

# TCP UPDATE

AUTUMN 2011

the newsletter of tcp chartered accountants

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## May the force not be with you

HMRC announced in May that it was to introduce specialist teams referred to as 'task forces' to undertake '...intensive bursts of compliance activity in specific high risk trade sectors and locations across the UK'.

The first task force was to focus on the restaurant trade in London, followed by the restaurant trades in Scotland and the North West. Since then, HMRC have added 'London fast food outlets' as a task force target area and are planning further task forces in both 2011/12 and 2012/13.

Mike Eland, Director General Enforcement and Compliance, said:

'These task forces are a new approach which uses HMRC's resources to identify and tackle rule-breakers and evaders swiftly and effectively.

Only those who choose to break the rules, or deliberately evade the tax they should be paying, will be targeted. Honest businesses have absolutely nothing to worry about.

But the message is clear - if you deliberately seek to evade tax HMRC can and will track you down, and you'll face not only a heavy fine, but possibly a criminal prosecution as well.'

We will obviously keep you informed of developments.

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### To be or not to be... resident

The Government has published a consultation document on its plans for a statutory residence test (SRT). The aim is to enable taxpayers to assess their residence status in a straightforward way. Furthermore, it will enable those who come to the UK on business, as employees or investors, to have a clear view of their tax treatment.

Tax residence has an important bearing on an individual's UK tax liability, especially if they have overseas income or capital gains. At present there is currently no full legal definition of tax residence, which means that the rules are unclear, complicated and seen as subjective. Instead, the definition largely rests on legal cases decided in the courts over a long period of time and is based on a world completely different from today's fast paced global environment. The current uncertainty for individuals about their residence status is seen as a deterrent to businesses and individuals investing in the UK.

The SRT will be based on the amount of time an individual spends in the UK and other connections they have with the UK.

The SRT will:

- determine tax residence for individuals not companies
- apply for the purposes of income tax, capital gains tax and inheritance tax
- not apply for non tax purposes and
- supersede all existing legislation, case law and guidance.

Part A of the test lists various alternative conditions. Where one of the conditions is

met then the individual is to be treated as not resident.

If you do not fall within Part A of the test you would then need to consider Part B or Part C.

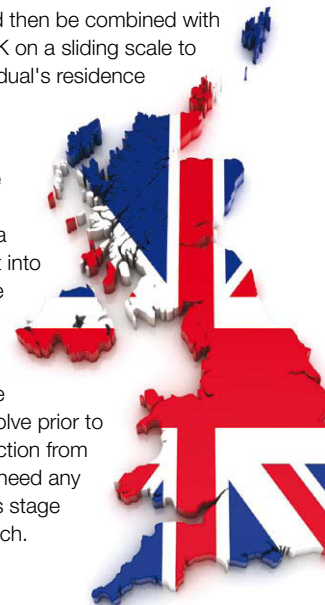
Part B of the test outlines precise circumstances which will determine when an individual is resident for the tax year.

Part C of the test only applies to individuals whose status is not determined by Part A or Part B. A number of factors are considered to be relevant to an individual's resident status but only when linked to the amount of time that person spends in the UK. An example of such a factor would include accessible accommodation in the UK.

These factors would then be combined with days spent in the UK on a sliding scale to determine the individual's residence status.

Finally, changes will also be made to the existing split year treatment whereby a tax year can be split into periods of residence and non residence.

We will keep you abreast of these changes as they evolve prior to the planned introduction from 6 April 2012. If you need any further advice at this stage please do get in touch.



# All change on the CIS express

Penalties for late construction industry scheme (CIS) contractor monthly returns will be changing from October 2011.

The good news is that, in many cases, the new penalties may be lower than the previous position. In particular, for new CIS contractors there will be an upper limit to some of the penalties charged. This upper limit will apply when new contractors first send a monthly return if that return, and any other monthly returns that are sent at the same time, are late.

Although the new penalties do not 'officially' start until October 2011, HMRC has published guidance explaining how the rules may apply early at the taxpayer's request ([www.hmrc.gov.uk/cis/penalties-late-returns.htm](http://www.hmrc.gov.uk/cis/penalties-late-returns.htm)). Any contractor who has been or is charged penalties for filing a monthly return late before October 2011 may ask HMRC to:

- work out how much the penalties would be under the new rules; and
- if this is less than the amount already charged, agree that the penalties should be reduced to the lesser amount.

## Rules up to October 2011

A late submission of a contractor monthly return currently incurs a penalty of £100 for each of up to 12 consecutive months that the return is not submitted by its due date. The due date is the 19th of the month, so for example, the monthly return from 6 July to 5 August is due on 19 August.

After 12 monthly penalties have been charged, if the return is still outstanding, a final penalty in the range of £300 to £3,000 is charged depending on how many other final penalties have been charged over the previous 12 month period.

When the returns are eventually submitted, the initial penalties of £100 are increased where the returns show entries for more than 50 subcontractors.

## New rules from October 2011

The new penalty system starts in October 2011. The first return to attract a penalty is the return due for the month starting 6 October and ending 5 November 2011.

Penalties will be charged as follows:

- Initial failure to meet the due date of the 19th of the month – a penalty of £100.
- Return still outstanding two months after the due date – a further penalty of £200.
- Return still outstanding six months after due date – a 'tax geared' penalty becomes due. This penalty is the greater of 5% of any deductions shown on the outstanding return and £300.
- Return still outstanding 12 months after the due date – a second 'tax geared' penalty becomes due.

## Contractors new to CIS

Under the new rules, if a contractor has not sent any previous returns and is filing the first returns late, there will be an upper limit of £3,000 on the total fixed penalties (£100 and £200) that may accrue.

This upper limit does not apply to any 'tax geared' penalty except that, where it applies, it removes the £300 minimum penalty that would otherwise be charged where the tax geared penalty is less than £300.

# Spotting the winning ticket in the premises lottery

A common tax issue that arises is where a business incurs expenditure on repair work to its business premises. The tax treatment generally allows a 100% tax deduction for genuine repairs as revenue expenditure but if the nature of the expenditure is more of an improvement or alteration, then the situation is not so clear cut. HMRC are likely to argue that the expenditure is capital rather than revenue and deny the tax deduction.

As capital, the expenditure would then only qualify for tax relief if eligible for capital allowances. This primarily means under current tax rules that it must qualify as plant and machinery, as most 'premises' expenditure does not get relief.

A case heard last year at the First Tier Tribunal (FTT) illustrates these very points. The company in question was involved in the manufacture and retailing of curtains and accessories. The business premises were a two storey building which contained a showroom and warehouse on the ground floor together with a workshop, offices and kitchen on the first floor. Extensive work was carried out to the premises and out of total costs of £67,000 a tax deduction of £53,000 was claimed as repairs.

As a result of this extensive work the premises had a larger refurbished showroom and a reduced warehouse facility. The alterations to the premises were designed to accommodate a shift in the business to providing a bespoke curtain/blind making service along with their installation hence reducing the need to hold stocks of material.

HMRC accepted that expenditure on roof repairs and refurbishing the kitchen should be treated as

repairs and allowed a tax deduction. However, they argued the rest represented capital expenditure on alterations and improvements aimed at refurbishing and increasing the size of the showroom and no tax deduction was allowed, except for that part of the cost which was eligible as plant and machinery.

In making its decision the Tribunal looked at the plans and other documentation available and concluded that the work had changed the character of the building as a whole. It was evident that the company had chosen to adapt its premises to its business needs and so they agreed with HMRC that this should be regarded as capital expenditure.

## What is plant anyway?

Another case heard at the FTT concerned a taxpayer who runs a country pub in West Sussex. She purchased a wooden gazebo which was placed in the pub's garden, but not bolted to the ground, to provide cover for customers who smoked.

HMRC argued that capital allowances on the cost of the gazebo were not due as the gazebo was not apparatus with which the business was carried on but premises in which it was conducted.

The Tribunal considered that where a gazebo was simply a fixed roof on pillars where customers could smoke outside the pub, then it would seem more likely that it could be described as part of the premises.

However, in this case, they concluded that the gazebo was not attached in any permanent way in the garden and remained moveable. They described the gazebo instead as 'more like an embellishment of the garden' rather than something which simply performs the function of housing the business, so capital allowances were due.

The moral is, if you are planning to incur repair/improvement expenditure or any capital expenditure in relation to your business, contact us in advance to discuss the likely tax treatment so that the optimum tax position can be planned for in advance.





## When 10% is really 4%...

You may recall in the Budget earlier this year that the Chancellor announced a new relief for Inheritance Tax (IHT) purposes that could reduce your IHT liability by 10%. As always the devil is in the detail and what is actually proposed is a relief that could reduce your IHT liability by 10% from 40% to 36%, in effect a 4% reduction in the main IHT rate.

The proposals broadly mean that for deaths occurring on or after 6 April 2012, estates that include charitable legacies of at least 10% of the net estate will benefit from the reduced 36% rate. There are a number of technical points that determine if the charitable legacies 10% target has been met and we can advise you further on this area if this is of interest to you.

Here is an example of how the proposed new relief is to apply.

Mike has an estate valued at £850,000 upon his death. He was always an active supporter of Cats Protection and in his will he provided a legacy to them of £52,500.

If he died in 2011 the IHT liability would be calculated as follows:

	£
Estate value	850,000
Less charitable legacy	(52,500)
Less available nil rate band	(325,000)
Taxable estate	472,500
IHT due at 40%	£189,000

The amount left for distribution to other beneficiaries, after accounting for the legacy and the IHT, would be £608,500.

If he instead died on or after 6 April 2012 (and the charitable legacy meets the 10% rule) then the estate would qualify for the reduced rate of IHT of 36%. This would result in a reduced liability of £170,100 leaving £627,400 available, after accounting for the legacy and the IHT, for distribution to other beneficiaries.

# Do you know about the new Agency Workers Regulations?

From 1 October 2011, after a certain period of time, workers supplied to a company (or to any entity) by an agency will become entitled to receive the same equivalent pay and basic working conditions as any directly employed employees doing similar work. In many cases, until now, agency workers have received significantly less pay than the entity's employees and have not had any entitlement to a number of other employee benefits.

This new entitlement will begin after a 12 week qualifying period, the 12 weeks commencing from 1 October 2011 for existing agency workers. If the employer wishes to avoid any additional cost and chooses to end the agency worker's contract within 12 weeks, there will need to be a break of more than 6 weeks between assignments with the same employer. The regulations inevitably include comprehensive anti-avoidance provision dealing with issues such as moving the agency worker to a different department to try to avoid the obligation!

From 1 October 2011, agency workers will have an entitlement to access employer supplied facilities such as canteens, car parking, transport services and childcare from the first day they work for the entity, though if there were a waiting

list they would have to wait until the facility became available.

There are also various provisions concerning pregnant workers and new mothers who, for example, would be entitled to attend antenatal medical appointments and classes after completing a 12 week qualifying period.

Where it is likely a temporary worker may benefit from the regulations, the agencies supplying the workers will require the hiring entity to provide information about pay and basic working conditions. The agencies bear the main practical responsibility for ensuring the appropriate comparability is achieved but obviously will pass on all relevant additional costs.

Breaches of the regulations, which could be committed either by the agency or the employer, may be dealt with by Employment Tribunals though the involvement of ACAS is encouraged prior to taking this step.

Comprehensive guidance of 51 pages was published in May 2011 by BIS (Department for Business Innovation & Skills) and is available on their website. The Chartered Institute of Personnel and Development have also published guidance written jointly with the Adecco Group.

## Lowest paid to get a boost

The National Minimum Wage (NMW) is a minimum amount per hour that most workers in the UK are entitled to be paid. The rates are reviewed each year by the Low Pay Commission (LPC) and from 1 October 2011 increase as follows:

- the main rate for workers aged 21 and over will increase to £6.08 (currently £5.93)
- the 18-20 rate will increase to £4.98 (currently £4.92)
- the 16-17 rate for workers above school leaving age but under 18 will increase to £3.68 (currently £3.64)
- the apprentice rate, for apprentices under 19 or 19 or over and in the first year of their apprenticeship will increase to £2.60 (currently £2.50).

Chairman of the LPC David Norgrove said:

*'We welcome the Government's acceptance of our recommendations. The Commission was again unanimous, despite all the economic uncertainties. We believe we have struck the right balance between the needs of low-paid workers and the challenges faced by businesses.'*

Business Secretary Vince Cable said:

*'More than 890,000 of Britain's lowest-paid workers will gain from these changes. They are appropriate - reflecting the current economic*

*uncertainty while at the same time protecting the UK's lowest-paid workers.'*

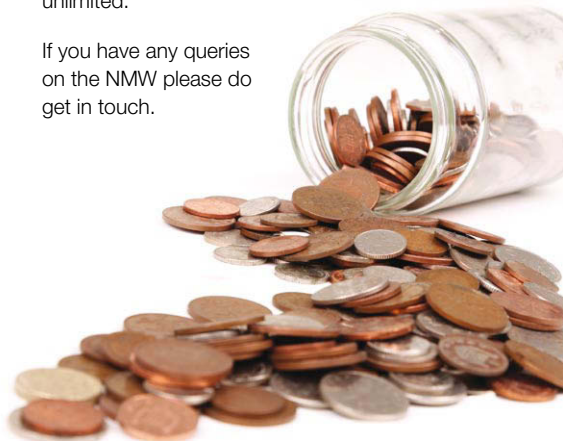
### The cost of ignoring the changes

Since April 2009 HMRC have been able to charge penalties to those employers found to be in breach of the NMW rules.

Automatic penalties are levied on employers where HMRC officers find NMW arrears. The penalties range from £100 to £5,000 with 50% prompt payment discounts for employers who settle within 14 days of notification.

The penalty is payable in addition to arrears owed to the workers. In serious cases of non compliance, the employer may even be tried in a Crown Court and in those cases the fines are unlimited.

If you have any queries on the NMW please do get in touch.



# What a relief

Over the last ten years, many tax reliefs have been introduced. Some are very specific and often only apply to limited companies. However, if they apply to your business, they can be very valuable. We thought that it might be useful to have a brief recap of some of these reliefs, especially as the Government are considering withdrawing some of them in the future. As always, advance planning is essential, so please get in touch with us if you are planning any new projects in any of the areas mentioned.

## What a relief part 1 - Remediation of contaminated land

This relief is designed to provide incentive for developers, investors and landlords to participate in the regeneration of urban sites and buildings. It is only available to companies.

Whilst the relief has been available since 2001, it appears that the Government may withdraw this relief in the near future, so maximising it while it is still here is crucial.

When relevant conditions are met, a company can:

- elect that capital expenditure on qualifying land remediation expenditure is allowed as a deduction against its trading or property business profits
- claim an additional 50% relief for qualifying land remediation expenditure as a deduction against those profits
- receive a payable tax credit in exchange for any qualifying land remediation 'loss' surrendered.

Land also includes buildings.

The relevant conditions are that:

- land in the UK is, or was, acquired by the company for the purposes of its trade or rental business and
- at the time of the acquisition all or part of the land was in a contaminated state and
- the company incurs qualifying land remediation expenditure in respect of the land.

However, no relief is available if the land, or any part of it, is in a contaminated state as a result of anything done, or not done, at any time by the company or a person with a relevant connection to the company.

Basically, the relief is aimed at cleaning up dirty land. Bearing in mind that asbestos is probably the biggest single contaminant in the country, it starts to become clear how wide the relief is.

So don't miss out. Get in touch today if you think that you might be able to claim.

## What a relief part 2 - Renovation of business premises in disadvantaged areas

Business Premises Renovation Allowance (BPPRA) has provided 100% capital allowance relief for expenditure incurred on the conversion or renovation of qualifying business premises in disadvantaged areas since 11 April 2007. The scheme was originally intended to run for five years from that date.

The Government has now confirmed it will extend the BPPRA for a further five years from 2012.

The scheme provides tax relief to any individual or company that incurs capital expenditure on bringing qualifying business premises (whether owned or let) back into productive business use. It could apply to trading or property investment businesses.

The allowances are given if a person incurs capital expenditure in connection with the conversion or renovation of a 'qualifying building' into 'qualifying business premises' or on capital repairs incidental to such conversion or renovation. As the qualifying business premises must be in a disadvantaged area, take a look at [www.dtistats.net/regional-aa/aa2007.asp](http://www.dtistats.net/regional-aa/aa2007.asp) to see if your premises are in the right area.

To qualify the business premises must also not be used as dwellings or be held or used for certain trades. Please contact us for details of excluded trades.

## What a relief part 3 - Conversion of parts of business premises into flats

Another scheme provides 100% capital allowance relief for expenditure incurred on renovating or converting space above shops and other commercial premises into flats for letting. The scheme enables property owners and occupiers to obtain upfront tax relief for their capital expenditure on recycling former residential space over shops.

The scheme, which includes all normal conversion expenditure, is only available on qualifying buildings. A qualifying building is one:

- where all or most of the ground floor is authorised for business use
- where it appears that, when the building was constructed, the storeys above the ground floor were for use primarily as one or more dwellings
- which has no more than 4 storeys above the ground floor and
- whose construction was completed before 1 January 1980.

Further, the expenditure must relate to a part of the building which was either unused or used only for storage, throughout the period of one year before the conversion or renovation work began.

There are other conditions and exclusions but the tax reliefs on offer could help finance your next business venture. So don't delay.

