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Chartered Accountants

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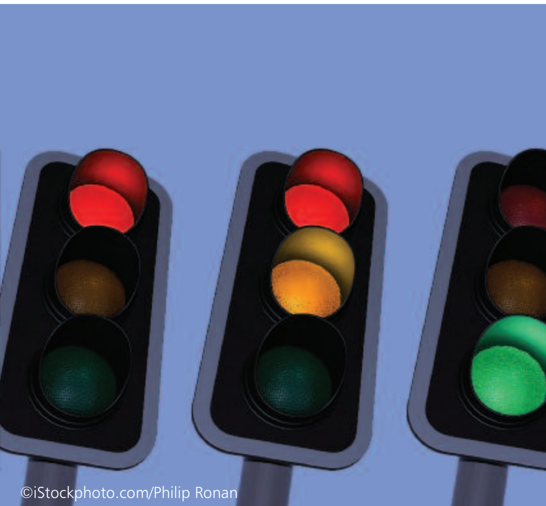
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Major changes proposed for employment law

The law could be shifting in favour of employers, especially for smaller businesses.

The Business Secretary, Vince Cable, has outlined a range of measures aimed at revising the way employers hire, manage disputes and dismiss employees. From 6 April 2012, the period that employees must have been with an employer before they can claim unfair dismissal is to be raised from one to two years.

One of the more radical proposals is to introduce compensated 'no fault' dismissals for micro-firms with fewer than ten employees. An underperforming employee of such a micro-firm could be paid off with a cash settlement, with no subsequent right to claim for unfair dismissal.

The Government is continuing to look at more ways to simplify the existing dismissal process, including an overhaul of the employment tribunal system, which some commentators believe has become increasingly complex and inefficient. There will be a consultation on the introduction of fees for anyone wishing to take a claim to an employment tribunal.

Mr Cable also announced that the Government will consult on a proposal to allow 'protected conversations' whereby employers can discuss issues such as poor performance or retirement with employees, without any fear of the discussions being used in an employment tribunal claim. There will be a further consultation on simplifying compromise agreements, where employees sign away all of their rights to make a claim against their employer in return for the payment of an agreed amount of compensation.

Employment tribunals have traditionally been unwilling to accept that the cost of providing support to a disabled employee is, alone, a legitimate reason for discrimination. But in a recent case, *Cordell v Foreign & Commonwealth Office,* it was accepted that there was no disability discrimination where the cost of making the support available was unreasonable.

It should be noted that in this case the additional cost with the disputed promotion were considerable (around £145,000 a year), and the decision is not binding on other tribunals.

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Sowing the seeds of enterprise and other tax changes

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Tax relief of up to 78% will be available for investments in new small companies under the Seed Enterprise Investment Scheme (SEIS).

This was one of several proposals in the Chancellor's Autumn Statement on 29 November aimed at stimulating growth. However, the investment risks will be high.

The scheme will be similar to the existing enterprise investment scheme, but it will be targeted at companies that are not more than two years old and are carrying on, or preparing to carry on, a new qualifying trade. Investors will benefit from income tax relief at 50%, regardless of the rates at which they actually pay tax on their income.

The potential for the extra 28% tax relief comes from an exemption from capital gains tax (CGT) on gains realised from disposals of any assets from 6 April 2012 to 5 April 2013, provided the gains are reinvested through the SEIS in the same period.

The company must comply with a number of conditions, including meeting a 'financial health requirement' at the time the shares are issued. There must be no prearranged exit for investors and the company's trade must be a genuinely new venture. Directors, but not employees, will be able to invest in their own companies provided they own less than 30% of the company's shares.

If you are attracted by the tax relief, do your research before investing. Around one in three new ventures fail in the first three years.

The Autumn Statement confirmed that the rate of research and development (R&D) relief for small and medium enterprises will increase to 225% from its present 200%, and that companies will no longer have to spend at least £10,000 on R&D to qualify for relief. Furthermore, from April 2012, claims will no longer be limited to the amount of the company's PAYE and national insurance contributions liability.

There were also details of an 'above the line' tax credit for R&D expenditure for large companies from April 2013. This will allow large companies to account for the tax credit as a reduction in the R&D spending of the company. Smaller companies can already claim repayment of R&D tax credits.

Are you newly self-employed? You may not have to pay your first tax bill until 22 months after you started your business and HMRC has recently published a new leaflet to help budget for this. Based on estimated earnings it shows the amount that should be set aside each week or month – for example, if weekly profits are £500 then you should set aside £104. However, this guidance, although helpful, ignores the payment on account that is likely to be due at the same time for the following year. The first tax bill will then be 50% higher – £156 instead of £104.

The pensions revolution continues

The start of the tax year on 6 April marks several important changes to pensions.

Contracting out If you are currently contracted out of the state second pension (S2P) through a personal pension or a money purchase occupational scheme, your contracting out will end automatically on 5 April this year. The funds built up in your private pension arrangement will remain, but from 6 April you will start to accrue S2P.

National insurance contributions (NICs) NIC costs will rise from this April for employees who are contracted out through their employer's occupational scheme – increasing both employers' and employees' contributions. For final salary schemes, the contracting out NICs rebate falls from 1.6% to 1.4%. For money purchase schemes, the rebate disappears completely because contracting out will have ended. The NIC rates will not change for employees contracted out through a personal pension.

Lifetime allowance The standard lifetime allowance, which normally sets the maximum tax-efficient value of pension benefits, will fall from £1.8 million to £1.5 million from 6 April. If you have existing primary or enhanced protection, the reduction will have little if any effect. However, if you have no protection, then you may need to consider the option of claiming fixed protection.

Broadly speaking, fixed protection allows you to keep the £1.8 million lifetime allowance, but only if no further contributions are made to your money purchase pension arrangements and you don't accrue any more benefits in a defined benefit scheme that exceed set limits. You must claim fixed protection by 5 April 2012, so if it might be relevant to you, please contact us as soon as possible.

Two other aspects of pensions were the subject of announcements late last year, but their impact will be longer term:

State pension age (SPA) You will only be affected by these adjustments if you were born between 6 April 1954 and 5 October 1954. The timetable for SPA increases has been changed. The move to 66 has been put back by six months, but the rise to 67 will now be introduced eight years earlier than previously planned, between April 2026 and April 2028.

Auto-enrolment The start date for auto-enrolment into pension arrangements for small employers will be put back by 13 months, to May 2015.

For more information on the implications of these changes for you, please contact us.

Do you have a Swiss bank account? If you do then the UK tax authorities will be coming after you. HSBC Swiss account holders are currently being contacted, and they will have just 30 days to disclose their tax liabilities or face possible investigation. The HSBC account details were apparently provided by a disgruntled former employee, but it is a taste of HMRC's approach ahead of the UK-Swiss tax agreement taking effect from 1 January 2013. One possible disclosure route is through the Liechtenstein Disclosure Facility, which is not restricted to Liechtenstein assets. Disclosure will avoid penalties of up to 200% and possible criminal prosecution.

Harder to escape the UK tax net

UK resident individuals have to make a distinct break with the UK if they want the tax authorities to treat them as non-UK resident, the Supreme Court has confirmed. The decision in the long-running appeal by the expatriate businessman Robert Gaines-Cooper could result in HMRC chasing thousands of British tax exiles for backdated tax.

Mr Gaines-Cooper, who spent most of his time in the Seychelles in the years concerned, argued that he was not resident in the UK because he averaged fewer than 91 days a year here. This had been one of the tests described in HMRC's guidance booklet IR20. In 2007, the Special Commissioners (the former appeal tribunal) upheld HMRC's decision that he was UK resident. Mr Gaines-Cooper applied for judicial review, claiming that HMRC had not followed its own guidance.

Turning down his application, the Supreme Court judges held that the 90-day test only applied to taxpayers who had clearly left the UK, whereas Mr Gaines-Cooper had continued to maintain social and family ties here. They also said that HMRC had not failed to follow its guidance but that, when read as a whole, there was enough information in IR20 for 'an ordinarily sophisticated taxpayer' to conclude that a person had to leave the UK permanently or indefinitely and relinquish their usual place of residence in the UK to become non-resident. The 90-day test only applied to taxpayers who had clearly left the UK.

Helpfully, the judgement confirmed that HMRC should be bound by its guidance. Mr Gaines-Cooper lost his appeal because he did not fall within it. The IR20 booklet has now been replaced by new guidance in the form of HMRC6, which explains explicitly the need for a definite break.

In June 2011, the Government proposed a statutory residence test to provide greater clarity, but has now postponed its introduction until April 2013. The consultation document proposed that residence status would be determined by reference to five connection factors with the UK, namely: family links; accommodation; doing substantive work in the UK; spending over 90 days here; and whether more time is spent in the UK than in another country. The present rule that a person going abroad to work full-time is non-resident from the outset would remain.

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If you are planning to leave the UK, please ask us for advice about your residence status.

How employers can avoid the PAYE blues

Employers who make systematic but unidentified mistakes in their PAYE payments are likely to suffer expensive penalties under the HMRC rules that have applied in the last two tax years.

This is because the level of penalty is based on how often they make late payments in a tax year. HMRC may send a warning letter after each late payment, but they tend to be rather vague, and they do not send out the penalty notices until the end of the tax year, because it is not possible to establish what the total penalty is until then. However, HMRC has said that it will change this policy, but not until Real Time Information (RTI) reporting is introduced in 2013.

RTI is HMRC's great hope for modernising PAYE. With RTI, employers will send tax and national insurance information to HMRC at the time payments are made instead of waiting until after the end of the tax year.

This will remove the need for an annual return, and hence the possibility of incurring late filing penalties. The starting and leaving process for employees will also be simplified.

HMRC is going to pilot RTI during 2012/13 and the new system will then be introduced from April 2013. In the interim, HMRC is recommending that employers ensure that information about each employee is accurate – name, date of birth, national insurance number, gender and address – and ideally that it has been verified from an official source.

The penalty for failing to file an end of year employer annual PAYE return on time can quickly mount up. It's calculated as £100 per 50 employees for each month or part-month late. The return should be filed by 19 May following the end of the tax year. But despite continuing criticism HMRC does not issue the first penalty notice for a late return until 19 September – by which time the penalty will be for five months, a minimum of £500.

In two recent cases – involving Hok Ltd and HMD Response International – HMRC's approach to the issuing of penalty notices has been roundly condemned. In the case involving Hok Ltd, a company with no employees, the tribunal found that only the first £100 of the penalty was payable. The agent acting for HMD Response International honestly and genuinely believed that filing had taken place on 16 May, and given this reasonable excuse the penalty was reduced to nil.

First the carrot, and now the stick

The carrot

HMRC raised over £10 million from more than 1,500 disclosures made under the Tax Health Plan, but the tax authorities are looking to raise yet more from the plan.

The plan ran until 30 June 2010 and gave medical professionals the chance to come forward voluntarily and bring their tax affairs up to date. The attraction of disclosure was a fixed penalty of 10% of the underpaid tax.

The stick

HMRC is now in the process of targeting a further 2,500 doctors and dentists whom it believes should have used the Tax Health Plan, but chose not to do so. They are being sent letters telling them to rectify their tax affairs within 21 days. If this is not done, then HMRC will either make a determination of the estimated tax liability, resulting in significant additional charges or it will refer the case to its Criminal Investigations department.

HMRC has been talking to a number of parties, including pharmaceutical companies and locum agencies. As a result it now holds a considerable amount of data with which to identify those who have not notified it of all their tax liabilities. It may not be too late for voluntary disclosure, and penalties are generally less severe for people who come forward.

Please contact us immediately if this affects you.

Cheque-ing out

Although the Payments Council has reversed its decision to scrap cheques, the Council's description of cheques as being in 'terminal decline' looks accurate, even if they can be useful on occasions.

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The total number of cheques written in a year dropped from a peak of 4 billion in 1990 to fewer than 1 billion in 2010. Many businesses are no longer accepting them – partly due to the abolition of the cheque guarantee card. Even without the Payments Council's reprieve, it seems that the fate of cheques has been sealed.

Despite the about-turn, in the second decade of the 21st century there is no reason for not using electronic payments. Although paying suppliers by cheque may give a perception of greater financial control, postal delays and the processing time involved means that it is impossible to know when funds will be debited, and lost cheques can cause major problems. The use of electronic payment methods such as BACS and the more modern Faster Payments Service mean that a business will know exactly when payments are to be made. Online banking provides an easy solution for smaller businesses.

Customers can be encouraged to pay electronically by including the bank sort code and account number on all invoices, while retail businesses have a choice of various cash (PDQ) machines, including fully mobile ones, to accept customers' debit and credit cards.

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 2012 for year ending 31 March 2011.

14 Quarterly instalment of corporation tax due for large companies (depending on accounting year end).

19 Pay PAYE/NIC and CIS deductions for period ending 5th of the month if not paying electronically. Submit CIS contractors' monthly return.

22 PAYE/NIC and CIS deductions paid electronically should have cleared into HMRC bank account.

30/31 Submit CT600 for year ending 12 months previously. Last day to amend 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.

If the due date for payment falls on a weekend or bank holiday, payment must be made by the previous working day.

January 2012

31 Submit 2010/11 self-assessment return online. Pay balance of 2010/11 income tax, Class 4 NIC and CGT plus first payment on account for 2011/12. Last day to amend 2009/10 return.

February 2012

1 Initial £100 penalty imposed (even if no tax due) where the 2010/11 return has not been filed or has been filed on paper after 31 October 2011.

2 Submit employer forms P46 (car) for quarter to 5 January 2012.

March 2012

1 Last day to pay 2010/11 tax to avoid automatic 5% penalty (unless late payment agreed with HMRC).

31 Last few days to use any CGT and IHT annual allowances and exemptions and to invest up to the 2011/12 ISA limits.

Deadline for tutors and coaches who have notified their intention to take part in the Tax Catch Up Plan to make their disclosure and pay all liabilities.

April 2012

1 Corporation tax main rate reduced to 25%.

6 First day of the new tax year. Basic personal allowance increases to £8,105 but basic rate threshold goes down to £34,370. ISA limit becomes £11,280 of which up to £5,640 can be in cash. £50,000 annual charge for remittance basis for non-doms in UK 12+ years.

14 Due date for CT61 return and payment for quarter to 31 March 2012.

20 Interest accrues on employers' unpaid PAYE and NIC for 2011/12 (23rd if paying electronically).

30 IHT due on lifetime transfers between 6 April and 30 September 2011.