

Personal tax round up

(Lecture P1196- 31.15 minutes)

Job Retention Scheme extension

Closure to new entrants from July 2020:

The government has stated that the scheme will close to new entrants from 30 June 2020, meaning that the final date by which an employer can furlough an employee for the first time will be the 10 June 2020. Any later, and the need for the current three-week furlough period to be completed by 30 June would not be satisfied.

Employers have until 31st July to make any claims in respect of the period to 30 June.

Flexible furlough

From 1 July 2020, the scheme will only be available to employers that have previously used the scheme to furlough employees.

Employers can bring back to work employees who have been furloughed for any amount of time, but the employer will be responsible for paying for the work done, including ERs NIC and pension contributions. The grant will continue to be available for the hours not worked.

To be eligible for the grant, employers must agree with their employee any new flexible furloughing arrangement and confirm that agreement in writing. Employers will need to report hours worked and the usual hours an employee would be expected to work in a claim period and in order to accommodate these planned changes, from 1 July, claim periods will no longer be able to overlap calendar months and must be for a minimum of a week.

Employers can claim the grant for the furloughed hours when their employees are not working calculated by reference to their usual hours worked in a claim period:

- July: Government pays 80% of wages up to a cap of £2,500 as well as employer National Insurance Contributions (ER NICs) and pension contributions for the hours the employee does not work.
- August: Government pays 80% of wages up to a cap of £2,500 for the hours the employee does not work but now employers pay the related ER NICs and pension contributions.
- September: Government pays 70% of wages up to a cap of £2,187.50 for the hours the employee does not work with the employer paying 10% up to £312.50. Employers pay the related ER NICs and pension contributions on the full 80%.
- October: Government pays 60% of wages up to a cap of £1,875 for the hours the employee does not work with the employer paying 20% up to £625. Employers pay the related ER NICs and pension contributions on the full 80%.

The table below summarises the position:

Month	Regular pay		Base cap *		Employers NIC		3% pension	
	Grant	ER	Grant	ER	Grant	ER	Grant	ER
Jul	80%	0%	£2,500	-	100%	0%	100%	0%
Aug	80%	0%	£2,500	-	0%	100%	0%	100%
Sept	70%	10%	£2,187.50	£312.50	0%	100%	0%	100%
Oct	60%	20%	£1,875	£625	0%	100%	0%	100%

* The base cap will be proportional to the hours not worked. So the full cap in the table above will only apply where the employee continues to be furloughed for 100% of the time. If an individual returns to work, the cap will be proportionately reduced.

Further guidance on this flexible furloughing scheme and how employers should calculate claims will be published on 12 June 2020.

<https://www.gov.uk/government/news/chancellor-extends-self-employment-support-scheme-and-confirms-furlough-next-steps>

Working for linked organisations

HMRC guidance makes it clear that while furloughed, employees cannot be asked to do any work that either makes money or provides services to their employer's organisation or any organisation linked or associated with their organisation.

The Coronavirus Act 2020 Functions of Her Majesty's Revenue and Customs (Coronavirus Job Retention Scheme) Direction states that a furloughed employee must cease all work in relation to their employment including work for a person connected with their employer.

The Direction defines what constitutes a connected (linked or associated) employer by referring to the definitions within s993 ITA 2007 and s 1122 CTA 2010, s1122.

S993 ITA 2007 and S1122 CTA 2010

An individual ("A") is connected with another individual ("B") if—

- (a) A is B's spouse or civil partner,
- (b) A is a relative of B,
- (c) A is the spouse or civil partner of a relative of B,
- (d) A is a relative of B's spouse or civil partner, or

(e) A is the spouse or civil partner of a relative of B's spouse or civil partner.

Partners in a partnership are connected in a similar way.

A company is connected with another company if—

- (a) the same person has control of both companies,
- (b) a person ("A") has control of one company and persons connected with A have control of the other company,
- (c) A has control of one company and A together with persons connected with A have control of the other company, or
- (d) a group of two or more persons has control of both companies and the groups either consist of the same persons or could be so regarded if (in one or more cases) a member of either group were replaced by a person with whom the member is connected.

A company is connected with another person ("A") if—

- (a) A has control of the company, or
- (b) A together with persons connected with A have control of the company.

And finally, also in relation to a company, any two or more persons acting together to secure or exercise control of the company are connected with—

- (a) one another, and
- (b) any person acting on the directions of any of them to secure or exercise control of the company.

Non-discretionary payments

HMRC has updated its guidance in this area. As we know, the amount used when calculating 80% of employees' wages is regular payments that employers are obliged to make, including regular wages and non-discretionary amounts for overtime, fees and commission.

Non-discretionary payments only includes payments where there is a contractual obligation to pay them and to which the employee has an enforceable right. Variable payments become non-discretionary if they are always paid.

Payments for overtime worked are classed as non-discretionary when the employer is contractually obliged to pay the employee at a set and defined rate for the overtime that they have worked.

<https://www.gov.uk/guidance/work-out-80-of-your-employees-wages-to-claim-through-the-coronavirus-job-retention-scheme#history>

Employment allowance

Once claimed, the Employment Allowance gives £4,000 relief against Employers NICs on salary paid.

When the Coronavirus Job Retention Scheme (CJRS) was first announced in March 2020, there was some doubt about how this regime would interact with the Employment Allowance for 2020/21.

If the £4,000 Employment Allowance is claimed, the furlough claim should not include employers NICs. In order to maximise the grant claim, the Employment Allowance should be set against working employees first.

However, there is no legal requirement to make the claim at the start of the tax year and so employers should consider deferring the Employment Allowance claim until it is needed. It could be deferred until:

- July 2020 when staff start working part-time and the employer is paying for hours worked; or
- August 2020 when the furlough grant stops covering employers NIC on furlough pay.

COVID-19 reimbursed home expenses

To support employees who are working from home and need to purchase home office equipment as a result of the coronavirus outbreak, a temporary tax exemption and National Insurance disregard will come into effect to ensure that the expense will not attract tax and NICs liabilities where reimbursed by the employer.

To qualify for this relief the expenditure must meet the following conditions:

1. The equipment must be obtained for the sole purpose of enabling the employee to work from home as a result of the coronavirus outbreak, and
2. The provision of the equipment would have been exempt from income tax if it had been provided directly to the employee by or on behalf of the employer (under s316 of ITEPA 2003).

The exemption is a temporary measure and will have effect from the day after the regulations come into force until the end of the tax year 2020/21.

HMRC will exercise its collection and management discretion and will not collect tax and NICs due on any reimbursed payments made from 16 March 2020 (the date the government recommended working from home) to the date these regulations take effect.

<https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2020-05-13/HCWS237/>

Reimbursed home-office expenses

S.316 ITEPA 2003 says that the provision of home-office equipment for an employee doesn't give rise to a taxable benefit as long as the equipment is only used for business purposes ('sole purpose') and so any private use is insignificant. "Provision" means that the employer owns the equipment and makes it available to an employee. So normally, these rules will not apply where an employer reimburses the cost of equipment that the employee has bought themselves. Such a reimbursement would be taxable and Class 1 NICable.

This has now been relaxed, effectively extending the reach of S.316 to items purchased by an employee and reimbursed by the employer. So yes, if an employee now has to work at home due to Covid, he can buy a desk, chair, monitor, headphones etc, and get the costs reimbursed with no taxable benefit.

If there is significant private use of items, there would still be a taxable benefit as before.

Contributed by Steve Sanders

Non-refunded tickets for charity events

Where a charity event is cancelled, the charity is normally obliged to refund the ticket holder for the cost of their ticket. Should that individual wish to gift aid those proceeds to the charity, this must be made as a subsequent donation back to the charity under the gift aid rules.

In an attempt to reduce the administrative burden on charities where events are cancelled due to the coronavirus, HMRC has announced a simple, but temporary, process for claiming gift aid without the need for this two-stage process.

Provided the ticket holder is given the option of a full refund but chooses to gift aid the money back to the charity, HMRC has confirmed that gift aid can still be claimed even if the charity does not actually issue a refund.

The ticket holder must still complete the required gift aid declaration.

To qualify for this simplified process, the charity must:

- contact the individual who previously purchased the tickets of the cancelled event;
- explain that the individual is entitled to a refund but may wish to donate the cost of the ticket to the charity;
- make it clear that the individual does not have to donate the refund but if they choose to donate it, it's non-refundable;
- make sure the individual has enough tax to cover the donation;
- document the conversation with the individual and keep records of this;
- ensure that there is a Gift Aid declaration in place for the individual.

www.gov.uk/guidance/processing-ticket-refunds-for-cancelled-charity-events-during-the-coronavirus-covid-19-pandemic

Lifetime ISA rules changed

The Lifetime ISA scheme is aimed at younger people and seeks to encourage them to save to buy their first home or provide funds for retirement. Under this scheme, the government pays a 25% bonus into the account on up to £4,000 of savings invested by the individual each year. So where an individual invested £4,000, with the government adding the £1,000, the fund balance would be sitting at £5,000.

Where funds are withdrawn for an unintended purpose, the government makes a 25% charge, claiming back £1,250, equivalent to 6.25% of the money originally invested.

Due to COVID-19, the Treasury is introducing temporary legislation, effective between 6 March 2020 and 5 April 2021, to reduce the charge to 20%. This means savers will get back all the money they originally put in (£5,000 x 20% = £1,000), subject to any investment losses incurred on stocks and shares Lifetime ISAs.

The rule change will be backdated to 6th March, so anyone who has withdrawn their money early already paid a 25% charge will have the difference refunded.

<https://www.gov.uk/government/news/lifetime-isa-rules-changed-to-help-people-whose-incomes-are-affected-by-coronavirus>

Should off-payrolling go ahead in the private sector?

As we know, the government plans to extend the off-payroll working rules used in the public sector to large and medium sized businesses in the private sector. However, due to Covid-19, the start date has been delayed until April 2021.

On 27 April 2020, the House of Lords Economic Affairs Finance Bill Sub-Committee published the findings of their 12-week inquiry into off-payroll working. Disappointingly for HMRC, the sub-committee opened their report by saying:

“ the IR35 rules— the government’s framework to tackle tax avoidance by those in ‘disguised employment’—have never worked satisfactorily, throughout the whole of their 20-year history.”

Most taxpayers and their agents would not disagree.

In principle, the IR35 legislation makes sense where workers are abusing the tax system by trading through a personal service company, when for all intents and purposes they are effectively employees in disguise. Surely they should be taxed as such. However, the sub-committee concludes that the current IR35 rules fail to address a number of issues including the fact that:

- The rules are already resulting in unintended behavioural consequences. Despite the delay to April 2021, some contractors are already being laid off, while others are struggling to have contracts renewed;
- Everyone struggles with the status determination process and the ongoing deficiencies of HMRC’s check employment status for tax (CEST) tool that many say is not fit for purpose; At present, the support offered by HMRC in determining status falls short of what is required;

- Both clients and contractors have benefited from the resulting tax treatment of contractors working through a personal service company so it seems unfair that under the off-payrolling rules, the contractor would effectively bear cost of the client's National Insurance Contributions in addition to their own, greater employment taxes;
- Having been classified as a deemed employee subject to PAYE, including national insurance, the worker is not entitled to any of the standard employment rights that attach to employee status;

Finally, the sub-committee commented that it does not seem right that private sector companies become 'responsible for enforcing a regime which HMRC has struggled with'. Surely, 'privatising tax compliance' cannot be right!

What to do now

The sub-committee concluded that considering the tax perspective alone was unlikely to deliver the optimal solution for our workers and economy as a whole. They believed that the government should reassess the “flawed” IR35 framework. By going ahead with the current plans for the off-payroll system in the private sector, this would result in an unfair system whereby significant numbers of contractors would become “zero rights” employees, taxed as an employee but without the rights that come with employment. They stated that we need a flexible workforce, where both employees and contractors play a vital role but in a way that is considered fair from both an employment and tax viewpoint.

Having considered a number of alternatives to off-payrolling that have been discussed over the years, the sub-committee finally recommended using the delay in implementation of the off-payrolling rules due to Covid-19 to:

- look back at the off-payroll rules in the public sector to see just how those rules are likely to impact the private sector labour market. The sub-committee noted that in the public sector, as a result of blanket assessments, contractors were likely to have been miscategorised and taxed incorrectly. Some contractors ceased working in the public sector altogether, causing recruitment and retention problems. Is this something that we want to see repeated in the private sector? The government should spend time analysing the potential impact of the off-payrolling rules on the wider labour market, particularly the gig economy.
- consider how to implement the Taylor Review recommendations by making the taxation of labour more consistent across different forms of employment (including national insurance), and improving the rights and entitlements of workers.

Times are changing?

If you remember when announcing the Self-Employed Income Support Scheme, the chancellor stated:

“It is now much harder to justify the inconsistent contributions between people of different employment statuses”.

With so many struggling financially due to Covid-19, and the government supporting both employees and the self-employed in trouble at this difficult time, the government is going to need to raise serious money going forward. Will this provide the ideal opportunity for the government to look to make both taxes and workers rights fairer in the future?

The sub-committee concluded the government should announce by October 2020 whether they will go ahead with the April 2021 launch date, or whether it will be further delayed.

The government should use this time to identify appropriate alternative solutions to the off-payroll rules and in so doing, it recommended applying the following six principles:

1. **Certain**—All parties should have certainty about the tax treatment that will apply.
2. **Simple**—Any solution should be as simple as possible.
3. **Fair**—Treatment as an employee for tax should only apply if there are employment rights and risk-sharing between employer and contractor.
4. **Supportive of growth**—Solution should respect and preserve flexibility in the UK labour market.
5. **Administratively straightforward**—Any alternative needs to be straightforward to operate, and not excessively burdensome to administer.
6. **Enforceable**—Any new proposal should be manageable for HMRC.

<https://publications.parliament.uk/pa/ld5801/ldselect/ldconaf/50/50.pdf>

Mortgage repayment and proceeds

Summary – The proceeds used to repay the mortgage was not deductible in arriving at the gain on sale of the property and the taxpayer had been careless in not reporting any gain on his tax return.

In April 2006, Daniel Unger's father inherited a property from his late partner. Its probate value was £375,000. In May 2007, under a deed of variation, his father became the bare trustee of the property, holding the property on bare trust for beneficiaries – 50% to Mr Unger and the remaining 50% shared between other family members.

In August 2009, while still living in the property, Mr Unger's father took out a mortgage:

- £325,000 was used to acquire an extension of the lease; and
- the remainder was used to fund the father's living and care costs.

When his father died in 2013, the property was sold to an independent third party for £1.3 million. Daniel Unger did not include the disposal of the property on his tax return for 2013/14.

HMRC opened an enquiry into the return and, on 26 July 2017 issued a closure notice stating that additional tax close to £72,000 was due. On 31 October 2017, HMRC raised a penalty assessment of just under £14,000.

During the course of the enquiry, Daniel Unger accepted that a capital gain should have been included in his 2013/14 return. He stated that he had not included it on the return because he was relying on advice received from professional advisers that no tax was due on the disposal. This advice had been verbal and he had not followed up to get this in writing.

Based on fairness rather than law, Daniel Anger argued that the amount used to repay the mortgage should be excluded from the consideration because:

- The circumstances of this disposal were not normal ones;
- His father had in fact borrowed the money, not him;
- The mortgage funds had been used to pay for the lease extension and to fund his father's living and care costs towards the end of his life; and
- The repayment of the mortgage had reduced the amount of money the beneficiaries had received.

Decision

Unsurprisingly, the First Tier Tribunal stated that there was nothing in legislation that would mean the proceeds should be reduced by the amount of the mortgage redemption payment.

They stated that:

“It simply cannot be the case that a taxpayer can reduce their potential capital gains tax liability on sale by mortgaging the property, and effectively withdrawing cash from it (save for the circumstances where those mortgage monies are then used wholly and exclusively for the purposes of enhancing the value of the property and that enhancement is reflected in the asset at the time of disposal, in which case it is not really the mortgage that reduces the capital gain, but the expenditure).”

The Tribunal considered whether HMRC had correctly calculated the penalties for being careless in omitting the gain from his return. Rather than tell his accountant about the disposal, he had sought advice from the solicitors who were dealing with the disposal. The Tribunal concluded that, even if he did have the phone conversation with the solicitors, it was not reasonable to rely on oral advice alone and he should have provided details of the disposal to the agent preparing his return. Daniel Unger had not shown that he took reasonable care in the preparation of his tax return for 2013/14.

Daniel Unger v HMRC (TC07543)

Statutory Sick Pay Rebate Scheme

HMRC has confirmed that the coronavirus Statutory Sick Pay Rebate Scheme will launch online on 26 May, enabling employers with fewer than 250 employees to claim coronavirus-related Statutory Sick Pay (SSP). Tax agents will also be able to make claims on behalf of their clients.

Eligible employers

The employer must:

- be claiming for an employee who is eligible for sick pay due to COVID-19;
- have had a PAYE payroll scheme in operation before 28 February 2020;
- have had fewer than 250 employees across all PAYE schemes on 28 February 2020;
- be eligible to receive State Aid under the EU Commission Temporary Framework.

The repayment will cover up to 2 weeks starting from the first qualifying day of sickness, if an employee is unable to work because they either:

- have coronavirus (COVID-19) symptoms;
- cannot work because they are self-isolating because someone they live with has symptoms;
- are shielding and have a letter from the NHS or a GP telling them to stay at home for at least 12 weeks.

The employer can claim for periods of sickness starting on or after:

- 13 March 2020 - if the employee had coronavirus or the symptoms or is self-isolating because someone they live with has symptoms;
- 16 April 2020 - if the employee was shielding because of coronavirus.

The weekly rate was £94.25 before 6 April 2020 and is now £95.85.

The scheme covers all types of employment contracts, including:

- full-time employees;
- part-time employees;
- employees on agency contracts;
- employees on flexible or zero-hour contracts;
- fixed term contracts (until the date their contract ends).

Records must be kept

Employers must keep records of SSP paid and want to claim back from HMRC for 3 years after the date that they receive the payment for their claim including:

- the dates the employee was off sick;
- which of those dates were qualifying days;
- the reason the employee said they were off work - if they had symptoms, someone they lived with had symptoms or they were shielding;
- the employee's National Insurance number.

<https://www.gov.uk/guidance/claim-back-statutory-sick-pay-paid-to-employees-due-to-coronavirus-covid-19>