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## Smith Craven

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### Welcome...

To March's Tax Tips & News, our newsletter designed to bring you tax tips and news to keep you one step ahead of the taxman.

If you need further assistance just let us know or you can send us a question for our [Question and Answer Section](#).

We are committed to ensuring none of our clients pay a penny more in tax than is necessary and they receive useful tax and business advice and support throughout the year.

Please contact us for advice in your own specific circumstances. **We're here to help!**

### March 2018

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### IHT: know your limit

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Insurance company Canada Life's annual survey for 2017 has revealed **growing confusion over the operation of inheritance tax**. According to the survey, more than two thirds of respondents did not know the current level of the inheritance tax nil rate band - among adults over the age of 45 with assets in excess of £325,000, some 70% did not know that the threshold for the standard nil rate band is currently £325,000. This is a significant increase on the 61% shown in the 2016 survey. In addition, 55% of respondents did not know the rate at which assets above their available nil rate band are taxed - this represents an increase of 3% on 2016 figures.

The research found that over a quarter (27%) of those aged 45 or over with enough assets to trigger a potential IHT bill do not have a will, leaving their inheritance plans unclear and meaning their wealth could pass to relatives they did not intend to provide for under intestacy rules.

Another simple and effective estate planning strategy is to gift money to relatives, but just a fifth of respondents had done so - with over half (51%) saying they don't see a need.

One of the main reasons that simple estate planning tools are being ignored by people with enough wealth to benefit from them is a lack of understanding that could easily be rectified by better use of financial advice. However, Canada Life's research found that just 27% of wealthy Brits over the age of 45 have sought professional advice on IHT planning. At the end of January 2018, the Chancellor requested the Office for Tax Simplification (OTS) to carry out an IHT review, with the view to simplifying the 'particularly complex' system in which it operates.

The review will focus on the technical and administrative issues within IHT, such as the process of submitting returns and paying any tax due, as well as practical issues around routine estate planning

and disclosure. It may also look at how current gift rules interact with the wider IHT system, and whether the current framework causes any distortions to taxpayers' decisions surrounding transfers, investments and other relevant transactions. Although there are no changes at present, there are likely to be future reforms in this area. With this in mind, individuals would do well to check their current position on inheritance tax issues and check that adequate provisions are in place.

## HMRC win IR35 appeal

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HMRC have won a significant appeal concerning the application of employment intermediaries legislation to BBC television presenters. In *Christa Ackroyd Media Ltd and the Commissioners for Her Majesty's Revenue and Customs*, [2018] UKFTT 0069 TC06334, the First Tier Tribunal (FTT) ruled that the legislation (known as the 'IR35 rules') applied to the arrangements under which the BBC contracted one of the presenters of the regional news programme Look North.

Christa Ackroyd, whose 'personal service company' (Christa Ackroyd Media Ltd (CAM)), was engaged under a seven year contract with the BBC to provide her services on up to 225 days per year. Ackroyd was appealing against demands for some £419,151 from HMRC relating to income tax and National Insurance contributions (NICs) for the tax years 2006/07 to 2012/13.

**This appeal is specifically concerned with 'hypothetical contract'**. HMRC argued that such a contract between the BBC and Ackroyd would have been a 'contract of service' rather than a 'contract for services', that her status was that of an employee, and that CAM Ltd should therefore account for tax and NICs accordingly. The taxpayer however, contended that she was a self-employed contractor, and there was no further liability on the part of CAM Ltd.

The FTT found that the hypothetical contract would have been a contract of employment. Such factors as:

- mutuality of obligation;
- control of what, when, where and how the taxpayer performed her role;
- right of substitution; and
- whether the taxpayer was in business on her own account,

were all considered in depth.

In his ruling, the judge said that a hypothetical contract of seven years, for at least 225 days per year, and terminable only for a material breach, pointed towards a contract of employment. In particular, the length of the contract was 'pursuant to a highly stable, regular and continuous arrangement'. It involved a high degree of continuity rather than a succession of short term engagements. However, he also went on to say that 'the fact the fees were payable on a monthly basis akin to the way an employee might be paid is significant. Nor is the absence of any provision for holiday, sick pay or pension entitlement.'

In this case, it was the ability of the BBC to 'control' the taxpayer, and the fact that there was a seven year contract for what was effectively a full time job, that were the significant factors in the Tribunal's findings that the taxpayer was an employee under a hypothetical contract.

The FTT said that whilst this appeal is one of a number of other appeals involving television presenters and PSCs, it is not a lead case as such. It is a significant ruling though as, not least, it indicates that the IR35 can be enforced where HMRC see fit to do so.

## Tax deductions for family members' wages?

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Many adults are likely to embrace the offer of help with technology from the younger generation! So where a child is employed in a family business to work on, say, website creation, management and social media, how can the owner make sure that their wages will be tax deductible? The recent case of [Nicholson v HMRC \(TC06293\)](#), in which the first tier tax tribunal examined a deduction made in sole

trader's accounts for his university student son, gives us some pointers.

In this case, Mr Nicholson claimed that his son had been employed in promoting the business through internet and leaflet distribution and computer work. His wages had been calculated at a rate of £10 per hour for 15 hours per week, but unfortunately there was no evidence to support wages being paid on this basis. HMRC rejected the claim because of a lack of contemporaneous records preventing a successful reconciliation from the business bank statements.

Mr Nicholson claimed that payments to his son had been paid partly through the 'provision of goods'. He managed to identify £1,850 in cash by reference to his son's bank statements. He also substantiated a monthly direct debit of £18.51 in respect of his son's home insurance costs. However, the bulk of the claim was based on Mr Nicholson buying food and drink to help support his son at university.

The tribunal made reference to an earlier judgement in *Dollar & Dollar v Lyon* (HM Inspector of Taxes)[1981] CH D54 TC 459, which also involved payments to family members, and concluded that Mr Nicholson's payments were made out of 'natural parental love and affection'. There was a duality of purpose as the 'wages' had a major underlying 'private and personal' motive, and thus not for the purposes of the trade. The tribunal subsequently dismissed the appeal on the grounds that Mr Nicholson was doing nothing more than supporting his son at university.

In particular, **this case highlights the importance of keeping proper records** regarding the basis in which payments are to be made to children. The tribunal commented that the likelihood of a successful claim would have been increased had there been payment on a time-recorded basis, or a methodology in calculating the amount payable plus an accurate record of the hours worked. A direct link between the business account and the recipient's account would clearly be advisable.

Whilst there was no suggestion here that employing relatives is an issue in itself, the importance of paying a commercial rate for the work undertaken should be noted. The concept of 'equal pay for equal value' should help prevent a suggestion of dual purpose and thus, in turn, also help refute allegations of excessive payments to family members as a means of extracting monies from the business.

Finally, wherever payments are made to family member, legal issues such as the national minimum wage should also be borne in mind.

## ISA limits update

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The maximum annual investment limit for Individual Savings Accounts (SAs) will remain at £20,000 for 2018/19 (of which, for eligible investors, £4,000 may be saved in a Lifetime ISA). Although the investment limit is not rising in the new tax year, a couple will still be able to add up to £40,000 to their ISA accounts during the year - a substantial investment limit - and the interest received will be tax-free.

**The maximum investment limit for Junior ISAs will rise from 6 April 2018 to £4,260**, so there is scope for parents and grandparents to make tax-free savings investments on behalf of their children/grandchildren. Since it is possible for children to hold both a Junior ISA and a Child Trust Fund (CTF) (the CTF investment limit for 2018/19 is also rising to £4,260), there is plenty of scope for investors to look for higher-yielding products.

Help-to-buy ISAs continue to be available to assist first-time buyers save a deposit to purchase their first home. Under this relatively new scheme, up to £200 a month may be saved (along with an initial deposit of £1,000, and up to a maximum of £12,000) and, subject to certain conditions, the government will provide a 25% boost to the savings up to a maximum of £3,000 per person. A couple buying together could therefore save up to £30,000 tax-free towards the purchase of their first home, but it will take around four and a half years to achieve this level of savings using the Help-to-buy scheme.

Lifetime ISAs can be used by people aged between 18 and 40 to save for a first home or later life (again, subject to certain conditions). A total of £4,000 may be invested each year until aged 50. The Government will add a 25% bonus to savings, up to a maximum of £1,000 a year.

Unfortunately, the Government has recently confirmed that the new Help-to-Save scheme will not be fully available until October 2018. Ministers had originally said that the new accounts would start 'no later than April 2018' but this is not to be the case. This new type of account is designed to encourage people on low incomes to save for a rainy day by offering a 50% government top-up on savings. Over time, eligible individuals should be able to save a total of £2,400 in qualifying accounts, and receive bonuses of up to £1,200.

## March questions and answers

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**Q. I am a sole trader and have been trading for several years. My turnover has now exceeded the VAT registration threshold and I have registered with HMRC accordingly. I am currently waiting for VAT number and certificate. Will I be able to claim back VAT on purchases made by the business before the registration date?**



**A.** There is a time limit for backdating claims for VAT incurred before the effective date of registration. From the date of registration, the time limit is:

- 4 years for goods you still have, or that were used to make other goods you still have;
- 6 months for services.

You can only reclaim VAT on purchases for the business now registered for VAT and they must relate to your 'business purpose'. This means they must relate to VAT taxable goods or services that you supply.

You should reclaim them on your first VAT return and keep records including:

- invoices and receipts;
- a description and purchase dates;
- information about how they relate to your business now.

**Q. I own a buy-to-let leasehold property, which currently has 49 years remaining on the lease. Can I claim a tax deduction for the legal and professional costs of extending the lease?**

**A.** The normal legal and professional fees incurred on the renewal of a lease are generally allowable if the lease is for less than 50 years. But any proportion of the legal and professional costs that relate to the payment of a premium on the renewal of a lease are not deductible.

Where a replacement lease follows closely on a previous one, and is in broadly similar terms, a change of tenant will not normally make the associated legal and professional costs disallowable. Any proportion of the legal or other costs that relate to the payment of a premium on the renewal of a lease will, of course, remain disallowable.

**Q. I am self-employed and have been claiming capital allowances on certain business items. If I close down the business and move into employment, but continue to use the same assets for my work, can the transfer from one to the other be at the written down value, or will there be a balancing allowance at the date my business ends?**

**A.** Strictly, the open market value should be used for the transfer, so that balancing allowances or charges result. However, since employees can claim capital allowances for equipment they provide for use in their work, and this will be a transfer between 'connected persons', you will be able to an election to use the tax written down value for the transfer instead.

## March key tax dates

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13 - Spring Statement 2018

19/22 - PAYE/NIC, student loan and CIS deductions due for month to 5/3/2018



### Need Help?

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Please contact us if we can help you with these or any other tax or accounts matters.



In addition, if there's anyone else who you think would benefit from the newsletter, please forward the email to them or ask them to contact us to be added to the newsletter list.

### New Clients Welcome

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If you are not already a client and are interested in becoming one, we would love to come to meet with you to discuss how we can help and provide you with a competitive quote for our services.



All new client consultations are provided free of charge and without obligation.

### About Us

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Smith Craven Accountants are based in Doncaster, Sheffield, Worksop and Chesterfield, offering local business owners and individuals a wide range of services.

Visit our website <http://www.smithcraven.co.uk> for more information.

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