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In this issue

- The ins and outs of Real Time Information
- Caught in the IR35 tax net?
- Tax credit changes set to shock
- More tax rewards from philanthropy
- VAT complexity for vouchers
- Universal Credit not universally hailed

Employment law updates

A controversial proposal to allow compensated no-fault dismissals appears to have been shelved because it received only limited support from business.

The original idea was to scrap the whole concept of unfair dismissal, but this was hastily changed to apply only to micro firms with fewer than ten employees. As an alternative, the Government has published details of a fast-track settlement scheme where employees can be asked to walk away by mutual agreement and, in return for their co-operation, receive a payout and possibly a reference – but they would waive any right to make claims against the employer.

Employee qualifying periods change

From 6 April 2012, the qualifying period for which an employee must have been employed before they can claim unfair dismissal has increased from one to two years. However, this change applies only to employees taken on from 6 April this year. Despite the change, employers should be cautious when dismissing new employees because there is no qualifying period for an unfair dismissal claim based on, for example, discrimination or whistle blowing.

Compulsory retirement not necessarily age discrimination

The outcome of a recent age discrimination case heard by the Supreme Court (*Seldon v Clarkson Wright and Jakes*) was that, despite the abolition of the default retirement age, employers can still set the age at which employees retire – provided there is strong justification for doing so. The case concerned a partner in a law firm who was asked to leave at the firm's normal retirement age of 65, as per the partnership agreement. Although the case involved partners, the Court's decision applies to employees too.

The partnership successfully argued that a compulsory retirement age gave younger associates the opportunity to obtain partnership within a reasonable timeframe, and meant that it could plan recruitment and promotion knowing when vacancies would occur. It also limited the need to expel underperforming partners. The Court found that the justification has to be legitimate in the particular circumstances of the employment concerned.

National minimum wage increase

Finally, advance warning that new rates of national minimum wage (NMW) will apply from 1 October. For workers over the age of 20, the NMW rate goes up from £6.08 to £6.19 an hour, and for apprentices it will rise from £2.60 to £2.65 – the other rates are unchanged.

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This newsletter is for general information only and is not intended to be advice to any specific person. You are recommended to seek competent professional advice before taking or refraining from taking any action on the basis of the contents of this publication. The newsletter represents our understanding of law and HM Revenue & Customs practice as at August 2012.

The ins and outs of Real Time Information

Most employers will have to move over to the new system of reporting PAYE by April 2013 – and all employers will be on the new system by October next year. But very many employers are unaware of this deadline and have not started to make preparations.

The new HMRC system is called Real Time Information (RTI), and the low level of employer engagement is causing concern about its successful implementation. A further concern is that the tight timetable may not allow software developers enough time fully to develop their products, according to the All-Party Parliamentary Taxation Group.

Under RTI, employers and pension providers will have to tell HMRC about PAYE payments every time they make them. Payroll software will collect the information and send it to HMRC online through the Government Gateway or Electronic Data Interchange. Employers will therefore no longer have to complete the P35 end of year return. RTI just affects reporting and the PAYE payments themselves will not change.

The reason for the tight deadline is that RTI is necessary for the introduction of the Universal Credit, which will replace current payments to job seekers and low-income earners (see page 4).

RTI will therefore provide HMRC with up-to-date information about claimants' employment income so that the Department for Work and Pensions can calculate benefit payments without claimants having to supply information. RTI is also intended to simplify the operation of PAYE and make it more accurate, reducing the need for recalculations after the end of the year.

The timetable

Most employers will have to move to RTI in April 2013, but all employers will be switched over by October 2013. Ten employers took part in HMRC's April 2012 pilot scheme, including HMRC itself, and around 1,600 more joined in the following three months. In July, HMRC said the pilot was going well and was on track for all small employers and most large employers and payroll bureaux to join RTI in April 2013.

Employers running their own payroll will have to update their software to allow RTI reporting. The Business Application Software Developers Association has said that the industry is trying to meet the timetable, but HMRC had not clarified all the specifications as at July 2012. The smallest employers – those with nine or fewer employees – can use HMRC's free Basic PAYE Tools software, which will support RTI.

Although employers will no longer have to make end of year PAYE returns, they will still have to give employees a form P60 and report expenses and benefits in kind on form P11D as at present.

RTI will be enforced by penalties. It will also enable HMRC to issue penalty notices for late monthly payments as soon as employers incur a penalty.



Caught in the IR35 tax net?

HMRC has published guidance setting out various business entity tests aimed at helping taxpayers decide if they are at risk of being subject to IR35. The tests build up a picture of how a business works on a points-based system.

Taxpayers have to work through the following questions:

- Do you have business premises that are separate from your home and from your client's premises? *Yes = 10 points*
- Do you need professional indemnity insurance? *Yes = 2 points*
- Has your business had the opportunity in the previous 24 months to increase business income by working more efficiently? *Yes = 10 points*
- Does your business engage workers who bring in at least 25% of your annual turnover? *Yes = 35 points*
- Has your business spent over £1,200 on advertising during the previous year? *Yes = 2 points*
- Has your current client employed you as an employee subject to PAYE during the 12 months ending on the previous 31 March with no significant changes to the working arrangements? *Yes = deduct 15 points*
- Does your business have both a regularly updated business plan and a separate business bank account? *Yes to both = 1 point*
- Does your business have to bear the cost of having to put right any mistakes? *Yes = 4 points*
- Has your business been unable to recover payment for work done during the previous 24 months amounting to more than 10% of your annual turnover? *Yes = 10 points*
- Do you invoice for work carried out before being paid and also negotiate payment terms? *Yes = 2 points*
- Do you have the right to send a substitute in your place? *Yes = 2 points*
- Have you actually hired anyone in the previous 24 months to work in your place? *Yes = 20 points*

A score of less than 10 indicates high risk, while medium risk is 10 to 20. If you are either high or medium risk there is a real chance that HMRC will check whether IR35 applies. A score above 20 is considered low risk, and if this is your score you should gather supporting evidence for each test in your favour.

There are indications that HMRC will be increasing the number of IR35 compliance checks, and they have already started sending out letters to contractors.

Tax credit changes set to shock

Many couples, especially those on higher incomes, no longer qualify for tax credits from 6 April 2012.

Although some tax credit elements have increased, the income thresholds have not been increased in line with inflation and this means that no one gains in real terms.

Rate increase: The child element has been increased in line with the consumer prices index, but the main working tax credit rates and relief for childcare are unchanged, with the exception of the disabled worker tax credit rates.

Income thresholds: The £40,000 family element second income threshold has been removed, and the family element is now withdrawn along with other elements. For 2011/12, a couple earning £39,000 with one child, not paying childcare, would have received the full family element of £545. This year they are not entitled to anything. The other income thresholds are unchanged, more than cancelling out the benefit of the child element increase.

Disregard for income fall: A fall in income of less than £2,500 is now ignored. For example, if income last year was £22,000 and forecast income for 2012/13 is £20,000, entitlement is still based on £22,000. The reduction will not be taken into account until 2013/14. Also, the first £2,500 of any larger fall is disregarded. Although a fall under £2,500 has no immediate impact, it should

still be reported promptly to HMRC to avoid an underpayment at the start of 2013/14.

Backdating: It was possible to backdate a claim by up to three months, but now the time limit is now just one month. This limit applies when making an initial claim, or notifying HMRC of a change of circumstances that increases an award – such as the birth of a child or paying extra childcare costs. Even though a couple's income may initially be too high to qualify for tax credits, it might be wise to make a protective claim, for example in case of an unexpected redundancy.

Other changes: With some exceptions, a couple with children now needs to work a joint 24 hours a week to qualify for working tax credit. The minimum was previously 16 hours. The additional payment is no longer available for people aged 50 or over who return to work.

Most of these changes were announced in the first Coalition Budget in 2010. The only outstanding point is that the disregard for increases in income will fall from £10,000 to £5,000, and this will happen next year. If you are concerned that these changes will affect you, please contact us as soon as possible.

More tax rewards from philanthropy

Taxpayers can cut their tax bill even further by passing some of their wealth to charities or to the nation, as a result of two new provisions.

The rate of inheritance tax (IHT) charged on an estate can now be reduced to 36% from the normal 40% where a person leaves at least 10% of their 'net estate' to a 'qualifying charity'.

The new rule applies to deaths after 5 April 2012. The net estate is the total assets after deducting IHT exemptions, reliefs and the nil-rate band of £325,000. The reduced rate of IHT will apply automatically if the 10% test is satisfied. However, personal representatives can elect for the reduced rate not to apply if the tax benefit is minimal.

It is important to take care where an estate consists of more than one 'component'. This is because the 10% rule applies separately to each one. The three possible components are:

- Assets owned jointly.
- Assets in trust.
- Assets owned outright or as tenants in common.

So one component of the estate could be subject to IHT at 36%, while another might be subject to the 40% rate.

Gifts to the nation

The other new tax relief is for gifts of 'pre-eminent' objects to the nation. Land and buildings do not count as objects for this purpose. An object will be considered to be 'pre-eminent' if it is of particular historical, artistic, scientific or local significance or it is associated with a building in public ownership, which would include a National Trust property.

Objects can be loaned or given to institutions such as charities, museums and galleries for safe keeping and to provide public



access. In return donors will receive a reduction in their UK tax liabilities based on a percentage of the value of the object.

Experts will consider the offer and agree the object's value with the donor if they decide to accept it. The donor will then receive a tax reduction based on the valuation if they decide to go ahead.

The tax reduction for individuals could be income tax and/or capital gains tax, and for companies it will be corporation tax at a fixed percentage of the object's agreed value, which will be 30% for individuals and 20% for companies. Individuals will be able to spread the tax reduction forward across a period of up to five years.

VAT complexity for vouchers



The complex VAT treatment of face-value vouchers has just been ratcheted up another notch. Before 10 May, VAT was not due until vouchers were redeemed. But in order to comply with EU law, VAT on single purpose vouchers now has to be accounted for on every sale of the voucher – both from company to retailer and from retailer to consumer.

Single-purpose vouchers are those that can be redeemed for just one type of goods or service, and which are subject to a single rate of VAT. Deciding if a voucher is single purpose is not always straightforward – a book voucher is single purpose if it gives entitlement to just books (zero-rated), but not if it also gives entitlement to e-books (standard rated). VAT is charged based on the value of the underlying supply, and so the change in treatment could cause difficulties where third-party vouchers are being sold.

The VAT rules for other, multi-purpose, vouchers are unchanged. But be warned: the EU is aiming to harmonise the VAT treatment of vouchers, with legislation planned for 2015.

Universal Credit not universally hailed

The Universal Credit benefit system, due to take effect from October 2013, could create serious problems for the self-employed if it is implemented in its current form.

In theory, Universal Credit will simplify the current system of Department for Work and Pensions payments to unemployed people and low-income earners. It consists of a standard allowance and five other potential elements, which are:

- Housing element.
- Child/disabled child additions.
- Childcare element.
- Carer’s element.
- Limited capability for work element.

Claimants will file their claims online to HMRC. In return they will

receive automatically calculated and delivered payments that are adjusted in line with their earnings on a month-by-month basis.

However, the draft regulations require self-employed people to report their income to HMRC differently from employees and small businesses. As it stands, if you are in business for yourself, you will need to submit an additional online report on a monthly basis. Your benefit payments will be suspended if you don’t claim your Universal Credit within seven days of filing this.

The concern is that this timeframe is too tight given the inherent pressures many self-employed people are under. Consultation on the regulations recently closed (on 27 July), so please call us for further information.

KEY TAX DATES	Every month		
	1 Annual corporation tax due for companies with year ending nine months and a day previously, e.g. tax due 1 January 2013 for year ending 31 March 2012.	CT600 for year ending 24 months previously. File accounts with Companies House for private companies with year ending nine months previously and for public companies with year ending six months previously. <i>If the due date for payment falls on a weekend or bank holiday, payment must be made by the previous working day.</i>	31 Deadline to file 2011/12 self-assessment tax return if filed on paper.
	14 Quarterly instalment of corporation tax due for large companies (depending on accounting year end).		November 2012
	19 Pay PAYE/NIC and CIS deductions for period ending 5th of the month if not paying electronically. Submit CIS contractors’ monthly return.		2 Submit employer forms P46 (car) for quarter to 5 October 2012.
	22 PAYE/NIC and CIS deductions paid electronically should have cleared into HMRC bank account.		December 2012
	30/31 Submit CT600 for year ending 12 months previously. Last day to amend		30 Last day to submit 2011/12 tax return online to have unpaid tax of under £3,000 collected through the 2013/14 PAYE code.
		October 2012	
		5 Deadline to notify HMRC that tax will be due for 2011/12 (for taxpayers who have not been sent a return).	
		14 Due date for CT61 return and CT payment for quarter to 30 September 2012.	
			January 2013
			14 Due date for CT61 return and CT payment for quarter to 31 December 2012.
			31 Submit 2011/12 self-assessment return online. Pay balance of 2011/12 income tax and CGT plus first payment on account for 2012/13.
		February 2013	
		1 Initial £100 penalty imposed where the 2011/12 return has not been filed or has been filed on paper after 31 October 2012.	
		2 Submit employer forms P46 (car) for quarter to 5 January 2013.	
		March 2013	
		2 Last day to pay 2011/12 tax to avoid automatic 5% surcharge.	