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BIK errors could prove very costly for dealers

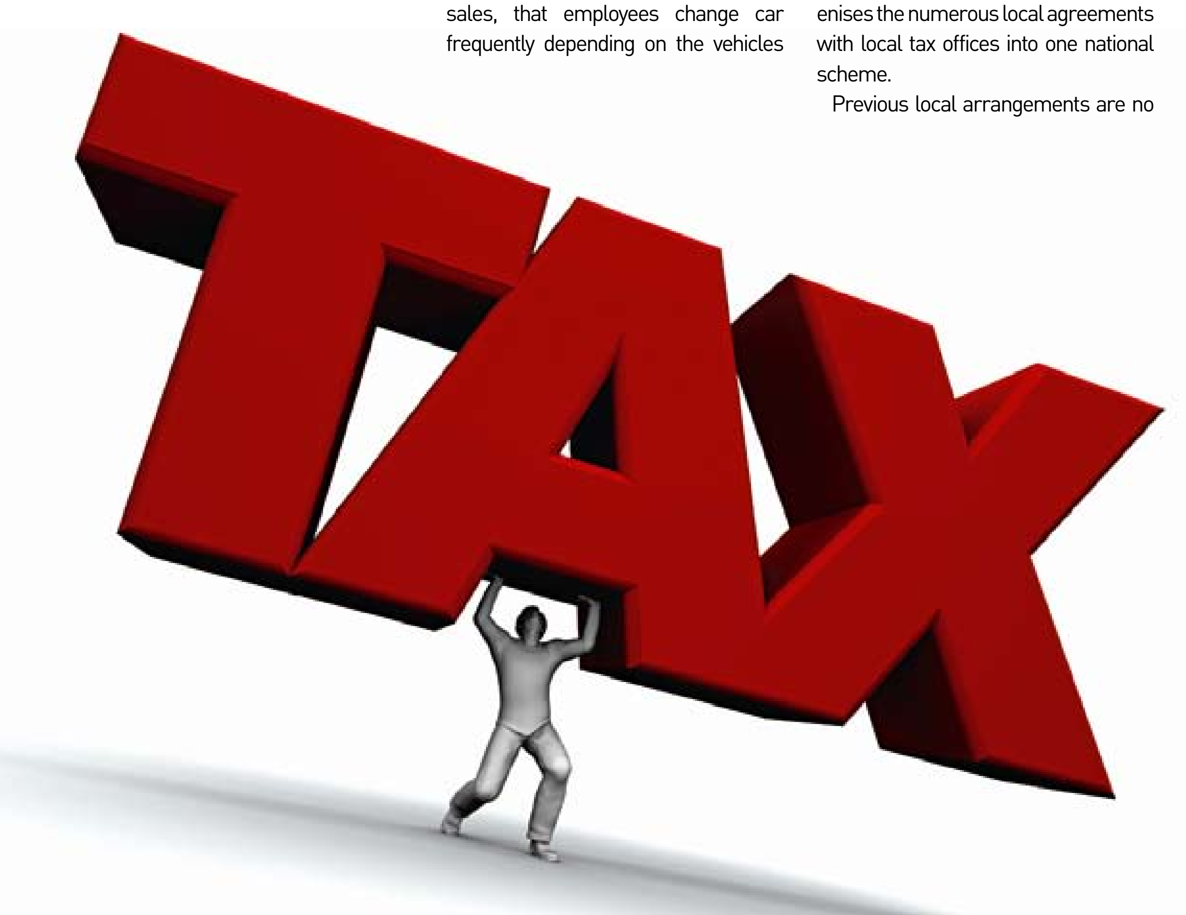
Experts emphasise the need for accurate records as HMRC looks to close UK's £42bn tax gap

Failure to closely adhere to current HMRC guidelines with respect to the benefit in kind payable by company car drivers could cause severe financial damage to dealerships, if they do not maintain the comprehensive records required.

Paul Brown, ASE tax director, explains the implications for dealers.

HM Revenue and Customs (HMRC) has invested £900 million in an attempt to close the £42 billion UK tax gap and to recover this it will actively seek out any 'big ticket' items to help recover the debt, he said.

"The UK's 5,000 franchised car dealerships are prime targets in this programme and will find that areas where the HMRC has been lenient will come under tighter scrutiny in future," he added.



One of the most prominent of these areas is the benefit-in-kind tax that company car drivers pay for the use of company vehicles.

Dealerships could be exposing themselves to heavy financial penalties if their record keeping is not up to standard when they are asked to produce it.

In April 2009 HMRC introduced a new system for managing the benefit-in-kind liabilities of drivers who changed car frequently.

This scheme affects many different sectors, the motor trade most of all.

It is part of the trade, especially in sales, that employees change car frequently depending on the vehicles available, the mileage levels of the stock and, in many cases, the set of keys which are easiest to find.

£900m

HMRC investment in tackling UK tax gap

5,000

Franchised car dealers who are prime targets for HMRC

"The new scheme is designed to deal with this frequent changing of vehicles and, by extension, the benefit-in-kind liability that the staff member incurs," said Brown.

The scheme bands vehicles by value and averages the liability in the band. Staff members are then allocated a band and are expected to stick to it.

It streamlines the paperwork involved in the changing of cars as HMRC no longer requires a P46 to be submitted at every change of vehicle, and homogenises the numerous local agreements with local tax offices into one national scheme.

Previous local arrangements are no longer valid. HMRC staff are not authorised to enter into local variants and any such local variant is therefore not valid.

"The dealership is still responsible for ensuring staff are in the right bands, paying the right tax and keeping adequate records to prove that fact when asked to do so. And this is the sting," said Brown.

With large numbers of drivers and vehicles often in different locations, changing frequently and used by multiple departments keeping auditable records can be very difficult. HMRC will audit driver activity as well as vehicle activity.

Exposure

"Keeping in mind the £42bn gap that needs to be filled by HMRC, dealerships should revisit any potential exposure they have to an aggressive audit," added Brown.

Company car benefit-in-kind liability is one area where most businesses are exposed to differing degrees.

If asked, would your business be able to account for the total mileage on current or sold, static demonstrators (i.e. vehicles which have been opted-out of the averaging scheme), to prove they haven't been used as company cars?

Are processes in place to record that members of staff have remained within their allocated band and, if not, is there an acceptable explanation?

Have logs been kept to show why they have been moving in and out of their band?

"These are difficult questions to answer before we even get to the real sting in the tail; can it be proven every member of staff who does not receive fuel as a benefit has used less than one litre of company or customer provided fuel over the entire tax year?" said Brown.

Keeping auditable records can be difficult with large numbers of drivers

"If the answer to these questions is no, the business is exposed to substantial financial penalties.

"If it cannot be proven that a vehicle has not been driven for private purposes, when no one is paying the tax for it, the dealership will find itself liable for the tax on that vehicle.

"This tax bill can be doubled as a fine and then multiplied by the number of years since the last audit."

Example:

Ford Kuga Zetec 5dr 2.0 diesel AWD worth £20,495 with 159g/km CO_2 emissions for a 20% taxpayer:

£20,495 x 20% x 23% = £942.77 tax liability per year

Plus 12.8% National Insurance (rising to 13.8% in 2011/12)

For a 40% taxpayer this liability is doubled. This can again be doubled as a fine for non-compliance and then multiplied by the number of years (maximum of four) since the last audit.

If one vehicle fails this test it is reasonable to assume that others will, further multiplying the tax bill. If it cannot be proven that a member of staff has not received fuel as a benefit and the tax hasn't been paid the same logic applies. The liability falls upon the dealership, again multiplied by the number of years since the last audit.

Example:

Fuel benefit for a Ford Kuga Zetec 5dr 2.0 diesel AWD with 159g/km CO_2 emissions for a 20% tax payer:

£18,000 x 20% x 23% = £828 tax liability per year

Plus 12.8% National Insurance (rising to 13.8% in 2011/12)

For a 40% tax payer this liability is doubled. This can again be doubled as a fine for non-compliance and then multiplied by the number of years (maximum of four) since the last audit.

Surprise visits

The potential exposure of dealerships within the motor trade to an aggressive audit by HMRC is vast and it has formed one of the hot topics that Brown addresses to his clients as part of ASE's specialist tax advisory services.

"Dealers should be aware that HMRC is starting to conduct impromptu visits. Tax law requires you to prove that you're complying with the regulations and it is your responsibility to prove you are not getting it wrong.

"HMRC has several different areas of interest; have drivers stayed within their band, can the mileage on a sold demonstrator be accounted for, particularly if is not designated for private use, and is private fuel benefit being accurately assessed.

"They will assume you are likely to be getting it wrong until they find records to the contrary, and HMRC only needs to find one mistake to penalise you."

Are you providing fuel as a benefit unnecessarily?

As a reaction to the threat of being fined for being unable to prove that fuel was not provided as a benefit, many dealers have taken the decision to give their staff company fuel allowances.

This has taken a variety of forms from limitless company fuel use to

With concerns over possible tax penalties now could be a good time to review company fuel schemes

an allowance dependent on seniority, which may be little more than the amount of tax the member of staff pays for the benefit.

This can be a costly solution for the staff member and the business.

Unlimited fuel can become very expensive especially with the rises in fuel prices.

On top of the fuel bill the business is required to pay National Insurance of 12.8% on the value of fuel provided.

Businesses which provide a set amount of fuel could be paying up to £150 per staff member per month plus 12.8% NI to protect them against an HMRC fine.

With some changes to record keeping and a review of the way fuel is provided these charges can be eradicated, potentially saving businesses tens of thousands of pounds per year.

From regulation to opportunity?

These new tax requirements can be taken as an opportunity rather than a threat.

Reviewing a business's company car scheme and fuel provisions can lead to savings for staff and business alike.

Taking a proactive stance towards the banding and averaging process can lead to lower tax paid by staff over the rest of the year and act as a catalyst to re-examine the types of vehicles provided, the fleet sizes and their use.

Having a more centralised system of managing fleets can lead to a leaner, more streamlined and efficient stock portfolio. Mileages can be managed, vehicles can be circulated to maintain

> 'Dealers should be aware that HMRC is starting to conduct impromptu visits'
>
> Paul Brown, ASE

their value and the utilisation can be increased. The HMRC may be looking for a bumper New Year from the motor trade, but the right response to this new level of regulation should be one of increased efficiency and professionalism and, where possible, lower BIK payments and NI contributions.

Cooper Solutions has worked with ASE to develop an upgrade package to its FullCover Fleet Management System that will accommodate the legal changes.

Managing director Barry Cooper said: "HMRC guidelines are detailed, complicated, ambiguous and, from discussion with numerous dealers, subject to interpretation in many different ways.

"The inescapable fact is that HMRC will audit dealers in the coming years and the potential penalties for non-compliance are severe.

"Without robust systems and procedures and a commitment from senior management to ensure consistent compliance in an efficient way, the cost of this regulation is likely to be considerable. The days of driving high BIK cars without a commensurate tax bill are gone."