

Employment taxes newsletter October 2023

Welcome to our second employment taxes newsletter. In this edition, we provide a roundup of newsworthy items and points of interest that have arisen over past months, finishing off with Christmas party costs, their Income Tax, and National Insurance Contributions (NIC) treatment and using any exemptions.

Roundup of employment taxes news

Salaried members update: BlueCrest Capital LLP
The Upper-Tier Tribunal (Tax and Chancery) (UTT) decision was announced on 18 September 2023, in relation to His Majesty's Revenue and Customs (HMRC) and BlueCrest Capital Management's (UK) (BlueCrest) appeals to First-Tier Tribunal's (FTT) decisions last year regarding the application of the salaried members rules to certain members of BlueCrest. Both appeals were lost. You can find our articles covering the [FTT decision here](#) and the [UTT decision here](#).

HMRC compliance team increases in size
HMRC has added 3,000 more staff to its compliance team. The announcement comes on the back of a report by the Public Accounts Committee earlier this year, showing that tax revenue had decreased from an average of 5.2% to 4.2% in the tax year 2021/22.

Therefore, it may not be a coincidence that we are seeing an increased activity in both queries from clients about employment status/IR35 and receiving HMRC Employer Compliance Review notices. We are urging all of our clients to ensure that they have a robust employment status process in place, to avoid any unforeseen liabilities.

Further resources are being made available to deal with COVID backlogs and Time to Pay arrangements.

UTT IR35 case hearings

Two dates announced for UTT IR35 cases involving TV personalities Gary Lineker and Stuart Barnes:

- HMRC v Gary Lineker: 19-20 February 2024. You can read more in our article [here](#).
- HMRC v S & L Barnes Limited: 24-25 April 2024. You can find the link to this case [here](#).

Employment status is driven by case law, so it is always advisable to keep up to date with current cases.

Veezu to go before employment tribunal

Like Uber, drivers of the private taxi platform Veezu are taking them to the employment tribunal to contest their employment status. The claimants maintain that the drivers' contracts are akin to one of full employment and entitled to basic employment rights, such as holiday pay, National Minimum Wage (NMW), etc.

Watch this space as this develops.

Bank of England interest rates unchanged

The Bank of England recently announced that it will keep interest rates unchanged at 5.25%. This will mean that the late paid interest rate on Income Tax/NIC will remain at 7.75% for the time being.

Rise in National Living Wage

At the Conservative Party conference in October 2023, it was announced that the UK's National Living Wage for workers over 23 will rise from £10.42 an hour to at least £11 an hour and will benefit nearly two million workers. This will create an additional cost to employers.

HMRC compliance activity

We are becoming aware that HMRC NMW compliance activity is concentrating on certain regions and sectors. The consequence of getting it wrong could not only lead to additional financial costs (any assessment is at the current NMW rate and penalties could be up to 200% of any underpayment), but also reputational damage via naming and shaming.

Check Employment Status for Tax (CEST) tool

CEST 2.0 has been introduced. Main changes notified by HMRC are:

- The CEST tool is now found on HMRC's in-house platform called Ocelot.
- Supposedly, it is more aligned to case law - one of the main criticisms levelled at the old version.
- The platform will enable HMRC to respond more quickly to any changes in evolving case law.
- The user can review their answers after each section rather than at the end.
- The employment status manual is embedded into the CEST tool. This should help users access guidance quickly.
- The tool will inform the users of the decision it has reached from the answers provided for each question.

Watch this space for any further developments.

Consultations

Intermediaries' legislation (commonly referred to as IR35) off-payroll working rules

In the 2023 Spring Budget, HMRC launched a consultation about the elimination of double taxation. Currently, should HMRC successfully challenge the employment status of a contractor, it can recover PAYE, Income Tax and NIC from the engager/feepayer (assuming the engaging entity is either a public body, or a medium or large company in the private sector). However, there is no legislative right for HMRC to credit the tax already settled by a contractor. We anticipate draft legislation will be introduced to enable 'other taxes' to be set-off against any PAYE liabilities.

Maybe as a pre-cursor to this announcement, we are aware that HMRC has been pausing Employer Compliance Reviews pending announcement in the 2023 Autumn Statement. An article providing more detail is [here](#).

Construction Industry Scheme (CIS) reform

In a continued attempt to address perceived non-compliance in the construction industry, HMRC launched a consultation in April 2023 and are currently considering responses.

Areas covered by the consultation were:

- Introduction of VAT check when considering if gross payment status (sub-contractor being paid gross instead of with CIS tax deductions) is approved.
- Simplifying application of reverse premiums: Landlords or developers sometimes offer inducements to prospective tenants to take up an interest in land. It might take the form of a rent-free period, a sum payable on occupation, or a contribution to or payment for the costs of fitting out the property. These inducements are commonly called 'reverse premiums'. Generally, landlords can make payments (where they are considered contractors) to tenants for work that is normally their responsibility (such as major structural work) and this is included within CIS. However, cosmetic work (such as amending the internal layout) as an inducement to the tenant to sign the lease is excluded from the scheme. Due to the nature of the commercial property sector, it is difficult to separate the two types of payments.
- Despite the fact that organisations in a number of categories of presumed contractors are required to register as contractors, these companies rarely receive payments that necessitate the submission of monthly reports. This process does not meet the needs of businesses with irregular reporting requirements, even though contractors have the option to notify HMRC of up to a six-month period of inactivity, which avoids late filing fines.
- Even though it is not required by law, many of these companies still submit zero returns as a safeguard against being incorrectly assessed, late filing penalties and the inconvenience of having to contest them. Property management companies in particular struggle because they regularly hire more than 100 registered contractors.

Umbrella companies

After the consultation period ended on 29 August 2023, it is likely that legislation will be passed to control umbrella companies, specifically addressing concerns about employment rights, and to combat tax avoidance, particularly the abuse of employment allowances and VAT flat rates.



Topical points of interest

Home to work travel expenses

The introduction of hybrid working has resulted in increased queries with clients asking whether home to work travel expenses can be reimbursed without being subject to Income Tax and NIC deductions.

The starting tax position is that home to work travel is considered ordinary commuting - consequently any reimbursement by the employer for these expenses will be taxable, should be processed via payroll and subject to the appropriate Income Tax and NIC deductions.

When an employee works from home, HMRC's position is always that this is by choice and therefore any ordinary commuting costs met by the employer are taxable. This is illustrated by the tax case *Kirkwood v Evans* (74TC481) – you can find HMRC guidance on this case [here](#).

Home can be a permanent workplace if it is an objective requirement for substantial duties of employment to be conducted at the employee's home and nowhere else. From experience, it is difficult for HMRC to accept an employee's home as a permanent workplace.

In contrast, if the company no longer has an office and employees are forced to work from home, their homes may now be considered permanent workplaces. As a result, business travel can be defined as travel from those residences to other temporary workplaces, and tax relief given to any expenses reimbursed.

The travel expenses legislation is extraordinarily complex with nuances which can catch those out who are not familiar with the legislation. Appropriate professional tax advice should always be sought.

Christmas costs

With Christmas around the corner (Christmas decorations are already in the shops!), there are a few things to consider regarding the costs and how they should be treated for Income Tax and NIC. Our previous newsletter covers this subject in detail [here](#).

We hope that you found the newsletter useful but please do let us know should you have any questions using the contact details below.



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