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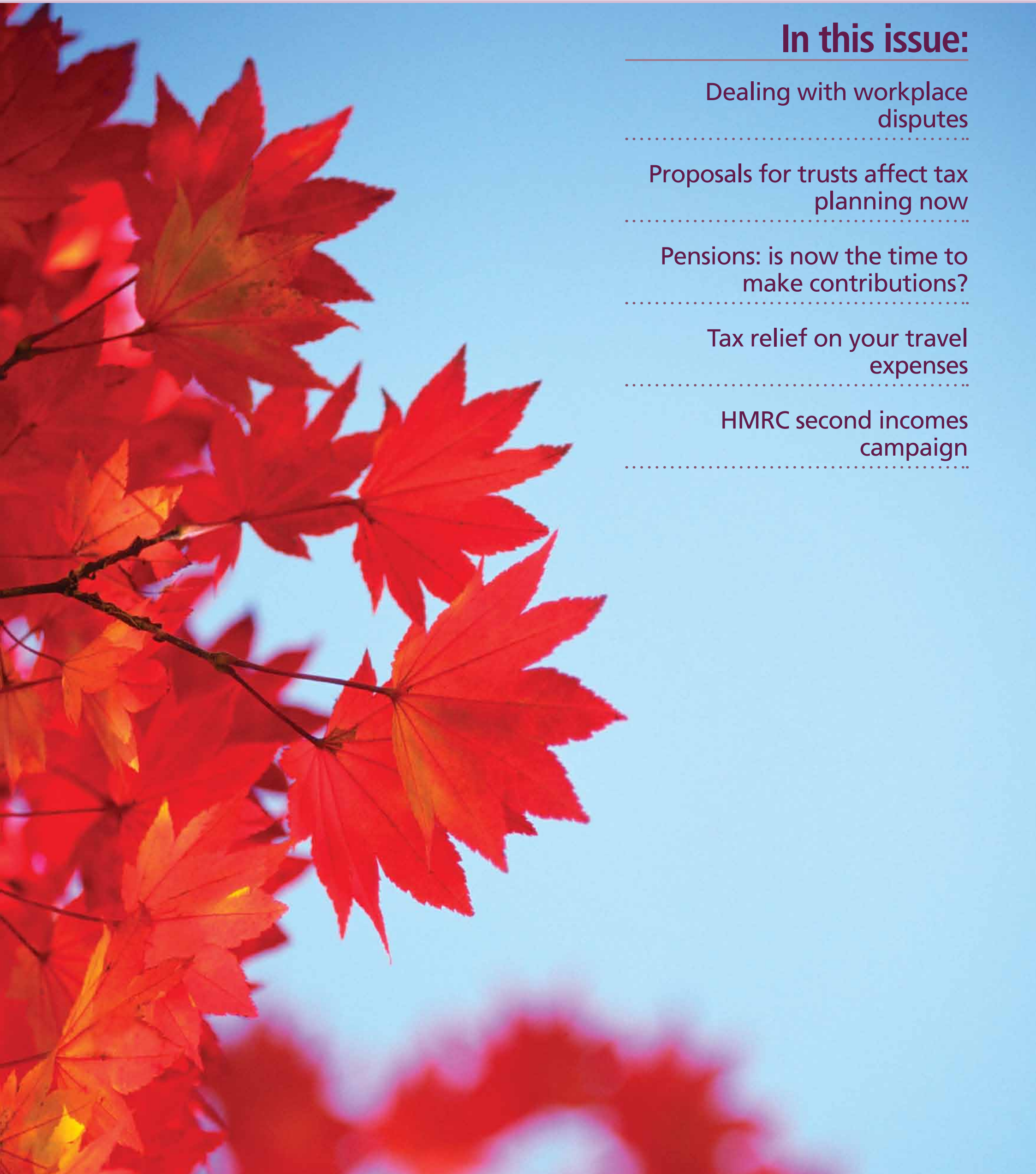
CHARTERED ACCOUNTANTS

money matters

Autumn 2014

UP TO DATE DEVELOPMENTS IN TAX AND BUSINESS PLANNING



In this issue:

Dealing with workplace disputes

Employees who intend to take a grievance to an employment tribunal must now first notify the Advisory, Conciliation and Arbitration Service (Acas) in most cases.

The idea is that pre-claim conciliation will reduce the number of workplace disputes ending up in court. Early conciliation started by the employee effectively stops the clock on the time limit for presenting a claim to an employment tribunal. The conciliator has one month to achieve a settlement, although discussions can be extended for a further 14 days where there is a prospect of settlement.

Early conciliation is free. It can avoid the costs of going to a tribunal, and may be a very quick solution. There is also the prospect of restoring trust where an employee stays and the agreed outcome might, for example, include an apology – something that is not possible at a tribunal. And if conciliation fails, discussions are confidential and cannot be used in subsequent proceedings.

Unreasonable claims?

If a grievance ends up being decided by an employment tribunal, the employer will normally have to pay their own costs, even if they win. However, the tribunal can order an unreasonable claimant to pay the costs, and there have been some recent decisions on this issue – with mixed results for employers.

In *Kapoor v The Governing Body of Barnhill Community High School*, the employee was found to have lied to a tribunal in pursuing a discrimination claim, but this did not automatically constitute unreasonable behaviour. The employee's appeal against the costs award therefore succeeded. In contrast, in the case of *Vaughan v London Borough of Lewisham*, costs were awarded against an employee because her discrimination and whistle blowing claims were found to have been misconceived.

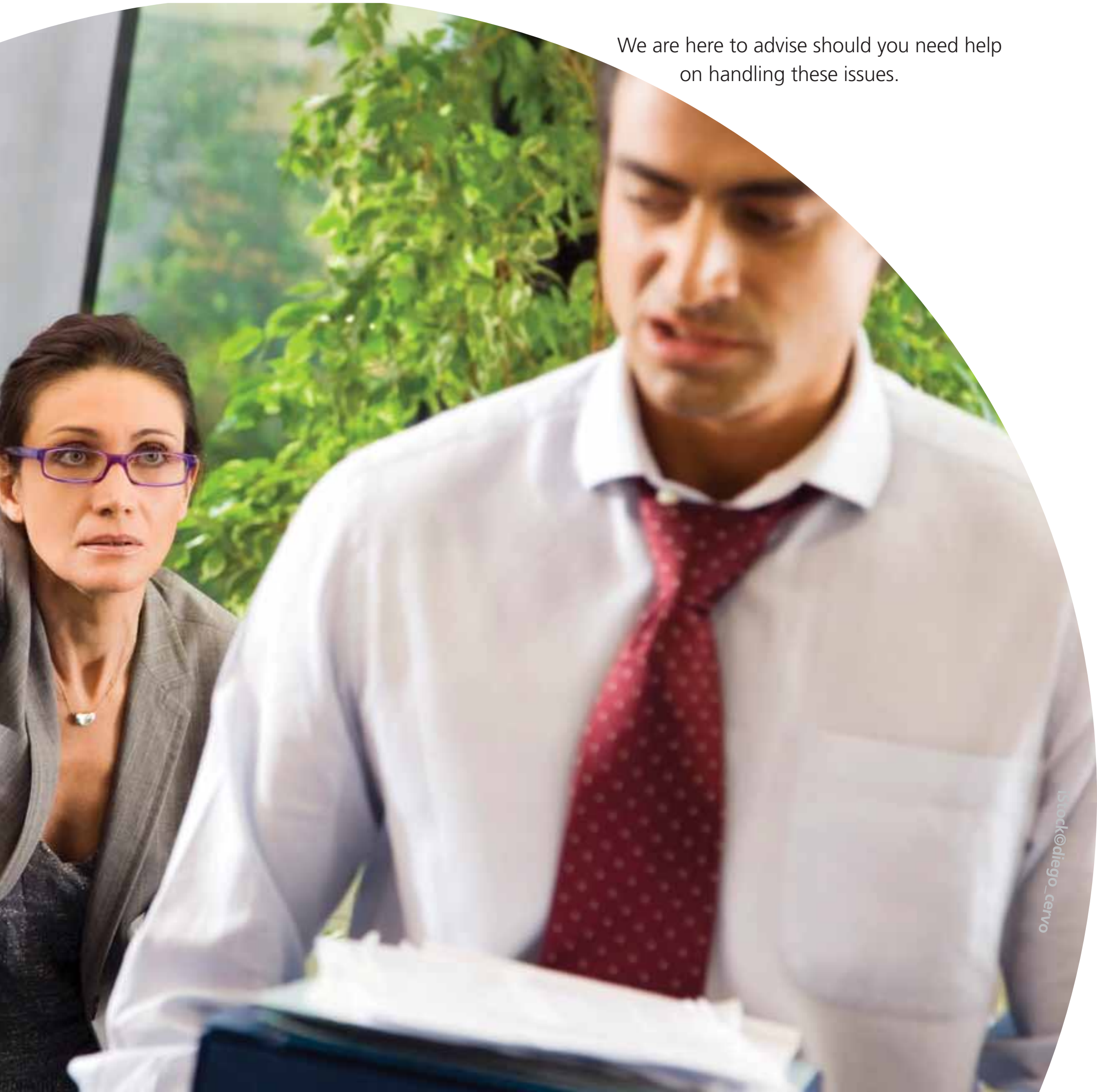
Paying tribunal fees

Tribunal fees to lodge a claim or an appeal were introduced in July 2013, and employers normally have to reimburse these fees where decisions go against them. In

Portnykh v Nomura International plc, the employer had to reimburse fees even though the appeal was only broadly successful and the employee lost on a few minor points.

This case also provided some useful guidance on the application of the 'without prejudice' rule. The basic principle is that a 'without prejudice' conversation undertaken with the intention of resolving an employment dispute is inadmissible in any subsequent proceedings. Nomura tried to have the conversations with the employee admitted as evidence by arguing that there was no dispute at the time the conversations took place. This argument was rejected because Nomura had already announced their intention to dismiss the employee for misconduct.

We are here to advise should you need help on handling these issues.



Proposals for trusts affect tax planning now

If you are planning to set up a trust, add funds to an existing trust or have a will that establishes a trust on death, then HM Revenue and Customs' (HMRC) proposed changes to the inheritance tax (IHT) treatment of trusts mean you might have to rethink your planning.

The changes affect the way that IHT applies to most trusts (also called settlements) with some limited exceptions. Trust assets are subject to an IHT charge every 10 years, and there can also be an exit charge when capital is paid out to the trust beneficiaries. The calculation of these charges is quite complicated, and the changes are partly designed to simplify this.

HMRC is also concerned about the ability of individuals to set up multiple trusts during their lifetime, with each trust then benefiting from a nil-rate band of £325,000. Establishing a new trust every seven years is a straightforward way of achieving this. If the process is started at an early age, such a strategy of making a gift into a trust of £325,000 every seven years could remove a substantial amount of assets from a person's estate.

HMRC's proposal is that each individual will have only one nil-rate band for trusts or settlements during their lifetime. This will be entirely separate from their personal nil-rate band, although it will be the same £325,000 amount. The settlor will be responsible for making an election that sets out how they wish to allocate their settlement nil-rate band between the trusts that they have set up. For trusts created on death, the election will be made by the personal representatives.

The new rules will apply after 6 April 2015, but they will only affect new trusts that have been created after 6 June 2014 – the publication date of HMRC's consultation document about the taxation of trusts. The rules will also apply where property or funds are added to an existing trust. Existing trusts made by 6 June 2014 will retain the nil-rate band available to them under the previous rules, but they will benefit from the new simplified way in which charges are calculated.

The changes are not definite – just a consultation, as things stand – but the proposals seem very likely to be included in next year's Finance Act.

Please get in touch with us if you need advice.

Pensions: is now the time to make contributions?

Should you put more into your pension scheme? Everyone with earnings should revisit this question following this year's Budget proposals for greater flexibility in accessing pension savings. The main changes are due from April 2015 but there have also been important relaxations this tax year.

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From April 2015, it will still be possible to take 25% of your pension fund tax-free from the age of 55, but under the proposed new rules, the aim is that you should then have broadly unrestricted access to the rest of your accumulated pension funds. It will still be possible to buy an annuity to secure a guaranteed lifetime income and this might well continue to be the best solution for many people. But it will become easier and generally less expensive to use other approaches.

The income you can draw is subject to income tax – but not national insurance contributions. So drawing excessive amounts from a pension fund could generate unnecessarily large tax liabilities which it might be possible to avoid, or reduce, by taking withdrawals spread over several years.

While investments remain in a pension fund, you can buy and sell them and accumulate income without paying any UK tax. It is only when you draw them out that you pay income tax on them. So it will generally make sense to only take income from the pension when it is needed for expenditure, or possibly for some individuals, in years of unusually low taxable income.

The increased attractiveness of pension investment has arrived just after a reduction to the effective limits on how much you can contribute. The maximum tax-efficient annual pension investment for an individual is now £40,000 (previously £50,000) and the lifetime allowance is £1.25 million, down from £1.5 million before 6 April 2014.

Your pension planning should also take into account the possibility of further changes. A new Government might limit tax relief on pension contributions to the 20% basic rate or perhaps a 30% flat rate for all – proposals that have often been aired recently – and further reduce the lifetime and annual allowances.

All this makes 2014/15 a good year to consider maximising your pension contributions, if your savings have not exceeded the lifetime allowance. You can generally bring forward your unused annual allowances from the previous three years.

Tax relief on your travel expenses

Virtually everyone who is self-employed incurs travel costs, but it may sometimes be hard to decide whether these expenses are allowable for tax.

Unfortunately, there is no detailed guidance from HMRC about such travel expenses, and instead we have to look at what the courts have decided. The latest decision does little to help matters.

The cost of a self-employed person travelling from home to their place of work is not normally allowed as an expense, and it makes no difference if they keep their business records, materials, tools etc at home. In the case of *Newsom v Robertson* (1952), a barrister worked part-time at home when the courts were sitting and full-time when they were not. Travel between home and his chambers was disallowed on the basis that the chambers were the base of operations. And because travel costs are disallowed, so are incidental costs such as car parking and congestion charges. However, travel costs to and from home are allowed when home is your base of operations, and you travel to a number of different temporary work locations. In the case of *Horton v Young* (1971), a self-employed bricklayer was successful in claiming travel costs between home and various temporary building sites.

The essential point is that the nature of the trade or profession must be itinerant and there should be no predictability about the place of work.

The upper-tier tribunal decision in the recent case of *Doctor Samadian v HMRC* (2014) reinforced the above principle. The doctor was employed full-time at two NHS hospitals, and he was also in self-employed private practice working from an office at home. He saw his private patients at consulting rooms that he hired at two private hospitals, and also visited patients in their homes. HMRC did not dispute the deductibility of travel between the two private hospitals, between the private hospitals and a patient's home, and between home and a patient's home.

The dispute concerned travel between the doctor's home and the private hospitals, and also between the NHS and the private hospitals, and in both cases the decision was in HMRC's favour. Although home and the private hospitals were all places of work, the doctor was not considered to be itinerant, and his attendance at the private hospitals was regular and predictable. The decision means that a deduction for the cost of travel to another place of business will only be allowed in very exceptional circumstances.

HMRC second incomes campaign

HM Revenue & Customs' (HMRC's) second incomes campaign is targeted at employees who have additional income from working for themselves. This latest campaign allows taxpayers to disclose any additional tax due on such additional incomes.

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The second incomes campaign has no fixed deadline and will be open for some time – unlike similar previous HMRC actions of this kind. There is also no incentive in the form of a reduced penalty for disclosure.

However, voluntary disclosure is always treated more leniently compared with the position where it is HMRC that discovers a taxpayer's error. Also, if a taxpayer has made a careless error and submitted their self-assessment tax returns on time, then they need only declare any unpaid tax for up to six previous years – no matter how many years are actually involved. Once the campaign closes, HMRC will use any information it has to come down hard on those it believes have something to disclose but have failed to do so. HMRC can obtain such information by internet research (such as where services are advertised) or from an informer (maybe a disgruntled customer).

HMRC is targeting a wide range of spare-time activities. You might be trading by making and selling craft items, or you could be selling goods from a market stall or at car boot sales. Personal services on which HMRC are focusing include taxi driving, hairdressing, fitness training or landscape gardening. Maybe you receive fees for consultancy or other services such as public speaking or providing training. You might receive payments for organising parties and events or for providing entertainment.

Of course the tax liability might be much lower than expected once allowable expenses are taken into account. For example, public speakers can generally deduct travel expenses from their taxable income, as well as some or all of the cost of equipment they use such as a laptop computer or projector. Even the cost of an office or workspace at home may well be allowable.

Anyone wishing to take advantage of the campaign must initially notify HMRC of their intention, and they then have up to four months to calculate and pay what is owed. Tax calculations covering several years can be quite complicated, especially if claims for tax credits are involved. Also, any other undeclared income, such as investment income or chargeable gains, must be disclosed along with the second income. We will, of course, be happy to help.

R&D tax relief of up to 45%

You may not be aware but your company could be eligible for tax relief on 225% of some of its expenditure.


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Relief at 225% means that most such companies paying corporation tax at 20% will benefit from a tax saving equal to 45% of the research and development (R&D) expenditure. The relief is available to companies that undertake research in a field of science or technology, but such R&D is broad.

Work on innovating, improving or developing a product, service or process may be eligible, provided it seeks to advance knowledge by resolving general scientific or technological uncertainty. The project must be related to the company's trade or a trade the company intends to start up subject to the results of the R&D. There is no minimum expenditure to qualify for R&D tax relief and the company does not need to have an R&D department or operate in any particular business sector.

Providing the project meets the conditions, a company can claim tax relief on revenue expenditure incurred in carrying out R&D including the cost of staff, materials, utilities (power, water, fuel), and computer software. Capital R&D expenditure qualifies for a 100% first year capital allowance. There are special rules for companies that subcontract their R&D.

Relief at 225% is available to small and medium-size companies (SMEs), whereas large companies can claim relief at only 130%. For this purpose, an SME is a company with fewer than 500 employees with either an annual turnover of €100 million (about £80 million) or less, or a balance sheet not exceeding €86 million, and generally not part of a larger enterprise. All companies qualify for the 100% relief on capital R&D expenditure.

An SME that is not yet profit-making can claim a payable tax credit of 14.5% for revenue expenditure incurred from 1 April 2014, instead of the tax relief. Before that date, the rate was 11%. That means every £1,000 spent results in a cash credit of £326.25 (14.5% of 225% of £1,000).

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