

# CLIENT BULLETIN

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## TWO WARNINGS ABOUT PENALTIES

Anyone running a company needs to be aware that the penalties for not filing the Statutory Accounts at Companies House on time have increased significantly. Private company and LLP accounts filed up to a month late will now attract a penalty of £150; this rises to £375 for accounts filed up to three months late; to £750 for accounts filed up to six months late; and to an enormous £1,500 for accounts filed more than six months late. Please forgive us when we chase you about your accounts, but the fines are now so big it really is important to keep up-to-date!

Secondly, all employers should note that penalties will now be charged wherever an inspector discovers that employees have been paid less than the minimum wage (hitherto, penalties have only been charged when an employer failed to comply with an enforcement notice, issued after an underpayment was discovered). The penalty is calculated as half the underpayment identified, subject to a minimum penalty of £100 and a maximum of £5,000. There is a 50% reduction if both the arrears of wages and the penalty are paid within 14 days. The penalty will not be a deductible expense for tax purposes. Also, arrears of wages are to be calculated at current NMW rates, not (as hitherto) at the rates in force when the work was done.

## **EMPLOYING FAMILY MEMBERS**

There is a band of earnings which are subject to 'nil rate National Insurance contributions' – this apparent contradiction in terms means that no contributions are payable, by employee or employer, but the employee's contribution record is still franked for pension and benefit purposes. For 2009/10, the 'nil rate band' runs from the 'Lower Earnings Limit' of £95 a week (£412 a month) to the 'Earnings Threshold' of £110 a week (£476 a month).

Where family members work part-time in a family business, it is important to remember that worthwhile pension rights can be accrued, at no cost, by paying them a salary just over, rather than just under, the Lower Earnings Limit. If you are already doing this, watch that the Lower Earnings Limit rises slightly each April – this year from £90 to £95 a week – so you must remember to increase wages accordingly.

## **PENSIONS LEGISLATION**

So many changes have been made to the law governing pensions recently that it is hard to keep abreast of what is happening. As they will affect everybody, and as some people will have the opportunity of significantly improving their National Insurance Retirement Pension for relatively little outlay, we thought it was worth outlining the position for clients in this newsletter.

### **National Insurance pension deferred**

Between April 2010 and April 2020, State Pension age for women (the age at which a woman can begin to draw her National Insurance Retirement Pension) will rise gradually until it equals that for men. Roughly speaking, for women born on or after 6 April 1950, State Pension age will be deferred by one month for every two months their 60th birthday falls after 5 April 2010 (for anyone wishing to know the exact date, there is a State Pension Age Calculator at [www.thepensionservice.gov.uk](http://www.thepensionservice.gov.uk) – type in your date of birth and the Calculator will tell you the date you become entitled to a pension). At the end of the phasing-in period, a woman born on 6 April 1955 will attain State Pension age on 6 April 2020 – her 65th birthday.

Unfortunately, that will not be the end of the story, as between 2024 and 2046, State Pension age will increase from 65 to 68, for both men and women. This will affect people born on or after 6 April 1959.

### **Reduced contribution requirement for a full pension**

Hitherto, it has been necessary for a man to pay (or to be credited with) National Insurance contributions for 44 tax years in order to qualify for a full National Insurance Retirement Pension (£95.25 a week for 2009/10) and for a woman to have paid or been credited with contributions for 39 years. However, for all those attaining State Pension

age on or after 6 April 2010 (that is, men born on or after 6 April 1945 and women born on or after 6 April 1950), the contribution requirement was recently reduced to 30 years.

Anyone who has not yet paid sufficient contributions to gain entitlement to a full Retirement Pension, and who is unlikely to do so over the remainder of their working life, should consider the possibility of paying voluntary contributions to buy 'added years'. The purchase of 'added years' in the National Insurance scheme has always offered good value for money, and even more so now, when the returns earned on other investments are likely to be very low. Also, of course, the National Insurance scheme is guaranteed by the Government.

The rules governing entitlement to pay voluntary contributions are complex in the extreme – in some cases, for example, it is possible for further contributions to be paid by people who have already retired and begun to draw their pensions. Accordingly, it is impossible to provide a simple guide and so we would invite clients to contact us for individual advice.

### **New rules for the State Second Pension**

Since 1961, there have been schemes to provide employees with an earnings-related 'top-up' to their National Insurance Retirement Pension. First there were Graduated Contributions, which from 1978 were replaced by the State Earnings-Related Pension Scheme (SERPS). Then from April 2002, SERPS was in turn replaced by the State Second Pension, also referred to as 'S2P' or the 'Additional State Pension' – the terms are interchangeable.

At present, an individual's eventual S2P entitlement is built up from contributions based on his earnings. Until 5 April 2009, the definition of 'earnings' for this purpose was capped at the Upper Earnings Limit (UEL) for employees' National Insurance contributions purposes, but from 6 April 2009 it will be capped at a new 'Upper Accrual Point' (UAP). For 2009/10, the UAP is £770 a week and the UEL £844, so that on the band of earnings between the two, the employee will be paying additional contributions which buy no additional benefit. The UAP will remain £770 in future years, so that (with inflation) the ceiling on earnings taken into account for S2P purposes is expected to fall, over time, in real terms.

On 6 April 2012 (the date has not yet been finally confirmed), another change to the rules will take effect. Further accrual to S2P will no longer be entirely income-related: a 'floor' will be set so that those on lower earnings will build up an additional pension of at least £1.60 a week for every year (from 2012/13) they are in employment, or entitled to National Insurance credits as a carer, or are seriously ill or disabled. The other side of the coin is that from April 2010 the rate at which earnings-related contributions earn additional pension above the 'floor' will be reduced in stages. The overall effect of this, taken with the 'freezing' of the Upper Accrual Point already mentioned, is that from around 2030 the additional pension will accrue at a flat rate each year, irrespective of the individual's earnings.

Accordingly, the simple effect of a highly complicated series of changes is that, over a very long period, the earnings-related pension is to be abolished altogether, though the

basic pension will be increased. But by 2030 the rules will no doubt have been changed all over again . . .

### **Pension plans for all employees**

Since October 2001, employers have been obliged to offer their employees the opportunity to join a ‘workplace personal pension scheme’, unless the employer has less than five employees or offers an alternative company pension scheme. However, less than 40% of eligible employees have chosen to avail themselves of this opportunity and many small employers have found that no-one wanted to join the pension schemes they had been obliged to set up.

The Government is keen to encourage employees to join private pension schemes (because the alternative is that they will be claiming Social Security benefits when they retire) and so, from 2012, will require employers to enrol all employees (between age 22 and State Pension age) in a pension scheme, to which the employee will contribute at least 4% of his earnings between £5,035 and £33,540 a year (to be uprated annually) and the employer a sum equal to at least 3% of those earnings. For both employers and employees, minimum contributions will be phased in over three years.

These contributions will be payable on the employee’s full earnings (including overtime, commission payments, *etc* – and even Statutory Maternity Pay) not, as is usually the case with pension contributions, only on his or her basic pay. The Government will ‘contribute’ 1% (in the form of the usual tax relief on the employee’s contribution) and the pitch will be that the employee ‘gets £8 for £4’.

There will be no minimum length of service to qualify for membership of the pension scheme, and part-time and temporary employees will be entitled to join on the same basis as permanent staff. However, employees will be entitled to opt out if they wish. They would not then pay contributions themselves, but would lose the benefit of contributions paid by their employer.

Even employers with existing pension schemes may have to reconsider their arrangements before 2012, as membership may have to be opened to individuals currently excluded, and the definition of earnings for contributions purposes may have to be extended.

### **BETTER SAFE THAN SORRY**

Because of the recession, it is quite likely that some people will find that their income falls sharply during the 2009/10 tax year. Also, some self-employed people may find that their taxable income is lower because of the availability of 100% first-year allowances for purchases of vans and equipment for their businesses. In some cases, they will find that they are, for the first time, entitled to claim Tax Credits.

There is a potential trap here, because of the interaction of two Tax Credit rules. The first is that income, for Tax Credit purposes, is averaged over the tax year (or, for self-employed people, is taken as being the income of the accounts year ending in the tax year). The second is that claims can only be backdated for a maximum of three months.

For example, suppose that an individual, who has not previously claimed Tax Credits, realises on 1 December that his income for 2009/10 is likely to be much lower than for 2008/09. If he submits a claim immediately, he will be entitled to Tax Credits for September onwards, but will lose the Credits he could have claimed for April to August.

If the same individual had submitted a protective claim, estimating a higher income, by 5 July 2009 (three months into the new tax year), he would in the first instance have been sent a 'nil award' notice. However, if his income falls, that award can be adjusted retrospectively, and he will be paid Tax Credits backdated to 6 April 2009.

We would therefore strongly advise any clients not already claiming Tax Credits carefully to consider whether they should make a protective claim. Further information on how to do this is posted on HM Revenue & Customs' website at [www.hmrc.gov.uk/taxcredits/claiming-early.htm](http://www.hmrc.gov.uk/taxcredits/claiming-early.htm).

Another point to watch is that if an individual claims Child Tax Credit, his claim to both Child and Working Tax Credit will be backdated automatically. However if he claims only Working Tax Credit, his claim will not be backdated unless he specifically requests this. Backdating can be requested by telephoning the Tax Credit Helpline.

*This newsletter deals with a number of topics which, it is hoped, will be of general interest to clients. However, in the space available it is impossible to mention all the points which may be relevant in individual cases, so please contact us for personal advice on your own affairs.*