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newsletter

HMRC calling?

High-level fraud, where criminals impersonate HMRC in order to steal from bank accounts, or get access to sensitive personal financial information, has become increasingly common.

Some scams involve bogus callers using apparently genuine HMRC helpline numbers with the 0300 prefix. This is called number spoofing. HMRC is making headway here, and it's hoped main HMRC inbound phone numbers are now protected.

To stay safe, remember the golden rules:

- never disclose personal information, such as PINs, passwords, National Insurance number or bank details. HMRC will never phone unexpectedly to ask for such details
- if in doubt, ask the caller's name and why they are calling: then call HMRC yourself, to check it's all above board
- don't reply to texts, download attachments or click on links unless you're sure they're genuine. HMRC does sometimes use SMS texts, but be on your guard. HMRC will not text about a tax refund, or ask for personal or financial details.

You can report suspicious phone contact here **phishing@hmrc.gsi.gov.uk**. HMRC regularly updates a list of things it may phone, text or email about **bit.ly/2HwFfIH**.

OCTOBER 2019

Top-earner pensions tax: trick or treat?

NHS pensions made news this year, consultants and GPs blaming large tax bills, linked to pension statements, for making some work uneconomic. But why should high-earning power, coupled with pension provision, spell trouble - even for top-earners outside the NHS?

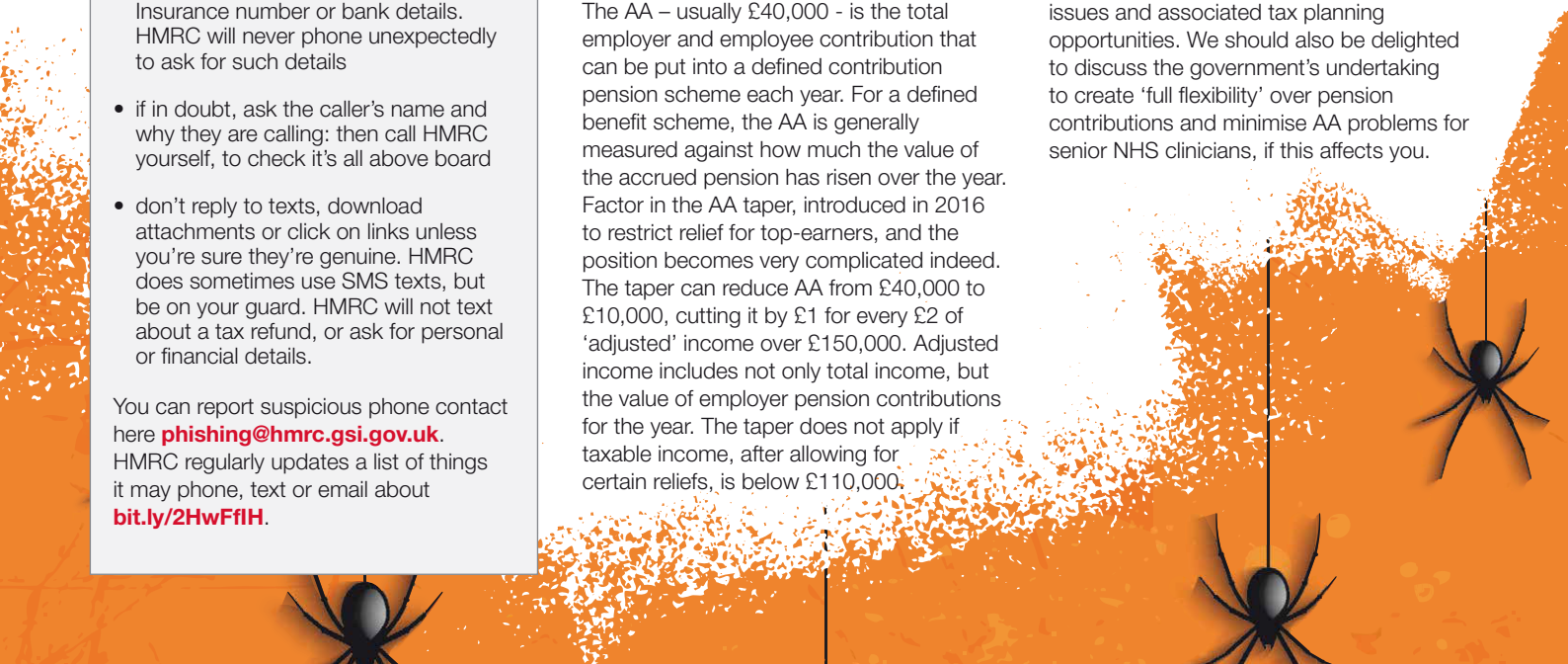
Two key allowances are at play: the annual allowance (AA) and tapered AA. The type of pension scheme also plays a part; the NHS uses a defined benefit arrangement.

The AA – usually £40,000 - is the total employer and employee contribution that can be put into a defined contribution pension scheme each year. For a defined benefit scheme, the AA is generally measured against how much the value of the accrued pension has risen over the year. Factor in the AA taper, introduced in 2016 to restrict relief for top-earners, and the position becomes very complicated indeed. The taper can reduce AA from £40,000 to £10,000, cutting it by £1 for every £2 of 'adjusted' income over £150,000. Adjusted income includes not only total income, but the value of employer pension contributions for the year. The taper does not apply if taxable income, after allowing for certain reliefs, is below £110,000.

For those in defined benefit schemes, benefit build up can be significant - and not immediately visible to the individual involved. Large pay increases and long pensionable service compound the issue. For those in defined contribution schemes, significant employer contributions may result in a tapered AA if total income, such as pay and dividends, exceeds £110,000.

How we can help

We are always happy to advise on pension issues and associated tax planning opportunities. We should also be delighted to discuss the government's undertaking to create 'full flexibility' over pension contributions and minimise AA problems for senior NHS clinicians, if this affects you.



Off-payroll? Be prepared…

From 6 April 2020, a major shake-up to the off-payroll (IR35) rules is expected. Draft legislation is already published, though changes to the Check Employment Status Tool (CEST) and adaptations to HMRC guidance are still expected.

The new regime will affect you if you work via your own personal service company (PSC), and off-payroll workers should be aware that their clients are likely to investigate the profile of the contractor workforce more closely than before, as part of a general review of compliance, strategy and spend. But the changes could be felt more widely: anyone supplying personal services via an 'intermediary' could be within scope of the IR35 rules. An intermediary can be an individual, a partnership, an unincorporated association or a company.

Your contracts?

The change could impact you if you supply personal services to large and medium organisations in the private and voluntary sector. If the client is a 'small' business, the rules are unchanged. A 'small' company meets two of these criteria: its annual turnover is not more than £10.2 million: it has not more than £5.1 million on its balance sheet: it has 50 or fewer employees. If you contract with an unincorporated organisation, the new rules only apply if its annual turnover is more than £10.2 million.

Not your decision

Under the new rules, responsibility for making the decision as to whether IR35 rules apply passes to the business you contract for. The key question is whether, if your services were provided directly to that business, you would then be regarded as an employee. You may be used to this if you undertake contracts in the public sector, where similar provisions already exist. If you or your client use CEST, HMRC's online employment status check tool **bit.ly/2mSIlWu**, HMRC undertakes to stand by the results if information provided is accurate, and given in good faith. At present, however, HMRC considers CEST is unable to determine status in 15% of cases, and many commentators consider the failure rate much higher. HMRC is working to improve CEST with the forthcoming changes in mind.

In future, your client will have to give you the reasons for its status decision in a 'Status Determination Statement' (SDS). If you disagree, you can challenge the status determination with the business, and it should respond within 45 days, either withdrawing or upholding the decision, again supplying reasons.



The future

Significant tax implications arise. If IR35 applies, the business or agency paying you will calculate a 'deemed payment' based on the fees charged by your PSC. Broadly, this means you are taxed like an employee, receiving payment after deduction of PAYE and employee National Insurance Contributions (NICs). If you operate via a PSC, the PSC will receive the net amount, which you can then receive without further payment of PAYE or NICs. The potential tax advantages of working under such a contract - especially for PSCs – are much reduced.

This is a good time to take stock of your options. Are clients likely to query your employment status? Should you consider restructured work arrangements, or renegotiating fees? If working via a PSC, is it still the best business model? With clients checking that contracts comply with the new rules, employment status for contractors is likely to come under increasing scrutiny across the board. We should be delighted to talk through your options and the tax consequences. And for those working only for small private sector clients, where contracts do not fall under IR35, we are always happy to review optimal profit extraction strategy. Please do get in touch.

Making Tax Digital for VAT: starter's orders

Making Tax Digital for VAT (MTDfV) is up and running. Most VAT-registered businesses with taxable annual turnover above £85,000 will now be signed up to HMRC's new system to keep digital records and file VAT returns using MTDfV-compliant software. But as the system beds in, there are some key points to remember.

Deferred businesses

MTDfV is still being rolled out for some businesses. The start date was deferred for trusts, not for profit organisations not set up as companies, VAT divisions and VAT groups, and some other businesses. HMRC should have notified these businesses of their deferral directly, but MTDfV rules apply for the first VAT return period starting on or after 1 October 2019.

On the horizon

Businesses submitting returns should be aware that, as an online service, MTDfV is subject to occasional downtime. Downtime should usually be flagged up in advance and service availability can be checked here **bit.ly/2UErRXA**. If filing your own VAT return, it would be prudent not to leave this until the last minute.

HMRC made concessions regarding certain specific aspects of digital record keeping for the initial stage of the new regime: the 'soft landing' period. This meant that the requirement for digital links joining all parts of a business' functional compatible software was eased for the first year of mandation. The use of cut and paste or copy and paste was also permitted instead of a digital link, but only within this period. Requirements are explained at Point 4 in VAT Notice 700/22 **bit.ly/2rLdQKR**

Businesses taking advantage of the soft landing period need to be confident that they can transition to full digital competence in 2020. We should be happy to advise further.



Capital gains on property

Disposing of property? There are important tax changes on the horizon. The date to keep in view is 6 April 2020. New capital gains tax (CGT) rules apply if you dispose of a property on or after this date.

Broadly speaking, private residence relief (PRR) means there is usually no CGT to pay on the sale or disposal of your main or only residence. To 'better focus' PRR on owner-occupiers, Budget 2018 announced changes to the final period exemption and lettings relief. You may want to consider your affairs now in the light of these changes.

Final period exemption

With the final period exemption, you are not usually liable to CGT for the last 18 months in which you own a property, even if you don't actually live there. This was intended to provide protection for someone moving to a new main residence when there was difficulty selling the original home. But from April, the final period is cut to nine months. The change could create CGT consequences for significantly higher numbers of property transactions. If buying a new property before selling the old, it will be important to try to sell within nine months to avoid a possible CGT bill.

There is an exception for those in, or moving into, care home accommodation, or those with a disability. Here there is a 36-month period, and this does not change.

Lettings relief

At present, lettings relief gives up to £40,000 relief (£80,000 for a couple who jointly own the property) for someone letting part, or all, of a property which is their main residence, or was the former main residence at some point in their period of ownership. But under the anticipated new regime, lettings relief will only be available where you jointly share occupation with a tenant, which is likely considerably to reduce its scope.

We have only been able to provide an overview of the new rules here, and complexities can arise, for example with periods of absence from a main residence, or with ownership of more than one property. Please do talk with us for advice on your individual circumstances.

Paying the tax

From 6 April 2020, there is also major change to the deadlines for paying CGT when disposing of a residential property. This may apply when a second home, an inherited property, or a rental property, is sold or otherwise disposed of. Individuals, trustees, and personal representatives should all be aware of the forthcoming change.

In future, there is a 30-day window after the completion of the property disposal in which to file a return, calculate and make payment on account of the CGT bill. This changes the current procedure, with payment made as part of the self assessment cycle, and CGT payable by 31 January of the tax year following the year of disposal. If no payment is due, reporting will not be required. This would be the case if, for example, PRR is available in full.

The change parallels current obligations of non-UK residents. Since 6 April 2019, non-resident CGT has applied to direct and indirect disposals of UK land or property, whether commercial or residential, with non-resident companies being chargeable to Corporation Tax on gains. There is a 30-day reporting requirement, even if there is no tax to pay. Where tax is due, it must be paid within 30 days of completion. The charge to CGT on ATED-related gains has been removed.

Tax and property are complicated, and it is always prudent to discuss the potential tax implications of any property transaction. For peace of mind, please do not hesitate to contact us.

VAT domestic reverse charge for construction delayed

There has been a last-minute change to the start date for the VAT domestic reverse charge (DRC) for building and construction services. This was scheduled to begin on 1 October 2019. It is now delayed until 1 October 2020.

The DRC changes the way that VAT is accounted for. The recipient of specified construction services accounts for the VAT due on the supplies on their VAT return, rather than the supplier.



This major change entails adaptation to invoicing and accounting systems, and a negative impact on cashflow for some businesses. The government cites concern that some businesses are not yet ready to implement the change – and possible coincidence with Brexit – as the reasons for the delay.

Where businesses have changed their invoicing to be DRC-compliant and cannot reverse this in time, HMRC will take the change in implementation date into account should genuine errors occur. Businesses which have now adopted a monthly VAT return cycle, can change back during the interim if they prefer. If you would like assistance, please do contact us.

Despite the delay, the government is still committed to the DRC, and businesses which have not yet assessed how they need to comply should still do so.



Brexit for employers

EU nationals currently contribute over 2 million people to the UK workforce.

Government policy regarding immigration and free movement is a rapidly changing area. To keep up to date, a regular check of the Brexit preparation pages on gov.uk **www.gov.uk/brexit** or signing up for email alerts **bit.ly/2ky8lzb** is recommended. The House of Commons Library also publishes useful and clearly written Brexit news items **bit.ly/2lAARk4**.

Workers: checking the right to stay

Citizens of the EU, European Economic Area (EEA) and Switzerland, or those with such a family member, living in the UK before it leaves the EU, should check what they need to do in order to stay after Brexit.

For most such workers, and their family members, this will involve applying to the EU Settlement Scheme (EUSS), which gives the ability to continue living, working and studying in the UK. However, there is no need to apply where someone has indefinite leave to enter or remain in the UK. Neither do those with British or Irish citizenship - including 'dual citizenship' - need to apply.

EU Settlement Scheme

There are different application deadlines for the EU Settlement Scheme, depending on whether there is a no-deal Brexit or a negotiated settlement. With a no-deal Brexit, the deadline for EUSS applications is 31 December 2020. Otherwise it is 30 June 2021. It is free to apply, and it would be wise to do so as soon as possible. Application can be made online **bit.ly/2K1PFUk**.

Successful applicants will receive either settled or pre-settled status. This is based on how long someone has lived in the UK: it is not a matter of choice. Broadly, settled status is given where someone has lived in the UK for five years continuously, and pre-settled status where someone has lived in the UK for less than this. For either status, applicants should have started living in the UK by 31 December 2020 - or the date the UK leaves the EU without a deal. Either status gives access to public services like the NHS, pensions, and means someone can continue working in the UK, though rights are slightly different for each.

Employers are not obliged to assist, but HMRC's employer toolkit is designed to facilitate employers providing advice and support to relevant staff **bit.ly/2mHoJuI**.

Employers: other considerations

The government is currently reviewing arrangements for EU, EEA and Swiss citizens arriving in the UK after Brexit as part of its plans for a future points-based immigration system. But until 31 December 2020, such citizens can continue to enter, live and work in the UK as they do now. For those wanting to stay beyond this, a temporary three-year UK immigration status, European Temporary Leave to Remain, is being planned. Thereafter, application under the points-based system, expected in 2021, would be required.

Employers should be aware of key deadlines and immigration rules applying at any point, as workers inadvertently breaching immigration procedures could become illegal workers.

Deal or no-deal Brexit, employers should also carry on with normal right to work checks. Further Home Office guidance is expected, clarifying when right to work checks will change. It is not anticipated, however, that there will be any change until 1 January 2021. Employers can check the current position here **bit.ly/2kmc5nD**. These are challenging times for employers, and we should be delighted to do all we can to help.

Hospitality: tips and tax

From time to time, HMRC turns the compliance headlight on a particular business sector. This year restaurants and takeaways come under scrutiny. Staff tips are one high risk area.

There are various ways that tips can be distributed to staff. Discretionary service charges and tips paid by credit card should be dealt with under PAYE.

It is however, the treatment for National Insurance Contribution (NICs) purposes which can cause dilemmas for employers. There is an exemption which means that NICs are not always due on tips, which can be advantageous for both business and employee. For the exemption to apply, the tip must satisfy either of these two conditions:

- it is not paid by the employer to staff, directly or indirectly, and does not represent monies previously paid to the employer, say by customers, or
- it is not allocated by employer to staff, either directly or indirectly.



The first condition can only apply where employees keep cash tips received by them directly or from an informal pooling arrangement. For the second condition, allocation is essentially about deciding who receives what. The exemption can thus apply if a specified employee, (often a troncmaster), rather than the employer, decides how the tips are distributed to staff. NICs will be due, however, where tips are allocated to employees directly or indirectly by the business. The flowchart at the end of HMRC's guidance may prove useful **bit.ly/2uP99IQ**, but please do contact us for further advice.

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