

contents

That's Entertainment

Recovery of VAT on

Road Fuel

Interest on Overseas

Bank Accounts

Bonus Payments -

Watch the Tax

Treatment

Private Use

Adjustments

Involving Family

Members in your

Business

Age is no Barrier

BUSINESS



That's Entertainment

Whether you are a potential Oscar winner, or simply involved in ancillary services within the entertainment industry, it is important that you are aware of any specific tax rules that apply to you. Here are some of the most common situations.

Companies are often set up by individuals to provide the services of a single worker. In such situations, it is important that an engaging production company satisfies itself that there is, in fact, a bona fide contract with the service company for the provision of the worker's services. It is not unusual to find that no such contract exists. If the production company has any doubts, then it should deduct PAYE and national insurance from payments. If the production company fails to exercise reasonable care in this

regard, it can be held liable for the deductions that ought to have been made.

Normally a person who is self-employed will be responsible for his/her own class 2 and class 4 national insurance contributions. However, the position of entertainers can often be different from the normal rules and it is advisable to review each case on its merits. HMRC has produced guidance notes for the film and television industry which may be helpful and these can be downloaded from www.hmrc.gov.uk/specialist/fi_guidance_notes2003.pdf.

Where overseas personalities perform in the UK, there may be a need to deduct withholding tax from the payments made. It is important that as soon as an overseas personality is engaged contact is made with the Foreign

“ ... theatre tickets, photographs, and auditioning expenses are deductible for entertainers ... ”

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Creative artists often engage in work where the expenditure, such as research costs for an author or the production costs for music, is often incurred years before the generation of the income. Such artists can have the fluctuations between their costs and the associated income evened out through a system of averaging, very similar to the one that has been available to farmers.

In respect of expenses for deduction against income,

Equity has agreed with HMRC a list of the types of allowable expenditure. Items such as hairdressing, make-up, theatre tickets, photographs, and auditioning expenses are deductible for entertainers. Clearly for those involved servicing the entertainment business, as opposed to being the stars, some of these items may be applicable depending on the actual nature of the work performed. In some cases the most unexpected type of expense is allowable for performers, especially within the category of comedians where their props can consist of

almost any imaginable item.

The entertainment industry follows in the main all the normal tax rules e.g for expense payments to employees or engaged workers. However, as can be seen from the brief notes above, there are many peculiarities that affect this sector.

Additional guidance for actors and entertainers can be found at www.hmrc.gov.uk/manuals/bimmanual/bim50150.htm. If you require specific advice on your situation, please contact us.

Recovery of VAT on Road Fuel

If you are deducting VAT on employee mileage claims then you need to have supporting VAT invoices. There has been uncertainty about the precise requirements. HMRC has given an assurance that this does not mean that each expenses claim from each employee must have an invoice. It has emphasised that it is taking a fairly relaxed attitude and at the end of a

given period, say a quarter, there should simply be sufficient invoices to support the total cost of business fuel on which VAT will be recovered by the employer.

Employers are able to develop their own policies to make sure that they have sufficient invoices in case of an enquiry during a VAT audit. Invoices are needed to give evidence of the right to

deduct but they do not determine the actual amount of VAT that can be recovered. The calculation to arrive at the VAT amount to be reclaimed by the business should still be based on business mileage and a set fuel rate. If you would like to discuss this matter or wish us to carry out a review of your present policies and procedures, please contact us.

Interest on Overseas Bank Accounts

A well known bank has recently lost its appeal against an order which required it to pass to HMRC details of all UK resident persons who held accounts in the overseas subsidiaries of the UK bank. It seems likely that HMRC will now approach all of

the other UK banks to get similar information about bank accounts held by UK resident persons in their overseas subsidiaries.

On a general point, income arising in an overseas bank

account is taxable on a person who is UK resident and domiciled. If you are in any doubt about the taxation treatment of any bank account which you have, please contact us as soon as possible so that we can clear the matter up.

“ ... a bonus which was not paid at the year end cannot be put into the company's financial statements ... ”

Bonus Payments – Watch the Tax Treatment

It was not uncommon to put bonuses due to staff and directors into the accounts of a business. Indeed we may previously have discussed with you putting bonuses into your company accounts as they were being finalised and approved. This may have had favourable tax consequences.

An important change happened with a recent Financial Reporting Standard (FRS 21) which applies to all accounts beginning on or after 1 January 2005. The effect of this is that a bonus which was not paid at the year end cannot be put into the company's financial statements

unless the company had a “present legal or constructive obligation at the balance sheet date to make such a payment as a result of events before that date”.

In practice, this means that the company would need to have (usually in writing) evidence that the bonus was payable at the year end. This might be a board minute or a contract obliging the company to pay a percentage of profits. If a profit related bonus scheme is in place and the final amounts are not decided upon until the profit figure is finalised, this may be

enough to meet the standard. It would not be appropriate, however, to provide for bonus payments for amounts which are very different from past practice, for example where the directors of a company, some time after the year end, consider that the final results are good and decide to make additional bonus provision at that stage.

We would ask you to speak to us well in advance of your business year end so that we can discuss the most efficient remuneration strategy and the correct accounting and tax treatment.

Private Use Adjustments

Where hotel and guesthouse owners live on the premises the cost of accommodation facilities and food has to be divided between the business and the personal use of the owner and his family. The personal amount is not allowed as a deduction for tax purposes. In the past some of the former Inland Revenue area offices agreed a fixed scale of personal use.

This was a practical approach but Revenue and Customs announced that from 2004 / 2005 they wanted all businesses to be dealt with individually and taxpayers would need to identify and apportion the private use of accommodation, facilities and food.

As a result of protests, Revenue and Customs has now announced that the deadline has been extended to include

2005 / 2006 tax returns pending a further review. We shall keep you informed of further developments.

Of course, an adjustment for personal use applies to any taxpayer who is able to use resources and facilities of a business which he owns. If you think that you may be affected by these issues and would like to be clear about your position, please contact us.

Involving family members in your business

It is a common enough thing to find spouses or children employed in a family business. As long as the pay being paid is justified by the work being done and the total remuneration package is commercial, there should be no difficulties in

claiming a tax deduction against business profits. A salary or wage can be paid to family members and it is worth remembering that other benefits may be tax efficient. In particular a tax deductible pension contribution can be

paid by the business for the working family member. Please contact us to discuss the most efficient remuneration package.

There may also be wider tax planning opportunities available by involving family members in

“... They prohibit unjustified direct and indirect age discrimination, and all harassment ...”

the ownership of your business. For limited companies you may wish to consider passing shares to family members and therefore giving them a right to dividends. There may also be some advantage in capital taxes planning by passing some value in the business to your family during your life time. If you trade as a partnership you may wish to take family members in as partners (after considering the commercial risks you are

exposed to as a partner). Again please come and talk to us about the most appropriate structure.

Finally, some people employ children in their businesses. Again if this is commercially justifiable there should be no difficulty in claiming a deduction against business profits for wages paid. You should, however, watch the law about employing children.

Some local authorities have applied their own byelaws. We suggest therefore that you check with your own local Council. In addition there may be particular health and safety issues to think about when employing children or young persons. In some parts of the UK children under the age of 13 must not be employed in work other than as part of a normal family activity.

Age is no Barrier

The Employment Equality (Age) Regulations 2006 come into force on 1 October 2006. The Regulations apply to employment and vocational training. They prohibit unjustified direct and indirect age discrimination, and all harassment and victimisation on grounds of age, of people of any age, young or old.

As well as making it unlawful, in most circumstances, to force workers to retire before age 65, they

- remove the upper age limit for unfair dismissal and

redundancy rights, giving older workers the same rights to claim unfair dismissal or receive a redundancy payment as younger workers, unless there is a genuine retirement;

- allow pay and non-pay benefits to continue which depend on length of service requirements of 5 years or less or which recognise and reward loyalty and experience and motivate staff;
- remove the age limits for Statutory Sick Pay, Statutory Maternity Pay, Statutory Adoption Pay and Statutory

Paternity Pay, so that the legislation for all four statutory payments applies in exactly the same way to all;

- remove the lower and upper age limits in the statutory redundancy scheme, but leave the current age-banded system in place and;
- provide exemptions for many age-based rules in occupational pension schemes.

Further details can be obtained at www.dti.gov.uk/employment/discrimination/age-discrimination/index.html.