

Finelines 50

The Newsletter of Lubbock Fine Spring 2010

All change for PAYE online filing and big potential late payment penalties

Employers, are you ready for changes affecting you for 2010-2011? The all-new electronic age now brings us new legislation to include provisions for mandatory online filing.

Subject to a few exceptions*, online filing is compulsory for all employers for 2009-2010 regardless of the number of employees. If the 'online filing' incentive has not been claimed previously, employers will now have to have computer facilities to use the HM Revenue & Customs' (HMRC) Online Service and purchase commercial payroll software or use a professional intermediary.

Due to registration and security procedures, you need to allow time to register well in advance of the filing date of 19 May.

**Please speak to your contact partner if you need further details.*

This tax year is to be the first where penalties can be imposed for not filing online. Penalties depend on the number of employees and will increase for the 2011 tax year. They are as follows:

| Number of employees | 2009-2010 (£) | 2010-2011 (£) |
|---------------------|---------------|---------------|
| 1-5 | 0 | 100 |
| 6-49 | 100 | 300 |
| 50-249 | 600 | 600 |
| 250-399 | 900 | 900 |
| 400-499 | 1,200 | 1,200 |
| 500-599 | 1,500 | 1,500 |
| 600-699 | 1,800 | 1,800 |
| 700-799 | 2,100 | 2,100 |
| 800-899 | 2,400 | 2,400 |
| 900-999 | 2,700 | 2,700 |
| 1000 or more | 3,000 | 3,000 |

Penalties will be charged if:

- the return is filed late.
- the return does not meet the standards of accuracy and completeness set by the regulations.

Penalties charged 'in-year' for late PAYE payments

From 6 April 2010, HMRC may also charge penalties for the late payment of monthly PAYE payments. In the current low interest rate environment, this will undoubtedly help HMRC to generate extra revenue.

In contrast to mandatory online filing, penalties will apply to all employers who have to make PAYE payments. PAYE payments incorporate income tax, Class 1 National Insurance (NI) contributions, student loan deductions and Construction Industry Scheme (CIS) deductions. Class 1A and 1B NI contributions are also included but as these are paid annually the rules are amended accordingly.

May 2010 is the first month that a penalty can be levied. The new rules will not apply to earlier years. At present the in-year charges only relate to penalties and HMRC has said that it will not levy interest on overdue PAYE until 6 April 2012.

Penalties are to be based on a percentage of the total annual tax that has not been paid by the due date and increases based on the number of late payments:

| No of times late in the year | Penalty percentage |
|------------------------------|--------------------|
| 1 | Nil |
| 2-4 | 1% |
| 5-7 | 2% |
| 8-10 | 3% |
| Over 11 times | 4% |

Furthermore, if payments are more than six months late, the penalty increases to 5% with an additional 5% if still outstanding after 12 months. For class 1A contributions, there is a 5% penalty after 30 days and additional 5% penalties after six months and 12 months, ie a total of 15%.

HMRC guidance is clear that the penalties will apply regardless, even if the payment is only a day late and will also apply to errors that result in underpaid tax. The only exception is if this is a one-off event but even a 'one-off' is subject to the six months rule - if payment has not been made within six months, the penalty is increased to 5%.

Reasonable excuse may still enable the penalties to be mitigated but this is a difficult argument and should not be relied upon. Reasonable excuse does not include lack of funds or reliance upon others to make the payment on your behalf.

Penalties are levied by an assessment being raised by HMRC in which it will state the period covered and the amount payable. In accordance with standard procedures, the penalty is payable within 30 days or an appeal can be lodged. HMRC has a two year time limit from the due date to levy penalties. HMRC has indicated that the first penalty notice will be issued after the end of 2010-2011 tax year in April or May 2011. The catch is that you will not know whether you are subject to a penalty or at what rate until that date, at which point it will be too late to be able to mitigate the penalty.

Penalties do not apply if there is a 'Time to Pay' arrangement in force but this only applies from the time you approach HMRC with a request to defer payment. The deferral arrangement will include penalties accrued up to the date of the agreement reached with HMRC, so it is all the more important to agree this with HMRC sooner rather than later.

Budget Update:

This newsletter was written before the Budget on 24 March. Our budget report is available online at www.lubbockfine.co.uk. Alternatively, if you would like a hard copy, please contact marketing@lubbockfine.co.uk and we will have one mailed to you.

All change for PAYE online filing and big potential late payment penalties

(continued)

Summary

For 2009-2010 online filing of employers' returns is mandatory. We advise that you review your computer system's software capability before the due filing date of 19 May 2010.

From May 2010, HMRC can levy penalties for late payments made during the year on an incremental percentage depending on the number of payments made late. Payments more than 6 months overdue are subject to a 5% surcharge and a further 5% is levied if payments are still outstanding after 12 months. One late payment can be made during the year without a penalty, provided it is not over six months old, at which point it falls within the general 5% penalty.

Class 1A contributions are not subject to late filing penalties until 19/22 July 2011 but could be subject to a massive penalty of 15% if still outstanding 12 months after the due date.

Although interest on overdue tax will not be charged for late payments made during the year, until at least 6 April 2012, interest will continue to be charged if payments are not made at the due date – 19 or 22 April - following the end of the tax year.

The following link www.businesslink.gov.uk/bdotg/action/keydates will allow you to set up email reminders of the due dates throughout the calendar year and should help you to mitigate the chance of a penalty.

Penalties are not levied if a 'Time to Pay' arrangement has been negotiated with HMRC and payments are made in accordance with its terms. It remains to be seen whether the 'Time to Pay' arrangements will continue after the general election but, in the meantime, we would recommend that if you are experiencing financial difficulties, you speak to your contact partner to establish whether we can approach HMRC on your behalf to negotiate a suitable payment programme. ●

Qualifying Recognised Overseas Pension Schemes (QROPS)

By Neville Pereira LL.B, Lubbock Fine Financial Solutions LLP



Neville Pereira

Back In April 2006 it was announced that individuals with UK pensions who are non-resident, or who will become non-resident in the UK for tax purposes, can transfer their pensions to a QROPS. Consequently any individual thinking of moving abroad or who is already non resident would need to consider these schemes.

Since their introduction nearly four years ago, some 7,500 people have transferred their UK pensions to a QROPS with assets under management approaching £500 million. These amounts are relatively small, considering the value of UK pension funds as a whole, but as more people move abroad and become aware of the potential advantages, this trickle could soon become a flood.

Legislative Background

QROPS are schemes recognised by the UK tax authorities as the equivalent of an overseas pension and they have substantial benefits. QROPS can accept transfers from UK registered pension schemes, providing retirement flexibility and superior benefits on death as compared to UK tax

schemes. QROPS have also become popular because of the tax advantages, simplicity and the increased investment flexibility. Other key benefits are the removal of a requirement to purchase an annuity and the potential freedom from inheritance tax. (Individuals can pass on their pension fund to dependents.) Many of these advantages are simply not available with a UK pension scheme.

It is very important to follow the guidelines as established by HMRC when selecting a QROPS provider. If a scheme is deemed to have been breaking HMRC rules, then any transfer made to that scheme could give rise to an unauthorised charge of some 55% of the pension fund.

There are many jurisdictions with approved QROPS that provide individuals with the ability to transfer UK pensions to the jurisdiction in which they have become resident. To become a recognised QROPS, the provider must meet the requirements set out by HMRC. A reporting requirement to HMRC remains for five years after the QROPS member has ceased to be resident in the UK.

Benefits

- There is a wide selection of investment options available, compared to UK pensions, with the ability to purchase onshore and offshore funds and fixed deposit accounts.
- Up to 25% can be taken as a lump sum free of tax.
- Individuals on retirement are not forced into buying an annuity and funds can be left for chosen beneficiaries without UK tax even after age 75. This is not possible with UK pensions.
- Income and benefits can be taken in a wide choice of currencies.
- Potential inheritance tax (IHT) planning and savings.

Tax

- Once transferred to a QROPS, generally there are no UK taxes applying.
- UK tax will only be paid if the recipient is resident in the UK for any tax year in which a distribution is made.
- Tax may be payable on distributions in the country of residence.
- Funds held in the scheme are not subject to any UK tax, allowing investments to grow tax free.
- Subject to the jurisdiction of the QROPS provider, tax is not deducted at source from pension payments.

Practicalities

Prior to transferring any UK pensions, new schemes should be reviewed to ensure that there are no penalties, no guaranteed annuity rates or any other matters that may make a transfer inappropriate.

The cost of establishing a QROPS can vary widely between scheme providers, asset size and complexity of transfer. Therefore, these matters should be thoroughly investigated,

If you would like to discuss whether QROPS may be suitable for your circumstances, please speak to your contact partner or contact Neville Pereira at LFFS on nevillepereira@lffs.co.uk or 020 7490 7766.

This article is based on our understanding of HMRC law and practice as at March 2010 which may be subject to change. ●

Lubbock Fine Financial Solutions is an appointed representative of City Gate Money Managers Limited which is authorised and regulated by the Financial Services Authority.



Client Profile

Esmail Harunani



Dr Esmail Harunani

Meeting Esmail Harunani is a little like standing in the path of a friendly, smiling tornado. Full of energy and enthusiasm, it's not difficult to see why his hard work, dedication and likeable manner have led to his undoubted success.

"I actually love dentistry," he explained. "It's as though I'm making my living out of a much loved hobby. In fact, if I'm asked, my advice to aspiring business people is to try to make a business out of the thing you love most and then you'll be guaranteed success."

Lubbock Fine partner, Rohit Majithia, commented: "One can see why Esmail is so successful. His energy and focus are extraordinary. He clearly loves what he does but I am quite sure that Esmail would have been successful in whatever profession he had chosen."

The young Esmail Harunani left Kenya for the UK in 1974 when, against his father's wishes, he enrolled as an overseas student at Bristol University to embark on a five year dentistry course. His father had been adamant that he should study medicine. This was at a time when university was free but fees for overseas students were £250 per year. That was a bit of a financial stretch for Mr Harunani senior but eventually a deal was struck between father and son. Once Esmail had qualified, he would undertake to help fund the further education of his two younger brothers. They are now both qualified dentists working in the USA.

From establishing his first dental practice in 1986 in Forest Hill, Dr Harunani set about buying and selling practices over the next two decades, always running at least three practices as going concerns. In 2006 when the new NHS contract arrived, the Government began to identify areas where there was a need for dental services. Dr Harunani tendered for one of the first of these new NHS contracts in Brixton, a large contract that he won. This was followed by successful tenders in West Thurrock, a further two in Forest Row and Eastbourne and four more in Essex, a total of eight successful tenders during the



last two years. This was the birth of "Harunani & Co Group of Dental Surgeries". Dr Harunani currently heads the group with 10 dental practices and employs over 100 people, including 30 qualified dentists. Many of his staff have been with him for well over 20 years and all of his main staff have been with him for at least 10 years.

"I first came to Lubbock Fine in 1988 when they successfully concluded an Inland Revenue investigation into my accounts and tax return for me," he explained. "After that, I sought their advice on an ad hoc basis until I became a permanent client in 2001. I'd never change accountants now," he added. "Lubbock Fine's a great firm and I feel safe and secure in that knowledge. It's all about the people you deal with and the service you get. The quality of the service and the tax advice I've had is amazing. Mushtak Macci has an encyclopaedic, up-to-the-second and right to hand knowledge of tax, he's like the walking tax book of Britain. What's more, I really look forward to meetings at their offices because there's a lovely fish restaurant just nearby. I do enjoy that place!"

"Whilst Esmail has a good grasp of tax and financial matters, he's keen to listen to us and act upon our advice which is what makes it all the more professionally rewarding to be associated with him," added Mushtak Macci, tax director.

"My dream is to reach my target of 17 practices," said Dr Harunani. "I don't know why 17 – perhaps there is a theological reason behind it."

"He's a total workaholic," added his wife, Mariam. "He's never had the time for leisure pursuits like golf, he's been too busy making something of his life. The hard work we've both put in over the years has really paid dividends and we've come a long way from our first tiny, two bedroom house."

The couple had known each other as children and describe their marriage as having been half arranged and half a love match. When the young Esmail left Kenya for the UK, he asked Mariam's sister to keep him informed of any marriage proposals that might come in for Mariam. She duly let him know and, when proposals started to flood in, he quickly contacted her father with his own marriage proposal. It was conditionally accepted and, once he'd qualified, they married in Kenya aged 20 and 25.

"Coming to the UK was quite a culture shock for me," said Mariam. "Up until then, I'd never even made a cup of tea for myself. Suddenly I was in the cold, in a tiny house with no labour saving devices – we couldn't afford them – and it was really hard work. Esmail was working 9am to 9pm every day and he simply wasn't able to be there, so

I shouldered all the responsibilities for every other aspect of our lives. We've had no help and we've achieved everything ourselves. In fact, along the way, we've been able to help other family members and that makes us feel very good."

The Harunanis have four grown up children, the eldest is 28 and the youngest 17. Shelina is a pharmacist, Mohamed Zaheed a lawyer, Mohamed Nadeem is in his final year at the dental school at Bristol University and the youngest, Shaheen, is at A level stage. Shelina and Mohamed Zaheed are both now married.



The Harunani family

"Our corporate structure is that we have three partners in this business," said Dr Harunani. "There's Murtaza Kanani, my son Mohamed Nadeem, who will be working with us once he's completed his vocational training and myself. Each practice has a manager and then we have area managers for Essex, London and East Sussex. Elizabeth Fernandez, our group manager, is my 'right hand man' and doing the payroll is Sheila, who's been with me 'man and boy' and is the one lady who can tell me off because she's known me since I first qualified!"

Esmail and Mariam have also, over the years, accumulated a considerable property portfolio, which is led and managed by Mariam. "It keeps me busy and very active. I meet different types of people in all walks of life on a daily basis. When I am in 'trouble', my lawyer son is always there for advice and assistance."

Esmail Harunani has been involved with the Local Dental Committee and the Primary Care Trust for Lambeth, Southwark and Lewisham for many years

in numerous activities, including principal membership of disciplinary committees and representations at national levels. He was Vice Chairman for six years and is presently Chairman of the Lambeth, Southwark and Lewisham Local Dental Committee. He has attained an MFGDP of the Royal College of Surgeons of England by examination, the DPDS from the University of Bristol with a distinction in the Anxiety & Sedation module, membership of the Faculty of Dental Surgery of the Royal College of Surgeons of England (MFDS RCS) by examination and the Royal College of Surgeons of Edinburgh and the Royal College of Surgeons and Physicians of Glasgow by election. He is also working toward a Diploma in Restorative Dentistry. Amongst a whole host of other involvements is his status as an examiner for the Overseas Registration Examination for overseas dental graduates, an examiner for the Royal College of Surgeons of England and he is studying for an MSc in Clinical Leadership at the University of Glasgow.

In December of last year, Esmail starred in GlaxoSmithKline's launch TV commercial for Sensodyne toothpaste in India.

His involvement with community activities started in 1985 when he joined the Kent & Lewisham Islamic Centre where he became the Vice Chairman. In 2001 he was elected to the National Council of the Memon Association UK, a cultural and socioreligious community organisation representing all the memons in the country, and he was elected unanimously as president in 2007. Esmail was also the chairman of Nasserpuria Memon UK from 2003 to 2006. He got involved with the World Memon Organisation in 2001 and is presently the Assistant Secretary General for the Europe Chapter.

Not content with just building up a thriving business and working with and for the community, the Harunanis are also involved in many charitable endeavours, including recently having contributed to building a community dental clinic in Mombasa, Kenya.

"My work is my love," he concluded, "and that makes me a very happy and contented man." ●



Fine Lines is 50 issues old!

Happy Birthday to us and welcome to our 50th issue! The first Fine Lines was published back in 1993 and we've been going strong ever since.

Back then we were discussing whether the forthcoming legislation on tax for company cars meant they would remain a perk or had become a liability.

But the main story in our inaugural issue was Lubbock Fine's successful three-year European court battle. The Lubbock Fine lease surrender VAT case changed UK law and resolved an important ambiguity between UK law and the EC's sixth VAT directive, so re-defining the 'border' for exemptions and underscoring the need for greater clarity in drafting EC legislation.

In that same issue, we reported a victory in the Court of Appeal when our client, TV vision mixer Ian Lorimer, finally won his historic eight-year case against the Inland Revenue. The Revenue had refused to accept Lorimer's claim to freelance status despite losing at every stage all the way to his victory. The case was important and forced the Revenue to examine the affairs of freelancers with increased flexibility.

Our first significant change in the look of the publication came in 1996 when we also announced that we were in the process of setting up a Lubbock Fine website and that we had embraced email. How times move on!

In 1997, as outlined in Fine Lines, the Inland Revenue announced its intention to allow taxpayers to submit official forms via the internet. We mentioned that a client of a firm of accountants had received a statement of account showing that the amount due on the 31st January 1997 was £404,040,404,040.04 – just about enough to pay off the national debt. It clearly took the Revenue some time to bed-in their new system.

The Millennium Bug was big news in 1998 and common misconceptions were that all computer systems would somehow implode in January 2000. At the time, guidance from the Revenue said that in most cases, upgrades or adaptations of software to guard against the millennium bug would be deemed to be a tax allowable deduction from trading profits. In that same year, the Data Protection Act 1998 received Royal Assent, becoming law by summer 1999.

In 1999 we reported that the mechanism for the full introduction of the euro would spring into gear. Although there would be no coins or notes in circulation until 2002, 11 countries were to join the first wave.

Former US President Bill Clinton got into a spot a bother during a visit to the UK in 2001. We explained that the Revenue had taken four weeks to decide

whether he was an entertainer or a politician. Tax chiefs had struggled to classify him after he was booked to appear at a business convention at Harrogate. On the day of the convention, a fax finally arrived with their decision. Under 'artiste's name' it said Clinton, William Jefferson, while under 'stage name' it said Bill Clinton. Bill must have been relieved that his political status was assured and that no tax was deducted from his fee.

A new, green method of taxing company cars, based on the CO₂ emissions of the vehicle, came into force in 2002. Unfortunately, due to teething problems in the new system, it left the majority of company car drivers with the wrong PAYE codes.

The London congestion charge scheme came into effect in February 2003 with some confusion as to whether the charge was to be tax deductible in the course of business travel.

Our 2004 special commemorative winter issue marked the Firm's 75th anniversary and we reproduced highlights from the news of the day on 6th February 1929. Amongst the headlines were: civilians needing protection against chemical warfare, the British Ambassador departing from Iraq, 652 people died from flu in one week and investment advice in a bear market. Plus ça change!

In 2005, due to the Freedom of Information Act, everyone in the UK had the right to request all kinds of information about the management and work of public bodies across the country. We also covered the legislation outlawing age discrimination in the workplace that was to come into force in 2006.

Offshore accounts were under attack from HM Revenue and Customs in 2006. In an unprecedented legal decision, Barclays Bank was forced to divulge information about its customers' offshore accounts.

As widely expected, in 2008 the Government began to target UK resident non-domiciled individuals (non-doms) introducing a charge of £30,000 per annum for the privilege of maintaining their non-dom status. The following year, New Zealand elected one of our past clients as Prime Minister in 2009. When John Key had departed the UK, we asked him what he was planning to do with the rest of his life. His surprising answer was that he was planning to become New Zealand's Prime Minister, an ambition he achieved within seven years.

Last year, Lubbock Fine was 80 years old and we were able to draw a neat parallel between the current economic times and those of the year in which the firm was founded – 1929. Despite turbulent times, we remain confident that we'll be around in another 80 years and still producing a newsletter – although the format may significantly evolve. ●

Sick employees may be fit to work

The old 'sick note' is to be renamed 'fit note', according to the Government's recent publicity campaign. From April 2010, the old style medical certificate, issued by a GP when an employee is sick, is to change. The Government stresses that it is in the employee's interest to return to work as soon as possible and places emphasis on doctors certifying fitness for work rather than the reverse.

From April, the doctor will state whether he considers an employee is either 'not fit to work' or 'may be fit to work'. In the case where an employee may be fit to work, the doctor will make recommendations to the employer to make it possible for the employee to return to work. For example, he may suggest alterations in working arrangements that an employer could make to enable the employee to return to work. Employers who are unable to make such alterations are being told to treat the new certificate as if the doctor had certified the employee as 'not fit for work' and apply the usual sick leave entitlements. ●

News

Housekeeping for companies

If you are a company secretary (or the relevant administration person in your company), read on. There are now additional filing requirements, together with a completely new set of Companies House forms – over 200 of them! Do make sure that you're up to speed with the new formalities. ●

Lubbock Fine baby

Lubbock Fine partner, Lee Facey, and his wife Helen are proud parents of a baby girl. Born on 9 February 2010, little Emma Cameron Facey weighed in at 6lb 10oz. We know that all of our clients and contacts join us in congratulating the Facey family on their new arrival. ●



We're always delighted to feature good news about our clients. If you have something special that you'd like to shout about, please email marketing@lubbockfine.co.uk and we'll try to get your story into our next issue.

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