TECHNICAL UPDATES

Our regular roundup of legal and regulatory change

TAX

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STRUCTURES AND BUILDINGS ALLOWANCE DRAFT LEGISLATION – NEW CONSULTATION

The new structures and buildings allowance (SBA) was announced in Budget 2018. Primary legislation is in Finance Act 2019 but the detailed legislation has only recently been published with the Spring Statement.

There is a consultation on the draft legislation (see tinyurl.com/BAM-DrftLegi), with a closing date of 24 April 2019. HMRC has also published a technical note that explains how some elements of the policy design have changed following consultation so far.

Expenditure on new non-residential structures and buildings incurred on or after 29 October 2018 will qualify for the new SBA. Relief will be given at a flat rate of 2% over a period of 50 years. Expenditure on land will not qualify.

The Tax Faculty plans to submit a response following any feedback received by 15 April 2019.

UPDATE ON PAYMENTS ON ACCOUNT FOR 2018/19 FROM HMRC

HMRC has provided an update on missing 2018/19 payments on account.

The update from HMRC states:

- HMRC helpline advisers have been provided with guidance to enable them to create the missing 2018/19 payments on account only if the payment is held on the customer's self assessment account at 31 January 2019.
- Agents do not need to notify HMRC of any further cases where 2018/19 payments on account are missing. However, if they specifically wish the 2018/19 payments on account to be created, the payment should be already on the customer's account at 31 January 2019. Where that is the case they can ask for the 2018/19 payments on account to be created.
- It is possible that payments intended for the 2018/19 first payment on account may be repaid if the 2018/19

return is submitted, 2018/19 payments on account have not been created and a repayment is claimed on the return. However, there would be no interest implications providing the 2018/19 liability was paid in full by 31 January 2020.
- Where 2018/19 payments on account should have been created but haven't, any liability due for 2018/19 will be due as a balancing payment in January 2020.
- If the 2018/19 first payment on account has been paid in full by 31 January 2019 then no interest should be charged even if the 2018/19 first payment on account was actually created after this date. HMRC is happy to review cases where interest has been charged on 2018/19 payments on account due on and paid by 31 January 2019. Please send the unique taxpayer references to our mail box: wt@hmrc.gov.uk
- Customers can make payments in advance on their statement of account if they wish as they will have a higher 2018/19 balancing payment to pay in January 2020 (note that it may be necessary to ask HMRC to set the 'no repayment flag' on the account to prevent repayment).
- HMRC can confirm that it is currently working to ensure that 2018/19 returns will correctly create 2019/20 payments on account.
- HMRC apologises for any inconvenience caused by this issue.

Failure of HMRC's systems to generate payments on account has occurred in previous years but is much more widespread this year. In previous years HMRC has been able to rectify the problem before 31 January but has been unable to do so this year.

ICAEW and the other professional bodies on the Issues Overview Group have made representations to HMRC on this issue. We are concerned that self assessment receipts for the exchequer in January and July 2019 are lower than they should be and that higher than expected self assessment demands in January 2020 may result in some taxpayers getting into debt.

NATIONAL MINIMUM WAGE POLICY TO PROTECT THE VULNERABLE UNDERMINED BY INFLEXIBLE ENFORCEMENT

National minimum wage (NMW) policy is not correctly applied because NMW legislation 'belongs' to BEIS but is being enforced by HMRC without regard to policy intent.

ICAEW Tax Faculty expressed this view in its response ICAEW REP 28/19 to the consultation *National minimum wage: salaried workers and salary sacrifice schemes* (see tinyurl.com/BAM-NMW) published by the Department for Business, Energy & Industrial Strategy (BEIS) on 17 December 2018.

Bigger steps than those proposed in the consultation are needed to create a sustainable regime for the long term.

On salaried hours work we recommend that:

- In the interests of flexibility, any payment cycle should be allowed, rather than, as at present, only weekly and monthly;
- In the interests of business efficiency and to obviate employer confusion, commissions, overtime, allowances, unsociable hours premia, and so on, should all be counted for national minimum wage;
- The calculation year should be abolished, failing which aligned with the tax year, subject to being able to be adjusted where necessary (eg, where remuneration is paid in an earlier tax year because the normal payday is on a non-banking day in the following tax year).

Salary sacrifice benefits lower paid workers comparatively more than higher paid workers because it helps them to access goods and services, frequently from their employer at discounted rates, and to make pension contributions that they otherwise may not be able to afford. NMW rules need to be changed so as not to discourage employers from allowing such workers to participate in salary sacrifice and other optional remuneration arrangements.

Compliance problems for employers arise from how HMRC applies the rules, in particular around payments for the benefit of the employer in reg 12 NMW Regulations 2015, study time, pre-apprenticeship employment, uniform and dress codes.

Either enforcement should be removed from HMRC or NMW law should incorporate management powers to ensure that HMRC when enforcing compliance can adopt an approach that achieves NMW policy intentions without penalising employers for technical breaches which actually benefit employees.

To create a sustainable regime in the longer term, NMW law, guidance and enforcement need a comprehensive review to ensure that:

- they achieve their objective of protecting vulnerable workers from exploitative pay practices and permit rather than outlaw pay practices that are beneficial to both employees and employers, including allowing any pay frequencies and reasonable contractual arrangements that are commonly present in 21st century business;
- the guidance includes practical real-life case studies and covers *inter alia* pensions and how to remedy a NMW compliance failure from a PAYE perspective; and
- the policing of NMW is undertaken by an agency under the direct control of BEIS so that the law is enforced in accordance with the policy intent.

SPRING STATEMENT: AN OVERVIEW

The chancellor delivered the Spring Statement on 13 March 2019 (see tinyurl.com/BAM-SpringSt2019). He had promised a statement without any tax changes, and he delivered on this up to a point; but we do have a surprising number of areas where more details of things already announced have been revealed for consultation.

It will be a great relief to businesses grappling to implement Making Tax Digital (MTD) for VAT ahead of the 1 April 2019 starting date to read that the government has confirmed a light touch to penalties in the first year of implementation. The message is, do your best and no filing or record-keeping penalties will be charged. We were also relieved to learn that MTD will not be extended to either smaller VAT-registered businesses nor to any new taxes in 2020.

Read the Tax Faculty overview in full at tinyurl.com/BAM-SpringStOver

TAXBITES: NEW FREE CONTENT FOR PROFESSIONALS

The Tax Faculty has issued two new TAXbites in its new series aimed at sharing snippets of insight and expertise in a quick and easy-to-follow format.

There are short recordings on an introduction to the residence nil rate band, with worked examples, and a session on IR35, covering essentials including employed vs self-employed, and the differences in tax rates.

Find them at tinyurl.com/BAM-TaxBites

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

NEW LEGAL MEASURES TO PROTECT WORKERS FROM MISUSE OF NON-DISCLOSURE AGREEMENTS

The government is proposing to change the law on the use of non-disclosure agreements (NDA) in the workplace.

BEIS has taken action in the wake of the #MeToo movement, in which women complained of sexual harassment at work and were being pressured into signing such agreements.

The proposed law will make the use of workplace confidentiality agreements to prevent the reporting of harassment or discrimination to police illegal. Workers would also receive access to independent legal advice on the limitations of an agreement.

There is evidence that some employers have used NDAs to silence workers in making complaints, even though the right to act as a whistleblower cannot be taken away.

The government's consultation on its proposals, which are part of the wider Industrial Strategy, closes on 29 April.

See tinyurl.com/BAM-NDAs

NEW PENSION SCHEME TRIAL WITH ROYAL MAIL

A new kind of pension scheme, the so-called collective defined contribution scheme (CDC), is to be taken up by the Royal Mail.

In a first backed by the government, the aim is for the scheme to reduce burden on employers while pooling the investment risk of workers to create a better pension pot. Employers have been moving away from old-style defined benefit pensions in favour of defined contributions, where the employee specifies an amount put into a personal pot rather than knowing the sum to be received at retirement.

CDCs group the funds invested by individuals, and are popular in European countries including Denmark.

Royal Mail worked closely with the Communication Workers Union to develop the new pension scheme, which was approved by pensions minister Guy Opperman on 18 March. It is hoped other businesses will follow suit.

Responses to the scheme have been mixed, with some industry commentators welcoming the additional pension option and others concerned about the rate of onward adoption.

SURVEY: JOBS BOOM ENDING?

Confidence in the jobs market is falling as Brexit approaches, according to the latest quarterly Employment Outlook Survey from Manpower Group.

The poll of 2,124 employers for Q2 2019 found that confidence is down overall to +4% from Q1. Employers were said to have only "modest hiring plans", with 7% expecting to increase payroll, 3% bracing for decreases, and 89% expecting no change.

The question posed was whether businesses anticipated total employment at their location changing in the three months to the end of June. Those who believed gains were possible in the next three months were mainly in the large and medium-sized employer category at +15%, contrasting with very cautious microbusiness bosses at +1% (having 10 or fewer employees).

The survey found that net workforce gains were anticipated in 10 of the 12 UK regions covered. Survey respondents in the North East and Wales had what Manpower described as "flat prospects" in the coming three months, while the West Midlands expected the best hiring performance in the three months to June with +7%.

Of the sector breakdown, those polled in the construction and utilities sectors were most positive about new hires, with a score of +11%, followed by +7% in manufacturing. On the flipside, both transport and communications expected a dip in hires of -4%, each having their "most pessimistic quarter since 2010". Three uncertain months lay ahead for finance and business services with those polled giving a score of -1% – negative for only the second time in 10 years.

Manpower drew a parallel between uncertainty around Brexit and confidence levels, concluding that the "boom in the UK jobs market is coming to an end". It suggested that as business and financial services employs about a fifth of the UK's workers, the "most important sector" was set to be hit by job losses.

See tinyurl.com/BAM-EOSQ2

FINANCIAL REPORTING

YOU CAN FIND OUT MORE ON THE LATEST FROM THE FINANCIAL REPORTING FACULTY AT ICAEW.COM/FRF

ICAEW BREXIT GUIDANCE

We continue to update our ICAEW Brexit hub, which contains a comprehensive library of information and guidance to help you assess the implications of Brexit and prepare for a number of scenarios – with or without a withdrawal deal. Here you can find our recent guide on the financial reporting implications of Brexit.

All ICAEW's Brexit guidance is at icaew.com/brexit

For more on how Brexit will impact individual members, see tinyurl.com/BAM-BrexImpMem

FINANCIAL REPORTING BRIEFINGS

The Financial Reporting Faculty has launched Bitesize Briefings, a new range of short webcasts covering a variety of topics. The briefings started in March with an introduction to the FRC's Financial Reporting Lab, which included an invitation to have your say on future work plans by taking part in a stakeholder survey.

With corporate reporting becoming more complex and with reporting requirements increasing, the next briefing (which will be open to all and free of charge) will look at what makes up an annual report. Topics for future briefings include risk and viability reporting and climate-related disclosures.

Details of Bitesize Briefings, and links to previous recordings, can be found at icaew.com/frfevents ●