eNews
SPRING 2018

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DATA PROTECTION

May deadline for data protection

Major changes in the rules governing how businesses manage personal data take effect this May. If your preparations are not well underway, you need to acquaint yourself with the new requirements without delay.

The EU General Data Protection Regulation (GDPR) comes into effect on 25 May 2018 and will replace existing data protection rules. Although this is EU law, the government has said it will remain in force after Brexit.

The GDPR gives individuals – including customers and employees – greater control of their personal data held by businesses and other organisations. Businesses will need explicit consent to hold a person's data in electronic format, and to share it with other organisations.

A new right to data portability will allow individuals to move, copy or transfer personal data easily from one IT environment to another. Your business must therefore be able to identify all of an individual's data, and make it available in a structured, commonly used and machine-readable form, for example CSV files. This will generally have to be done free of charge and within one month of a request.

Subject to various conditions, individuals will also have the right to:

- Be informed how their data will be used.
- Have their data corrected, or deleted.
- Restrict or object to processing of their data.
- Object to automated decision making.

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By 25 May, you need to know precisely what data you are holding and for what purposes. In particular, organisations must:

- Ensure that employees are fully informed about the uses being made of their personal data, and that HR staff have training in the new rules.
- Delete all information about employees and customers they no longer need.
- Only collect and process personal data they legitimately need for identified purposes.
- Update their procedures for managing access requests by data subject.

Don't delay: the penalty for getting it wrong after 25 May will be up to €20 million or 4% of worldwide turnover – whichever is the higher – depending on the damage done.

EMPLOYMENT

IR35 reforms coming to the private sector

The government is planning to consult on extending the public sector off-payroll working rules to the private sector.

In April 2017, there were major changes to the way in which IR35 applies where a contractor provides their services to a public sector body client through an intermediary:

- Status determination – the responsibility for determining IR35 status shifted from the contractor to the client. The client is likely to take a risk-adverse approach and set the IR35 status even before advertising a contract.
- Tax deduction – if the client decides that IR35 applies, the contractor is taxed as if they were an employee, and will be subject to PAYE and NICs.

Even though a public sector contractor can be taxed as an employee, their employment status does not change and they do not receive the rights and benefits that go with employment. Not surprisingly, the change has been extremely unpopular, and many contractors have decided to stop working in the public sector or to increase their fees to cover the additional tax costs.

A recent survey reported that 80% of IT projects in the public sector are suffering delays because of the IR35 changes.

In the November 2017 Budget, the government announced that it would carry out a consultation on how to tackle IR35 non-compliance in the private sector. A possible next step is the extension of public sector.

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TAXATION

Indexation changes hit company capital gains

Property owning companies are likely to face a significant increase to their future tax liabilities because indexation is being frozen at December 2017.

Indexation provides a relief against inflation by effectively increasing allowable expenditure in line with the Retail Price Index (RPI). The indexation freeze comes when inflation is rising, with the December RPI showing a 4.1% increase for 2017. Although the rate of corporation tax itself is to be reduced to 17% in 2020, this may not compensate for the change.

It is important to emphasise that indexation relief is being frozen, not abolished as it was for individuals and trusts. It will apply to all assets a company acquired before December 2017.

For assets acquired earlier with a disposal date of January 2018 or later, you will be able to calculate the indexation relief based on the RPI index figure for the date you acquired the asset and the December 2017 indexation figure.

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Potential impact

Although indexation is given for corporate capital gains generally, its freezing will be particularly felt as regards property sales.

Many buy-to-let investors have moved their properties into a company structure in response to the government's crackdown on tax relief for finance costs. For example, if a company has purchased buy-to-let property costing £300,000 in 2018 and sells it in five years' time, assuming an RPI increase of 20% over that period, it will have lost the benefit of indexation of £60,000. At a tax rate of 17%, the extra tax will be £10,200.

EMPLOYMENT

Making bullying and harassment a thing of the past

With harassment, bullying and sexual misconduct highlighted in the news recently, no employer can afford to be complacent.

Allegations of such behaviour towards employees or others can do serious harm to the reputation of a business. Ignoring the issue can lead to expensive and damaging litigation. Employers need to know what behaviour amounts to harassment or bullying and have procedures to stop it effectively and quickly.

Defining the problem

Bullying is offensive, intimidating, malicious or insulting behaviour, the abuse or misuse of power by undermining, humiliating, denigrating or injuring the recipient.

Harassment is defined under the Equality Act 2010. It consists of unwelcome behaviour that is:

- Intended to violate, or has the effect of violating, an individual's dignity or of creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual.
- Related to a protected characteristic – age, disability, race, religion or belief, sex, sexual orientation or gender reassignment.

Harassment may come from another employee or from someone else, such as a customer. Unacceptable behaviour includes exclusion, victimisation, spreading rumours, unfair treatment, overbearing supervision, blocking an individual's training or promotion opportunities and making sexual advances or comments.

Addressing the issues

Employers have a duty under the Equality Act to prevent harassment at work. Here are some things they should do:

- Consider making a statement that bullying and harassment will not be tolerated. Involve staff in framing such a statement.
- Have fair and strong grievance and disciplinary procedures.
- Assure employees that any allegations will be taken seriously, investigated and handled confidentially.
- Make sure managers will challenge inappropriate behaviour and comments.
- Establish a culture in which employees feel able to contribute their views rather than being instructed what to do.
- Consider whether any training is needed to rectify any lack of understanding of what bullying and harassment are.

Having good systems can provide an employer with a defence if there is a tribunal claim, and help produce a happy and productive workplace.

TAXATION

Stamp duty relief for first-time buyers

The November 2017 Budget introduced stamp duty land tax (SDLT) relief for first-time buyers who buy a property costing up to £500,000 from 22 November 2017.

The relief cut SDLT by £1,660 for someone buying the average first-time buyer property for £208,000.

First-time buyers do not pay any SDLT on purchases of residential property costing £300,000 or less. For purchases costing between £300,000 and £500,000, they pay SDLT at the rate of 5% on the excess over £300,000. Normal rates of SDLT are paid on the full purchase price if it exceeds £500,000.

A first-time buyer is defined as someone who has never owned a freehold or leasehold interest in a residential property in the UK or anywhere else in the world, and who intends to occupy the property as their main residence. Where there are joint purchasers, all purchasers need to be first-time buyers.

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