CROSS & BOWEN
CHARTERED CERTIFIED ACCOUNTANTS

Newsletter

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ACCA

What is employment?

The Court of Appeal has for the first time ruled on employment status under the intermediaries legislation (often known as IR35) in two cases – and agreed with HMRC in both. In each case, the terms of the contracts proved crucial.

The two appeals, both involving broadcasters using personal service companies to provide their services, were heard together. Paul Hawksbee was co-presenter of a daily radio show under contracts between his company and Talksport Ltd. HMRC determined that Mr Hawksbee should be treated as an employee.

The Court of Appeal found that there was mutuality of obligations, an important indicator of employment, because the express terms of one of the contracts required Talksport to offer at least 222 programmes a year and Mr Hawksbee had to accept the work. A second contract did not include these requirements, but similar terms appeared in an attached 'schedule of services'.

The second case concerned freelance journalist Kaye Adams whose services were provided to the BBC through her company Atholl House Productions Ltd. A complication was that the terms of the written contract differed from the actual agreement between the parties. The First-tier Tribunal had considered the contracts as if they had not included certain 'control' clauses, because these provisions had never been used. On this basis Ms Adams was not treated as employed.

> *These cases confirm the importance of a properly drafted contract that reflects the true relationship between the parties. Businesses should review mutuality of obligations and control.*

An additional factor was that Ms Adams had other similar engagements that were akin to self-employment. However, the Court of Appeal held that the relevant factor was the contract in question. A person can have an employment and separately perform other similar activities as a sole trader.

These cases confirm the importance of a properly drafted contract that reflects the true relationship between the parties. Businesses and sole traders should review mutuality of obligations and control. If they are present, then establish whether the terms of the contract are indicative of employment or self-employment.

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BUSINESS

Managing your business through inflation

Small businesses trying to cope with 9.4% inflation face a difficult balancing act between potentially alienating customers by increasing prices too sharply or absorbing increased costs and risking their survival. How can you cushion the blows?

Maintaining a regularly updated cashflow forecast looking up to a year ahead will help to identify any cash shortfall well in advance.

- It may be tempting to sell stock at what it has cost you, rather than what it is going to cost to replace. All well and good if it keeps cash coming in, but an accurate forecast will give you an idea of how long such an approach is sustainable.
- Costs should obviously be minimised as far as possible and feeding in any possible reductions to the forecast will show their impact over the longer term. Reviewing purchasing patterns, for example, could bring cost savings.

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- Businesses are not protected by the energy price cap, so it is important to focus on energy usage. Even something as simple as replacing inefficient light bulbs with more modern alternatives could make a difference.

Staffing costs

Staffing costs are likely to be on the increase and generally represent a large proportion of a business's outgoings. Although a checkout-free store is not an option for most, technology might be a solution.

Any business looking to replace staff or to expand will almost certainly be facing increased wage demands. Recruiting new staff on more generous remuneration than existing employees can foster resentment, so creating more attractive overall packages with flexible working, or providing perks which can be easily revisited, may be more helpful. Managing expectations around unsustainable pay increases as inflation creeps higher is a fundamental concern.

Anticipate new challenges

The economic situation has brought a level of risk and volatility that many businesses will have never faced before. For now and the foreseeable future, forward planning is about building resilience and managing costs. If you need additional guidance as you weather the storm, please get in touch.

EMPLOYMENT

Understanding the national insurance changes

Some of the latest changes to national insurance contributions (NICs) started from 6 July 2022, causing complications for self-employed people and directors. Normally rates and thresholds are set for the whole tax year.

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The main NIC rate for employees is 13.25% for 2022/23, on earnings above the primary threshold and up to £50,270 a year. It is the primary threshold that changed from 6 July 2022, from £190pw for the period 6 April to 5 July 2022 up to £242pw from 6 July 2022 to 5 April 2023. The change brings the threshold into line with the £12,570 income tax personal allowance.

Company directors generally use an annual or quarterly earnings period. Those on an annual earnings period will pay NICs on earnings above £11,908. Those on a quarterly earnings period will use the £190pw threshold for the first three months of 2022/23 and the £242pw threshold for the rest of the year.

Self-employed and small profits

The self-employed class 4 NIC rate of 10.25% is payable on earnings above the £11,908 lower profits limit, up to £50,270. Earnings above this are charged at 3.25%. The class 2 small profits threshold remains at £6,725 for 2022/23 but contributions – £3.15pw or £163.80py – are not payable until profits reach £11,908.

Where annual profits are between £6,725 and £11,908 the individual will now be able to build up a contributions credit without paying class 2 NICs. To benefit, the person will need to submit a tax return showing profits from self-employment of at least £6,725. Those with profits below £6,725, or a loss, are not entitled to the class 2 NI credit, but can, as before, make voluntary class 2 payments to maintain a contribution record. You currently need 35 qualifying years to qualify for a full state pension and it may be worth checking your contribution record.

TAX

HMRC amends working from home rules

The temporary concessions introduced by HMRC for homeworking during the pandemic came to an end on 5 April 2022. Pre-pandemic rules now apply for employees looking to claim tax relief.

Higher rate taxpayers received an annual tax cut of £124.80 from the £6 a week tax free allowance. However, to claim relief now, there must be an arrangement between employer and employee requiring homeworking on a regular basis. This requirement is met if, for example, an employee works from home two days a week, even if these two days vary from week to week.

Relief is typically available where an employee lives a long way from their employer's office, or the employer doesn't have an office. Relief cannot be claimed if the employee chooses to work from home, including working from home because of Covid-19 or where it is not possible to work from an employer's office because it is full.

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BUSINESS

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New house rules: reforming company registration

Companies House is to be extensively reformed into a more active body under new government proposals. The Registrar will be given new powers to become a custodian of verifiable information rather than just a keeper of submitted company records. One key change will see all smaller companies filing a profit and loss account.

Smaller companies

There are some 4.4 million active companies registered with Companies House, with the vast majority of these micro-entities or small companies. Businesses in these two categories do not have to file a profit and loss account, and the information provided by a micro-entity can be as little as just three figures: total fixed assets, current assets and current liabilities. The minimum disclosure requirements for micro-entities are attractive to fraudsters and can be exploited by companies that do not meet the eligibility criteria. Current rules do not include thorough checks.

Filing a profit and loss account will mean sensitive commercial information is readily available to a company's competitors.

In total there are 58 changes across nine areas, including:

New querying power: Companies House will be able to query information either before it is placed on the register or post-registration. Fraudulent information will be swiftly removed.
Identity verification: Directors and persons with significant control will be required to verify their identities.
Shareholders: Full names will have to be recorded, for example David Smith rather than D Smith. Private companies will need to provide a list of all current shareholders, and update changes annually.
Corporate directors: A corporate director will only be permitted if registered in the UK and the company directors are natural persons.
Data sharing: Companies House will have new powers to proactively share data with law enforcement and other relevant agencies.

Director's liability

HMRC has various powers that enable it to pierce the corporate veil and make directors personally responsible for a company's tax debts. When it comes to national insurance contributions (NICs), HMRC can issue a personal liability notice (PLN) if the failure to pay contributions can be attributed to fraud or neglect. In a recent appeal to the First-tier Tribunal, a sole director issued with a PLN did not believe he had been neglectful. Neglect is where someone either omits to do what a reasonable person would do or does what a person taking reasonable precautions wouldn't have done.

HMRC has various powers that enable it to pierce the corporate veil and make directors personally responsible for a company's tax debts. PLNs are issued if it suspects fraud or neglect.

- HMRC attested that the director had been neglectful in prioritising payments to himself and to related companies despite accumulating debts with HMRC.
- The director's defence was weakened by his track record: he had also been the sole director of two similar companies which had both gone into liquidation owing tax to HMRC.
- The director argued the failure to pay was due to poor business decisions in a difficult marketplace (although he had run similar companies before), and he had made a time to pay arrangement (although these payments were not maintained for long).

Perhaps not surprisingly, the appeal failed. Most PLNs are issued to serial evaders where there seems to be a good chance of recovering the debt.

For help with company-related matters, just get in touch.

TAX

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Statutory residence test – exceptional circumstancs

Up to 60 days a year spent in the UK can be ignored when establishing a person's residence status, if they result from exceptional circumstances. However a new, controversial amendment to HMRC guidance has been contested and may not be correct.

Even before the latest update, HMRC has always taken a strict approach towards exceptional circumstances. Days in the UK due to the emergency landing of an aircraft count, but not any extra days if a flight is missed due to traffic disruption. Birth, marriage, divorce and death are not normally regarded as exceptional circumstances, nor is coming to the UK for medical treatment, dentistry or cosmetic surgery.

Controversy

The latest version of HMRC's manual states that exceptional circumstances generally do not apply in respect of events that bring an individual back to the UK. The new position is that the exemption only applies to a person – already in the UK – who is overtaken by exceptional circumstances that prevent them leaving.

HMRC has, however, just lost a non-binding First-tier Tribunal decision on this point. Exceptional circumstances were acknowledged when a taxpayer returned to the UK to care for her sister and her sister's minor children necessitated by the sister's alcoholism.

Even HMRC accepts the exemption will be available if someone returns to the UK as a result of Foreign, Commonwealth & Development Office advice to avoid all travel to a particular country or region. This covers people fleeing danger and includes the current situation in Ukraine.

TAX

Reclaiming overpaid inheritance tax

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Inheritance tax (IHT) is expected to raise £37 billion over the next five years – £10 billion more than in the past five years. But IHT is sometimes overpaid and families have reportedly made 32,000 claims for IHT repayments over the past six years.

Much of the increase in receipts is due to rising property values and the continuing freeze to the nil rate band of £325,000 and residence nil rate band of £175,000. IHT is charged on the value of an estate at the date of death and the tax must normally be paid within six months. However if the estate's executors sell property or shares below the valuation at death, they can revise the calculation and reclaim the overpaid tax.

Refunds are available for property sold within four years of the death and for shares and other qualifying investments sold within 12 months of death. The revision is not automatic and has to be claimed.

Monitor value

Valuation of property at the date of death needs to be realistic, but the value may fall before sale, especially if it has been left empty and has deteriorated. Of the 32,000 claims for repayments, more than 22,000 were for property.

Consider the whole picture

Where shares are concerned, market volatility may result in investments being sold at less than their valuation on the IHT return. Refund claims have to include all the shares sold by the executors in the calculation, not only those sold at a loss. If some have increased in value, that will reduce the amount of IHT that can be claimed. Executors should instead consider passing shares that have increased in value directly to the beneficiaries rather than selling them.

As more estates become subject to IHT it is important for executors to keep an eye on asset values and act where the circumstances are advantageous.

PENSIONS

Using salary sacrifice

In these straightened times, salary may be preferable to receiving a benefit. However, the attraction of salary sacrifice has increased since 6 April, and when it comes to pensions it makes sense to take a longer-term view.

NIC savings

Salary sacrifice typically involves an employee – who is contributing to a pension scheme – making an agreement with their employer to forego an equivalent amount of salary in return for the employer paying pension contributions on their behalf.

This reduces gross salary, so employee NICs are saved at either 13.25% or 3.25%, boosting take home pay.

Successful sacrifice

To be successful, a salary sacrifice arrangement has to meet several conditions:

- The right to receive salary should be given up before the employee becomes entitled to it.
- The arrangement must genuinely reduce the employee's entitlement to salary in exchange for provision of a benefit (it does not apply where a non-contractual bonus is involved).
- The employee should not be able to give up the benefit at any time they choose and return to the original salary level.

Straightened times

Given the cost-of-living crisis, many employees may prefer to have cash in their pockets, even if this impacts on their pension savings or means giving up a tax advantageous benefit.

Any arrangement can be cancelled, or the sacrifice reduced, after 12 months. It is also possible for an employee to opt out earlier if they experience a lifestyle change which significantly alters their financial circumstances. Such a change could be due to Covid-19, marriage, divorce or a partner becoming redundant or pregnant.

Employees need to carefully consider any change. If the sacrifice involves a leased company car, they may face an early termination penalty. Putting salary sacrifice contributions on hold for three or four months may be preferable.

NEWS IN BRIEF

News round up

HMRC late payment interest rate rise

HMRC's late payment interest rate has gone up by another quarter percent, and now stands at 3.75%. Late payment interest encourages prompt payment, ensuring fairness for those paying on time. The rate for overpayments remains at 0.5%.

NIC pandemic easement ending

During the pandemic, HMRC disregarded changes to an individual's work location caused by Covid-19-related restrictions when deciding whether NICs are payable in the UK. This approach ended on 30 June, and NICs will now generally be paid according to where a person works.

MTD for income tax and sole traders

One in five sole traders is unaware of the impact Making Tax Digital (MTD) for income tax with have on them, according to a recent report. From April 2024 quarterly reporting requirements will become mandatory for any sole trader earning more than £10,000 each year from self-employment or property.

Advisory fuel rates

Advisory fuel rates from 1 June show across the board increases, particularly for petrol and diesel where all but one rate has gone up 2p or 3p. LPG rates are 1p higher, with the fully electric car rate unchanged at 5p.

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