

TAX ADMINISTRATION FOR INDIVIDUALS

Self Assessment

The self assessment system in the United Kingdom requires the tax payer to calculate his own tax liability. The tax payer will generally be sent a self assessment return which must be completed and submitted by 31st January following the year to which it relates. The final due date for payment of the year's income tax falls on that same date. Interim payments on account may be required on 31st January in the tax year and 1st July following it with the balance due by 31st January following the tax year. The tax year is 6th April to 5th April following year.

The self assessment return is in two parts. The first part requires the tax payer to provide all information necessary to calculate tax liability. This will include information relevant to income, capital gains, reliefs and allowances.

Self employed people must include standardised accounts information. Most employees pay their tax liability on PAYE and a self assessment return will often not be required for them. Although partners are dealt with individually, a partnership return will also have to be completed to aid self assessment for the individual partners. This will include details of the partners tax adjusted income and allocation.

In the second part of the return, the tax payer is to calculate his own tax liability. This is required even if the tax due is nil or a repayment is due.

HMRC will calculate the tax liability if the return is submitted by 30th September following the tax year. This is treated as a self assessment. In this situation HMRC does not pass any judgement on the accuracy of the figures but merely calculates liability and offers information to submit it. HMRC usually communicates with a tax payer by issuing a statement of account. This sets out tax charges and interest on payments already made.

Either party may amend the return. HMRC can correct obvious errors and mistakes within 9 months. This is not to imply the return is necessarily accepted as accurate. The tax payer can amend within 12 months.

Under self assessment, the onus is on the tax payer to make the return. If the tax payer did not receive a return, he is still required to notify HMRC if he has income or chargeable gains on which tax is due. He must notify HMRC within 6 months of the end of the year on which liability arises. Notification is not necessary if there is no actual tax liability.

There are penalties for failure to make returns accurately and on time. The initial penalty is £100.00. A daily penalty up to £60.00 can apply. This can be mitigated under certain circumstances. If a failure to return continues for more than 12 months, higher level penalties can apply.

Where a self assessment return is not filed, HMRC may determine the tax due. This is treated as a self assessment. It can only be replaced when an actual self assessment is made. There is no appeal against HMRC determination, which encourages a tax payer to displace it for the actual self assessment.

Tax payers are required to keep and preserve records to make a correct and complete return. This includes all receipts and expenses, goods in purchase, details of records of goods and purchases, receipts and expenses and supporting documentation such as vouchers, receipts etc. Tax payers must keep their records until five years after the filing date.

For non self employed persons tax documents such as P60, P11D and bank statements should be kept. A penalty up to £3,000.00 may be charged if there is a failure to keep records.

Payment

Final payment of liabilities must be paid by 31st January following the end of the tax year for income tax, national insurance and capital gains tax.

If a tax payer had income tax liability in the previous year in excess of the tax deducted at source, payment on account is normally required. This does not apply where the relevant amount in the previous year is less than £500.00 or more than 80% of the tax liability is not by deduction at source. Therefore most employed people will not need to have to make payments on account if 80% of their tax liability is paid through PAYE.

Where payment on account is required the first payment is due on 31st January in the tax year, the second payment on 31st July after the tax year. The remaining balance is settled by 31st January following. Payments on account is only required for income tax and Part 4 (Self Employed National Insurance Contributions). Payments on account are not required for capital gains tax.

The required payments on account are based on the previous year's liabilities. This is the previous years liability less the amount deducted at source such as PAYE, dividend tax credits etc. It is possible to apply to reduce payments on account under certain circumstances.

Interest and Penalties

Interest is due on late paid tax at a specified rate. This was recently reduced to 3.5% but used to be higher. Interest runs from the due date for account to date of payment. Interest is charged on penalties.

In addition to interest, penalties and surcharges also arise. Interest on tax paid is not a penalty and the surcharge acts as the penalty element. Where a balancing payment is not paid when due, a surcharge of 5% of the tax applies. A further 5% applies if the tax is not paid six months later. The surcharge itself is subject to interest. The surcharge can be mitigated by the HMRC where there is reasonable excuse. Insufficiency of funds is not a reasonable excuse.

A claim for relief allowance on repayment must be quantified when it is made. Claims must be made on the self assessment returns.

Where a claim is made in respect of earlier overpayment, it operates firstly as set off against current year liability. Where an assessment is excessive due to an error or mistake a claim can be made within 5 years on this basis.

HMRC has the right to enquire in relation to the sufficiency and accuracy of self assessment returns. They do not need to state a reason for their enquiry and are unlikely to do so. HMRC can demand a tax payer to produce documents, accounts, particulars and request replies to specific information. A tax payer must respond within 30 days of request. HMRC will give notice of the outcome of the enquiry.

Standard enquiries must generally be raised within 12 months of the assessment. Discovery assessment can be raised at a later date to prevent loss of tax to HMRC. The use of discovery assessment is restricted where self assessment has already been made unless there was fraud or negligence.

HMRC will accept full disclosure has been made, if contentious items have been brought to their attention. This may for example be set out in a covering letter or in the tax return itself. Therefore a tax payer who makes full disclosure in self assessment will generally have finality within 12 months of the filing date. The time limit for making a discovery assessment is 5 years. This is extended to 20 years in the case of fraud or negligence.

In addition to interest HMRC can impose a penalty for omitting information for a return or the return includes false information. The maximum penalty is the difference between the amount paid and the amount due. This may be reduced by HMRC depending on co-operation etc.

Appeals

The tax payer has a right of appeal against amendment to his self assessment return, HMRC enquiry or a discovery assessment. Disputes that cannot be settled are referred

to either the General Commissioners or the Special Commissioners. They will hear the appeal and the HMRC and tax payer will present their case. Their findings are conclusive in relation to the facts but disputes and points of law can be appealed to the High Court, the Court of Appeal and ultimately to the House of Lords.

At Commissioner stage, both sides will normally meet their own costs. Special Commissioners can award costs against the party who is deemed to act unreasonably in bringing or persisting with an appeal. The costs of appeal are not allowable for tax purposes.

The General Commissioners are four lay persons, with no special tax qualifications. Their appointments are honorary and part time. All appeals are heard by them automatically unless an election is made for an appeal by the Special Commissioners. This is not available unless the General Commissioners direct that they are satisfied the case should be heard by the Special Commissioners. The General Commissioners can transfer appeals subject to obtaining agreement of the Special Commissioners due, for example, to the complexity or length of time involved.

The Special Commissioners are full time paid officials independent of HMRC. They are usually barristers and advocates of not less than 10 years standing.

This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.