Volume 34 ■ Part 9 ■ May (1) 2013

Practical TAX Newsletter

Cash Basis accounts

Annette Morley outlines the route ahead.

This article is the promised follow up to my article in TPT 34-07 April(1). Then, the question was 'where are we now?' Since then some extra detail and practical points have emerged, sufficient to show the way forward.

A brief recap of the cash basis headlines sets the scene:

- profits are calculated from receipts and expenses within the period including VAT and cost of plant and machinery, but with no adjustment for creditors, debtors or stock;
- to qualify for its use the total cash basis receipts of the year, for all businesses combined under one ownership, must not exceed the compulsory VAT registration threshold, although this limit increases to twice the VAT threshold for Universal Credit (UC) recipients;
- an election must be made to use the cash basis;
- no sideways loss relief is available;
- simplified expenses, being fixed rate allowances, are available as deductions instead of actual costs for:
  - motoring expenses;
  - business use of home; and
  - private use of business premises.

Note that using simplified expenses is not compulsory and is open to all unincorporated businesses, not just cash basis users.

Where do we look?

The draft legislation is contained in Finance Bill 2013 Sch 4, which will amend Part 2 of ITTOIA 2005. New ITTOIA 2005, s 25A states that an election may be made for the profits of a trade to be calculated on the cash basis instead of in accordance with GAAP. It introduces ITTOIA 2005, Chp 3A which sets out the conditions for its use and its effect.

ITTOIA 2005, s 25A replaces ITTIOA 2005, s 160 which hitherto gave barristers in the early years of practice the opportunity to use a cash basis system. The new cash basis differs from the old cash basis, which has been repealed, although those already using the old cash basis can continue until the end of their qualifying period. Eligible barristers will be able to elect to use the new cash basis instead of GAAP.

ITTOIA 2005, s 31A identifies the persons who qualify to use the cash basis. These conditions are unchanged from those in the earlier draft legislation and hinge on business turnover. The full list of persons excluded whatever the turnover is at ITTOIA 2005, s 31C.

Eligible barristers will be able to elect to use the new cash basis instead of GAAP.

Changes in Finance Bill 2013

There are three important changes to the cash basis compared with the draft legislation published in December 2012:

1. It is intended that businesses electing to use the cash basis will continue to do so either, until the relevant turnover figure is exceeded (twice the VAT threshold in this context, whether UC recipients or not), or, until there is a change

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of circumstances relating to the trade such that it would be more appropriate to use GAAP. There is no elaboration on this latter condition at present. However, it appears not to be compulsory and it must be coupled with an election to make the switch effective. In the December 2012 draft proposals businesses could move into and out of the cash basis as often as they wished, provided the turnover and excluded persons tests were not breached.
2. Cash basis users do not have to use simplified expenses for their cars. Using those fixed deductions is optional in the same way as for the other two fixed rate allowances.
3. The legislation has, according to HMRC's updated tax information and impact note (TIIN), been simplified compared with the original draft. There is indeed one useful amendment; traders who take an item from stock will not now need to account for the profit they have potentially foregone (the *Sharkey v Wernher* principle was previously considered by HMRC to be in point).

How is transition dealt with?

HMRC's stated objective for introducing the cash basis measure is to simplify and clarify the self-assessment of small businesses' tax liability. It is not intended to change the tax liability of the business over its lifetime although, as explained in TPT 34-07, to some extent this is a likely consequence. To minimise the opportunity for divergence, the way to handle transactions on moving into or out of the cash basis, and on cessation of the business, has been prescribed. It relies heavily on the existing legislation detailing 'adjustment income' at ITTOIA 2005 ss 226 – 240. Particularly, ITTOIA 2005, s 231 identifies the steps to be taken. The effect is:

- for a switch between cash basis and GAAP accounts, income is adjusted in a logical way for opening/closing debtors so as to ensure all income is taxed only once;
- expenses are similarly adjusted for opening/closing creditors; and
- stock accounted for as closing stock under GAAP is brought in as a deduction from profits when first entering the cash basis. If a trading business ceases whilst using the cash basis the value of the stock on hand is brought in as a receipt. A profession or vocation would deal similarly with the value of work in progress on cessation.

Where the adjustment results in an addition to income it is spread evenly over the next six years. However, an election can be made under ITTOIA 2005, s 239B to bring forward any amount of that additional income and have it taxed in a year of choice. The remaining adjustment income is then re-calculated so that it is spread evenly over the remaining years. This election can be made as often as required.

CAs and cash basis transition

An additional Chapter 17A has been inserted into ITTOIA 2005 Pt 2, to deal with capital allowance adjustments when a business moves to the cash basis system from GAAP. Plant and machinery (P&M) pools are treated differently from cars. Their treatment is as follows.

This could be a classic trap, as the AIA has provided a 100% write off for the cost of P&M.

The 'unrelieved qualifying expenditure' – effectively the written down value (WDV) of the capital allowance pools – is brought in as an expense in the year of the transition to the cash basis, unless for any reason it would not have been treated as allowable had it represented new purchases in that year. Bear in mind that expenditure on new assets that would normally be deductible under the capital allowances code in GAAP is allowed in full under cash basis (except for cars).

There is an exception to the above. That is where expenditure on P&M that makes up the WDV has not all been paid for. Primarily this means items bought on hire purchase. In those circumstances ITTOIA 2005, s 240D states that the WDV of the items in question must be compared with the amount already paid. If total payments exceed WDV the difference can be brought in as an expense in the first year of cash basis. Alternatively, if WDV is less than payments already made the difference must be treated as an additional receipt. Subsequent payments would then be allowable when made. This could be a classic trap after several years of annual investment allowances have provided a 100% write off for the cost of plant and machinery, coupled with relatively low interest rates having made HP attractive.

There is a comparable clause if a business moving out of the cash basis is in the process of buying P&M on HP. The balance of the total purchase price, which will automatically not have been available as actual expenditure during the cash basis, can be brought in as the start of a capital allowance pool under GAAP. A claim under the annual investment allowance would be permitted.

Where a business has been transferred to the current owner together with a CAA 2001, s 266 claim and he changes to the cash basis, ITTOIA 2005, s 240E is effective. This states that the successor is treated as if he were the predecessor, with any amounts actually paid by the new owner to the previous owner for P&M assets being ignored. Admittedly these would be unusual circumstances, but if they are in point significant research might need to be undertaken to establish the facts.

Interaction between P&M and CGT is provided for. No chargeable gains or losses will be applied to an asset sold whilst on the cash basis. If an item is subsequently sold that was acquired whilst on the cash basis, it will be treated as if capital allowances had been applied.

Cars

Unlike P&M, expenditure on cars cannot be treated as a deductible

expense under the cash basis. Where a business transfers into the system from GAAP and capital allowances have been claimed on a car then, again unlike the treatment for P&M pools, the WDV cannot be brought in as a cost. Instead capital allowances can continue during the cash basis regime.

Where a car has been included within a pool rather than being identified as a single asset, a reasonable value must be assessed and excluded from the P&M pool treatment.

If a car has been subject to capital allowance claims it cannot be included in the fixed rate simplified expenses regime. Similarly, once the costs of car ownership and travel for business purposes have been claimed under the simplified expenses option no capital allowances can be claimed on the car afterwards.

Conclusions

The legislation covers other less common situations and should be checked where these might be relevant. Changes and clarifications could also occur as the Finance Bill 2013 becomes enacted.

Cash basis accounting was introduced in the guise of simplification. This rings somewhat hollow under examination. **TPT**

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David Testa v HMRC

John Newth considers this case in which the taxpayer requested suspension of an income tax penalty.

A draconian system of income tax penalties was introduced by Finance Act 2007. However, one part of the system appears to give taxpayers possible relief. That part is the opportunity for the penalty for a 'careless error' to be suspended.

The Law

FA 2007, Sch 24, para 14(3) gives HMRC discretion to suspend a penalty as follows:

"HMRC may suspend all or part of a penalty only if compliance with a condition of suspension would help the taxpayer to avoid becoming liable for further penalties … for careless inaccuracy". The period of suspension must not exceed two years. In many circumstances the practical application of this provision will cause no conflict, as a careless inaccuracy in a self assessment return can be followed by strict conditions regarding the return for the following two years.

HMRC pronouncements

Suspension of penalties is dealt with in the HMRC Compliance Handbook at paras CH83110-CH83220. In CH83110 HMRC state that suspension of a penalty is a discretionary matter for HMRC and that it is HMRC that sets at least one suspension condition.

Practice and Cases

There is a procedure in FA 2007, Sch 24, para 15 to allow the taxpayer to appeal to the First-tier tax Tribunal when HMRC declines to grant suspension of a 'careless inaccuracy' penalty.

Cases that have been taken to the tribunal include 'one off 'defaults, and in particular errors regarding the receipt of severance payments when an employee leaves a company. In these cases the 'careless error' penalty of 15% of the tax produces a sizeable sum which may well be several thousand pounds.

The period of suspension must not exceed two years.

It has been the view of HMRC that suspension of the penalty cannot be granted in such cases. The reason for this is that each error regarding compensation for loss of office, for instance, is not likely to be repeated in the following two years. In other words, HMRC are stating that conditions must be granted only on a 'like for like' basis.

This view influenced the tribunal to find against the taxpayer in *Fane v HMRC* [2011] UKFTT 210 (TC) and *Hearn v HMRC* [2013] UKFTT 782 (TC). In both of these cases the facts concerned substantial severance payments received by the taxpayer, and which were incorrectly recorded on the self assessment tax return or omitted from the return.

However in *Philip Boughey v HMRC* [2012] UKFTT 398 (TC), which also concerned a careless inaccuracy in the return regarding a severance payment, the appellant's suggestion that conditions imposed should be that his tax returns be prepared by a qualified accountant for the next two years persuaded the tribunal to allow the appeal.

Interestingly, the Tribunal in *Boughey* commented that there was nothing in the legislation that requires any condition to be 'specific to the careless inaccuracy' and since HMRC had explicitly based their refusal to grant relief on the fact that 'they could not see that a specific condition can be set to enable the taxpayer to show that he is able to declare a redundancy payment and claim the correct reliefs against such payment' that refusal must be flawed.

The *Testa* case

The facts in *David Testa v HMRC* TCO 2549 [2013] UKFTT 151 (TC) were broadly similar to the facts in *Fane*, *Hearn* and *Boughey*.

Following Mr Testa's termination of employment with a bank he was paid £213,600 of which £100,000 was a payment in lieu of notice and the balance compensation for loss of office. The severance payment was made after he had left the bank and was taxed at 20%, after allowance for the tax-free compensation of £30,000. Previously he had received a separate form P45 on leaving employment in the same tax year.

When completing his 2009/2010 tax return, Mr Testa included the figures shown on the form P45, but not the severance pay and tax deducted from it. When HMRC checked his former employer's records, the matter came to light. The under-declared income tax was £38,866 and Mr Testa ultimately agreed that he had made a careless error on his tax return. HMRC then imposed the minimum 15% penalty, totalling £5,830.

In correspondence with HMRC Mr Testa submitted several times that the penalty should be suspended. He stressed that he had already retained a tax adviser, which would meet a condition of suspension over the next few years.

However HMRC refused to accept the submission, and when the penalty assessment was issued it stated "suspension of the penalty is not appropriate as the error was 'one off' and conditions cannot be set".

The Tribunal's Determinations

The appeal was heard by Judge Kevin Poole and Carol Debell. They first considered the law in FA 2007, Sch 24, paras 14 & 15. The representative for HMRC based her case on the decisions in *Fane* & *Hearn*. On the other hand the representative for Mr Testa drew attention to the decision in *Boughey*.

The tribunal drew attention to the apparent underlying purpose of the legislation. This was not simply to allow the taxpayer the opportunity of a 'last chance' if he or she mends his or her ways (akin to a suspended sentence in the criminal sphere) but also to allow the last opportunity for the taxpayer to take some specific action which is specifically designed to improve compliance.

In the current case the appellant had suggested the imposition of a suspension condition to the effect that his self assessment returns for the next two years should be submitted on Mr Testa's behalf by an appropriate professional adviser. Mr Testa said, quite rightly in the view of the tribunal, that compliance with such a condition would help him to avoid becoming liable to further 'careless inaccuracy' penalties in relation to his self assessment returns.

Mr Testa's suggestion should have been considered by HMRC on its merits in accordance with the terms of the legislation by reference to whether or not it would help Mr Testa to avoid careless inaccuracies in his self assessment returns; it should not have been ignored or discarded as a result of a HMRC policy which says that 'there can be no suspension of penalties for one off errors'.

However, HMRC treated Mr Testa's suggestions in precisely that way. The department gave no indication as to why they considered that it did not meet the requirements of the legislation, beyond the blanket statement that 'one offs' were not appropriate for the suspension scheme. There was also no evidence that they gave any proper consideration to the suggestions actually made by Mr Testa.

Accordingly the tribunal found that HMRC had acted in a way which was flawed for the purpose of FA 2007 Sch 24 para 17(6) . Under FA 2007, Sch 24 para 17(4)(a) the tribunal is empowered to order HMRC to suspend the penalty, and the appeal was therefore allowed.

The Tribunal has no powers to order the conditions of the suspension, but for the avoidance of doubt 'suitably qualified' individuals for the purposes of the relevant conditions would include at least the holders of ACA, ACCA and CTA qualifications.

Commentary

Robert Maas, in a recent article in the ICAEW TAXline magazine, stressed that if HMRC does not offer to suspend a 'careless error' penalty, they can be asked to do so. Robert also stressed that FA 2007, Sch 24, para 14(3) is a clearly aimed at a solution for avoiding future penalties for inaccuracy. There is nothing in the sub-section that either ties future improvements to past inaccuracies or that allows conditions to be imposed that are aimed at 'ensuring general compliance'. There does not appear to be any statutory authority, therefore, for the current statement by HMRC in the Compliance Handbook at CH83152.

As regards the current and other cases, the remarks of the judge in *Boughey* are relevant, as follows:

"It is clear that the decision maker proceeded on the erroneous legal basis that any condition of suspension must be designed to ensure that, in the future, the appellant correctly declared the receipt of any redundancy payment. That was far too narrow a view that disclosed a highly material error of law." In other words HMRC cannot dismiss a suspension claim out of hand on the basis that it stemmed from a one off careless error that is unlikely to be repeated.

As Andrew Gotch stated in his article in TPT 32.15 July 2011:

> *"Advisers should invariably argue strongly for suspension on every occasion on which a penalty for a careless error is charged, and should proactively formulate and advance suitable conditions that would help the client avoid such errors in the future".*

Finally, on their part, HMRC need to:

- consider each case on its merits;
- ensure that general policies are consistent with statutory provisions; and
- have proper regard to positive suggestions for avoiding future errors.

TPT

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newsfile

Finance Bill 2013

A committee of the whole House of Commons passed the following clauses and schedules of the Finance Bill on 17 and 18 April 2013 without amendment.

- clause 1& 3: income tax charge and basic rate limit;
- clause 16 & Sch 3: limit on income tax reliefs;
- clause 183 & 184:air passenger duty;
- clause 200 to 202:bank levy; and
- clause 203 to 212 & Sch 41: general anti-abuse rule.

The remainder of the Bill will now go to a Public Bill Committee.

GAAR guidance

The interim GAAR advisory panel has approved guidance for the operation of the general anti-abuse rule (GAAR). It includes over 36 examples in six broad categories:

- straightforward legislative choices;
- long established practice;
- situations where the law sets boundaries;
- standard tax planning with some artificial elements;
- transactions demonstrably contrary to the sprite of the law; and
- contrived or abnormal arrangements that produce a tax result not consistent with the legal effect and economic substance of the underlying transaction.

Charities online

The charities online service was launched by HMRC on 22 April 2013. This allows charities and community amateur sports clubs to submit claims online for tax refunds arising from gift aid donations. The current paper forms R68(i) will be accepted by HMRC until 30 September 2013.

PA Holdings Ltd

HMRC Commissioners v PA Holdings Ltd [2011] EWCA Civ. 1414 was lost by the taxpayer in November 2011. The case concerned the tax treatment of dividends received from a restricted share scheme. The judges decided that the payments received by the individuals concerned were more properly considered to be earnings rather than dividends based on an analysis of the actual statutory provisions. The company has now decided to withdraw its appeal to the Supreme Court.

The ICAEW Tax Faculty was concerned that the Court of Appeal judgement raised doubts about many common arrangements including the way dividends received by director/ shareholders are to be treated for tax purposes, even in the most straightforward of cases. The Tax Faculty is now calling on HMRC to confirm that the PA Holdings case does not undermine the assurances given by Dawn Primarolo in June 2005 that 'genuine' dividend payments made by owner managers will not be taxed under the 'special benefits' rules in ITEPA 2003 Pt 7, Chp 4.

ADR trial results

The alternative dispute resolution (ADR) trial for small businesses has produced good results. Over two thirds of the applicants accepted into the trial resulted in the dispute being either fully or partially resolved.

The SME trial uses HMRC trained facilitators, who have no connection with the cases they handle or compliance case-workers. The trial feedback shows that taxpayers and agents saw the HMRC facilitators as open-minded and impartial. HMRC is training staff to expand its ADR team, which should be fully up to strength by August 2013. In the meantime applications for the ADR service are welcomed from small businesses and individuals.

ESC A19 review

Under extra statutory concession A19 (ESC A19) HMRC will write off income tax and CGT demanded where it has been slow to use information and tell the taxpayer about an underpayment, and the taxpayer could reasonably have believed their tax was correct. HMRC consulted on changes to ESC A19 which would have made it more difficult for taxpayers to access this concessionary treatment.

The published responses to the consultation show that most respondents were against any the proposed revision to the wording of ESC A19. HMRC has decided not to replace the existing ESC A19, but will focus increasing taxpayer awareness of the concession, and ensure it is applied on a consistent basis.

HMRC has previously refused to accept that forms P14 are 'information' for the purposes of ESC A19. However, the response document indicates that HMRC is considering the implications of accepting that a P14 is information for ESC A19 purposes, but only for 2012/13. From 2013/14 RTI will apply but HMRC will not be amending PAYE codes during the year on receipt of the RTI data during 2013/14, and therefore it will not treat in-year submissions as information within the terms of the ESC A19. HMRC is considering the implications of accepting that the final Full Payment Submission (FPS) of the year as information that affects a taxpayer's code.

Employee shareholder status

The changes required to employment law to bring in the new employee shareholder status are to be enacted by clause 27 of the Growth and Infrastructure Bill. The House of Lords voted clause 27 out of the Bill on 20 March 2013, but on 16 April 2013 the House of Commons reinstated clause 27 in the Bill by 277 to 239 votes. The Bill is now in ping-pong mode; the House of Commons having considered the Lords' amendments on 23 April, and sent the Bill back to the House of Lords. The two Houses have to agree on the same version of the Bill before it can be passed.

Employee shareholder status is due to take effect from 1 September 2013, if all the relevant tax provisions in the Finance Bill 2013 are also passed.

Striped bond schemes

HMRC has highlighted two cases

recently decided in its favour by the First-tier Tribunal:

- *Malcolm Healey v HMRC* [2013] UKFTT 176 TC2591
- *Philip Savva & Ors v HMRC* [2013] UKFTT 211 TC2625

These cases both involved flexi-note bonds which had been stripped of their interest coupons and sold at a discount. The buyers of the bonds would sell them back to the banks at a higher price or redeem then at maturity in an attempt to gain a tax-free return. The tribunal decided that the profit made on the stripped bonds was taxable.

HMRC will now seek full payment of the tax due plus interest from other people who bought similar stripped bonds, who have not already paid the full amount of tax due.

Scottish landfill tax

The Scottish Parliament has introduced a Bill that makes provisions for Scottish Landfill Tax which will tax disposals to landfill in Scotland. The UK government intends that the UK Landfill Tax regime should be disapplied in Scotland with effect from 31 March 2015, a change that will be enacted by treasury order in the UK Parliament.

Pensions

Pension liberation

HMRC has published detailed guidance about the tax costs of accessing pension funds early, also known as 'pension liberation'. It warns that: "unscrupulous firms are using misleading information to promote personal loans or cash incentives and enticing savers to access their pension pots early. Very often they say there is a legal loophole so you don't pay tax. There is no legal loophole."

Pension business update

This newsletter includes articles on:

- single tier pensions;
- change of contracting-out status; and
- issues for pension scheme cessation.

Corporation tax

CT returns online

In the first two years of compulsory use of XBRL to submit corporation tax returns online, the requirements for XBRL tagging have not been changed. However, later in 2013 HMRC will introduce a new detailed profit and loss account taxonomy for XBRL tags.

In the future HMRC will pay more attention to tax returns which appear not to have the expected number of XBRL tags or where tagging is clearly inaccurate. Partial or inaccurate tagging will make it more likely that a return will be selected for detailed risk analysis leading to a compliance check.

Non-UK companies

Where a company which is not resident for tax purposes in the UK acquires a permanent establishment in the UK, it must register for tax in the UK, as it falls within the charge for UK tax. This registration can be made by submitting details to HMRC by fax to the following fax number: 020 7667 2594.

Stamp taxes

SDLT adjustments

Revenue & Customs brief 08/13 sets out policy changes in relation to transfers of a property as a going concern business (TOGC) following the First-tier Tribunal decision in the case: *Robinson Family Ltd v HMRC* [2012] UKFTT 360 TC2046. If a business believes that it has overpaid SDLT on such a TOGC transaction, it may make a claim for overpayment relief. Guidance for claims criteria and exclusions is found in the Stamp Duty Land Tax manual at paras SDLTM52500 and 54000.

Stamp taxes bulletin

This issue numbered 01/2013 includes articles on:

- annual tax on enveloped dwellings (ATED);
- tenancies at will; and
- variable or uncertain rents.

HMRC publications

Agent update

Edition number 35 incorporates working together issues and includes articles on:

- tax simplification for small businesses;
- dishonest conduct by tax agents;
- amendments to the CASC rules;
- processing IHT 100 forms; and
- missing clients from online client lists.

Helpline numbers

The HMRC helplines are being moved from 0845 to 0300 numbers, which should make calls cheaper. The numbers changed so far are:

- online services helpdesk: 0300 200 3600
- billpay plus: 0300 200 3601
- employer helpline: 0300 200 3200
- new employer helpline: 0300 200 3211
- child benefit helpline: 0300 200 3100
- guardian's allowance helpline: 0300 200 3101

For those with hearing or speech impediments the following numbers can be used:

- online Services Helpdesk: 0300 200 3603
- employer Helpline: 0300 200 3212
- child benefit and guardian's allowance: 0300 200 3103.

All the HMRC helpline numbers will be moved to 0300 numbers by September 2013. The old 0845 numbers will continue to work for about 18 months.

Tackling the hidden economy

This HMRC issues briefing sets out a range of measures it uses to identify those who are part of the hidden economy. These measures include targeting local market traders, and comparing property registration data to declared rents. HMRC also work with other government departments such as the UK Border Agency, the Vehicle

and Operator Services Agency, Trading Standards and local authorities.

As part of the move to display all government information in one place, this briefing was published on the Gov.uk website and not on the HMRC website.

Cash basis

Commentary has been added to the Gov.uk website to explain the new cash basis method of accounting and simplified expenses, also known as fixed rate expenses. Both of these methods of reporting can be used by unincorporated businesses from 6 April 2013, they can be used together or independently, but their use is optional. However, there are a range of businesses which cannot use the cash basis, including LLPs and farmers and authors who use averaging of profits.

The HMRC website has links to software which can be used for cash basis reporting and for simplified expenses.

Form P85

This form should be completed by individuals who are leaving the UK to take up residence in another country, in order to claim any tax repayment due from HMRC. Form P85 has been revised to take account of the statutory residence test effective from 6 April 2013.

Toolkits update

The following HMRC toolkits have been updated for the 2012/13 tax year:

- expenses and benefits from employment;
- NICs and statutory payments.

IHT408

If a deceased person's estate is large enough to require an IHT return on form IHT400, the executor or PR also needs to complete form IHT408 to declare the value of any goods given to charity by the beneficiaries but not under the will. This form IHT408 has recently been revised, and now requires evidence of the transfer to a charity to be submitted, such as a receipt. This applies for deaths on and after 6 April 2012.

ISA bulletin

Issue 51 of this bulletin contains articles on:

- possible transfers from a child trust fund account to a junior ISA;
- changes to the ISA regulations; and
- cash deposited in error in junior ISAs.

Tonnage tax

Revenue & Customs brief 06/13 provides guidance on the application of the flagging rules for tonnage tax in 2013.

Climate change agreements

The new climate change agreement scheme runs from 1 April 2013 to 31 March 2023, and entitles facilities to pay a 35% reduced rate of climate change levy in return for meeting targets for improving energy efficiency.

High net worth unit

The high net worth unit in HMRC deals with the tax affairs of individuals who have assets in excess of £20 million. It was established in 2009 and has collected over £665 million in additional tax through tax enquiries since then. In 2011/12 it collected £200 million, and in 2012/13 the unit increased its yield from tax enquiries by 10%. The unit employs 380 staff in eight offices across the country.

RTI guidance

RTI information

The contents the HMRC RTI website is here: www.hmrc.gov.uk/rti/guidelist.pdf. Employers should pay particular attention to the pages headed *What payroll information to report* and *When to report your payroll information*.

The ICAEW Tax Faculty has published a round-up of the RTI rules in TaxLine Tax Practice 30: Real Time Information. This is available free to Tax Faculty members through the ICAEW website. A paper version will be published later, when clarification has been received from HMRC of some RTI issues.

Error messages

Employers who using the HMRC free software: *Basic PAYE tools* to submit RTI returns have been puzzled by the error messages generated by that software. HMRC has published a list of error messages and the action to take to correct the submission: www.lexisurl.com/rtierr

Annual schemes

Employers who only pay employees once a year can call HMRC (0845 366 7816) to register their PAYE scheme as an annual scheme if all of the following conditions are met:

- all employees are paid annually and on the same date;
- the employer is required to pay PAYE to HMRC annually (ignoring Class 1A NIC).

Once this annual registration is actioned by HMRC the employer should not have to submit a nil EPS during the eleven months when employees are not paid. However, the requests for annual schemes are not currently working, so employers will have to submit a nil EPS for every month in which employees are not paid, until the annual scheme registration process is fixed on 17 May 2013.

NINO verification

The employer doesn't need the each worker's NI number in order to submit the RTI (FPS or EPS) report. If the employee arrives without an NI number the other data fields for that worker should be completed. The employer should leave the NI number field bank if no NI number has been provided. The worker should be told to apply for an NI number as soon as possible.

The employer can run an NI number verification check (NVR) under RTI, but this should only be attempted once the employer has joined RTI and has already sent the first FPS. If HMRC finds an incorrect NI number on the FPS the employer will be told automatically. In that case the worker can be asked to check if the NI number they have

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provided is correct. This can be done by using form CA5403.

Forms P45 and P46

The HMRC computer system is rejecting forms P45 and P46s submitted after the start of RTI, even where those forms relate to a period before the employer started using RTI.

Employers with employees that started or left in 2012/13, for whom they have not submitted a P45 or P46 should:

For leavers:

- If possible, enter the leaving date on the employees' 2012/13 form P14.
- If the employer has already submitted the 2012/13 forms P35 and P14s without a leaving date then they need take no further action, do not submit revised P14s.
- The employer should not include the employee on their first Full Payment Submission (FPS) or Employer Alignment Summary (EAS). The employment will be then be automatically ceased at 05/04/2013 following HMRC's processing of the employers first FPS or EAS.

For starters, employers should include details of the new employee in their EAS and/or first FPS and either show a date of starting of 6 April or leave this field blank. However, this may adversely affect the employee's NI record.

Form CIS 132

This construction industry scheme form is used to record the set-off of CIS tax deductions against PAYE and NICs due. It has been revised to reflect changes brought in by RTI.

RTI pilot update

In this update for employers who took part in the 2012/13 RTI pilot, HMRC provides advice for using the Basic PAYE tools to submit an earlier year update (EYU).

Employer bulletin

Issue number 44 of the Employer Bulletin is largely concerned with RTI, but it also contains articles on:

- week 53 payments;
- child maintenance deduction orders;
- employee share schemes; and
- auto-enrolment.

Regulations

Gifts of pre–eminent objects

This scheme provides tax relief for lifetime gifts of pre-eminent objects, and is also known as the cultural gifts scheme. It has finally been given a start date of 1 April 2012 by SI 2013/587.

When an object is accepted under the scheme an individual donor receives 30% of the agreed value as a tax credit to set against their income tax and/or CGT liabilities for up to five years. Corporate donors get a tax credit of 20% of the agreed value of the gifted object, but that credit can only be set against tax liabilities for one year.

National insurance

Voluntary NICs (class 2 and class 3) can be made, subject to certain conditions, within a period of six years from the contribution year to which they relate. Amendments to the primary regulations (SI 2001/ 1004) were made to extend the period of time in which to make voluntary contributions for contributors who will reach pension age on or after 6 April 2017.

As the single tier state pension will now be introduced from 6 April 2016 not April 2017, the extended period for voluntary NICs had to be extended to those who reach state pension age from 6 April 2016. The Social Security (Contributions) (Amendment) Regulations (SI 2013/718) makes this change.

Guardian's allowance

The Guardian's allowance has been uprated from 8 April 2013 by the following regulations: SI 2013/217, SI 2013/746 and SI 2013/716.

International tax

European agreement

The UK government has signed an agreement with France, Germany, Italy and Spain to develop and pilot a multilateral information exchange in a bid to crack down on tax evasion. Under the agreement, a wide range of financial information will be automatically exchanged between the five countries. The scheme is based on an existing model intergovernmental agreement to improve tax compliance developed between the five countries and the US, which was published in July 2012.

Financial transaction tax

HM Treasury has filed a challenge at the Court of Justice of the EU on the authorising decision for a European financial transaction tax (FTT). It is challenging aspects of the proposal linked to the extraterritorial approach, which infringe the rights of non-participating member states (such as the UK) and contravene international tax rules.

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© Reed Elsevier (UK) Limited 2013
ISSN 1475-2352

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