The Construction Industry
Joint Taxation Committee

JTC

JTC NEWSLINE

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What is the 2018/19 PAYE tax code?

The basic PAYE tax code is set at 1185L for employees. This gives an employee a personal allowance of £11,850 for the year.

Employees who earn more than £123,000 have no personal allowance and receive an 0T tax code (see below).

Employees who earn between £100,000 and £123,000 have their personal allowance tapered away. It is reduced by £1 for every £2 in excess of £100,000.

Employees who have claimed the Marriage allowance, by virtue of a low earning spouse have a code with a suffix of M. Those who surrender the allowance have a suffix of N.

Employees who are Scottish Taxpayers have the prefix S. The higher rate threshold in Scotland will be £43,430 in 2018/19, compared with an increase to £46,350 in the rest of the UK.

What tax code do I use for 2018/19?
In general, use 1185L for employees unless:

- Notification of a different code is advised by HMRC.
- The employee's code was not the basic code last year, in which case expect to:
  - o Add 35 to any tax code ending in L
  - o Add 39 to any tax code ending in M
  - o Add 31 to any tax code ending in N

It is advisable to double check with HMRC, and if in doubt check online or phone the tax office.
Do not carry forward any week 1 or month 1 adjustments.

What is the "emergency" tax code for 2018/19?
1150L is the default code in use.

What is code OT?
This means that you are not given any allowances against tax. This is most probably because your employer has probably not been given your starting information, or you earn over £123,000.

How do I check my tax code?
If your code is lower or higher than expected you need to find out why. It may have been adjusted by HMRC to code out underpayments of tax in previous tax years.
If you receive any benefits from employment or do more than one job, or receive investment income and are a higher rate taxpayer you may find that your PAYE code is restricted in some way.

Pensioners
Pensioners no longer qualify for any additional age allowance. Married pensioners over 83 (born before 6 April 1935) may receive the married couples allowance adding up to 869 to their tax code. ■

Time apportionment of profits – what is ‘just and reasonable'?

There are many situations in tax law where an apportionment has to be made in a way that is just and reasonable. In **Maersk Oil UK Limited v HMRC [2018] TC06295**, the First Tier Tax Tribunal (FTT) held that an allocation of profits within a period had simply to be made on a just and reasonable basis: the existence of a better method was not sufficient reason to displace it. This is important to remember.

HMRC may be able to show that some apportionment methods give a result that is more in their favour but if the method you use is just and reasonable it cannot be supplanted.

Where the tax rules change within an accounting period, figures will need to be apportioned between the pre- and post-change periods. The default position is that the allocation is on a time basis, but the allocation can be done on an another “just and reasonable” basis where the time basis would give an unfair result. ■

Increase in Scottish income tax rates for 2018/19

Scottish Income Tax Rates for 2018-19 were announced during the Scottish Budget on 15 December 2017 but have already been increased.

Following the publication of the draft budget there have been ongoing negotiations to pass the Budget through the Scottish Parliament. An agreement was reached between the Scottish National Party and the Scottish Green Party on 31 January 2018, resulting in changes to the previously announced tax bands and rates for relevant non-savings income for 2018-19.

These changes mean Scottish taxpayers will start paying the 41% tax rate when their income exceeds £43,430, compared to the originally proposed threshold of £44,273. ■

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Good work? Response to modern working practices review

The government has published "Good Work", its response to the The Taylor Review of Modern Working Practices which aimed 'to improve the lives of this country's citizens' together with four new consultations covering the employment and the labour market.

The Taylor review had recommended:

- In order for people and employers to make the choices that are right for them, clarity and transparency are essential.
- A flexible labour market works for employers and individuals, encouraging job creation and allowing more people to participate in work.
- The current three tier system for rights is still relevant in the modern labour market, reflecting the broad categories of different types of employment relationship (see below regarding 'Dependent contractors').
- The self-employed should receive more support and advice.

Tax was not actually part of the review's terms of reference.

Recommendations

The government have agreed with the following recommendations, taking account also of proposals made by the work and pensions and business, energy and industrial strategy, committees:

- There should be a clearer outline of the tests for employment status setting out the key principles in primary legislation and using secondary legislation and guidance to provide more detail.
- Those individuals who are eligible for worker rights but are not employees should be renamed 'Dependent contractors' and in developing the test for and defining 'Dependent contractor' status:
    - o In distinguishing workers and the self-employed, supervision and control should be of greater importance than substitution, with less emphasis on the requirement to perform work personally.
    - o The piece rates legislation should be adapted to ensure those working in the gig economy are still able to enjoy maximum flexibility whilst also being able to earn the National Minimum Wage.
- Renewed effort should be made to align the employment status framework with the tax status framework so that differences between the two are minimised.
- There should improvement of clarity and understanding by providing individuals and employers with access to an online tool that determines employment status in the majority of cases.
- Consideration should be given to accrediting a range of platforms to support the move towards more cashless transactions with a view to increasing transparency of payments and supporting individuals to pay the right tax.

The government has:

- Disagreed with the proposal to legislate to implement a 'worker by default' model to apply to companies above a certain size saying that "clarifying status and rights along with actions to make redress easier and faster should help address the concerns underlying this recommendation."
- Confirmed that there are no plans to revisit the issue of disparity in NIC between the employed and self-employed. This is perhaps the most important statement because it is this disparity that fuels the problems in construction.

New Consultations:

BEIS has published four new consultations:

- Consultation: Employment status: this examines the steps in determining employment status, comments by 1 June 2018.
- Consultation: Agency workers recommendations: this looks at the working practices of payroll providers, umbrella companies and how their practices affect labour and rights, it considers registration and new statutory requirements, comments by 9 May 2018.
- Consultation: Increasing transparency in the labour market; this considers workers rights, comments by 23 May 2018.
- Consultation: Enforcement of employment rights, this considers enforcement measures, comments by 16 May 2018. ■

An MSC provider loses their appeal

In ***Christianuyi Limited & Others v HMRC [2018] UKUT10*** the Upper Tribunal agreed that a Managed Service Company (MSC) Provider was 'involved' with the taxpayers' personal service companies and was subject to the MSC rules. It is expected that the resulting tax bill will run to several million pounds.

- In 2007 the i4 group, including Costelloe Building Services Limited (CBS) developed a new product for use by Personal Service Companies (PSCs).
- CBS assisted in setting up the PSCs; each was solely owned by an individual client who also acted as director with most PSCs using the address of CBS as their registered office and a group company as company secretary.
- Amounts received from third parties for clients' work were paid into special bank accounts which CBS set up and CBS made deductions from these accounts for their fees and taxes.
- The vast majority of clients opted to be paid a minimum wage by their company. The balance of funds in the PSC account was then transferred to their private bank accounts as dividends.

The FTT held that CBS:

- Benefitted financially on an ongoing basis from the provision of services by their clients.
- Controlled or influenced the way in which payments were made to each individual taxpayer
- Influenced the PSCs' finances and activities in respect of bank accounts, tax payments, and access to their funds without having a direct debit in place.
- As a result CBS was 'involved' with the PSCs and the MSC rules applied.

The taxpayers appealed to the Upper Tribunal but the Upper Tribunal has now dismissed the appeal. This is another nail in the coffin of Managed Service Companies.■

Public Register of Beneficial Ownership

The Parliamentary Under Secretary of State for Business, Energy and Industrial Strategy (BEIS) has confirmed that the government will establish a public register of beneficial owners of non-UK entities that own or buy UK property, or which participate in UK Government procurement.

A draft Bill will be published this summer.

The aim of the proposed register is to achieve greater transparency around foreign entities that own or buy property in the UK or participate in UK Government procurement.

The government 'intends a significant piece of legislation that delivers a streamlined policy, consistent across the UK, where currently the Land Registries for England and Wales, for Scotland and for Northern Ireland have taken different approaches to land registration and registration of overseas entities.'

It intends that the register will be operational in 2021. ■

Tax-free childcare now open to all

From 14 February 2018 tax free childcare is open to all eligible families regardless of the age of the youngest child.

The new Tax-free Childcare scheme began on 21 April 2017 and was extended to parents whose youngest child was under 9 on 15 January 2018. Those whose youngest child was between 9 and 12 (17 if they are disabled) have had to wait an extra month to benefit under the scheme.

The scheme is open to the employed and self-employed where both parents are in paid work for more than 16 hours per week regardless of whether the employer contributes. The Government will contribute an extra 25% of the parents' contribution, up to £2,000 per child per year. It will replace Employer childcare voucher schemes which are closed to new entrants from April 2018. ■

Warning - payments to student son not exclusively for the business

In ***Alan Nicholson v HMRC [2018] TC06293***, the tribunal disallowed a sole trader's payments made to and on behalf of his son as wages, whilst at university: the expenditure was not wholly and exclusively incurred.

A sole trader may claim tax relief for expenses incurred wholly and exclusively for the purposes of the trade. Apportionment may be possible where only part of a cost is for business purposes.

- Mr Nicholson was a self-employed central heating salesman and was building up an internet business. He claimed an expense of £7,400 as wages on his 2013/14 SA return.
- The wages were calculated as £10 per hour for 15 hours each week and were paid to his son for "the promotion of the business through internet and leaflet distribution and computer work".
- Payment was made to his son as a mixture of cash and for meeting his weekly food bills and payment of his expenses at university. No contemporaneous records of the amounts paid as wages were available.

The First Tier Tribunal (FTT) disallowed the wages: there was no direct relationship arithmetically or otherwise between the amount of work done and the payments made, whether in cash or in kind. The taxpayer was helping to support his son whilst at University, the payments had a dual purpose and so were not wholly and exclusively for the purposes of the trade. ■

If you have a query relating to any of the items featured contact Liz Bridge.
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