 from £5,435 to £6,035 and the basic rate limit will be reduced by £1,200 from £36,000 to £34,800 for the financial year 2008/09.

Though these changes relate to the financial year 2008/09 the changes will not be effective until September 2008, the time the new tax codes and amended tax tables are issued by HMRC. Due to the press coverage this issue has received, it would be advisable to inform those benefiting from the announced changes that they will not be implemented until September 2008.

No corresponding changes have been announced for National Insurance.

HMRC leaflets

HMRC has published the following documents replacing *Reviews of Employers, Contractors' Records (COP3)* and *Employer Compliance Reviews and Negotiations (IR109)*:

- employers and contractors – reviewing your records
www.hmrc.gov.uk/leaflets/ecfs1.pdf
- large employers and contractors – reviewing your records
www.hmrc.gov.uk/leaflets/ecfs2.pdf
- compliance checks – what happens during and at the end of a check
www.hmrc.gov.uk/leaflets/ecfs3.pdf
- compliance checks – types of penalty
www.hmrc.gov.uk/leaflets/ecfs4.pdf
- employers and contractors compliance checks – your obligations
www.hmrc.gov.uk/leaflets/ecfs5.pdf

These are useful if you need to provide an overview to clients.

Form P87

Form P87 (www.hmrc.gov.uk/forms/p87.pdf), that covers tax relief for expenses of employment, has been updated. The form can be used for employment-based expenses incurred by employees including professional body subscriptions as per the following list: www.hmrc.gov.uk/list3/list3.pdf.

ACCA UK's Technical Advisory Service summarises recent points of interest.

SRA

The Solicitors Regulation Authority (SRA) has issued a reminder to solicitors and their advisers on the obligations for the prompt return of surplus client funds and reporting to clients if funds are retained. The Solicitors' Accounts Rules (Residual Client Account Balances) Amendment Rules 2008 can be viewed at www.sra.org.uk and take effect from 14 July 2008.

SRA states: "The lead-in time of three months from the Master of the Rolls' concurrence is intended to give solicitors and their reporting accountants time to make the necessary changes to their systems and procedures."

Reporting accountants will need to amend any work programmes used to reflect the changes. SRA has stated: "The reporting accountant will be required to check the procedural side of the rule 22(2A) requirements – see note (iv) to rule 42, and rule 44. Under rule 29 SAR, the reporting accountant is required to report on any substantial departures from the Guidelines discovered whilst carrying out work in preparation of the report."

ACCA

Technical Briefing Papers – which are effectively summaries of significant developments in technical matters – can be viewed online at www.accaglobal.com/publicinterest/activities/library/financial_reporting/briefings

ACCA would welcome your views on papers, beginning with a discussion paper on the financial reporting of pensions available via the above link.

court report

Court judgements can have a major impact on the work of accountants. Each issue of *In Practice* takes a detailed look at recent judgements.

Marks & Spencer ECJ judgement

■ **The European Court of Justice (ECJ) has backed M&S in its ruling in a landmark VAT refund case. The case focused on the application of domestic law of 'unjust enrichment'.**

This decision follows a long line of litigation challenging the three year cap, headlined in the now infamous ECJ case brought by Marks & Spencer (M&S) in 2002. The previous M&S case covered its claim for overpaid output tax. After this case was won by M&S, HMRC reduced the VAT refund due to M&S by 90%; justified by claiming 'unjust enrichment'.

HMRC can use this line of defence when it can show that someone else other than a claimant bore the burden of VAT. For example, if a claim is made for overpaid output tax, HMRC can show that the VAT cost was passed on to a customer; if HMRC were to repay the claim the claimant would have been unjustly enriched. It is important to note that the onus of proving 'unjust enrichment' is with HMRC.

The case has now been referred back to the House of Lords to provide a response. It is important to note that the ECJ made reference to 26 May 2005, the date before which HMRC is not able to use the line of defence in respect of overpaid output tax claims.

Therefore, if you have a relevant claim currently lodged with HMRC, this case should shed some light on the direction your claim may take. In addition, claims can now be made where previously you decided not to make one due to HMRC's stance.

It is likely that HMRC will issue a *Business Brief* providing advice to businesses wishing to make a claim, though this may be delayed until the House of Lords publishes its response. ■