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Newsletter

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STAFF OUT OF OFFICE? RULES UNDER REVIEW

With employees increasingly able to work from almost anywhere in the world, the Office of Tax Simplification (OTS) is examining the rules around tax and social security as they apply to distance and hybrid working - within the UK and globally.

In due course, there may be recommendations easing compliance: but what should you, as an employer, be looking out for now?

The tax rules on areas like travel and subsistence are a prime area to review, taking stock where working practices have changed post-Covid. Particularly important is the concept of 'permanent workplace', something that has specific meaning in tax law. It has a direct bearing on the allowability of travel expenses.

If employees are working remotely or in a hybrid arrangement, where they work both on site and at home, special care is needed: tax relief for travel from home to the employer's premises will be available only in very limited and specific circumstances. In most cases, HMRC will hold that the employer's normal workplace is the permanent workplace. Where this is so, the ordinary commuting rules work to deny tax relief.

The position regarding home working expenses and employer provided equipment is another area to check. A number of easements applied specifically during the pandemic and we recommend taking the opportunity to engage with staff now to make sure that expectations are set at a realistic level.

The OTS is also looking at the increasing trend in cross border working, where employees work overseas for employers based in the UK, or work in the UK for overseas employers. It notes: 'These arrangements are different from traditional expatriate assignments, where individuals moved to a different country to work for a set period. Hybrid arrangements may typically involve an individual working in two or more countries, often in residential accommodation, where the location is chosen by the employee and not by the employer.'

Employers potentially need to deal with many different issues arising here. They range from where someone is considered resident for tax purposes, to consideration of what are called double tax treaties – treaties between the UK and other countries establishing how an individual is taxed. Areas like share schemes and pension contributions also require appropriate attention.

Whether your employees are internationally mobile, or footloose within the UK, there's a lot of complexity to take on board. We are always on hand to help with advice specific to your business.

Staff tips, employer obligations

Long-anticipated legislation to ensure workers keep the tips intended for them is finally going through parliament. It's need to know employer information, particularly for sectors like hospitality, leisure and services, where tipping is especially high profile.

The Employment (Allocation of Tips) Act 2022 will apply in England, Scotland and Wales (not Northern Ireland), with the start date yet to be announced.

> It inserts new employer obligations into the Employment Rights Act 1996, meaning all tips, gratuities and service charges which an employer receives, or has control over, must be paid to workers in full, without deductions.

Workers should receive such payment by the end of the following month.

New employer responsibilities come in around fair distribution of tips, potentially even where there's what's known as an independent tronc system to allocate them. Look out, too, for a new code of practice on what constitutes fair distribution. Most employers will need a written policy on dealing with tips, plus records of tips received and allocated. Workers will have certain rights of access to these records.

A process for complaint to the Employment Tribunal is also set out.

In short, it means additional employer compliance, backed up by worst case scenarios of enforcement and awards of compensation at the Tribunal.

We should be pleased to provide further help and advice.

Introducing the Plastic Packaging Tax

If your business imports or manufactures plastic packaging components, or regularly trades with a business that does so, the Plastic Packaging Tax (PPT) needs to be on your radar.

New tax

Designed to increase use of recycled plastic, while minimising landfill and incineration, the PPT came into force on 1 April 2022. It applies to what are called finished plastic packaging components containing less than 30% recycled plastic. Packaging designed for use in the supply chain, as well as packaging for single use by the consumer is impacted. It's not just the import of unfilled plastic packaging that's within scope: so, too, is filled plastic packaging, from soft drinks in plastic bottles to plastic tubs containing squid.

Does it apply to you?

Significant complexity lies behind the broad overview.

Businesses importing or manufacturing plastic packaging components need to monitor tonnage, registering for the PPT if a specific 10-tonne limit is passed. It should be stressed that businesses may need to register even when they don't ultimately have to pay the tax. Registration is carried out through gov.uk, and there is then a requirement to submit returns (even if these are nil returns) on a quarterly basis. Where there is a liability to pay tax, PPT is charged at a rate of £200 per tonne.

Entry into the regime creates a new area of compliance, with accounts and records needed to support information submitted in quarterly returns. HMRC has produced extensive guidance on what is involved. It should be noted that appropriate records are required even if there is no PPT to pay, and also to support the position where a business is below the registration threshold. An exemption applies if plastic packaging components contain at least 30% recycled plastic as a proportion of the total weight of plastic: but to claim the exemption, appropriate records are needed.

> Even if your business does not need to register for the tax or pay it, it may still need a high level of awareness of the new rules.

If manufacturing or importing plastic packaging components, or buying them from another business, there is a requirement to carry out due diligence and record action taken. Failure to do so could result in secondary or joint and several liability for unpaid PPT elsewhere in the supply chain.

In the long run, it's anticipated that businesses will need to include a statement with their invoice to show that PPT has been paid. Due to take effect in April 2022, the requirement is currently postponed. Businesses are still, however, encouraged to make PPT paid visible to customers.

Working with you

We have only been able to give an overview of the PPT here. What constitutes plastic and packaging, for example, are precisely defined for the purposes of the tax, and we should be pleased to advise further. Do contact us with any questions you may have.

BYE BYE GDPR?

Expect change. The General Data Protection Regulation (GDPR) is getting a post-Brexit makeover as new data protection rules are planned.

The Data Protection and Digital Information Bill is set to amend existing legislation - such as UK GDPR. The government says this will reduce the burden on businesses, replacing a 'one-size-fits-all' approach with risk-based compliance. As well as updating and simplifying the data protection framework, the aim is to give the flexibility to drive greater innovation. Headline issues include:

- replacement of the requirement to appoint a Data Protection Officer, with a new requirement to appoint a senior responsible individual. Organisations carrying out 'low risk' processing activities will not need to make this appointment
- new requirements on record keeping, with controllers or processors employing fewer than 250 people exempt from the duty to keep records unless carrying out high risk processing
- changed procedures around data subject access requests, giving more grounds for a business to refuse or charge for these
- data protection impact assessments to be replaced by an assessment of high risk processing.

A change to the regulatory body, the Information Commissioner's Office, is planned, with its powers transferred to a new body, the Information Commission.

Whilst a broad outline of proposals is starting to emerge, at this stage, there are two things to bear in mind. The first is that details may yet change before the Bill becomes law. The second is the European dimension. UK businesses operating in both the EEA and the UK will need to make sure they are compliant in each. Further, the free flow of personal data from Europe is currently guaranteed by the EU's 'Adequacy' decision, but the government acknowledges that 'As the UK diverges from EU GDPR, the risk that the EU revokes its Adequacy decision increases.' This is a point businesses engaging with the EU will want to keep under review.

Easing into new rules is always a concern and we are on hand to assist. Please don't hesitate to get in touch.

When couples separate: capital gains tax change

Couples whose marriage or civil partnership ends formally in divorce or dissolution get longer to make a fair and tax efficient distribution of assets between them under new rules planned for disposals that occur on or after 6 April 2023.

At present, the capital gains tax (CGT) rules mean such couples can transfer certain chargeable assets between them without CGT on a 'no gain, no loss' basis within certain time limits. This window is only open until the end of the tax year of separation. After that, transfers are treated as normal disposals for CGT purposes.

Under the new proposals, couples will have up to three tax years from the year that they stop living together to make no gain or no loss transfers of assets, and unlimited time when the assets are the subject of a formal divorce agreement. There are also modifications to the private residence relief rules as they apply when a spouse or civil partner moves out of the former shared home. These aim to ensure that private residence relief operates more fairly, allowing relief for the period between moving out and sale to a third party. If this is an area of relevance to you, please do contact us.

Did claims comply with the furlough scheme?

1,100 HMRC staff, a set of FAQs and a negative outcome for a business at the tax tribunal. What's the common factor?

The answer is - they all demonstrate HMRC's approach to claims made under the Coronavirus Job Retention Scheme (CJRS or furlough scheme).

Risk profile

It's an approach summed up in a recent policy paper on errors and fraud in Covid support schemes generally: 'We are not writing anything off and will continue to prioritise the most serious cases of abuse. HMRC has legal powers to recover this money up to 20 years after the event.'

HMRC is heavily involved in the Taxpayer Protection Taskforce investigating this area. Although HMRC stresses that it is not actively looking for innocent errors, CJRS compliance activity is very much live and it is important for businesses to look back and check past claims and supporting calculations.

FAQs

HMRC has published FAQs showing its position with regard to common errors in furlough calculations. It focuses on instances where calculations were made using methods other than those set out in HMRC guidance, and highlights areas where an error means a claim should be corrected, and where, with certain provisos, it doesn't.

High on the 'must correct' list are errors where an employer failed to take reasonable care following HMRC guidance available at the time of the claim. On the other hand, if an employer relied on incorrect HMRC advice, in certain specific circumstances, claims may not require correction. Please contact us for further details.

Clear bright line

One of the first cases involving HMRC clawback of CJRS payments has recently come to the tax tribunal.

> It's important because even though the tribunal had every sympathy with the taxpayer business, finding it 'honest and straightforward' and noting that it had managed 'extremely competently through very difficult times', in the final analysis, none of this was enough.

The case turned on the issue of furlough payments for two members of staff who started employment just as the pandemic hit. Though they began work in February 2020, it wasn't until 25 March 2020 that they were included on an RTI return.

The problem was that to be eligible for furlough, staff not only had to be on payroll on or before 19 March 2020, they also had to be notified to HMRC on an RTI submission on or before that date. The view from HMRC's corner, therefore, was that claims for these employees were invalid and should be repaid. The view from the taxpayer's corner was that, having followed the guidance as best it could in a rapidly moving commercial and legislative environment, it had done nothing but claim in line with the 'spirit' of the scheme.

The tribunal, however, held that the rules drew 'a clear bright line to determine eligibility for the scheme' and regrettably, the taxpayer fell the wrong side of them. It's a cautionary tale – and it cost the taxpayer more than £20,000 in repayments.

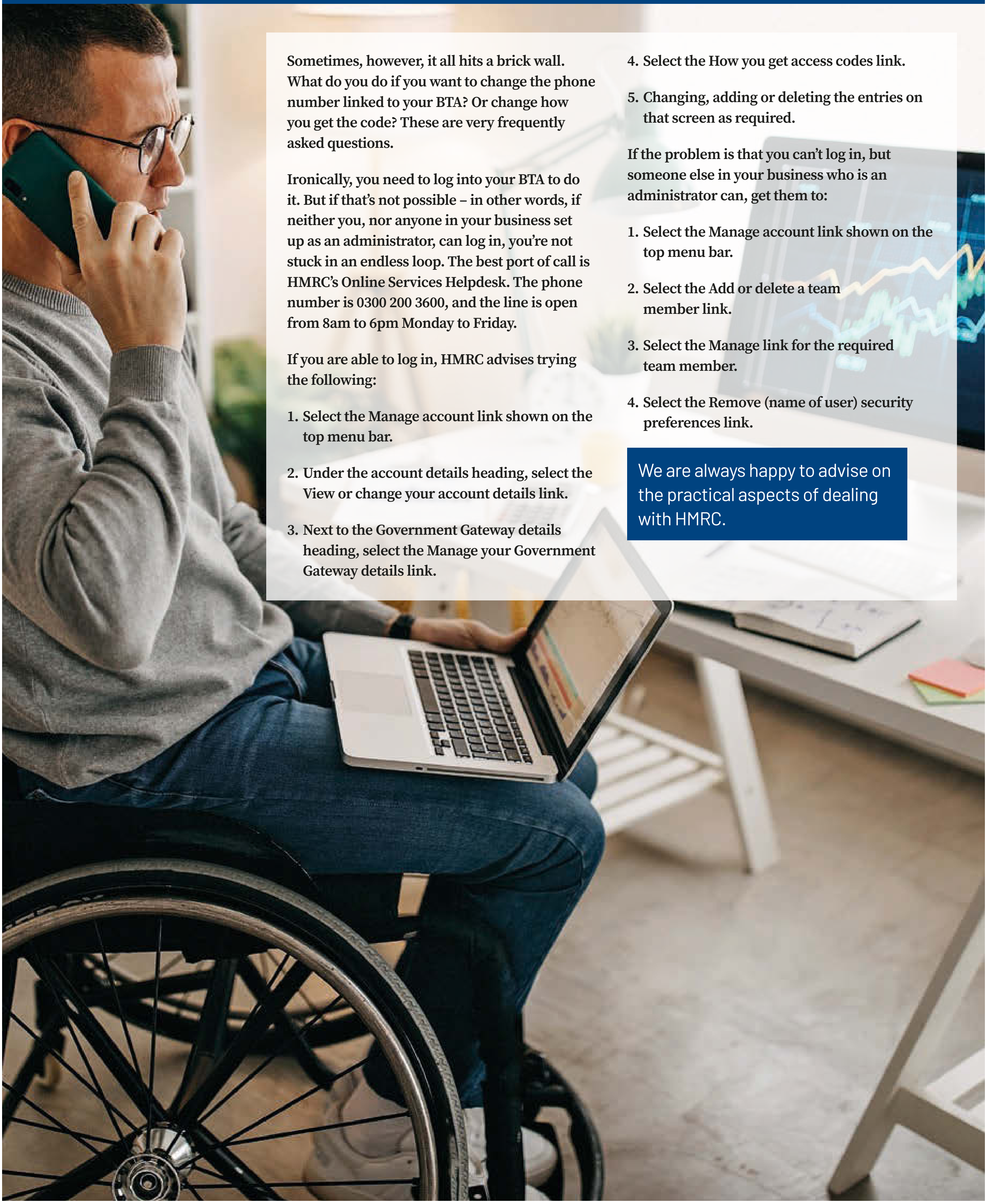
Working with you

When put under scrutiny, many claims under the CJRS are turning out to contain errors – as this one did. Latest HMRC analysis in fact suggests that error was a bigger driver of problem claims than fraud. It also highlights that the greatest area of risk came from employers claiming for employees who were working.

We strongly recommend that businesses take a proactive approach, going back over claims with a view to making disclosure of any issues arising. We can help you review compliance, to help minimise potential exposure to demands for repayment or penalties.

Accessing your business tax account

Multi-factor authentication on Government Gateway accounts, including the business tax account (BTA), means getting the access code pinged to your phone.



Sometimes, however, it all hits a brick wall. What do you do if you want to change the phone number linked to your BTA? Or change how you get the code? These are very frequently asked questions.

Ironically, you need to log into your BTA to do it. But if that's not possible – in other words, if neither you, nor anyone in your business set up as an administrator, can log in, you're not stuck in an endless loop. The best port of call is HMRC's Online Services Helpdesk. The phone number is 0300 200 3600, and the line is open from 8am to 6pm Monday to Friday.

If you are able to log in, HMRC advises trying the following:

1. Select the Manage account link shown on the top menu bar.
2. Under the account details heading, select the View or change your account details link.
3. Next to the Government Gateway details heading, select the Manage your Government Gateway details link.
4. Select the How you get access codes link.
5. Changing, adding or deleting the entries on that screen as required.

If the problem is that you can't log in, but someone else in your business who is an administrator can, get them to:

1. Select the Manage account link shown on the top menu bar.
2. Select the Add or delete a team member link.
3. Select the Manage link for the required team member.
4. Select the Remove (name of user) security preferences link.

We are always happy to advise on the practical aspects of dealing with HMRC.

VAT: terminating a contract early

When someone charges a customer to withdraw from an agreement to supply goods or services, the position can be complicated. What is the position as regards VAT – never a set of tax rules to take lightly? And why is it news now?

In a nutshell

Since 1 April 2022, there's been something of a U turn in HMRC policy. HMRC's interpretation had been that charges to end a contract early did not attract VAT. This was on the grounds that the charges were not generally for a supply, and so fell outside the scope of VAT. Then along came some key judgments in the Court of Justice of the European Union, with the result that HMRC policy has shifted ground.

The new position is that if there's an early termination or cancellation fee, and the goods or services supplied in the original contract were subject to VAT, then the fee to exit the contract is subject to VAT as well. HMRC guidance gives the example of the fee charged to leave a mobile phone contract or terminate a car hire contract early. In each instance, the fee will attract VAT. HMRC stresses that it's not the wording that's important, so that even where payments are described as compensation or damages, a VAT liability is likely to arise.

Essentially, the charges are treated as additional consideration for the supply of goods or services. For this to be the case, however, there must be a direct link between the customer's payment and the supply made. Where the fee charged looks 'punitive', as for example, in the case of additional fees where someone overstays at a car park, the link with the original supply may be lacking. In this scenario, the fee may fall outside the scope of VAT.

Landlords

The land and property sector is one area particularly impacted by HMRC's clarification. There had been some doubt as to what stance HMRC would take on dilapidation payments to landlords – payments at the end of a lease to cover costs if property isn't handed back in the specified condition. Change to the status quo had been widely expected.

This latest guidance, however, states that dilapidation payments will still normally be outside the scope of VAT: the existing regime continues to apply. HMRC's updated VAT manual nonetheless highlights the potential for grey areas: 'We might depart from that view if in individual cases we found evidence of value shifting from rent to dilapidation payment to avoid accounting for VAT.'

VAT: working with you

This new guidance means a significant number of payments that were previously deemed to be outside the scope of VAT may now need different treatment, and we should be pleased to give in-depth advice relevant to your business sector. If you have any queries, do please raise them with us.

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