Take **'reasonable care'** to avoid unreasonable charges

New penalties introduced for errors in tax returns

The 2008 Finance Act introduced a new penalty regime for errors in tax returns which, in short, means you could be charged a penalty if you do not take 'reasonable care' with your tax affairs.

The new regime will provide a uniform approach to penalties for all taxes which are covered. In practice, this is likely to see the number of penalty applications increasing following tax enquiries and disclosure of earlier errors.

When do the new penalties begin?

The new penalties apply for periods starting after 31 March 2008, but only to returns or documents due to be filed with HMRC on or after 1 April 2009.

Which taxes are covered by the new regime?

The new penalties initially apply to Income Tax, Corporation Tax, Capital Gains Tax, VAT, Construction Industry Scheme, PAYE and National Insurance contributions.

HMRC state that they will be extended later to most of the Department's other taxes, levies and duties.

When are penalties charged?

Financial penalties can be charged if you make an error in your return or other documents and that error means that you understate your tax, misrepresent your liability or do not inform HMRC when you have been under-assessed.

It's all about 'behaviour'

As illustrated below, the level of potential penalties involved, will depend on the 'behaviour' of the taxpayer. HMRC guidance explains that if you send a document to HMRC that contains a mistake you will be charged a penalty if:

> **the error is because you failed to take reasonable care, or**
> **the error is deliberate, that is you knowingly and intentionally send an incorrect document but do not take active steps to hide the error, or**
> **the error is deliberate and concealed, that is you knowingly and intentionally send an incorrect document and have taken active steps to hide the error.**

Most importantly, no penalties will be chargeable provided that reasonable care has been taken in preparing any return delivered to HMRC.

How is the penalty charge calculated?

The penalty is a percentage of the extra tax due. The rate depends on the 'behaviour' that gave rise to the error. The following table illustrates the potential penalty charges:

Behaviour	Not Disclosed		Unprompted Disclosure	
	Maximum	Minimum	Maximum	Minimum
Careless	**30%**	**15%**	**30%**	**0%**
Deliberate	**70%**	**35%**	**70%**	**20%**
Deliberate and concealed	**100%**	**50%**	**100%**	**30%**

Reasonable Care – NO PENALTIES PAYABLE

What is reasonable care?

According to HMRC, 'reasonable care' varies according to the person, their particular circumstances and their abilities.

Every person is expected to make and keep sufficient records for them to provide a complete and accurate return.

If your tax affairs are relatively straightforward, you may only need to keep a simple system of records, which are followed and regularly updated. However businesses with more complex tax affairs may need more sophisticated systems that are maintained equally carefully.

What can I do to mitigate potential penalties?

HMRC have made no secret of the fact that they will seek to apply penalties in all appropriate cases. This means in the first instance you must always ensure that 'reasonable care' has been taken when filing all returns and documents.

In the case of established businesses this will mean ensuring that your accounting and administrative procedures are sufficient to ensure all returns can be accurately prepared. It may be time to review these procedures and once established, ensure that they are adhered to!

Finally, if you do uncover any errors which could give rise to penalties, these must be disclosed to HMRC as soon as possible.

Where can I get more help?

To find out more about the implications of the new penalties please speak with your WK contact or Matthew Hall e: matthew.hall@wilkins.kennedy.com

Actions to avoid unwanted penalties:

> **Review procedures to meet 'reasonable care' criteria**
> **Disclose any errors at earliest opportunity**
> **Take early advice**

FSA regulated firms face **changes in regulatory fees**

How will the rules impact on your business?

Last month, the Financial Services Authority (FSA) published its Business Plan for the year ahead which outlines the FSA's priorities and specific initiatives for the forthcoming year based on their perception of the continuing difficulties and challenges facing the financial services industry. It also means a change – and in some cases – an increase in fees and levies.

The FSA has four stated objectives under the Financial Services and Markets Act 2000:

> **to maintain market confidence;**
> **to promote public understanding of the financial system;**
> **to secure the appropriate degree of protection for consumers;**
> **to fighting financial crime.**

According to their statement "This will be a very difficult year for financial markets and their users". In carrying out its consumer mandate, the FSA will concentrate its resources on helping people cope with the economic downturn and maintaining pressure on firms to treat customers fairly. Furthermore, the FSA intend to focus on making sure that firms are soundly run and in particular that they adjust their business models to remain both well capitalised and securely funded.

Updating the regulatory framework

As well as addressing these current risks, the FSA has confirmed that it will play a full role in modernising the global regulatory framework. This will involve taking forward the agenda that will be laid out in an FSA Discussion Paper in March. Finally and crucially the FSA will complete the planned programme of improvements to its supervisory processes.

According to the FSA, the financial services industry is currently facing unprecedented challenges, which look set to continue throughout 2009. The FSA has a central part to play in addressing these challenges and providing leadership on the future shape of regulation. As such, the FSA will be focused on ensuring firms are soundly run in these difficult times and consumers are protected.

How much more will it cost you?

Providing additional resources to meet these demanding priorities in 2009/10 will mean higher fees for regulated firms, although the FSA does suggest that it has been careful to ensure, as far as possible, that firms requiring the most regulatory work and engagement pay proportionately. According to the FSA and based on draft proposals, there should be no increase in fees for the smallest firms, and many of them should experience a fee reduction following a redistribution of fines.

Where the money is going?

The FSA's budget of £415m for 2009/10 reflects the cost of taking these priorities forward. To fund its proposed plan of work, the FSA will need to increase the amount it raises from firms (the Annual Funding Requirement) by £117m. The largest component of this increase, approximately £70m, is due to the cost of embedding and delivering higher quality supervision, especially in respect of 'higher impact' firms. To support the enhancement of its supervisory process, the FSA will also be investing an additional £12m in technology and property infrastructure.

However, as in previous years, proposed fees will reflect the amount of resource that the FSA plans to dedicate to different types of firms in the coming year. Obviously this means that the largest firms in areas needing most regulatory attention and supervisory activity will be subject to higher fees.

For a more detailed discussion on the implications of these changes to FSA fees and levies, contact Robin Haslam at robin.haslam@wilkinskennedy.com – or call 020 7403 1877

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wknews

Welcome

Welcome to the new look Wilkins Kennedy newsletter which hopefully will give you a fresh view and new insights into the world of finance and taxation. We have tried to address many of the most burning issues of the day from taxation, HMRC charges, the Enterprise Finance scheme – and staff issues in the economic climate.

Naturally in a publication of this size, we can only highlight some of the many issues which are of concern to today's businesses, but at the end of each article you'll find details on how to contact Wilkins Kennedy for further, more detailed, help and advice.

We at Wilkins Kennedy have been helping businesses of all types and sizes for over 125 years, during which time we have built up invaluable experience that can help your business.

To find out more, simply contact any of our offices listed overleaf, or visit the Wilkins Kennedy website at **www.wilkinskennedy.com**.

Colin Wiseman, Managing Partner

You want accountants who think on their feet

File on time to avoid the fine

When the new Companies Act came into force in 2006, several major changes came with it. Some of these have been widely publicised but others have not had the prominence they deserve.

Shorter filing times

With effect from 6th April 2008 private companies have nine months (previously 10 months) from their year end to file accounts and public limited companies have six months (previously 7 months).

Higher penalties

With effect from 1st February 2009 late filing penalties were increased as follows:

Accounts delivered	**Penalty** Private limited company	**Penalty** Public limited company
Not more than 1 month late	**£150**	**£750**
More than 1 month but less than 3 months	**£375**	**£1,500**
More than 3 months but less than 6 months	**£750**	**£3,000**
More than 6 months	**£1,500**	**£7,500**

What's more, for companies that offend repeatedly (i.e. file late accounts in the following year) the filing penalty would be **double** the figure set out above.

Please also be aware that the 14 day concession period allowed under Section 706 of the 1985 Companies Act will cease to exist as from 1st October 2009. This allowed 14 days from the date of a rejection letter for the company to refile its accounts without incurring a penalty if the refiled accounts were received after the filing deadline.

Annual Returns are also getting stricter

Although no penalties have been introduced for late filing of returns, it has become apparent that Companies House is taking a stricter view on non-compliance. The time allowed by Companies House after the normal reminder has been issued is now much shorter and companies who are in breach can find themselves faced with letters threatening strike-off or prosecution for a criminal offence much sooner than under the old 1985 Companies Act.

Other changes coming into force on 1st October 2009

Change of name. It is now necessary to file a copy of the amended Memorandum and Articles of Association with the Special Resolution at Companies House. Failure to comply with this requirement will not stop the change of name being effective if approved but will trigger a notice from Companies House requiring the company to file the missing Memorandum and Articles within 28 days. The Companies Act 2006 also introduces a new civil penalty of £200 for failure to comply with these requirements so you would still remain liable to criminal proceedings in addition to the £200 civil penalty.

Finally, please remember that it remains a criminal offence not to file any changes affecting the Memorandum and Articles of Association within 15 days of the passing of any Resolution to change them.

For further information please speak to your usual WK contact or Adam Merrett e: adam.merrett@wilkinskennedy.com

In this issue **It pays to treat your staff well**
Just the right help – at just the right time
How will the new FSA rules impact on your business?

Is the **new government-backed loan scheme** the right answer for your business?

In the current financial climate, as the banks change their approach to risk and tighten their lending conditions, literally thousands of businesses are finding it increasingly hard to access the finance they need - particularly working capital. However, under the new Enterprise Finance Guarantee, the Government will underwrite bank lending to viable businesses to ensure that they can get the working capital and investment they need.

This £1.3bn scheme, which supersedes the earlier Small Firms Loan Guarantee scheme, will support bank lending to a wider range of UK businesses with a turnover of up to £25 million who are currently finding it difficult to access the finance they need.

So if you are looking for support, it could enable you to secure a loan of between £1,000 and £1 million through the Government guarantee and is available up to 31 March 2010.

More built-in flexibility

The guarantee can be used to support new loans, refinance existing loans, or to convert part or all of an existing overdraft into a loan to release capacity to meet working capital requirements.

Delivery of the Enterprise Finance Guarantee, including the decision on whether or not it is appropriate to use it in connection with any specific lending transaction, is fully delegated to the participating lenders. There is no automatic entitlement to receive a guaranteed loan - nor is there any pre-qualification process for it.

The Small Firms Loan Guarantee - which was for businesses that lacked collateral and/or track record – will still be available under the new scheme. Government will be bringing forward proposals for a scheme post March 2010 later this year.

More than just a change of name

The new scheme is designed to offer more help to more businesses – EFG provides loans up to £1 million compared to an upper limit of £250,000 for SFLG and supports businesses with a turnover of up to £25 million compared to £5.6 million under SFLG. Additionally ECF loans can be used to convert an overdraft into a loan. The EFG is available to viable businesses that in normal circumstances would be able to secure lending from banks but who cannot secure bank lending in the current times.

Fewer restrictions – more availability

All individual decisions on the use of EFG, are made by the participating lenders based on the information provided by potential borrowers.

However, the scheme is now available across more sectors of business and industry. As of 1 March 2009, BERR has removed the remaining restrictions on the following sectors:

- **Authors, music composers and own-account artists**
- **Automotive**
- **Betting and gambling**
- **Medical and Health services**
- **Postal services**
- **Shipbuilders**
- **Steel**
- **Synthetic fibres**
- **Ticket Agents**
- **Tied Public Houses**
- **Veterinary Services**

Help where it's needed most

The scheme is expected to be a huge help for growing small businesses, but still comes with the usual warnings.

For instance, some banks may be reluctant to lend on the scheme until they have exhausted their other lending options, including overdrafts, mortgages and invoice factoring.

You will still need to put up some security for the 25% of the loan that isn't guaranteed by the government. So if your business doesn't have appropriate assets, that could include your home, which will then be at risk if you default on the loan.

For more information or advice on any of the topics above, please contact Dan Nixon e: dan.nixon@wkcf.co.uk t: 0207 403 1877

The new scheme is designed to offer more help to more businesses

* The BERR replaces the old DTI

It pays to **treat your staff well**

In these tough times, it can pay huge dividends to make sure you retain your key staff and employees – ready to give you a strong competitive advantage when things get better.

One of the surest ways of achieving this is to set up some form of employee share scheme which would give your staff a stake in your business and help improve its performance.

Greater loyalty – and even government approval

As employees normally have to remain with the business to get this benefit, share schemes encourage loyalty and can help you retain valued staff. They act as an incentive or reward – and can also help recruitment when you start thinking about expanding again. What's more, many such schemes are HM Revenue & Customs (HMRC) approved.

Bonuses – the dreaded 'B' word!

They might currently be frowned on in some areas of business but there's no doubt that a well-planned bonus scheme can incentivise staff to perform better, achieve more and help your business grow. Provided your bonus scheme is dependent on profitability, it will effectively cost you little or nothing. So it's well worth thinking about.

Consider all the options

There is a wide range of incentive schemes, each with different costs. They include financial and non-financial schemes, individual and group schemes, and short-term and long-term schemes.

For example, financial incentives can help improve performance and be self-financing.

Examples include:

- **profit-related and share option schemes**
- **bonuses**
- **commission**

Non-financial and non-pay incentives include:

- **formal recognition/awards**
- **vouchers**
- **extra holidays**
- **gifts**
- **company cars**

An incentive scheme can offer employees extra pay as long as they reach individual or group performance targets.

Giving your staff all the options

Some companies offer their staff a range of options. Indeed, many businesses allow staff to select their own benefits from a pre-defined list. For example, staff might be able to choose between health insurance and a gym membership.

Talk it over with Wilkins Kennedy

As there can be tax and National Insurance implications for most financial incentives and for non-financial benefits with an equivalent cash value, it's a good idea to talk to your Wilkins Kennedy contact early about the tax and National Insurance implications of different employee share schemes before introducing one.

We will examine the benefits and potential pitfalls, and provide information on how to choose and manage a scheme that suits your business.

And finally, if all else fails...

Please remember that in the unfortunate event that you need to lay staff off, the current redundancy rules can be complicated and confusing, so it could well be worth contacting Wilkins Kennedy to help you steer your way through the legislation.

For more information or advice on any of the topics above, please contact Adrian Glynn e: adrian.glynn@wkbusinesssolutions.com t: 0207 403 1877

Just the right help – at just the right time

The Financial Services Compensation Scheme

If you're having problems with a claim against an authorised financial service firm, the Financial Services Compensation Scheme (FSCS) can almost certainly help.

It can pay you compensation of up to £50,000 if a firm is unable, or likely to be unable, to pay claims against it. Usually this is when a firm has stopped trading, and has insufficient assets to meet claims, or is in insolvency. Furthermore, the FSCS service is completely free to consumers.

The FSCS is an independent body set up by law under the Financial Services and Markets Act 2000 (FSMA) and became the single compensation scheme on 1 December 2001 when the FSMA came into force, replacing former schemes. The FSCS is funded by levies on authorised firms.

How the scheme can help you.

The FSCS covers business conducted by firms authorised by the Financial Services Authority (FSA), the independent watchdog set up by government to regulate financial services in the UK and protect the rights of consumers. In some cases, European firms that operate in the UK may also be covered – particularly if they are authorised by their home state regulator.

Are YOU protected?

The FSCS can only consider claims against firms that were authorised by a UK regulator at the time the advice was given. Although the UK's regulator is currently the Financial Services Authority (FSA), it replaced a number of previous regulators, including:

- **PIA (Personal Investment Authority),**
- **SIB (Securities and Investment Board),**
- **FIMBRA (Financial Intermediaries, Managers and Brokers Regulatory Authority);**
- **LAUTRO (Life Assurance and Unit Trust Regulatory Organisation);**
- **SFA (Securities and Futures Authority)**

CLAIMS BEFORE 1 DECEMBER 2001

Important dates to watch out for

For investment claims If a claim relates to business conducted before 28 August 1988 the FSCS is unlikely to be able to help. This is the date when these activities were first protected by an investor compensation scheme in the UK.

Mortgage advice and arranging. The FSCS will only be able to help if a claim relates to business conducted on or after 31 October 2004. These activities were not protected by FSCS before this date.

Claims relating to insurance intermediaries. The FSCS will only be able to help if a claim relates to business conducted on or after 14 January 2005. These activities were not protected by FSCS before this date.

For further information and help with a claim or advice on any of the topics above please speak to your usual WK contact or Steve Golder e: steve.golder@wilkinskennedy.com

What the FSCS covers

- **deposits,**
- **insurance policies,**
- **insurance broking (for business on or after 14 January 2005),**
- **investment business, and**
- **mortgage advice and arranging (for business on or after 31 October 2004).**

How the scheme works

- **The FSCS will carry out an investigation to establish the financial position of the firm from whom you are claiming.**
- **They can pay compensation only if a claim is eligible under FSCS rules.**
- **FSCS can pay compensation only for financial loss and there are limits to the amounts of compensation.**
- **Although the Scheme was set up mainly to assist private individuals, some smaller businesses are also covered.**
- **Larger businesses are generally excluded, although there are some exceptions to this for deposit and insurance claims.**

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