Coulthards Mackenzie

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# The gig economy: reining in a giant

**It's been hard to miss the news coverage given to the tribunal decision on the employment rights of Uber drivers.**

When it comes to disputes over employment classification, it's generally been a case of taxpayers wanting to establish self-employed status to benefit from the related tax advantages. However, the Uber drivers involved argued that they should be treated as employees, wanting entitlement to the national minimum wage, company pension contributions, holiday pay and sick pay.

The decision, if it stands, only applies to the Uber drivers involved in the case, but it would mean Uber having to amend contracts for all 40,000 drivers in the UK. The ramifications could extend throughout the so-called gig economy, to groups such as self-employed delivery drivers, food couriers, builders and even hairdressers. But it would depend on the working conditions in each case and whether workers want to be treated as employees.

Uber argued that it is a technology company rather than a taxi provider, and that its drivers are independent self-employed contractors who use the technology to make money. The company does not own a single vehicle. However, the tribunal dismissed as ridiculous the claim that it simply linked thousands of small businesses through a technology platform. Many of the facts do support a case for self-employment. Uber drivers provide their own vehicles, pay for all the related costs (such as private hire insurance), are permitted to work independently or for other companies, do not wear an Uber uniform and are free to accept work only when they want to by turning the Uber App on or off.

However, when the Uber App is turned on, the relationship is one of employment, with drivers generally having to accept most of the work offered to them. Drivers do not know the name of passengers, do not know the destination until a journey begins, have little control over the route, have no control over the fee charged, do not collect the fee and are discouraged from accepting tips. Uber, rather than the driver, accepts the risk of any financial loss and deals with passenger complaints. The company exerts considerable control over drivers, even going as far as accepting only a limited choice of vehicles.

Uber has downplayed the decision and will be taking the case to the employment appeal tribunal. There could then be further hearings in the court of appeal and the supreme court. Watch this space.

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# Tax allowances: use them or lose them

**With just a few months left until the end of the tax year, consider making use of the following before 5 April 2017 comes around.**

**Pension contributions:** Making an additional pension contribution will be particularly beneficial if you have a high marginal income tax rate for 2016/17. Maybe you have income taxed at 40% or 45%, although the tax saving can be even higher if a contribution allows you to retain your personal allowance or child benefit.

**ISAs:** With low interest rates, cash ISAs may not be particularly attractive right now. However, for 2016/17, an innovative ISA is available, allowing you to shelter £15,240 of peer-to-peer lending. Stocks and shares ISAs could be an option for investors who can save capital gains tax (CGT) at the higher 20% rate. And don't forget the £4,080 that you can put into a junior ISA for each child or grandchild.

**EIS and SEIS:**
Although high-risk investments, this risk is mitigated if you can benefit fully from the available tax reliefs. You could also invest in a professionally managed portfolio rather than in individual companies. With the SEIS, the combined income tax and capital gains tax reliefs can save tax of up to 64%.

**Venture capital trusts (VCTs):** You can obtain 30% income tax relief by investing in VCTs. However, this is a longer-term investment and like EIS is quite high-risk – although the 20 to 80 different companies that a VCT typically invests in should give a good level of diversification.

**CGT exempt amount:** Aim to use your exemption of £11,100 by making disposals. If you have already made gains of more than £11,100 this tax year, dispose of investments standing at a loss that can be set against the gains. It might also be beneficial to dispose of further investments if gains will only be taxed at the basic rate of 10%.

**IHT exemptions:** Gifts up to £3,000 a year are exempt. If you have not used the exemption for 2015/16, you can make IHT-free gifts of up to £6,000 before 6 April 2017. Small gifts up to £250 per person in each tax year are also exempt from IHT.

Remember that we are here to help, so please get in touch.

# The last Autumn Statement

**The replacement of George Osborne as Chancellor by Philip Hammond has not brought about a significant change in tax policy. It did, however, herald the end of Autumn Statements.**

He also abandoned Osborne's target of ending the budget deficit in 2019/20, although this was largely an acceptance of the figures from the Office for Budget Responsibility (OBR).

Hammond's emphasis was on increased infrastructure spending in an attempt to boost the UK economy following the Brexit vote. Hammond confirmed that corporation tax would be reduced to 17% in 2020, with a 19% rate from 1 April 2017. These rates are lower than basic rate income tax and may tempt some sole traders and partnerships to incorporate, but care needs to be taken because there are many considerations in addition to the tax rate on profits.

The Chancellor also confirmed that the tax and national insurance advantages of most salary sacrifice schemes would be removed from April 2017, except for arrangements relating to pensions (including advice), childcare, cycle to work schemes and ultra-low emission cars. Arrangements in place before April 2017 will be protected until April 2018, and arrangements for cars, accommodation and school fees will be protected until April 2021.

It remains the case that salary sacrifice schemes relating to pensions are ineffective in calculating 'adjusted income' for the purpose of tapering the annual allowance that limits contributions to pension plans.

One matter that attracted some attention was the confirmation that termination payments to employees of over £30,000, which are subject to income tax, would also be subject to employer's national insurance contributions(NICs). The government confirmed that tax would only be applied to the equivalent of an employee's basic pay if they have not worked their notice. The first £30,000 of a termination payment will normally remain exempt from income tax and NICs.

A new announcement was the reduction in the pensions money purchase annual allowance (MPAA) from £10,000 to £4,000. Individuals who have drawn any income benefits under the pension flexibility rules are subject to a reduced annual allowance if they continue to pay into a pension scheme. The restriction is aimed at limiting pension income being recycled as fresh, tax-relieved pension contributions. There may be some exemptions to the reduced allowance following consultation.

**The government's Making Tax Digital (MTD) initiative has been very controversial. From 2018, the self-employed and landlords will need to use software or apps to keep their business records, and to update HM Revenue & Customs on a quarterly basis – even though the due dates for paying tax will not change.**

**Implementing MTD will be a major challenge if you currently keep your records on paper or use spreadsheets, and you will only be exempt from MTD if your annual turnover or income is below £10,000.**

**The government has promised to publish its response to the MTD consultations in January 2017, and we will of course keep you informed.**

# A round-up of payroll

**If you are not using HM Revenue & Customs' (HMRC) payrolling benefits in kind service for 2016/17, you need to register online before 5 April 2017 if you want to use it for 2017/18.**

It is advisable to register as soon as possible to avoid being sent multiple tax codes for employees. You will not be able to register after the start of the tax year – so if you miss the deadline you will have to wait for another year. Ensure that your payroll software can cope with payrolling before registering.

You can choose which benefits to payroll, but once the tax year has started, you will have to continue to payroll those benefits for the whole of the year – unless you stop providing them. HMRC will amend the tax codes for those employees receiving payrolled benefits. Any employee who does not want their benefits to be payrolled can be excluded.

With payrolling, taxable benefits are put through your payroll on a current basis in the same way as cash earnings which can be advantageous. Your employees pay the correct amount of tax when they receive the benefit, so self-assessment is more straightforward for those who need to complete a tax return. There is less administration for you because there is no need to report payrolled benefits on form P11D. Payrolling company car benefits will avoid the need to complete P46 (Car) forms.

**Three-day grace period –** HMRC can charge you penalties on a monthly basis if your real time PAYE submissions are late. There is no penalty for the first month in a tax year for which you make a late submission, but after that there may be a monthly late filing penalty depending on how many employees you have. This ranges from £100, for one to nine employees, to £400 if you have 250 or more employees.

HMRC has until now given you an extra three days to make submissions before applying a penalty. However, this will end on 5 April 2017. Although HMRC has been reviewing its approach to charging penalties, you will need to take care that you file next year's returns on time.

If you do receive a penalty notice, remember that you can appeal if there is a reasonable excuse for late filing, for example an IT problem, ill health, a natural disaster or you no longer have any employees or did not pay any employees. Of course if you do not pay any employees, you are still expected to report this to HMRC.

**Automatic enrolment penalties –** The Pensions Regulator has reported a huge rise in the number of fines for not complying with automatic enrolment requirements. That is perhaps not surprising given that it is now the turn of smaller employers. Most employers with fewer than 50 employees have to automatically enrol them by 1 April 2017.

Penalties can be substantial, with even the very smallest of employers facing a daily penalty of £50 if they ignore a 28-day warning notice. If you have between 5 and 49 employees, the daily penalty is £500. Auto-enrolment is not something you can leave to the last minute. There are some key dates for completing various tasks including choosing a pension scheme, establishing who you will have to enrol, writing to employees individually to explain how automatic enrolment applies to them and declaring your compliance.

Illness or being short-staffed are not accepted as reasonable excuses for non-compliance.



# Limits on pension contributions

**Higher earners are now subject to tight limits on how much they can pay into tax-relieved pension schemes and it is essential to take care to avoid a substantial extra tax charge. With the tax year coming to an end, this is a good time to review your pension planning.**

The allowance effectively limits pension contributions. The allowance is normally £40,000 if your 'adjusted income' is £150,000 or less, but is tapered down – by £1 for each £2 of income – to £10,000 for income of £210,000 or more. Adjusted income consists of all your taxable income before personal allowances, plus the value of certain pension contributions during the tax year, including employer contributions.

If the input into your pension schemes is greater than the annual allowance, you may have to pay tax at your marginal rate on the excess. You also will not receive tax relief on any contributions you make over the allowance.

Tapering the annual allowance started in 2016/17. Any unused allowance from earlier years can normally be carried forward for up to three years. You can only use annual allowance from earlier years after you have used the current year's annual allowance.

Another tax charge – at 25% or 55% – may arise if the value of your pension benefits is greater than the lifetime allowance, now £1 million, when you draw benefits. You need to plan ahead now to avoid it.

# Voluntary contributions to your pension

**The full amount of state pension is currently £155.65 a week for those retiring after 5 April 2016, and it is generally an improvement over the old basic state pension.**

You must have made 35 qualifying years of national insurance contributions, but there is a big catch. If you have been in 'contracted out' employment, then this will result in a deduction from the full pension.

For anyone who keeps working until state retirement age, any further qualifying years beyond the required 35 will help rectify the situation. However, there is also an attractive option for those retiring early, especially public sector employees retiring at 60. The idea is that you can pay voluntary class 3 contributions for each of the five or six years between retirement and reaching state pension age (65 or 66), reducing the amount of deduction.

The current cost for each year of voluntary contributions may seem high at £733, but this


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could add £231 a year to your pension – not a bad return if you live well into your eighties or nineties. Of course, you might decide to keep working on a self-employed basis after retiring, and you can then currently obtain further qualifying years by paying class 2 contributions of just £146 a year.

Unfortunately, the new state pension is not paid to those who retired before 6 April 2016. Such pensioners have been given the chance to top up their pension entitlement by up to £25 a week, but the take up has so far been way below government expectations. If you wish to purchase a top-up, then you only have until 5 April 2017 to do so. The extra income is for life, is inflation proofed and, in most cases, your surviving spouse or civil partner will inherit between 50% and 100% of the income following your death.

Advice is essential, but in general terms, a top-up is worthwhile if you are in good health, do not pay tax at higher rates and have a younger partner who will inherit when you die. It is not quite so attractive for single people, although women have the advantage of a longer life expectancy – top-up rates are gender neutral.

# Offshore disclosure: a final chance

**HM Revenue & Customs closed its offshore disclosure facilities on 31 December 2015, but it is giving a final chance to anyone with outstanding tax on undeclared offshore income or assets to come forward.**

The worldwide disclosure facility (WDF) does not offer any special terms as such, but it does mean that interest and penalties will be calculated based on existing legislation – a minimum penalty of 30% of the tax due and no immunity from criminal prosecution. However, HMRC will not publish any details of the disclosure.

This may not appear very enticing until you appreciate that from September 2018, HMRC could apply penalties ranging from a minimum of 100% of the tax due up to a maximum of 300%, linked to the widespread adoption of the common reporting standard. Over 100 countries have committed to exchange information on a multilateral basis, dramatically increasing international tax transparency. The WDF covers tax years up to and including 2014/15. The actual number of years requiring disclosure depends on a taxpayer's behaviour, and this has to be self-assessed. After registering an intention to disclose – normally online – the disclosure, along with a calculation of interest and penalties, must be completed within 90 days.

Professional advice is essential, so please contact us if this affects you

## TAX CALENDAR

### *Every month*

**1** Annual corporation tax due for companies (other than large companies) with year ending nine months and a day previously, e.g. tax due 1 October 2016 for year ending 31 December 2015.

**14** Quarterly instalment of corporation tax due for large companies (month depends on accounting year end).

**19** Pay PAYE/NIC and CIS deductions for period ending 5th of the month if not paying electronically. Submit CIS contractors' monthly return.

**22** PAYE/NIC and CIS deductions paid electronically should have cleared into HMRC bank account.

**30/31** Submit CT600 for year ending 12 months previously. Last day to amend CT600 for year ending 24 months previously.

File accounts with Companies House for private companies with year ending nine months previously and for public companies with year ending six months previously.

### FEBRUARY 2017

**1** Initial £100 penalty imposed where the 2015/16 tax return has not been filed or has been filed on paper after 31 October 2016.

**2** Submit employer forms P46 (car) for quarter to 5 January 2017.

### MARCH 2017

**2** Last day to pay 2015/16 tax to avoid automatic 5% penalty.

**31** Last few days to use any pension, CGT and IHT annual allowances and exemptions and to invest in an ISA in 2016/17.

### APRIL 2017

**1** Final staging date for businesses (unless commenced after 1 April 2012) to automatically enrol staff into a workplace pension scheme.

**5** Deadline for making a payment of Class 3A voluntary NIC to top-up entitlement to the additional state pension.

**5** Last day to submit final Full Payment Submission (FPS) or Employer Payment Submission (EPS) for 2016/17. Final day to register online to 'payroll' benefits and expenses in 2017/18.

**6** First day of the 2017/18 tax year. Changes to many tax allowances, rates and thresholds, and ISA limits. Start of phased restriction to residential property mortgage interest relief. Introduction of new domicile rules. MPAA reduced to £4,000. Salary sacrifice schemes restricted.

**14** Due date for CT61 return for quarter to 31 March 2017.

**19** Final day to send a late FPS for 2016/17. (After 19 April corrections for 2016/17 must be made on an Earlier Year Update. A penalty will usually be charged.)

**23** Interest accrues on employers' unpaid PAYE and NIC for 2016/17 (20th if not paying electronically).

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