



Newsletter: March 2020

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Payroll

In February 2020, it was announced that no action will be taken against any employer who makes employee-approved deductions from pay that put the net amount below the **national minimum wage (NMW)**.

This addresses an issue that arose with Iceland supermarkets. The company operated a scheme whereby an employee could have part of his or her wages paid into a savings fund. The employee retained ownership of these funds and could access them at any time. HMRC took the view that these transfers of funds were deductions from wages that reduced them below NMW.

The change means that such transfers are not regarded as breaching NMW rules. This change also covers salary sacrifice schemes.

In February 2020, it was announced that the government will resume **naming and shaming** employers who fail to pay the national minimum wage (NMW). This provision was paused in 2018 pending a review.

From April 2020, naming and shaming will resume with these changes:

- the threshold of underpayment increases from £100 to £500
- naming and shaming will be more frequent
- there is a change for measuring national minimum wage for salaried workers

who have variable hours.

Employers who pay less than NMW may correct the mistake without being named. They must pay the arrears and can be liable for a fine of up to 200% of the underpayment.

In 2018/19, HMRC identified £24.4 million in arrears for more than 220,000 workers. It also raised £17 million in penalties.

Further details can be downloaded from

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/864801/national-minimum-wage-enforcement-policy-february-2020.pdf.

The **advisory fuel rates** from 1 March 2020 have been announced. The rates are given below with previous rates (from 1 December 2019) in brackets.

Petrol engines:	1400cc or less: 12p (12p)
	1401-2000cc: 14p (14p)
	over 2000cc: 21p (20p)
Diesel engines:	1600cc or less: 9p (9p)

	1601-2000cc: 11p (11p)
	over 2000cc: 13p (14p)
LPG engines:	1400cc or less: 8p (8p)
	1401-2000cc: 10p (9p)
	over 2000cc: 14p (14p)

These rates apply when an employee has a company car. They are the amounts that an employee may pay the employer for using the car for private mileage and thus avoid the car fuel benefit charge.

Where an employee is not provided with fuel (and so does not pay the fuel benefit charge), these are the amounts that an employer may pay the employee for business mileage in the company car.

On 18 February 2020, HMRC confirmed that the tax code for **off-payroll workers** is OT on a month 1 or week 1 basis. It had been thought that the code would be BR.

This applies to deemed employees under IR35 provisions in the private sector. These provisions were due to start on 6 April 2020, but this has now been put back to 6 April 2021.

An employee who is reinstated is entitled to **annual leave** for the period between dismissal and reinstatement. The Advocate General of the Court of Justice of the European Union (CJEU) so decided on 29 January 2020.

The decision is not binding on the court, though it is usually followed in practice. If that decision is handed down by 31 December 2020, it is binding in UK law, though a UK court could depart from it (or the UK Parliament could legislate against it) from 2021. Neither is likely.

The case concerns a Bulgarian case of unfair dismissal. There was also a reference from Italy. The decision held that the period was analogous to a worker on sick leave or maternity leave, where annual leave entitlement continues to accrue.

QH v Varhoven kasatsionen sad na Republika Bulgaria [2020]. Case C-762/18 [20.02]

It is not sex discrimination to pay a woman more **statutory maternity pay** than a man receives as shared parental leave. The Court of Appeal so decided in two cases heard together.

These are both statutory provisions whose terms are clear. There is no basis for them to be amended under discrimination law.

The case report can be downloaded from <https://www.bailii.org/ew/cases/EWCA/Civ/2019/900.html>

Ali v Capita Customer Management Ltd. Chief Constable of Leicestershire Police v Hextall. [2019] EWCA Civ 900.

An estimated 8.6 million workers took “**sickies**” in 2019, according to a survey by Kantar. A sickie is when a person pretends to be sick to have a day off work. Against this, 12 million workers are estimated to attend work when they should be off sick.

In February 2020, HMRC issued another factsheet on **employment status**. In particular, it stressed that employment status is a matter of fact and not a matter of choice. An employer

and employee do not have the freedom to choose for their working relationship not to be that of employment if the conditions for employment are met.

Business tax

The OECD revised its guidance on **transfer pricing** in February 2020.

Transfer pricing is when goods are transferred between entities under the same control but subject to different tax provisions. The commonest example is when goods or services are sold between group companies in different countries. By adjusting the transfer price, profit could be shifted to the lower taxed countries. Regulations have long existed to ensure that market value may be substituted for a transfer price in such circumstances.

The aims of the latest change are to:

- improve consistency on the arm's length principle in determining market value
- avoid disputes on transfer pricing and double taxation.

The new guidance gives worked examples

The new guidance also looks at when a purported loan should be treated as a loan.

This guidance is not mandatory, but non-compliance could attract national tax authorities.

Guidance can be downloaded from <http://www.oecd.org/tax/beps/transfer-pricing-guidance-on-financial-transactions-inclusive-framework-on-beps-actions-4-8-10.pdf>.

HMRC is implementing changes for **non-resident corporate landlords** (NRCLs). From April 2020, such landlords pay UK corporation tax on profits rather than income tax. There are believed to be 22,000 NRCLs.

There are several reasons for using a NRCL. Before April 2017, it was used as a means of avoiding inheritance tax.

From April 2019, all gains from UK properties are taxed in the UK. This removed another historic advantage.

An NRCL does not become UK-resident under these provisions. Instead it must register as a non-resident landlord, failing which UK tenants could be required to deduct tax at source. HMRC is writing to all NRCLs to give them their new UTR numbers. By default, the first corporation tax period ends on 5 April 2021. An NRCL that wishes to use a different date may do so by writing to HMRC.

An agent may act for an NRCL, but this will require another 64-8 or other authorisation as the income tax authorisation is not valid for corporation tax.

Profits to 5 April 2020 remain subject to income tax, and from 6 April 2020 to corporation tax. Where an accounting period straddles these dates, the profits and expenses must be apportioned. This can mean deciding how to apportion general management expenses.

Tax payments are due thus:

- 31 January 2020: first income tax payment on account for 2019/20
- 31 July 2020: second income tax payment on account for 2019/20
- 31 January 2021: balancing income tax payment for 2019/20
- 6 January 2022: corporation tax payment for 2020/21.

The system is likely to request income tax payments on account for 2020/21. These must be reset to zero.

There is a tax advantage to the NRCL as the corporation tax rate of 19% is just under the basic income tax rate of 20%. There may be other tax benefits, such as being able to claim land remediation relief.

The corporation tax return must be submitted online, tagged under iXBRL. The free corporation tax software from HMRC cannot be used.

An NRCL does not have to register at Companies House.

A company had reasonable excuse for not taking corrective action from a **follower notice** when they had agreed a payment plan with HMRC.

A company was owned by a married couple. They bought a farm using a scheme to try to avoid stamp duty land tax (SDLT). The scheme did not work. In September 2017, HMRC sent a follower notice to the company, telling them that the scheme had failed at a tribunal hearing and they were liable to pay £22,000 SLDT. The notice required corrective action within 90 days, that is by 3 January 2018. On 15 January 2018, HMRC said they were liable to a 50% penalty because the deadline had passed with no corrective action.

The couple agreed to make two payments, each of £11,000 on 15 February 2018 and 15 March 2018. The payments were made.

HMRC then pressed for a penalty of £11,000.

The tribunal agreed that the company had a reasonable excuse in believing that the payment agreement discharged their liability.

The case report can be downloaded from

<https://www.bailii.org/uk/cases/UKFTT/TC/2020/TC07535.html>

Comtel Network Systems (UK) Ltd [2020] TC 7535

There was held to be no **goodwill** when a chartered accountant sold his company in 2014 and claimed entrepreneur's relief for goodwill for £1.2 million. The tribunal accepted HMRC's view that there was no goodwill. The sum was employment income which meant that additional tax of £431,400 was payable.

The tribunal considered the history of the business and its various incarnations as a sole trader, partnership and different companies. On the facts of the case, the tribunal held that the taxpayer had not retained the goodwill when his business had passed to the company.

The case report can be downloaded from

<http://financeandtax.decisions.tribunals.gov.uk//judgmentfiles/j11526/TC07567.pdf>

Neill Dyer [2020] TC 7567

A director of a project management company had sufficient experience to know that his business could have been required to register under **construction industry scheme**. Therefore he had no reasonable excuse for not so registering.

He should have been aware of a potential duty to register and then checked whether he did need to register.

The case report can be downloaded from

<https://www.bailii.org/uk/cases/UKFTT/TC/2020/TC07549.html>

T Adern Ltd [2020] TC 7539

A penalty under **senior accounting officer** (SAO) rules were upheld. An innocent mistake was not reasonable excuse. The company and the SAO were each fined £5,000.

The company was one of about 100 companies in the D C Thomson publishing group. The company has been dormant since its formation and did not submit tax returns. Its name had inadvertently been omitted from the list of companies sent by the group's external accountants as required under SAO rules. The company had been included in previous years' SAO returns.

As the penalties were fixed by law, the tribunal had no power to reduce them or to question HMRC's discretion. The tribunal said that imposing the full penalty was unfair. It would have reduced the penalty if it had been able to do so.

The case report can be downloaded from

<https://www.bailii.org/uk/cases/UKFTT/TC/2020/TC07540.html>.

Castlelaw (No 628) Ltd. Irene Douglas [2020] TC 7540

Personal tax

HMRC reminds taxpayers that the rules on selling residential property (other than a main residence) in the UK changes on 6 April 2020.

From 6 April 2020, a seller must tell HMRC within 30 days. Any capital gains tax (CGT) due must also be paid within 30 days. It is not sufficient to declare a capital gain on the annual tax return.

The change particularly affects:

- a second home
- a property that is let to others
 - a holiday home
 - any other residential property that is not the taxpayer's main residence.

The new 30-day provision does not apply:

- to a person's main residence
- where the sale was made under a contract signed before 6 April 2020, even if completion was after
 - where a property is sold at a loss
 - where the property is outside the UK
 - if the capital gain is less than the annual exemption for CGT. This is currently £12,300 from April 2020
 - if the sale is to a husband, wife or civil partner.

These changes extend the 30-day rule that applies from April 2015 to non-residents selling UK property.

HMRC will be launching a new online service to report such transactions. This can also be used by non-residents.

The period of ownership for **main residence relief** runs from completion date, not contract date, the Court of Appeal decided. In 2006, a taxpayer contracted to buy an apartment in a tower to be converted. The purchase was completed in January 2010, before which he did not have any right to occupy the property. For most of that time his property was just a space in a

tower. HMRC argued that the period of ownership ran from 2006. The Court agreed with the taxpayer that it ran from 2010. *Higgins v HMRC [2019] CA. The Times 17 February 2020.*

A taxpayer was not allowed to claim **main residence relief** from capital gains tax on a property, because she could not prove she had ever occupied the property. She showed that she paid council tax and utility bills, but that did not prove occupation.

For the six months, she claimed occupation, the property was advertised on a website. The open wardrobe in the bedroom, showed no hangers or clothes. The bathroom showed no towels or toiletries. Shelves were empty. The property looked un-lived-in.

The case report can be downloaded from

<https://www.bailii.org/uk/cases/UKFTT/TC/2020/TC07552.html>.

Carol Adams [2020] TC 7552

The 2020/21 rates of **Scottish income tax** were announced on 6 February 2020.

For most taxpayers, entitled to the UK personal allowance of £12,500, the rates are:

- starter rate of 19%: £12,501 to £14,585
- basic rate of 20%: £14,586 to £25,158
- intermediate rate of 21%: £25,159 to £43,430
- higher rate of 41%: £43,431 to £150,000
- top rate of 46%: above £150,000.

As in previous years, the personal allowance reduces by £1 for every £2 income above £100,000. This means that there is a marginal rate of 61.5% income tax on the slice of income between £100,000 and £125,000.

From 7 February 2020, Scotland is imposing a new 2% band of **land and buildings transaction tax (LBTT)** on rents that have a net present value (NPV) of more than £2 million. This complements the existing 1% charge where the NPV exceeds £150,000.

LBTT is the devolved equivalent to stamp duty land tax.

On the facts of the case it was held a taxpayer was not **ordinarily resident** in the UK between 1 February 2007 and 5 April 2010. (The concept of ordinary residence has now been replaced by the statutory residence test.) In turn, this determined whether he qualified for foreign service relief. This exempts the whole amount of a termination payment and not just the first £30,000. To qualify, the payment must meet all the conditions set out in Income Tax (Earnings and Pensions) Act 2003 s413(1). A smaller reduction may be claimed under s414 if all the conditions in s413(1) are not met.

The definition of foreign service has changed over the years, so determining whether the conditions have been met can depend on the tax years in question. For this period, he has a UK address. His salary was paid to a UK bank with UK tax and national insurance deducted. The taxpayer said that this was because UK sterling was a strong currency. He spent most of this time living in his apartment in Portugal or out of suitcases. He said he spent 70% of this period outside the UK, but the tribunal noticed that the evidence for this was “thin”.

Bank and credit card statements indicate he was in the UK for at least some of 34 of the 40 months. Evidence from his passport does not contradict this. His own evidence is that trips abroad were often short.

On this basis, he was ordinarily resident for the period. His appeal was dismissed. The case report can be downloaded from

<http://financeandtax.decisions.tribunals.gov.uk//judgmentfiles/j11555/TC07600.pdf>

Louis da Silva [2020] TC7600

Eamonn Holmes is the latest television presenter to lose an **IR35 case** that he is to be taxed as an employee and not as self-employed. He provides his services to ITV's *Good Morning* programme via a limited company he set up in 2001. The contract with the company requires his exclusive services on certain dates. In the hearing, it was explained that Holmes did not receive any of the employee benefits of other staff. It was held that his was not relevant. So far, eight presenters are known to have challenged decisions before the tribunal. Five have now been lost. Three have been won but two of these are subject to appeals by HMRC. Lorraine Kelly is the only presenter to have won and not face an appeal.

Red, White and Green Ltd [2020] TC7603.

HMRC is reported to be secretly investigating **family investment companies**, according to a report in *City AM* on 25 February 2020. Such companies are believed to be used to reduce tax liabilities through complex arrangements.

Business tax

A trader had reasonable excuse when he discovered that he had been the victim of a massive fraud by his trusted manager and, possibly, other staff, at a restaurant. They had cancelled properly issued customer bills and replaced them with bills for smaller amounts. The customers paid the full amount but only the smaller amounts were paid into the company's bank account.

This was discovered at the end of the summer season when most of its income was earned. He dismissed the employees, reported them to the police, and notified HMRC that he would have difficulties in paying the VAT. He said he found it difficult to have a meaningful conversation with anyone at HMRC.

The tribunal found that the fraud was of such magnitude that it still constituted reasonable excuse 16 months later. The appeal against the penalties was allowed.

The case report can be downloaded from

<http://financeandtax.decisions.tribunals.gov.uk//judgmentfiles/j11539/TC07581.pdf>

Mirencliff Ltd. [2020] TC 7581.

A claim for consortium relief failed as it was caught by an anti-avoidance provision.

The provision affects voting rights that are adjusted for a tax motive, and where the taxpayer would have had control had the adjustment not been made. In such a case, the relief is restricted by 50%.

In this case, the voting rights of the taxpayer were increased from 40% to 74.6%, and the voting threshold for resolutions was increased from 50% to 75%. This change was made when the new rules were introduced.

The upper tier tribunal agreed with the first tier tribunal that the change of voting rules was an arrangement and so triggered the anti-avoidance provisions.
Eastern Power Networks plc [2019] UKUT 367.

Valued added tax

HMRC said on 19 February 2020 that VAT will continue to be charged on **digital newspapers** despite losing a case before the upper tier tribunal in case *UT/2018/0065*. HMRC is appealing the decision to the Court of Appeal. In the meantime, its position is set out in HMRC Brief 1 (2020). This broadly retains the VAT charge but would allow businesses to reclaim VAT should it lose the appeal.

Newspapers in print form have been zero-rated since VAT was introduced in 1973. New Corporation, which publishes *The Times* and other titles, has been campaigning for this to be extended to on-line versions

The upper tier tribunal decided that the zero-rating set out in Value Added Tax Act 1994 Sch 8 Group 3 is not limited to goods but can apply to services such as digital publishing.

[Since this newsletter was first written, the Chancellor of the Exchequer announced in the Budget that digital publications will be zero-rated from 1 December 2020. This does not affect digital publications before that date.]

A **craft box** comprising a magazine and craft materials was a mixed supply for VAT, a first tier tribunal decided.

The company sold three versions of its product. Two of them comprised a book and craft materials. HMRC accepted that these were mixed supplies. The issue related to the least expensive version which comprised a magazine and materials. It retailed for £5.95. HMRC said this product was a single standard-rated supply as the magazine was incidental to the materials.

The company successfully argued that:

- the craft materials for the magazine product are similar to those for the book versions
- company research showed that 91% of the magazine readers valued it
- the magazine was not simply instructions for using the craft materials, but was an educational product in its own right
- the magazine could be bought separately, albeit in batches of 12 editions.

Doladine Ltd t/a Toucanbox [2020] TC 7505

A couple were able to claim VAT input tax under the **DIY builder scheme** for a property in Scotland, where HMRC guidance did not reflect Scots law.

HMRC said that the couple's VAT claim was too late. The issue was when the building could be regarded as complete. Here HMRC guidance did not reflect the fact that Scots law is different from English law.

Simone and Joanne Cotton [2020] TC 7533.

A **DIY built home** was complete when it had the necessary certificates to confirm that it is complete. This decision was fact-specific so “each case will be decided on its own facts”. But the house must be safe, hygienic and habitable.

The date of completion is relevant as a claim to recover VAT on materials must be made within three months of completion. HMRC said that the house was completed earlier when it became habitable.

This was not agreed by the tribunal. Some DIY builders camp in a clearly incomplete dwelling, such as for site security or out of simple necessity. Conversely, completion does not necessarily mean that all building works must have been completed. A dwelling may be completed even though some works such as fencing and landscaping have still to be completed.

The tribunal found that the housebuilders submitted their claim in time.

The case report can be downloaded from

<http://financeandtax.decisions.tribunals.gov.uk//judgmentfiles/j11571/TC07614.pdf>

Proffitt, Neil. [2020] TC 7614

VAT relief for a DIY builder was denied when the work was not in accordance with an extant planning permission.

The taxpayer’s wife suffered a serious stroke, so it was decided to convert an old workshop in the garden to a dwelling that was suitable for her.

Planning permission was granted for the demolition of the workshop except for two walls and foundations.

An inspection found that the workshop was not structurally sound, so it was decided to demolish the workshop completely, including the foundations. New plans were submitted to the council which were approved. The design of the dwelling had not changed. The two walls that were to have been retained were rebuilt to their original specification.

The council issued a development certificate on 21 August 2018, though it made the comment that a new planning application should have been submitted. After HMRC contacted the council. it issued a further completion certificate on 20 November 2018 in relation to the foundations.

HMRC said that DIY VAT relief was only available when the building is completed in accordance with an extant planning permission. The taxpayer did not then have planning permission for a new building. The law is Value Added Tax Act 1994 Sch 8 Group 5 Note 2.

The tribunal judge said “I have every sympathy with the appellant but I must apply the law”.

The case report can be downloaded from

<http://financeandtax.decisions.tribunals.gov.uk//judgmentfiles/j11518/TC07561.pdf>

David Stewart [2020] TC 7561

Four new companies are added to the list of companies that may claim **VAT refunds** under Value Added Tax Act 1994 s33E.

They are:

- High Speed Two (HS2) Ltd
- East West Railway Company Ltd
- Transport for Wales

- Single Financial Guidance Body

The Value Added Tax (Refund of Tax) Order SI 2020 No 185

The tribunal set aside a **default surcharge** of 10% on the basis that a previous default was issued where the correct amount of VAT had been charged.

The return in question overstated the amount of VAT as it did not reflect allowable input tax. The correct amount of VAT was paid for the quarter. The error was in the VAT return which overstated the VAT due by £399.92, representing the input tax. HMRC accepted that the correct amount of VAT had been paid.

The issue turned on the meaning of the words in Value Added Tax Act 1994 s59(1)(b) that a penalty may be imposed if “HMRC have received that return but have not received the amount of VAT payable shown in the return as payable by [the taxpayer] in respect of that period”.

HMRC took the view that this meant that a penalty arose whenever a payment was made for less than the amount on the VAT return, even if the payment was for the whole actual liability.

The tribunal found that the current situation was not that clear. HMRC was seeking to impose a penalty for tax that was not owed. “In the tribunal’s view, it would be inconsistent (given that tax and penalties are *imposed by law* as made by Parliament) to conclude that Parliament intended HMRC to benefit from mistakes made by taxpayers in HMRC’s favour” (para 24).

Accordingly, the tribunal held that there was no default for that period. The consequence of this was that the other default surcharges failed as they were no longer within a 12-month period of a previous default.

As a cautionary note, it is worth observing that the 10% penalty being sought by HMRC was for an amount of £269,239 as a consequence of an alleged default of less than £400 which HMRC admitted was not even owed.

The case report can be downloaded from

<http://financeandtax.decisions.tribunals.gov.uk//judgmentfiles/j11536/TC07578.pdf>

Medivet Group Ltd [2020] TC 07578

National insurance

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Inheritance tax

From 6 February 2020, the amount of the **statutory legacy** increases from £250,000 to £270,000.

This is the amount that a surviving spouse (or civil partner) will receive absolutely if the other spouse dies without a will leaving a spouse and children. The surviving spouse also receives personal chattels and half the balance of the estate absolutely. The other half is shared between the children.

The previous figure of £250,000 from 1 October 2014. Before that, the figure was £125,000, from 1 February 2009. The relevant date is when the person died.

The provisions have been implemented under Inheritance and Trustees’ Powers Act

2014.

Couples often wrongly assume that if one dies, the other inherits everything. That is not so. The Intestacy Rules can be problematic, particularly if there are divisions within a family. The simplest way to ensure that an estate passes in accordance with a person's wishes is to make a will, and to review it periodically.

A **home loan scheme** failed to avoid inheritance tax, a first tier tribunal decided. The scheme was intended to remove a property from a taxpayer's estate when it passed to his children on his death. He was a widower with three children. He died in September 2013.

In March 2002, he sold his property to a trust for £1.4 million. This was funded by a loan agreement between him and the trust, which was interest-free and payable on demand. He gifted the loan to his children under an irrevocable deed of assignment. Under the terms of the deed, he could live in the property until his death.

Had the scheme worked, it would have avoided not only inheritance tax, but stamp duty land tax and capital gains tax also.

The tribunal found that the terms of the sale agreement and loan agreement did not reflect the reality. The written documents did not satisfy the requirements of Law of Property (Miscellaneous Provisions) Act 1989 s2.

This meant that the agreement to sell the house to the trust was void. This also voided the deed of assignment as there was nothing to assign. The tribunal found that the parties never intended to honour the terms of the sale agreement.

As a consequence, the house remained part of the man's estate.

The case report can be downloaded from

<https://www.bailii.org/uk/cases/UKFTT/TC/2020/TC07549.html/>

Shelford and others [2020] TC 7549.

On 11 February 2020, a group of MPs proposed **radical reform** of inheritance tax. The proposals are:

- reducing the main rate from 40% to 10%
- increasing the annual limit on gifts from £3,000 (unchanged since 1984) to £30,000
- abolishing many other reliefs.

The tax yields £5.3 billion a year. The nil rate band has been frozen at £325,000 for ten years, though this has been partly compensated by the residence nil rate band. The consequence of this freeze is that its yield increased by 13% between 2014 and 2016. Despite this only 5% of the 588,000 people who die each year have estates caught by the tax.

Stamp duties

HMRC has revised its manual on stamp duty land tax (SDLT) for sections SDLTM00360-SDLTM00400 and SDLTM00410 to SDLTM00430.

The revision relates to the **definition of a dwelling**. The manual sets the bar low for what it considers to be suitable for use as a dwelling, for which a higher rate of SDLT is payable.

Other taxes

In February 2020, the government announced some “sticking plaster” reductions to help with **business rates**. The changes announced were:

- another £1,000 rates relief for 18,000 pubs, bringing their relief to £13,500
- increasing rates relief for small shops from 33% to 50%
- £1,500 rates relief for cinemas and music venues
- extending the £1,500 discount for newsagents to 2025.

Some of these have been overtaken by reliefs during coronavirus lockdown.

Most councils have increased **council tax** by the maximum 3.99%. Of the 133 of 151 councils who have set a budget, all but two have included the 2% precept for social care. For an average band D property, the increase adds £69 per household.

Scotland announced in its Budget on 6 February 2020 that **reverse vending machines (RVMs)** will qualify for 100% rates relief from 1 April 2020.

An RVM is a machine that accepts an empty can or plastic bottle and provides either cash or a voucher.

On 10 February 2020, HMRC announced an extension for **Customs funding** to 31 January 2021.

The scheme was set up in September 2019. It has £26 million in funds to assist businesses with IT provisions and training to comply with Customs regulations. Only £18.5 million had been allocated by the deadline, which has now been extended to allow further grants.

The **television licence** (which is legally a tax) may be paid in fortnightly or monthly instalments from 1 April 2020, under what is known as the simple payment plan (SPP). This is only available for colour televisions, not for the lower fee for black and white televisions. It provides help for people in financial difficulties who must meet one of four conditions:

- they have been visited about not having a television licence
- they have sought advice from a debt charity about their financial obligations
- they have become unlicensed and had missed payments on a previous licence
- they were part of SPP in the previous year.

Under the scheme, a person does not pay for the licence for the first six months, known as frontloading. SPP was trialled between April 2018 and September 2019.

This ensures that the £157.50 licence fee from 1 April 2020 is fully paid.

The Communications (Television Licensing) (Amendment) (No 2) Regulations SI 2020 No 160

A tribunal upheld the decision to seize 588 Roman and Carthaginian coins that were concealed in an imported car for contravening **Customs law**.

The taxpayer said the coins had been in the UK, exported to Libya and were now being re-imported. The coins were concealed to prevent them being stolen by forces that controlled the airport at Libya.

The tribunal heard evidence from a coin expert from the British Museum.

There were conflicts of evidence on many issues. This related to the state of the coins, how a coin collector would behave, and how the coins had been cleaned. Some paperwork was produced to indicate UK acquisition, but there was doubt as to whether this related to the seized coins.

The role of the tribunal is not to reconsider the decision to seize, but to rule as to whether it was a decision that no reasonable could have made. The decision maker did not take into account irrelevant material, as alleged. The seizure therefore stood.

The case report can be downloaded from

<http://financeandtax.decisions.tribunals.gov.uk//judgmentfiles/j11568/TC07612.pdf>

Anwar Enajah [2020] TC7612

On 10 February 2020, the government announced plans to create 10 new **freeports**. These would allow goods to be brought into the UK without payment of Customs duties or import VAT until the goods were released for free circulation.

A taxpayer was held not to have walked away from a **Customs officer** when his partner had been stopped in the Customs green channel (for “nothing to declare”) for having brought in tobacco well in excess of that allowed from Egypt.

The tribunal also accepted that the cigarettes and tobacco were not concealed, and the late reply to HMRC was because he was in Bulgaria at the time.

Accordingly the mitigation of his penalties for evasion of tobacco duty were reduced by 45% rather than 25% offered by HMRC.

The tribunal did not accept that the taxpayer, a frequent traveller, had reasonable excuse because he thought Egypt was part of the EU, and he was not aware of the limits on importing tobacco.

The case report can be downloaded from

<http://financeandtax.decisions.tribunals.gov.uk//judgmentfiles/j11531/TC07572.pdf>

Mark Andrew Lockey [2020] TC 7572

A tribunal found that a taxpayer had acted dishonestly when he brought in **excess tobacco** products to the UK from Tenerife.

The issue was whether the taxpayer had been deliberately dishonest, which attracts a higher penalty.

The tribunal found that he had been. Tobacco limits were conspicuously displayed at the airport and should be well known to a frequent traveller. In any event, the tribunal would expect a taxpayer to check the allowances.

Accordingly the penalty for deliberate dishonesty stood, though the tribunal increased the mitigation from 45% to 50%.

The case report can be downloaded from

<http://financeandtax.decisions.tribunals.gov.uk//judgmentfiles/j11532/TC07573.pdf>

Dear Ernest Southern. [2020] TC 7573

From 12 March 2020, new provisions state what explanatory notes and other information a local authority must put on its website regarding **council tax** and business rates.

The Council Tax and Non-Domestic Rating (Demand Notices) (England) (Amendment) Regulations SI 2020 No 133

A tribunal considered what was slate for the purpose of the **aggregates levy**. This tax was introduced in 2002 on the commercial exploitation of sand, gravel and rock. There are many exemptions, of which slate is one. The word “slate” is not further defined.

The tribunal agreed with the taxpayer that the word should be used in an ordinary sense to mean slate rock that can be used for any purpose rather than the narrower definition that limits it to rock that can be made into roof tiles.

The case report can be downloaded from

<http://financeandtax.decisions.tribunals.gov.uk//judgmentfiles/j11561/TC07606.pdf>

Lovie Ltd [2020] TC7606

A tribunal found that a bank was not liable to **bankers payroll tax** (BPT) for an adjustable performance plan award because HMRC did not give proper notice. Had proper notice been given, the award would have been taxed under BPT.

BPT was a tax charged in one year only. It was levied in 2010 by Finance Act 2010 Sch 1 after many banks had been bailed out in the banking crisis of the previous two years. BPT imposed a 50% tax on the banks on the amounts of excess remuneration (broadly bonuses) in excess of £25,000.

The appeal had two elements: a procedural issue and substantive issue.

The procedural issue was whether HMRC had given notice to the bank by 31 August 2011 of its intention to enquire into the bank’s BPT return. The tribunal found that it had not met that requirement, which meant that the case was won by the taxpayer.

The substantive issue was whether the award fell within the scope of BPT, namely whether it was awarded “during the chargeable period”. The tribunal found that it was, though this point was academic as the case had already been dealt with on the procedural issue.

The case report can be downloaded from

<http://financeandtax.decisions.tribunals.gov.uk//judgmentfiles/j11538/TC07580.pdf>

Credit Suisse Securities (Europe) Ltd. Other Credit Suisse companies [2020] TC 7580

Tax administration

The **Budget** will still be held on 11 March 2020. The new Chancellor Rishi Sunak MP so said on 18 February 2020.

Kate Forbes became the new Scottish finance secretary on 18 February 2020.

Businesses having difficulties with tax because of **flooding** in February 2020 can all the flooding helpline on 0800 904 7900. The line is open Monday to Friday 8am to 8pm, and Saturday 8am to 4pm.

If the problem is in paying tax, the business can call:

- 0300 200 3835 if payment is not due, or
- 0300 200 3822 if payment is overdue.

Agents can call the agent dedicated line on 0300 200 3887.

It is also now possible to set up a self-assessment payment plan online.

An assessment may be issued by HMRC's **computer**, an upper tier tribunal has ruled. This has the effect of reversing several decisions of the first tier tribunal which held that an HMRC assessment is only valid if issued by an identifiable "flesh and blood" officer.

The tribunal held that there was no difference between "HMRC" and "an officer of HMRC". The legislation does not require an officer to be identified on an assessment. The computer issues assessments according to criteria set by HMRC officers. "It is enough that officers have decided the criteria to be satisfied for a taxpayer to receive a [Taxes Management Act 1970 s8] notice leaving the implementation of that decision to administrative staff and contractors" (para 57 in part).

Neil Rodgers [2020] UTT 2018/0142 and 2018/0144

Since the *Neil Rodgers* case has been heard, it has been confirmed that the matter will be put beyond doubt in legislation. This will apply to all cases that arise from 29 October 2019 and to all previous cases that has not been settled by that date.

Gateway is restricted for older operating systems. Gateway is used to file online tax returns and for other government services.

From 1 April 2020, the Gateway service cannot be accessed using Windows XP, Windows Vista or Internet Explorer 6 or 7. Some other old operating systems are also excluded.

HMRC is using its new **criminal powers** it was revealed in February 2020. It is investigating 9 cases under these powers, with another 21 lined up. The new powers are contained in Criminal Finances Act 2017. This creates two new criminal tax offences:

- failure to prevent UK tax evasion, and
- failure to prevent foreign tax evasion.

These provisions deal with "blind eye" practices whereby an institution denies responsibility for tax evasion on the grounds that this was the activity of a maverick employee. The law requires businesses to have policies to prevent evasion and to have provisions to ensure compliance. A business may be prosecuted even if no tax has been evaded. The penalty is an unlimited fine.

HMRC is reported to be conducting nine "**failure to prevent**" cases, according to STEP. This is a new offence created by Criminal Finances Act 2017 Part 3.

The new offence deals with situations where an employee of an organisation engages in tax evasion but the organisation escaped punishment on the basis that this was an action of a maverick employee.

The new provision requires organisations to have measures in place to prevent such action by employees and subcontractors, and to have provisions to secure compliance.

A tribunal ruled that a notice by **email** is served when actually received by the recipient. "In summary therefore, I have come to the conclusion that in order for a notice to be validly served by email then it must actually be received by the intended recipient. It is not in my view

sufficient for the notice to be received by the tribunal's server, even if I were able to make such a finding of fact".

The issue was whether a taxpayer's agent filed an appeal within time. The agent notified the tribunal by email.

Tribunal rules set out clear requirements as to what the notice of appeal should include, but is silent on how such notice may be delivered.

Interpretation Act 1978 s7 provides details of when a notice by post is considered served, but is silent on emails.

HM Courts and Tribunals give directions about serving notice by fax which is similar to email in that it does not require an agent physically to deliver a letter. CPR Practice Direction 5A states: "A party filing a document by fax should be aware that the document is not filed at court until it is delivered by the court's fax machine, whatever time it is shown to have been transmitted from the party's machine."

HM Courts and Tribunals also state that an email, including attachments, must not exceed 10 MB.

The tribunal also considered the possibility that the email reached the tribunal's server but was blocked by its firewall. The tribunal had no evidence that this is what happened.

The tribunal ruled that the notice of appeal was not properly served on the tribunal.

The tribunal then considered whether to allow a late appeal, now more than four years late.

HMRC is one of many organisations that do not send out automatic acknowledgments to emails, so the lack of acknowledgment was not something which could have alerted the taxpayer.

The tribunal must consider a late appeal against clearly defined criteria as to who would be prejudiced. HMRC said that a late appeal would prejudice them as the officer involved had since retired, the agent had (unwisely) sent original documents of which he does not have copies and these could be difficult to locate.

On balance, the tribunal found for the taxpayer. The late appeal had already resulted in a debt of £386,000 plus interest, and the taxpayer had an arguable case. So a late appeal was allowed.

The case report can be downloaded from

<http://financeandtax.decisions.tribunals.gov.uk//judgmentfiles/j11559/TC07604.pdf>

Jeffrey John James Ltd [2020] TC7604 [20.02/10]

HMRC made 1,082 **dawn raids** on homes and businesses in 2018/19, according to the firm Pinsent Masons. This is a reduction from 1,482 raids the previous year. The reduction is believed to be because HMRC has better intelligence on tax evasion.

A first tier tribunal decided that it did not have jurisdiction to consider whether HMRC is entitled to **disapply PAYE regulations**.

The decision relates to a direction between HMRC and lead appellants in litigation who were users of the Edge Scheme tax avoidance plan. This broadly split earnings from employment into two parts. One part was a national minimum wage subject to PAYE. The other

part was paid into an employee benefit trust with a view to avoiding PAYE. The scheme ran from 2005.06 to 2010/11, and had between 576 and 1,648 users.

The appellants argue that they should be given credit for the tax that should have been deducted under PAYE, even though no such tax was actually deducted. It is claimed that HMRC has discretion to do so.

The tribunal considered that it did not have jurisdiction.

The case report can be downloaded from

<http://financeandtax.decisions.tribunals.gov.uk/judgmentfiles/j11567/TC07611.pdf>

Philip Higgs and others. [2020] TC7611 [20.02/10]

HMRC is revising The **Taxpayer's Charter**, it announced on 24 February 2020. The consultation period ends on 24 February 2020. The Charter sets out standards for HMRC. It is a legal requirement under Finance Act 2009.

In January 2020, the government announced that more trusts would be required to register with the **Trust Registration Service** (TRS). The change is that all express trusts would be required to register, and not just those with a tax liability.

Under current law, a trust must register with TRS if it has a tax liability, except if:

- the trust's only tax liability is less than £100 income tax from interest
- the trust is a bare trust
- only the settlor or beneficiary is liable for tax
- the trust is a tax-exempt charity
- the assets in the trust go back to the settlor (as in a resulting trust), for example when all the beneficiaries have died
- the trust has been created by legislation (a statutory trust)
- the trust was imposed by a court (constructive trust).

The 31 January 2020 tax **filing deadline** was missed by 958,296 taxpayers, HMRC reported in February 2020. They are each liable for a £100 fine unless they can show reasonable excuse.

A record 10.4 million taxpayers filed online by the deadline. This represents 94% of all returns. More than 700,000 taxpayers filed their tax returns on the last day, with 26,562 submitting returns in the last hour.

In February 2020, it was disclosed that there are 25,000 appeals outstanding at the **Valuation Office Agency**. At the current rate of hearing appeals, businesses could wait four years for 2017 appeals to be heard.

The EU has declared the **Cayman Islands** a tax haven, it was announced in February 2020. It is a British overseas territory based in the Caribbean Sea. While the UK was still a member of the European Union, it could not be blacklisted. The official term is listed as a "non co-operative jurisdiction".

The EU believes that £506 billion is lost in tax because of tax havens. Four of the ten biggest havens are British overseas territories.

Being designated a tax haven means that EU countries can deal with them more

robustly. The objective is not to penalise a haven but to encourage them to make changes towards international co-operation. The first list was produced on 5 December 2017. It has been amended since and is now reviewed twice a year. The first list had 17 countries or territories, some of whom have now been removed.

Businesses operating from havens can be affected by measures such as:

- increased audit requirements
- non-deductibility of costs paid into a haven
- stricter controlled foreign company rules
- measures on withholding taxes
- limitation on profit distribution.

As at 27 February 2020, the list comprises:

- American Samoa
- Cayman Islands
- Fiji
- Guam
- Oman
- Palau
- Samoa
- Seychelles
- Trinidad and Tobago
- US Virgin Islands
- Vanuatu.

Countries that have been removed from the original list are Bahrain, Barbados, Grenada, Korea (Republic of), Macao, Marshall Islands, Mongolia, Namibia, Panama, Saint Lucia, Tunisia, and United Arab Emirates.

Brexit is not a **reasonable excuse** for late payment of tax, a first tier tribunal decided. Caris Properties Ltd was late in filing its corporation tax return and in paying the tax. Part of its argument was that Brexit created unforeseen market conditions which adversely affected its cashflow. The tribunal decided that a prudent company would have made appropriate arrangements to pay its corporation tax.

Caris Properties Ltd [2020] TC 7481.

Historic non-compliance with PAYE did not invalidate a contract of employment, the employment appeal tribunal decided.

If an employer and employee improperly agree that PAYE and class 1 national insurance will not be deducted, the contract of employment is illegal. As such, legal actions may not be enforceable. For example, an employee will usually not be able to claim unfair dismissal or wrongful dismissal if he or she knew the arrangement was illegal.

In this case, the employee was engaged from March 2007 to May 2017. She agreed to be responsible for paying her tax which she failed to do. The employer did not know this until July 2014. From that date, the employer put aside sufficient money to pay the tax and national insurance.

She later claimed unfair dismissal and wrongful dismissal. The employer said she could

not claim because of the historic illegality. The employment tribunal agreed. The employment appeal tribunal overturned the decision. She had not participated in illegality for almost three years before the dismissal.

Robinson v His Highness Sheikh Khalid Bin Saqr al Qaimi. [2020] UKEAT/0106/19/RN.

From 12 March 2020, appeals against **tax-free childcare** will be dealt with by the social entitlement chamber and not the tax chamber.

The First-tier Tribunal and Upper Tribunal (Chambers) (Amendment) Order SI 2020 No 137.

On 26 February 2020, the Chancellor of the Exchequer Rishi Sunak MP promised a “light touch” in enforcing penalties for non-compliance with the new **IR35 provisions** in the private sector.

Under this change, private sector employers must decide whether a worker is providing his or her services under conditions which are the equivalent to being an employee. If so, the worker must be paid through the payroll with income tax and national insurance deducted under the PAYE system. The worker does not otherwise legally become an employee. This mirrors provisions made for the public sector in 2017.

Separately, the government announced that the new provisions will not affect existing contracts which started before 6 April 2020.

[Since this newsletter was first written, the IR35 provisions for the private sector have been deferred by one year to April 2021.]

Tax reliefs “cost” £155 billion a year, according to the National Audit Office (NAO) on 17 February 2020.

The report found that there are 362 “tax interventions”, which are tax reliefs for a particular group or sector. Examples include research and development expenditure and pension contributions.

Of these, only 111 reliefs have been costed.

There are 23 interventions that each cost more than £1 billion. They account for 92% of all such relief.

The most expensive interventions are:

- tax relief on pension contributions
- VAT zero-rating on food and new dwellings
- capital gains tax relief on a taxpayer’s main residence.

As a separate exercise, the Treasury is considering tax reliefs on 63 interventions.

On 12 February 2020, it was disclosed that HMRC investigations into **small businesses** yielded an additional £4.9 billion revenue. It is estimated that every £1 spent on such investigation yields £16 in tax revenue.

The film 1917 could only have been made with film tax relief, said its producer Pippa Harris. The film employed 1,200 crew and 1,000 actors and other performers. It was made in 12 locations from Glasgow to Salisbury Plain.

Film tax relief was introduced in 2007 and has amended since then to prevent abuse.

More than 5,000 films have claimed relief. It has been estimated that every £1 in film tax relief generates £7 for the British economy.

Spain and Mexico agreed in February 2020 to co-operate in settling tax outstanding from 1631. They are attempting to recover more than a million pieces of gold, silver and gems on the **galleon** Nuestrs Señora del Juncal which sank off the coast of Mexico in October 1631.

Pensions

The Pensions Regulator (TPR) has decided not to require pension scheme boards to engage a **professional trustee** as had been suggested, it was announced on 13 February 2020. A consultation showed a desire to raise trustee standards, but believed that such compulsion was inappropriate. TPR has power to appoint a professional trustee in defined circumstances

Welfare

The completion date for **universal credit (UC)** has been put back yet again, it was announced in February 2020. The latest date is that migration from the six legacy benefits that UC replaces should be concluded by September 2024, rather than December 2023. The original completion date was 2017.

Credit card companies have been told by the Financial Conduct Authority (FCA) to contact card holders who have paid no more than the minimum each month. There are believed to be between one million and two million people with problem card debt. This is defined as when a person has more interest and charges than they repaid over 18 months.

From 5 February 2020, travellers who cannot get **travel insurance** must be referred to another insurer who may be able to help. Travel insurance is often refused to passengers who are elderly or frail, or who have an existing medical condition.

The government announced a scheme called **First Homes** on 7 February 2020. This is designed to reduce house prices by one third. Such properties will be available to veterans and key workers. The discount will be locked in, so subsequent purchasers will also pay one third less. Further details will follow.

Transitional payments made as part of employment and support allowance (ESA) will not end on 5 April 2020 as previously stated. They will continue to be paid until they either fall to zero or entitlement to ESA ends.

The amendment came into force on 27 February 2020.

The Employment and Support Allowance (Transitional Provisions) (Amendment) Regulations SI 2020 No 102

Rules limiting the higher rate of **bereavement support payment** (BSP) to where a claimant had been married to their late partner were incompatible with the European Convention on Human Rights, the High Court ruled on 7 February 2020.

The relevant law is Pensions Act 2014 s30 and SI 2017 No 410.

Jackson v Secretary of State for Work and Pensions [2020] EWHC 183 (Admin) [20.02/22]

Being an **unadopted stepdaughter** of a national does not establish a right to reside in the UK, the Court of Appeal held on 20 February 2020.

A 46-year old woman was a Philippines national. Her mother came to the UK in 1990 and lived with a partner who was an Irish national. They never married or became civil partners. The woman argued that she had the right to remain as the stepdaughter of an Irish national.

The Court rejected this argument. The definition of a “direct descendant” in the Citizens Directive 2004/38/EC meant a biological child or adopted child, not someone with whom she had no relationship. If her mother had married the Irish national, there could be a right-to-remain relationship.

Latayan v The Secretary of State for the Home Office [2020] EWCA Civ 191 [22.02/22]

Accounting

On 6 February 2020, the government gave some further details about the new body **Audit, Reporting and Governance Authority** which is due to replace the Financial Reporting Council.

The main change relates to the regulation of auditors. These will be contained in a statutory instrument. Other proposed changes will be put out to consultation.

The Financial Reporting Council and Department for Business, Energy and Industrial Strategy have issued joint guidance to accountants during the Brexit **transition period** from 1 February 2020 to 31 December 2020. The main points to note are:

- Brexit in itself does not trigger any changes to accounting or financial reporting
- companies that currently use EU-approved international accounting standards will be required to use UK-approved international accounting standards from 1 January 2021. These are expected to be the same standards
- any new international accounting standards issued during the transition period may be adopted
- UK incorporated parent companies with European Economic Area (EEA) based immediate subsidiaries, that themselves are intermediate parent companies, can continue to rely on the equivalence of UK GAAP for the purpose of exemptions for their EEA based subsidiary, but such companies should check their reporting requirements in the EEA state
- there are no changes to audit requirements
- accounting and auditing qualifications will be mutually recognised during the transition period. The position from 2021 has yet to be agreed
- the EU's Audit Regulation and Directive (ARD) continues to apply. After the transition period, it will be retained as UK law, though the UK may subsequently amend it.

The Bank of England said in February 2020 that it will adjust the **stress test** for banks following the introduction of international accounting standard IFRS 9. This standard changes the way that impairment losses are measured.

The main accounting bodies pledged to encourage their members to play their part in dealing with **climate change**.

The accountant's role includes:

- integrating climate change risk into organisational strategy, finance, operations and communications
- supporting sustainable decision making, and
- providing sound advice and services.

Coronavirus is a risk that may need disclosure in accounts, the Financial Reporting Council said on 18 February 2020. An example is where a business depends on imports from China.

The Institute of Chartered Accountants in England and Wales issued guidance in February 2020 on how coronavirus could affect accounts:

- carry out a risk assessment on how supply chains from China will be affected, and how this will impact on the business
- consider what steps are necessary to keep employees safe
- ensure that communications within the organisation are good
- check insurance policies that often do not cover epidemics
- ensure that employees follow government advice.

On 21 February 2020, the government announced plans to expand the **dormant assets** scheme to include insurance, investment and securities.

The scheme was launched in 2011 under the provisions of the Dormant Bank and Building Societies Accounts Act 2008. It allows banks and building societies to transfer balances on accounts that have not been touched for 15 years to be applied for charities. Funds may only be transferred when the bank or building society has made efforts to trace the true owner without success. In previous decades, it was possible to open a bank account with no proof of identity under a false name.

The true owner of the account is able to reclaim the funds at any time, even after 15 years of inactivity.

Since the scheme was established, it has realised £600 million for good causes.

Shell and BAE Systems are among 11 companies that have been suspended from the **Prompt Payment Code**. They failed to pay 95% of invoices within 60 days.

The Code was administered by the Chartered Institute of Credit Management on behalf of the Department for Business, Energy and Industrial Strategy. It has now passed to the Office of the Small Business Commissioner.

A further 14 firms suspended in November 2019 have been reinstated having improved their payment practices.

The code and current signatories can be found at <https://www.smallbusinesscommissioner.gov.uk/ppc/>.

The Institute of Chartered Accountants in England and Wales revised its guidance on **mortgage references** on 25 February 2020. The main principle remains unchanged; accountants should stick to the facts.

The Institute of Chartered Accountants in England and Wales revised its guidance on **solicitors' client funds** on 25 February 2020. The main change relates to the conditions for approaching such work. The rules for solicitors' client funds are prepared by the Solicitors Regulatory Authority. They amended the rules on 25 November 2019.

Guidance has been issued on **deepfake audio fraud** in February 2020. This uses sophisticated computer technology to change a person's voice to impersonate a senior director. This is used to contact the accounts department to ask for an urgent transfer of funds. Internet security company Symantec have reported three such cases. Fraudsters often also study the vocabulary of the chief executive to make such a request plausible. As such software is likely to become less expensive and more readily available, it is recommended that organisations amend their payment procedures so that all verbal instructions must be confirmed before being actioned.

Business Finance

On 18 February 2020, the government announced a series of measures to assist homes and businesses affected by **flooding**. Parts of the UK were battered by Storm Ciara on 10 February 2020 and Storm Dennis on 17 February 2020. Areas particularly affected include West Yorkshire, Cumbria and Lancashire. Other affected areas include Nottinghamshire, Leicestershire, Derbyshire, Shropshire, Telford and Wrekin, Worcestershire and Herefordshire.

The measure include:

- 100% business rates or council tax rates relief for three months
- £500 payment for every flood-hit home, and £2,500 for every flood-hit

business

- tax-free grants of up to £5,000 on application to floodproof any home or

business

- further bespoke support and guidance.

Under the Bellwin Scheme, a local authority may recover 100% of flood-related costs from central government.

Flooding can also be reasonable excuse for penalties against late filing or payment of tax.

Personal Finance

More details were given in February 2020 of the new **Breathing Space** scheme to assist people with debt problems.

The main provision is that a person has 60 days in which interest is frozen and enforcement action cannot be taken. The person must seek professional advice during that period. There are additional provisions for debtors with a mental health issue.

There are an estimated nine million people with debt problems of whom only 1.1 million get help.

Under the scheme the debtor must:

- not take out any further credit above £500 without the agreement of their debt adviser
- meet continuing repayments and other obligations as far as they can
- engage with the debt adviser.

The debt adviser will do an ongoing eligibility check after 30 days to ensure the debtor is keeping to the scheme.

The scheme should be introduced in 2021.

It is believed that the scheme will help 700,000 people in its first year. It will also help creditors as it makes it more likely that they will receive payment.

The **City of London** will not be a rule taker from the EU after the transitional period ends on 31 December 2020, Chancellor Sajid Javid said to *City AM* newspaper on 11 February 2020. The government is working on its detailed provisions which will include the “right to diverge”.

A new **telephone scam** is a caller pretending to be Amazon Prime to confirm that the caller had agreed to pay £39.99 for the service, and if this was incorrect (as it almost always is), the caller should hold for a customer services agent who will accept that you signed up by mistake. You are then asked for details of your bank account for a “refund”

Law

Whistleblowing protects the whistleblower only from employment detriments, the Court of Appeal decided. The employee was a council’s senior planning officer. She and her husband complained that the council had not dealt properly with a sewer under their property. They also contested that planning permission was needed for work on their property. She resigned from her job and brought proceedings under Employment Rights Act 1996 s103A, as inserted by Public Interest Disclosure Act 1998 s5. The Court held that the law only related to issues connected with the employment, and not to issues in a private or personal capacity. *Tiplady v Bradford Metropolitan District Council [2019] CA. The Times 19 February 2020.*

Not all documents demanded by the **Financial Reporting Council** (FRC) have to be disclosed. The Court of Appeal allowed Sports Direct International plc to withhold 40 documents on grounds of legal professional privilege (LPP).

The FRC was investigating the company’s auditors Grant Thornton; it was not investigating the company. This was under provisions of Statutory Auditors and Third Country Auditors Regulations (SATCAR), SI No 2016 No 649. SATCAR implements the UK’s obligations under EU Regulations 537/2014 regarding statutory audit of public interest companies.

SATCAR allows FRC to require third parties to provide documents. They can be penalised for refusing. There was concern that a relationship between the company and a subsidiary was not properly reflected in the accounts for the year to 24 April 2016. FRC ordered the company to provide copies of all relevant emails.

The company provided about 2,000 documents but withheld 40 on the grounds that these are privileged. They relate to legal advice on VAT in France, Ireland and Finland.

The case involved a long discourse on the nature of LPP. Its broad conclusion is that SATCAR reg 10(iv) does not allow FRC to require production of LPP documents. Although there has been some case law that privileged documents may be produced to a regulator, this did not displace the clear wording of the regulation.

The case report can be found at <https://www.bailii.org/ew/cases/EWCA/Civ/2020/177.html>.

Sports Direct International plc v The Financial Reporting Council [2020] EWCA Civ 177.

On 26 February 2020, the Competition and Markets Authority launched a campaign called **Cheating or Competing?** which aims to stop cartels in the construction industry.

An employee may be fairly dismissed for an **unconvicted criminal offence**, but each case must be decided on its merits. The employee was a hospital porter with a long unblemished work record at a charity hospital. He was charged with a sexual offence outside his work which he denied. He was dismissed because the charity feared reputational damage if he remained. The employment appeal tribunal upheld the dismissal in what it described as a marginal case. It made its decision on 15 August 2019 but did not publish it until 15 February 2020. *Lafferty v Nuffield Health [2020] UKEATS/0006/19/SS.*

The wrongful imposition of a curfew can constitute **unlawful imprisonment** even though there were no physical blocks on a person's movement, the Supreme Court decided. *R (Jalloh) v secretary of state for the Home Department [2020] The Times 18 February 2020.*

In February 2020, two men were found guilty in the first known prosecution for **ticket touting**. They were prosecuted for fraudulent trading and fraud. They traded as Ticket Wizz and BZZ. They used multiple identities and computer bots to buy £4 million worth of tickets and sell them for £10.8 million.

A person can be imprisoned for contempt of court when they make a dishonest statement served in compliance with a **pre-action protocol**, the Court of Appeal decided. *Jet 2 Holidays Ltd v Hughes [2019] CA. The Times 3 February 2020.*

An employment tribunal was justified in refusing to add the **correct employer** to an existing claim where an employee had not participated in an ACAS early conciliation with that employer, the employment appeal tribunal decided.

The employee issued proceedings against two companies, neither of whom was his employer. The tribunal refused to allow the correct employer to be added. The correct employer was clearly stated on the contract of employment. He was a director of that company, and ACAS had advised him to check that detail.

Patel v Specsavers Optical Group Ltd [2019] EAT/0286/18/JOJ.

On 24 February 2020, the government announced the creation of a **New Homes Ombudsman** to protect home buyers from poor building work. All developers will be required to belong to the scheme.

Under the scheme, rogue builders will be required to pay compensation for poor work. The Ombudsman will be able to order remedial work and even ban rogue developers from building. The Ombudsman will also intervene in disputes between home buyers and builders.

It is not yet known when the scheme will start.

On 19 February 2020, the government gave details of its new **immigration system** that will be introduced on 1 January 2021.

Under this scheme someone from overseas, including from an EU country, must score at least 70 points according to criteria such as professional skills and qualifications, salary, and ability to speak English.

The main points are:

- all migrants to UK will require a firm job offer
- the minimum salary level for points is £25,600 (reduced from £30,000)
- migrants generally need a qualification of at least A-level or equivalent
- scientists, engineers and academics are particularly encouraged
- there is no specific route for low-skilled workers other than a scheme for

harvest workers.

Related changes are:

- student visas will also be points based
- non-visa nationals (including EU citizens) will not need a visa to visit the UK for up to six months
- national identity cards will be phased out and replaced by a new system.

EU citizens resident in the UK by 31 December 2020 may apply for settled status until June 2021.

On 19 February 2020, the government announced that the number of **farm workers** who may be recruited from outside the EU is quadrupled from 2,500 to 10,000. This is under the Seasonal Workers Pilot which started in 2019. Such workers are allowed to stay for six weeks.

On 10 February 2020, the government gave police new powers compulsorily to **quarantine** a coronavirus-infected person for 14 days against their will.

In February 2020, it was announced that there will be bans on the sale of some **coal and wood** from February 2021.

The ban will apply to loose coal and wet wood, which produces more smoke and pollution. The ban is designed to reduce a pollutant known as PM2.5 which can get into the blood and lungs. Wet wood may still be sold in quantities of more than two cubic metres. The sale of loose coal is due to be phased out by 2023.

Other wood and coal is not banned as fuel, but providers must show it has a low sulphur content and emits only a low amount of smoke.

In February 2020, the Department of Work and Pensions was ordered to pay more than £386,000 compensation to Anne Giwa-Amu for **racism**. She is of mixed Nigerian and Welsh race. She worked as an administrative officer at the DWP's Caerphilly office in 2017 where she was bullied and subjected to racist behaviour. None of the wife staff involved have been disciplined, and some have been promoted.

On 12 February 2020, measures were laid before Parliament in relation to **VE Day** commemorations on 8 May 2020. These include extending pub hours from 11pm to 1am on 8 and 9 May with similar extensions for places of entertainment.
[Since then, these measures have largely been negated by the coronavirus lockdown.]

On 26 February 2020, the **Terrorist Offenders** (Restriction of Early Release) Act 2020 became law.

Changes have been made to the requirements for age classifications on **video recordings** from 6 April 2020.

The Video Recordings (Labelling) (Amendment) Regulations SI 2020 No 187

Other matters

Postal rates increase from 23 March 2020. The postage for an ordinary first class letter rises by 6p to 76p. Second class letters by 4p to 65p. Other rates also change.

National Savings cuts its rates on 14 products on 17 February 2020. Rates were cut by up to 0.45 percentage points.

The **television licence**, which legally is a tax, increases by £3 a year to £157.50 from April 2020.

Rishi Sunak MP became the new **Chancellor of the Exchequer** on 13 February 2020 when Sajid Javid resigned. Sunak's place as chief secretary to the Treasury is taken by Stephen Barclay MP.

Sunak was born in Hampshire to an Indian Punjabi family. He went to Winchester College and Oxford University where he read philosophy, politics and economics. He worked for Goldman Sachs before becoming an MP in 2015.

Alok Sharma MP replaces Andrea Leadsom as business secretary.

On 11 February 2020, the government decided that the **HS2** rail line will proceed, though with some amendments. This followed a review which required stricter controls on expenditure. Construction on Phase 1, London to West Midlands, will begin in April 2020. Other transport announcements were made on the same day.

Sales of new **petrol and diesel cars** will be banned from 2035, the government announced on 4 February 2020. It had previously announced that the ban would be from 2040. It has subsequently suggested that the ban could be brought forward to 2032.

It was further announced that hybrid cars, which run on batteries and petrol or diesel will come within the ban.

On 21 February 2020, it was announced that British **passports** will return to having a blue cover from new issues in March 2020. This colour was used between 1921 and 1988. Passports changed to Burgundy when the EU harmonised designs. Burgundy covered passports remain valid to expiry date.

There remains a need for **cash** in the form of notes and coins, concluded the Access to Cash report of 18 February 2020.

Although card payments now account for more retail sales than cash, there are an estimated 2 million people who do not have a bank account and rely on cash. There were 11 billion retail sales in cash in 2018.

The lesser use of cash resulted in the loss of 13% of free-to-use cash dispensers during 2019. With the closure of many bank branches, consideration is being given to other ways of getting cash to people, particularly in rural areas. Measures under consideration include allowing cash to be withdrawn from the country's 11,500 Post Office branches and allowing all shops to provide cashback against a debit card.

Visa is trialling a **cashback** service in rural areas whereby customers may receive cash against a debit card. EU law does not allow cashback without a purchase. Rural shops can have cash machines fitted, but are often reluctant to do so for two reasons. The shop typically receives commission only when usage is above a threshold that may not be reached. Also, a cash machine makes the shop more vulnerable to ram raiders.

The Royal Bank of Scotland is trialling a **biometric fob** that will allow a customer to make a payment of up to £100 without using a card or mobile phone. Payment will be authorised by a fingerprint. The technology is being tested by 250 customers between February 2020 and May 2020. The fob is the same size as a normal keyring fob. It has a green light which illuminates when a fingerprint has been successfully matched.

On 20 February 2020, the government launched a new website called **Business Support**.

It promotes four support schemes:

- finance and business planning
- innovation and technology
- leadership and talent
- exporting.

Each of these provides a range of information and advice.

The website can be accessed on <https://www.businesssupport.gov.uk/> .

A helpline is available on 0300 456 3565.

Mental health issues at work cost £45 billion a year according to a report by accounting firm Deloitte in February 2020. This is a 16% increase from two years earlier.

The report also found that:

- one in six workers has a mental health issue at any time
- employers are getting much better at discussing mental health issues

- there is still a problem of “presenteeism” where employees attend work when they should be off sick
- £1 invested in good mental health practice provides an average return of £5
- cost of mental health absences is £7 billion a year
- cost of staff turnover because of mental health issues is £9 billion a year
- 9% of employees who disclose a mental health issue were dismissed, demoted or disciplined.

An **off-the-shoulder dress** worn by Tracy Brabin MP in Parliament on 4 February 2020 sold for £20,200 on eBay after it sparked comment in the press. The size 12 pencil dress, bought for £35, attracted 180 bids. Brabin donated the proceeds to the Girl Guides.

On 10 February 2020, the BBC broadcast a documentary from the **Bank of England vaults**.

This revealed the following facts:

- the vault holds £194 billion in 400,000 gold bars
- if all bars were stacked on top of each other, they would be 46 times as tall as the Eiffel Tower
- most bars are trapezoidal in shape, which makes them easier to handle, but US bars are rectangular
- it would need 4,000 Minis to do an “Italian Job”
- no-one has broken into the vault since it was constructed in 1694.

An order has been made allowing the **Midland Metro tramway** service to extend from the city centre, under the proposed HS2 station, and terminating at Heath Mill Lane.

The Midland Metro (Birmingham Eastside Extension) Order SI 2020 No 141

A new **£20 note** was issued on 20 February 2020. It features a picture of the artist JMW Turner.

The note is the third to be produced on polymer plastic. In 2021, the £50 note is to be replaced by polymer, after which all English banknotes will be polymer plastic.

Half of cash dispensers will be dispensing the new note from the first week of March 2020. The new note is about 15% smaller than the one it replaces, so dispensers need new cassettes.

The existing two billion paper £20 notes remain legal tender until at least 2021. Six months’ notice will be given of their demonetisation. These paper notes are being removed from circulation by banks. They are then turned into compost. Bank notes remain of value indefinitely, so the paper notes, and indeed any Bank of England note, may be exchanged for its face value however old it is.

Landmark anniversaries

6 April 1990: separate taxation of wives

On 6 April 1990, married women became taxpayers in their own right. Until then, a married man was liable for his wife's tax, though there were schemes for separate assessment and separate taxation. The latter taxed the husband and wife as if they were not married. Separate taxation was hailed as ending the idea that a wife was her husband's chattel.

7 April 1770: William Wordsworth was born

The poet William Wordsworth was born 250 years ago. In 1813, he was appointed Distributor of Stamps for Westmorland for a stipend of £400. This was a position known as a "tax surveyor" under which the tax authorities appointed people to administer the tax system. It was then a common practice for the collection of taxes to be given to people called surveyors or farmers, before tax officials became tax inspectors. Wordsworth died in 1850.

Articles

Dawn raids

HMRC has the power to raid premises in connection with suspected tax evasion. Such raids were unknown until the 1980s. By 2014/15, there were 593 raids in the year. This has since climbed to 1,482 in 2017/18, but fell back the following year to 1,082. Even this represents about four raids every working day of the year.

Each business should have a raid policy, even if it is not engaged in tax evasion or avoidance. HMRC may have received intelligence sufficient to justify a raid even if the business is wholly innocent.

The increased use of raids has been prompted by greater international co-operation and by more sophisticated technology. HMRC now receives information from more than 100 other countries under co-operation agreements. Raids are often connected with information from other countries. Sometimes a raid is conducted on behalf of another country.

Its new technology includes the Connect software that extracts information from other sources such as Companies House and the Land Registry. HMRC also has “robots” which check tax returns.

The first raid policy is simply to have one. This should be a written document that is made known to all staff who may be affected. This is not limited to directors and accounts staff, but should usually include reception and computer staff.

There must be a list of employees and advisers to contact. This may require the list to include home or mobile telephone numbers to ensure prompt contact.

The HMRC officers must identify themselves and produce the warrant. The details should be checked to ensure that they have the correct business and address, for example. HMRC may only search under the authority of a search warrant signed by a judge or magistrate. If more than one premises is raided, each premises requires a separate warrant.

HMRC has the right to copy or seize documents. For this purpose “documents” is construed very widely and has been held to include computers and their drives. The term is not restricted to pieces of paper.

There are certain documents that they may not copy or seize. This includes material covered by legal professional privilege. This applies only to material from a lawyer, not from an accountant. It is possible for an accountant’s advice to be given via a solicitor to bring it within the scope of privilege. It is also possible to avoid seizure by sending documents out of the country. If either of these are considered necessary, they must be done at the time.

HMRC may not seize irrelevant documents, but this is a difficult area. HMRC have been allowed to take personal diaries and even medical records when there is a possibility that they may be relevant. Where there is doubt whether a document may be taken, the procedure is for it to be put in a sealed container. An independent lawyer then reviews whether the documents may be seen by HMRC. If not, the documents are returned to the business unseen.

Each investigator should be accompanied by an employee. Where HMRC takes a copy of a document, the employee should take a second copy so that the business knows what documents HMRC possesses.

Staff should be polite and co-operative with HMRC officers, but should not self-incriminate themselves. If a business wishes to confess to any oversight, this should be done formally where there are proper safeguards. Otherwise, no information should be volunteered. By the time a matter has come to a raid, everything must be done formally by the book.

It is possible that staff may be arrested. If so, they should be taken to a police station for interview. The procedure is the same as for a police arrest. The person has the right to be accompanied by a solicitor and to be provided with a video or audio recording.

Copies of documents taken by employees should be brought together and securely stored, separate from the business's other records.

After the raid, the business should consider putting together a team to mount any defence against charges that may be brought. The business should also consider such matters as employee stress, reputational damage and business disruption.

Employment status

The issue of whether a worker is an employee or is self-employed continues to cause problems. It is an issue that is regularly tested before the tax tribunal.

As an issue, it is growing in importance as the "gig economy" becomes larger. Instead of one person having one job or one self-employment, many people now have a portfolio of work. For example, a music teacher may work part-time in a college, give private lessons, and perform for various bodies.

The issue is further complicated because employment law recognises three categories: employee, worker and self-employed, whereas tax only recognises two.

The rates of income tax are the same for employed and self-employed, but many workers prefer to be treated as self-employed because:

- they pay less national insurance (9% rather than 12%)
- they can claim more expenses (items do not have to be "necessary")

- tax is paid later instead of each month.

There are disadvantages. A self-employed person has no entitlement to holiday pay, statutory payments, sick pay or redundancy pay. They also do not have protection against unfair dismissal or wrongful dismissal. A self-employed person does not build up any pension entitlement under a workplace pension or an occupational pension scheme. And a self-employed person cannot claim some social security benefits, such as jobseeker's allowance.

However, it cannot be stressed too strongly that employment status is a matter of fact and not a matter of choice. An employer and worker may not agree that the worker will be self-employed and be responsible for his or her own tax. If the nature of the work falls within the scope of employment, that is how it must be taxed.

There is a further risk that an attempt to avoid tax can have the effect of invalidating the contract of employment. This could mean that an employee, for example, is unable to bring proceedings for unfair dismissal.

HMRC has provided a Check Employment Status for Tax (CEST) on its website. Provided the answers are honest and the working arrangements are not contrived, HMRC will stand by the results obtained from CEST. CEST asks a series of yes/no questions.

Facts that suggest self-employment are:

- whether the worker can send a substitute
- whether the worker can be given alternative work
- the degree of control exercised by the employer
- who decides working hours and place of work
- who provides and pays for equipment
- whether the worker is paid by the hour or a fixed price, or by some other

means

- whether the worker has to correct work at his or her expense
- whether the worker receives any employment benefits
- whether the worker may work for other employers.