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Client Briefing

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SPRING 2018

The rising cost of company cars

New emissions charges explained

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Future company capital gains hit by change to indexation

Property-owning companies, including buy-to-lets, are likely to face a significant increase to their future tax liabilities because indexation is being frozen at December 2017. No relief will be given for inflationary gains accruing from January 2018 onwards.

Indexation provides relief against inflation by effectively increasing allowable expenditure in line with the Retail Price Index (RPI).

Example
A company bought a freehold property in May 2000 for £140,000 and sold it in November 2017 for £400,000. During this period the RPI increased by 61.6%. So, the £140,000 base value for the gain is uplifted by 61.6% – £86,240 – reducing the taxable gain to £173,760, which will be subject to corporation tax.

The indexation freeze comes at a time when inflation is rising, with the December RPI figure showing a 4.1% increase for 2017. Although the rate of corporation tax itself is to be reduced from 19% to 17% in 2020, this may not compensate for the change.

Frozen, not withdrawn

It is important to emphasise that the indexation relief is just being frozen – not completely abolished in the way it was for individuals and trusts. It will continue to 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.

For any assets acquired on or after 1 January 2018, no indexation will be available.

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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 workplace harassment a thing of the past

With harassment, bullying and sexual misconduct featured 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.

At worst, 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 has a legal definition 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. It is conduct related to a protected characteristic – age, disability, race, religion or belief, sex, sexual orientation or gender reassignment.

Harassment may come from an 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. Involve 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 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.

Credit: iStock/inhiromantic

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 CO_2 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 CO_2 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.

> *"From 6 April 2020 a 2% charge will apply for cars that can only be driven in zero-emission mode.*

Not too long ago, drivers of company cars with zero emissions did not suffer any tax charge,

but they are now going to see their current 9% charge increase by nearly 80% over the next couple of years.

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

Looking just over two years ahead, from 6 April 2020 the electric range of a car will also be a factor in determining the percentage charge for cars with CO_2 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 CO_2 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 that are 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.

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 CO_2 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.

Credit: iStock/Rawpixel

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.

At £85,000, the UK's threshold is the highest in Europe, where the average is £20,000. The advantage to 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.

> *"At £85,000, the UK's threshold is the highest in Europe.*

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.

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.

New holiday rights for self-employed workers

The growth of the 'gig economy' has highlighted questions concerning the employment rights of workers who are categorised as self-employed.

A recent European Court of Justice (ECJ) ruling has in effect extended those rights, which has potentially costly implications for employers with self-employed workforces.

The decision concerns holiday pay and is likely to affect many employees, not only workers who have been classed as self-employed.

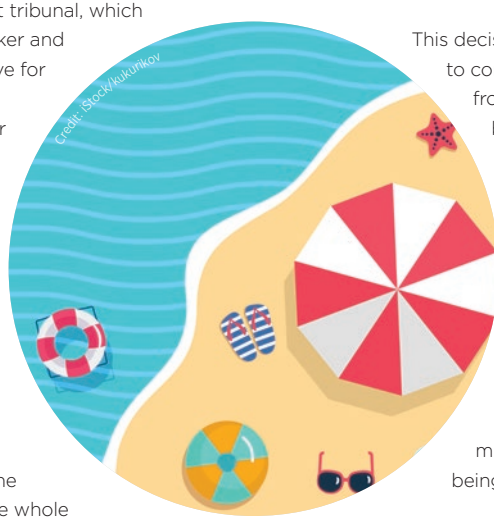
Payment for accrued leave – legal case

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

Current regulations state that statutory holiday entitlement under the European Working Time Directive – from which the UK Working Time Regulations are derived – expires at the end of each leave year. The worker loses the entitlement if they do not take the leave. The government is likely to legislate to give all workers the right to carry forward paid annual leave when their employer does not put them in a position in which they can take it.

> *"The government is likely to legislate to give all workers the right to carry forward paid annual leave.*



This decision is likely to lead to compensation claims from workers who have been denied paid leave, especially now there are no fees for bringing a case to the employment tribunal. Employers with staff who are categorised as self-employed may be able to review their terms of engagement to minimise the risk of them being classified as workers.

In the longer term, it may be preferable to grant all workers holiday pay and other employment rights from the outset, to avoid compensation claims later.

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 a person's data in electronic format, and to share it with other organisations.

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 form, for example CSV files.

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 precisely what data you are holding and for what purposes. 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.

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