Newsletter: May 2020

Tax Training Ltd. www.taxtrainingltd.co 020 8224 5695
Email: robert.leach04@googlemail.com

Payroll: Coronavirus Job Retention Scheme

The **Coronavirus Job Retention Scheme** (CJRS) opened for business at 8am on 20 April 2020 as promised. By 4pm, it had processed claims from 140,000 employers for more than one million employees. Employers were notified of their logging-in details on 17 April 2020.

The **Coronavirus Job Retention Scheme** has been extended by one month. Originally it was to apply for the three months from 1 March 2020 to 31 May 2020. This has now been extended to four months to 30 June 2020. This announcement was made on 17 April 2020. The announcement was designed to stop employers giving workers 45 days' notice of redundancy required under employment law when proposing to make 100 or more workers redundant.

The **Coronavirus Job Retention Scheme** cut-off date has been brought forward from 28 February 2020 to 19 March 2020. This is the date that an employee must have been on the payroll to come within the scheme.

On 16 April 2020, HMRC dropped the requirement for a business applying for **Coronavirus Job Retention Scheme** (CJRS) to use an authentication code sent by post. This has been taking ten days. Businesses can now set up CJRS wholly online.

On 15 April 2020, further details were given on the conditions for **Coronavirus Job Retention Scheme.** The main conditions are:

- the employee has been instructed to cease all work for at least 21 days
- the employer has notified the employee in writing
- the employee has accepted in writing.

Writing includes email. Previous conditions were simply that the employee had been notified. It is not clear whether employees merely notified before 15 April are covered. It may be prudent to ask employees to give written consent.

Other points to note are:

- the claim is made by the employer
- any payment to an employer which is not used for CJRS must be repaid to HMRC
- the employer must have been registered for PAYE on 19 March 2020
- if an employer has more than one PAYE scheme, separate claims must be made for each scheme

• the claim must not be "abusive" or contrary to the aims of CJRS
• CJRS may not be claimed for periods for which statutory sick pay is paid
• the workers must be furloughed because of coronavirus
• if an employee was on sabbatical or unpaid leave on 28 February 2020, furloughed pay starts from when that ends
• where an employee does not have fixed earnings, the amount is the average earned in 2019/20 tax year.
• pay includes basic salary and contractual commissions. It does not include overtime and non-contractual commission
• a furloughed worker may work as a volunteer.

On 27 April 2020, HMRC made further amendments to **Coronavirus Job Retention Scheme.**

First, HMRC has introduced a new CJRS claims template that may be used.

Second, it has produced guidance on how CJRS interacts with real time information (RTI) for PAYE. The amount of pay that is reported should be the amount the employee is paid. This may be 80% of normal earnings or a higher figure if the employer provides any top-up. When the employer receives the CJRS payment is irrelevant for RTI.

Third, HMRC has provided guidance on what to do if the March 2020 figures were filed incorrectly. This guidance can be access at https://www.gov.uk/guidance/reporting-payments-in-paye-real-time-information-from-the-coronavirus-job-retention-scheme.

Fourth, a new section has been added on claiming through an agent. This can be accessed from https://www.gov.uk/guidance/claim-for-wages-through-the-coronavirus-job-retention-scheme.

Fifth, a calculator has been added to help calculate 80% of wages. This can be accessed at https://www.gov.uk/guidance/work-out-80-of-your-employees-wages-to-claim-through-the-coronavirus-job-retention-scheme.

Sixth, the section gives additional guidance on employees who were made redundant after 19 March 2020 but have been subsequently re-engaged.

Seventh, there is more explanation on the cut-off date.

Several accountants have reported problems trying to set up **Coronavirus Job Retention Scheme** payments for clients.

The problem is a message saying "You are not eligible for the Coronavirus Job Retention Scheme", but giving no reason. Although there is a helpline and online support, accountants report problems in getting through to HMRC. Even when they do, HMRC staff are often unable to explain the rejection.

Problems seem to arise for schemes wrongly registered as construction industry scheme (CIS) only or registered as a subcontractor scheme. There may also be difficulties if the PAYE scheme started in the last year.

HMRC reported at the end of April 2020 that 795 employees had reported their employers to HMRC for making **false Coronavirus Job Retention Scheme (CJRS) claims.**

A common complaint is that their employers are requiring them to continue working while being furloughed.

A **director** who is paid through PAYE is covered by Coronavirus Job Retention Scheme, provided he or she does no work while furloughed, other than meet statutory duties such as filing accounts and returns.

An employee who is given a **payment in lieu** of notice while furloughed is probably entitled to that payment being based on 100% of earnings, and not 80% paid under Coronavirus Job Retention Scheme.

That is the opinion of employment law barrister Daniel Barnett, barrister of Outer Temple Chambers, as explained in April 2020.

There has yet to be official guidance or a tribunal hearing on this matter, so these comments should be regarded as persuasive advice.

Barnett's full opinion can be downloaded from http://emplawservices.co.uk/wp-content/uploads/2020/04/Notice-Pay-when-on-Furlough.pdf?mc_cid=9d1c05d649&mc_eid=c36eb1d0ec

On 17 April 2020, HMRC confirmed that employees may take **holiday leave** while furloughed.

For the holiday period, the worker must be paid 100% of normal wages. It is not clear whether an employer may compel a worker to take leave. The government says it is keeping the issue of holiday pay under review.

Furloughed employees must still be re-enrolled for **automatic enrolment** of workplace pensions, The Pensions Regulator confirmed on 17 April 2020.

A debate is continuing among accountants on whether they should charge a fee for **arranging furlough** funding for clients under Coronavirus Job Retention Scheme.

A survey by AccountingWEB found that most accountants were not charging. Others have made a small charge such as a nominal £25. Where a client objects, the firm could invite the client to make the application himself or herself.

Payroll: non-coronavirus

There are no changes to the main **personal allowance** and most other income tax allowances for the new tax year that started on 6 April 2020. This means that tax codes issued to employers in February 2020 do not need to change.

There are changes for the blind person's allowance and for married couples where one was born before 6 April 1935. For the few, if any, employees affected by these changes, the new tax code will be separately notified by HMRC.

From 6 April 2020, the flat rate allowance for an employee **working at home** increases from £4 a week to £6. This amount may be paid to an employee working from home, regardless of whether this is because of coronavirus, without having tax deducted.

A higher amount may be claimed by an employee if this can be justified and is properly recorded.

The **employment allowance** increases from £3,000 to £4,000 for the 2020/21 tax year. It may now only be claimed if the previous year's total national insurance contributions did not exceed £100,000. This allowance is set against employer's national insurance from the start of the tax year.

This allowance may not be claimed if any of the following apply:

- the employer paid more than £100,000 in national insurance in the previous tax year
- the employer works in the public sector, including private sector companies that provide services to the public sector
- the EU limit for state aid has already been reached
- there is only one employee paid above the national insurance employer's threshold
- a penalty has been imposed on the employer for employing an illegal worker.

From 25 April 2020, an employee who is furloughed and makes a claim for statutory maternity pay, statutory paternity pay or other **statutory payments** (but not statutory sick pay) has their average weekly earnings calculated as if they had not been furloughed, under the provisions of SI 2020 No 450.

From 6 April 2020, employees have a new right to statutory parental bereavement leave (SPBL) and **statutory parental bereavement pay** (SPBP). The rules closely follow those for statutory paternity pay.

These provisions may be claimed by a worker who is the parent, or partner of a parent, of a child who dies under the age of 18, or where a baby is stillborn after 24 weeks of pregnancy. The death or stillbirth must be on or after 6 April 2020.

The leave entitlement is one period of two consecutive weeks, two separate periods each of one week, or one period of one week.

The employee may choose when to take the leave, but it must be completed within 56 weeks of the death or stillbirth. It may be taken between periods of shared parental leave, even if that leave relates to another child.

An employee is eligible to SPBP if he or she had been employed for 26 weeks and earned an average of at least £120 a week over eight weeks. The employee must notify the employer that he or she is claiming. That notification must be before taking the leave in the first 8 weeks after the death or stillbirth, or at one week's notice for weeks 9 to 56. Notice may be given by letter, phone, phone message, text message or email.

SPBP is paid at the lower of £151.20 a week or 90% of earnings. The employee must request it within 28 days of the death or stillbirth. It is subject to PAYE income tax and class 1 national insurance as normal earnings.

And remember, that from 23 July 2019, the state pays for a funeral of a child under 18 or a baby stillborn after 24 weeks of pregnancy.

The **official rate of interest** reduced from 2.5% in 2019/20 to 2.25% in 2020/21.

This rate of interest is used for three purposes:

• calculating the taxable benefit of an employer loan at no interest or a low rate of interest where the loan exceeds £10,000

• calculating part of the taxable benefit where an employer provides an employee with accommodation

• calculating the pre-owned asset charge when an asset has been given away but there is still significant use by the donor. (This last item is not a payroll matter but an anti-avoidance inheritance tax provision.)

HMRC has given its view on "**significant personal use**" in Employer Bulletin 83 published in April 2020.

An employer may provide a tax-free work facility such as a laptop and Internet connection provided there is no "significant personal use". The HMRC guidance on this is reproduced below:

"For items which are taxable you need to remember that the exemptions for work related benefits must show that there is no significant private use. HMRC accepts that where:

• the employer's policy about private use is clearly stated to the employees and sets out the circumstances in which private use may be made (this may include making the conditions clear in employment contracts or asking employees to sign a statement acknowledging company policy on what use is allowed and any disciplinary consequences if this policy is not followed), and

• any decision of the employer not to recover the costs of private use is a commercial decision, for example based on the impractical nature of doing so, rather than a desire to reward the employee.

"You are not expected to keep detailed records of every instance of actual private use in order to substantiate a claim for exemption. The "not significant" condition should not be decided purely on the time spent on different uses, but in the context of the employee's duties and the necessity for the employee to have the equipment or services provided in order to carry out the duties of the employment. For example, where a computer is provided by an employer because it is necessary for an employee to be able to carry out the duties of the employment at home, it is highly unlikely that any private use made of that equipment will be significant when compared with the business need for providing the computer in the first place."

From 6 April 2020, there is a new tax exemption for a **bursary** of up to £1,000 for an apprentice who starts work.

Details have now been published on how small employers may recover payments of **statutory sick pay** (SSP) for coronavirus-related absences. Note that these provisions do not apply to SSP paid for other reasons.

SSP is recovered through the statutory sick pay recovery scheme (SSPRS). It may be used by employers who had fewer than 250 PAYE employees on 28 February 2020.

Recovery is NOT by deduction from PAYE but by direct application to HMRC.

SSP is payable from the first day of absence if it started on or after 13 March 2020, and from the fourth day (after three waiting days) before 13 March 2020.

To make a claim for an employee, the employer must record why the employee was not at work, the start and end dates of absence, the dates for which SSP was paid, and the employee's national insurance number.

There is an absolute time limit of two weeks for SSP paid. No further SSP is payable after two weeks. An employee still not able to return may be furloughed under the Coronavirus Job Retention Scheme.

In April 2020, HMRC amended its guidance on calculating statutory paternity pay (SPP) and other **statutory payments**.

The change relates to calculating the average weekly earnings (AWE) figure. Statutory payments may be based on AWE for eight weeks.

The change means that the figure used for AWE is the higher of:

- what the employee actually received from the employer, and
- what the employee would have received from the employer had he or she not been furloughed.

This provision applies for periods of leave that start on or after 25 April 2020.

The latter figure should include any bonuses or commissions that would have been paid.

The Department of Work and Pensions is asking employers to stop making deductions under **direct earnings attachments** (DEAs) for the period from April 2020 to June 2020. This date may be extended. DEAs recover overpaid social security.

In April 2020, HMRC said that it will accept that **company cars** have been "virtually handed back" during the outbreak if the employee hands back the keys or fobs to the employer so that the employee cannot use the car. This means that the employee ceases to be liable for the car benefit charge for income tax.

Reservists may be called up during the lockdown.

A reservist is a person who has military training but is in civilian employment. It is believed that 3,000 reservists could be required, though only those with specialist skills are likely to be called up now.

A reservist is usually given 28 days' notice of mobilisation and then has 7 days to request cancellation or deferment. An employer must allow a reservist to return to his or her duties on return. The reservist is not paid by the employer while on military duty but is paid by the Ministry of Defence.

The employer is entitled to claim from the Ministry of Defence (MOD) these amounts:

- £110 a day towards a replacement
- advertising and agency fees to find a replacement
- finance for 5 days handover before and after mobilisation
- 75% of cost of specialist clothing up to £300
- training costs up to £2,000
- any retraining of the reservist on return to work.

A small or medium-sized enterprise may also claim £500 a month if its annual turnover is less than £25.9 million and it has no more than 250 employees.

The concession relating to **representative accommodation** is to be withdrawn from April 2021. A "representative occupier" relates to posts which existed before 6 April 1977 where an employee:

- resides in living accommodation provided rent-free by the employer; and
- who, as a condition of the contract of employment, is required to reside in that particular living accommodation and is not allowed to reside anywhere else; and
- occupies the house for the purpose of the employer, the nature of the employment being such that the employee is reasonably required to reside in it for the better and more effective performance of the duties.

This extra-statutory concession has been found by the Court of Appeal to be outside the scope of HMRC's authority. This means that the concession must either be legislated or withdrawn. The decision has been made to withdraw it.

About 20,000 recently retired **NHS staff** have returned to work to assist with coronavirus.

Salaries paid are subject to tax and national insurance in the normal way. This will usually require the returning worker to complete a starter pack. If the worker is furloughed, he or she should complete Statement C.

Any tax-free termination payment is not disturbed by the resumption of work. Some artificial tax avoidance schemes are being marketed to returning NHS workers, offering to make about 85% of salaries tax-free. These schemes do not work and should be avoided.

Employment limits in **Northern Ireland** are increased from 6 April 2020.

The guarantee payment increases to £30 a day. A "week's pay" for calculating redundancy pay and for calculating an award for unfair dismissal increases to £560.

Key workers earn an average 8% less than average, according to the Institute of Fiscal Studies. It identifies 7.1 million key workers, including doctors, nurses, carers, social workers, teachers, prison officers, refuse collectors, and those in the food industry.

This group earns an average of £12.26 an hour against the overall average of £13.26. A third of key workers earn less than £10.

A company that employed three sales representatives was unable to demonstrate that two of them reimbursed the company for **private use of fuel**.

A company employed two or three sales representatives. They each had cars which they filled once a week from a diesel pump at the company premises.

Their employment contract allowed them to use the cars for private purposes but they had to fund the fuel so used. They could either replace the diesel or pay the company for it. The representatives were told that private fuel that was neither paid for nor replaced would be regarded as theft and could lead to dismissal.

One representative kept records of private mileage in a log, which was not challenged. The company had no records that other representatives used the cars for private mileage or reimbursed the company.

HMRC raised an assessment for which the company asked for an internal review by another HMRC officer. This upheld the liability but reduced the amounts.

The tribunal noted that the lack of records was not always fatal: "we accept that there is an obligation upon an employer to keep, maintain and retain supporting documentation. However, the absence of, or any inadequacy relating to, such records is not determinative of itself" (para 33). Lack or inadequacy just makes it harder for an employer to prove the matter on the balance of probabilities.

The case report can be dowloaded from
http://financeandtax.decisions.tribunals.gov.uk//judgmentfiles/j11619/TC07662.pdf
Contract Services (Millennium) Ltd [2020] TC7662

A disabled woman, known only as AB, won a £4.7 million **discrimination payment** in April 2020 from Royal Bank of Scotland.

She suffered severe depression and psychosis as staff at NatWest branches discriminated against her. Her problems started with a road accident 11 years earlier. The Bank was found not to have provided her with necessary equipment and therapy. It also required her to work on the till against her wishes. The Bank's appeal was dismissed by the employment appeal tribunal.

A **diver** was held to be carrying on a trade because he met the conditions of Income Tax (Trading and Other Income) Act 2005 s15. This holds that, anomalously, employment as a diver in the UK Continental Shelf is (subject to conditions) treated as trading income.

As a separate issue, the tribunal considered whether the diver was eligible for seafarers' employment deduction (SED). This can make earnings 100% exempt from income tax. HMRC said that he was not working "on" a ship but in a diving bell. The tribunal disagreed. The diving bell was connected to the ship, providing a compressed mixture of oxygen and helium, and other life support. The diver spent more time on the ship anyway, staying under compression, and preparing and tidying up for the dive. However, as the income was treated as trading income and not employment income, SED could not apply.

Other issues were considered.

The case report can be downloaded from
http://financeandtax.decisions.tribunals.gov.uk//judgmentfiles/j11613/TC07656.pdf

Paul Szymusik [2020] TC7656

Business tax

From 1 April 2020, the annual rate for **structures and buildings allowance** increases from 2% to 3%.

From 11 March 2020, the lifetime limit for **entrepreneur's relief** is reduced from £10 million to £1 million.

From 1 April 2020, a company is restricted on the amount of **capital loss** it may claim. If a company makes a capital gain, it may only offset a brought forward capital loss up to half that gain. This mirrors existing provisions about carrying forward losses against current profits.

The increasing use of online methods for meetings could have implications for **company residence** for tax purposes.

A company is UK resident if either it was incorporated in the UK (or in any part of it) or if its central management and control is in the UK. This may be amended by provisions in a double taxation treaty.

Where a non-UK company conducts its business through employees based in the UK, there is a risk that could make it UK resident.

HMRC has said that it will take a flexible and pragmatic approach to corporate residence. This is already allowed under existing law.

Sideways loss relief was denied to a farmer for four out of 17 years in which a farm made a loss. On the evidence presented to the tax tribunal and upper tribunal, it was held that a competent farmer would have made a profit after 13 years in the circumstances of that case, which were unusual.

A trading loss may only be claimed for years when a business is competently run with a view to making a profit. This case does not allow a farm to make tax-deductible losses for 13 years. This case was decided on its facts, such as the farm changing the scope of its produce for sound commercial reasons.
Ardeshir Naghshineh [2020] UKUT 30 (TCC).

Personal tax

There are no changes to the main **personal allowances** for 2020/21. The personal allowance remains at £12,500 throughout the United Kingdom. There are small increases in the blind person's allowance and the marriage allowance for those born before 6 April 1935.

In England, Wales and Northern Ireland, there are no changes to the **rates** or bands of income tax for 2020/21. These are the same as for 2019/20.

The annual exemption for **capital gains tax** increases from £12,000 to £12,300 from 6 April 2020.

The tax-free allowance for **junior ISAs** and remaining child trust funds increases to £9,000 a year.

A second change has been made to the **statutory residence test.**

Periods between 1 March 2020 and 1 June 2020 will not count as a day in the UK for anyone working here in connection with coronavirus.

This was announced on 9 April 2020. It follows last month's change that days will not count as a UK day where a person is prevented from leaving by travel restrictions.

HMRC has amended its arrangements for **short-term business visitors** (STBVs).

These arrangements apply to workers who occasionally work in the UK from countries with whom the UK does not have a double taxation agreement. Someone was only an STBV if

they work in the UK for no more than 30 days. These provisions do not apply to non-resident directors. The 30 days does not include days where only incidental duties were performed. The employer decides whether days of travel are regarded as days of work.

From 6 April 2020, the 30 days are temporarily increased to 60 days.

The workers are liable to UK tax on their UK earnings, but it is recognised that this can create unnecessary work for the payroll department.

From 6 April 2020, new Appendix 8 regulations apply. There are introduced under PAYE Regulations 2003 reg 141. This allows HMRC to amend the PAYE regulations when the usual arrangements are impracticable.

The main element of the arrangement is that the employer provides details on STBVs in month 12 of the tax year (ie between 6 March and 5 April). If the employee has no tax liability, this avoids the need for tax to be paid and then refunded.

The arrangement covers payments in the form of salary or similar, and taxable benefits. The employer totals all payments and benefits. If these exceed the personal allowance, tax is calculated and paid to HMRC. Form P11D is not required for the benefits. If the employer pays the STBV's tax on benefits, the amount must be grossed up as the tax itself is a taxable benefit.

The employer has an annual PAYE scheme set up for the STBV. Payment is due by 22 April if made electronically, and by 19 April if not.

For 2020/21 tax year, the deadline to apply for Appendix 8 provisions has been put back to 17 July 2020. This extra time is in recognition of problems created by coronavirus.
This information was set out in Employer's Bulletin 83 issued in April 2020.

The new requirement to report sales of **residential properties** within 30 days can apply to a person's main residence. From 6 April 2020, sales of residential property must be separately reported to HMRC within 30 days, and not on the annual tax return.

While most sales of a person's main residence will not require to be reported because they are not subject to capital gains tax, some main residences will need to be reported.

They may include:

- residences with grounds of more than half a hectare (or other size for reasonable enjoyment)
- residences where a business was conducted.

Crediting a **directors' loan account** which could be freely drawn upon is not a distribution for the purposes of Corporation Tax 2010 s210.

The same case held that an expert witness cannot also act as an advocate.
The case report can be downloaded from
http://financeandtax.decisions.tribunals.gov.uk//judgmentfiles/j11639/TC07681.pdf.
Neil Pickles, Sharon Pickles {2020] TC7681

A charity may keep the **Gift Aid** donation on tickets for cancelled events unless the donor asks for a refund. HMRC confirmed this on 17 April 2020. It is not necessary for the charity to refund the donation and ask the donor to re-donate it.

HMRC has said it will not charge penalties for late filing of capital gains on **residential property** until August 2020.

From 6 April 2020, a UK resident who makes a gain from selling a residential property must generally report it within 30 days and not wait until they file their annual tax return. This does not apply to a person's main residence which is exempt from capital gains tax, but it does apply to second homes and buy-to-let properties. This requirement was introduced for non-resident owners in 2015.

A penalty for failing to notify a liability to **high income child benefit charge** (HICBC) was upheld though the percentage was reduced from 20% to 10%.

Judge Charles Hellier said, "to my mind these penalties raise the uncomfortable spectacle of one arm of HMRC penalising a taxpayer for not telling them that another arm of HMRC made a payment to him or his partner" (para 3).

HICBC is an income tax charge designed to clawback child benefit where a taxpayer or their partner earns more than £50,000 in a tax year. Both child benefit and income tax are administered by HMRC. HICBC was introduced from 7 January 2013. The law is Income Tax (Earnings and Pensions) Act 2003 s681B as inserted by Finance Act 2012. The taxpayer is under a duty to notify HMRC. Failure to do so attracts a penalty of up to 30% of the amount of HICBC.

The taxpayer's wife claimed child benefit for their first child from May 2012 and for their second child from 29 September 2014. Payments were made to her bank account.

HMRC said that they publicised the change widely. The tribunal believed the taxpayer when he said he had not been made aware of it.

HMRC said that they had written to the taxpayer, but the taxpayer said he had not received the letter. The judge said he believed the taxpayer as the judge had not received such a letter either.

In 2013, the taxpayer's salary was about £38,000 a year. In 2014, it was about £40,000. Commission payments took his remuneration above £50,000 in each year. The taxpayer admitted that, had he received such a letter, he would not have taken much notice of it as his salary was below £50,000.

The judge said that he found it "extraordinary that HMRC did not act promptly on information arising from their own conduct" (para 23).

The judge's deliberations took a theological turn: "It does not seem to me that it can be said that A causes B simply because if A had not occurred B would not have occurred. If Eve had not eaten the apple the second world war would not have occurred, but one would not say that Eve's consumption caused the war. Some greater connection is required" (para 54).

The judge provides what could be a useful quote: "but sometimes ignorance of the law can be a reasonable excuse: a person of limited mental capacity might reasonably be expected not to know laws other than the most simple; and a person who is not a lawyer, accountant or taxpayer might reasonably be expected not to know the details of some complex provision or perhaps one of uncertain construction" (para 65).

It was also observed that HMRC had taken four years to collect the tax and impose a penalty. The judge concluded that the penalties were properly imposed under the law, but reduced the amount for two of the three years.

The case report can be downloaded from
http://financeandtax.decisions.tribunals.gov.uk//judgmentfiles/j11631/TC07675.pdf.
James Fuller [2020] TC7675

The judge made similar observations in a similar case, even using some of the same wording. Again, he upheld the penalties for two years but at 10% rather than 20%.
The case report can be downloaded from
http://financeandtax.decisions.tribunals.gov.uk//judgmentfiles/j11630/TC07674.pdf
Joseph Carthy [2020] TC7674

Failure to submit tax returns on time may not be sufficient to justify **deportation,** the Court of Appeal has decided. One of the factors to be considered in deportation is "lack of integrity". An immigration tribunal found against an individual for the late submission of three years of tax returns. These were only submitted when his residence became an issue. This tribunal found that the individual had not been dishonest. Accordingly, the issue of late returns should be considered in balance with other factors. The case was remitted to a new tribunal. *Yaseen v Secretary of State for the Home Department {2020] CA.*

Valued added tax

VAT on electronically supplied **books** is zero-rated from 1 May 2020, and not 1 December 2020 as previously announced.

This applies to the electronic equivalent of all books, newspaper, magazines, newsletters and leaflets that are zero-rated in paper form.
Items excluded from the new zero-rating are:

- publications which are wholly or predominantly devoted to advertising
- where the publication is wholly or predominantly comprised of audio or video content
- plans or drawings for industrial, architectural, engineering, commercial or similar purposes
- where the supply is ancillary to a supply of goods or services made by another supplier.

The Value Added Tax (Extension of Zero-Rating to Electronically Supplied Books etc)m (Coronavirus) Order SI 2020 No 459

From 1 May, zero-rating is introduced for a new category of **personal protective equipment** (PPE). This is a new Group 20 in Value Added Tax Act 1994 Sch 8.

The zero-rating applies from 1 May 2020 to 31 July 2020.

PPE is equipment to protect from infection from coronavirus.

It covers disposable gloves, disposable aprons, fluid-resistant overalls and gloves, surgical masks, face piece respirators, and eye and face protection.
The Value Added Tax (Zero Rate for Personal Protective Equipment) (Coronavirus) Order SI 2020 No 458

HMRC should adopt a "flexible approach to the burden and standard of proof" in **historic VAT cases**, the Court of Sessions has said. This relates to "Fleming claims" for VAT repayment going back decades. HMRC should realised that may documents from the 1970s and 1980s will no longer be available. *NHS Lothian Health Board v HMRC [2020] CSIH 14*

Royal Mail is not obliged to issue VAT invoices for its services, according to the High Court in an action brought by 340 claimants.

Postal services are generally exempt from VAT. The exemption applies when the services are subject to price and regulatory control. They are subject to VAT at the standard-rated rate when supplied in competition to other delivery services.

VAT regulations require traders to issue VAT invoices for taxable services (with a few exceptions), but that obligation cannot be enforced by a customer against a supplier.

An opera company was not allowed to use the standard method of VAT **partial exemption** as HMRC said it was not fair and reasonable. The upper tier tribunal has upheld that decision.

The company, which is a charity, receives income from ticket sales which are exempt as a supply of culture. It also has catering income. It claimed a proportion of the input tax on the production costs on the basis that it was a cost of opera in that the better the performance, the more ice cream they sell.

The first tier tribunal allowed the claim as it considered there was sufficient link between these supplies and the opera. The upper tier tribunal decided there was insufficient link.

The case report can be downloaded at
https://www.bailii.org/uk/cases/UKUT/TCC/2020/132.html.

The **supply of doctors** was held to be a VAT standard-rated supply of staff and not an exempt supply of medical services.

The case report can be downloaded from
http://financeandtax.decisions.tribunals.gov.uk//judgmentfiles/j11648/TC07690.pdf
Mainpay Ltd. [2020] TC7690

A business that suffered **fraud** at the hands of its former finance director had reasonable excuse against a VAT default surcharge.

The company was unable to explain the precise nature of the fraud beyond that the director ran a shadow sales ledger to draw down more funds than the sale invoices would indicate. One of the current directors said that he personally checked the VAT returns but was unaware that the finance director then failed to file them or pay the VAT.

The tribunal found that the deliberate manipulation and concealment of a fraud constituted reasonable excuse.

A curious aspect of this case is that HMRC accepted the reasonable excuse for some periods, and withdrew the surcharges, but not for other periods.

The case report can be downloaded from
http://financeandtax.decisions.tribunals.gov.uk//judgmentfiles/j11647/TC07689.pdf.
EWGA Ltd [2020] TC7689

A tribunal agreed with HMRC that VAT input tax was disallowed for the expenses of arranging an **awards ceremony** at the House of Lords.

The taxpayer said that input tax had been allowed at a previous awards ceremony. The tribunal simply observed that it could not comment on a case not before it.

HMRC advanced three reasons for not allowing input tax:

- the expenses were not incurred by the Academy but by the event organiser who is not VAT registered
- the expenses were not directly attributable to a taxable supply — admission was free
- the event was business entertaining on which VAT is not recoverable.

Attendees were not customers or potential customers of the Academy, but there was a chance that its raised profile could assist. However, the event was cultural and not marketing.

The work of the Academy was in translation, interpreting and publishing literature from Kazakhstan. The award ceremony was not linked to this work. The question of business entertainment did not need to be considered.

The case report can be downloaded from
http://financeandtax.decisions.tribunals.gov.uk//judgmentfiles/j11629/TC07673.pdf
Aitmatov Academy [2020] TC7673

The EU has agreed measures to allow member states to introduce **simplified procedures** for VAT. The member state sets the limit, which cannot exceed €85,000. The measure will be introduced with effect from 1 January 2025. It does not affect UK businesses as the UK has left the EU, but could affect EU subsidiaries, suppliers and customers.

National insurance

The thresholds for primary class 1 contributions paid by **employees** and class 4 paid by the self-employed increase to £9,500 in the first stage to more these thresholds to the same as the personal allowance for income tax, which remains at £12,500.

From 6 April 2020, class 1A national insurance is payable in respect of **termination payments** above £30,000 and sporting testimonials above £100,0000.

Inheritance tax

From 6 April 2020, the rate of **residence nil rate band** is £175,000, at the end of its four-year transition from £100,000. The nil rate band itself is again unchanged at £325,000.

Together this means a parent can leave £500,000 worth of property to their children or other descendants free of inheritance tax. Both elements are subject to the transferable nil rate band, finally making it possible to bequeath £1 million free of tax.

On 14 April 2020, HMRC said it would temporarily accept **printed signatures** on inheritance tax (IHT) returns. It will also no longer accept cheques for payment of IHT.

Normally IHT is declared by the legal personal representatives (LPRs) signing forms IHT400 and IHT100. These must be signed personally by the LPRs.

Because the coronavirus pandemic makes travel difficult, HMRC is prepared to accept a printed signature if:

- the names and other personal details of the LPRs are shown on the declaration page, and
- the account includes a clear and unambiguous statement from the agent to confirm that all LPRs or trustees have seen the accounts and have agreed to be bound by the declaration.

HMRC's suggested wording is:

"As the agent acting on their behalf, I confirm that all the people whose names appear on the declaration page of this Inheritance Tax Account have both:

- seen the Inheritance Tax Account, and
- agreed to be bound by the declaration on (page 14 of the IHT400) or (page 8 of the IHT100." *(amend as applicable)*

As for payment, HMRC will no longer accept cheques or issue cheques or payable orders for IHT. Instead the tax must be paid by another means such as Faster Payments (ie online banking), CHAPS or BACS.

Any refunds of inheritance tax will be paid to a bank account using Faster Payments. Details should be sent to Inheritance tax, HM Revenue and Customs, BX9 1HT. The letter must be headed "Repayment — further details" and must be signed by whoever signed the IHT400 or IHT100 form. [20.04]

The depressed financial markets make this a good time to **give away shares** to children or other beneficiaries.

The market has lost about one fifth of its value during 2020 to mid April 2020. This means that more shares may be gifted within the £3,000 annual limit, without potentially incurring a liability to inheritance tax.

Stamp taxes

A flat was held to be a **dwelling** when acquired by a property, who were not aware that the building had the same cladding as on Grenfell Tower. Accordingly they were liable for stamp duty land tax.

The taxpayer company argued that the cladding meant that the flat could not be let and so was not a dwelling until the cladding had been replaced.

The tribunal held that a property does not cease to be a dwelling just because it does not mean current safety standards. Many pre-war properties do not meet current safety standards but are still dwellings.

Some defects can make a property cease to be a dwelling. But these must be such that it is dangerous to live in the property. The risk that there might be a fire and this might spread to the cladding reduced that level of danger. It was noted that the council had not served a prohibition or enforcement notice.

The case report can be downloaded from
http://financeandtax.decisions.tribunals.gov.uk//judgmentfiles/j11622/TC07666.pdf.
Fish Homes Ltd [2020] TC7666

On the facts of the case, an **annexe** was held to be part of a dwelling and not a separate dwelling for the purposes of determining stamp duty land tax.

The annexe could be accessed via French windows without going through the house. It had facilities for independent living, such as its own kitchen and bathroom. It could access the main part by a corridor. The property was in a poor state of repair when acquired.

A door could be fitted in this corridor to make the two parts more separate. A significant factor was that there was no indication that such a door had ever been fitted. Someone looking at the property would conclude that it was one dwelling.

The annexe did not have separate utility meters and was not billed separately for council tax. But the tribunal did not place great weight on these facts.

This is the latest in a series of similar cases, several of which were discussed in the judgment.

The case report can be downloaded from
http://financeandtax.decisions.tribunals.gov.uk//judgmentfiles/j11632/TC07676.pdf
Fiander and Brower [2020]. TC7676

Other taxes

The higher rate of **landfill tax** is increased from £91.35 a tonne to £94.14.

From 1 April 2020, there is no **vehicle excise duty** on purpose-built vehicles for medical courier charities.

From 1 April 2020, a new penalty is introduced when wine or made-wine is diluted after **excise duty** has ben paid.

A new **digital services tax** is introduced from 1 April 2020. It is charged on the largest digital platforms at 2% of UK revenues.

A **business premises** is not occupied by a charity just by having bluetooth equipment in it. Trustees who operated the charity were disqualified from acting as trustees, it was announced in April 2020.

Public Safety Charitable Trust (PSCT) was set up to broadcast messages about local crime using bluetooth equipment. They took leases on empty properties to install equipment. Businesses received a reduction in business rates and made a donation to PSCT. The charity eventually held 2,000 leases in 240 local authorities.

Some local authorities took the charity to court on the basis that installing equipment was not sufficient charitable purpose. This was eventually upheld by the Court of Appeal in 2013.

As a result, PSCT owed £17 million in business rates.

It was established that a trading company called Commercial Link Ltd received 95% of the income, and the charity 5%.

As a result one trustee was disqualified from being a director for nine years, and another for five years.

A Bulgarian was required to pay **excise duty** on tobacco products, even though the tribunal accepted that they were for personal use and so are not subject to duty. This was because the person did not realise they only have a month to challenge the seizure.

She was stopped when returning from Bulgaria, and admitted having a large quantity of tobacco for personal use, namely for her to smoke and to give as presents to friends (which also counts as personal use). She answered all the questions asked by the Border Force officer.

The officer seized all the tobacco on the grounds that they appeared to be for commercial use. This was because:

- the 8,000 cigarettes exceeded the suggested limit of 800
- there were four brands of cigarettes, whereas most heavy smokers stick to one brand
- there were no open packets, suggesting she was not a smoker
- saving £10,000 in duty was not compatible with her income and outgoings
- the quantity was consistent with selling products to the six people with whom she lived.

The tribunal found the tobacco was for personal use. She was a chain smoker who was not fussy about what she smoked.

As she had not challenged the seizure within one month, the tribunal reluctantly had to uphold the liability to tobacco duty. It did set aside the penalty.

The case report can be downloaded from http://financeandtax.decisions.tribunals.gov.uk//judgmentfiles/j11635/TC07678.pdf.

Kostova, Katya

The law does not set out a time limit for a **Customs duty penalty** under Finance Act 1994 s8. The tribunal invited HMRC to comment on this.

HMRC pointed out that the penalty in this case was issued with an assessment for duty under s13(2) which has a time limit of one year. HMRC had its own policy of issuing Customs penalties within 12 months of the seizure.

The case concerned a man who brought in tobacco and alcohol from Canary Islands, believing them to be within the EU. He had checked the government website to find out the amounts he could bring in. This website explicitly states that the Canary Islands are not in the EU.

The man was stopped by a Customs officer on 23 January 2018 when the goods were seized. HMRC wrote to him on 16 January 2019 to say they were considering a dishonesty penalty. This was just within the year.

This case does not establish that there is a 12-month limit for imposing a Customs penalty, but could be useful evidence.

Other issues were raised at the hearing.
The case report can be downloaded from
http://financeandtax.decisions.tribunals.gov.uk//judgmentfiles/j11646/TC07688.pdf.
Gino Cifaldi. [2020] TC7688

On evidence produced by an experienced Customs officer, it was held that **solar panels** had been made in China and not Malaysia. As such they were subject to additional anti-dumping duty and countervailing duty, in addition to normal Customs duty and import VAT.

Anti-dumping duty is charged when goods are sold below cost in an attempt to kill off a domestic market. Countervailing duty is charged when a foreign government has subsidised the goods. These extra duties apply to Chinese solar panels.

The officer cited the weight of the packaging used and issues relating to documentation.
The case report can be downloaded from
http://financeandtax.decisions.tribunals.gov.uk//judgmentfiles/j11628/TC07672.pdf.
Zenex Solar Ltd [2020] TC7672

Tax administration

Clients are reminded that the deadline for reporting **expenses and benefits** for the 2019/20 tax year is 6 July 2020.

HMRC has suspended **enquiries**, it was announced on 16 April 2020, so that it can concentrate on coronavirus-related work. Taxpayers have been requested not to ask HMRC for documents until further notice.

Where new legal proceedings and pre-action letters need to be sent, HMRC asked on 16 April 2020 that they be sent by email to either newproceedings@hmrc.gov.uk or preactionletters@hmrc.gov.uk.

Cayman Islands and the USA are the most **secretive nations** regarding tax disclosure, according to Tax Justice Network. They are followed by Hong Kong, Singapore and Switzerland.
The most “corrosive” territory for tax evasion is British Virgin Islands. They are followed by Bermuda, Cayman Islands and Netherlands.

The **Base Erosion and Profit Shifting** (BEPS) provisions would add about 4% to global tax revenues, about $100 billion, according to the Organization for Economic Co-operation and Development (OECD) which has promoted these provisions.

BEPS is when a company shifts a profit from a high taxed country to a lower taxed or no-tax country.

Traditionally this was done by transfer pricing — adjusting the price at which goods are passed from country to country so that the profit largely falls in the lower taxed country. The UK and other countries have long had provisions to deal with this.

Now, profit shifting is more commonly done by paying royalties or management charges or similar to the lower taxed country.

One of the provisions to counter BEPS is greater tax disclosure between tax authorities of different countries. The UK now receives information from more than 100 other countries. Action has also been taken against territories that deliberately seek to undermine the tax rules of other states. For example, sums from those territories can be made subject to a withholding tax unless the other state agrees to comply with BEPS provisions.

For the specific issue of digital services, which can be supplied from anywhere in the world, new taxes are being developed. These include the digital services tax introduced in UK from April 2020.

Pensions

The pensions **lifetime allowance** increases from £1,055,000 to £1,070.000 from 6 April 2020. This is the cumulative amount that a person may pay into a pension fund tax-free during their lifetimes, provided they do not exceed the annual allowance.

The **annual allowances** for pension contributions have both been increased by £90,000 from 6 April 2020. The threshold income limit increases from £110,000 to £200,000, and the adjusted income limit increases from £150,000 to £240,000. Up to these limits, a taxpayer may contribute up to £40,000 a year tax-free to a pension fund, provided the lifetime allowance has not been exceeded. Above this figure, the annual allowance is reduced by £1 for every £2 above until it has reduced to £10,000. For employees, the annual allowance includes the employer's contributions. This had created particular problems for senior doctors in the NHS.

A pension tax rule has been temporarily relaxed during the coronavirus outbreak for **returnees** aged between 50 and 55 who have returned to work in the public sector, particularly in health and police.

Without this relaxation such returnees would reduce their pension income.
This relaxation applies from 1 March 2020 to 1 June 2020, though the latter date may be extended.

Welfare

Individuals who have opted out from receiving **child benefit** may wish to reconsider that decision.

A taxpayer who earns more than £50,000 has part of any benefit clawed back as high income child benefit charge (HICBC). At £60,000 the whole benefit is clawed back. These figures have not changed since HICBC was introduced in 2013. The coronavirus lockdown could mean that earnings have fallen below the thresholds making the benefit claimable.

From April 2020, child benefit is £21.05 a week for a first child, and £13.95 for a second or subsequent child.

During the lockdown, a claim for **child benefit** may be made even if the birth has not been registered. It can take 12 weeks to process a claim which may be backdated by 3 months.

From 16 April 2020, new **universal credit claimants** may access the facility by using their Gateway account, provided the claimant has used it at least once in the last 12 months, such as for filing a tax return. Other methods include the GOV.UK Verify procedure. In the month from 16 March 2020, there have been 1.4 million new claims for universal credit.

From 4 May 2020, it is possible to claim **pension credit** online.
The State Pension Credit (coronavirus) (Electronic Claims) (Amendment) Regulations SI 2020 No 456

There is a voucher scheme to assist parents whose children would receive free **school meals.** The school is free to make its own arrangements.

The government is funding a scheme where it will provide an online voucher worth £15 a week per child to be spent at a participating supermarket. As at 21 April 2020, participating supermarkets are Aldi, Asda, Marks and Spencer, Morrisons, Sainsbury's, Tesco and Waitrose. Press reports say there have been many problems with this scheme.

From 8 April 2020, benefit claimants may be eligible to claim £1,000 for **funeral expenses.** This is an increase from £700 set in 2003.

Claimants for **employment and support allowance** (ESA) could find the timing of claims works against them. ESA is paid if an employee has a class 1 national insurance record for the two previous tax years or a self-employed claimant has class 2 national insurance record for the two years. This means that someone who claims from 6 April 2020 could miss out.

ESA is normally paid on day 8, after seven waiting days. For coronavirus claimants, it is paid from day 1.

A similar problem could affect entitlement to **jobseeker's allowance** for which eligibility requires two years of class 1 contributions before claiming.

On 8 April 2020, the Chancellor announced £750 million to help **charities.** Of this. £370 million is for small charities working with vulnerable people; £360 million to charities providing essential coronavirus services, such as hospices; and £20 million to top charities like St John 's Ambulance and Citizens Advice Bureau.

Claimants of **employment and support allowance** (ESA) may also get a transitional allowance paid after they transferred from old incapacity benefits in respect of housing benefit. Those transitional allowances will continue to be paid after 5 April 2020.

The new regulations came into force on 4 April 2020.
The Housing Benefit (Transitional Provision) (Amendment) Regulations SI 2020 No 288

Scottish child payments have been delayed, and child disability payments have been deferred, the Scottish government said on 1 April 2020.

Scottish child payment is a new Scottish social security payment due to have been introduced in autumn 2020. It hopes to take applications by the end of 2020 with payments made from 2021.

Child disability payments and a new benefit to replace personal independence payments have been delayed. The UK government has agreed to continue paying existing benefits to Scottish claimants

A public awareness campaign on **domestic violence** was launched on 11 April 2020. Incidents of violence have more than doubled during the lockdown.

A call can be made to the National Domestic Abuse Helpline at any time on any day on 08080 2000 247. The police may be called on 999. A caller may whisper details if they fear being overheard.

Alternatively, a person can dial 999 and say nothing at all. The system will then switch to a silent caller mode and the person will be asked to dial 55 to confirm they are in danger.

The Welsh Assembly is considering introducing a new **social care tax.** A consultation will take place in summer 2020.

The **Earl of Cardigan** disclosed in April 2020 that he had been living on jobseeker's allowance. He had an overdraft of more than £2 million. He fell out with his son Viscount Savernake who sold the 16th century Tottenham House for £11.5 million and sold some Old Master paintings. They have now agreed to joint running of the 4,500-acre estate.

Accounting

On 16 April 2020, Institute of Chartered Accountants in England and Wales gave guidance on **audit reports** as affected by coronavirus. There are likely to be more material uncertainties, key audit matters, and qualified opinions. These can be caused by such factors as the auditor not being able to attend stocktaking. There may also be a need to give greater consideration as to whether the entity is a going concern.

The Financial Reporting Council has produced guidance on the **production of accounts** and reports, including interim reports.

Its main guidance is to:

- develop and implement mitigating actions and processes to ensure that you continue to operate an effective control environment, addressing key reporting and other controls on which you have placed reliance historically but which may not prove effective in the current circumstances;
- consider how you will secure reliable and relevant information, on a continuing basis, in order to manage the future operations, including the flow of financial information from significant subsidiary, joint venture and associate entities; and
- pay attention to capital maintenance, ensuring that sufficient reserves are available when the dividend is paid, not just proposed; and sufficient resources remain to continue to meet the company's needs.

The full guidance can be downloaded from https://www.frc.org.uk/about-the-frc/covid-19/company-guidance-updated-may-2020-(covid-19)

The Institute of Chartered Accountants in England and Wales has provided some practical guidance on **virtual meetings** while physical meetings are not possible during the coronavirus lockdown.

The guidance basically says:

- the organisation should know its constitution both under its own rules and under the law
- the organisation should question whether a meeting is needed at all. It may be possible to postpone an annual general meeting or other meeting within the required deadline
- shareholder attendance at a general meeting does not come within the scope of essential work for lockdown travel.

Where a virtual meeting is held, the organisation should consider:

- what technology is most suitable
- how to maintain security
- implications regarding confidentiality and data protection
- how to ensure access to all participants
- measures to count votes and check a quorum.

More details guidance has been produced by ICSA and other bodies. It can be downloaded from https://www.icsa.org.uk/assets/files/pdfs/guidance/agms-and-impact-of-covid-19-supplement-web.pdf.

The International Accounting Standards Board announced a two-week consultation on a temporary amendment to international accounting standard **IFRS 16** on leases.

The amendment relates to accounting for rent holidays and rent reductions because of coronavirus.

The problem is exacerbated as many businesses that use international accounting standards will be using IFRS 16 for the first time this year.

The standard requires lessees to assess individual lease contracts to determine whether the concessions are to be considered lease modifications and, if that is the case, the lessee must remeasure the lease liability using a revised discount rate.

Under the proposed amendment, lessees would be exempted from having to consider whether a particular rent concession is a lease modifications. This would apply to Covid-19-related rent concessions that reduce lease payments due in 2020.

The exposure period ends on 8 May 2020. The effective date of the amendment will be 1 June 2020.

The International Accounting Standards Board (IASB) has started consulting on a proposal to update the International Financial Reporting Standard (IFRS) for **small or medium-sized enterprises** with full IFRS standards.

The deadline for responses is 27 October 2020.

The request for information can be downloaded from https://cdn.ifrs.org/-/media/project/2019-comprehensive-review-of-the-ifrs-for-smes-standard/request-for-information-comprehensive-review-of-the-ifrs-for-smes-standard.pdf.

More than 40% of FT-350 companies are looking outside the Big Four for **audits**, according to a survey by the Institute of Company Secretaries and Administrators (ICSA).

Business Finance

The Chancellor of the Exchequer has announced new **Bounce Back loans** for the smallest businesses to complement Coronavirus Business Interruption Loan Scheme (CBILS).

The loans are available from 9am on 4 May 2020 for amounts between £2,000 and £50,000. The upper figure is also limited to 25% of current business turnover.

The government pays all charges and interest for the first 12 months, and provides a 100% guarantee. For CBILS, the guarantee is 80%. The Chancellor ruled out increasing that guarantee to 100% for fears of moral hazard.

Loans should be granted within 24 hours. They are provided by accredited lenders. It must be stressed that the business remains fully liable to repay the loans.

Application is made online by completing a simple two-page form. The loan will be paid to the small business within days.

On 20 April, Chancellor Rishi Sunak said at a press conference that he was not minded to increase the 80% government guarantee for business loans under **Coronavirus Business Interruption Loan Scheme** (CBILS). Some European countries are offering 90% or 100% guarantees.

The **Coronavirus Business Interruption Loan Scheme** (CBILS) got off to a slow start. By 7 April 2020, only 1,000 loans had been agreed.

On 2 April 2020, the Chancellor announced two changes:

- banks may not ask for a personal guarantee for a loan up to £250,000
- administrative changes designed to speed up the process.

Seven banks in the **Coronavirus Business Interruption Loan Scheme** (CBILS) have relaxed their rules on evidence to secure the loans.

The seven banks are:

- Barclays
- Danske Bank
- HSBC
- Lloyds
- NatWest
- Santanader
- Virgin.

The banks issued a joint statement which says "Following the changes to the scheme announced today lenders will only ask businesses for information and data they might reasonably be able to provide at speed and we will not require the provision of forward-looking financial information or business plans from businesses applying for CBILS-backed lending, relying instead on our own information to assess credit and business viability.

Landlords may not issue a statutory notice for **rent arrears** nor start winding-up proceedings for rent for periods from 1 March 2020 to 30 June 2020, business secretary Alok Sharma MP said in April 2020. This end date may be extended.

Another change in the law is that commercial rent arrears recovery (CRAR) proceedings may not be brought until at least 90 days of rent is in arrears.

The quickly-introduced schemes to assist during the coronavirus lockdown are creating problems for **regulators**, they told MPs in April 2020.

Even in normal times, they expect 12% of businesses to fail each year. This figure is expected to increase under the lockdown. The Coronavirus Business Interruption Loan Scheme (CBILS) gives a guarantee for 80% of the loan, which means banks must check out the company for the other 20%.

In personal finance, there are now 1.2 million mortgages where payments have been paused for three months. There are similar pauses for repayments of personal loans such as for cars. A high level of subsequent default could damage the financial sector.

In a separate development, KPMG recommends that businesses should:

- improve their cash forecasting
- seek to preserve cash,
- reduce costs, and
- where necessary, negotiate with creditors.

The Office of National Statistics said in April 2020 that 25% of businesses have stopped trading because of coronavirus, and 41% have temporarily reduced staff.

On 20 April 2020, the government announced a new £1.25 billion package for companies engaged in **innovation and development** in relation to coronavirus. There is a £500 million Future Fund to give loans to high-growth firms, and another £750 million for small and medium-sized businesses engaged in research and development.

Dividends have been suspended by about half of all UK listed companies, according to *City AM* on 2 April 2020. This includes all the major banks. London Stock Exchange has allowed dividend payments to be delayed by up to 30 days. Dividend yield before the outbreak was a generous 6%.

Individuals and businesses may be tempted to **sell assets** during the coronavirus outbreak. Some investments have fallen by a quarter. The advice is not to do so. Lessons from the 2008 banking crisis show that such assets usually recover well.

The EU rule on **insurance proceedings** applies to assignees of an insurance policy. The Supreme Court so held on 1 April 2020.

Under EU law an insurer may bring proceedings only in the member state where the policy holder is domiciled. That applies to assignees also.

Aspen Underwriting Ltd and others v Credit Europe Bank NV [2020] SC. UKSC 11. The Times 21 April 2020

The department store John Lewis has decided to stop publishing **weekly sales figures** as part of its reorganisation. These sales figures have been widely used as an indicator of how retail sales are doing generally.

Personal Finance

On 14 April 2020, HMRC gave more guidance on the **self-employment income support scheme** (SEISS). The main elements are:

- SEISS comprises a single payment expected to be made in June 2020
- the amount is three months of annual income as defined
- generally, the figure for annual income is the average of the last three years, with a loss treated as a negative figure
- income is reduced by the £1,000 trading allowance for any year in which it was claimed
- more than one trade will be aggregated
- income must be no more than £50,000 a year and must be at least half the taxpayer's income. These conditions must be met for either 2018/19 or for the three years from 2016/17 to 2018/19
- all sources of income must be included in this consideration, including property income, trading income, dividends, pensions and taxable social security
- income is NOT reduced by the personal allowance or any brought forward losses
- the payment is taxable when received
- the payment can affect any claim for universal credit but only when received.

A taxpayer has the right to amend his or her tax return up to one year after submission. Changes made after 26 March 2020 will not be considered.

It is a condition that the taxpayer has submitted a tax return for 2018/19 by 23 April 2020. It was due on 31 January 2020.

HMRC hopes to notify qualifying taxpayers in May 2020.

Banks have introduced some measures to assist customers adversely affected by the lockdown. These vary from bank to bank, and between different types of account. Typically they include such provisions as:

- agreeing a holiday for three months for mortgage or other form of loan
- providing or increasing an overdraft buffer to £300 or more
- increasing the contactless payment limit from £30 to £45.

From 6 April 2020, banks are required to have a single overdraft rate, which many banks had set at 40%. Most banks have now reduced this to around 20%. They are also not allowed to make separate charges for loans.

Many branches have closed or only opened from 10am to 2pm. Cash dispensers and online banking are unaffected.

The **self-employment income support scheme** (SEISS) received 110,102 claims in its first four hours.

SEISS pays 80% of income for three months up to £2,500 a month. The scheme covers

those who earn no more than £50,000 a year, where at least half their income comes from self-employed, and where their income has been adversely affected by coronavirus. Claimants must have submitted a tax return for the last tax year.

On 20 April 2020, **Metro Bank** was ordered to repay £10.5 million in overdraft fees. The bank failed to notify customers in advance.

In mid April, UK Finance, which represents mortgage lenders, said that about one in nine **mortgages** had been paused.

Borrowers are asked not to cancel direct debits as this could affect their credit rating. Instead the lender will not take payments for the holiday, usually of three months. It should be remembered that interest is applied during the holiday. For an average repayment of £775 a month, this will add £260 over the lifetime of the mortgage.

Law

Companies House announced some relaxations in filing requirements on 16 April 2020. The changes are:

- the striking off process is paused to give companies more time to get their records in order
- appeals against late filing penalties will be considered more sympathetically
- a three-month extension for filing will be given automatically on request.

It is worth remembering that company law already allows for audiovisual equipment to be used for **annual general meetings,** provided that all members can see and hear what is happening. The test case was *Byng v London Life Association [1989].*

On 9 April 2020, the government confirmed that **shoppers** may buy anything that is sold in a supermarket or shop allowed to remain open during the lockdown. There had been reports of police saying that only essential items could be purchased.

The government has announced some relaxations in rules on **visas** during the lockdown:

- anyone who cannot leave the UK because of travel restrictions will not be regarded as an overstayer
- anyone whose visa expires between 24 January 2020 and 30 May 2020 will automatically have their visa extended to 31 May 2020
- NHS front line workers and their families whose visas expire before 1 October 2020 will be given an automatic extension of one year.

On 1 April 2020, the Supreme Court gave two decisions which rein in the scope of employers' **vicarious liability.** In both cases the Court reversed decisions of the High Court and Court of Appeal. Vicarious liability is when one person is responsible for the actions of another. An employer is generally vicariously liable for the actions of an employee in the course of his or her work, even when that work is not done properly.

One case concerned Morrison's supermarket. An employed internal auditor with a

grudge against his employer posted sensitive payroll data about 126,000 employees on a website, for which he was sent to prison. The issue was whether the company was vicariously liable to 9,263 employees who brought an action. The Supreme Court held no. The auditor was not doing his job, even badly. He was on a "frolic of his own" deliberately flouting his responsibilities. The employer was not liable.

In the other case, the Supreme Court held that a company was not liable for the actions of a non-employee. Between 1968 and 1984, Barclay's Bank required new employees to have a medical. They used a self-employed doctor to whom they paid a fee. A doctor allegedly sexually abused 126 job applicants, mostly teenage women. The Court held that the Bank was not liable as the doctor was working on his own account and not as an employee of the Bank.
W M Morrison Supermarkets plc v Various Complainants [2020] UKSC 12
Barclays Bank plc v Various Complainants [2020] UKSC 13.

On 29 April 2020, the Presidents of the Employment Tribunals updated their guidance on **employment tribunal** hearings. Those listed for hearing from 29 June 2020 will remain listed. Efforts will be made to contact parties to establish the best way of proceeding, including remote hearings and paper-based assessments. Parties remain free to make any application to the tribunal.

On 29 April 2020, the Law Commission issued a report on **employment law hearing** structures.

Its main recommendations are:

- raising the limit on contractual damages from £25,000 to £100,000
- having a single time limit for employment tribunal claims of six months
- replacing the "reasonably practicable" test for time limit extensions with a "just and equitable" test
- having an informal list in the Queen's Bench Division of the High Court for employment and discrimination matters
- ensuring that an employment tribunal cannot grant an injunction
- allowing employment judges to lend their expertise to the county courts.

Note that these are recommendations which may not be implemented, though Commission recommendations often are implemented.

The full report can be downloaded from https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2020/04/6.6527_LC_ELHS-Main-Report_FINAL_WEB_210420.pdf

A person is not guilty of the tort of **inducing a breach of contract** if the person honestly believed that the contract was unenforceable, even if he or she was wrong in that belief. The Court of Appeal so decided on 27 February 2020.

Mr Pollock was employed by the accounting firm David Allen as a business service specialist whose main work was preparing tax returns.

Pollock's contract of employment contained a post-termination restrictive covenant. He was offered a job by another firm, Dodd & Co Ltd which he took. Dodd & Co took legal advice that this covenant was more likely than not to be unenforceable.

Allen brought proceedings against Pollock for break of contract and against Dodd & Co for procuring a breach of contract. The judge found that the covenant was enforceable but that Dodd & Co was not liable for procuring a breach.

The Court of Appeal broadly found that the tort of procuring a breach of contract required an enforceable contract. A claim in tort is to provide restitution. If the contract was not enforceable, or where there was doubt as in this case, there was no loss and so no restitution.

Allen (trading as David Allen chartered accountants) v Pollock and another. [2020] EWCA Civ 258. The Times 29 April 2020

The tort of private nuisance does not include people **overlooking** someone else's land and the consequent loss of privacy. The Court of Appeal so decided on 12 February 2020.

The claim relates to an extension to the Tate Modern art gallery which residents of nearby flats say would allow gallery visitors to see into their properties.

Fearn and others v Board of Trustees of the Tate Gallery [2020] EWCA Civ 104. The Times 17 April 2020

Scottish Biometrics Commissioner Act 2020, passed by the Scottish Parliament, received Royal Assent on 20 April 2020.

It establishes the office of **Scottish Biometrics Commissioner**, and sets out their functions in relation to the acquisition, retention, use and destruction of biometric data for criminal justice and police purposes.

Female Genital Mutilation (Protection and Guidance) (Scotland) Act 2020, passed by the Scottish Parliament, received Royal Assent on 24 April 2020. It allows for female genital mutilation protection orders and related matters.

Changes are made to several provisions relating to **adoption and fostering** of children. These relax some requirements between 24 April 2020 and 25 September 2020, in relation to the coronavirus outbreak.

The Adoption and Children (Coronavirus) (Amendment) Regulations SI 2020 No 445

Skywriting and skytyping is banned in the UK from 8 May 2020. Both involve the use of aircraft smoke to create signs visible from the ground. Skywriting typically involves a single aircraft whereas skytyping typically involves several aircraft. This amends provisions in Civil Aviation Act 1982 s82(1).

The Civil Aviation (Aerial Advertising) (Amendment) Regulations SI 2020 No 430

From 1 July 2020, **cathedrals** are required to keep better records of objects of architectural, archaeological, artistic or historic interest.

The Care of Cathedrals (Amendment) Rules SI 2020 No 408

Other changes

The three week coronavirus **lockdown** was extended by a further three weeks, it was announced on 14 April 2020.

About one quarter of British businesses temporarily closed or paused their **trading** in the last week of March 2020, according to *City AM* on 5 April 2020. Of those that continued, about 20% of staff have been furloughed.

On 26 April 2020, social distancing rules were extended in scope in **Scotland**.

The two-metre rule was formalised and applies to all businesses allowed to remain open.

It was confirmed that livestock markets and foreign exchange facilities may continue to operate. Burial grounds may remain open.

Some guidance on **remote working software** was provided by Microsoft in April 2020.

Many suppliers are using the opportunity to market their products. Microsoft is offering free Office 365 Enterprise 1 licences for six months. Other suppliers are making similar offers.

There are channel-based business chat applications that are similar to WhatsApp but allows for different groups of colleagues to discuss work without the formality of an email.

Microsoft provides such software, as do Slack, Discord, Google and Hangouts. There are also call-oriented software such as Zoom and Webex.

On 9 April 2020, **cash dispenser** operators Link and Paypoint reached an agreement with Barclays, NatWest and Sainsbury's Bank to maintain free-to-use machines in High Streets and rural areas.

The new **Shadow Chancellor** is Anneliese Dodds MP. She was appointed on 6 April 2020, the day after Sir Keir Starmer was elected the new leader of the Labour party. Dodds is 42 years old. She has a degree in politics, a masters degree in social policy, and a doctorate in government. She is the first female Shadow Chancellor. There has yet to be a female Chancellor. She succeeds John McDonnell whom she served as Shadow Finance Secretary. She was a university lecturer from 2007 to 2014, and an MEP from 2014 to 2017 when she was elected to Parliament.

On 27 April 2020, the Public Accounts Committee (PAC) of MPs launched a formal inquiry into the risks of **local authority investment** in commercial property. Many local authorities have so invested as a means of topping up their income from council tax and government funding, the latter of which has been sharply cut in the last ten years.

In February 2020, it was reported that local authorities had invested £6.6 billion in commercial properties in the three years to 31 March 2019. Of this, £2.5 billion has been invested outside the local authority's area.

PAC is particularly concerned that coronavirus rent holidays will have a major impact on local authority financing.

PAC also believes that local authorities should be more willing to invest in local infrastructure projects that will aid economic recovery.

On 20 April 2020, the **price of oil** went negative. West Texas Intermediate, the US benchmark, fell to -$1.43. That means the oil producer has to pay someone to take the oil. The following day, the price went to -$37.63.

Brent crude, on which about two-thirds of the world's oil price is based, fell to $5.79 on 21 April 2020.

Millions of pages of **digital archives** will be made freely accessible during the lockdown, it was disclosed on 3 April 2020. The records include wills, and military and immigration records. Records include:

- wills from 1384 (not a typing error) to 1858
- British Army medal index cards from 1914 to 1920 covering 5 million soldiers
- British Army war diaries from 1914 to 1922.

Major Tom Moore, 99 years old, sought to raise £1,000 for NHS charities in April 2020 by a sponsored 100-lap walk round his garden.

His appeal caught the public imagination. He raised nearly £33 million. He was promoted to honorary colonel on 30 April 2020, and given a knighthood on 22 May 2020. He is to be made a Freeman of the City of London.

He also had a number 1 hit reading some of the words of *You'll Never Walk Alone* sung by Michael Ball and a choir. This is the greatest age at which anyone has had a number 1 hit, beating Tom Jones who was 68.

He celebrated his 100th birthday on 30 April 2020, still at no 1, with 140,000 birthday cards, messages from political leaders, and two RAF flypasts.

Only in Britain....

Landmark anniversary

30 June 1980:
The sixpence ceased to be legal tender. The coin was worth half a shilling or one fortieth of a pound. In decimal currency, it was worth 2½p.

The coin was introduced in the 16th century by Edward VI, and quickly became popular. It attracted many traditions. Sometimes a sixpence was bent and used as a form of wedding ring. It was sometimes put in the shoe of a bride. It was sometimes put in a Christmas pudding when a silver threepence was not available.

A sixpence was also the going rate for an entertainer. In *Twelfth Night,* Sir Toby Belch offers a sixpence to a clown to provide a song. The coin lives on in the nursery rhyme *Six A Song Of Sixpence.* This alludes to then common practices such as putting live birds into a pie so that they fly out when the pie is opened.

By 1786, many sixpences had been worn flat and were typically 36% under weight. A new minting in 1787 proved popular. The design changed several times over the next two centuries. On the accession of Queen Elizabeth II in 1952, the design was changed to an array of national flowers until the last minting in 1969.

When decimal currency was introduced in 1971, the sixpence was remonetised as 2½p. While other pre-decimal coins were quickly demonetised, the popularity of the sixpence ensured its continued legal tender status. In 2016, the Royal Mint produced a commemorative sixpence, worth 6p.

Articles

Vicarious liability

In April, the Supreme Court passed two judgments that restrict the scope of vicarious liability. This has otherwise been growing in scope.

Vicarious liability basically means when one person is responsible for the actions of another. This is now largely confined to employment. In general, an employer is liable for the actions of an employee in the course of his or her work. A common example is that an employer is liable for road accidents committed by its drivers. An employer is required by Employers' Liability (Compulsory Insurance) Act 1969 to have insurance cover to protect employees.

The two issues that need determining in a claim for vicarious liability is whether the person (legally the tortfeasor) was working for the employer, and whether the action was in the course of the work.

The scope of working for an employer is wider than formal contracts of employment. It is sufficient that the person was under the control of the employer. This was established back in 1924 when a dance hall was held liable for breaches of copyright by a dance band it engaged for a year. In this case, the hall controlled what music was played, so this does not necessarily mean that all venues are responsible when a band plays its standard repertoire.

The second issue is that the tort, such as an accident, must have been in the course of work. This covers work done badly, such as poor driving. It does not cover situations where the worker goes off on a frolic of his own.

Different decisions have been made when an argument gets out of hand and becomes violent. In 1948, an employer was held not liable when a petrol pump attendant assaulted a customer in a dispute about payment. That was clearly outside the scope of the attendant's duties. But in 1996, a night club was held liable when doormen beat up a customer who smashed a door when refused entry. The doormen were seeking to protect their employer's property.

The fact that the worker has disobeyed a specific rule is not always sufficient to avoid vicarious liability. In 1942, a worker was told to use the company lorry for a delivery, but disobeyed by using his own car. This was held to be within the scope of vicarious liability.

A problem can arise at social events such as a Christmas party. This will usually be regarded as in the course of employment. An employer can be liable for drunken and lecherous behaviour of staff.

An employer can also be liable for abusive or discriminatory remarks by a worker. The scope here is very wide, but can be avoided by taking appropriate steps, such as having clear policies. An offence in this area should be dealt with properly, as this can prevent or avoid liability for a subsequent incident.

Other areas of risk include operating machinery and handling sensitive data.

Under separate legislation, an employer must have adequate procedures to protect against fraud or tax evasion by staff.

An employer can protect himself or herself in two broad ways. First, have clear policies as to what is acceptable behaviour, with normal safety provisions and similar. Second, have insurance cover.

Beneficial loans

If an employer lends money to an employee, this may give rise to an income tax charge on a beneficial loan.

There is no such charge if any of the following conditions apply:

- the total value of all such loans does not exceed £10,000 at any point in the tax year
- the employer is a professional lender (such as a bank) and the loan is on the same terms as the employer offers to its customers
- the loan is a reasonable advance of expenses, all of which are accounted for which any excess refunded by the employee.

The £10,000 limit (£5,000 before 6 April 2014) is designed to exclude season ticket loans.

If none of these conditions apply, the loan triggers a tax charge equal to the official rate of interest applied to the loan minus any amount of interest paid by the employee. The official rate is 2.25% for 2020/21 unless, exceptionally, the loan is made in Swiss francs or Japanese yen.

There are two ways of applying the official rate: the averaging method and the alternative method. The averaging method is used unless the employee elects to use the alternative method. The choice of method can make a significant difference to the amount of tax.

The averaging method takes the average of the amount owed on 5 April of the current year and of the previous year. This is multiplied by the official rate. Any amount of interest is subtracted from the result.

If the loan was not outstanding for the whole tax year, the average is taken from either or both of when the loan was granted and when the loan was repaid. The average is multiplied by the official rate but this is then divided by M/12 where M is the number of whole tax months where the loan was outstanding. A tax month runs from the 6th of a calendar month to the 5th of the following month. It can be seen that M can be reduced (and thus tax can be saved) if a loan is repaid on 4th of the month or taken out on 7th.

Under the averaging method, it can be advantageous not to pay off the whole loan before the end of the tax year. A small balance can reduce the taxable average.

The alternative method is more precise. It considers the balance outstanding each day and multiplies this by the official rate divided by the number of days in the year or loan period.