client BRIEFING

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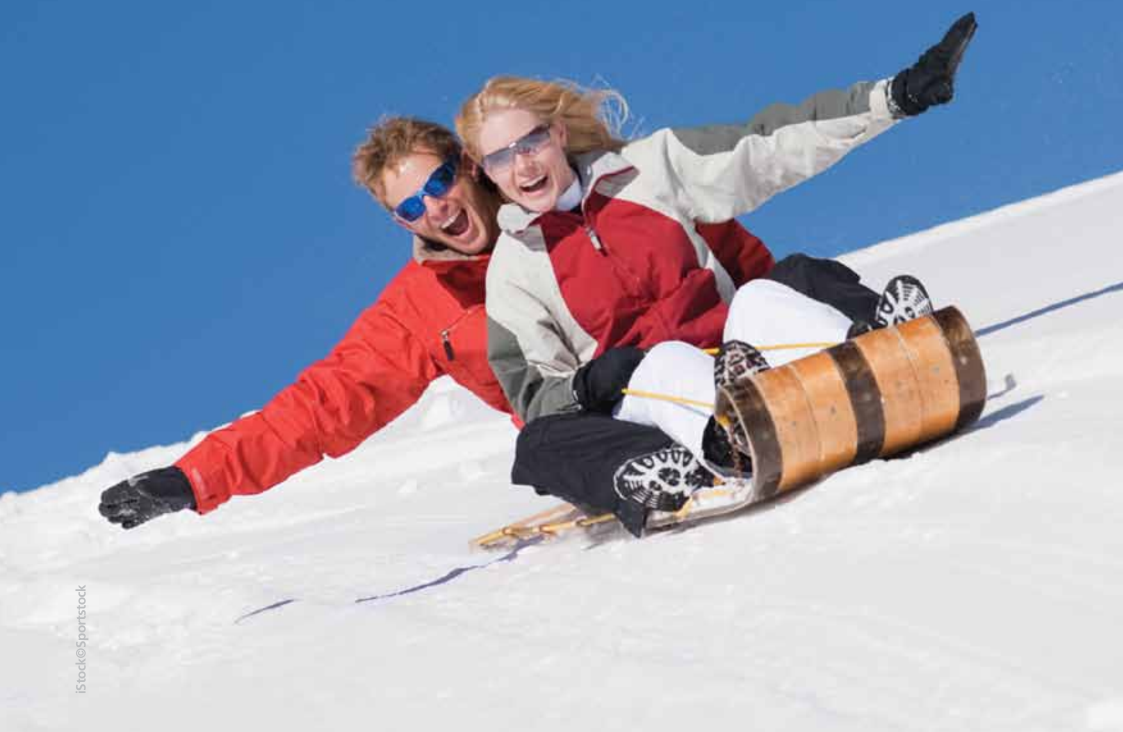

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Auto-enrolment rolls closer for SMEs

Auto-enrolment is well underway, requiring employers to enrol their employees into pension schemes that meet certain minimum standards. The new system is being phased in over a five-and-half year period and requires all employers – no matter how small – to make pension contributions for their employees. Failure to comply will result in hefty fines.

The auto-enrolment process began in October 2012 and will be completed in February 2018. The date at which an employer is required to start auto-enrolment (known as the staging date) can be found by entering the employer's PAYE reference into a tool on the Pensions Regulator's website (www.thepensionsregulator.gov.uk).

An employer's obligation

Employers must automatically enrol all their workers aged between 22 and state pension age if they earn more than the basic personal allowance (£9,440 for 2013/14). Employees who are automatically enrolled have the right to opt out of auto-enrolment and those who are outside auto-enrolment have the right to opt in. Employers must not encourage employees to opt out.

Employers must provide a qualifying pension scheme into which their employees can be automatically enrolled. The scheme must meet:

- The automatic enrolment criteria;
- The qualifying criteria; and
- The minimum requirements.

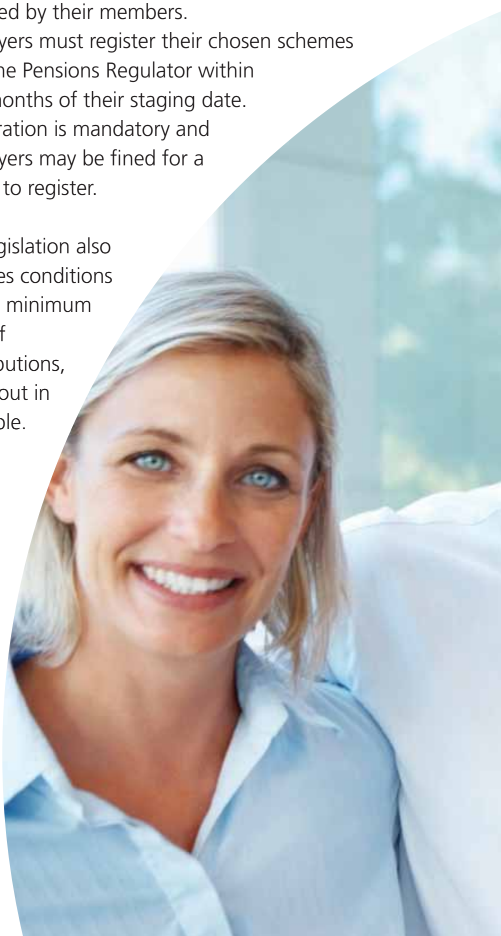
The employer can set up an occupational or personal pension scheme, which must be a registered pension scheme for UK tax purposes. Guidance on the qualifying requirements can be found on the Pensions Regulator's website.

The process

Employers can find a provider by contacting a financial adviser (FA) or they can use the Government's National Employment Savings Trust (NEST). The Association of British Insurers also produces a list of qualifying schemes provided by their members.

Employers must register their chosen schemes with the Pensions Regulator within four months of their staging date. Registration is mandatory and employers may be fined for a failure to register.

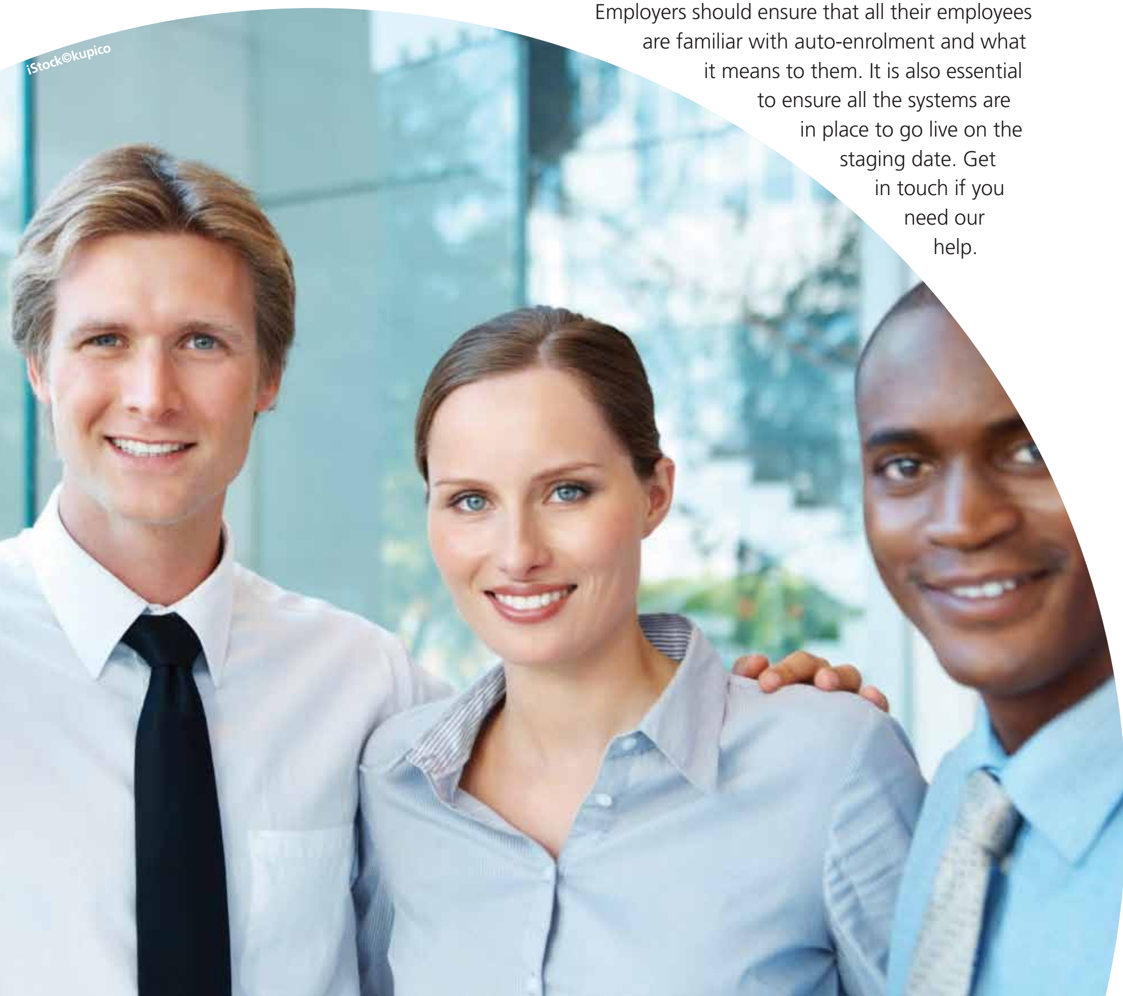
The legislation also imposes conditions on the minimum level of contributions, as set out in the table.



Date	Employer minimum contribution	Total minimum contribution
Staging date to 30 September 2017	1%	2%
1 October 2017 to 30 September 2018	2%	5%
1 October 2018 onwards	3%	8%

Employees' contributions, together with the related tax relief, make up the difference between the total and the employer contributions. Schemes must comply with various reporting and regulatory duties, which include filing regular scheme returns. There are penalties for employers who fail to comply with the auto-enrolment rules.

Employers should ensure that all their employees are familiar with auto-enrolment and what it means to them. It is also essential to ensure all the systems are in place to go live on the staging date. Get in touch if you need our help.



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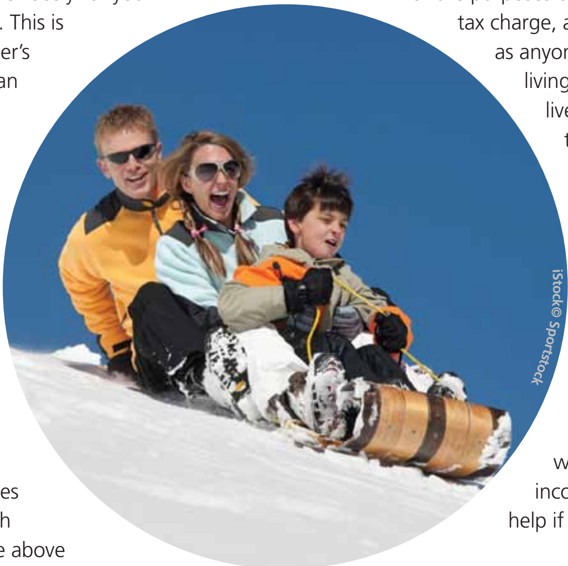
Managing the child benefit tax charge

We are now in the first full tax year of the child benefit tax charge, which means that you may find yourself in the scope of self-assessment – even if you have never had to file a tax return before.

The high income child benefit charge was introduced on 7 January 2013, meaning that even if self-assessment is not new to you, you may still have to provide us with more information than previously for your 2012/13 tax return. This is because your partner's financial position can now be relevant when it comes to completing your own tax return.



The child benefit tax charge applies where either you or your partner has income of more than £50,000 and either of you receives child benefit. If both of you have income above £50,000, then whoever has the higher income will suffer the charge. Of course you might be one of almost 400,000 people who opted out of receiving child benefit prior to the introduction of the charge, in which case you are unaffected.

However, if you are not yet registered for self-assessment and you should be paying the tax charge for 2012/13, it is already too late to register without incurring a penalty. The deadline was 5 October. The deadline for submitting the actual tax return is next 31 January (for online filing), but you will really need to contact us earlier than that.

Who counts as a partner?

For the purposes of the child benefit tax charge, a partner is defined as anyone that you are living with (or have lived with) during the tax year. This can put someone in the awkward position of having to contact a former partner to establish if they are claiming child benefit and/or who has the higher income. HMRC will help if there is a problem.

Child benefit is only ever paid to one claimant, normally the person the child is living with. However, someone else could claim if they are contributing towards the child's upkeep at least as much as the amount of the child benefit. This includes the cost of clothes, presents and pocket money.

Depending on your level of income, it might be possible to reduce the tax charge for the current tax year by making additional pension contributions, but you will need to organise this by 5 April 2014. If you need our help, please get in touch.

Self-employment rules change for LLPs?

The Government has consulted on proposals to remove the presumption of self-employment for limited liability partners (LLPs) and to tax salaried members as employees. HMRC is now considering the responses received with a view to introducing new rules from April 2014.

At present, individual members of an LLP are taxed as self-employed partners, even if they have more in common with employees (such as being on a fixed salary) than full partners in a traditional partnership. A person who is self-employed is generally taxed more favourably than an employee and HMRC is concerned that LLPs are being used to exploit the tax advantages of self-employment even though they are in substance employees in most respects.

HMRC plans to introduce new rules to prevent LLPs being used in this way, by removing the presumption that all individual members of an LLP should be taxed as self-employed partners. Instead, a member who meets the test for a 'salaried member' will be taxed as an employee, subject to income tax and primary Class 1 national insurance contributions.

A `salaried member' is a member who meets one of the following two conditions:

Condition one

They are an individual member of the LLP who, if the LLP were carried on as a partnership by two or more of its members, would be regarded as an employee of the partnership. The normal tests of employment and self-employment would apply.

Condition two

They are an individual member of the LLP who does not meet the first condition but who:

a) has no economic risk (loss of capital or repayment of drawings) if the LLP makes a loss or is wound up;
b) is not entitled to a share of the profits; and
c) is not entitled to a share of any surplus assets on a winding up.

Where the substance of the relationship is that of employment, the member would be treated as a salaried member and taxed as an employee.

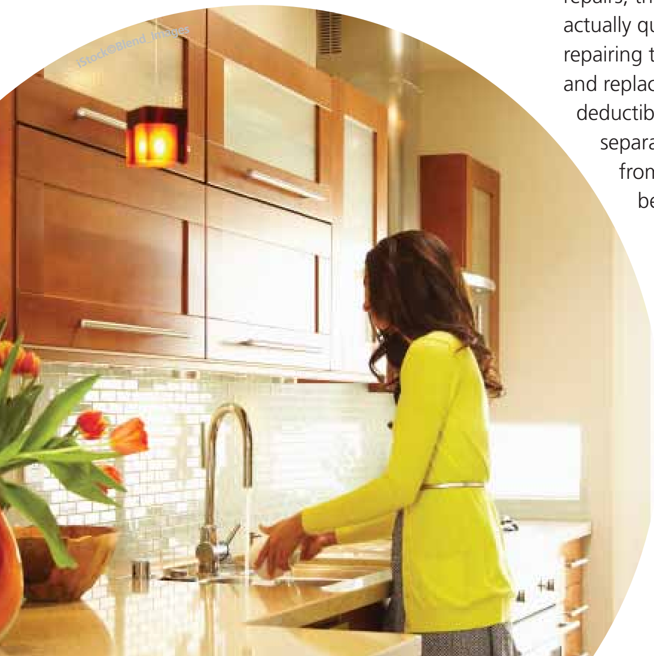
Members of an LLP who do not meet either condition would continue to be taxed as self-employed partners. If you need to review your partnership and employment status before the intended rules change in April 2014, let us know.

Repair or replace but don't renew

The rules have changed about what expenditure is deductible for calculating the profit on a property letting. The so-called 'renewals basis' has been abolished affecting landlords of partly furnished residential property.

The problem essentially arises because items such as tables, beds, carpets, cookers and washing machines are classed as capital expenditure. A normal trading business can claim capital allowances, but these are not available if assets are used in a dwelling house, unless it qualifies as a furnished holiday letting.

However if you let out furnished property, you can claim a wear and tear allowance to cover the cost of providing furniture. The allowance is 10% of the rent received, although the rental figure is reduced for any costs that the landlord pays, which would normally be borne by the tenant. The 10% deduction covers those items that tenants would usually provide themselves if the property were unfurnished.



Until April 2013, you could also use a renewals basis. For furnished property, this was less popular than the wear and tear deduction as it was more complex and only covered the replacement cost of furniture and appliances rather than their initial cost. However, it was the only option available if you let property with some furniture, but not enough for the property to qualify as furnished. Unfortunately, the renewals basis has been withdrawn from 6 April 2013.

Repair or replace?

Now the only deductible expenditure is the cost of repairing or replacing furnishings that would normally be found in unfurnished lettings, such as bathroom or kitchen fittings. With property repairs, there can be a fine line as to what actually qualifies. HMRC distinguishes between repairing the property itself (deductible) and replacing a separate, distinct, asset (not deductible). An item will be classed as a separate and distinct asset if it stands apart from other assets, is freestanding or can be removed.

Where a landlord carries out a substantial amount of work, HMRC will also consider whether the character of the property has been altered. The cost of modernising a property should not be problematic, but this might not be the case where, a property is renovated for up-market long term letting rather than as student accommodation.

Rogue directors – skating on thin ice

The Department of Business, Innovation and Skills is proposing to toughen up the regime that applies to directors who have acted fraudulently or negligently.

The aim is to enhance the transparency of company ownership and increasing trust in business. This probably comes as no surprise following some of the recent problems in the banking sector.

A common complaint from creditors is that although disqualification prevents a director from future misconduct, the creditors receive no compensation. In many countries the reverse applies and there is much more emphasis on allowing creditors to recover losses. Under the proposals, directors who have acted fraudulently or negligently will be far more personally liable for the company's debts than is currently the case. There are also several other proposals related to disqualification:

- When considering the disqualification of directors, the courts should be allowed to take into account their previous business failures, as well as the scale and social impact of those failures.
- Directors who have been disqualified from running companies overseas could be barred from acting as directors of UK companies.
- The current two-year time limit for bringing disqualification proceedings after a company insolvency could be extended to five years.

To increase the transparency of company ownership, the proposal is that Companies House should maintain a central registry to show every company's beneficial ownership. The registry will hold information on individuals who have an interest in more than 25% of a company's ordinary shares or voting rights, even where the interest is held through dispersed shareholdings. Currently, it is not difficult for the true owners of a company to remain hidden. One option being considered is to require beneficial owners to disclose their interest.

A small number of companies still have bearer shares. These have no evidence of ownership and the proposal is to prohibit the issue of any new bearer shares and require existing bearer shares to be converted to ordinary shares.

The Government is also looking to restrict the use of nominee directors, banning corporate directors, simplifying company filing requirements, stopping the use of pre-pack company administrations (where sale arrangements are in place prior to the administrator's appointment), and controlling the fees charged by insolvency practitioners.

Protect your pension before April

You need to act before next April to safeguard your lifetime allowance.

The lifetime allowance is currently £1.5 million, and represents the maximum amount of pension saving you can build up over your lifetime benefiting from tax relief. From 6 April 2014 it will be reduced to £1.25 million, but you can fix at the current £1.5 million limit by applying for fixed protection 2014 (FP2014). This has been available since 12 August 2013 and you can apply up to 5 April 2014.

There have been previous opportunities to fix the level of lifetime allowance, and the current protection will not be available if any of these already apply:

- **Primary protection** and **enhanced protection** were available when the lifetime allowance was introduced in April 2006.
- **Fixed protection** 2012 was available when the lifetime allowance was reduced from £1.8 million to £1.5 million in April 2012.

Although FP2014 will fix your lifetime allowance at £1.5 million, it means that no further pension savings can be made by you or on your behalf. And new benefits in any defined benefit scheme will be restricted.

To add to the confusion, the Government is also proposing to introduce an alternative in the form of individual protection 2014. This cannot be applied for until 6 April 2014, although a three-year application window is proposed. Individual protection will only be available if you have already built up pension savings greater than £1.25 million, whereas fixed protection can be used if pension savings are below this limit. It will be possible to continue pension saving after 5 April 2014 with individual protection.

FP2014 is the only option if your pension savings are below £1.25 million. Otherwise, it may well make sense to apply for both types of protection. This is a complex decision, so take professional advice if you think you may be affected.

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