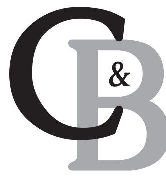

CROSS & BOWEN

CHARTERED ACCOUNTANTS

Newsletter

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The last thing you do

Dying intestate isn't the best legacy for your family, especially as the outcomes may not be what you expect. The rules of intestacy apply if someone dies without leaving a valid will and differ quite a bit between the three UK jurisdictions.

To understand the importance of leaving a valid will you need only consider all those who have no automatic right of inheritance:

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

Intestacy rules mean an inheritance could go to someone you might prefer to exclude, such as a former spouse.

Spouse and children

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

- **England and Wales:** The spouse receives £530,000, with the other £270,000 split equally between the children.
- **Scotland:** The spouse receives £600,000, with the rest split equally between the children.
- **Northern Ireland:** If there is just one child then the split is the same as for England and Wales. However, if there is more than one child, the spouse only receives £440,000, with the other £360,000 split equally between the children.

The government's online tool at www.gov.uk/inherits-someone-dies-without-will/y can quickly establish who will inherit if someone dies without leaving a valid will. It covers all three jurisdictions. The intestacy rules can also mean an inheritance going to someone you might prefer to exclude, such as a former spouse. 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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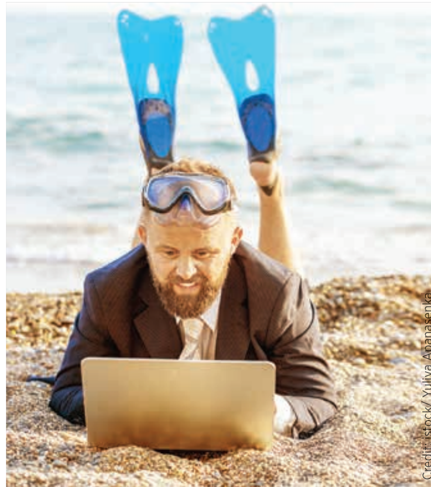
TAX

When off-payroll really is off-payroll

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 for her engagements with ITV Breakfast. 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 control was the key factor and ITV Breakfast had not controlled Ms Kelly as if she were an employee. 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.


Credit: iStock/ Yuliya Apanasenka

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

Although Ms Adams had to provide her services personally and mutuality of obligation was present, 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.

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. HMRC insists that CEST is reliable, but its recent failures at the tax tribunal cast doubt on this claim.

While employers should still use CEST, they should also supplement the result with good professional advice.

BUSINESS

Could you be using simplified expenses?

You can use the 'simplified expenses' rules when calculating allowable business expenses. They are associated with the cash basis for accounting but can be used independently by sole traders and partnerships, though not limited companies.

Credit: iStock/ andresr

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 45p a 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. You can pick and 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. Keep receipts for fuel purchases if you want to claim back VAT on the fuel element included in the rates.

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. Rates are:

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

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

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.

TAX

Tax codes alert

The recent revelation that some Welsh taxpayers have been paying the wrong amount of income tax after Scottish tax rates were applied to them shows just how important it is to check tax codes.

The blame has been laid at HMRC's door, although it says that the error arose because the employers entered an S code for Scotland, rather than the C code used for Welsh taxpayers. In broad terms, Scottish and Welsh taxpayers are categorised by where they live, so problems can also arise when people move. Welsh income tax rates have applied from 6 April 2019, although rates and bands are currently the same as England and Northern Ireland.

Employers should ensure they are using the latest version of their payroll software. Once tax codes are corrected, any errors in the amount of tax paid will then automatically be put right without the taxpayer needing to take any action.

Credit: iStock/ MarsGuti

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.

Pensions and payslips

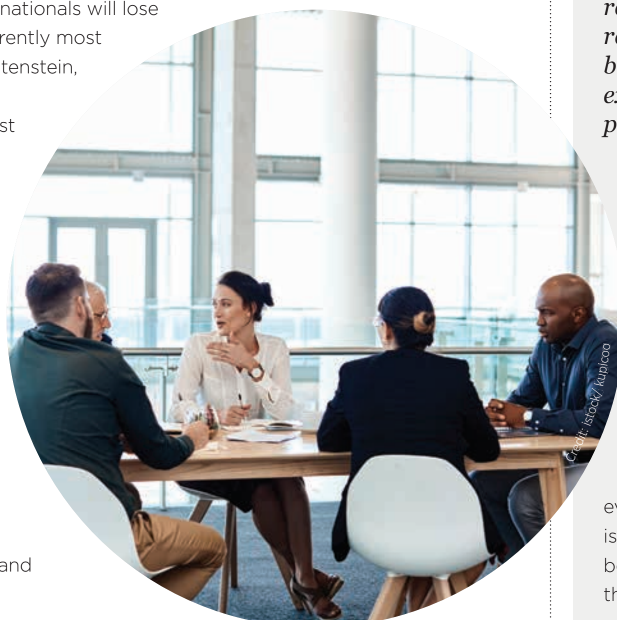
From April 2019 the minimum contribution to auto-enrolment pension schemes increased to 8% of qualifying employee earnings, of which the employer must pay at least 3%. There are no plans for rate increases but employers and employees may choose to pay more. Alternatively employees may opt out and make other provision.

The right to receive a payslip was 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.

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 working 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 existing 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 must ensure that employees who are not UK or Irish citizens do have the right to work in the UK if they will still be in post after June 2021.



Credit: istock/ kupicoo

Most EU nationals 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. 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.

Disclosures

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 use of NDAs may be restricted in future.

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

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.

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.

Beneficial loans

Employers 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%).

Living accommodation

The official rate of interest comes into play for employer-provided living accommodation if the cost exceeds £75,000. The official 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.

VAT

Don't be tripped up by MTD

If you have a VAT-registered business, you should now be getting used to submitting VAT returns digitally using MTD-compatible software, or bridging software to connect non-compatible software, such as spreadsheets, to HMRC systems.

Contrary to some of the advertising for accounting software, however, it is not as simple as scanning all your invoices and receipts and 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, 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 for inaccurate returns. 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'.

Credit: istock/Sitthiphong

MTD for VAT is only the first stage in a programme that should result in most individuals and businesses filing their tax details digitally. 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.

PROPERTY

A question of property

Landlords 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.

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 to actual periods spent living on the premises, the final months of ownership are also exempt.

Credit: istock/ Martin Barraud

The exemption used to be the final 36 months of ownership but 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.

Letting relief

Letting relief provides an additional exemption where you have at some point let out a property which has been your main residence. The exemption is a maximum of £40,000 of the gain, but cannot be more than the amount of PPR exemption. The relief can be up to £80,000 for a jointly owned property.

From April 2020, the letting exemption will only apply where the owner of the house shares occupancy with the tenant, so there will no longer be any exemption where a whole house is let.

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. 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 an annual rent less than £50,000. The rules only apply in England; letting fees have already been banned in Scotland.

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 clawings back all or part of the benefit. The higher earner has to register to pay the charge, but many assumed HMRC would automatically make payment adjustments and did not register 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.

Opting out

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.