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# Newsletter

## Construction: a change for the diary

**If you are VAT-registered and work in construction, take note.**

The VAT domestic reverse charge for building and construction services (DRC) was due to take effect from 1 October 2020, and you are likely to have had a letter from HMRC giving this as the start date. In view of Covid-19, the DRC has now been postponed until 1 March 2021.

The charge is a business to business measure, intended to combat missing trader fraud. It applies to VAT-registered businesses where payments have to be reported under the Construction Industry Scheme: not to consumers. In outline, it means that rather than the supplier accounting for VAT on specified building and construction services, the recipient does so.

The DRC is not a new tax: and it doesn't alter the VAT liability. But it does change the way VAT is collected, and has other significant consequences. As well as the new administrative nuts and bolts needed to put the scheme in place, it will also impact cash flow for firms which have hitherto benefited from handling output tax on their supplies.

If you have yet to gear up for the DRC, we recommend that you review the position now, looking at what it will mean for sales and purchases, and checking that relevant staff, accounting systems and software are ready. The latest information is here **https://bit.ly/2CpWgEP**. Note that a last-minute change means businesses who are 'end users' or 'intermediary suppliers' will have to confirm this to their subcontractors. If this affects you, we should be delighted to advise.

## Research and Development: the tomorrow business

Covid-19 spotlights research and development (R&D). Funding initiatives like the Fast Start Competition, managed by Innovate UK, have recently been available for break-through projects in science and technology. Companies involved in R&D may also be eligible for support such as the Coronavirus Business Interruption Loan Scheme (CBILS) and the Future Fund. But how do these measures fit in the context of the R&D tax incentives available for companies generally?

There are two main types of R&D tax relief, with availability largely dependent on the size of the company. Small and medium sized enterprise (SME) R&D relief provides an enhanced 230% deduction from taxable profits for qualifying R&D expenditure. Where an R&D claim creates a loss, it may be possible to surrender this for a cash repayment, currently 14.5%, a valuable boost to cash flow in current circumstances. Research and Development Expenditure Credit (RDEC) is another valuable relief, available both to large companies, and SMEs not meeting the criteria for the SME R&D scheme. It is now worth 13% of qualifying R&D expenditure.

Covid-19 creates a number of issues for R&D claims:

- deadlines: claims should normally be with HMRC within 12 months of the statutory filing date of the company's tax return. Where this is not possible in current circumstances, HMRC advises that it may be able to consider late claims.
- State aid: government Covid-19 support qualifying as State aid, such as CBILS, could impact eligibility for SME R&D relief, which also sits within State aid rules. CBILS funds channelled specifically towards R&D costs, for instance, rather than being used to support the company more widely, could prejudice such a claim.
- other tax liabilities: R&D repayment claims may not be paid in full where there are other outstanding tax liabilities, unless covered by Covid-19 VAT deferral measures. Otherwise, HMRC will offset RDEC repayments against other tax liabilities, including those owing under a Time To Pay agreement. It is also likely to offset payment of a credit under the SME scheme against a tax liability, though it has more discretion here and will consider individual circumstances if requested.
- going concern: to claim the tax credit for a surrenderable loss, it is a statutory requirement that a company is a going concern according to the last published accounts. For many claims, the underlying accounts will have been prepared before the pandemic, so this should not present a problem. But going forwards, this will need appraisal and HMRC advises getting in touch where there are difficulties.

Please do contact us for advice on the complexities of R&D.

# Cars, chairs, tax and tables: working from home

**Covid-19 has seen an upsurge in homeworking. For many people, the follow-up question is the tax on the paraphernalia involved.**

### What if I contribute to employee costs?

You can look to reimburse some specified costs incurred by employees when working from home without income tax or National Insurance consequences, by making a nominal fixed payment, or a larger contribution.

- nominal payment: you can pay £6 per week: or £26 per month to employees paid monthly (£4 and £18 respectively, before 6 April 2020) in recognition of costs like additional heat, light, or increased metered water. This is the simplest route to take. You don't have to justify the expenditure and your employee doesn't have to keep records.
  To qualify, payment must be in respect of reasonable additional household expenses incurred by the employee carrying out the duties of their employment at home. It must also be in the context of a formal homeworking arrangement. This is defined as an employer-employee arrangement that some or all of their duties will regularly be performed at home.
  HMRC confirmed that employees working from home because the workplace had closed, or following advice to self isolate, were covered by the rules on homeworking expenses, and the requirement for 'regular' homeworking should therefore be met in these circumstances.

- larger contribution: you can potentially reimburse more than £6/£26, though this will involve providing analysis of costs and is more cumbersome. We are happy to advise in detail on the best approach in your circumstances.

### Can employees claim tax relief themselves?

**Yes:** employees looking to recoup costs have a potential alternative route to employer reimbursement: claiming tax relief themselves. The easiest way to do it is to claim relief of £6 per week/£26 per month for those paid monthly (£4 or £18 before 6 April 2020). As with the employer method, this doesn't need records. Note though, that relief for making business phone calls can be claimed separately, and this does mean recording costs involved. Employees can claim online, by phone or post, or via their self assessment tax return, if they usually file one. They can be directed here for further help **https://bit.ly/3dsVvb4**.

**But:** gateway criteria for employee claims are normally very strict, and it doesn't usually follow that where an employer doesn't reimburse, an employee can get tax relief by default. And while it's likely HMRC will accept that its usual tests are met where someone is working at home because of Covid-19, it has yet to confirm some aspects of the position. It may be worth flagging this up to employees, for example if there is a degree of choice over homeworking as we move out of lockdown.

### Do normal rules on taxable benefits and expenses still apply during Covid-19?

**Broadly, yes.** In most cases, it's (tax) business as usual. So, for example, you can provide one mobile phone and SIM card per employee, with no restriction on private use, and it doesn't count as a taxable benefit. Or you can provide an asset, like a computer for work at home and it will usually be exempt from tax, provided the arrangement fits three conditions:

- it's provided solely to enable the employee to perform the duties of the employment
- any private use is not significant, and
- it isn't an 'excluded' benefit – such as a car.

Where employees are paid travel and subsistence expenses to get to a temporary workplace, and furlough or home working interrupts this, the usual time clock still runs. So for tax purposes, a 'temporary' workplace won't qualify as temporary after 24 months, and the 24 months includes time furloughed or homeworking. For HMRC guidance, covering areas like volunteer fuel and mileage costs, and paying or refunding transport costs, see **https://bit.ly/3hU65v7** and **https://bit.ly/3fTea1s**.

### Are there any new Covid-19 rules?

**Yes.** They cover the position where you reimburse an employee who has bought home office equipment: table, chair or monitor, for example. Normally, reimbursement after an employee purchases would be taxable. But from 16 March 2020 to 5 April 2021, a temporary exemption from income tax and National Insurance exists, so long as:

- equipment is obtained solely to enable the employee to work from home because of the pandemic
- it would have been exempt from income tax if provided directly to your employee, either by you or on your behalf
- such arrangements are available to all your employees generally on similar terms.

Care will be needed regarding current and future ownership of the equipment. We are happy to advise further.

### What about employer provided cars?

With cars going nowhere during lockdown, this may seem counter sense: but usual rules on company cars mostly still apply, for furloughed employees, and those working at home because of Covid-19. The car is still treated as 'available for private use' for tax purposes. That's even if you have told employees not to use it; asked someone to take and keep a photographic image of mileage, both before and after a period of furlough; or employees are unable physically to return it and it can't be collected from them.

HMRC will accept a car is unavailable in limited circumstances, applying only where Covid-19 restrictions on movement prevent its being returned to the employer, or collected. Thus, where the contract is terminated, it will be unavailable from the date car keys are returned; or where the contract has not been terminated, after 30 days from the date keys are returned.

# Your workforce: changing the small print

**Covid-19 brings significant change to many aspects of workforce operations.**

As an employer, you may want to review the options going forwards. Change to employee roles, working hours, working patterns or workplace may all be on the agenda. Could staggered hours help employees come back to the workplace safely? If homeworking has been a success, could you use it long term to cut property costs? A degree of reorganisation may make sound business sense, enabling you to build for the future.

But any adaptations, permanent or temporary, require you to tread carefully, with due regard to relevant employment law. Change to terms and conditions of work is essentially change to the employment contract. Some contracts contain a flexibility clause, allowing you to vary terms, but are unlikely to permit a fundamental change to hours or pay. In the absence of a flexibility clause, look to agree any change with your employees. Express employee (and in some circumstances trade union) agreement to the proposed change is advisable in most cases. Simply trying to force change through can open the pandora's box of claims for breach of contract and the risk of legal action by employees. It is also important to step back and look at the bigger picture. Which individuals are being asked to accept change? Are you confident that you have closed the door on any question of discrimination? That you can show that no one has been selected because of a characteristic protected under the Equality Act 2010, such as age or disability?

Change can be agreed verbally or in writing, but where change affects something included in the written statement of employment particulars, it must be notified to employees in writing, within a month of the change being effected.

Any change to the small print is best done through dialogue and employee engagement. And as businesses emerge from lockdown, workers are likely to need particular reassurance about plans for the future. At this point, make regular two-way communication with your workforce a priority in order to carry them with you. The Arbitration and Conciliation Service provides guidance on how to go about changing employment contracts **https://bit.ly/2Cz6we9.** We would, however, strongly recommend professional advice tailored to your own circumstances. Please do not hesitate to contact us for help reviewing your options.

# Home is where the dog is

**Disposals of residential property bring the potential for any gain to trigger a capital gains tax (CGT) liability. If you dispose of your main home, principal private residence relief (PRR) usually renders the gain exempt.**

But as always with tax, there are conditions. The most straightforward scenario is where you have only one home, and live in it, as your main home, for all the time you own it. Life, on the other hand, isn't always that simple.

Where a property is acquired with a view to profit, PRR can be denied, and HMRC is increasingly alert to such possibility. Two recent tax cases illustrate areas of potential challenge.

In one, the bone of contention was whether 'period of ownership' runs from date of contract (HMRC's view) or date of completion. The property was a flat, purchased off-plan, and the issue of dates significant because the credit crunch delayed construction for some three years - while property prices rose. At contract date, the flat was unbuilt, and the 'residence' just an empty 'space in a tower'. When the taxpayer sold, HMRC time apportioned PRR, and with CGT of over £60,000 at stake, the case went all the way to the Court of Appeal. Here it was held that HMRC's interpretation ran 'counter to the ordinary meaning of the words "period of ownership"': a victory for common sense and good news for taxpayers.

Taxpayer, Carol Adams, was not as fortunate. Contending that a two-bed London house, previously let out, was her main home for six months before it sold, she claimed what is called 'final period exemption' for PRR, bringing a longer period (currently nine months) outside the scope of CGT. HMRC argued she had never occupied the house as a residence at all, and if she had, it was not her main residence. Complicating matters, Ms Adams also owned, and had lived in, a 'substantial property' in the country. HMRC held there was insufficient 'degree of permanence, continuity or expectation of continuity … to amount to residence' of the London house. It clearly suspected a decision to sell had been made early on, scouring the estate agency's online photographs for signs of genuine occupation.

And this was where the dogs came in. Ms Adams owned two Labradors. Noting the 'complete absence of … canine paraphernalia' in the photographs on Zoopla, Tribunal commented that it would 'be unusual for a pet owner to move to a new house on a permanent basis' leaving the pets behind. HMRC's view of impermanence won the day, losing the taxpayer over £40,000 in CGT. So it's official. Be careful where you put the kennel: home is (very possibly) where the dog is.

PRR claims can be lost without attention to detail. We should be delighted to help you review the availability of this important relief in your own circumstances.

# Covid-19 round up

## Job Retention Scheme: phase two

The Job Retention Scheme (JRS) has been a lifeline for employers looking to avoid staff lay-offs because of Covid-19. Now it's changing.

### You can use it part time

From 1 July 2020, JRS gives you a half-way house: flexible furloughing. You can bring employees who have been furloughed back to work, for any amount of time and any shift pattern. There's no longer a minimum furlough period. You must agree any new flexible furlough arrangement with employees, and confirm it in writing. If bringing staff back, you are responsible for paying wages under the normal terms of the employment contract, with tax and National Insurance contributions (NICs) for any hours worked. But you can still use JRS for the hours staff don't work. This has the potential to help your business adapt creatively as the economy emerges from lockdown.

Other changes to the scheme mean it's no longer possible to use furlough for anyone not successfully claimed for previously. And for any claim periods starting from 1 July 2020, check that you're not claiming for more employees than claimed for in any claim ending by 30 June 2020.

### Tip: JRS deadlines

JRS ends on 31 October 2020. Although the last date by which to furlough an employee for the first time was 10 June 2020, (unless they were returning from family leave), if you still need to claim for any period before 30 June 2020, you have until 31 July 2020.

### Sharing the cost

Government support will taper off from August. For employees who are on full time furlough, in August, JRS will pay 80% of wages, capped at £2,500. You will pay employer NICs and pension contributions on hours furloughed. In September, JRS will pay 70% of wages, capped at £2,187.50 for hours furloughed. You pay employer NICs, pension contributions and 10% of wages to make 80% total, up to a cap of £2,500. In October, JRS pays 60% of wages, capped at £1,875 for hours furloughed. You pay employer NICs, pension contributions and 20% of wages to make 80% total, up to a cap of £2,500.

If you use flexible furlough, the cap is proportional to the hours your employees are furloughed. For example, an employee is entitled to 60% of the £2,500 cap if they are placed on furlough for 60% of their usual hours.

The revised rules add further complexity, and care will be needed to ensure claims fit the scheme criteria **https://bit.ly/2YLoLpt**. We should be happy to advise on any aspect of compliance.

## Job Retention Bonus

The Summer Economic Update on 8 July 2020 announced a new Job Retention Bonus. This is designed to 'incentivise employers' to continue to keep furloughed staff in work over the economically uncertain period once the JRS ends. It will be a one-off payment of £1,000 to UK employers for every furloughed employee who remains continuously employed until the end of January 2021.

As an employer, you will be eligible to claim the bonus where employees earn at least £520 per month on average for November 2020, December 2020 and January 2021. You must have furloughed and legitimately claimed for them under JRS, and they must have been continuously in your employment until at least 31 January 2021. You will be able to claim the bonus from February 2021, once accurate RTI data to 31 January 2021 has been received by HMRC.

## Self-employed Income Support Scheme

The Self-employed Income Support Scheme is being extended until 19 October 2020. HMRC's online portal will open from 17 August 2020, and those eligible will be invited to claim the final grant, covering the period on or after 14 July 2020 **https://bit.ly/2AZZazK**. The grant, which is taxable, will be worth 70% of average monthly trading profits, capped at £6,570, and paid in one instalment. You can claim whether you claimed the first grant, or not. Claims must, however, relate to the correct period: you will need to confirm that your business has been adversely affected by Covid-19 on or after 14 July 2020. This adds potential complexity, and you can see some examples of what HMRC currently considers being 'adversely affected' means here **https://bit.ly/2NJUy3H**.

# Help for tourism and hospitality

## Temporary VAT cut

A temporary cut to VAT, targeted at the hospitality and tourism sectors, was announced on 8 July 2020. From 15 July 2020 to 12 January 2021, a reduced rate of VAT of 5% (rather than the usual 20% standard rate) will apply in some cases.

The new temporary rate will apply to supplies of food and non-alcoholic drinks from restaurants, pubs, bars and cafes and similar premises. It will also apply to hot take-away food and hot take-away non-alcoholic drinks. More information is here **https://bit.ly/2DrjsTR** and a revised VAT Notice taking account of the change here **https://bit.ly/38DKVNC**.

To help tourism, the VAT cut will also apply to supplies of accommodation, such as hotels, bed and breakfasts, campsites and caravan sites and admission to attractions, such as cinemas, theme parks and zoos across the UK. The new VAT Notice on hotels and holiday accommodation is here **https://bit.ly/3ei6RPj** and guidance on admission charges here **https://bit.ly/3ffyABw**.

## Eat Out to Help Out

This is an additional, temporary scheme to boost the hospitality trade, running just for the month of August 2020. On Mondays, Tuesdays and Wednesdays from 3 to 31 August 2020, it will give diners 50% off the cost of eat-in meals and non-alcoholic drinks, up to £10 per person. Restaurants, bars, cafes and other eligible food service establishments will need to register to participate and will then receive reimbursement for the 50% discount. Further details are here **https://bit.ly/3edB9D0** and registration details here **https://bit.ly/2ZV9gun**.