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Forrester Boyd
CHARTERED ACCOUNTANTS

EMPLOYMENT

What is employment?

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The Court of Appeal has for the first time ruled on employment status under the intermediaries legislation (often known as IR35) in two cases – and agreed with HMRC in both. In each case, the terms of the contracts proved crucial.

The two appeals, both involving broadcasters using personal service companies to provide their services, were heard together. Paul Hawksbee was co-presenter of a daily radio show under contracts between his company and Talksport Ltd. HMRC determined that Mr Hawksbee should be treated as an employee.

The Court of Appeal found that there was mutuality of obligations, an important indicator of employment, because the express terms of one of the contracts required Talksport to offer at least 222 programmes a year and Mr Hawksbee had to accept the work. A second contract did not include these requirements, but similar terms appeared in an attached 'schedule of services'.

The second case concerned freelance journalist Kaye Adams whose services were provided to the BBC through her company Atholl House Productions Ltd. A complication was that the terms of the written contract differed from the actual agreement between the parties. The First-tier Tribunal had considered the contracts as if they had not included certain 'control' clauses, because these provisions had never been used. On this basis Ms Adams was not treated as employed.

> *These cases confirm the importance of a properly drafted contract that reflects the true relationship between the parties. Businesses should review mutuality of obligations and control.*

An additional factor was that Ms Adams had other similar engagements that were akin to self-employment. However, the Court of Appeal held that the relevant factor was the contract in question. A person can have an employment and separately perform other similar activities as a sole trader.

These cases confirm the importance of a properly drafted contract that reflects the true relationship between the parties. Businesses and sole traders should review mutuality of obligations and control. If they are present, then establish whether the terms of the contract are indicative of employment or self-employment.

TAX

Statutory residence test – exceptional circumstancs

Up to 60 days a year spent in the UK can be ignored when establishing a person's residence status, if they result from exceptional circumstances. However a new, controversial amendment to HMRC guidance has been contested and may not be correct.

Even before the latest update, HMRC has always taken a strict approach towards exceptional circumstances. Days in the UK due to the emergency landing of an aircraft count, but not any extra days if a flight is missed due to traffic disruption. Birth, marriage, divorce and death are not normally regarded as exceptional circumstances, nor is coming to the UK for medical treatment, dentistry or cosmetic surgery.

Controversy

The latest version of HMRC's manual states that exceptional circumstances generally do not apply in respect of events that bring an individual back to the UK. The new position is that the exemption only applies to a person – already in the UK – who is overtaken by exceptional circumstances that prevent them leaving.

HMRC has, however, just lost a non-binding First-tier Tribunal decision on this point. Exceptional circumstances were acknowledged when a taxpayer returned to the UK to care for her sister and her sister's minor children necessitated by the sister's alcoholism.

Even HMRC accepts the exemption will be available if someone returns to the UK as a result of Foreign, Commonwealth & Development Office advice to avoid all travel to a particular country or region. This covers people fleeing danger and includes the current situation in Ukraine.

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BUSINESS

Managing your business through inflation

Small businesses trying to cope with 9.4% inflation face a difficult balancing act between potentially alienating customers by increasing prices too sharply or absorbing increased costs and risking their survival. How can you cushion the blows?

Maintaining a regularly updated cashflow forecast looking up to a year ahead will help to identify any cash shortfall well in advance.

- It may be tempting to sell stock at what it has cost you, rather than what it is going to cost to replace. All well and good if it keeps cash coming in, but an accurate forecast will give you an idea of how long such an approach is sustainable.
- Costs should obviously be minimised as far as possible and feeding in any possible reductions to the forecast will show their impact over the longer term. Reviewing purchasing patterns, for example, could bring cost savings.

- Businesses are not protected by the energy price cap, so it is important to focus on energy usage. Even something as simple as replacing inefficient light bulbs with more modern alternatives could make a difference.

Staffing costs

Staffing costs are likely to be on the increase and generally represent a large proportion of a business's outgoings. Although a checkout-free store is not an option for most, technology might be a solution.

Any business looking to replace staff or to expand will almost certainly be facing increased wage demands. Recruiting new staff on more generous remuneration than existing employees can foster resentment, so creating more attractive overall packages with flexible working, or providing perks which can be easily revisited, may be more helpful. Managing expectations around unsustainable pay increases as inflation creeps higher is a fundamental concern.

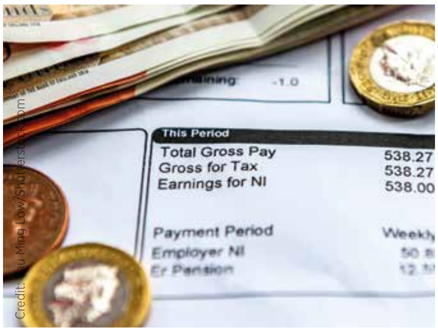
Anticipate new challenges

The economic situation has brought a level of risk and volatility that many businesses will have never faced before. For now and the foreseeable future, forward planning is about building resilience and managing costs. If you need additional guidance as you weather the storm, please get in touch.

EMPLOYMENT

Understanding the national insurance changes

Some of the latest changes to national insurance contributions (NICs) started from 6 July 2022, causing complications for self-employed people and directors. Normally rates and thresholds are set for the whole tax year.



The main NIC rate for employees is 13.25% for 2022/23, on earnings above the primary threshold and up to £50,270 a year. It is the primary threshold that changed from 6 July 2022, from £190pw for the period 6 April to 5 July 2022 up to £242pw from 6 July 2022 to 5 April 2023. The change brings the threshold into line with the £12,570 income tax personal allowance.

Company directors generally use an annual or quarterly earnings period. Those on an annual earnings period will pay NICs on earnings above £11,908. Those on a quarterly earnings period will use the £190pw threshold for the first three months of 2022/23 and the £242pw threshold for the rest of the year.

Self-employed and small profits

The self-employed class 4 NIC rate of 10.25% is payable on earnings above the £11,908 lower profits limit, up to £50,270. Earnings above this are charged at 3.25%. The class 2 small profits threshold remains at £6,725 for 2022/23 but contributions – £3.15pw or £163.80py – are not payable until profits reach £11,908.

Where annual profits are between £6,725 and £11,908 the individual will now be able to build up a contributions credit without paying class 2 NICs. To benefit, the person will need to submit a tax return showing profits from self-employment of at least £6,725. Those with profits below £6,725, or a loss, are not entitled to the class 2 NI credit, but can, as before, make voluntary class 2 payments to maintain a contribution record. You currently need 35 qualifying years to qualify for a full state pension and it may be worth checking your contribution record.

TAX

HMRC amends working from home rules

The temporary concessions introduced by HMRC for homeworking during the pandemic came to an end on 5 April 2022. Pre-pandemic rules now apply for employees looking to claim tax relief.

Higher rate taxpayers received an annual tax cut of £124.80 from the £6 a week tax free allowance. However, to claim relief now, there must be an arrangement between employer and employee requiring homeworking on a regular basis. This requirement is met if, for example, an employee works from home two days a week, even if these two days vary from week to week.

Relief is typically available where an employee lives a long way from their employer's office, or the employer doesn't have an office. Relief cannot be claimed if the employee chooses to work from home, including working from home because of Covid-19 or where it is not possible to work from an employer's office because it is full.