

## McPhersons Tax E-News

Welcome to our latest monthly tax newswire. We hope you enjoy reading this newsletter and find it useful. Contact us if you wish to discuss any issues further.

March 2018

### ARE YOU SURE YOU OR YOUR WORKERS ARE SELF-EMPLOYED?

Last year we reported that the House of Commons Work and Pensions Committee published a report calling on the Government to close the loopholes that allow “bogus” self-employment practices, which burden the welfare state but reduce the tax contributions needed to sustain it.

Most of the people working for organisations such as Uber, Amazon, Hermes and Deliveroo are not on the payroll, have limited workers’ rights and are paid for each delivery or “gig”. The Committee recommended a **default assumption of “worker” status**, rather than “self-employed”. The economist Mathew Taylor was also asked to produce a report on the status of such workers and suggested that a new category of “dependent contractor” should be established.

HMRC and the Treasury have now published a consultation into a thorough review of employment status.

### Consultation on employment status

HMRC published a consultation on employment status on 7 February as a follow up to the Taylor Review of Modern Working Practices.

Individuals and their employers have to know which employment status applies to ensure the right protections are applied – from the National Minimum Wage and holiday pay, to unfair dismissal protection and statutory redundancy pay.

Employment status also affects the taxes that an individual and their employer pay. It is therefore essential in maintaining a clear and effective tax base, with individuals and employers knowing what rates of tax and National Insurance contributions (NICs) are applicable to everyone in their organisation.

The existing legislation defining an employee for both tax and employment rights ultimately relies on whether a **contract of service** exists. No further definition or clarity is provided in the legislation.

As a result, over time the courts have interpreted the legislation and developed tests to determine an individual’s employment status. These tests are contained in a number of key precedent cases, including a mixture of employment rights and tax judgments.

A possible solution suggested is to legislate a more detailed definition of employment incorporating the irreducible minimum core tests established by case law:

- Mutuality of obligation
- Control over the individual
- Personal service

### BBC PRESENTER LOSES LANDMARK IR35 CASE

The IR35 personal service company legislation has been on the statute book since 2000 and has never really worked as intended.

The main reason for this is that the interpretation of the legislation is based on the same employment status tests referred to above, which lack clarity and are open to interpretation by the courts.



However, HMRC have recently won a key case on IR35 at the First Tier Tribunal concerning the BBC presenter Christa Ackroyd.

Ms Ackroyd had been supplying her services to BBC through her personal service company Christa Ackroyd Media Services Ltd since 2006/07. The Tribunal agreed with HMRC that the

hypothetical contract between the BBC and Ms Ackroyd would have been a **contract of service**. The existence of a seven-year contract meant that Ms Ackroyd's work at the BBC was pursuant to a highly stable, regular and continuous arrangement. It involved a high degree of continuity rather than a succession of short term engagements. That is a pointer towards an employment contract.

Another key factor considered by the court was that her fellow presenter on "Look North" was on the BBC payroll. Ms Ackroyd's company was appealing against demands for some £419,151 from HMRC relating to income tax and National Insurance contributions (NICs) for the tax years 2006/07 to 2012/13. It will be interesting to see if there is an appeal to a higher court and whether this decision will be used by HMRC against other BBC presenters and other personal service companies. Please contact us if you wish to discuss whether or not the employment status or IR35 rules impact on your working arrangements.

## PENSION FUNDS CAN BE VERY EFFECTIVE IN ESTATE PLANNING

We have featured the tax efficiency of pension fund investment in a number of recent newsletters. As well as the increased flexibility in terms of drawdown arrangements that were introduced in April 2015 there were some important changes to what happens to

the undrawn funds on death. These changes mean that your pension fund can be passed to survivors tax efficiently.

Where the pension scheme member dies under age 75 certain lump sum death benefits are now tax-free. In particular a drawdown or flexi-drawdown pension fund lump sum death benefit or an uncrystallised funds lump sum death benefit.

Where the member at the time of their death was age 75 or older the special lump sum death benefit charge on the fund will be 45%. However, if a nominated beneficiary wants to draw down income each year rather than take the lump sum the amounts drawn would be taxed at their marginal income tax rate. It has recently been reported that there are currently £2 billion of pension assets in drawdown where the beneficiary is aged under 55 suggesting that a significant number of individuals have taken advantage of the new rules.

Note that cash and quoted shares, including those held within an ISA, are subject to inheritance tax on death whereas pension fund assets are generally free from inheritance tax. It may therefore be more tax efficient to spend or give away cash and shares rather than draw on the pension fund.

Please contact us if you would like to discuss estate and inheritance tax planning in more detail.

## WANT TO JOIN THE MAKING TAX DIGITAL VAT PILOT?

HMRC have announced that they are looking for suitable businesses to sign up for the pilot testing of the new system of digital reporting of VAT information. Turkeys voting for Christmas springs to mind?

After a period of testing the new system is scheduled to go live in April 2019 for VAT registered businesses with turnover in excess of the £85,000 VAT registration threshold.

## DIARY OF MAIN TAX EVENTS MARCH/APRIL 2018

Date	What's Due
1/03	Corporation tax payment for year to 31/5/17 (unless quarterly instalments apply)
19/03	PAYE & NIC deductions, and CIS return and tax, for month to 5/03/18 (due 22/03 if you pay electronically)
1/04	Corporation tax payment for year to 30/6/17 (unless quarterly instalments apply)
5/04	End of 2017/18 Tax Year. 2018/19 tax year starts 6 April 2018
19/4	PAYE & NIC deductions, and CIS return and tax, for month to 5/04/18 (due 22/04 if you pay electronically)