

Tax and legal update

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Annual VAT adjustment

Is your business engaged in both VAT exempt and VATable activities with a 31 December accounting year end and VAT returns filed on a bi-monthly basis? If so your business should consider whether an annual VAT recovery rate adjustment for 2017 should be made on or before 23 July 2018, ie the filing date for the May-June 2018 VAT return.

While VAT recovery can be a complex area of VAT law, in its simplest form, a business has full entitlement to VAT deduction on costs directly attributable to VATable activities, while no entitlement to VAT deduction on costs which are directly attributable to VAT exempt activities. A partial VAT credit is given for general overhead costs with several methodologies available to arrive at the partial VAT credit including, but not limited to, turnover, floor area, staff numbers, location of investments, etc. Ordinarily a business having considered the appropriate VAT recovery methodologies may estimate what partial VAT credit it may be entitled to during 2017 and following 31 December 2017 the business should compare the estimated figures to the actual figures, with any adjustment arising included in a VAT return on or before 23 July 2018.

It should be noted that changes introduced in Finance Act 2016 made the turnover basis, the standard basis for calculating a partial VAT credit for general overhead costs, unless the turnover basis does not

correctly reflect the use of the general overhead costs and using such a basis does not have due regard to the range of activities and supplies undertaken by the business.

Businesses should consider reviewing their VAT recovery methodologies, particularly if it has not been reviewed in some time and/or there have been changes in the activities of the business.

Employers: e-workers and tax

The level of e-workers is increasing throughout Ireland. Generally, e-working is a method of working using IT in which the work-related activity that is carried out is not bound to any particular location. E-working includes working:

- at home on a full time or part time basis;
- some of the time at home and the remainder in the office; and
- while on the move, with occasional trips to the office.

Income tax benefits

Where an employee is classified as an e-worker the following items, if provided by an employer, will not be subject to a Benefit-In-Kind (BIK) charge where the items are used for business purposes and private use is incidental, including:

- computers;
- printers;
- scanners;
- software; and
- fax machines.

The provision of a telephone line, broadband, etc for business use will also not give rise to a BIK. Additionally, the provision of other equipment such as office furniture will not give rise to a BIK, where the equipment is provided primarily for business use.

Home expenses

Revenue allows an employer to make payments up to €3.20 per day to employees without deducting PAYE, USC or PRSI in respect of an e-workers additional heating and electricity costs. This does not prevent an employee making a specific expense claim where the actual expenditure is in excess of this amount.

It is important to note that the above arrangements only apply to e-working employees. They do not extend to employees who, in the normal course of employment, bring some work home in the evening, etc.

Companies Registration Office (CRO)

With effect from 1st April 2018, the CRO has confirmed that:

- all annual return B1 forms will be automatically rejected where the signature page or overall certificate is not signed or if it has only one signature. The Registrar will no longer use their discretion under Section 898 of the Companies Act 2014 in these cases and will not allow 14 days for the amendment required. A new annual return must be captured, financial statements uploaded and a new signed signature page delivered to the CRO. Where this new annual return is more than 28 days after the company's

annual return date, the return will be late;

- all annual returns will be late if the financial statements are not successfully uploaded prior to delivering a signed signature page to the CRO. If a signature page is received and there are no financial statements uploaded then this return will be rejected and companies will not be given the additional 14 days to upload the financial statements.
- if the financial statements are uploaded after the 28 day period allowed following the capture of the annual return online, then the annual return is late and a late filing penalty will be charged and where relevant, audit exemption for two years will be lost; and
- where a company or a presenter requests the CRO to return an annual return prior to the CRO receiving the signature page, this request will not be facilitated if made within three days of the delivery date on the signature page.

UK Companies House update

Companies House in the UK has recently published the following Press Release in which a company director has been fined for deliberately falsifying information about his firms, in what is thought to be the first ever conviction of its kind.

Kevin Brewer incorporated John Vincent Cable Services Ltd in 2013, making the former Business Secretary, Vince Cable MP, a director and shareholder without his knowledge. The company was dissolved and taken off the company register after Companies House took action.

Mr Brewer then formed another company in 2016, Cleverly Clogs Ltd, making Baroness Neville-Rolfe, Minister with responsibility for Companies House, James Cleverly, MP and an imaginary Israeli national, Ibrahim Aman, all directors and shareholders without their knowledge. Companies House dissolved the company and took it off the company register.

Mr Brewer was ordered to pay over £12,000 after he pleaded guilty to filing false information on the UK's company register, at a hearing in Redditch Magistrates' Court on 15 March 2018, contrary to Section 1112 of the Companies Act 2006.

This is thought to be the first time a company director has been successfully prosecuted for falsifying company information under laws which came into force in 2009.

A Companies House spokesperson said: *"Deliberately filing false information on the register is a serious offence and people who have been found to have knowingly done this can face prosecution"*.

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