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Newsletter

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May deadline for data protection

Major changes in the 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. Businesses will need explicit consent to hold, and share, a person's data in electronic format.

A new right to data portability will allow individuals to move, copy or transfer personal data from one IT environment to another. Your business must therefore be able to identify all of an individual's data, and make it available in a structured, accessible form, such as CSV files.

“ *A new right to data portability will allow individuals to move, copy or transfer personal data 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 what data you are holding and why. 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 they no longer need.
- Only collect and process personal data they legitimately need for identified purposes.
- Update their procedures for managing access requests by data subject.

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

Indexation changes hit company capital gains

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

Indexation provides a relief against inflation by effectively increasing allowable expenditure in line with the Retail Price Index (RPI). The indexation freeze comes when inflation is rising, with the December RPI showing a 4.1% increase for 2017. Although the rate of corporation tax itself is to be reduced to 17% in 2020, this may not compensate for the change.

It is important to emphasise that indexation relief is just being frozen, not abolished as it was for individuals and trusts. It will 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.

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.

Making bullying and harassment a thing of the past

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. 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 is defined 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. 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 or comments.

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. You could involve your 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 your 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.

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

Stamp duty relief for first-time buyers

The November 2017 Budget introduced stamp duty land tax (SDLT) relief for first-time buyers who buy a property costing up to £500,000 from 22 November 2017.

The relief cut SDLT by £1,660 for someone buying the average first-time buyer property for £208,000.

First-time buyers do not pay any SDLT on purchases of residential property costing £300,000 or less. For purchases costing between £300,000 and £500,000, they pay SDLT at the rate of 5% on the excess over £300,000. Normal rates of SDLT are paid on the full purchase price if it exceeds £500,000.

A first-time buyer is defined as someone who has never owned a freehold or leasehold interest in a residential property in the UK or anywhere else in the world, and who intends to occupy the property as their main residence. Where there are joint purchasers, all purchasers need to be first-time buyers.



TAXATION

Company car costs to increase with new emissions charges

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

There 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:

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

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 would 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.

Recently, drivers of company cars with zero emissions did not suffer any tax charge, but they will see their current 9% charge increase by nearly 80% over the next couple of years.

From 6 April 2020, the electric range of a car will also 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 high distance on just electric power. A 2% charge will apply for cars that can only be driven in zero-emission mode.

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 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.



You can check your car benefit for the current tax year using HMRC's calculator: <http://ccfcalculator.hmrc.gov.uk>

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 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.

EMPLOYMENT



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

VAT registration thresholds frozen from April 2018

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

This is in response to the report on VAT simplification published by the Office of Tax Simplification which focused on the cliff-edge nature of the registration threshold. The government will consult on VAT thresholds 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. 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 whose turnover is just below the threshold. They may be restricting their growth by not recruiting an extra employee or taking on an extra contract, or simply not working for a period.

What are the options?

The government 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 act as a way to bring more businesses into HMRC's 'Making Tax Digital' programme, which will initially only be imposed on businesses above the VAT threshold.



- The introduction of a smoothing mechanism. One possibility would be to allow newly registered businesses to use a reduced flat rate. Another option would be for newly registered businesses to retain a proportion of the VAT otherwise payable to HMRC.

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

EMPLOYMENT

More holiday rights for self-employed workers

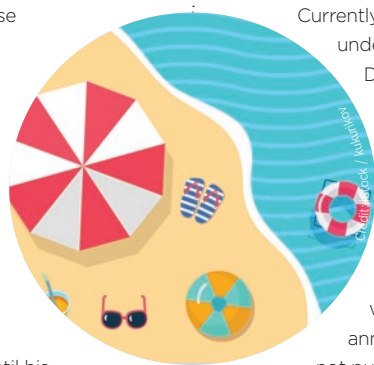
A recent European Court of Justice (ECJ) ruling concerning holiday pay has highlighted the employment rights of workers who categorise as self-employed.

The effect is extension of those rights, which has potentially costly implications, especially for employers with self-employed workforces.

Payment for accrued leave

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.

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



Currently statutory holiday entitlement under the European Working Time Directive - from which the UK Working Time Regulations derive - expires at the end of each leave year. Workers lose the entitlement if they do not take the leave. The government is likely to legislate for the right of workers to carry forward paid annual leave when employers do not put them in a position in which they can take it.

This decision is likely to lead to compensation claims. Employers with self-employed staff may be able to review their terms of engagement to minimise the risk of them being classified as workers.

It may be preferable to grant all workers holiday pay and other employment rights, to avoid compensation claims later.

EMPLOYMENT

Minimum wages increase

Revised hourly rates come in from 1 April 2018.

The increases are all well above the 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