

# TECHNICAL UPDATES

Our regular roundup of legal and regulatory change

## EMPLOYMENT LAW



**THIS SECTION IS SUMMARISED FROM THE BULLETINS OF VARIOUS LAW FIRMS AND ASSOCIATIONS. NONE OF THE INFORMATION IN THIS UPDATE SHOULD BE TREATED AS LEGAL ADVICE**

### BREXIT HITTING RECRUITERS HARD

With just under a year to go until Britain leaves the European Union, HR professionals and recruiters are feeling the squeeze.

LinkedIn's *Workforce Report* for April showed that the UK is now losing talent to the 27 other EU member states (EU27). This was made evident by Britain seeing a net outflow of professionals to the EU27 during the first quarter of 2018.

According to the Recruitment Survey supplied with the report, 96% of recruiters believed Brexit was affecting hiring strategies, with 44% saying that the UK was less attractive to EU27 candidates as a result of Brexit. A further 28% of recruiters believed that the UK had become less attractive to candidates from the rest of the world.

There were noticeable decreases in hiring from major EU markets, with 37% saying they had seen a decline in hires from Italy, and 35% seeing decreases in hires from France and Germany. There were also decreases in key markets outside the EU, including South Africa (27%), Canada (27%) and Australia (26%).

For small and medium-sized businesses, finding the right talent may become harder due to potential talent abstaining from opportunities provided to come to the UK.

The report can be found at [tinyurl.com/BAM-WrkReport](https://tinyurl.com/BAM-WrkReport)

### THIRD OF LGBT EMPLOYEES HIDE SEXUAL ORIENTATION AT WORK

Britain's leading charity for lesbian, gay, bi and trans (LGBT) equality, Stonewall, has called for zero-tolerance policies on homophobic, biphobic and transphobic discrimination in the workplace, following a report into discrimination in Britain's workplaces.

According to the *LGBT in Britain - Work Report*, more than a third of LGBT workers (35%) said they have hidden their sexual orientation at work for fear of discrimination. The figure rises to 42%

for black, Asian and minority ethnic LGBT staff, and just over half for trans staff (51%).

Bullying remains an issue for LGBT employees, with nearly one in five (18%) saying they have been the targets of negative comments or conduct from work colleagues in the past year due to their identity. Meanwhile, 18% have said they had been discriminated against due to their identity.

The number worsens for LGBT staff from a minority ethnic background who are trans or disabled. They are more likely to experience harassment and abuse in the workplace. One in 10 minority ethnic employees have said customers had physically attacked them.

The report can be found at [tinyurl.com/BAM-LGBTRport](http://tinyurl.com/BAM-LGBTRport)

## PRESENTEEISM HITS RECORD HIGH IN UK

Presenteeism has more than tripled since 2010, according to the latest *Health and well-being at work* report from the Chartered Institute of Personnel and Development (CIPD) and Simplyhealth. The CIPD defines presenteeism as “working when unwell”.

The survey found that 86% had observed presenteeism in their organisation over the past 12 months – an increase from 72% in 2016 and just 26% in 2010.

However, the report also found that ‘leaveism’, which includes people using annual leave to work, is also a growing problem as 69% of respondents reported that it had occurred in their organisation over the past year.

Despite the alarming figures, few organisations are trying to tackle these unhealthy workplace practices, with just 25% saying they have taken steps to discourage it in the last year – a figure that has halved since 2016. Additionally, only 27% have committed to tackling leaveism.

The report highlights that increased presenteeism can be linked to increases in reported common mental health conditions and stress-related absences, which the survey shows is among the top causes of long-term sickness absence.

But only one in 10 of those taking action against both issues said it was viewed as a priority for the board, while 58% said their organisation is meeting the basic legal requirements for reducing stress in the workplace.

See [tinyurl.com/BAM-HWBWork](http://tinyurl.com/BAM-HWBWork)

## TAX



**NEWS AND UPDATES FROM THE TAX FACULTY WEEKLY NEWSWIRE. VISIT [ION.ICAEW.COM/TAXFACULTY](http://ION.ICAEW.COM/TAXFACULTY) AND CLICK THE SIGN-UP LINK TO SUBSCRIBE FOR FREE**

## REVIEW OF THE CORPORATE INTANGIBLE FIXED ASSETS REGIME

ICAEW submitted *ICAEW Rep 53/18 Review of the corporate Intangible Fixed Assets regime* on 11 May 2018 in response to the consultation launched by HM Treasury and HM Revenue & Customs on 19 February 2018.

The Executive Summary in the ICAEW response reads: “Intellectual property/ Intangible assets are driving the growth of individual countries and of the global economy. A recent report from the World Intellectual Property Organisation, a specialised agency of the UN, states that ‘Intellectual Property and other intangibles add twice as much value to products as tangible capital’. (See the report at [tinyurl.com/BAM-WIPO](http://tinyurl.com/BAM-WIPO))

“This is a topic that is incredibly important to the potential success of the UK economy and it is going to be equally important to ensure that the tax regime successfully matches the need to incentivise successful UK activity in this vital area while at the same time ensuring that any new regime is proportionate and cost effective.

“The current Intangible Fixed Assets regime (IFA) was introduced in 2002 and has been amended on a couple of occasions since then, mainly to deal with perceived avoidance and to ensure fairness, but it has not been subject to any detailed review or amendment.

“The new, 2002, regime did not apply to intangible assets in existence as at 1 April 2002 which remained in the ‘old’ capital gains tax regime.

“This has created, in effect, two parallel tax regimes for intangible assets: those existing pre April 2002 and those intangible assets brought into existence after that or intangible assets which have been transferred between third parties after 1 April 2002. In the latter case the acquiring party is treated as acquiring an intangible asset to be treated under the new regime.

“A further difference between the two parallel regimes was created in 2011 in respect of the de-grouping charges which applies to both regimes but

after 2011 any de-grouping charge applicable to pre-April 2002 intangible assets would now, post 2011, be incorporated into the gain or loss on the share disposal. This means that if such a ‘share’ gain is exempt because the substantial shareholding exemption applies then the de-grouping charge is also exempt from any charge to tax.

“A further change to the IFA regime is explained in chapter 3 of the consultation document under which there is a restriction to the tax relief for a number of elements of business goodwill so that there is no relief under the tax regime until purchased goodwill is actually disposed of.

“The financial reporting system does not recognise the value of internally generated intangible fixed assets unless they are sold to a third party, in which case the cost is recognised by that third party. Any overview of the contribution that the tax system can make to enhancing the impact intangible fixed assets can have on the UK economy needs to consider what, if anything, could ensure that the tax system makes an appropriate contribution to the influence of intangible fixed assets.”

## MPs SAY UNIVERSAL CREDIT DOES NOT WORK WELL FOR THE SELF-EMPLOYED

The Work and Pensions Committee of the House of Commons has published a report on universal credit (UC) for the self-employed. It says that UC is “designed with little regard for the reality of self-employed work” and that this poses “a very real risk” to entrepreneurship.

UC is being phased in to replace tax credits (working tax credit and child tax credit). From when the new system was first proposed, there have been concerns that UC will not cater adequately for small self-employed businesses and business start-ups, and indeed will discriminate unfairly against this group compared to employed claimants. UC has significant differences from tax credits:

- awards are based on monthly cash income rather than on annual profit; and
- after the first year, a business’s maximum UC entitlement is based on an assumed monthly income known as the ‘minimum income floor’ (MIF) (linked to the national minimum

wage), even if actual income is less. The idea of these rules is that UC should not be paid to people running businesses which are really hobbies or which are totally unviable, and to encourage them to either make the business work or seek employment.

The Tax Faculty is one of many bodies to have highlighted the problems that these measures, to tackle a minority of claimants, can cause for many genuine self-employed businesses, particularly the following:

- The monthly basis of the claim and the MIF rules mean that seasonal fluctuations and income volatility are not taken into account - even if the trader's income on an annual basis would be at least equal to the MIF.
- The MIF rules mean that no relief is given for losses, and that self-employed traders may not get full relief for pension contributions.
- The one-year start-up period before the MIF rules apply is too short, as many businesses take longer to get established and become profitable.

The Tax Faculty is pleased that the Work and Pensions Committee's findings endorse these concerns. Indeed, chairman Frank Field said: "Universal credit was not designed with self-employment in mind and it shows. Its current set-up for people starting and running their own business risks crushing potentially viable, productive enterprises."

The Work and Pensions Committee's recommendations include:

- extend the current one-year start-up period to up to three years, at the discretion of work coaches in Jobcentres;
- allow reporting periods of up to one year for self-employed claimants who receive irregular monthly pay, similarly at the discretion of work coaches;
- ensure front-line Jobcentre Plus staff have sufficient expertise in self-employment; and
- produce ongoing evaluations of the effect of the new self-employment rules on UC claimants.

The hope is that the government will look closely at the Work and Pensions Committee's findings and recommendations. It cannot be right that a self-employed claimant with the same annual earned income as an employed claimant should receive less in UC support. Genuine entrepreneurial self-employment is vital to the UK

economy. Without some changes - as the report highlights - people may be discouraged from starting self-employment and those running existing businesses may be forced to give up.

### HMRC'S CAMPAIGNS AND MAKING A DISCLOSURE

HMRC has recently updated its guidance on current disclosure opportunities. The main change is to insert a section about how to make a disclosure for someone who has died.

For some years HMRC has run a series of campaigns providing opportunities for taxpayers to come forward and bring their tax affairs up to date. Each is targeted at a specific taxpayer group or type of taxable activity. Most campaigns have closed now, but two are still open.

- Let Property Campaign: aimed at individual landlords letting out residential property in the UK or abroad who have not declared their letting income.
- Card Transaction Programme: aimed at those in business who accept credit or debit card payments but have not declared that income to HMRC.

In addition, HMRC offers The Worldwide Disclosure Facility, aimed at anyone who has an undisclosed UK tax liability that relates wholly or in part to an offshore issue. It is particularly important to disclose any such liabilities by 30 September 2018, after which tough new penalties for offshore non-compliance come into force.

The main route for making a disclosure under any of the above is HMRC's Digital Disclosure Service (DDS). It can also be used in any other situation where voluntary disclosure of undeclared liabilities is required.

Agents can use the online route to makes disclosures on behalf of clients.

It is worth noting that if tax fraud is in point, it may be better to ask HMRC to deal with the case under the Contractual Disclosure Facility (Code of Practice 9) rather than use the online disclosure routes.

### Making a disclosure for someone who has died

The paragraph that HMRC has added into its guidance on all the above disclosure opportunities is: "If you want to make a disclosure for someone who's died and you're the personal representative or executor of the deceased, or their interests, you can do

this using the DDS. Make sure it's clear that you're notifying on someone else's behalf. We may ask for additional evidence that you're authorised to act for them."

In making a disclosure, the taxpayer, agent or representative is required to assess the back tax, interest and penalties. It is important to note that penalties for offences committed by a deceased person before their death cannot be imposed on the personal representatives. However, we cannot see that HMRC has updated its penalty guidance to make the position clear to anyone making a disclosure in the capacity of personal representative or executor.

### FINANCIAL REPORTING



### FINANCIAL CLIMATE-RELATED DISCLOSURES

As of April 2018, some 250 organisations from around the world have expressed support for the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD) published in 2017. Given the current momentum behind the TCFD recommendations, ICAEW, in association with The Carbon Trust, has published this practical guidance for organisations wanting to learn more about the recommendations and steps to implementation.

See [tinyurl.com/BAM-TFCRF1](http://tinyurl.com/BAM-TFCRF1)

### REDUCED DISCLOSURES

The FRC has confirmed that there will be no amendments to FRS 101 *Reduced Disclosure Framework* as a result of the 2017/18 review.

Read the FRC press release at [tinyurl.com/BAM-FRS101RD](http://tinyurl.com/BAM-FRS101RD) ●