FLETCHER & PARTNERS
Chartered Accountants

Crown Chambers, Bridge Street, Salisbury SP1 2LZ Tel: 01722 327801

We are a member of CharterGroup the national alliance of high quality independent firms of chartered accountants

NEWSLETTER

WINTER 2017

Changes to pensions auto-enrolment

The Pensions Regulator (TPR) reports that in the first part of 2017 alone, 136,000 small and micro employers began complying with their new responsibilities under the pensions auto-enrolment regime. That's an average of one every 57 seconds. But with change ahead, it's important to keep up to date with developments.

The latest important deadline is 1 October 2017, as the regime enters a new phase, with no lead-in time for new employers to comply. From 1 October, any employer taking on staff for the first time immediately comes within the rules. Those who have employed staff before 30 September 2017 have different deadlines – see the 'Duties Checker' section on the TPR site, **goo.gl/TXS6T5**

Ongoing duties

The first step in employer compliance involves assessing staff on the basis of age and earnings. Staff aged between 22 and State Pension age, who earn over £10,000 pa, (£833 per month or £192 weekly), must be put in a pension scheme, to which both employer and employee contribute.

But employer involvement doesn't stop there. If staff don't need to be put into a scheme, there's still a declaration of compliance to be made, and ongoing duties, including keeping track of employees' age and earnings each time they are paid, managing requests to leave or join a pensions scheme, and a three-year cycle involving re-enrolling employees who have opted out.

Next developments

The next major change to the regime is the increase in contribution rates from April 2018. From 6 April 2018 to 5 April 2019, employer minimum contribution increases to 2%, and from 6 April 2019 onwards, it rises again, to 3%.

Failure to comply can result in fines and being named and shamed on the TPR website. TPR is particularly vigilant regarding compliance: it has warned that it will prosecute for failure to provide information in the course of its investigations, and has initiated a first prosecution where an employer is held to have deliberately failed to put staff in a workplace pension.

National Minimum Wage – where are we now?

Falling foul of the National Minimum Wage rules can be expensive – as well as having serious implications for employer reputation. Many firms have been named and shamed for getting it wrong - are you compliant?

Employer errors

The National Minimum Wage (NMW) keeps appearing in the headlines. Recently the Department for Business, Energy and Industrial Strategy (BEIS) announced that some 230 employers had been named and shamed for failing to pay NMW and National Living Wage (NLW). The retail, hairdressing and hospitality sectors were among the most non-compliant. Because of BEIS intervention, more than 13,000 low-paid employees were due to receive £2 million in back pay.

But the final price tag for employers who hadn't kept the rules was much higher. Between them, they were also fined a record £1.9 million. Business Minister Margot James said there was a clear message to employers. 'The government will come down hard on those who break the law.'

BEIS report that common employer errors include deducting money from employees to pay for uniforms, not accounting for overtime and wrongly paying apprentice rates to workers. So, what is the latest on NMW and how do employers keep on the right side of the law?

NMW and NLW – the basics

NMW is the least pay per hour most workers are entitled to by law. The rate is based on a worker's age and whether they are an apprentice. NLW applies to working people aged 25 and over. From 1 April 2017, the rate ranges from £7.50 per hour for those aged 25 and over, to £3.50 per hour for apprentices under 19, or for those aged 19 or over who are in the first year of an apprenticeship. Changes to NLW rates are in the pipeline from April 2018, so employers may need to plan for these now.

NMW/NLW rates are reviewed by the Low Pay Commission, but it is HMRC who police the system. Employers can be faced with court action if they don't pay NMW/NLW. Penalties for non-compliance stand at 200% of the back pay due to workers. The maximum penalty per worker is £20,000. There is a provision to reduce a penalty by half if unpaid wages and penalty are both paid within 14 days.

Not everyone qualifies for the NMW/NLW. These include people who are self-employed: volunteers: company directors: family members, or people who live with an employer and carry out household tasks eg au pairs.

But most other workers are entitled to NMW/NLW, including pieceworkers, home workers, agency workers, commission workers, part-time workers and casual workers. There are also rules regarding agricultural and horticultural workers, with slightly different small print for England, Scotland and Wales.

In calculating pay for minimum wage purposes, the starting point is total pay in a pay reference period - before deducting income tax and National Insurance. Some payments are not included, such as loans and pension payments.

To add to the complexity, there is also something called the Living Wage, which is an hourly pay rate, set independently by the Living Wage Foundation. This isn't anything to do with the government, and any employer who pays this does so entirely voluntarily.

Latest guidance: social care workers

HMRC have updated their guidance to clarify how NMW applies in the social care sector for workers carrying out 'sleepover shifts', following confusion over whether such shifts qualified for NMW. BEIS had suggested sleepover shifts carried out before 26 July 2017 qualified for a flat rate allowance, not NMW. But the decision is that NMW does apply, and applies retrospectively.

This could have left employers with bills of up to six years in back pay and penalties. But from 26 July, enforcement activity for sleepover shift pay is suspended until November, with retrospective penalties for sleepover shifts before 26 July 2017 waived. The actual back pay is still due, unless employers can show they can't pay. Although it is envisaged that underpayments will be pursued from this date, the government says it is committed to minimising the impact of future minimum wage enforcement in the social care sector.

When an employee is in crisis

Research suggests that one in ten employees is likely to be affected by bereavement at any given time. This can have many knock-on consequences in the workplace. Staff may need to take time off unexpectedly, find that their performance is affected, or be temporarily unable to carry out some roles. The law in this area is changing. What do you need to know?

Employment Rights Act

The Employment Rights Act is the law currently governing this area. It gives employees the right to take a 'reasonable' amount of *unpaid* time off in the event of an emergency involving a dependant. This includes making arrangements on the death of a dependant, and is likely to be agreed between employer and employee on an ad hoc basis. What is 'reasonable' in this context is not defined in the legislation, and the involvement of Acas or an employment tribunal would be a last resort here.

New legislation

The new, government sponsored, Parental Bereavement (Pay and Leave) Bill got its second reading in Parliament this autumn, and will change the law here. It will provide *paid* leave for bereaved parents for the very first time. The Bill's sponsor, Kevin Hollinrake MP, commented 'This is such an important Bill for parents going through the most terrible of times. There is little any of us can do to help, but at least we can make sure that every employer will give them time to grieve.'

In the meanwhile, employers can visit the Acas good practice guide for helpful guidance in this area.
goo.gl/aadWNQ

Accidentally becoming a landlord

You may not think of yourself as a landlord - but do HMRC?

From time to time, HMRC run campaigns targeted at specific business sectors to help people bring their tax affairs up to date if they have inadvertently fallen outside the rules. At present, they are running a let property campaign, aimed at individual landlords letting out residential property abroad or in the UK, and recent guidance shows some of the ways that landlords can sometimes make mistakes **goo.gl/hTFbX5**

One of the most common mistakes is that people simply don't think of themselves as landlords. This can happen when someone inherits a property and then lets it out, or if they move in with a partner and then rent out their old house, or rent out a flat just to cover the mortgage payments. In fact, each of these scenarios means that HMRC need to be put in the picture, and the rental income could be liable to tax.

Other problem areas reported by HMRC are, for instance, property bought as an investment and rented out, and divorce situations where the matrimonial home is rented out and both partners move elsewhere. Difficulties are recorded where people relocate for work and rent out their house, or move into a care home and let out a house to help pay for care home fees. Issues can also arise with jointly-owned investment property, or when purchasing a property for a child at university, where other students also live there and pay rent on an informal basis. Members of the Armed Forces posted abroad, who let out a home in the UK, and people living in tied accommodation who let out a house, can also run into problems.

But it's not all bad news. One plus point for individuals (but not partnerships) letting out property on a small scale is the introduction of a new allowance – the property allowance – from 6 April 2017. There has been quite wide-scale coverage of this in the media earlier in the year. However, the allowance only gives relief for income of up to £1,000 in the tax year.

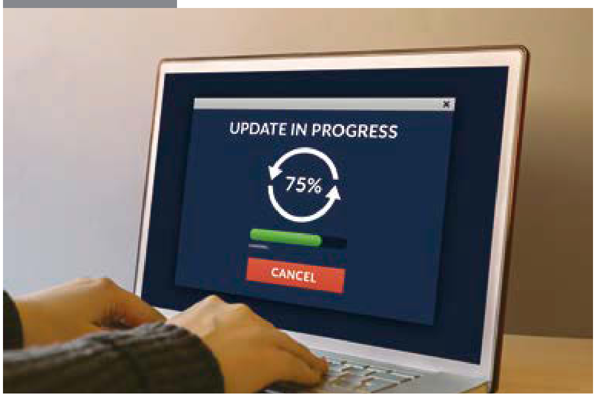
There can be unforeseen pitfalls – and tax planning possibilities - when letting out property. Please do talk to us if we can be of help in this area.

HMRC computer fix for personal tax returns

You may have heard that HMRC computer systems have had major problems correctly processing some 2016/17 self assessment tax returns. Essentially, there have been so many changes to personal tax legislation that HMRC software has struggled to cope.

One key problem area is the introduction of the Savings Allowance and the Dividend Allowance for the 2016/17 tax year. The main complication for HMRC was identifying and remedying scenarios in which it is not beneficial for a taxpayer to allocate personal allowances in the default order of 'non-savings income, then savings income, then dividend income'. In the new dividend tax regime there are a number of scenarios in which it may pay a taxpayer to reallocate part of the personal allowance to dividends - but HMRC systems were not always picking this up. The commercially provided software that we use as tax agents must follow HMRC specifications (even though some of the specifications may be incorrect), otherwise the returns filed online would be rejected.

Good news



The good news is that HMRC have now taken action to try to fix many of the problems, and amended the specifications for their 2016/17 tax calculator software. Such a late adjustment is unprecedented for HMRC, and the fix should be in place by the time you read this Newsletter. It should then be possible for those taxpayers affected to have their returns filed online as usual.

There will be some situations which will still not be resolved for the 2016/17 tax year but there will be an option for returns to be filed on paper even though the normal deadline for paper returns (31 October 2017) will have passed. We will be able to do this for you if necessary with a covering letter giving various technical details of what HMRC call the relevant 'exclusion' category. The extended deadline for such paper returns will be 31 January 2018. Should HMRC systems automatically generate a penalty for late filing, this will also be cancelled.

Please be assured that we are monitoring the situation closely. Should your affairs be affected, we will act to minimise your tax liabilities.

Making Tax Digital - plans for VAT

Earlier this year, the government announced that businesses operating above the VAT-registration threshold, (currently £85,000), would be the first to enter the new Making Tax Digital (MTD) regime.

Now there are indications as to what such businesses will have to do to comply, and when. The detailed rules should be in place by April 2018, with a view to a start date of 1 April 2019. Much work will be going on at HMRC and the software houses to get the scheme off to a smooth start.

Digital records

From 1 April 2019, businesses over the VAT threshold will be obliged to keep digital records and use MTD functional compatible software to give the information for their VAT returns to HMRC. They will have to preserve records in digital form for up to six years.

Software must be able to connect to HMRC via an Application Programming Interface, creating VAT returns and supplying HMRC with information digitally. HMRC are looking to harvest data on a voluntary basis as well, so they can monitor compliance, and also to provide information from their end. Business software would therefore need to be capable of accommodating this two-way information flow.

Supplying HMRC with quarterly information is one of the cornerstones of the MTD regime. But though VAT-registered businesses already supply quarterly VAT information, it isn't always an entirely digital operation. Many businesses use spreadsheets to submit returns, and HMRC may underestimate the change needed. HMRC state that the VAT account will link the underlying records and VAT return, but should a business use more than one software system, or spreadsheets, there could be complications. Add-on submission software will be needed for businesses using spreadsheets.

There are some exemptions from the requirement to keep digital records. These broadly follow those currently in place with regard to electronic VAT returns, covering members of religious societies, insolvent businesses, and those who 'for reasons of disability, age, remoteness of location, or any other reason' are not required to make an electronic return. A right of appeal is allowed if HMRC refuse exemption.

Businesses will have to keep and preserve what is called 'designatory data' digitally. This includes business name, principal place of business and VAT registration number, and information about any VAT scheme used: the VAT account, and information about supplies made and received.

Schemes and returns

HMRC say, 'The information contained with the VAT return will be generated by pulling information from the digital records. This information will contain as a minimum the nine boxes required for the VAT return, but can also contain a specific data set of supplementary information – all of which will be pulled from the digital records.' The procedure to correct errors will mostly be as at present.

Any business currently submitting monthly returns will continue to do so, as will any business submitting non standard returns. Users of the annual accounting scheme will be able to continue to do so. But the requirements for digital record keeping and submission will apply in these cases. Retail scheme users will be allowed to record electronically sales transaction data based on daily gross takings - rather than having to record details of each sale. For those using the Flat Rate Scheme, digital record keeping requirements will 'mirror' current record keeping requirements.

There will also be the facility for businesses to submit VAT information more often than the VAT return cycle requires, for example to keep HMRC informed of a change in circumstances. In the long run, HMRC are still looking to a scenario where income tax updates are made quarterly and digitally, and this is really what the VAT provisions anticipate.

Monitoring your VAT position

With VAT about to be linked to a new digital record keeping regime, it will be more important than ever to monitor business turnover to see if there is a need to register for VAT, as a business operating over the VAT threshold will enter a more complex regime. The requisite software is not yet available, but as we move towards MTD, many businesses may need guidance to make sure their systems are compliant, and we will be happy to advise on record keeping or in any other way we can.

https://online.hmrc.gov.uk/webchatprod/community/forums/list.page

HMRC

New HMRC online help for small business

HMRC have recently set up a new online forum and webchat facility to provide help for small businesses and the self employed. **goo.gl/rwJTBx**

It aims to provide guidance on starting in business, which legal structure to use, how to register and pay for taxes, and start-up finance, as well as helping with issues a growing business may face, such as expanding and taking on employees, buying and selling abroad, completing tax returns, working tax credit and child tax credit.

The forum aims to give general guidance, but is not able to provide answers to questions about individual circumstances. We can help with the specifics, so please do contact us where you need advice.