

Another Revas Irregular Update

As the outsourcing arm of Baker Tilly, Revas is perfectly placed to provide you with the very latest advice on how to make the most of any opportunities to reclaim money from HM Revenue & Customs and/or make sense of the numerous tweaks to the tax regime.

Below is most recent guidance from Baker Tilly tax experts on claiming refunds from HMRC.

Opportunities to reclaim refunds on NIC and VAT on samples

Do you pay employees a car allowance and then a rate of business mileage designed to cover just the cost of the fuel? If so there may be an opportunity for you to claim refunds of National Insurance contributions for a period of up to six years.

HMRC has lost a recent case at the Tax Tribunal concerning the treatment of lump sum payments made to employees who drive on business. In the past these have often been treated by employers as an advance of salary and subjected to both tax via PAYE and also employers' and employees' NIC.

Following the Tribunal's decision, and subject to any appeal by HMRC, such payments may now be treated for NIC purposes as an advance in respect of mileage expenses incurred rather than simply an addition to salary.

This means that as an employer you could potentially make a claim to a refund of overpaid NIC if you:

- make lump sum payments to staff who drive their own vehicle in the course of their work, and
- pay a business mileage rate of less than 40p per mile, and
- have kept adequate records backing up the business mileage travelled and
- do not link the amount of lump sum allowance paid to the salary level of the employees in question.

Refunds are not available for car allowances paid to staff regardless of whether any business mileage was actually undertaken, or where the amount paid is clearly linked to salary levels.

Refund claims could go back up to six years so for an organisation with, say, 100 employees each travelling 6,000 miles per year on business, being paid a car allowance of £5,000 per annum plus 15p per mile, the employer NIC paid on the allowable element of the lump sums would have been £192 per employee per year, or £19,200 in total. Over six years this totals just over £115,000.

In addition, the employees could themselves claim back the employees' NIC paid on the allowance. For 100 employees this could be as much as £99,000 over six years, or nearly £1,000 per employee.

What do I need to do?

HMRC has sought leave to appeal the decision and so the Tribunal's decision is not yet final. However, if you think the decision may affect you, please do contact either your own accountant or Mark Collins, Baker Tilly on 01483 307000 to discuss the best approach.

Opportunity to claim back VAT on samples and certain gifts

Samples

The European Court of Justice has ruled in the case of EMI Group that the UK's VAT treatment of samples is incompatible with EU law.

Under the UK rules, where a number of identical samples are given to the same person, only the first sample is free from VAT. However, the ECJ found that all samples should be VAT-free provided the sample is a specimen of a product which is intended to promote sales and which allows the characteristics and qualities of that product to be assessed.

In light of this judgement, the opportunity to recover VAT paid to HMRC on samples over the last four years has been confirmed.

Gifts

Where gifts are concerned, under the UK rules, no VAT liability arises on goods gifted by a taxable person if the value of goods given to the same recipient does not exceed £50 in the same year. Unfortunately, the ECJ has ruled that Member States are free to set a cumulative threshold such as the one the UK has implemented. However, some opportunity does remain in that the ECJ has confirmed that each recipient of a gift should be looked at individually. This means that where a number of employees of the same company receive a gift, the employer is not to be treated as the recipient for the purposes of the £50 cumulative limit.

Please contact your own accountant or Rupert Moyle, Baker Tilly on 01483 307000 for further advice on reclaiming VAT from HMRC if either of the following apply to you during the last four years:

- You have distributed samples and have accounted for VAT on these
- You accounted for VAT where you made gifts to more than one employee of the same company (where individually the gifts would fall below the £50 limit in a 12-month period).

I hope that you find these topical updates of interest and do please contact me if you would like to discuss any aspect or be introduced to a Baker Tilly tax specialist.

Kind regards

Mark Holland
Managing Director
Baker Tilly Revas

mark.holland@bakertilly.co.uk