

OFF-PAYROLL WORKING

IR35 decisions shift in contractors' favour

EXPENSES? SIMPLES!

How simplified expenses could work for your business

MTD COMPLICATIONS

Is your MTD software up to the task?



Financial UPDATE

JUL/AUG 2019

Employment in the spotlight

Are you keeping up with important changes for employers and employees?



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With warmer days and longer evenings, thoughts turn to holidays and enjoying time away from work. For both employers and workers, however, a range of new rules have been coming into effect. Recent changes to employment law give workers enhanced rights, with accurate payslips mandated for all. Contracted workers may also feel a boost from the current trend in IR35 tribunal cases to find in favour of the contractor rather than HMRC. Despite tax experts arguing that HMRC's tools are unfit for purpose, it seems unlikely that the private sector will escape the scheduled IR35 extension. If you are running your own small business as a sole trader or partnership, however, you may be able to benefit from simplified expenses. And don't forget Making Tax Digital – there are still plenty of wrinkles to iron out if you are submitting your VAT through the new system.

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The last thing you do

Dying intestate – without a valid will – isn't the best legacy for your family or other beneficiaries, especially as the outcomes may not be what you expect.

The intestacy rules differ quite a bit depending on whether you live in England and Wales, Scotland or Northern Ireland. To understand the importance of leaving a valid will you need only consider all those who have no automatic right of inheritance:

- Unmarried partners
- LGBT partners not in a civil partnership
- Relations by marriage
- Close friends
- Carers

SPOUSE AND CHILDREN

You can see the differences between the three UK jurisdictions by looking at an example of who inherits if someone dies intestate with an estate valued at £800,000. We assume that the estate includes personal possessions worth £10,000 and a home valued at £450,000, and that they leave a spouse and children ('spouse' for this purpose includes civil partners).

- **England and Wales** The spouse inherits a total of £530,000 (£10,000 of personal possessions, £250,000, plus half the remainder). The other half (£270,000) is split equally between the children.
- **Scotland** The spouse receives a total of £600,000 consisting of the home (because it is worth less than the £473,000 limit) and furniture (assuming it's not worth more than £29,000), £50,000, plus a third of the remainder. The other two-thirds (£200,000) is split equally between the children.
- **Northern Ireland** If there is just one child then the spouse will inherit on exactly the same basis as they would have done in England and Wales. However, if there is more than one child, the spouse will only receive £440,000, because they are only entitled to a third – rather than a half as in England and Wales – of the remaining estate (£180,000). The balance (£360,000) is then split equally between the children.

If a son or daughter has already died, their children will inherit instead, and this is the case in all three jurisdictions. The government's online tool at www.gov.uk/inherits-someone-dies-without-will/y can help quickly establish who will inherit if someone dies without leaving a valid will. It covers all three jurisdictions.

SEPARATION

The intestacy rules can also mean an inheritance going to someone you might prefer to exclude, such as a former spouse. For example, in England an informal separation does not make any difference to what a spouse receives.

To ensure your estate goes only to whom you want to benefit, make a will and keep it updated as your wealth and circumstances change.



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When off-payroll is off-payroll



istock/ Yuliya Apanasenko

HMRC recently lost two tax tribunal appeals against rulings that individuals providing their services through limited companies should be taxed as employees under the intermediaries rules, commonly known as IR35. Both cases concern television presenters but have far wider significance.

Lorraine Kelly used a limited company, run with her husband, for her engagements with ITV Breakfast from 2012 to 2017. HMRC claimed she was working as if she were an ITV employee and so owed tax and national insurance contributions totalling over £1.2 million.

However, the tribunal ruled that Kelly's relationship with ITV was a contract for services and not one of employee and employer. Control was the key factor and ITV Breakfast had not controlled Ms Kelly as if she were an employee. She was in control of her working day and how she hosted the programme. She had considerable freedom over her performance, presenting herself as 'a friendly, chatty and fun personality', rather than appearing merely as herself. She did not receive pension benefits, sick pay or holiday pay, and worked for several other media outlets.

Kaye Adams also succeeded in her appeal against an HMRC challenge over her engagement with the BBC as presenter of The Kaye Adams Programme. A crucial point in her favour was her numerous other engagements, which indicated that she was clearly in business on her own account.

CONSIDERING THE BROADER PICTURE

A right of substitution is often important in establishing self employment. In this case there was no question that Ms Adams had to provide her services personally – an indicator of employment. The tribunal also found that mutuality of obligation was present, often another indicator of employment. Furthermore, the BBC had a contractual right to editorial control of her work, although it was never exercised. However other terms of the contract were consistent with self employment. In reality, Ms Adams was largely in control of her work and, looking at the overall picture, the relationship between Ms Adams and the BBC was not one of employment.

PAUSE FOR PRIVATE SECTOR?

Public sector organisations that engage freelancers via personal service companies have been responsible since 2017 for determining whether tax and NICs are payable under the off-payroll working rules. This requirement is due to be extended to the private sector from April 2020. But following the recent tribunal decisions, many tax professionals are arguing that the rules are too complex and unclear to be extended safely.

HMRC has proposed that where an organisation fails to pay tax owed under the

“...many tax professionals are arguing that the rules are too complex and unclear to be extended safely.

IR35 rules, that liability will transfer through the supply chain, which places a heavy burden on the contracting organisation.

HMRC recommends that businesses use its 'Check Employment Status for Tax' (CEST) tool to determine whether the off-payroll working rules apply to an engagement. The Chartered Institute of Taxation (CIOT) has recently criticised the CEST tool, saying that it makes inaccurate status determinations because it fails to consider essential employment case law before arriving at a decision.

Lack of confidence in CEST will increase disputes between businesses and HMRC, according to the CIOT, although the Revenue insists that CEST is reliable. Its recent failures at the tax tribunal, however, cast doubt on that claim. While employers should still use CEST, they should also supplement the result with good professional advice.

EMPLOYMENT

Employment in the spotlight

Employment regulations have been overhauled in a variety of ways over the past year, with implications for most businesses and employees.

P

PENSION CONTRIBUTIONS

From April 2019, the minimum contribution to auto-enrolment pension schemes increased to 8% of qualifying employee earnings, of which the employer must pay at least 3% – the rest being made up by the employee.

There are no plans for further rate increases at present, but a government report warns that 8% may not be enough to provide many employees with a comfortable retirement, so the percentage may go up in future. Currently employers and employees may choose to pay more, or employees may opt out and make other provision.

PAYSLIPS

The right to receive a payslip was also extended to anyone recognised as a 'worker' from April 2019. A worker is broadly anyone who has a contract or arrangement to carry out work or provides services for a reward. Workers have certain employment rights, but not to the same

extent as employees. There is still no need to provide a payslip to fully self-employed individuals.

As well as showing earnings and all deductions, a payslip must now include the number of hours the employee or worker worked, if their pay varies according to the time they worked. Employers also have to keep 'adequate records' to show whether they are complying with the time limits on weekly and night working. A recent decision of the European Court of Justice could result in a tightening of UK law on recording working hours, although Brexit timing now makes this unlikely.

EU NATIONALS

Another consequence of Brexit is that EU nationals will lose their current right to reside in the UK. Currently most citizens of the EU, as well as Iceland, Liechtenstein, Norway and Switzerland, do not need any permit to remain in the UK. Employers will have to ensure that employees who will still be in post after June

2021 and are not UK or Irish citizens have the right to work in the UK.

Most nationals of these countries will have to obtain settled status to continue living and working here from 2021. This will normally be granted to people who have been living in the UK for five years by the date of their application.

Those with less than five years will receive pre-settled status. Applications to the EU Settlement Scheme are already open and the deadline for applying is 30 June 2021 if the UK leaves with a deal, and 31 December 2020 if there is no deal.

NON-DISCLOSURE

A consultation into the use of confidentiality clauses in the workplace has recently closed. Also known as non-disclosure agreements or NDAs, these provisions have long been used to prohibit departing employees from disclosing information. More recently, however, they have also been used to prevent victims of workplace harassment or discrimination from speaking out. The government is expected to respond later this year and the use of NDAs may be restricted in future.

TAX

Officially holding steady

HMRC's official rate of interest remains at 2.5% for 2019/20. This rate is used to calculate taxable benefits for beneficial loans and expensive living accommodation provided to employees.

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mployers often provide loans to employees to buy a season travel ticket or even a car.

There is no taxable benefit on an employee if the value of loans provided to them does not exceed £10,000 at any point during the tax year. However, the exemption will not apply if they go over this limit by even a few pounds.

The taxable benefit is then measured as the difference between the amount of interest at the official rate and any interest the employee has actually paid.

For example, Jane's employer made her an interest-free loan of £20,000 to buy a car on 6 April 2019 and she repaid £5,000 during 2019/20. The average amount of loan outstanding throughout 2019/20 was £17,500, so Jane's taxable benefit is £438 (£17,500 at 2.5%).

The official rate of interest comes into play for employer-provided living accommodation if the cost exceeds £75,000. The rate is then used to calculate the additional benefit by applying it to the excess of the cost over the £75,000 threshold. The original benefit is instead based on the property's annual value.



Payslips must now include hours worked, if pay varies according to hours. Employers must also keep adequate records on weekly and night working.

EXECUTIVE PAY

Listed companies with more than 250 employees will be required to publish their executive pay gap – the difference between the amount paid to their CEO and average employee pay. Although the first reports will not be due until 2020, companies should ensure now that they are collecting the necessary data throughout the year. Employers with at least 250 employees in both the public and private sectors have been reporting their gender pay gap to government since 2017 and publishing the information on their websites.

Employers who fail to comply with any of these requirements could face heavy penalties and costs, so it is important to keep up to date.



BUSINESS

Could you be using simplified expenses?

istock/shapecharge

You can use the 'simplified expenses' rules for calculating allowable business expenditure – they are easier to follow than the full alternative. The simplified expenses rules are associated with the cash basis for accounting, but they can be used independently and your business doesn't need to be within the £150,000 cash basis receipts limit.

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ole traders and partnerships can use simplified expenses, but not limited companies.

BUSINESS COSTS FOR VEHICLES

All you need to do is keep a record of your business miles. You calculate the deduction for business mileage in your car or van at a rate of 45p per mile for the first 10,000 miles, and 25p a mile thereafter. For a motorbike, the rate is 24p a mile.

You can ignore the actual costs of buying and running your vehicle in your expenses record. It is up to you to choose which vehicles you want to use for the flat rates, but once you have allocated the flat rates, you must continue to apply them for as long as you use that vehicle in your business. If you have already claimed capital allowances, then you cannot use the flat rates for that vehicle. You can still claim for any other travel expenses (such as train journeys and parking) on top of your vehicle expenses.

You can pay the same mileage rates tax-free to employees who use their own car for business mileage, and make sure you keep receipts for fuel purchases if you want to claim back VAT on the fuel element included in the rates.

If over the course of your accounting year you drive 11,000 business miles, for example, the deduction for vehicle expenses will be £4,750 (10,000 miles at 45p plus 1,000 miles at 25p).

WORKING FROM HOME

The amount of allowable expenses for working from home can be based on the number of hours you work there each month. There is, however, a minimum 25 hours requirement. Rates are:

Hours worked at home per month	Flat rate per month
25 to 50	£10
51 to 100	£18
101 or more	£26

The flat rate doesn't include telephone or internet expenses, so you can claim these by calculating the business proportion of the bills.

For example, if you worked 40 hours from home for 10 months, and 60 hours for the other two months, over the course of your accounting year your total deduction would be £136 (10 months at £10 plus two months at £18).



The simplified expenses rules are easier to follow than the full alternative and can be used by sole traders and partnerships.

LIVING AT YOUR BUSINESS PREMISES

A few business owners use their business premises as their home – typically small hotels and guest houses. The simplified expenses rules can be used to calculate the adjustment for private food and utility bills – based on the number of people living at the premises (including children). The adjustment is £350 for one person, £500 for two and £650 for three or more.

A couple who run a guest house, with the total annual cost of food and utility bills of £37,000, will benefit from a private use adjustment of £6,000 (12 at £500), so the expenses figure is reduced to £31,000.

You should always check whether the simplified expenses rules are the right way to go – HMRC provides a basic online tool at www.gov.uk/simplified-expenses-checker and of course we're here to help.

PROPERTY

A question of property

If you are a landlord, you must be wondering if the punches are ever going to stop coming.

From April 2020, final period principal private residence relief (PPR) will be cut again, with letting relief also severely curtailed. This comes after last April's increase to the proportion of finance costs restricted to the basic rate, and the recent implementation of the Tenant Fees Act.

The changes coming next April could have a serious impact on your capital gains tax (CGT) bill, so you might want to plan any sale well ahead. Bear in mind that the CGT due date will also be brought forward after next April – and if you make a taxable gain on a residential property, you will have to make payment on account just 30 days after completion.

PRINCIPAL PRIVATE RESIDENCE RELIEF

If you have at some point lived in your rental property as your main residence, then a proportion of the gain arising on sale is exempt and will be based on the period you occupied the property. In addition there's an exemption for the final months of ownership.

The exemption used to be the final 36 months of ownership, but this period has now been cut to 18 months. From April 2020, there will be a further reduction to nine months. However, the final period exemption will remain 36 months for disabled people and those in long-term care homes. Even if you are not letting out property, the change will affect you if you have more than one property that has been your main residence.

LETTING RELIEF

Letting relief provides an additional exemption where at some point you have let out a property that has been your main residence.

The exemption is a maximum of £40,000 of the gain but it cannot be more than the amount of relief you get just because the property has been your main residence. The relief can be up to £80,000 for a jointly owned property.

SHARED OCCUPANCY

From April 2020, the letting exemption will only apply where the owner of the house shares occupancy with the tenant. Shared occupation means the owner resides in the property with the tenant and occupies the property as their only or main home.

OTHER CHANGES

There is a 75% limit of finance costs at the 20% basic rate for 2019/20 – up from 50% last year.

Since 1 June, it is no longer permissible to charge tenants letting fees, and you cannot get around this by asking for a higher rent at the start of a tenancy. Letting agents are almost certainly going to charge landlords higher set-up fees and increase their management fees.

Deposits are now capped at five weeks' rent for properties rented at less than £50,000 a year. The Tenant Fees Act only applies in England, although letting fees have already been banned in Scotland.

EXAMPLE

Pippa sold a rental property which she owned for 10 years and had occupied as her main residence for the first 18 months, making a gain of £150,000.

Pippa's main residence exemption covers £45,000 of the gain and another £40,000 is exempt because of letting relief. From next April, no letting relief will no longer be available, and Pippa's main residence exemption would be just £33,750.





TAX

HMRC refunds parents' penalties

HMRC has refunded £1.8 million in penalties charged to taxpayers who had failed to notify their liability for the High Income Child Benefit Tax Charge.

The charge applies where a family claims child benefit but one partner earns more than £50,000, effectively clawing back all or part of the benefit. The higher earner has to register to pay the charge, but many did not do so when the charge was introduced in 2013.

HMRC has now refunded penalties charged to families that claimed child benefit before 2013 where one partner's income subsequently increased to over £50,000, as well as to some families where liability resulted from the formation of a new partnership.

The rules, nevertheless, remain complicated and awareness is low. You can avoid paying the charge by electing not to receive benefit payments. But continuing to claim child benefit (and paying the tax charge) means that state pension entitlement will be preserved.

VAT

Don't be tripped up by MTD

If you have a VAT-registered business, you are probably now getting used to the Making Tax Digital (MTD) service to submit your tax returns digitally. But you may have discovered that it's not quite as simple as some sources say.

If your business is in this first digital transformation wave, you should now be using MTD-compatible software or employing bridging software to connect spreadsheets or other non-compatible software to the HMRC systems.

Nevertheless, and contrary to some of the advertising for accounting software, it is not as simple as scanning all your invoices and receipts and just clicking 'go'.

Software designed to prepare VAT returns for business owners might be expected to include checks and prompts whenever it encounters anything unexpected or unusual, such as expenses that look as if they might be private. But not all MTD-compatible software does this and sometimes the VAT it calculates is simply wrong.

For example, the software might not identify whether the business uses the cash basis or the invoice basis for its VAT returns, unless the information has been input correctly. Calculating VAT on the wrong basis could result in duplication or omission of output tax or input tax.

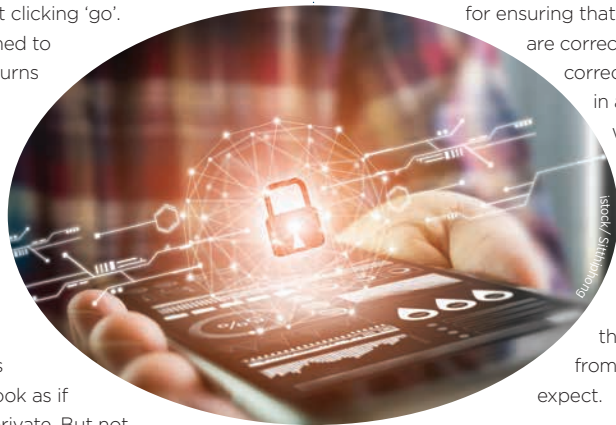
START RIGHT

Using software does not remove your responsibility for submitting an accurate VAT return, and HMRC could charge a penalty if an inaccuracy is considered to be deliberate

or careless. The government announced in March 2019 that HMRC would exercise a 'light touch approach' to penalties in the first year of implementation, but it is too early to predict the extent reliance on MTD-compatible software will qualify as 'taking reasonable care'.

Bear in mind the GIGO principle – 'garbage in, garbage out'. Each business is responsible for ensuring that the figures

are correct and correctly analysed in accordance with the VAT legislation. Check your results carefully if your software produces results that look different from what you expect.



MTD for VAT is only the first stage in a programme that should result in most individuals and businesses filing their tax details digitally. Although MTD is only currently compulsory for VAT, HMRC has encouraged self-employed individuals and landlords to keep digital business records voluntarily and send income tax updates to HMRC instead of filing tax returns.

MTD was intended to be rolled out for income tax from April 2020, but this will not now go ahead and the government has not yet announced a new target date.

If you have any queries on MTD for your business, let us know.

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