

OFF-PAYROLL STATUS

Private sector employment after the IR35 roll out

COMPANY CAR TAX

Changes to benefit in kind charges

VERY AWKWARD TAX

Getting it right on VAT

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Financial UPDATE

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So you want to be your own boss?

Key issues to consider when going self-employed

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As we move towards winter with continuing political uncertainty, in this edition we focus on change. The planned roll out of the off-payroll employment tax rules to the private sector will mean that many contractors may see an unwelcome change to their employment status. New car emission standards will come into effect from April 2020, resulting in significant changes to the company car tax regime. Meanwhile, for many, the idea of completely changing how they work to become self-employed has many attractions. But being your own boss brings a whole new set of issues you need to take into account. We also look at the implications of getting it wrong on VAT, as well as a reminder that small and micro employers will soon need to comply with workplace pensions re-enrolment.

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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 Office of Tax Simplification (OTS) has been looking at how IHT could be simplified, and their latest report, containing a raft of suggestions, has recently been published. The changes concentrate on three key areas.

LIFETIME GIFTS

The report recommends that the seven-year survival period be reduced to five years, but with taper relief abolished. Since taper relief is only relevant when tax is payable, this measure would be largely beneficial. However, such a change would create a five-year cliff edge for IHT chargeability.

Regarding the various lifetime exemptions, the OTS suggests that the annual exemption and the marriage/civil partnership exemption be replaced with a personal gifts allowance. This allowance could be used to replace the exemption for normal expenditure out of income.

BUSINESSES

The OTS suggests that the threshold for trading activity for business property relief should be aligned with that for capital gains tax (CGT) gift holdover relief and entrepreneurs' relief. So the present test of 'wholly or mainly' (generally meaning above 50% of trading activity) would be replaced with an 80% test. On a more positive note, the OTS thinks that furnished holiday lets should qualify for business property relief.

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 well be a change of government on the horizon. The Labour party avoided IHT in their previous election manifesto, but there is speculation that they may cut in half the maximum tax-free allowances (currently £950,000) where a family home is left to children.

All of which means that 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.
- 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

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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, then 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 just as in the public sector. There will be no change for small businesses, which are those with two or more of the following features:

- Turnover of £10.2m or less.
- A balance sheet total of £5.1m or less.
- 50 employees or fewer.



A problem for PSCs and their clients is that determining employment status requires applying complex rules that even HMRC can find difficult to interpret.

Where a medium or large end-user decides that a worker's engagement is in the nature of employment, the business that pays the PSC will be responsible for accounting for, and paying, the related income tax and national insurance contributions (NICs) to HMRC, including the additional cost of employer's NICs. For small businesses, this responsibility will remain with the PSC.

STATUS DETERMINATION

Medium and large end-users will have to issue an employment status determination statement (SDS). The end-user must take reasonable care in reaching its decision and explain the reasons for it. The worker will be able to challenge the decision, but he or she will have to argue the case against the end-user, not against HMRC.

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 payments. It is also responsible for paying the employer's NICs. There is no right to deduct the employer's NICs from the payment to the PSC, although it is likely that many agencies will do so.

Up to 170,000 PSCs, and the individuals working through them, 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 an 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.

TRIBUNAL CASES

A problem for PSCs and their clients is that determining employment status requires applying complex rules that even HMRC can find difficult to interpret. The tax tribunal recently had to consider contracts between two hospitals and a locum doctor who was operating through a PSC. In both cases, HMRC argued that the doctor's contract terms were in the nature of an employment, but the tribunal found that in one case there were enough indicators of self-employment, so the contract fell outside the IR35 rules.

A number of cases concerning television presenters have also resulted in conflicting decisions, with HMRC winning the most recent ones after losing previous cases. Every situation has to be looked at on its own facts and an HMRC status indication may not be reliable. If you are affected, we can advise.



EMPLOYMENT

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.

S

ome key considerations to making a success of self-employment are set out 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. Working from home can eliminate some of the extra costs, although it may not be feasible. If it is, talk to your insurer and explain your plans.

- **Holidays and sickness** mean no income, so calculate how many weeks of work it would take to earn the full year's income you need. Look at income protection and possibly critical illness insurance. You may want to consider also taking out private medical insurance.

YEAR END AND TAX PAYMENTS

Your choice of year end is important when self-employed, but it is not entirely straightforward.



It also helps to have your accounts prepared as soon after your year end as possible to give you maximum advance warning of future liabilities.

A good approach is to save a regular amount to fund tax liabilities. It also helps to have your accounts prepared as soon after your year end as possible to give you maximum advance warning of future liabilities.

Your choice of year end can also have an impact on purchasing decisions. Most equipment that you buy will be treated as an expense with tax relief given in the year of purchase, depending on the level of tax allowances available. So it's a good idea to make purchases before your year end to receive tax relief a year earlier.

EMPLOYING PEOPLE

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. This can be quite onerous, especially if you have a high staff turnover. You will also have to comply with national minimum wage legislation and contribute to a workplace pension.

VAT

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. Most VAT-registered businesses must also submit returns via the Making Tax Digital online portal unless you receive an exemption.

PENSIONS

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.

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 first years of your business.

Not setting enough aside for tax payments can catch you out, especially early on. For example, say you start 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.

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All change for company car tax benefits

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If you have a company car or run a company car fleet, the next tax year will see a substantial overhaul to how these vehicles 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%.

MAJOR CHANGES

The company car tax changes result from the UK adopting the Worldwide Harmonised Light Vehicle Test Procedure (WLTP) to establish carbon dioxide (CO₂) 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 the 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 BIK rates for 2023/24 are under review, but the Government has said it will announce them at least two years ahead of implementation.

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

ENCOURAGING ELECTRIC

The zero tax for pure electric cars is aimed at encouraging adoption of these vehicles. Take-up has been relatively slow because of the cars' higher capital cost, generally limited range and lack of widespread fast charging points. However, electric cars have some advantages apart from their low BIK rates including:



The WLTP emissions figures are likely to be higher than the currently calculated figures because they reflect real world driving conditions

- No fuel duty.
- No fuel benefit charge.
- No benefit in kind on employees who charge their own car in the workplace.
- 5% VAT on electricity compared with 20% on road fuels.

No vehicle excise duty for cars valued at less than £40,000.

Most company cars are diesels despite the diesel supplement – 79% of the total in 2016/17 according to government statistics. An issue for drivers of older diesel cars is the ultra-low emission zone charge, which currently applies to central London. Owners of non-compliant cars, which include diesel cars and small vans registered before September 2015, have to pay £12.50 for any day they drive in the zone (in addition to the congestion charge). The zone is due to be greatly extended in 2021 and similar zones may be introduced elsewhere in due course.

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. For example, with a staging date of 1 February 2017, re-enrolment can be done anytime between 1 November 2019 and 30 April 2020. 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 (30 June 2020 in the above example), although the Pension Regulator recommends making the submission as soon as re-enrolment duties are complete.

Key details entered when you made the original declaration of compliance should automatically be filled in on the re-declaration form.

Don't forget that outside of the re-enrolment process, you still



The re-declaration of compliance confirms that an employer has checked whether they need to re-enrol any of their staff

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





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 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.

The current rates are:

Engine size	Petrol	Diesel	LPG
1,400cc or less	12p	10p	8p
1,401cc to 1,600cc	14p	10p	10p
1,601cc to 2,000cc	14p	11p	10p
Over 2,000cc	21p	14p	14p

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. Getting VAT wrong can be very expensive.

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. Food is especially contentious. For example, VAT is not charged on plain biscuits or cakes, as determined in the Jaffa cake case, but a chocolate-covered biscuit is standard-rated.

Building materials can be similarly difficult. 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.

Even the 5% reduced rate of VAT can cause difficulties, with changes introduced from 1 October. There is now a complicated definition of when the supply of energy-saving materials can qualify for the reduced rate.

NO SPLITTING

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.

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