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Newsletter

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A chance to simplify inheritance tax?

Inheritance tax (IHT) has remained largely unchanged for the past decade, apart from the introduction of the residence nil rate band in 2017. However, proposals from both sides of the political spectrum mean any current estate planning may soon require revision.

The latest report on simplifying IHT, produced by the Office of Tax Simplification (OTS), concentrates on three key areas.

Lifetime gifts The report recommends that the seven-year survival period is reduced to five years, but with taper relief abolished. However, such a change would create a five-year cliff edge for IHT chargeability.

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The OTS also suggests that the various lifetime exemptions should be replaced with a personal gifts allowance. This might also be used to replace the exemption for normal expenditure out of income.

Businesses The threshold for trading activity for business property relief should be aligned with that for capital gains tax (CGT) reliefs. So the present test of 'wholly or mainly' (generally meaning above 50% of trading activity) would be replaced with an 80% test.

Interaction with CGT Currently, there is a CGT tax-free uplift on death, with a person inheriting assets at their market value at the date of death. The OTS recommends that the uplift be removed where an asset also qualifies for an IHT exemption, and the recipient of the asset should inherit at the historical base cost of the person who has died.

Given the current political turmoil, there could soon be a change of government and the Labour party has its own IHT plans. So you may wish to take some simple planning measures. If you are in a position to make large tax-free gifts out of income, do so now in case the exemption is curtailed. Look at restructuring a business that falls between the 50% and 80% trading activity tests. And if there is no CGT advantage to retaining assets until death, consider making lifetime gifts instead.

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EMPLOYMENT

Determining off-payroll employment status

The off-payroll working rules for private businesses are set to change from April 2020, but some recent tribunal decisions have led to uncertainty over determining employment status.

The rules, commonly known as IR35, apply where a worker provides services to a client or end-user through an intermediary – typically a personal service company (PSC) owned by the worker. At present, if the end-user is in the public sector, they must determine the worker's employment status. If the end-user is in the private sector, it is the responsibility of the PSC.

From April 2020 private sector medium and large businesses that engage workers via intermediaries will have to determine their employment status. There will be no change for small businesses.

Status determination

Medium and large end-users will have to

issue an employment status determination statement (SDS) and explain the reasons for it. If there is an employment agency or other intermediaries in the supply chain, the end-user should pass the SDS down the line until it reaches the business that will pay the PSC. If that business decides the worker is an employee, then it is treated as the employer and must deduct income tax and employee's NICs from the payment. It is also responsible for paying the employer's NICs.

Up to 170,000 PSCs are expected to be affected by the change. Some may find it has far-reaching consequences. If such workers considered they were not within the IR35 rules before April 2020, but the end-user then categorises them as an employee under the same contract conditions, HMRC could impose tax penalties for previous tax years. A PSC owner in this position may wish to make an unprompted disclosure to HMRC, which would reduce or possibly avoid penalties.

A problem for PSCs and their clients is that determining employment status requires applying complex rules that even HMRC can find difficult to interpret. In a number of cases, the tax tribunal has issued conflicting decisions, depending on the precise facts, with HMRC winning some very recent ones. If you may be affected, we can advise.

PENSIONS

Remember pension re-enrolment

Every three years employers must re-enrol any staff who have left their pension scheme. Small and micro employers now have to comply with these requirements for the first time.

This October marks the seventh anniversary of the start of workplace pension auto-enrolment, with 85% of eligible private sector employees now enrolled according to recently published figures. The Pensions Regulator is concerned that some employers are failing to complete re-enrolment correctly, with the risk of incurring a fine, and has now launched a new online re-enrolment tool to make the process clearer.

The re-enrolment date is the three-year anniversary from your business's original staging date, but there is a three-month leeway either side of this date. You can check using the re-enrolment date tool.

Re-enrolling employees

Employers must check whether they have any staff to re-enrol and ensure those who are eligible are added back into a pension scheme.

- This means assessing those staff who have left your pension scheme, or who have reduced their contributions into it (they are not considered as being members of a qualifying scheme).
- If you have any staff to re-enrol, they must be automatically enrolled into your pension scheme within six weeks of the re-enrolment date. Any re-enrolled staff should be sent an explanatory letter.
- Re-enrolled staff have one-month in which they can opt out of your pension scheme.

Re-declaration

Employers must then complete and submit a re-declaration of compliance. This is required even if, as will often be the case, there is no need to re-enrol any staff. The re-declaration of compliance confirms that an employer has checked whether they need to re-enrol any of their staff, even if none were re-enrolled. The deadline is five months from the third anniversary of the staging date.

You also still have ongoing duties to monitor your staff's ages and salary to see if they need to be enrolled into your pension scheme.

TAX

MTD – reprieve for late filers

One in ten businesses failed to submit their VAT return using the Making Tax Digital (MTD) service by their 7 August 2019 deadline. However, HMRC has waived penalties in a concession announced in advance because of the slow sign-up to MTD.

Most VAT-registered businesses with taxable turnover above £85,000 are required to keep digital business records and send VAT returns using MTD-compatible software for accounting periods that started on or after 1 April 2019. For businesses with a VAT period starting on 1 April 2019, the first returns under MTD were due on 7 August 2019.

Businesses that missed the deadline for signing up for MTD were told that penalties would not be charged – provided they submitted their returns by 7 August using the old HMRC VAT return portal. To comply with the MTD rules in future, they must obtain the necessary software and sign up to MTD before their next return is due.

So you want to be your own boss?

Increasing numbers of people are choosing to be self-employed, from sole traders and entrepreneurs to those extending their careers as they seek to work past retirement age. However, self-employment is a completely different experience to being employed and requires good planning and organisation.

Some key considerations to making a success of self-employment are set below. Among the basics are:

- **Self-employed or corporate?** You may find that it would be worth setting up a company rather than trading as a self-employed person, depending on a variety of factors.
- **Cash flow** A business may be profitable, but still run out of cash. You will have to keep on top of customer payments and that can be challenging.
- **High overheads** can cause many businesses to fail, particularly where your income fluctuates.
- **Holidays and sickness** mean no income, so calculate how much time it would take to earn the full year's income you need. Look at income protection and critical illness insurance and private medical insurance may be advisable.

Year end and tax payments

Your choice of year end is important. You may find it simplest to use the tax year end – usually 31 March or 5 April. You can opt for another date, but bear in mind that there may be implications for your tax payments in the early years of your business.

Not setting enough aside for tax payments can catch you out, especially early on. For example, say you start a business on 6 April 2020, preparing your first accounts to 5 April 2021. The income tax and NICs for the whole year will be due on 31 January 2022, plus possibly another 50% payment on account for the following year.

It's helpful to save a regular amount to fund tax liabilities, while having your accounts prepared as soon after your year-end as possible gives you maximum advance warning of future liabilities. Depending on the level of tax allowances available, most equipment purchases will effectively be treated as an expense, with tax relief given in the year of purchase. So it's a good idea to make any purchases just before your year-end.

Other issues

If you take on workers, you will need to register with HMRC as an employer and run payroll software that reports PAYE information each pay day. You will also have to comply with national minimum wage legislation and contribute to a workplace pension.

> *Not setting enough aside for tax payments can catch you out, especially early on.*

VAT registration is compulsory if your annual taxable turnover exceeds £85,000, but it can be worth registering voluntarily if your sales are zero-rated or your customers are VAT registered. In both cases, you should be able to recover VAT on purchases and expenses without any impact on sales.

And don't forget your pension. Paying NICs of just £156 a year will entitle you to the state pension, so you should pay these voluntarily if your profits are too low for compulsory contributions. This depends on whether you already have the 35 years of contributions needed for the full state pension – you can check using your HMRC personal tax account.

This list is not exhaustive and there are many other things to consider, such as whether to trade as a limited company. Please get in touch with us for a full discussion of your options.

Unpaid work trials and the minimum wage

Do you ask job applicants to carry out a period of unpaid work to decide whether they have the skills and qualities required for the job? If so, they may be entitled to the minimum wage.

Most workers in the UK must be paid the National Minimum Wage or National Living Wage There are no clear rules, however, for work trials. In practice, payment of the minimum wage depends on the answers to several questions:

- Is the work trial genuinely for recruitment purposes? If not, it is a work contract and the minimum wage is payable.
- How long is the trial? HMRC considers that no more than a day is usually needed to test a candidate's qualities.
- To what extent is the individual observed in carrying out tasks during the trial?
- What is the nature of the tasks in the trial and how do they relate to the job being offered?
- Do the tasks the person carries out provide any value to the employer beyond just testing the applicant? If so, the applicant is likely to be treated as a worker.
- Is the employer actually using trial periods to reduce labour costs?

Employers should also take care about internships, work experience and volunteers, where similar considerations apply.

VAT

Very awkward tax: getting it right on VAT

VAT is regularly in the news, whether it's planning for Brexit or postponing the reverse charge for construction services just weeks before its start date. Businesses are responsible for ensuring their returns are accurate, but regular tribunal cases prove how difficult this can be.

Even if you are not currently VAT registered, the freezing of the registration threshold of £85,000 until April 2022 means that you must keep a careful check on your turnover. You need to do this monthly, not annually, and, if you register late, you will have to back-date VAT to when you should have registered.

Type of supply

Tribunal decisions on whether a supply is standard rated, zero-rated or exempt can be confusing, especially when they involve food or building materials. A recent tribunal case, for example, decided that mirrored cabinets did not qualify as building materials, so the self-employed builder involved could not recover the VAT on the £3,415 cost. The cabinets could easily be removed from the wall, so they were not considered to be fixed to the building.

HMRC also does not look kindly on schemes aimed at avoiding VAT by splitting a business into separate parts – known as disaggregation – so that some, or all, of the parts are below the registration threshold.

A tribunal decision from 2018 decided that there was only one business where a husband was a self-employed plasterer, but was also running a floor-screeding business in partnership with his wife. It didn't help that both businesses had originally been run together and were just separated into two parts to avoid charging VAT on the plastering work.

Reverse charge

The reverse charge for construction services was supposed to start on 1 October, but has been put off for a year. Businesses that had changed their systems to meet the new requirements now need to revert to the existing system for the next 12 months.

The penalties for getting VAT wrong can be onerous, so make sure you seek guidance through the complexities if you have any questions.

TAX

All change for company car tax benefits

The next tax year will see a substantial overhaul to how company cars are taxed.

Pure electric company cars will attract a 0% benefit in kind (BIK) rate for 2020/21, instead of 2% as originally announced. The zero rate will only last for one year, increasing to 1% in 2021/22 and 2% in 2022/23. The current (2019/20) BIK rate for zero-emission vehicles is 16%.

The company car tax changes result from the UK adopting the Worldwide Harmonised Light Vehicle Test Procedure (WLTP) to establish carbon dioxide (CO_2) emissions.

Taxable BIK rates for company cars registered from 6 April 2020 will be based on the new emissions figures and there will be separate tables for 2020/21 and 2021/22 for cars registered before 6 April 2020. The key points are:

- For cars first **registered before 6 April 2020,** other than pure electric cars, rates for 2021/22 and 2022/23 will be frozen at the previously announced 2020/21 levels. Hybrid cars will be taxed based on their electric mileage range.
- For cars first **registered from 6 April 2020,** most company car tax rates in 2020/21 will be reduced by two percentage points compared with those registered before that date. They will then increase by one percentage point in 2021/22 and a further one percentage point in 2022/23, at which point they will be the same as rates for older cars.
- The BIK rates for **diesel cars** are still 4% higher, up to the same maximum rate of 37%. Cars that meet the Real Driving Emissions Step 2 (RDE2) standard are exempt. The diesel supplement also does not apply to diesel plug-in hybrids because they are classed as alternatively fuelled vehicles.

The WLTP emissions figures are likely to be higher than the currently calculated figures because they reflect real world driving conditions. The lower BIK rates for the next two years are aimed at reducing distortion of the car market.

RATES

New advisory fuel rates

In HMRC's update on advisory fuel rates on 1 September three of the petrol and diesel rates reduced by 1p, but the 1401cc to 2000cc liquefied petroleum gas (LPG) rate was increased by 1p.

The current rates per mile are:

Engine size	Petrol	Diesel	LPG
1400cc or less	12p	10p	8p
1401cc to 1600cc	14p	10p	10p
1601cc to 2000cc	14p	11p	10p
Over 2000cc	21p	14p	14p

The advisory electricity rate for fully electric cars remains at 4p a mile. Hybrid cars are treated as either petrol or diesel models, depending on the fuel they use. Any amounts paid above HMRC's rates will give rise to tax liabilities. However, you can use your own rates if, for example, your cars are more fuel efficient or if the cost of business travel is higher than the advisory rates. HMRC will review the rates again from 1 December, although the current rates can be used for a further month.