cohen arnold
Chartered Accountants
Registered Auditors

New Burlington House
1075 Finchley Road
Temple Fortune
London NW11 0PU

Tel: 020 8731 0777
Fax: 020 8731 0778
Email: mail@cohenarnold.com
www.cohenarnold.com

Tax Matters

Making Tax Digital: at a glance

HMRC's flagship Making Tax Digital (MTD) programme has seen many stops and starts over the years. Where are we now?

VAT: the initial easement, meaning full digital links did not have to be in place, expired for VAT return periods starting on or after 1 April 2021. Businesses now need to be fully compliant with the new rules. We can provide guidance on what does and doesn't constitute a digital link, in cases of doubt. From April 2022, MTD for VAT applies to all VAT registered businesses, even voluntary registrations.

Corporation tax: mandation is not expected before 2026, with a pilot from 2024.

Income tax self assessment: MTD rules apply from 6 April 2023 for unincorporated businesses and landlords with total business or property income more than £10,000 per year. HMRC had intended to expand its pilot scheme substantially from April 2021, allowing entry to the vast majority of sole traders and landlords. This has not happened. It is now pushed forwards to April 2022, whittling away the two-year period to trial the system. Given the considerable demands of the new rules, which involve filing quarterly summaries of business income and expenses via MTD-compatible software, plus an end of year finalisation, we recommend making an action plan for your business now. Please contact us to discuss what is needed to comply.

Trading loss. Cash flow gain?

Temporary change to the rules on carrying back trade losses was announced in Budget 2021. Unlocking such tax relief could be a considerable cash flow plus for businesses hit by the pandemic.

As you may be aware, the new rules extend the period over which losses can be carried back for relief against profits of earlier years. This becomes three years rather than the usual one year, and the measure applies to both incorporated and unincorporated businesses. For companies, this covers losses arising in accounting periods ending between 1 April 2020 and 31 March 2022. For unincorporated businesses, it affects the tax years 2020/21 and 2021/22.

Updated HMRC guidance, published since the Budget, outlines the claims procedure for companies, and we will be pleased to steer you through the process.

For companies, general points to note are as follows:

- claims for a loss can be made once the extent of the loss has been established
- the claim must be for an amount which is quantified at the time the claim is made
- this is usually done in the corporation tax (CT) return
- claims that are more than the £200,000 de minimis limit will be made in the CT return. Details of the carry back claim will be included in the computations accompanying your accounts and CT return
- we will not need to submit amended returns for earlier periods to which the relief applies: the claim will be treated as constituting an amendment, where relevant
- claims up to the de minimis £200,000 limit can be made as a stand-alone exercise, outside the corporation tax cycle
- claims to the extended loss relief must be made within two years of the end of the accounting period in which the loss being carried back arises.

Where a claim is below the £200,000 limit, this can be made via an online claims facility, where it is possible to supply relevant details immediately after the end of the accounting period in which the loss occurs. HMRC obviously requires supporting information: the claim must be appropriately quantified, and substantiated by evidence such as draft accounts or management accounts to enable HMRC to verify the claim's accuracy.

Now that the Finance Bill has received Royal Assent, HMRC will be starting to accept claims, both for companies and unincorporated businesses. We look forward to working with you to action such a claim where this is appropriate.

Self-employment Income Support Scheme: HMRC and your claim

As the Self-employment Income Support Scheme (SEISS) comes to a close, HMRC will continue to check claims rigorously.

Reviewing claims

It is always preferable to approach HMRC with a disclosure, rather than wait for HMRC to discover potential problems.

As HMRC recognises, genuine mistakes in SEISS claims have been made over the last year. The rules have changed frequently and in the very early stage of roll out, HMRC took a fairly broad brush approach to what it meant for a business to be 'adversely affected'.

We recommend checking back over claims now, so that you can be sure that you have evidence in place to support your claim, and that you are confident that you have met the eligibility criteria under each successive phase of the rules. Particularly important are differences in the rules for SEISS 1 and 2, for which a business had to be adversely affected, and also within a particular timeframe: and SEISS 3, 4 and 5, where requirements are more precisely defined in terms of reduced activity, capacity or demand.

Reviewing your claim before your 2020/21 tax return is submitted is particularly important. SEISS amounts will be entered on the tax return, and submission of the return constitutes your acceptance that the figures are accurate.

Disclaiming grants

In some circumstances, the whole, or part, of a SEISS grant would need to be repaid. This could be, for example, where a claim doesn't fit the criteria for a particular phase of SEISS; where a claimant did not intend to continue trading; or where a business has been incorporated before a SEISS claim was made.

For SEISS 4 and 5, any amendments to the tax returns which HMRC has used to calculate your grant, made on or after 3 March 2021, are now on the list of circumstances that need monitoring. If such an amendment changes SEISS eligibility, resulting in less or no SEISS payment, it's now your responsibility to notify HMRC of this. There is a different route to notify and repay in these circumstances, and we can advise here. Note however that if the amendment means a reduction of £100 or less, HMRC does not need notification: the amount can be ignored.

There are time limits both for alerting HMRC to potential problems and making repayment. Most importantly, HMRC should be notified within 90 days of receiving a grant to which you think you may not be entitled. Once this has been done, HMRC is likely to be open to arranging time to make repayment, and we can guide you on procedure here.

Checking claims is particularly important as HMRC has the power to charge penalties. These can apply when someone fails to notify HMRC that they claimed a grant to which they knew they were not entitled. More rigorous conditions attach from SEISS 4 onwards, including a responsibility to notify HMRC where circumstances change and someone becomes ineligible after making a claim. Penalties should not apply where someone received SEISS not knowing they weren't eligible, if they repay the grant by 31 January 2022, or by 31 January 2023 for SEISS 4 and 5. Where penalties do apply for claiming when not entitled, HMRC may charge a penalty of up to 100% on the SEISS grant overclaimed.

Finally, just as some major employers have voluntarily repaid furlough monies, it's possible at any time to repay voluntarily some or all of a SEISS grant. We can advise on how this can be done.

HMRC will be dealing with claims for SEISS 5 shortly, and we should be pleased to advise in this area, particularly as regards the new requirement to calculate reduction in turnover.

Don't click on the link. Covid-19 scams

Scam texts, emails and phone calls saying they're from HMRC are on the rise. And it can be increasingly difficult to tell the real from the fake.

Scammers know when tax is going to be on people's minds. Self assessment tax return season is always a time to be alert: but the pandemic has given scammers a field day. Emails mimicking HMRC, with invitations to apply for the Self-employment Income Support Scheme (SEISS) grant, and texts offering refunds or funding because of lockdown are among those in circulation. In the case of SEISS, it can be even more confusing, because HMRC has been contacting some claimants to carry out pre-verification checks. But if this is the case, it should notify you by letter in advance.

Sometimes there are basic clues to note. Bad grammar. Spelling mistakes. And HMRC isn't likely to start its emails 'Hello' or end with a chatty 'Thank you for your cooperation'. It won't use WhatsApp or email to tell you about a tax refund.

Tip: Don't click

Most scams invite you to open an attachment or click on a link. Don't. They're likely to take you to a misleading 'phishing' website, to get you to enter personal details that can then be exploited, or expose you to malicious software.

If in any doubt about contact that seems to be from HMRC, please do talk to us. We are always able to point you towards HMRC's 'live' list of issues, where it really is contacting the public.

Employees working from home: new claim needed

During the pandemic, employees required to work from home have been able to claim tax relief for additional costs, if these are not reimbursed by their employer.

Tax relief for the year to 5 April 2022 tax year is also available and you may like to bring this to the attention of relevant members of staff. They should be aware that they must make a new claim for this, even if they claimed tax relief in 2020/21: the old claim does not carry forward. Relief should apply to the whole tax year, regardless of whether staff are brought back to the workplace during the year, so long as they have at some point been required to work at home. Staff who didn't get round to claiming tax relief last year haven't lost their opportunity. HMRC will accept their claim for this period for up to four years.

To recap: employees can claim tax relief on up to £6 per week, or £26 per month, to help with additional costs if they are required to work from home because of Covid-19. Tax relief is based on the rate at which employees pay tax. Someone paying 20% basic rate tax, claiming relief on £6 weekly, would get £1.20 in relief weekly (20% of £6). Higher rate taxpayers would get £2.40 weekly (40% of £6). With devolved taxation, calculations will be slightly different in Scotland. The relief applies to costs like business phone calls and heat and light for the workspace, but not the purchase of office equipment or furniture. Different provisions apply here.

Employees should be directed to HMRC's online portal on gov.uk. HMRC advises that they search 'working from home tax relief' to find it. The portal checks eligibility and accepts an online claim through Government Gateway there and then. Alternatively, if someone usually completes a self assessment tax return, they will be re-routed to claim there. The gov.uk service is easy to use and employees are well recommended to claim themselves, rather than use a commercial repayment service charging commission.

Holiday. Leave. Covid-19

As the economy starts to reopen, how flexible do employers have to be when it comes to time off for staff?

Almost all workers, including zero-hour contracted workers, and people on irregular hours contracts are legally entitled to 5.6 weeks' paid holiday each year. Ideally, this should be taken in the current leave year. Staff should be encouraged to book and take paid holiday, spread throughout the year, if at all possible. But in the pandemic context, there may be unusual factors to take into account, both for you and your workforce. Making up for lost time could be the employer number one priority, where employees may be desperate for a break. Whatever the scenario, it's likely that good communication, plus a degree of flexibility on both sides, will get the best outcome.

Where it's not possible for staff to take all the holiday they are due during the holiday year because of Covid-19, special provisions are in place to allow them to carry some holiday entitlement forwards. Up to four weeks' statutory paid holiday can be carried over into the next two holiday leave years. When calculating how much holiday can be carried over, you need to give workers the opportunity to take any leave that they can't carry forwards before the end of the leave year. Workers who can't take annual leave because they are on maternity leave or sick leave, still have the right to carry their annual leave forwards.

There is no statutory requirement to give staff notice that they can carry holiday forwards if they don't use it. But it would be unlawful to prevent workers taking holiday to which they are entitled, and best practice would suggest telling workers of the need to carry forwards, and how much leave this covers.

If you have staff on furlough, they can take holiday as normal, with your permission. Their holiday pay needs to be based on what they would earn if they were working. If that's higher than their pay while they're furloughed, it falls to you to make up the difference. But you are still able to claim through the furlough scheme for the holiday period. Taking holiday does not break the furlough period.

Can you require staff to take leave? The answer is yes. Employers can require that certain days are taken as holiday, provided that the correct period of notice is given. If, for example, you want staff to take six days off, they must be notified 12 days in advance. Similarly, employers can cancel paid holiday time that has been booked. This must also be done within a particular timeframe. If your employee has booked six days holiday, you must tell them you need to cancel it at least six days before the holiday was due to start.

Finally, what if an employee wants time off in an emergency to look after a dependant? This is another area where there is a right to time off. There isn't a statutory right to pay, and the amount of time provided must be reasonable, given the situation.

Please don't hesitate to contact us for further advice on any of the issues covered here.

Side hustle. Tax?

A pup from a favourite black labradoodle. Speciality cakes on a Facebook page. Perhaps you had space to branch out during lockdown: perhaps you need to advise a family member. What's the position with tax?

Trading?

It can be difficult sometimes to know where a hobby stops and a trade begins. But where there's any question of additional income, it's not always appreciated that HMRC may need to be told. This applies to all sorts of fairly informal arrangements, from making sales online to taking on casual jobs like dog walking, gardening or babysitting: even renting out property or part of the home.

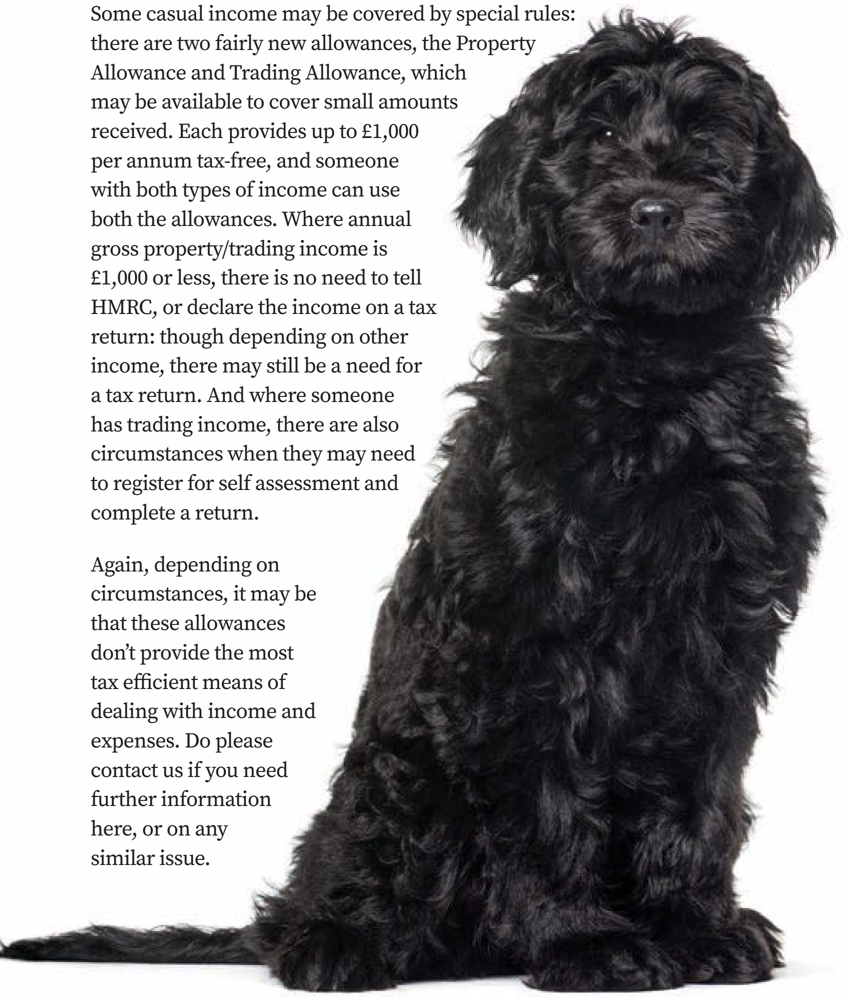
The questions HMRC will have are: has this person effectively set up a business, and does this amount to trading income, or property income? To decide, there are particular signs HMRC looks for. These are sometimes called the 'badges of trade'. They include the intention to make a profit, the number of transactions, and the way sales are carried out.

Notification may be needed for additional income not from someone's usual employer or business. Please do discuss additional income with us when the self assessment tax returns are being prepared. We are happy to advise whether income should be disclosed, and if so, the appropriate timescale for action.

Taxable?

Some casual income may be covered by special rules: there are two fairly new allowances, the Property Allowance and Trading Allowance, which may be available to cover small amounts received. Each provides up to £1,000 per annum tax-free, and someone with both types of income can use both the allowances. Where annual gross property/trading income is £1,000 or less, there is no need to tell HMRC, or declare the income on a tax return: though depending on other income, there may still be a need for a tax return. And where someone has trading income, there are also circumstances when they may need to register for self assessment and complete a return.

Again, depending on circumstances, it may be that these allowances don't provide the most tax efficient means of dealing with income and expenses. Do please contact us if you need further information here, or on any similar issue.



Pensions auto-enrolment: business as usual

Pandemic or no pandemic, employer obligations remain. With the auto-enrolment (AE) compliance cycle still fairly new, what should you be doing now?

Despite Covid-19, AE duties apply as normal, whether your staff are working, whether you've furloughed them, or whether you have staff on placement with government funding as part of the Kickstart scheme. Both you and your staff should continue to make pension contributions. Staff do have the option to reduce the level of contribution in some circumstances: they can also decide to opt out or cease active membership of the scheme, if they decide that is the best course of action for them. But it is critical that as employer, you don't encourage or induce them to do so: this would breach the legal safeguards provided for workers under the regime.

If you're using the furlough or Kickstart scheme, you should run your normal payroll process. Both the contributions you pay, and your staff pension contributions due under your pension scheme are calculated on the total pay. That's regardless of how much government support you are claiming.

If you are a new employer, the pandemic doesn't make any difference to procedure. You should still assess staff and put them in a pension if they are eligible. But you may be able to formally postpone the procedure for up to three months, and we can advise you more fully here. It's only a delay, however: it doesn't cancel your obligations. And it comes with its own admin requirements, so it isn't completely hands-free.

Regular AE housekeeping

The AE regime has its own cycle of responsibilities. This involves regular re-enrolment and re-declaration duties every three years. In outline, certain staff who have left your pension scheme must be put back in it. And you then have to submit a re-declaration of compliance to the Pensions Regulator (TPR), setting out how you have met your duties.

Many smaller employers will be coming up to their first re-enrolment. TPR is likely to write to you with information about this, recommending that you assess your staff for re-enrolment on the third anniversary of your staging date or duties start date. Although there isn't the option to use postponement for re-enrolment, TPR is providing some flexibility on dates if you are struggling to get re-enrolment carried out on your third anniversary because of Covid-19.

Here to help

Getting the figures right for pension contributions and the furlough scheme can be extremely complex. If you would like us to review this for you, please don't hesitate to get in touch.