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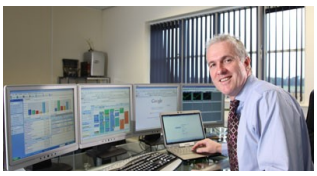
LG News



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Using tax to keep employees healthy

The adverse effects of being inactive can of course have a major impact on health and wellbeing. According to a recent government report, workers can spend up to three-quarters of their day sitting down, which contributes to a range of preventable health conditions, including the two leading causes of workplace absence: back injuries and stress, depression or anxiety. In 2016/17, 1.3 million workers suffered from work-related ill-health, which equated to 25.7 million working days lost. This has been estimated to cost £522 per employee, and up to £32 billion per year for UK business. With this in mind, HMRC have recently been reminding employers that there are certain tax breaks on offer for those who promote health and fitness for their workers.

Businesses often offer employees workplace gym or leisure facilities, either run internally or by a third-party provider. Use of such facilities could be offered to employees for free or on a 'paid-for' basis. Providing certain conditions are met, in-house gym facilities may be offered to employees at a convenient location to fit in around work and there will be no tax or NIC liability arising on the provision of this benefit.

Broadly, to qualify as a tax-free benefit, the following conditions will need to be satisfied:

- available for use by all employees;
- not available to the general public;
- used mainly by employees, former employees or members of employees' families and households (employees of any companies grouped together with to provide the facilities also count);
- not located in a private home, holiday or other overnight accommodation (including any associated sporting facilities) and
- don't involve the use of a mechanically propelled vehicle (including road vehicles, boats and aircraft).

Alternatively, employers are often able to negotiate with local gyms and leisure centres to secure a discounted membership rate to pass on to employees - this can be up to 20% - 30% cheaper than the normal price. Depending on how the employer pays for the cost of the gym membership, the payment is either taxed as earnings or a taxable benefit-in-kind. So, for example, if an employer gives the employee additional salary to pay for their gym membership, the money is taxed as earnings through PAYE. If the employer pays the gym membership direct, a taxable benefit-in-kind arises on the employee and should be reported to HMRC on form P11D, or through the payroll.

Employers may wish to consider taking advantage of an existing tax exemption covering one medical check or health assessment per employee per tax year. The exemption applies only to employees (and not, for example, to family members unless they are also employees in their own right). Employers do not have to offer the medical checks to all employees to gain the exemption. An employer may provide, for a given employee in a given tax year, both one health screening assessment and one medical check-up. The exemption applies whether the employer pays for the services direct or whether the payment is by way of a non-cash voucher or credit token.

As fitness and health issues become increasingly popular, anything an

Inside this issue:

The Nantwich Show is Wednesday 25th July this year and we will be there!

Put the date in your diary and join us

Wealth Management

employer can do to help is likely to be most welcomed by employees.

Investors' relief

At the time of the 2016 Spring Budget, the government announced that the existing capital gains tax (CGT) entrepreneurs' relief would be extended to certain long-term investors in unlisted trading companies who had subscribed for their shares. However, when the Finance Bill 2016 was published a few days later, it became apparent that in fact a new relief - investors' relief - was being created. This new relief is designed to complement entrepreneurs' relief by extending the 10% rate of CGT to gains accruing on disposals of qualifying shares by investors in a company who have no connection with the company, subject to a lifetime limit of £10 million.

HMRC have recently been reminding employers that there are certain tax breaks on offer for those who promote health and fitness for their workers.

The extension of the 10% CGT rate to external investors is intended to provide a financial incentive for individuals to invest in unlisted trading companies over the long term, to enable such companies to be able to access the capital that they need for expansion. The relief also applies to certain trustee disposals.

An individual may be able to claim investors' relief and entrepreneurs' relief on the disposal of different shares held in the same company or group. However, the investors' relief shares must be acquired before the investor becomes an employee or officer of the company.

Investors' relief is a completely separate stand-alone CGT relief - it does not have any associated income tax reliefs. It allows the investor to pay the 10% rate of CGT on gains he makes when he disposes of his qualifying shares, if those shares have been held for at least three years. Since this three-year period can only start from 6 April 2016, the first qualifying disposals will not occur until 6 April 2019.

Conditions

There are strict conditions on how and when the investor can become involved as an employee or director of the company.

The investor is permitted to be a shareholder of the company before he acquires the shares that qualify for investors' relief. So on disposal of those shares, the investor may also hold other non-qualifying shares in the same company. This requires a complex set of rules to determine which shares are qualifying shares for investors' relief, and how much of the gain that arises from a particular disposal qualifies for the relief.

Bureau Outsourcing

The rules are designed to prevent the investor being repaid all or part of his investment before the three-year investment period has expired. To achieve this investors' relief borrows conditions from the Enterprise Investment Scheme (EIS) concerning receipt of value, which stipulate that amounts received in excess of £1,000 will mean the shares do not qualify.

Certain conditions apply to the company, the investor, and the shares and all these must be reviewed if a claim is to be successful.

Investors' relief must be claimed; it is not automatic. The time limit is the first anniversary of 31 January following the end of the tax year in which the disposal takes place. Trust claims must be made jointly by the trustees and the beneficiary.

IT contractor wins IR35 case

The confusion over HMRC's application of the IR35 legislation continues after an IT contractor successfully appealed to the First Tier Tribunal (FTT) against a tax charge of some £26,000 in connection with a project he was working on with the Department for Work and Pensions (DWP).

In Jensal Software Ltd v HMRC Commrs [2017] TC 00667, the IT contractor, Ian Wells, successfully appealed a tax bill relating to a succession of contracts during the 2012/13 tax year. Wells provided his services through his limited company, Jensal Software Ltd, to the Department of Work and Pensions (DWP), via recruitment agency Capita.

Wills and Trusts

Wells worked on a project which formed part of the DWP's universal credit roll-

out, which involved attending a DWP office and travelling to different sites. He had the use of a secure DWP laptop and the tribunal heard evidence of meetings between Wells and DWP managers on the project.

HMRC contended that there was a direct contract between Wells and the DWP during the period of engagement, and that this represented a contract of services (as opposed to a contract for services).

HMRC relied heavily upon evidence provided by DWP officials, who noted that Wells was required to give feedback on the progress being made throughout the project. They also argued that Wells was expected to come to work each day.

However, Wells' submissions demonstrated that he had full autonomy over the work completed while noting that he would regularly work off-site under his own volition. This was confirmed by a project colleague, who noted that Wells managed his own time and location around the demands of the role.

Three conditions determining employment status were examined in depth by the Tribunal. The first is commonly known as 'mutuality of obligation', the second relates to the degree of control and the third is a negative condition, i.e. where it is shown that there is: 'requisite mutuality of work-placed obligation and the requisite degree of control, then it will prima facie be a contract of employment unless, viewed as a whole, there is something about its terms that places it in a different category.'

Mutuality of obligation

Judge Jennifer Dean stated: 'The essence of the relationship was that there was no continuing obligation on the part of the DWP to provide work; if it chose to abandon the project there was no contractual basis upon which Mr Wells could demand further work.

'though there is mutuality of obligation it does not, in my view, extend beyond the irreducible minimum nor does it demonstrate that the relationship was one of a contract of employment. Moreover, the level of control falls far below the sufficient degree required to demonstrate a contract of service.'

The judge also pointed out that each contract lasted a short duration. The break between the penultimate and final contracts of approximately two weeks indicates that there was no contractual obligation for the DWP to provide continuous work.

The judge said: 'It was also clear from the evidence of all of the witnesses that Mr Well's engagement did not extend beyond the specific project in respect of which his skills were required.

'The position as borne out by the facts is that there was a period during which one contract ended and the DWP was under no obligation to continue to offer a further contract. No further work was offered for a short period. Moreover, Mr Wells was under no obligation to perform the work and in relation to the final contract Mr Wells terminated the final contract when a better offer presented itself.'

Control

On this subject, the judge commented: 'The level of control exercised did not go beyond that which was usual for an independent contractor. In balancing all of the factors I conclude that Mr Wells was not subject to the degree of control which would be necessary to constitute a contract of employment.'

Conclusion

The judge concluded that the appellant's circumstances were such that they were not caught by the IR35 legislation, and in turn, this outcome now throws further uncertainty into the IR35 framework. On 18 May 2018, the government launched a consultation on proposals to extend the IR35 rules to the private sector (see Off-payroll working in the private sector). This consultation will run until 10 August 2018. It now seems very likely that changes to the regime will be announcement in due course.

Accounts and Audit

confusion over HMRC's application of the IR35 legislation continues after an IT contractor successfully appealed

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Tax Solutions

Corporate offences guidance updated

HMRC's guidance on corporate offences for failing to prevent criminal facilitation of tax evasion has recently been updated to include information about self-reporting a company or partnership that has facilitated such an offence.

All corporate entities need to be aware of the two new offences that were introduced by the Criminal Finances Act 2017, which apply from 30 September 2017 onwards. The first applies to the facilitation of UK tax evasion, and the second applies to the facilitation of foreign tax evasion.

Criminal facilitation of tax evasion involves a person deliberately and dishonestly helping another person to evade tax. This doesn't include the accidental, ignorant or negligent facilitation of tax evasion. This is referred to in the Criminal Finances Act 2017 as a 'Tax Evasion Facilitation Offence', (as defined in s. 45(5)).

A business may commit one or more of the offences when a person providing a service for or on behalf of the business criminally facilitates tax evasion and the business did not have procedures in place to prevent it.

It's possible to report on behalf of a company or partnership if it has failed to prevent the facilitation of tax evasion. This is known as self-reporting.

Further guidance on the new offences, and how to protect against them, can be found in HMRC's guidance Tackling tax evasion: Government guidance for the corporate offences of failure to prevent the criminal facilitation of tax evasion.

Business should be aware that:

- from 1 April 2018, the Welsh Revenue Authority may investigate the domestic tax offence in Wales where the tax evaded has been devolved; and
- there are no provisions for deferred prosecution agreements in Scotland.

Cloud Accounting

For further information including a free demo please call Alison Grocott on 01270 624445 or email alisongrocott @lyongriffiths.co.uk

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Bureau Outsourcing

June questions and answers

Q. I use my own car for business. My employer reimburses me 20p per mile. In 2017/18 I travelled 15,000 on business. I am a basic rate taxpayer. Can I claim any tax relief for the use of my car?

A. There's a statutory tax exemption for Mileage Allowance Payments (MAPs), which if paid below a certain amount will not produce a liability to employees. Payments in excess of the exempt amount are taxable. The exemption does not apply to 'round sum' expense allowances. From 6 April 2011, the standard rate for cars and vans is 45p per mile, reducing to 25p per mile for mileage in excess of 10,000 miles per tax year.

Where the employee receives no mileage allowance payments, or the payments are less than the statutory limits, he may claim a deduction from his emoluments equal to the statutory mileage allowance, or, where appropriate, equal to the excess over the payments received.

As 20p per mile is less than the HMRC approved mileage rate of 45p for the first 10,000 miles and 25p per mile thereafter, you may claim tax relief as follows:

Allowable mileage payments:

10,000 miles at 45p per mile = £4,500

5,000 miles at 25p per mile = £1,250

Total allowable £5,750

Less: mileage expenses received

15,000 x 20p per mile (£3,000)

Tax relief due £2,750

Note that the amount of tax relief due is the amount on which you may claim tax relief at your marginal tax rate - it is not the amount of tax that may be reclaimed from HMRC.

Q. I am an employee and am liable to income tax at the higher rate. I also receive income from a rental property that I own. My wife does not work. If I instruct the tenants to pay the rent directly to my wife, will that absolve me from declaring it on my own self-assessment return and avoid paying higher rate tax on it?

A. Unfortunately this will not be possible. You cannot assign income to someone else - even to a spouse - to avoid paying tax on it. However, you could put the property into joint names, even if you have a declaration of trust behind the transfer restricting her beneficial ownership to a small amount (say 5%), she will be taxed on 50% of the rental income. If you want your wife to be taxed on a greater part of the rental income, you will have to transfer a greater part of the property ownership to her and make an election for tax using form 17.

Q. I am a VAT-registered sole trader. What is the VAT position if I buy a new car for £10,000 and part-exchange my used van for £4,000?

A. VAT is calculated as follows:

New car £10,000, plus VAT @ 20% = £12,000
Less:
Trade allowance on used van £4,000 plus VAT @ 20% (i.e. £800) = £4,800
Net payment is therefore £7,200

The net payment of £7,200 is the same as would have been arrived at by charging VAT on the value of the car less the trade-in allowance. However, the consequences of doing it the correct way are different. This is because the input tax on the new car of £2,000 will probably not be recoverable. In addition, the business must account for output tax of £800 on the van. The motor dealer will account for £1,200 (i.e. output tax less the input tax charged to him on the van). He will recover this input tax because he is buying a used commercial vehicle on which he will charge output tax when he subsequently sells it. The net effect is that VAT is charged on the gross value of the deal, not the net cash paid.

June key tax dates

19/22 - PAYE/NIC, student loan and CIS deductions due for month to 5/6/2018.

The Nantwich Show

The Nantwich Show is on Wednesday 25th July this year at The Showground, Nantwich, Cheshire, CW5 8LD. We'll be there and hope to see you there too!

We have lots going on throughout the day including the View from the Cloud, Free Jewellery and Silver Valuations by the regions' experts and Complimentary Refreshments.

View from the Cloud

We will be in the Cloud all day, come and see the view! We will be showcasing all the latest developments in cloud accounting and it's benefits for you and your business.

Jewellery & Silver Valuation

David and Helena from Peter Wilson will be joining us for the day to provide complimentary valuations on items of jewellery and silver. Whether it's an item you are wearing on the day or a specific item that you bring along why not satisfy your curiosity and get the opinion of the experts!

Complimentary Refreshments

If that's not enough to have you dashing to our stand we'll have a glass of bubbly, canapes and nibbles waiting for you.....

The information contained in this newsletter is of a general nature and no assurance of accuracy can be given. It is not a substitute for specific professional advice in your own circumstances. No action should be taken without consulting the detailed legislation or seeking professional advice. Therefore no responsibility for loss occasioned by any person acting or refraining from action as a consequence of the material can be accepted by the authors or the firm.

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