IR35 compliance

How to get your employment status right

Universal Credit

How irregular income could penalise you

Share options

How to recruit and hold onto talented employes

FSPG
CHARTERED ACCOUNTANTS

Journal

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IN THIS ISSUE:

» Don't end up in hot water over VAT
» Using Enterprise Management Incentives to retain talent
» Requirement to correct deadline nears
» Defining IR35 employment status
» Income and growth bonds return
» Fluctuating incomes impact on Universal Credit
» The increasing burden of property ownership
» Childcare vouchers deadline approaching

Credit: iStock/ideabug

Unpicking complex reliefs

If you baulk at the complications around savings and investment income or inheritance tax (IHT), you are not alone. The Office of Tax Simplification (OTS) is carrying out reviews of both.

Regardless of any change, it is important to be aware of currently available reliefs and basic tax planning opportunities.

The first £2,000 of dividend income is tax free each year, including the value of shares bought through dividend reinvestment plans.

Savings and investments

This review mentions both the complexity of the current tax rules and the general lack of taxpayers' knowledge. Although there is awareness of ISAs, many savers do not understand how the savings and dividend allowances work.

- Basic rate taxpayers benefit from a £1,000 savings allowance. It can be worthwhile making a pension contribution in order to remain within the basic rate threshold – otherwise the allowance falls to £500.
- The first £2,000 of dividend income is tax free each year, including the value of shares bought through dividend reinvestment plans. You may want to hold your shares in an ISA where your dividend income exceeds the allowance.
- Savings and dividend income can be transferred between spouses to maximise the benefit of the two allowances.

Inheritance tax

With less than 5% of estates paying IHT, the OTS is looking at ways to simplify how specific rules work. Currently you can benefit from a nil-rate band, and possibly a further residence nil-rate band, free of IHT. Other valuable reliefs include a 100% exemption on business property, provided qualifying rules are met, and a £3,000 annual exemption for gifts.

Remember, valuing land and property can be particularly problematic, and you are strongly advised to instruct a qualified independent valuer before acting.

Please get in touch if you would like help setting up tax-efficient savings or minimising IHT.

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TAX

Don't end up in hot water over VAT

VAT mistakes can be very expensive, and a recent First-Tier Tribunal case shows just how easy it is to get things wrong.

The way VAT is charged on hot food was changed in 2012 when the then Chancellor, George Osborne, was forced into a U-turn over his proposed 'pasty tax'. The result is one of the oddities of the VAT system, where VAT is only charged on takeaway food if it is hot when sold.

The tribunal case involved the sale at a market of rice, wraps and curries. Despite the food being allowed to cool after cooking, it was kept hot for sale. This temperature was considerably higher than the ambient air temperature of the premises and so the judge sided with HMRC. The taxpayer ended up with a VAT bill for £114,122 covering a four-year period.

Credit: iStock/nikkytok

Retrospective assessments

HMRC can normally go back four years when assessing VAT errors, but they can go back further if dishonesty is involved. In addition, a penalty may be applied depending on a taxpayer's conduct. There is no penalty if the taxpayer has taken reasonable care, but there can be a 30% penalty for carelessness. This can be reduced to zero if unprompted disclosure is made, and 15% with prompted disclosure.

The way VAT is charged on sales can be confusing, because the system contains many peculiarities. For example, peanuts in shells are zero rated, while shelled salted peanuts are standard rated. Physical books are zero rated, but ebooks are standard rated. Services are affected as well – a tutor's services are zero rated unless the tutor has incorporated, in which case the tuition is standard rated.

With such heavy penalties and a complicated system to untangle, it is essential to understand and charge your VAT correctly.

EMPLOYMENT

Using Enterprise Management Incentives to retain talent

Doubt over the future of Enterprise Management Incentive (EMI) share options has been lifted with the renewal of EU State Aid approval for the scheme on 15 May. EMI options can offer tax benefits to help smaller, higher-risk companies to attract and retain key employees.

HMRC advised companies to delay granting EMI options after State Aid approval lapsed on 6 April 2018. HMRC has now confirmed that options granted during the period from 7 April until receipt of State Aid approval are eligible for the tax advantages of the scheme.

Recruiting talent

Employees can buy shares at a price agreed when the options are granted under the scheme. There is no tax on the grant of an EMI option, nor on its exercise, provided the exercise price is not less than the market price when the option was granted. So, a good time to offer EMI options is during the early stages of a business when the shares generally have a low value.

Credit: iStock/LisaBlue

Each employee may be granted EMI options worth up to £250,000 over three years and a company can grant up to £3 million of options. Only trading companies that are not controlled by another company and have assets of £30 million or less can offer EMI options. Several trades are excluded, including property development, most financial activities, farming, leasing, and operating or managing hotels and residential care homes.

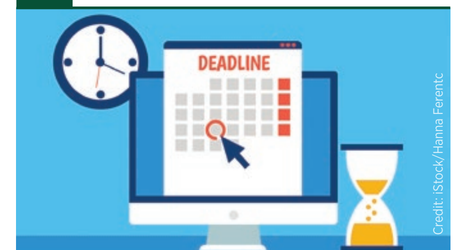
Rewarding employees

An option can be subject to individual performance targets. Employees usually exercise their options and sell their shares immediately afterwards to realise their value. Arrangements may be needed to ensure there is a market for the shares. Employees are then typically liable to capital gains tax at 10% on the increase over the exercise price.

Companies must notify HMRC within 92 days of the grant of any option and complete annual EMI returns.

There are many other conditions, so please talk to us if you would like advice on your employee-incentive scheme.

TAX



Credit: iStock/Hanna Ferentc

Requirement to correct deadline nears

Taxpayers will find themselves facing serious penalties if they haven't fully declared any income tax, capital gains or inheritance tax liabilities relating to offshore matters by 30 September.

The disclosure requirement covers periods up to 5 April 2017, with the objective of getting taxpayers into a compliant position before new, substantially higher, penalties are introduced from 1 October 2018. It is the failure to correct that will be penalised, not any under-declaration. The minimum penalty is 100% of the tax due, and it can be as high as 200%. Unlike existing penalties, no account will be taken of a taxpayer's behaviour, so a penalty could apply even if you have taken reasonable care.

The scope of the requirement is wide-ranging and you could be caught if, for example, you live abroad and pay tax outside the UK, but rent out UK property.

TAX

Defining your employment status for IR35

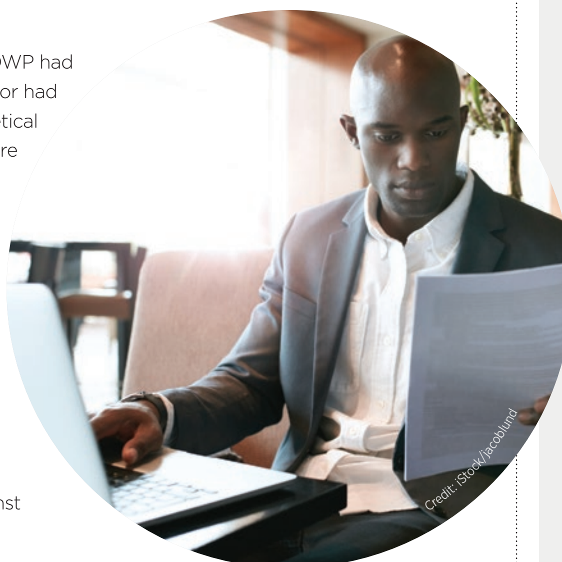
The way HMRC applies the off-payroll working rules has been successfully challenged in a tax tribunal appeal, with implications for contractors and the so-called IR35 regime generally.

The tribunal decision came as HMRC launched a consultation on tackling non-compliance with the IR35 rules in the private sector.

The tribunal ruled in favour of an IT contractor who provided his services to the Department for Work and Pensions (DWP) during 2012/13 through his company, via a recruitment agency. HMRC decided the contractor's terms of engagement equated to employment under the IR35 rules and deducted over £26,000 in income tax and national insurance contributions from his deemed earnings.

Assessing employment status

In reaching her decision, the judge emphasised that she had looked at the overall picture and made a qualitative assessment of the features of this case, giving useful insights into how to determine employment status.



Credit: iStock/jacoblund

Mutuality of obligations – HMRC argued the DWP had an obligation to provide work and the contractor had an obligation to perform it under their hypothetical contract. The judge considered this was no more than what exists where any person works for payment. The contractor also worked under a succession of short contracts and the DWP was not obliged to offer further work.

Substitution – The contractor could send a substitute if the DWP agreed, according to the contract with the recruitment consultant. The contractor admitted he always sought such a clause because it was characteristic of self-employment. Though never used, the substitution right was real and it weighed against employment status.

Control – The contractor had considerable freedom to decide how to meet the needs of the project and the timescale for the work. He had no set hours and worked with minimum supervision, but gave frequent feedback to a DWP manager. These meetings, on which HMRC's case had relied, were not indicative of control over an employee but of the DWP ensuring that its needs were met, as any independent contractor would require.

HMRC says CEST gives an answer in 85% of cases and that the outcome is self-employment in 60% of these.

Private sector changes

Since April 2017, public sector clients (or the agency where there is one) have been responsible for deciding an individual's IR35 status and deducting tax and NICs where necessary.

HMRC estimated compliance with the off-payroll working rules at 10%, but the public sector rules have increased this. An HMRC consultation running until 10 August 2018 sets out proposals for increasing compliance in the private sector. One proposal was to extend the public sector rules to the private sector, but HMRC has also aired other possibilities. For example, clients could be required to ask the personal service company to provide a completed determination under HMRC's 'check employment status for tax' (CEST) service.

HMRC says CEST gives an answer in 85% of cases and that the outcome is self-employment in 60% of these. However, CEST has been heavily criticised and does not test for mutuality of obligations at all. Given the importance of mutuality of obligations in this case, CEST may not be the best solution.

If you would like help dealing with the IR35 rules, please let us know.

INVESTMENT

Credit: iStock/john shepherd

Income and growth bonds make a return

National Savings and Investments (NS&I) launched new issues of its guaranteed income and growth bonds in June. This is the third launch since these bonds were reintroduced in December 2017 after an eight-year gap.

Both bonds are on general sale for one-year and three-year terms. The one-year income bonds pay interest of 1.45% and growth bonds pay 1.5%. The rates for the three-year bonds are 1.9% for the income and 1.95% for the growth version. The interest is taxable, and so counts towards the investor's personal savings allowance of £1,000 for basic rate taxpayers or £500 for higher rate taxpayers.

Investors must be aged 16 or over, and the minimum investment in each bond is £500. The maximum is now £10,000, much reduced from the previous limit of £1 million set on their reintroduction, when the three-year interest rates were an attractive 2.15% (income) and 2.2% (growth).

Better rates are available elsewhere. For example, one bank currently offers an expected 2.3% return for a three-year bond. Other investments may involve some risk, especially where investments are not protected by the Financial Services Compensation Scheme (FSCS). Even where FSCS protection exists, it is limited to £85,000 and is unlikely to extend to any promised investment growth.

Other NS&I products have variable rates of up to 1%, apart from the junior ISA, which pays 2.5% but is open only to children under 18 (or people investing for their benefit) and is subject to a maximum investment of £4,260 in 2018/19.

TAX

Fluctuating incomes impact on Universal Credit

Inconsistencies in the Universal Credit rules could cost self-employed claimants hundreds of pounds a year.

The Universal Credit rules will cause issues for people with fluctuating earnings in particular. For example, self-employed claimants with irregular income could receive less than employees earning the same amount from a regular monthly salary.

Unlike tax credits, which essentially use the income tax rules for establishing the amount of self-employed earnings, Universal Credit:

- calculates earnings on a monthly basis, without any averaging;
- uses actual receipts and payments to calculate earnings, even though earnings for tax purposes may be calculated on an accruals basis; and
- applies an assumed level of earnings – the minimum income floor (MIF) – after a start-up period of 12 months.

The MIF is the core of the problem for self-employed people with fluctuating earnings. Very broadly, the MIF assumes that a self-employed person will earn the equivalent of the national minimum wage. Deductions are made for income tax and NICs. Actual earnings are used where they are higher than the MIF, but Universal Credit does not make up the shortfall if monthly earnings are lower than the MIF.

EXAMPLE

Simone's MIF has been set at £1,000. During 2018, she earns £1,400 a month for nine months, but only £300 during each of the other three months. Her Universal Credit payments will be based on earnings of £1,400 for nine months and £1,000 for three months. This is £2,100 more than Simone's actual earnings for the year. The earnings taper reduces the amount of Universal Credit by 63p per every £1 earned over a set amount, so higher earnings could potentially cost her a significant amount in Universal Credit.

The MIF is intended to weed out unviable businesses. Anyone considering moving from employment into self-employment should be aware of how it might impact on their claim for Universal Credit.

INVESTMENT

The increasing burden of property ownership

Some changes are about to take place that will affect how UK resident and non-resident individuals who own property personally, or through a company, pay tax.

Payment window for gains

From April 2020, you must make a payment on account of capital gains tax (CGT) when you dispose of a residential property situated in the UK or overseas. Payment will be due within 30 days of completion of the disposal.

Payments on account will not be due where full private residence relief is available, so the change will mainly affect those disposing of a second home or a rental property.

It will be essential to have all the information necessary for calculating the gain readily to hand. This can be a particular issue where the property has been enhanced, especially if you carried out much of the work yourself.

Non-residents owners of UK property

If you are non-resident in the UK, you are already taxed on gains made when disposing of UK residential property. From April 2019, this liability will be extended to:

- **Non-residential property** Property values will be rebased to April 2019, so that only subsequent gains will be taxed. However, the original property cost can be used if beneficial – such as where rebasing results in a gain where there is an overall loss. Unlike residential property gains, there will be no option to time apportion a gain over the period of ownership.
- **Indirect disposals** For example, the disposal of shares in 'property rich' companies – where at least 75% of a company's asset value is represented by UK property.

If the changes affect you, you should review your current holding structures and any plans for future acquisitions/disposals. At the very least, you need to arrange for April 2019 property valuations.

TAX

Childcare vouchers deadline

There is still time for employees to join their employer's childcare voucher scheme as the government has extended the deadline to 4 October 2018.

Employees can receive up to £55 a week of their pay in the form of tax-free vouchers under the scheme, and these can be used to pay for approved childcare, saving up to £933 in tax and national insurance contributions (NICs). The employer also saves NICs on the salary sacrificed.

Parents who have joined a scheme and receive their first voucher before 5 October can continue to benefit as long as they stay with the same employer.

The replacement scheme, tax-free childcare, is not linked to employment. It may be more beneficial for some working parents because it offers up to £2,000 a year for each child to people with high childcare costs. You cannot use both schemes at the same time and their conditions and operation are very different.