

## TAX NEWS – MAY 2018

Welcome to our monthly newsletter. We hope you enjoy reading this newsletter and find it useful.

### CHANGES TO TERMINATION PAYMENTS

Care is always required when employees are made redundant or payments are made on the termination of employment. Not only are there employment law considerations, there are also important tax implications and this is an area where professional advice is strongly recommended to avoid unnecessary pitfalls. The tax treatment of these payments changed from 6 April 2018 and further changes come into effect in 2019.

#### Pay In Lieu of Notice

Employers now need to pay Income Tax and Class 1 National Insurance Contributions (NICs) on an element of all termination payments from 6 April 2018, whether or not they are contractual payments. The element that is now chargeable to Income Tax and NICs is the amount of the termination payment that represents payment in lieu of notice (PILON), sometimes referred to as “garden leave”.

#### Ex-gratia Payments

The first £30,000 of genuine ex-gratia continues to be exempt from income tax and national insurance. The £30,000 limit includes statutory redundancy payments. Payments in excess of £30,000 are taxed as employment but there is currently no NIC on such payments. It was originally proposed that employers’ NIC would be applied to such payments from 6 April 2018 but

the delayed introduction of the National Insurance Contributions Bill means that employer NICs on termination payments above £30,000 will now take effect from 6 April 2019.

#### Periods of Foreign service

In addition, foreign service relief on termination payments was removed for all UK residents - apart from seafarers - from 6 April 2018. Previously, this provided a further exemption from income tax and NIC depending on the period of time working abroad.

UK residents whose employment ends after 6 April 2018 who receive a payment or benefit in connection with that termination made after 13 September 2017, will not now be eligible for tax relief for any period of foreign service as part of that job.

### TAX ADVANTAGE OF EMI SHARE OPTION SCHEMES LAPSES

HMRC have advised companies to consider delaying the grant of Enterprise Management Incentive (“EMI”) share options until fresh State Aid approval has been granted by the EU.

As the UK Government were late in applying for an extension (12 months’ notice is required) the existing approval expired on 6 April 2018 and EMI share options granted after that date before new approval is received **may be treated as non-tax advantaged employment-related securities options.**

The EMI share option scheme introduced in 2000 was the most

tax efficient scheme to attract and retain key staff, providing employees in receipt of qualifying options with significant tax advantages.



Depending upon the price paid by the employee for their shares on exercise of EMI options, the receipt and subsequent sale of the shares is subject to capital gains tax at just 10% instead of PAYE and NIC.

We are expecting the scheme to be re-approved under the State Aid rules and we will let you know when this happens.

### FORM P11Ds TO INCLUDE BENEFITS PROVIDED BY SALARY SACRIFICE

Employers need to report all Benefits in Kind (BiKs), including those under the Optional Remuneration Arrangements (OpRAs) or “salary sacrifice” arrangements, to HMRC on form P11D from 6 April 2018, unless they are registered to voluntarily payroll benefits.

OpRAs are where an employee gives up the right to an amount of earnings in return for a Benefit in Kind (BiK) and includes flexible benefit packages with a cash option, cash allowances and salary

sacrifice. All BiKs are now valued at the **higher of** the cash given up or the value of the BiK. Many previously non-taxable BiKs are now taxable, valued on the cash given up.

Note however that cars with emissions of 75g CO<sub>2</sub> / km or less, pensions, pension advice, childcare and Cycle to Work benefits are unaffected.

Subject to a few specific exceptions, arrangements entered into on or before 5 April 2017 kept their previous tax treatment until the earlier of a renewal or variation of the arrangement. Such arrangements moved into the new rules on 6 April 2018.

## HMRC LOSE IR35 CASE

In the February newsletter we reported the Tax Tribunal decision involving Christa Ackroyd Media Ltd, a company set up by a TV presenter to supply her services to the BBC, where it was held that the IR35 personal service company rules applied to the arrangements. In a recent case involving a night manager on a building site, another tribunal decided that the IR35 rules did not apply.



The facts of the recent case involve a Mr Daniels supplying his services via his company MDCM Ltd. These are entirely different from those in the Christa Adcock case but it indicates that the current rules are very unclear and

open to interpretation by the courts.

For the IR35 rules to apply it must be inferred that under the hypothetical contract between “worker” and client that worker would be regarded as an employee if directly engaged. There are numerous factors taken into account, but the most important factor considered by the courts is the extent to which the “worker” is under the control of the client.

Please contact us if you wish to discuss whether these recent cases impact on your particular circumstances.

## TAKING A LODGER? DON'T FORGET TO CLAIM “RENT A ROOM” RELIEF

HMRC are carrying out a review of rent a room relief to discover whether the scheme, introduced back in 1992 provides the right incentives for the rental market. The current scheme exempts from tax, gross rents up to £7,500 where rooms within the taxpayer’s main residence are rented out.

Most accountants that responded to the call for evidence were keen for the relief to continue as it encourages taxpayers to let out spare rooms and provides them with additional income.

Note that where the gross rental income exceeds £7,500, say £12,000, the excess of £4,500 would be taxable. Alternatively the taxpayer may deduct costs of providing the living accommodation such as a proportion of mortgage interest and light and heat. If these allowable expenses amounted to £9,000 then it would be more appropriate to be taxed on the net rental profit of £3,000.

Note also that the current scheme only provides relief where the rooms let are in the taxpayer’s main residence and if the property is jointly owned, the relief would be £3,750 each. Where the lettings are in another property, the new £1,000 property allowance could be set against the gross rental income, however this allowance applies to each taxpayer.

## CGT TO BE PAID EARLIER ON PROPERTY DISPOSALS IN 2020

HMRC are consulting on the mechanism for collecting CGT on residential property disposals from April 2020, when the tax will be due within 30 days of completion.

This will be instead of the normal payment date of 31 January following the end of the tax year and is yet another attack on buy to let landlords!

## DIARY OF MAIN TAX EVENTS MAY/JUNE 2018

Date	What's Due
01/05	Corporation tax payment for year to 31/07/17 (unless quarterly instalments apply)
19/5	PAYE & NIC deductions, and CIS return and tax, for month to 5/05/18 (due 22/05 if you pay electronically)
01/06	Corporation tax payment for year to 31/08/17 (unless quarterly instalments apply)
19/6	PAYE & NIC deductions, and CIS return and tax, for month to 5/06/18 (due 22/06 if you pay electronically)