

Technical

CONNECTION

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WORK OUT IF YOU'LL PAY WELSH INCOME TAX

HMRC has issued further guidance on Welsh income tax which includes some useful examples on who will be treated as a Welsh taxpayer. This guidance is in addition to the technical guidance which was issued last year.

Broadly, those who live in Wales throughout the tax year will be treated as Welsh taxpayers, whereas those who live anywhere else in the UK will not be treated as a Welsh taxpayer, regardless of whether they deem themselves as being Welsh or if they work in Wales.

The position may be different for those who:

- move to or from Wales during the tax year;
- have more than one home at the same time; or
- have nowhere that they can identify as their home.

Those who move to or from Wales during the tax year will only be treated as a Welsh taxpayer if they live in Wales for longer than anywhere else in the UK during the tax year.

If someone has more than one place which they regard as home, for example, one in Wales and one elsewhere in the UK, they will be a Welsh taxpayer if their main home is in Wales.

For those who cannot identify anywhere as their home, they will be treated as a Welsh taxpayer for the whole tax year if they spend more days in Wales than anywhere else in the UK.

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CORONAVIRUS: FCA WARNS FIRMS OVER MAKING DIVIDENDS

On 17 April, the Financial Conduct Authority (FCA) updated its statement on its expectations on financial resilience for FCA solo-regulated firms in light of the coronavirus. It says that, during this time of stress, it expects firms that are prudentially regulated by the FCA to support the functioning of the economy by planning ahead and ensuring the sound management of their financial resources. This means taking appropriate steps to conserve capital, and to plan for how to meet potential demands on liquidity.

When considering whether to make a discretionary distribution of capital to fund a share buy-back, fund a dividend, upstream cash or meet a variable remuneration decision, the FCA warns firms that it expects them and their boards to satisfy themselves that each distribution is prudent given market circumstances, and consistent with their risk appetite. The FCA says that it would not expect firms to distribute capital that could credibly be required to absorb losses over the coming period. The FCA adds that it may contact specific firms in relation to this, as relevant.

The FCA states that capital and liquidity buffers are there to be used in times of stress. Firms that have been set buffers can use them to support the continuation of the firm's activities. If a firm is planning to draw down a buffer, it should contact the FCA or its named FCA supervisor.

If the firm needs to exit the market, planning should consider how this can be done in an orderly way while taking steps to reduce the harm to consumers and the markets. Firms should maintain an up-to-date wind-down plan that takes consideration of the current market impact of the coronavirus. Government schemes to help firms through this period can be part of a firm's plans for how they will meet debts as they fall due.

If a firm is concerned it will not be able to meet its capital requirements, its debts as they fall due, or if its wind-down plan has identified material execution risks, it should contact the FCA or its named FCA supervisor, with its plan for the immediate period ahead.

Non-bank lenders subject to IFRS9 are reminded that the standard requires that the forward-looking information used in expected credit loss estimates is both reasonable and supportable. It is essential that the standard is implemented in a well-balanced and consistent way that reflects not only the potential impact of the coronavirus crisis, but also the support provided by governments and central banks domestically and internationally to protect the economy.

Firms that are prudentially regulated by the Prudential Regulation Authority (PRA) should consider the PRA's requirements and discuss their concerns with them. Those firms should also keep the FCA notified of any significant developments.

CORONAVIRUS: THE IMPACT OF FILING COMPANY ACCOUNTS LATE

There are approximately 4.3 million companies on the Companies House register, and all companies must submit their accounts and reports each year.

The deadline for filing a company tax return with HMRC is usually 12 months after the end of the accounting period it covers. A flat-rate penalty is charged if this deadline is missed.

Under section 442 Companies Act 2006:

- a private company must usually submit a copy of its accounts and reports to Companies House within nine months of the end of its period of account;
- a public company must usually submit a copy of its accounts and reports to Companies House within six months of the end of its period of account.

Under normal circumstances, companies that file accounts late with Companies House are issued with an automatic penalty. However, businesses will now be able to apply for a three-month extension for filing their accounts and those citing issues around COVID-19 will be automatically and immediately granted an extension.

As a result, a company will often be delivering its accounts to Companies House after the 12-month deadline for submitting its corporation tax return to HMRC. In this situation, provided the company has a return period that coincides with a period for which it is required to deliver accounts to Companies House, no flat-rate penalty is chargeable if the company delivers its return to HMRC by this later date.

For example:

- Company E, a private company, makes up accounts for the accounting period ended 30 June 2019.
- A notice to deliver specifying the period 1 July 2018 to 30 June 2019 is served by HMRC on 1 August 2019.
- Companies House allows an extension of three months to the period for delivering accounts, extending the deadline from 30 April 2020 to 31 July 2020.
- The filing date for the company tax return is 30 June 2020 (12 months after the end of the corporation tax return period).

If the company delivers its corporation tax return to HMRC by 31 July 2020 (13 months after the end of the period of account, as allowed by Companies House), it will not incur a fixed penalty.

Legislation requires that the company tax return period and the period of account be the same. In practice, the provision should be applied to any accounting period that forms part of a longer period of account, where the date for filing the accounts with Companies House is later than the date for filing the tax return with HMRC.

CORONAVIRUS: HELP AND SUPPORT IF SOMEONE DIES

The DWP’s latest guidance, published on 22 April, covers what to do after a death, bereavement benefits, and arranging or attending a funeral during the coronavirus (COVID-19) outbreak:

1. A step by step guide provides information on what to do after a death: ‘What to do when someone dies’. When the death is registered, the ‘Tell Us Once’ service allows someone to tell all relevant Government departments about the death in one go, either online or by

phone.

2. The following financial help and benefits may be available:

- Help with funeral costs – for those on a low income who are entitled to certain benefits. The amount will depend on the individual’s circumstances. However, it will not usually cover all of the costs of the funeral. Funeral expenses payments increased from £700 to £1,000 from 8 April 2020 for eligible benefit claimants.
- Bereavement Support Payment – for the spouse or civil partner of the person who died, where that spouse or civil partner is under State Pension age.
- Guardian’s Allowance – for someone bringing up a child whose parents have died.

In addition, those on a lower income following the death of their partner may be entitled to benefits. A benefits calculator is available to check what is available and how to claim.

3. There are restrictions in place during the coronavirus outbreak which will affect the type of funeral that can be held. The funeral can usually only take place after the death is registered. The DWP suggests that the funeral director will be able to give more advice about what is possible, and has provided on-line information on arranging a funeral and finding a funeral director, or contacting your local council to arrange a funeral.

Whilst the DWP’s guide doesn’t provide specific details on the restrictions in place which will affect the type of funeral that can be held, Public Health England’s guide to managing a funeral during the coronavirus pandemic provides some information on who should attend a funeral and on social distancing for mourners.

FURLOUGH AND DIRECTOR/SHAREHOLDERS

It was reported over the weekend of 25th/26th April that Mel Stride, Conservative Chair of the influential Treasury Select Committee, had urged the Chancellor to look again at the plight of owner/managers of SMEs who “remunerate” themselves wholly, mainly or partly through dividends.

It has been well reported that, self-evidently, such people cannot access financial support through the Self Employment Income Support Scheme (SEISS) and if they furlough under the Job Retention Scheme (JRS) they can only carry out statutory duties and cannot do work they would normally do to generate commercial revenue or provide services to or on behalf of their company. And even if they do furlough (and adhere to those conditions) the grant can’t be claimed under the JRS in respect of dividends. So, for most, the amount that can be claimed is likely to be relatively small.

The Treasury has previously said it is problematic to distinguish the dividend income that directors take from their own companies from dividends earned on other investments, such as shares – making it difficult to design a scheme that targets company directors.

In Committee, Mr. Stride questioned whether this was the case. He (effectively) challenged the Treasury by questioning whether their current position is founded on an official belief that they see dividends as part of tax planning and lowering tax bills and, as a result, they are less sympathetic to it. He made the point that whether or not that is the case “That is just a view that is out there.”

Andy Chamberlain, Director of policy at the lobby group the Association of Independent Professionals and the Self-Employed (IPSE) also made the point that while there may be the general perception that taking dividends is a way of avoiding, or paying less, income tax/National Insurance, the source of the dividend is profit that will have been subject to corporation tax at 19% and that the tax rates on dividends have increased.

Mr. Stride said the Committee would “pursue” an idea suggested by IPSE for the Treasury to provide emergency funds to company directors through a “pay now, claw back later” model.

Such a system, it seems, would rely on directors self-reporting their average dividend income, and obtaining a similar measure of support to the 80% of income that the self-employed and employers claiming through the JRS for employees can access. However, presumably following some form of auditing, if HMRC later found out that a director had inflated the figures, it would be entitled to reclaim it with penalties attached.

Mr. Chamberlain added that, according to recent information from the Office for National Statistics, there are 710,000 limited company directors “...getting very little by way of support when compared to some other groups”.

THE GOVERNMENT'S RESPONSE TO CALLS TO RELAX WITNESSING RULES FOR WILLS IN ENGLAND AND WALES

The problems with Will execution during the current social distancing/self-isolation period have recently been highlighted - namely the difficulties with complying with the English law requirement that two witnesses are necessary for a Will to be legally valid.

The Law Society and the Ministry of Justice have been discussing ways to reduce the formalities required for the signing of Wills and how to make it quicker to register for lasting powers of attorney (LPAs).

Solicitors for the Elderly and the Society of Trust and Estate Practitioners (STEP) were also asking for temporary legislative measures to help them deal with the current problems, both on Wills and powers of attorney. These involve reducing the number of witnesses and other solutions such as video witnessing.

Among the options for Wills are: an Australian-style approach, which would give judges more flexibility when deciding what constitutes a Will; a European-style system where testators could write Wills by hand without witnesses; and a process whereby Wills could be witnessed electronically.

A suggestion has also been made that legislation could be introduced that mirrors the process of Will making for those in the armed forces under section 11 of the Wills Act 1837 which allows for members of the armed forces to draw up a Will quickly when they do not have the time, resources or the capability to comply with the formalities that otherwise need to be satisfied. They are able to make either a written or an oral Will and, if written, there is no requirement for witnesses to its execution.

The Ministry of Justice has now responded to the above suggestions. Unfortunately, there is no suggestion as yet what, if any, reform will actually take place, other than what the Government has rejected, namely the extension of the above-mentioned section 11.

Parliamentary under-secretary, Alex Chalk, has since told the House of Commons that “the constraints of the COVID-19 situation must be balanced against the important safeguards in the law to protect elderly and vulnerable people in particular against undue influence and fraud.”

Responding to a Parliamentary question, Chalk pointed to the fact that privileged Wills are a “convention restricted to people making wills when on active military service where the normal formalities cannot be observed, but which do not equate to the current civil circumstances.”

However, while emphasising that having two independent witnesses provides safeguards for testators, Chalk stated that the Government is still reviewing the case for reform of England and Wales law on making Wills, given the current circumstances. Other reform measures will be considered, along with longer-term changes to the law along the lines suggested by the Law Commission of England and Wales in its work on Wills (the Law Commission report on ‘Making a Will’ is now on the back burner), and in its recent report on the electronic execution of documents.

COMMENT

It has been widely reported that many more people are either updating or making Wills and executing LPAs.

Many practitioners have been struggling to find the best way to help these clients achieve a valid Will and LPA without violating the self-isolation rules.

Many firms are embracing the use of technology to help take instructions. Some clients can be easily interviewed over Skype, Facetime, Teams, Webex or Zoom or other video-calling means. The advantage of this is that you have visual contact with the client which can help determine their capacity, their understanding of the discussion and whether there is evidence of undue influence.

It is also possible to record these interviews, with the client’s permission, which could be useful at a later date. A draft Will can be prepared for the client to execute.

Many clients will be in self-isolation or practicing social distancing, which means that some clients must not let you in the property or come to your office. So, how do you deal with the requirement for two witnesses being physically present?

The obvious thing is to stand either side of a window (assuming the client is in a house) and witness the testator signing the Will. Then collecting the document (through the said window) and signing it as witnesses on the other side of the window whilst the testator watches. This does not help those in blocks of flats, obviously.

One firm of solicitors has been offering a novel method whereby a client drives up and parks their car outside their office, two members of staff come out (this assumes the office is still open), the client signs the Will in his or her car with the window open and the witnesses watching and then adding their signatures. This will also amount to a valid execution.

Let's hope the Government comes up with proposals for simplification soon.

COVID-19: NEW GOVERNMENT FUNDED LIFE ASSURANCE PLAN FOR NHS, FRONTLINE AND CARE WORKERS

In summary, under the new life assurance scheme launched for eligible frontline health and care workers during the coronavirus pandemic, families of eligible workers who die from coronavirus in the course of their frontline essential work will receive a £60,000 payment.

The scheme recognises the increased risk faced by staff during the crisis and will cover coronavirus-related deaths of workers in frontline health and adult and children’s social care roles during the outbreak. It will cover staff who provide hands-on personal care for people who have contracted coronavirus or work in health or care settings where the virus is present.

Bereaved family members will receive a £60,000 lump sum worth roughly twice the average pensionable pay for NHS staff, with the cost met by the Government. This will cover full, part-time or locum NHS and public health workers, including GPs, dentists, retired staff and second and final year students taking up paid frontline roles.

Within social care, the scheme will cover employees of publicly funded care homes, home care, directly-employed carers, including personal assistants, and frontline child and family social workers.

The scheme is aimed at those who die from coronavirus during the course of their essential and lifesaving work. This includes those providing direct care as well as cleaners and porters who continue to carry out vital duties in these care environments.

The scheme is time-limited, providing cover for the duration of the pandemic. This is measured as the period for which the NHS workforce provisions in the Coronavirus Act 2020 are in force (which took effect on 25 March) but claims for deaths occurring before this will be considered. At the conclusion of the emergency response, the Secretary of State will give notice to close the scheme. The coverage of the scheme is broadly drawn across health and care sector employers given the variety of roles and locations, but eligibility is work-related.

Employers will be asked to initiate claims on behalf of the individual’s families and claims will be verified and processed by the NHS Business Services Authority, who will work with employers to ensure claims are handled swiftly and sensitively.

Funding will also be provided to devolved administrations to support similar schemes in Scotland, Wales and Northern Ireland.

COMMENT

Although the announcement was short on more detail it is assumed that the payments will be in addition to any death benefits paid under pension arrangements and will not generate any direct or indirect taxable benefit.

NS&I STAYS THE EXECUTION

Back on 17 February 2020 BC (Before Coronavirus), well ahead of the Bank of England base rate cuts, National Savings & Investments (NS&I) announced cuts to rates on its fixed rate products (for reinvestment) and many of its variable rate products, other than the Direct ISA and JISA. The rate changes were generally due to take effect from 1 May.

On Friday 17 April, NSI revealed a change of mind “To support savers at this difficult time”. The changes to variable rate products will not now go ahead, although those for fixed rate products will be implemented.

As a reminder, the current variable rates are:

Product	Current rate
Direct Saver	1.00% gross/AER
Income Bonds	1.15% gross/1.16% AER
Investment A/C	0.80% gross/AER
Direct ISA	0.90% gross/AER
Junior ISA	3.25% gross/AER
Premium Bonds	1.40% 24,500:1 monthly odds

INCOME WITHDRAWAL RATE FOR MAY 2020

The appropriate gilt yield, used to determine the ‘relevant annuity rate’ from HMRC’s tables for an adult member commencing income withdrawals (or reaching an income withdrawal review date), in May 2020 is 0.5%.