



# Newsletter: January 2020

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## Payroll

From April 2020, the reference period for **holiday pay** increases from 12 weeks to 52 weeks. Where someone has not had continuous employment, the reference period is the last 52 working weeks in the previous 104 weeks.

From 6 April 2020, an employee has the right from the first day of employment to know his or her entitlement to paid **annual leave** and other employment rights.

*The Employment Rights (Employment Particulars and Paid Annual Leave) (Amendment) Regulations*

The Low Pay Commission published on 31 December 2019, its recommended **national minimum wage** (NMW) rates from April 2020. The government has indicated that it accepts these rates.

	Rate from April 2019	Rate from April 2020	Increase
National Living Wage	£8.21	£8.72	6.2%
21-24 Year Old Rate	£7.70	£8.20	6.5%
18-20 Year Old Rate	£6.15	£6.45	4.9%
16-17 Year Old Rate	£4.35	£4.55	4.6%
Apprentice Rate	£3.90	£4.15	6.4%
Accommodation Offset	£7.55	£8.20	6.4%

The April 2019 increase in the NLW directly raised pay for around 1.6 million workers in 2019. Overall, the number of workers paid at the rate has remained stable since 2017.

While in recent years NLW workers have done better than their counterparts paid above the rate, this year there was strong pay growth across the bottom two-fifths of the distribution. This suggests employers have taken measures to preserve pay differentials, changed their workforce structures or simply raised pay to compete with other firms.

Average weekly pay for NLW workers grew faster than for most other groups between 2018 and 2019, as these individuals typically worked more hours. This marks a change from previous years, when increases in the NLW had a weaker effect on workers' weekly pay and therefore on living standards.

This year's recommendations for younger workers are higher than in 2018, reflecting the strong pay growth and stable overall employment levels for these groups. This will be the final year in which the NLW will apply to workers aged 25 and over, with the age threshold coming down to 23 in 2021 and to 21 by 2024.

The rate for the **living wage** increased by 30p an hour to £9.30, to be phased in over the next few months, it was announced on 10 November 2019. The rate is £10.75 in London.

The living wage is not part of the statutory national minimum wage regime. The living wage is set independently by the Living Wage Foundation. Compliance is voluntary. About 6,000 employers have voluntarily agreed to pay the living wage to their 210,000 workers.

The **advisory fuel rates** from 1 December 2019 are:

Petrol cars:	to 1400cc: 12p
	1401-2000cc: 14p
	over 2000cc: 21p
Diesel cars:	to 1600cc: 9p
	1601-2000cc: 11p
	over 2000cc: 14p
LPG cars:	to 1400cc: 8p
	1401-200cc: 9p
	over 2000cc: 14p.
Electricity:	4p

These rates may be used from 1 December 2019 or, if the employer wishes, from 1 January 2020. These rates reflect a small reduction in the price of road fuel.

These amounts may be either:

- paid by an employee to an employer for private use of a company car to avoid being tax on the fuel benefit, or
- paid by an employer to an employee where the employee for business use of a company car where the employee pays for the fuel.

HMRC seems to have imposed a new condition regarding the tax exemption for a **trivial benefit in kind**.

A trivial benefit in kind is one which cost less than £50. Under rules introduced in 2016, such a benefit in kind may be ignored. This provision is given in Income Tax (Earnings and Pensions) Act 2003 s323A.

HMRC said in *Employer Bulletin* of December 2019 that a benefit in kind is not regarded as trivial if "provided pursuant to... any other contractual obligation" which includes where the employee has a legitimate expectation the benefit would be provided.

The legislation says nothing about legitimate expectation.

Students starting a **nursing course** from September 2020 will receive a non-repayable grant of at least £5,000, the government announced on 18 December 2019. This also includes some other categories of health professionals.

There are three additional grants, each of £1,000, that may be claimed for studying in shortage specialism, studying in shortage areas, and for childcare.

The government has promised to recruit another 50,000 nurses, including retaining 19,000 existing nurses.

**Employment** reached a new record of 76.2% in the period from August 2019 to October 2019, the government announced on 17 December 2019. Unemployment is at its lowest level since 1974. Wages have risen by more than price inflation for 21 consecutive months.

The government is consulting on changes to **statutory sick pay**. The main change is to allow for a phased return to work after a sickness absence.

The government is studying how the rate and length of SSP influences employee behaviour.

A new payroll variant under consideration is **payment on demand** (POD). This allows an employee to log into their payroll account and be paid for the work during the payment period.

This would allow, for example, an employee to log in during the month to receive perhaps two weeks' worth of their monthly pay. At present, an employer who is willing to help an employee before the next pay day (and an employer is not obliged to do so) will provide an advance. This is a sum paid with no deductions such as for PAYE or national insurance. The payslip is run normally at the next pay day with the advance deducted from net pay. The employee must give written consent for the advance to be deducted.

There are believed to be about 6 million workers still paid weekly with almost all the rest paid monthly. There was a large move from weekly to monthly pay during the 1980s.

An advantage to the employee is that it can assist with budgeting, and avoids pay day loans which often have high interest rates. An advantage to the employer is that this could be seen as a valuable benefit at little cost.

A full payment submission (FPS) would have to be sent to HMRC every time a POD was triggered. If the payroll is run by an agency, it will make a charge. This is usually between £1 and £1.75 per payslip.

A car temporarily provided to an employee as part of a **relocation package** can be included within the £8,000 tax-free relocation limit, provided conditions are met. This means that the employee is not liable for the car benefit charge nor the fuel benefit charge.

The provision is the same regardless of whether the car belongs to the employer or is hired for the employee.

This exemption does not apply if the employee already has a company car.

The car is restricted to these uses:

- preliminary visits to the new location
- travelling from the old home to the new work location
- travelling between the new home and the old work location where the house move occurs before the job transfer
- travelling between the old home and any temporary living accommodation

- travelling between the new home and any temporary living accommodation where the house move occurs before the job transfer
- travelling from the old home to the new home when the move takes place
- for a member of the household under 19 undertaking school exams who stays behind at the old location or moves earlier to the new location so as to avoid disruption of studies.

These provisions apply to the employee and his or her family.

The exemption is an “all or nothing” provision. Either the car comes within the relocation exemption or it does not.

This means that any private mileage other than that listed above.

If the car is used for non-exempt private mileage, it must be reported on the P11D form in the usual way.

There are no tax implications if an employee and employer agree a reduction in salary (salary sacrifice) in return for **additional leave**. Such an agreement does not have to be reported to HMRC.

The average **commuting and working day** is just over 10½ hours, according to a survey by Moneybarn in late 2019.

It found that the average leaving time is 7.17am and return time is 5.48pm.

Average daily commuting time is 62 minutes. About 15% commute for more than 102 minutes.

The average commute distance is 23 miles a day, with 14% of commuters travelling more than 42 miles.

The costs of travelling between home and work are generally not tax deductible nor are they usually paid as part of the working day.

Only 43% of employers offer any assistance to employees in commuting. Other employers may consider doing so. This can include:

- providing an interest-free loan to buy a season ticket, which is tax free up to £10,000 a year
- allowing flexible working. Every employee has the right to request flexible working and to be told the reason for any refusal. Only 21% of employers offer flexible working, but that should not stop an employee asking
  - allowing the employee to work from home, perhaps for part of the week
  - where appropriate, such as in rural areas, consider making arrangements for travel such as running a works bus or coming to an agreement with a local bus company. There are some tax exemptions
  - consider payments for some of the travel time where the employee works while commuting, such as making business calls or using a laptop.

Once a business has been classed as **small** for IR 35 purposes, it remains small for the whole tax year. It does not cease to be small because it suddenly grows or acquires a subsidiary.

This is relevant as the IR35 provisions for the public sector due from 6 April 2020 do not apply to a small company.

[The operative date for IR35 provisions has since been postponed by one year to 6 April 2021.]

HMRC has said in Employer Bulletin, published in December 2019, that **trivial benefits** can be aggregated throughout the year. If they exceed the £50 de minimis limit as legitimate expectation, they must be reported as a benefit in kind.

HMRC has confirmed that the PAYE return for **December** should indicate the usual payment date and not an earlier date when the employer agrees to pay before Christmas. This was disclosed in Employer Bulletin for December 2019. This has been allowed as a one-off concession previously. It is now made permanent.

## Business tax

From 10 January 2020, obliged entities must report any discrepancy on information they hold on file about a beneficial owner and the information held on the person with significant control register at Companies House. The report must be made to Companies House.

An obliged entity is one required to carry out due diligence **under anti-money laundering regulations**.

The new requirement implements the EU's Fifth Anti-Money Laundering Directive which came into effect on 10 January 2020.

The corporation tax online service does not readily permit a claim for **structures and buildings allowance (SBA)** and will not do so until April 2020.

SBA applies to structures and buildings established from 29 October 2018. It provides a 2% capital allowance on the straight line basis.

If SBA needs to be claimed online before April 2020, this can be done by using boxes 725, 750 and 775 on the CT 600 corporation tax return.

Box 725 can be used to report SBA for a trade; box 750 to report SBA for a non-trade; and box 775 for qualifying expenditure on SBA.

This will not work for taxpayers who use HMRC's free filing service. If such a taxpayer needs to claim SBA, they are asked to contact HMRC.

## Personal tax

There have been two relaxations of the rules for the loan charge:

- the cut-off date has been brought forward from 1999 to 9 December 2010
- the loan charge date has been put back to September 2020
- those who used the scheme between 9 December 2010 and 5 April 2016 and who disclosed this on their tax returns will not be charged.

The loan charge was introduced in April 2019 to catch a common tax avoidance scheme. Instead of paying a worker directly, money was paid to another body, often an offshore trust.

This "lent" money to the individual. There was no expectation that the loan would be repaid. This exploits the rule that loans are not in themselves taxable.

This was the basis for the scheme for which comedian Jimmy Carr was widely criticised. It was used by many freelancers, footballers and celebrities, who assumed it was simply a

normal tax planning scheme. About 60,000 people were affected. The loan charge imposes an income tax charge on the balance of any outstanding loans. Some of those effected have become bankrupt or been forced to sell their homes.

The loan charge was seen as controversial because it amounted to retrospective taxation. The loan charge did not exist when the money was paid.

This change means that the loan charge only applies when the loan was taken out from 9 December 2010. This means that 11,000 people avoid the charge completely. Other action may now be taken against those who marketed the scheme before 2010.

Users who remain in the scheme, now have extra time to file their returns and pay the tax.

About 30,000 people are expected to benefit. Those who had paid tax that is now not owed will be refunded.

The government has not said how much tax is affected, but sources have estimated it at £3.2 billion.

HMRC guidance on this charge can be downloaded from [https://www.gov.uk/guidance/report-and-account-for-your-disguised-remuneration-loan-charge?utm\\_source=fe50c516-0c25-4bb3-ab90-dbe595e8dc9d&utm\\_medium=email&utm\\_campaign=govuk-notifications&utm\\_content=immediate](https://www.gov.uk/guidance/report-and-account-for-your-disguised-remuneration-loan-charge?utm_source=fe50c516-0c25-4bb3-ab90-dbe595e8dc9d&utm_medium=email&utm_campaign=govuk-notifications&utm_content=immediate).

A claim for a **capital loss** for a loan was refused by HMRC and the tribunal on the basis that no loan had been made. The loss claim was made under Taxation of Capital Gains Act 1992 s253.

An investor paid £130,020 to a company of which he only received £30,000 back. He claimed loss relief for the £100,000.

This was declined as there was no capital asset to which it related. Cash itself is specifically excluded from the scope of capital assets for this purpose.

There was no evidence that there was a loan. The payment appeared to be an investment. The lack of documentary evidence was a factor in denying relief.

*Steve Flashman [2019] TC 7419*

The disposal of contractual rights could create a **capital loss**.

In 2007, a couple signed contracts to buy villas in Barbados and paid \$5m as a deposit. In 2009, work ceased because of financial difficulties of the developer. In 2011, the couple terminated the agreement. They signed new contracts which they considered worthless. They claimed capital losses to offset against other capital gains.

The issue was whether the amounts paid were to enhance their contractual rights or to enhance their estates in land. This turned on Taxation of Capital Gains Act 1992 s38.

The tribunal considered that the payments were for contractual rights and those rights had now been disposed of. Had Parliament wished to exclude such a disposal from capital loss relief, it could have made a provision to that effect.

The case report can be downloaded from

<http://financeandtax.decisions.tribunals.gov.uk/judgmentfiles/j11459/TC07488.pdf>

*Lord and Lady Lloyd-Webber [2019] TC 7488*

## Valued added tax

The retailer Dixons has lost its VAT appeal for **dishonoured cheques**.

Dixons made a late claim for £1.8 million in respect of dishonoured cheques between 1996 and 2003. It had a bespoke retail scheme which it believed put it outside the four-year limit that generally applies for late claims. The tribunal rejected this and other arguments.

*Dixons Retail plc [2019] TC 7486*

A tribunal held that VAT input tax could be claimed for advice on **services provided to directors**. In 2012, the company decided to pay bonuses to its directors as they had received low salaries during the recession.

The company decided to reward its directors with bonuses and shares. It sought tax advice to do so. It also gave advice on reducing the directors' tax liabilities.

The issue was whether the supply of advice was to the company (allowable) or to the directors (not allowable).

The tribunal found that the services were used for the purposes of the business, and that they did not have a direction and immediate connection with the issue of share capital.

The case report can be downloaded from

<http://financeandtax.decisions.tribunals.gov.uk//judgmentfiles/j11422/TC07464.pdf>

*Taylor Pearson (Construction) Ltd. [2020] TC 7464*

A fee for **money handling** was not a separate VAT supply from the related media services, a first tier tribunal decided.

Virgin Media Ltd provided the media services of cable, broadband and telephone. It was in the same group as Virgin Media Payments Ltd. If a customer of media services did not agree to pay by direct debit, they were required to pay an extra £5 charge to Virgin Media Payments. The Virgin group argued that this was a separate supply and was exempt as a financial service. The tribunal found that this was simply part of the media services charge paid by the customer. Even if it were a separate supply, that was to another group company and so would be disregarded.

*Virgin Media Ltd and Virgin Media Payments Ltd [2020] TC*

HMRC has said that it will continue to hold in abeyance applications for VAT registration by **non-resident traders** on the basis of intending supplies, it was disclosed in December 2019. The plan had been to let these applications lapse when it was clear that a no-deal Brexit was not a possibility. As this remains as a possibility, the applications have not lapsed.

The supply of **doctors** and other medical staff was an exempt supply of medical care, not a standard-rated supply of staff, a first tier tribunal held.

The case report can be downloaded from

<http://financeandtax.decisions.tribunals.gov.uk//judgmentfiles/j11330/TC07370.pdf>

*Medacy [2020] TC 7370*

## National insurance

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## Inheritance tax

A legacy to a **political party** is exempt from inheritance tax if the party either:

- had at least two members elected to the House of Commons at the last general election, or
- has one member elected, and at least 150,000 votes were cast for all candidates of that party.

This means that the political parties exempt as a result of the December 2019 general election are:

- Conservative
- Democratic Unionist Party (DUP)
- Green Party (second ground only)
- Labour
- Liberal Democrat
- Plaid Cymru
- Scottish Nationalist Party
- Sinn Fein
- Social Democratic and Labour Party (SDLP) (first ground only)

The Alliance Party of Northern Ireland won one seat but only got 134,115 votes.

All other parties also fail to qualify. This includes Brexit, Change UK, UKIP, Ulster Unionists, and Yorkshire Party.

Six etchings by the Dutch artist **Rembrandt** have been donated to the Ulster Museum as part of an agreement to settle an inheritance tax bill of £150,000.

The etchings are:

- Six's Bridge
- The Adoration of the Shepherds
- Bearded Man in a Furred Cap and Robe
- The Artist's Mother
- The Descent from the Cross by Torchlight.

The first two have already gone on display.

## Stamp duties

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## Other taxes

The **digital services tax** could damage UK-US trade deals, according to the transatlantic lobby group British American Business, speaking in December 2019.

The UK proposes to introduce the tax in April 2020 on multinational digital platforms at 2% of their UK profits. The UK has said it will scrap the tax if a multinational tax could be agreed.

**Local authorities** collect £2.3 billion a year in “stealth taxes” according to *The Times* of 7 December 2019. This comes from charges for garden waste, bulky waste, funeral services, pest control and public toilets. These charges have increased by 50% since 2009. The total is about £100 per household per year on top of average council tax of £1,671.

## Tax administration

A discovery assessment was held to be **stale**. The first tier tribunal dismissed the assessments and closure notices, even though the issue of staleness was not raised by the taxpayer.

HMRC had issued seven discovery assessments, including one in August 2018 for the tax year 2009/10. HMRC also issued penalty notices. This discovery related to information known to HMRC for 30 months.

HMRC said that the concept of staleness was “unsound and devoid of statutory authority”.

The tribunal was critical of HMRC’s approach. In para 27, the judge said, “it is one thing for HMRC to take a principled stance that certain decisions of the courts and tribunals contain errors of law and to argue accordingly (but frankly) in affected cases. But is quite another thing to gloss over decisions which HMRC knows but dislikes and to proceed as if they do not exist.” In para 30, the judge said “HMRC did not act with the necessary candour”.

The case report can be downloaded from  
<https://www.bailii.org/uk/cases/UKFTT/TC/2019/TC07465.html>.  
*Jafari [2019] TC 7465 [19.12/17]*

HMRC were held by an upper tier tribunal to have properly issued a **notice** under Taxes Management Act s8 even though it knew the amount of tax owed. The decision of the first tier tribunal was overturned.

The claimant received employment and support allowance (ESA), taxable social security benefit in addition to wages from a low-paid job. His employment income was less than his personal allowance, so he paid no income tax. For reasons that are not clear, HMRC allocated his tax code to his earnings with no part allocated to ESA.

His earnings plus ESA exceeded the personal allowance, so he owed tax. HMRC knew exactly the amount of tax owed, and issued form P800 showing the amount. This amount was not collected by adjusting his tax code, but by a repayment plan of 33 payments. He only paid three.

HMRC issued notices under Taxes Management Act s8, requiring him to complete tax returns for two years. This was to create an enforceable debt. The taxpayer was late on completing these returns, so HMRC imposed two penalties of £100 each, plus daily penalties which it later cancelled.

The wording of s8 meant that a notice issued under that section was not limited to calculating the amount of tax owed. It could be used to create a valid debt from the taxpayer. This contradicts other decisions by tribunals.

*Goldsmith [2019] BTC 527.*

In a case, tax penalties were cancelled because the notification had been sent to the **wrong address**.

There was also discussion about whether the correct penalties had been charged.

The case report can be downloaded from

[https://assets.publishing.service.gov.uk/media/5e0204a6e5274a33c5aaa385/HMRC\\_v\\_Duncan\\_Hansard.pdf](https://assets.publishing.service.gov.uk/media/5e0204a6e5274a33c5aaa385/HMRC_v_Duncan_Hansard.pdf)

*Duncan Hansard [2020] UKUT 0391*

The Low Income Tax Reform Group (LITRG) says it has received several reports of **HMRC errors** when processing tax returns submitted on paper. It believes that the incidence of HMRC human errors is higher than should be expected.

### **Wrong address is reasonable excuse**

A taxpayer had reasonable excuse for late payment of accelerated payment notices (APNs) which were **incorrectly addressed**.

HMRC sent the taxpayer an accelerated payment notification date 13 October 2017. The taxpayer confirmed he had received this. The notification stated that APNs were to be issued within two to four weeks for PAYE and NI payments for the 2013/14 tax year.

These APNs were dated 20 October 2017, due for payment by 23 January 2018. Penalties were imposed in March 2018 and October 2018 for non-payment.

The APNs were incorrectly addressed. Parts of the address were omitted and an incorrect name added. The postcode was correct. The copy to the taxpayer's agent had the wrong postcode. These errors were repeated until April 2018.

The tribunal found that the APNs were not properly addressed as required by Taxes Management Act 1970 s115, and therefore could not be said to have been delivered.

The taxpayer's appeal was upheld and the penalties cancelled.

The case report can be downloaded from

<https://www.bailii.org/uk/cases/UKFTT/TC/2019/TC07458.html>.

*Hooton (t/1 KDS Refrigeration Ltd) [2019] TC 7458 [19.12/17]*

The **HMRC tax manuals**, accessible free on the Internet, create a legitimate expectation on which a taxpayer may generally rely. This means that HMRC cannot usually depart from its own manuals. In exceptional cases, HMRC may resile from the manual to avoid unfairness.

The Court of Appeal so held in a recent case regarding double taxation treatment of payments from a US subsidiary.

In this case, the taxpayer had obtained specialist legal advice. This had the effect of diminishing the legitimate expectation from the manuals.

*R (on application of Aozora GMAC Investment Ltd) v HMRC [2019] EWCA Civ 1643*

HMRC was forced to comply with its **guidance** given to an industry body.

The case concerned an assignment of rights under a construction project in an enterprise zone.

The taxpayer relied on guidance given by HMRC to an industry body. The guidance was clear, unambiguous and unqualified. The taxpayer was entitled to rely on it. HMRC could not resile from its own guidance.

*The Queen (oao Cobalt Data Centre 2 LLP and others) [2019] UKUT 342*

In 2018, HMRC presented 4,073 **winding-up petitions**. This is the highest number since 2015.

On **Christmas Day**, 3,003 tax returns were filed. Another 9,254 returns were filed on Boxing Day. Tax returns are generally due by 31 January 2020. If a taxpayer owes tax and wants that recovered by adjustment to the tax code, the return is due by 31 December 2019.

HMRC has reduced its use of **paper** by 76% over the last ten years. It has cut its greenhouse emissions by 61% over the same period. A main element is that only 6% of taxpayers now file their tax returns on paper.

HMRC has also reduced officer travel by 11%, and stopped using single-use coffee cups and plastic stirrers.

The Institute of Chartered Accountants in England and Wales tax faculty reports a decline in the **quality of service** from HMRC. It attributes this to so many staff being redeployed to deal with Brexit, leaving too few staff to deal with routine tax matters. The faculty calls for a review of the resources needed to provide a proper tax service.

The Low Incomes Tax Reform Group (LITRG) reports of several instance of mistakes occurring in respect of tax returns submitted on **paper** rather than online.

## Pensions

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## Welfare

Between August 2019 and December 2019, 12,299 **Blue Badges** have been issued to people with non-visible disabilities such as Parkinson's Disease, dementia, and epilepsy. The scope was widened in August 2019 to include such disabilities.

In December 2019, the Department of Work and Pensions started a small-scale test of paying the **universal credit housing element** directly to the landlord at the same time as making payment to the claimant.

If the test is successful, this procedure may be applied more generally later in 2020.

Social security **appeals** fell by 22% between July and September 2019 compared with a year earlier, according to Ministry of Justice statistics issued in December 2019. The reduction mainly related to employment and support allowance and personal independence payment.

Of the decided appeals, 74% were decided at the hearing. Of these, 71% were in favour of the claimant. This is an increase from 68% a year earlier.

The average time it took to deal with an appeal was 30 weeks.

From 1 April 2020, the **Scottish Parliament** takes over control of more elements of social security. This is being used to introduce some new benefits. This timetable was issued by the Scottish government on 16 December 2019:

- summer 2020: disability assistance for children and young people, replacing disability living allowance
- Christmas 2020: Scottish child payment for children under six
- end of 2020: winter heating assistance for children receiving the highest care component of disability assistance
- early 2021: disability assistance for working age people, replacing personal independence payment
- 2021: disability assistance for older people, replacing attendance allowance
- winter 2021: winter heating assistance and cold spell heating assistance, replacing winter fuel payments and Social Fund weather payments.

An upper tier tribunal found that a couple could be regarded as **estranged**, even though they remained on friendly terms and co-operated on matters such as finance and childcare.

The judge found that estrangement “implies that the reason the two people concerned are no longer living together as a couple in the same household is that the previous relationship between them has ended”.

This interpreted Housing Benefit Regulations SI 2006 No 213 Sch 6. A woman and her three children moved out of the matrimonial home in 2012; the husband remained in the property. She still had a financial interest in the property. She claimed housing benefit in 2012 and 2014. The local authority found that she had not declared her interest in the house until 2016. This had to be included as part of her capital unless she was estranged. As a consequence, the council attempted to recover the housing benefit.

*Bristol City Council v SJP (HB) [2019] UKUT 360 (AAC).*

A claimant had good reason for **not attending** a medical even though he had not provided evidence.

The claimant lost entitlement to personal independence payment because he missed a medical. The claimant said this was because he had had an epileptic fit which required him to stay overnight in hospital. He produced no evidence to support this, but the judge found that there was sufficient evidence of his medical condition to support it.

As an aside (ie obiter dicta), the judge noted that the letter from ATOS said that it was “important” for the claimant to attend. The letter should have been much clearer that failure to attend without good reason could lead to a loss of benefit.

*IR v SSWP (PIP) [2019] UKUT 374 (ACC)*

The upper tier tribunal found that a first tier tribunal had properly dealt with a claim where it had **not believed** that the tax credit claimant had been working and incurred childcare costs.

An all-female tribunal had been constituted to accommodate the claimant’s religious sensitivities.

In terms of credibility, the tribunal was correct in basing its decision on *what* the claimant said rather than *how* she said it. Tribunals must be aware that there can be cultural differences in mannerisms.

*NN v HMRC (TC) [2019] UKUT 386 (AAC)*

## Accounting

The financial reporting faculty of the ICAEW has produced guidance on the financial reporting implications of coronavirus. Some of the main points are noted below:

- going concern needs to be considered, as to whether the business will survive
- post-balance sheet events: generally coronavirus is a non-adjusting event for most entities. These should be disclosed when material. The level of disclosure will be linked to when the accounting period ends
- impairment of assets: some items such as stock may need to have an immediate write-down if the lockdown means it cannot be sold. There is also a need to consider whether there will be more bad debts
- government grants: the various forms of government support should be recognised in the accounts only when the conditions for support have been met and the entity knows the support will be received
- onerous contracts: where a contract has been renegotiated, that should be reflected in the accounts. Examples include rent on short-term lets and construction contracts
- disclosure: entities should consider the risks and be transparent and specific about them.

International accounting standard IFRS 16 on **leases** came into force on 1 January 2019.

This generally treats all leases as finance leases, meaning that the value of the leased asset must be shown as a fixed asset on the balance sheet.

There are two exceptions when a lease may still be regarded as an operating lease with the asset not shown on the balance sheet, and the lease payment treated as an expense on the profit and loss account.

Those exceptions are:

- leases that last for less than 12 months, and
- leases of low-value items. An indicative amount is \$5,000 when new.

Accounting standard **FRS 102** is amended from 17 December 2019 in respect of interest rate benchmark reform.

The interest rate benchmarks, such as LIBOR, are being reformed. LIBOR is not expected to be available after 2021. This can affect financial reporting, particularly in relation to hedge accounting.

Changes are made to sections 11 and 12. The changes apply for accounting periods that begin on or after 1 January 2020.

The changes can be downloaded from

<https://www.frc.org.uk/getattachment/26f4b8c9-4753-4ea5-9678-1a5616e3b53d/Amends-to-FRS-102-WEB-READY.pdf>.

Two minor amendments are proposed to accounting standard **FRS 101** for smaller entities. They relate to requirements for cash flow statements.

The proposals are set out in Financial Reporting Exposure Draft FRED 73.

International accounting standard **IAS 315** on material misstatement was revised by the International Auditing and Assurance Standards Board (IASSB) in December 2019. The revised standard requires clarification of the methodology for identifying and assessing risk, and emphasises the importance of identifying potential fraud.

A radical review of **auditing** has been proposed by Sir Donald Brydon in December 2019.

His main proposals are to:

- create a new profession of corporate auditing
- extend the audit remit to detecting fraud
- replace the concept of “true and fair”.

This would be achieved by:

- introducing suspicion into auditing qualities
- extending the scope of audit beyond financial statements
- requiring additional statements on resilience and public interest
- improved audit communication and transparency
- increased use of technology.

The report can be downloaded from

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/852960/brydon-review-final-report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/852960/brydon-review-final-report.pdf).

The High Court has said that **cryptoassets** are to be treated as property under English law, according to the Society of Trust and Estate Planners (STEP).

Cryptoassets include cryptocurrencies such as bitcoin. They are any form of asset that exists purely as computer code.

A cryptoasset is only to be regarded as property where it is possible to establish who owns it and how that ownership may be transferred.

As a cryptoasset cannot be physically owned, it cannot be subject to a bailment, pledge or lien.

Only certain forms of security, such as a mortgage or equitable charge, may be made over a cryptoasset.

STEP separately reported that some cryptocurrency firms are closing to avoid compliance with the EU fifth Anti-Money Laundering Directive which requires greater disclosure of assets.

The Big Four accounting firms have increased their share of the **audit market** in 2017/18 in the UK and Irish Republic, according to research from the Financial Reporting Council (FRC), published at the end of 2019.

Total fee income for the Big Four increased by 4.7% to £10.95 billion. Audit fee income increased by 1.7% to £2.1 billion.

In contrast, audit firms outside the Big Four saw income fall by 6.3%.

There was a decline in the number of firms authorised to do statutory audit work to 5,394 from 5,660 the previous year. This was largely due to the reduction in sole practitioners and firms with six or fewer principals.

Membership of the seven accounting bodies overseen by the Financial Reporting Council grew to 350,000 in the UK and Irish Republic, and to almost 550,000 worldwide.

It has become apparent that some tax accounting software cannot cope with an accounting period of one day as it requires a later date for the period end.

**One-day accounting periods** are fairly common in liquidations and administrations. They can also arise in disposing of capital assets. It is advised that users check their software.

## Business finance

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## Personal finance

On 30 December 2019, the government announced changes to the **student loan scheme**. During 2020, students will be able to access their accounts online. This will make it easier for the student to switch to direct debit towards the end of the repayment period, and thus avoid overpaying.

British people are paying an average £963 a year in **credit card interest**, according to Money Charity in December 2019. That is an average of £1,831 per household. Only four out of ten people have savings of more than £100.

Peer-to-peer lenders on the **Lendy** platform, now in administration have found that their investments were not ring-fenced, as promised. Their funds are being used to pay insolvency practitioners and other creditors, it was revealed in December 2019.

Lendy was formed in 2014 to invest in property development. It has suffered a high level of defaults. It went into administration in May 2019, with 9,000 investors owed £152 million.

From April 2020, some **hospital parking** charges must be waived. From that date, all 206 NHS hospital trusts are required not to charge for parking by:

- Blue Badge holders
- frequent outpatients who must attend regular appointments to manage long-term conditions
- parents of sick children staying overnight
- staff working night shifts

Otherwise, each trust remains responsible for its own policy on parking charges.

## Law

**Data protection** laws on processing certain categories of personal information apply to search engines. The Court of Justice of the European Union so held.

Under European laws, a search engine must comply with a request for de-referencing within the scope of the laws.

*GC and others v Commission Internationale de l'information et des Libertés (CNIL). [2019] CJEU Case C-136/17. The Times 23 December 2019*

Opposite sex couples may enter a **civil partnership** from 30 December 2019, 14 years after same sex couples were able to. A civil partnership, of opposite sexes or same sex, generally follow the same tax rules as marriages. The new regulations came into effect on 2 December 2019, requiring the couple to give 28 days' notice.

A landlord is entitled to refuse permission to convert **business premises** to residential premises on the basis that this would give the tenant protection under Leasehold Reform Act 1967. The Supreme Court has so ruled.

The lease was of a six-storey building which could be, and was, used for both business and residential purposes. The tenant applied for the first and second storeys to change to residential use. This required the landlord's permission "not to be unreasonably refused".  
*Hautford Ltd v Sequent Nominees Ltd. SC. The Times 2 December 2019.*

A bank was held liable for a **fraud** on a company where it had reasonable grounds for believing that instructions from a director was fraudulent. The Supreme Court has so ruled.

The bank said that the director was the "controlling mind" of the bank, so the fraud should be attributed to the company itself. The Court disagreed.

A bank has a duty to its customers to use reasonable skill and care when executing orders. The bank incurs liability if it executes orders knowing them to be dishonest or shutting its eyes to obvious facts of dishonesty.

The case concerned a company set up to manage the affairs of a wealthy Saudi Arabian businessman. The director was given extensive powers. He instructed the bank to transfer \$240 million to two companies controlled by the director.

*Singularis Holdings Ltd (in liquidation) v Daiwa Capital Markets Europe Ltd [2019] SC. The Times 19 December 2019.*

A planning authority should not have considered funding matters when giving **planning permission** for a wind turbine. The Supreme Court so ruled on 20 November 2019.

The developer offered to apply a proportion of the funds to community use. This was challenged by local resident Peter Wright.

*R (Wright) v Resilient Energy Severndale Ltd. [2019] SC. The Times 30 December 2019*

**Facial recognition** software may legally be used by police to identify a person in a crowd, the High Court has ruled. This does not breach Article 8 of the European Convention on Human Rights.

*R (Bridges) v Chief Constable of South Wales Police [2019] QBD. The Times 9 December 2019.*

## Other changes

The **general election** on 12 December 2019 saw a Conservative majority of 80 seats. The numbers of seats (with the change since the last election in brackets is):

- Conservative: 368 (+47)
- Labour: 203 (-59)
- SNP: 48 (+13)
- Lib Dem: 12 (-1)
- DUP: 8 (-2)
- Sinn Fein: 7 (-)
- Plaid Cymru: 4 (-)
- SDLP: 2 (+2)
- Green: 1 (-)
- Alliance Party of Northern Ireland: 1 (+1)
- Speaker: 1 (-)
- Independent: 0 (-1).

It is the Conservative party's biggest majority since 1983, and Labour's worst result since 1935.

Other significant points from the election:

- the pound rose 2% overnight when the exit poll was announced
- Labour leader Jeremy Corbyn and shadow Chancellor John McDonnell said they would stand down once a new leader has been elected
- Lib Dem leader Jo Swinson lost her seat
- for the first time, Northern Ireland has more nationalist MPs than unionist MPs.

The Queen opened **Parliament** on 19 December 2019 following the general election.

Its main proposals relate to leaving the European Union on 31 January 2020.

Measures of particular interest to accountants include:

- raising the threshold for national insurance to £9,500
- increasing the national living wage to £10.50 an hour by 2024, and lowering its age threshold from 25 to 21
- increasing research and development tax credits to 13%
- widening the scope of research and development to include cloud computing
- establishing a National Skills Fund
- making changes to business rates, including an increase in retail discount from 33% to 50%, extending this to cinemas and music venues, bringing forward the next review by one year to 2021, and providing additional relief for pubs
- doubling the maximum prison sentence for the most egregious tax evaders to 14 years
- reforming audit, including introducing a new regulator.

The following provisions were included in the **Conservative manifesto** for the general election, and should therefore be reflected in government policy in the coming months and years:

- no increases in income tax, national insurance or VAT

- increasing the employees' class 1 national insurance threshold from £8,632 to £9,500, with a view to increasing it to £12,500

- keeping corporation tax at 19% and not proceeding with reducing it to 17%
- introducing a stamp duty surcharge for non-resident buyers of UK property
- increasing employment allowance from £3,000 to £4,000
- increasing research and development tax credit to 13%
- reducing business rates for small local shops, music venues, pubs and cinemas
- resolving the problem with pension tax for hospital consultants
- removing VAT from sanitary protection
- doubling the maximum prison sentence for tax fraud to 14 years
- introducing the digital services tax
- reviewing alcohol duty, particularly on whisky
- introducing a new NHS visa for health workers from overseas
- ensuring that no-one has to sell their home for long-term social care
- introducing an Australian-style points system for immigration
- giving new parents the right to take neonatal leave
- clawing back redundancy pay when high-paid public sector workers change

jobs

- spending £9.2 billion on energy efficiency in homes, schools and hospitals
- consulting on the earliest day to ban the sale of new petrol and diesel cars
- ending the freeze on social security benefits
- keeping the triple lock on state pensions, free bus passes and other pensioner

benefits

- restricting benefits to EU citizens for first five years in UK
- stopping child benefit for children living overseas
- extending pay-as-you-go ticketing on trains
- requiring a minimum rail service to be maintained during a strike
- reconsidering whether to proceed with HS2 rail link
- abolition of hospital parking charges for certain groups
- clamping down on health tourism, and increasing charges for overseas users of

the NHS

- extending the Help To Buy scheme
- abolishing no-fault evictions.

On 20 December 2019, the European Union (Withdrawal Agreement) Bill had its second reading in the House of Commons. This gives effect to **Brexit** which now appears certain after the general election.

The Bill also:

- prohibits the extension of the implementation period beyond 31 December 2020
- gives all courts powers to reconsider decisions by the European courts, and, if desired, to overturn them
- requires ministers to provide an annual report on any continuing disputes with

the EU

- repeals Acts that no longer have any purpose, including the so-called Benn Act
- removes a commitment to maintain employment law, consumer law and environmental protection. These will be addressed in separate legislation.

**Andrew Bailey** is to be the new governor of the Bank of England from 13 March 2020, it was announced in December 2019. He replaces Mark Carney who was appointed in 2013.

Carney's term of office was extended to help maintain continuity of economic policy.

Bailey has led the Financial Conduct Authority since 2013. Previously he was deputy governor of the Bank of England and a member of its financial policy committee since 2012. He joined the Bank in 1985.

Bailey will be the Bank's 121<sup>st</sup> governor, and its ninth since the Bank was nationalised in 1946.

**Equity Life** ceased to exist at midnight on 31 December 2019. It was the world's oldest member-owned insurance group. The remaining 176,000 policy holders are being transferred to a new company after most of them accepted £9,000 for giving up guarantees on their contracts.

The society was founded in 1762. It was damaged beyond repair by a House of Lords ruling in 2000 that it was wrong to have cut guaranteed bonuses on policies

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## Landmark anniversary

### 16 February 2010

Robert Gaines-Cooper lost his tax case in the Court of Appeal about residence.

He made his fortune in the 1960s by renting juke boxes in pubs and caravan parks. In 1976, he moved to the Seychelles to escape the high rates of income tax of up to 98% on "unearned income".

The issue was whether he was still UK resident. He claimed he was not because he was in the UK for fewer than 90 days a year.

The courts kept ruling that the 90-day rule was not the only criterion. It was also necessary to make a clean break from the UK. In his case, the taxpayer had not sufficiently severed family ties with the UK.

Although he lost the case, it demonstrated the need for clearer rules.

The statutory residence test was introduced in 2013.

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# Articles

## Artificial intelligence and tax

Artificial intelligence (AI) is the latest development in computer technology. It is a development from programmable calculation in the 1940s, data processing from the 1950s and the many other functions since developed. Yet it was not until the 1980s that the computer started to become standard equipment in most offices.

AI is the ability of a computer to adapt to its environment. The effect is that the computer appears to think and learn in a human way. The objective is not to produce a machine that is as intelligent as a human, but one that is much more intelligent.

HMRC has already started to use AI. It has robots for routine checking of tax returns, and Connect software to check tax return data from other sources.

But AI has moved beyond that. Much software can now be accessed in ordinary English. There is even a chatbot that can answer tax queries. The query is expressed in normal sentences. The chatbot will ask further questions as necessary.

AI can analyse data. One accounting firm noted that the tax department spent 80% gathering data and 20% analysing it. The use of AI has reversed those percentages. Much more data can be analysed, with consequent superior service at lower cost.

There is a fear that computers will replace accountants. Those firms that have started to embrace AI have not found that. Their experience is that it has not reduced staff levels but has allowed them to perform more efficiently.

## Relocation

An employer may provide up to £8,000 tax-free and national insurance-free to an employee who is relocates because of his or her employment. This provision was introduced in 1993 at the same figure. The figure would now be about £16,500 if it had kept up with inflation.

The payment may be made when an employee relocates to a workplace where normal commuting is not possible. This may be an existing employee who relocates to a new working place with the same employer, or it may be a new employee.

The legislation does not specify any distance or commuting time. It is not necessary for the employee to sell his or her home, but if they do, many expenses can be included within the limit.

Examples of expenses that can tax-free to the limit include:

- legal and estate agent fees in selling the existing home
- legal fees, Land Registry fees and stamp duty land tax (or equivalent) in buying new home
- furniture removal expenses
- travel and temporary accommodation while visiting the area to find new accommodation
- new carpets, curtains and other items that cannot be readily transferred
- bridging loans, subject to conditions
- costs in relation to disconnection of utilities
- temporary accommodation for family members under 19 so as not to disrupt their education or exams
- benefit of a car or van that is necessary for the relocation
- additional insurance while a property is empty
- the services of a relocation company.

A bridging loan provided by an employer benefits from the separate £10,000 limit for beneficial loans. If a bridging loan exceeds that amount, the additional benefit may be covered by the relocation exemption.

Relocation does not cover:

- compensation for moving to a more expensive housing area (which could be claimed before 1993)
- compensation for a loss in selling previous home
- rent or mortgage costs for the new home
- new school uniforms.

All expenses must be paid by the end of the following tax year. So if someone moves on 20 January 2020, all expenses must have been paid or reimbursed by 5 April 2021.

If allowable relocation expenses are within the £8,000, they do not have to be reported to HMRC. If they do exceed this limit, the excess may be a taxable benefit in kind that will usually need to be reported on a P11D. The employer will have to pay class 1A national insurance.