money *matters*

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ACCOUNTANTS & TAXATION PRACTITIONERS

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In this issue: A reduced sense of relief? • The value of worthless shares • New rules for new parents • The immigration cap still fits • Proving your house is your home

This newsletter is for general information only and is not intended to be advice to any specific person. You are recommended to seek competent professional advice before taking or refraining from taking any action on the basis of the contents of this publication. The newsletter represents our understanding of law and HM Revenue & Customs practice as at January 2011.

A reduced sense of relief?

You could be affected by the Government's latest plans to reduce the amount of tax relief available to individuals on contributions to pension schemes.

The plans were announced in mid-October and are designed to replace the special annual allowance charge rules from 6 April 2011. The necessary legislation, already published in draft, will form part of this year's Finance Bill.

From 6 April 2011, the annual allowance will be reduced from £255,000 per tax year to £50,000. It will remain at this level until at least 2015/16, after which the Government will 'consider options for indexing the level'. Alongside the reduction in the annual allowance, several other changes are proposed:

- The rate of the annual allowance charge will move from the current flat 40% to a variable rate, pitched at a level equal to the average rate of tax relief given on the excess contribution. The rate, therefore, will normally be between 40% and 50%.
- A new basis will apply for valuing the increase in benefits if you are an active member of a defined benefits scheme. This will incorporate an adjustment for inflation (as measured by the consumer prices index (CPI)), but will potentially result in a higher value being placed on significant increases in pension rights.
- A new three-year 'carry forward' of unused annual allowances will be introduced from 2011/12. Initially you will be able to carry forward unused annual allowances from 2008/09, 2009/10 and 2010/11, provided you were a member of any registered pension scheme during the relevant tax year. This concession is not as attractive as it sounds, because the exercise will assume that a £50,000 annual allowance applied for those years (rather than the actual figure) and use a notional carry forward calculation if total contributions exceeded £50,000 during a tax year.
- From 2012/13, the lifetime allowance will be cut from £1.8 million to £1.5 million. The Government has made no comment about indexing this figure, although the draft legislation does allow for increases to be made by Treasury order.

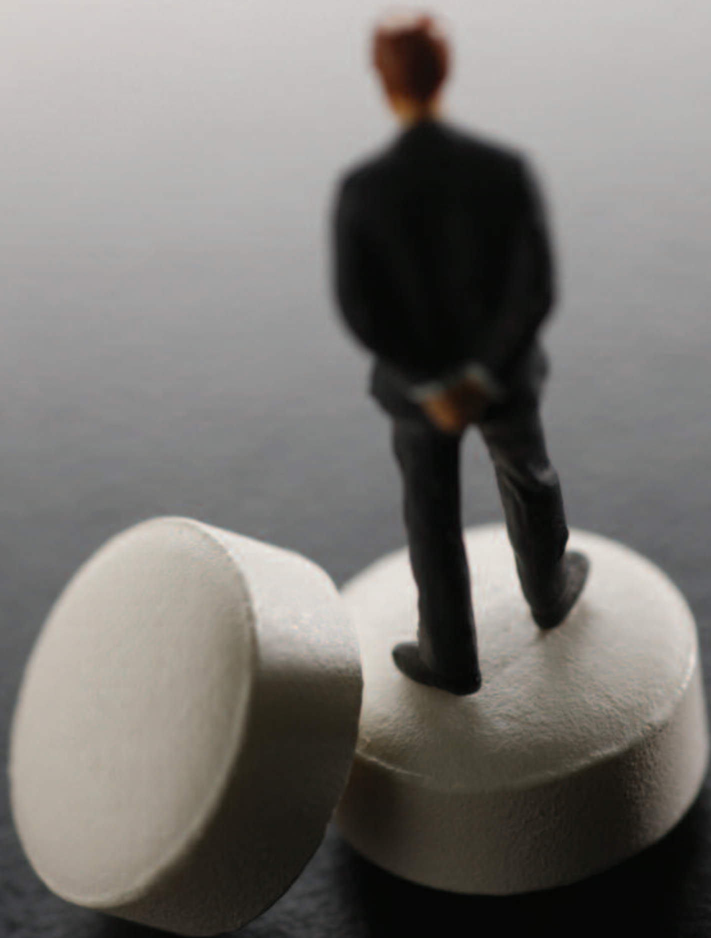
For contributions made after 13 October 2010, there are complex rules based on the end date of each pension arrangement's pension input period (PIP). While it is possible to amend PIPs, the best course of action is to take advice if your current or planned pension contributions in this or next tax year are nearing or above the new £50,000 limit, and/or you are already within the scope of the special annual allowance (very broadly gross income of £130,000 or more).

Carry forward

Brian has a self-invested personal pension (SIPP), to which he has made irregular lump sum contributions. His carry forward calculation is shown below:

Tax year	Contribution	Annual allowance	Carry forward calculation	Carried forward to next tax year
2008/09	**£34,000**	**£50,000**	**£50,000 – £34,000**	**£16,000**
2009/10	**£70,000**	**£50,000**	**£50,000 + £16,000 – £70,000**	**Nil**
2010/11	**£35,000**	**£50,000**	**£50,000 + Nil – £35,000 =**	**£15,000**

Brian's carry forward amount is £15,000 (the unused notional annual allowance for 2010/11). The £16,000 carried forward from 2008/09 is deemed to have been used in 2009/10. Although the calculation for that year produces a negative figure, this is treated as nil for carry forward purposes.



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The value of worthless shares

Do not despair if you find yourself in possession of worthless shares – there is tax relief available to you.

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Negligible value claim

You can submit a negligible value claim if the company has not been wound up. This creates a deemed capital loss in your hands, equal to the amount you paid for the shares.

You can set this loss against gains arising in either of the two tax years ending before the year of the claim, if the shares were worthless at that date. But if you currently pay capital gains tax (CGT) at 28%, the loss will be worth more in this year than in an earlier year, when CGT was just 18%. Once the company is dissolved you are deemed to have disposed of your shares so the negligible value claim is unnecessary.

Income tax loss claim

Once you have established a capital loss as above, you could claim to have that loss set against your income for the current or previous tax year. However, this share loss relief claim has the following pre-conditions:

- The shares must be issued by an unquoted trading company or under the Enterprise Investment Scheme (EIS); and
- You must have subscribed for the shares, or acquired them from your subscriber spouse or civil partner.

HM Revenue & Customs (HMRC) previously refused claims where unquoted shares were subscribed for in joint names or by a nominee, but not if the shares were EIS shares. From 11 October 2010, HMRC decided to accept claims for share loss relief relating to unquoted shares from joint or nominee subscribers.

Any such claims that are under enquiry will be reconsidered in light of this new practice. The deadline for submitting claims relating to a share loss arising in 2009/10 is 31 January 2012.

Before you launch a new claim for share loss relief talk it through with us, as there are a number of other factors that could scupper such a loss claim.

New rules for new parents

The new additional statutory paternity pay (ASPP) and leave is available for parents of babies due or matched for adoption on or after 3 April 2011. The aim is to allow both parents to share the 39 weeks of paid maternity/adoption leave, and the 13 weeks of unpaid leave which can be claimed by the new mother or the primary adopter.

The old statutory paternity pay is renamed 'ordinary statutory paternity pay' (OSPP). This can be paid for one or two weeks within 56 days of the birth or adoption placement.

The new ASPP can only be paid between the time the child is 20 to 52 weeks old, and the mother has returned to work. The additional paternity leave can last for up to 26 weeks, but the paid part of that leave (ASPP) may only extend up to 19 weeks (i.e. 39 weeks minus 20 weeks).

The ASPP is the surplus statutory maternity pay (SMP) the mother has not taken, or the equivalent statutory adoption pay (SAP). But the mother must have taken at least two weeks off work after the birth, or have at least two weeks of SMP remaining for ASPP to be paid. Special rules apply if the mother or the child dies. For both OSPP and ASPP the employee must:

- Give the employer at least eight weeks' notice of the date the leave is to begin;
- Be employed for at least 26 continuous weeks up to the 15th week before the child is due or matched for adoption; and
- Have average weekly earnings of at least the national insurance lower earnings limit (£102 per week for 2011/12).

HM Revenue & Customs has produced standard forms to claim the ASPP in the case of births, UK adoptions and overseas adoptions. These claim forms include declarations for the mother or primary adopter to sign.

The ASPP is paid at the lower of 90% of the employee's average weekly earnings and a flat rate (£128.73 a week in 2011/12). It is subject to national insurance, just like normal pay. Employers can reclaim 92% of the ASPP, or 104.5% of the ASPP if the employer's annual class 1 NIC liability (employers and employees) is no more than £45,000.

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The immigration cap still fits

Despite the Government's pre-Christmas setback in the High Court, where it was held that the temporary cap on non-EU migrants was unlawful on procedural grounds, the permanent cap to be imposed by an Act of Parliament in April is back on the cards.

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Since the Government lost on a technicality – the temporary cap was introduced without parliamentary scrutiny – the measure was reintroduced within a week of the ruling, and is now back up and running.

Despite the concession on so-called intra-company transfers (i.e. secondments to the UK within a multi-national group of companies), businesses are still concerned that they will be unable to hire the foreign workers they need. This concession applies to both the temporary and permanent caps.

Since workers from the EU are exempt, as are genuine asylum seekers, the cap falls on workers from outside the EU, many of whom – research scientists and medical professionals, to name but two categories – are badly needed by the health service and cutting-edge businesses.

Many leading businesses, organisations (like the Confederation of British Industry) and immigration lawyers warned that the cap could leave British businesses at a significant competitive disadvantage. To allay these concerns, the Home Secretary announced in November that intra-company transfers would be largely exempt, provided the job to which they were coming paid more than £40,000 a year – as opposed to the current £24,000 annual minimum, which will continue to apply for transfers of less than 12 months' duration. Precisely what the new rules will be like is still far from certain.

Faced with the new lower levels of permitted non-EU workers, employers may have to fill the gap by recruiting on a short-term contract people who may not be the most appropriate appointee. However, there is always a silver lining.

For umbrella contractors (freelancers working through a so-called umbrella company, which employs them and concludes contracts on their behalf with employers, while taking care of all their tax and paperwork) and other highly skilled UK freelancers, the cap may present new work opportunities.

Proving your house is your home

You will almost certainly be aware of the exemption from capital gains tax (CGT) on the sale of your main residence, but did you know that the property concerned must actually be used as your home at least some of the time in order to qualify for relief? You do not have to live there permanently, as was illustrated by the MPs 'second home' controversy, but some occupation is required.

When you claim the CGT exemption, HM Revenue & Customs (HMRC) may ask for documentary evidence of your occupation. This could be a TV licence registered at the address and the local council tax bills. If the period of occupation was brief, the utility bills for the property might be called for. Where the energy used at the address was very low, this could indicate that the property was unoccupied during the period concerned.

The tax exemption can still be claimed when you occupy two or more properties concurrently, but in that case within two years of acquiring the second or subsequent property you have to elect for one of the properties to be treated as your tax exempt home. You can do this by writing to your Tax Office.

The election can be changed at any time once it is made, but in order to elect for a property to be tax exempt you must actually occupy the property for some of the time.

If you do not make an election, the tax inspector will try to determine which property you officially recorded as your main home. HMRC can ask banks and credit card companies to confirm which address was used for loan applications, and will want to know to which address your bank statements were sent.

Although there is a statutory period for which records must be retained, in the case of a property where exemption has been claimed it is better to keep such documents indefinitely

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(since an enquiry could go back 20 years if fraud is suspected). This should be easy enough to do if paperless (electronic) records are kept.

Do not assume that your bank or utility company will keep your online statements, bills and payment records indefinitely. Most such online records disappear after a few months.

For example, BT telephone bills are only available online for about six months after the issue date, so you should ensure that you keep your own secure copies of relevant records.

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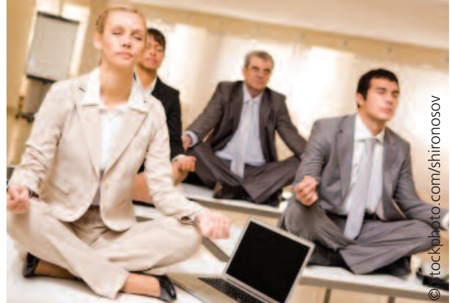
Keeping the peace at work

Employers face difficult decisions when disciplining and dismissing staff, but clear guidelines and policies can minimise the risk of problems arising in the first place.

As an employer, proper grievance procedures can also help you to retain key staff members by providing them with the opportunity to resolve any issues they face before becoming so disgruntled that they want to leave. You should also be ready for recent law changes that could catch you out; for example, the abolition of the default retirement age on 1 October 2011, and the right to request training that was introduced for employees in organisations with 250 or more employees on 6 April 2010 (which will apply to all businesses from 6 April 2011).

At a minimum, employers should be aware of the Advisory, Conciliation and Arbitration Service (ACAS) Code of Practice on disciplinary and grievance procedures (www.acas.org.uk). Although the law does not oblige you to use the Code, it is strongly recommended that you do because a failure to follow it will be frowned on by an Employment Tribunal.

You should clearly define and communicate to staff what constitutes misconduct. As a general rule, you cannot dictate to employees what they do on their own time. However, your business may require strict rules on drug and alcohol use, or not permit inappropriate secondary employment. If you have not done so already, you may also consider issuing guidelines covering what may and may not be posted online about the company and its personnel.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If misconduct results in a disciplinary procedure, a three-stage process should be followed: a letter, a meeting, and an appeal procedure. Employers should first write to the employee, setting out the nature of the issue and reminding the employee of their right to bring a representative to the meeting. If you do decide to take action after the meeting, this should take the form of a written warning and a timescale for improvement. Failure to improve would then lead to a final warning.

Whatever you intend to achieve with your discipline and grievance policy, you should ensure that your aims, and the way they are communicated, are both clear and reasonable.

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