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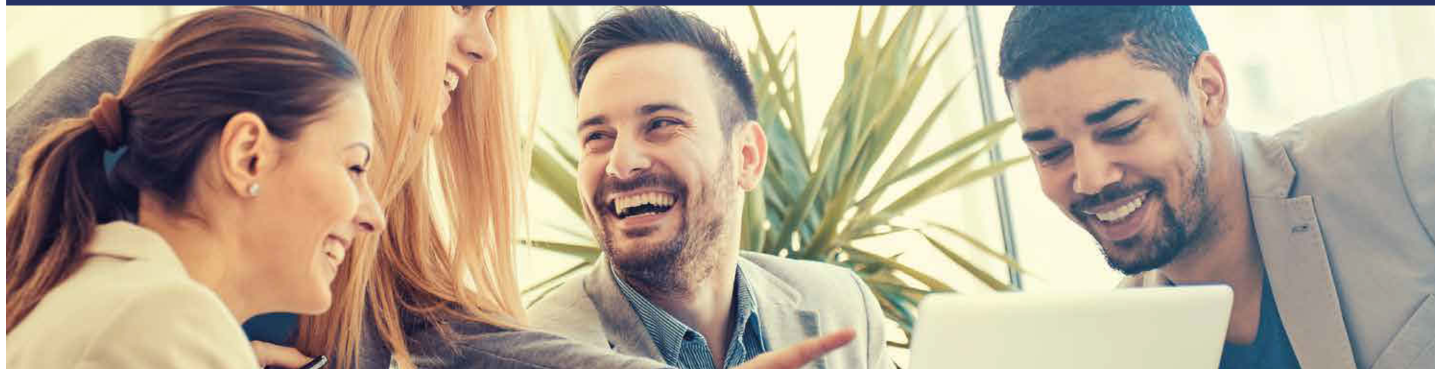

newsUPDATE

P11Ds – review your expenses policy

The deadline for form P11D completion is 6 July.

Let us

- Complete or review the forms for you
- Review your expenses policy
- Review your remuneration planning packages to ensure they are tax efficient.

Don't get caught out by the rules for salary sacrifice and optional remuneration arrangements.

Get in touch for advice on benefits, expenses and P11D completion.

To find out more about how we can help contact Charmaine 01698 258178

MAY 2018

Paying family members: get it right

There are special rules for tax-deductible expenses for the self-employed. To qualify for tax relief, expenses have to be incurred 'wholly and exclusively' for the purpose of the business. There can't be any indication that there is dual purpose. A recent case at the tax tribunal shows how to get it wrong. So how do you get it right?

Not like this

Mr Nicholson wanted to claim wages paid to his student son as a business expense. The son had helped with computing for many years, and when he went away to university, helped with business promotion via the internet and leaflet distribution. Mr Nicholson said, 'Without his help I could not do my job as a central heating salesman and the Internet business I was trying to build.'

Mr Nicholson went to tribunal over payment of £7,400 wages. He argued that he paid his son less than a commercial rate: if he took someone else on to do the work, the business would have had to pay 'an awful lot more.' He based the figure of £7,400 on 15 hours work a week at £10 an hour.

The problem was - there wasn't evidence that the wages had been paid like this. What actually happened was that Mr Nicholson sometimes gave his son cash, and using his own credit card, not only paid for food and drink when visiting him, but also funded the weekly student grocery shop. There were no time records for the hours worked. The tribunal therefore found that the payments had a dual purpose: although they had a business element, they also had a private element; they helped to support a son at university. Mr Nicholson lost his appeal.

Moral

When paying family members, record hours and make sure you can show payments relate to work done. The tribunal was looking for 'some form of methodology in calculating the amount payable and an accurate record maintained of the number of hours his son worked.' Had Mr Nicholson done this, he should have obtained a deduction for the wages paid - without having to appear before a tax tribunal.

Bitcoin

Bitcoin has been in the news recently as increasing numbers of people have been looking to make money through buying and selling this new 'cryptocurrency.' But what is bitcoin? Can it make a good investment? And where do HMRC fit into the picture?

Bitcoin explained

Bitcoin is a 'cryptocurrency.' Essentially, that means a digital currency generated by a network of computers using sophisticated mathematical formulae. The process of production is called bitcoin 'mining.' Bitcoin can be used for electronic transactions, but it has no actual physical form.

The origin of bitcoin is shrouded in mystery. It was 'created' by 'Satoshi Nakamoto,' a name which seems to be an alias. Various people have claimed to be – or denied being - Satoshi Nakamoto – including Tesla chief, Elon Musk.

Unregulated

According to the European Central Bank (ECB), bitcoin is 'virtual, yes, but currency, no.' That is because unlike, say, the pound or euro, bitcoin is neither issued nor guaranteed by a central, accountable public authority. Another downside cited by the ECB is that there is no protection for those who use bitcoin – it can be stolen by computer hackers. Nor is bitcoin universally accepted as a form of payment.

The ECB's final word of caution is that bitcoin is 'too volatile … Its value has both skyrocketed and tumbled dramatically all within the space of a few days.'

Investment or nightmare?

Analysts describing bitcoin use the vocabulary of drama: words like 'plummet,' 'plunge' and 'unpredictable.' From a record high of $19,850 in mid-December 2017, bitcoin hit a very rocky patch. At one point before Christmas, its value fell by nearly $2,000 in one hour alone.

Safe as houses, it certainly isn't. Prime Minister, Theresa May, is considering action against cryptocurrencies because the fact that they can be traded anonymously makes them open to use in criminal activity. One recent report suggested that half all bitcoin transactions are linked to illegal activity of some kind. In the WannaCry ransomware attack that hit NHS computers in 2017, it was bitcoin that was demanded by the hackers. Traditional watchdogs, like the Financial Conduct Authority, at present have no powers of regulation over bitcoin.

Bitcoin – an Inspector calls

Despite the risks, some people have taken to bitcoin speculation, and HMRC are not unaware of the fact.

Dealing in bitcoin can be a taxable activity. The question will be whether the buying and selling amounts to a trade, and so is chargeable to income tax: or is a chargeable gain on an investment, and so liable to capital gains tax: or whether it is so highly speculative that it is classed alongside activities like gambling and betting, and so is not taxable, nor can any losses be offset against other taxable profits. HMRC have said that they will decide on a case by case basis whether profits or gains are chargeable, or losses allowable.

HMRC published guidance in 2014. It has not been updated since, although HMRC advise that 'given the evolutionary nature of these cryptocurrencies,' they will issue further guidance as appropriate.

GDPR - the final countdown

A new data protection regime comes into force on 25 May 2018. This is D day for the General Data Protection Regulation (GDPR), and most processing of personal data by organisations must comply with GDPR from that date.

The organisation in charge of enforcing compliance is the Information Commissioner's Office (ICO). Its message is that GDPR is 'a huge opportunity for you, as small businesses, to get information handling right.'

GDPR replaces the existing Data Protection Act (DPA), significantly raising the bar on how personal data is handled. Greater protection to individuals is achieved through key changes, such as: an expanded definition of personal data, based on a wider range of personal identifiers: the need to identify a lawful basis for processing personal data: and a range of new rights for the individual, including the 'right to be forgotten.'

Also new is the fact that GDPR applies both to data controllers (those determining how and why data is processed) and data processors (those responsible for processing data on behalf of a controller). Under the GDPR, data processors will be specifically required to maintain records of personal data and processing activities. They will also have increased legal liability for any breaches. Data controllers will have to ensure that contracts with processors are GDPR-compliant.

Although DPA-compliant businesses will, in the ICO's words, be 'well on the way' to GDPR compliance, they will need evidence to show they are implementing the new rules. Failure to comply could result in significant fines.

Information Commissioner, Elizabeth Denham, said, 'We know there are particular challenges for small organisations in preparing for the new law. All organisations are different … whether you're a micro-brewery with 20 staff, or a tech start-up with 200, you can get it right.'

GDPR compliance will need ongoing monitoring and review. We should be delighted to be of assistance.

Keep calm and plan for the future: Brexit

On 29 March 2017, the government triggered Article 50, starting the formal process for the UK to leave the EU. This will happen on 29 March 2019. Brexit: a little word with big consequences and a lot of uncertainty.

All change

At the moment, it is estimated that there are around 12,000 EU regulations in force in the UK, and the government believes that it will probably require over 1,000 new statutory instruments to facilitate our exit. The Withdrawal Bill is intended to 'ensure that the UK exits the EU with certainty, continuity and control.'

The government hopes for a transition period to help businesses and others ease into the new post-Brexit era. The length of the transition period is set to be under two years, ending on 31 December 2020.

But whatever the agreements ultimately hammered out, one thing is certain. Businesses will have new sets of rules to accommodate, and considerable change to adapt to. VAT and customs duties are front runners for change, since they are based on EU law.

Attention farming and land management clients

Farming and land management are areas where the government has already started to give some indication of what a post-Brexit future might look like. The Environment Secretary, Michael Gove, has reiterated that funding for farming will be protected 'in cash terms - for the whole of this Parliament - until 2022.' However, as NFU Scotland point out, 'change is inevitable' and this year's modifications to the Countryside Stewardship Scheme (CSS) in England may suggest the way ahead.

CSS provides financial incentives for farmers and land managers in England to look after the environment through a variety of schemes, from woodland creation to conserving wildlife habitats. The scheme has been simplified to make it easier to apply for, and is currently open for applications. 2018 paper application packs are available from Natural England until 31 May. Applications can also be made online, but here you may need a pre-application pack to help. The deadline for all applications is 31 July 2018.

Analogous schemes are also open for other parts of the UK. In Northern Ireland, farming clients could consider the Environmental Farming Scheme (Wider level), for application later this year. In Wales, Glastir is a sustainable land management scheme offering financial support to farmers and land managers. Its Small Grants (Water) is expected to open to applications in July 2018. In Scotland, the Scottish Rural Development Programme runs a range of schemes, such as the Agri-Environment Climate Scheme (AECS). AECS applications for collaborative projects involving five or more businesses are accepted until 31 May, as are applications for Improving Public Access.

We are always happy to advise on any aspect of farm accounts and taxation, especially as clients look to the future and post-Brexit funding.

Planning for future success

Amid the change and uncertainty, it is more important than ever to stay in the driving seat of your business. Accurate, up to date management information, robust budgets and forecasts will be key tools for any business wanting to minimise risk and maximise opportunity. A survey by the Institute of Directors suggests that 30% of larger businesses have already drawn up contingency plans, and that around 60% of SMEs intend to do so. Making plans to negotiate the run-up to Brexit and beyond can play a critical part in ensuring future success. Do please contact us for help in assessing how Brexit might impact your business and drawing up a contingency plan.

For now, the message is keep calm - and plan for the future.

Is your business owed money?

The 'scourge of late payment' was specifically mentioned in the government's Spring Statement this year. There is government consultation in the pipeline, but with 20% of small businesses running into cash flow difficulties because their bills are paid late, December 2017 saw a new service launched to help.

The Small Business Commissioner (SBC) has taken on a new complaints handling role to assist small businesses by:

- supporting Britain's 5.7 million small businesses to resolve payment disputes and tackle larger businesses' unfair payment practices to drive culture change
- providing a new website to help small businesses with late payment issues
- receiving late payment complaints from small businesses.

There are a number of parameters about which cases the SBC can help with. If the SBC does take your complaint on, it will aim to make its recommendation within six weeks. Its decision is not legally binding, so court action and other options remain open should you require them. The new website can be found here **goo.gl/qd8P24**

Is it a car – or is it a van?

In terms of tax, providing employees with a vehicle which fits within the definition of a van, rather than a car, can be very worthwhile. This is equally relevant to company directors, who are also treated as company employees. A recent tax case sheds interesting light on how cars and vans are defined for income tax purposes.

Advantages

If an employee is given an employer-owned van, where they are given exclusive use of the vehicle, and it is available for private use, there is a taxable benefit. In 2018/19, this is a flat rate charge of £3,350 for vans that emit CO_2.

This contrasts favourably with company car rules. The taxable benefit on a company car is generally based on a range of 13% - 37% of the manufacturer's list price of the car, including accessories, and will depend on the carbon dioxide emissions, and whether diesel or petrol driven.

Vans also have advantages over cars in terms of fuel. Where there is a chargeable benefit for an employer-provided van, and the employer provides fuel for the employee's private use, a van fuel benefit charge arises: £633 for 2018/19. As regards National Insurance, provision of either a car or van as a benefit in kind can give rise to an employer charge to Class 1A at 13.8% of the assessable benefit.

Definition

Given the tax at stake, it is not surprising that HMRC's guidance on what constitutes a van runs to many pages. And to add to the complexity, what holds good for Vehicle Excise Duty and VAT, doesn't necessarily hold good for income tax. The key point is whether the vehicle is a goods vehicle – defined as 'a vehicle of a construction primarily suited for the conveyance of goods or burden of any description.'

HMRC have special guidance on off-road vehicles and double cab pick-ups. Double cab pick-ups are, broadly, pick-ups with a second row of seats, capable of seating about four passengers plus driver, with four doors capable of being opened independently, and uncovered pick-up area behind the passenger cab. HMRC say it is not possible 'to come up with a single categorisation for all double cab pick-ups. Nor is it possible to give a blanket ruling on any particular makes … So each case will depend on the facts and the exact specification …' Generally, HMRC define a double cab pick-up as a vehicle with a payload of one tonne (1,000kg) or more, and there is small print about how to define payload and how the vehicle hard top fits into the calculations.

Caution

All this was put to the test in a recent tax tribunal case, where the Vauxhall Vivaro and Volkswagen Transporter Kombi I and 2 came under the spotlight with a degree of intensity befitting a television car show. Each vehicle had been modified.

The judge considered maximum load that could be carried, braking systems, loading areas, modifications like extra seating and storage racks, provision of seat belts, climate controls, power sockets and sound-proofing, not to mention the role of the bulkhead in enabling goods to be carried in the rear cargo section and ensuring protection of passengers in the mid-section. He found that the Vivaro was a goods vehicle, but the VW Kombi was multi-purpose, and should be classed as a car. The judge suggested that vehicle modifications did not need to amount to a 'fundamental alteration in structure' in terms of 'core framework or chassis or body.' The definition of 'construction' could be wider than simply the 'original construction' of the vehicle and could include subsequent modifications.

Tax tribunals do not produce binding legal precedent. But this case serves as a reminder that company vans can have tax advantages, and that in this complex area, professional advice is always advisable.

Pensions auto-enrolment: the story continues

'As an employer you provide the teabags … But you're also responsible for providing a workplace pension … It's the law.'

All employers now have responsibilities under the pensions auto-enrolment (AE) regime, as this reminder from the Pensions Regulator (TPR) shows. Anyone employing at least one person is classed as an employer, and must put certain staff into a pension scheme and contribute towards it.

The regime does not stand still. From 6 April 2018, there are changes to the minimum AE contributions that must be made by both employer and employee. The total of minimum contributions rises to 5% from this date, being a minimum employer contribution of 2% and staff minimum of 3%. Further increases apply from 6 April 2019, when employer minimum rises to 3% and staff minimum to 5%.

The government is monitoring the AE regime closely. Whilst TPR has published figures showing a record number of 9.3 million people saving for a future pension, there is still concern that even the projected increase in AE contributions is 'unlikely to give all individuals the retirement to which they aspire.' A recent government review pledges to focus on younger people, part-time workers and the self-employed in the next round of AE developments. One change suggested is lowering the age threshold for AE from 22 to 18. It is also suggested that pensions contributions be calculated from the first pound earned, rather than from a lower earnings limit. However, it is not expected that these changes will be implemented until the mid-2020s.

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