

MAY DEADLINE FOR NEW DATA PROTECTION RULES

Businesses must meet the new requirements on data management

INDEXATION CHANGES TO HIT COMPANY CAPITAL GAINS

Freezing of inflation relief to affect property-owning companies

NEW HOLIDAY RIGHTS FOR SELF-EMPLOYED WORKERS

New ruling affects rights to paid annual leave



Financial UPDATE

SPRING 2018

The rising cost of company cars

New emissions charges explained



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If you would like to discuss any issues raised in this newsletter please contact your usual DTE contact. Alternatively, call Natalie Noone on 0161 767 1293 or email marketing@dtigroup.com

DATA PROTECTION

May deadline for new data protection rules

Major changes in rules governing how businesses manage personal data take effect this May. It is essential you are familiar with the new requirements.

The EU General Data Protection Regulation (GDPR) comes into effect on 25 May 2018 and will replace existing data protection rules. Although this is EU law, the government has said it will remain in force after Brexit.

The GDPR gives individuals – including customers and employees – greater control of their personal data held by businesses and other organisations. They will be able to choose whether and how businesses use those data, and they will also have the right to have their data deleted. Businesses will need explicit consent to hold a person's data in electronic format and to share it with other organisations. The definition of data has widened to include IP addresses, internet cookies and even DNA.

DATA PORTABILITY

A new right to data portability will allow individuals to move, copy or transfer personal data easily from one IT environment to another. For example, they could upload their data to a price comparison website to find a better deal based on their personal circumstances. Your business must therefore be able to identify all of an individual's data, and make it available in a structured, commonly used and machine-readable form, for example CSV files. This will generally have to be done free of charge and within one month of a request.



A new right to data portability will allow individuals to move, copy or transfer personal data easily from one IT environment to another.

Subject to various conditions, individuals will also have the right to: be informed how their data will be used; have their data corrected or deleted; restrict or object to processing of their data; and object to automated decision-making.

By 25 May you need to know precisely what data you are holding and for what purposes. In particular organisations must:

- Ensure that employees are fully informed about the uses being made of their personal data, and that HR staff have training in the new rules.
- Delete all information about employees and customers that they no longer need.
- Only collect and process personal data that they legitimately need for identified purposes.
- Update their procedures for managing access requests by data subjects.

Don't delay: the penalty for getting it wrong after 25 May will be up to €20 million or 4% of worldwide turnover – whichever is the higher – depending on the damage done.



SPRING 2018

In this issue...

The new year brings change, but not all those changes may be welcome. We look at the increases to company car costs in our feature, as well as the impact of the freezing of indexation relief for corporate capital gains. Employment law is in the spotlight as well, with advice on effective workplace harassment policies and changes to workers' rights to holidays. If you are affected by any of our stories, please get in touch to discuss your circumstances.

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Workplace harassment

With harassment and bullying dominating the headlines, it is more important than ever to have robust systems in place.

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VAT registration thresholds frozen from 2018

Ahead of a major consultation, the government is freezing VAT thresholds.

Cover image: iStock / Rawpixel

EMPLOYMENT

Workplace harassment

With harassment, bullying and sexual misconduct highlighted in the news recently, no employer can afford to be complacent.

Allegations of such behaviour towards employees or others can do serious harm to the reputation of a business. Staff morale may be damaged, contributing to absences, poor performance and loss of productivity.

At worst, ignoring the issue can lead to expensive and damaging litigation. Employers need to know what behaviour amounts to harassment or bullying and have procedures to stop it effectively and quickly.

DEFINING THE PROBLEM

Bullying is offensive, intimidating, malicious or insulting behaviour, the abuse or misuse of power by undermining, humiliating, denigrating or injuring the recipient.

Harassment has a legal definition under the Equality Act 2010. It consists of unwelcome behaviour that is:

- Intended to violate – or has the effect of violating – an individual's dignity, or of creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual.
- Related to a protected characteristic – age, disability, race, religion or belief, sex, sexual orientation or gender reassignment.

Harassment may come from another employee or from someone else, such as a customer. It need not be face-to-face, and it may occur through written communications and pictures. It may take place where a manager

applies a form of supervision that they do not apply equally to other employees. Examples of unacceptable behaviour are exclusion, victimisation, spreading rumours, unfair treatment, overbearing supervision, blocking an individual's training or promotion opportunities and making sexual advances.

Sexual harassment is one of the most common forms of harassment and it is specifically outlawed by the Equality Act. It includes sexual comments or jokes, touching, displaying pictures of a sexual nature and sending emails with a sexual content.

Employees can complain of behaviour that they find offensive, even if it is not directed at them or they do not share the protected characteristic. For example, a heterosexual male could make a complaint that a colleague made homophobic remarks to him.

Example

Stephen, a manager, makes frequent derogatory comments about the Christian faith of Bernadetta, a junior employee. Alison, who is not herself a Christian, finds this offensive. Both women might be able to make a claim about unlawful harassment at an employment tribunal if the business fails to deal with Stephen's behaviour.

ADDRESSING THE ISSUES

Employers have a duty under the Equality Act to prevent harassment at work. Here are some things they should do:

- Consider making a statement that bullying and harassment will not be tolerated and may be treated as disciplinary offences. The statement could include examples of unacceptable behaviour and the steps the employer takes to prevent it. Involve staff in framing such a statement.
- Have fair and strong grievance and disciplinary procedures.
- Assure employees that any allegations will be taken seriously, investigated and handled confidentially.
- Make sure managers will challenge inappropriate behaviour and comments.
- Establish a culture in which employees feel able to contribute their views rather than being instructed what to do.
- Consider whether any training is needed to rectify any lack of understanding of what bullying and harassment are. An individual might genuinely not think their behaviour or management style amounts to bullying or harassment.

Having good systems can provide an employer with a defence if there is a tribunal claim, and help produce a happy and productive workplace.

TAXATION

Company car costs: INCREASES COMING

Changes to company car charges due in 2018/19 and 2019/20 will lead to increased costs, particularly for drivers of low-emission vehicles.

T

here will be increases in the charges that are applied to a car's list price to calculate the taxable benefit of having a company car.

For cars with CO₂ emissions of 95g/km and above, the percentage is increased by 1% for each additional 5g/km of emissions. For example, in 2018/19 the relevant percentage charge for a car with CO₂ emissions of 119g/km will be 24%. The charge is capped at a maximum of 37%.

To take a specific example, the Audi A4 is widely used as a company car. For 2017/18 the tax on a 3.0-litre diesel engine A4 with a list price of £37,480 for a 40% taxpayer would be £315 a month. Next year, the monthly cost will be £353 and by 2019/20 it will be £391.

Not too long ago, drivers of company cars with zero emissions did not suffer any tax charge,

CO ₂ emissions g/km	2017/18	2018/19	2019/20
0 - 50	9%	13%	16%
51 - 75	13%	16%	19%
76 - 94	17%	19%	22%
95 - 99	18%	20%	23%

but they are now going to see their current 9% charge increase by nearly 80% over the next couple of years.

DIESEL CARS

Diesel company cars are subject to a 3% surcharge for 2017/18, although the percentage charge is still subject to the 37% maximum. For example, a diesel car with CO₂ emissions of 119g/km will have a percentage charge of 25% (22% + 3%). The surcharge does not apply to diesel hybrids.

From 2018/19, the diesel surcharge will increase to 4%, although it will not apply to diesel hybrids (as now) or diesel cars that are certified to the Real Driving Emissions 2 (RDE2) standard. Sadly there are no qualifying RDE2 diesels currently for sale and there are unlikely to be any for the next 12 to 18 months

FUEL

If you are also provided with fuel for private motoring, you will suffer a double hit next tax year. This is because the fixed figure used in the fuel benefit calculation will also increase by nearly 3.5% – from £22,600 to £23,400.

From 6 April 2020, the electric range of a car will be a factor in determining the percentage charge for cars with CO₂ emissions of 1-50g/km, with a very favourable tax charge if a car can travel a long distance on just electric power. A 2% charge will apply for cars that can only be driven in zero-emission mode.



“ From 6 April 2020, a 2% charge will apply for cars that can only be driven in zero-emission mode.

WHAT TO DO NOW?

The increasing tax costs make vehicle selection more important than ever, whether you are an employee selecting your next company car or you are responsible for your company's car fleet.

- Modern hybrid cars generally have much lower CO₂ emissions rates compared with petrol and diesel variants.
- Employees should consider the advantages of contributing towards the cost of a company car if it means that you can have one with much lower emissions. Up to £5,000 can be deducted from a car's list price for the purpose of calculating benefits.

If you are reviewing your company car arrangements and would like some advice, please get in touch with us.

KEY FACTS

0%

There is no fuel benefit for all-electric company cars because electricity is not classed as a fuel, even if a car's battery is charged at work.

4%

The surcharge for diesel cars in 2018/19.

check

You can check your car benefit for the current tax year using HMRC's calculator:

<http://ccfcalculator.hmrc.gov.uk>



EMPLOYMENT

News in brief...

IR35 reforms coming to the private sector

The government is planning to consult on extending the public sector off-payroll working rules to the private sector.

In April 2017, there were major changes to the way in which IR35 applies where a contractor provides their services to a public sector body client through an intermediary:

- Status determination – the responsibility for determining IR35 status shifted from the contractor to the client. The client is likely to take a risk-averse approach and set the IR35 status even before advertising a contract.
- Tax deduction – if the client decides that IR35 applies, the contractor is taxed as if they were an employee, and will be subject to PAYE and NICs.

Even though a public sector contractor can be taxed as an employee, their employment status does not change and they do not receive the rights and benefits that go with employment. Not surprisingly, the change has been extremely unpopular, and many contractors have decided to stop working in the public sector or to increase their fees to cover the additional tax costs.

“ A recent survey reported that 80% of IT projects in the public sector are suffering delays because of the IR35 changes.

In the November 2017 Budget, the government announced that it would carry out a consultation on how to tackle IR35 non-compliance in the private sector. A possible next step is the extension of public sector reforms to the private sector.



TAXATION

Company capital gains – changes to indexation

Property-owning companies, including buy-to-lets, are likely to face a significant increase to their future tax liabilities because indexation is being frozen at December 2017.

Indexation was introduced in 1982 following the high rates of inflation of the 1970s. It provides a relief against inflation by effectively increasing allowable expenditure in line with the Retail Price Index (RPI).

The indexation freeze comes at a time when inflation is rising, with the December RPI figure showing a 4.1% increase for 2017. Although the rate of corporation tax itself is to be reduced from 19% to 17% in 2020, this may not compensate for the change.

FROZEN, NOT WITHDRAWN

It is important to emphasise that the indexation relief is just being frozen – not completely abolished in the way it was for individuals and trusts. So, the effect on the taxation of corporate capital gains will be gradual. It will continue to apply to all assets a company acquired before December 2017.

For assets acquired earlier with a disposal date of January 2018 or later, you will be able to calculate the indexation relief based on the RPI index figure for the date you acquired the asset and the December 2017 indexation figure.

The Office for National Statistics announced that the December 2017 RPI figure was 278.1. The RPI figure was pegged at 100 for January 1987 and was 170.7 by May 2000. So the maximum indexation uplift that a company can

claim for an asset it acquired in May 2000 will be 62.9%.

POTENTIAL IMPACT

Although indexation is given for corporate capital gains generally, its freezing will be particularly felt as regards property sales.

Many buy-to-let investors have moved their properties into a company structure in response to the government's crackdown on tax relief for finance costs. For example, if a company has purchased buy-to-let property costing £300,000 in 2018 and sells it in five years' time, assuming an RPI increase of 20% over that period, it will have lost the benefit of indexation of £60,000. At a tax rate of 17%, the extra tax will be £10,200.

Example

A company bought a freehold property in May 2000 for £140,000 and sold it in November 2017 for £400,000. During this period the RPI increased by 61.6%. So the £140,000 base value for the gain is uplifted by 61.6% – £86,240 – reducing the taxable gain to £173,760, (£400,000 - £140,000 - £86,240) which will be subject to corporation tax.

MITIGATION

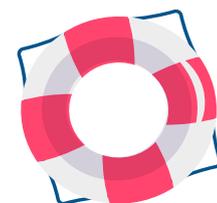
We can help company owners with assets such as property to mitigate the impact of the change by careful tax planning, although tax issues should not normally drive the commercial considerations. The following are some possible tax planning strategies:

- It is always possible that at some point in the future, indexation relief will be abolished altogether. This could be a factor when deciding which properties to dispose of, giving priority to long-held properties that benefit from a substantial amount of indexation.
- If you are replacing a business asset, you can claim rollover relief, which will postpone triggering a tax liability on any gain. You can even buy the new replacement asset up to a year before you dispose of the original asset. However, rollover relief does not apply to buy-to-let properties.
- Capital losses cannot be carried back, so it is important to time disposals of assets to make sure that the company can make use of such losses.
- Companies can set both trading and property business losses against capital gains, and the relief is now given on a very flexible basis.

EMPLOYMENT

New holiday rights for self-employed workers

The growth of the 'gig economy' has highlighted questions about the employment rights of workers who are categorised as self-employed but have many characteristics of employees. A recent European Court of Justice (ECJ) ruling has in effect extended those rights, which has potentially costly implications for employers with self-employed workforces.



Workers' rights to paid leave, the minimum wage and employer's pension contributions were the subject of an employment appeal tribunal hearing last year. The tribunal ruled that drivers for the taxi company Uber were working as employees within the meaning of employment legislation. Meanwhile, the ECJ decision in November 2017, in the case of King v. Sash Windows, concerned holiday pay and is likely to affect many employees, not only workers who have been classed as self-employed.

PAYMENT FOR ACCRUED LEAVE - LEGAL CASE

Mr King, a commission-based salesman, took unpaid holidays of about two weeks a year during the 13 years he worked for Sash Windows until his dismissal in October 2012. He brought a case to the employment tribunal, which ruled that he was a worker and was entitled to paid leave for the whole of his period with the company under the Working Time Regulations. He claimed payment for all the unpaid leave he had taken, as well as compensation for holiday accrued since the beginning of his employment. He said that he had not been able to take these holidays because the business did not provide pay during leave.

The matter referred to the ECJ concerned payment in lieu of accrued leave not taken. The ECJ decided that Mr King was entitled to compensation for statutory holiday leave he had not taken during the whole of his 13 years' service.

Current regulations state that statutory holiday entitlement under the European Working Time Directive - from which the UK Working Time



The government is likely to legislate to give all workers the right to carry forward paid annual leave.

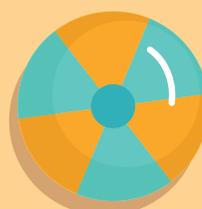
Regulations are derived - expires at the end of each leave year. The worker loses the entitlement if they do not take the leave, except in the case of a worker who is unable to take planned annual leave because of sickness absence.

If the Court of Appeal follows the ECJ ruling, as is expected, the government is likely to legislate to give all workers the right to carry forward paid annual leave when their employer does not put them in a position in which they can take it. Brexit will almost certainly not affect this process, because British law is expected to remain consistent with pre-Brexit ECJ decisions.

This decision applies only to the four weeks of leave provided under European law and not the full 5.6 weeks provided by UK regulations. It is likely to lead to compensation claims from workers who have been denied paid leave, especially now there are no fees for bringing a case to the

employment tribunal. Employers with staff who are categorised as self-employed may be able to review their terms of engagement to minimise the risk of them being classified as workers.

In the longer term, it may be preferable to grant all workers holiday pay and other employment rights from the outset, to avoid compensation claims later. In its ruling, the ECJ pointed out that paid holiday is an important health and safety initiative, which is necessary for workers to recover from the demands of working.





EMPLOYMENT

Minimum wages rise

The government has accepted all of the Low Pay Commission's rate recommendations, with the revised hourly rates coming in from 1 April 2018.

The percentage increases are all well above the current 2.7% rate of inflation for December 2017, with apprentices seeing the biggest gain of 5.7%. Employers need to be careful with apprentices, because they will be entitled to the hourly rate for their age if they are 19 or over and have completed the first year of their apprenticeship.

The national wage rates do not just apply to full-time employees. They also cover such people as part-time workers, casual labourers, homeworkers paid by the number of items made, trainees, workers on probation, agency workers and foreign workers.

Age	Current	Revised
25 and over	£7.50	£7.83
21 to 24	£7.05	£7.38
18 to 20	£5.60	£5.90
Under 18	£4.05	£4.20
Apprentices under 19 or in first year	£3.50	£3.70

TAXATION

VAT registration thresholds frozen from 2018

The VAT thresholds will be frozen for two years from 1 April 2018, at £85,000 for registration and £83,000 for deregistration.

This is in response to the report on VAT simplification published by the Office of Tax Simplification. The report was wide ranging, but focused on the cliff-edge nature of the registration thresholds. The government intends to consult on the threshold over the next two years.

A business with a turnover of £84,000 which is not VAT registered does not have any VAT cost, but a business with a turnover of £85,000 faces an annual VAT bill of up to £17,000.

At £85,000, the UK's threshold is the highest in Europe, where the average is £20,000. The advantage of this is tax simplification for more than three million small businesses - not just saving VAT, but avoiding time-consuming VAT administration. The drawback is the distortion in competition between businesses that have to charge VAT and those that don't.

The threshold is also a major disincentive to expansion for businesses with turnover below £85,000. There is a significant bunching of businesses with turnover just below the threshold, that may be restricting growth by not recruiting an extra employee or taking on a new contract, or simply stopping working for a time.

WHAT ARE THE OPTIONS?

The report considered a range of options, including:

- A substantial increase to the VAT threshold, for example to £500,000. A nice thought, but a highly unlikely outcome, given it would cost at least £3 billion a year.



- A substantial reduction to the threshold, for example to £25,000. This would bring more than a million small businesses within the VAT system and would raise at least £1.5 billion a year. Such a reduction would also bring more businesses into HMRC's 'Making Tax Digital' programme, which will initially only be imposed on businesses above the VAT threshold.

Any VAT threshold is bound to create an incentive to operate just below it so another option considered was the introduction of a smoothing mechanism. One possibility would be to allow newly registered businesses to use a reduced flat rate. However, this would not square with the recent introduction of a 16.5% flat rate for limited cost traders.

Another option would be for newly registered businesses to retain a proportion of the VAT otherwise payable to HMRC - such as only paying over 70% on turnover between £85,000 and £95,000.

If your business might be affected, please get in touch with us.

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