

A woman with dark hair and red-rimmed glasses is smiling and looking towards the left. She is seated at a long table in a meeting room. Other people are visible in the background, some looking at laptops. The room is brightly lit with natural light.

EMPLOYMENT TAXES - CURRENT PITFALLS FOR THE UNWARY

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SPEAKERS TODAY



CAROLINE JONES

Tax Director

+44 (0)7866 178226
caroline.jones@bdo.co.uk



JULIA ASCOTT

BUFDG Employment Taxes Specialist

+44 (0)7591 206723
julia@bufdg.ac.uk



AGENDA

1. Holiday pay - impact of Harpur v Brazel

2. Working from anywhere - the new reality

3. Off payroll changes?



HOLIDAY PAY

Impact of Harpur v Brazel



HOW WERE EMPLOYERS CALCULATING HOLIDAY PAY HISTORICALLY?

Percentage methods?

- Most organisations have been using one of 2 methods
- Percentage method (5.6 weeks / 46.4 working weeks = 12.07%)

Or

- Pro rata method to correspond with the working pattern



BACKGROUND TO HARPUR V BRAZEL

Facts

1

Ms Brazel worked for Harpur Trust only during term time on a zero hours contract

2

Her holiday pay was calculated using the percentage method based on her term time hours

3

She challenged this on the basis that her holiday pay should be based on the average of her earnings over the past 12 weeks worked increased to 52 weeks from April 2020

4

Case heard by EAT, Court of Appeal and finally by the Supreme Court and decision was handed down in July



HOLIDAY PAY CHANGES

Supreme Court decision

- ▶ Employees are entitled to 5.6 weeks holiday pay
- ▶ This includes those on part year and irregular hours
“holiday pay is to be calculated in line with the Working time Regulations 1998 and that holiday entitlement cannot be reduced on a pro rata basis for part year.”
- ▶ There is no mechanism to reduce holiday entitlement on a pro-rata basis to account for part-year working
- ▶ Percentage method can no longer be used



HOLIDAY PAY CHANGES CONT.

Supreme Court decision

- ▶ Judgement only applies to statutory holiday, if you contractually pay more than the statutory entitlement you can reduce the contractual element on a pro rata basis, should you wish



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HOW SHOULD HOLIDAY PAY BE CALCULATED?

- Holiday pay should be calculated at the week's pay in respect of week of leave
- A week's pay will vary depending on how employee is paid - determined by the Employment Rights Act 1996
- Multiply one week's pay by 5.6 to calculate a year's holiday pay
- Let's have a look at a simple example

EXAMPLE

Normal working hours with pay that doesn't vary

- ▶ Lets assume annual working weeks are 39
- ▶ Average out over 12 equal monthly payments
- ▶ $39 \text{ weeks} + 5.6 \text{ weeks holiday pay} = 44.6 \text{ weeks pay}$
- ▶ What if the employee receives occasional overtime?



PART TIME STAFF

- ▶ Are we able to apportion the entitlement?
- ▶ What about part time staff who work 2 days a week?
- ▶ Same as previous example 39 weeks working but working 2 days a week
- ▶ $39 + 5.6 = 44.6$ weeks pay (so same as previous example BUT a week's pay is based on part time hours)



IMPACT OF THE JUDGEMENT?

- ▶ Will you consider the nature of your contracts?
- ▶ Will this change the way you engage part year workers? Switch to fixed term contracts?
- ▶ Have you been compliant thus far or do you need to consider repayments?
- ▶ New enforcement body taking responsibility for ensuring holiday pay.
- ▶ What information on payroll, is it sufficient to establish any under payments



WORKING FROM ANYWHERE - THE NEW REALITY



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HYBRID AND DISTANCE WORKING UNDER THE OTS SPOTLIGHT

UK Government Response



- ▶ Office of Tax Simplification (OTS) has recognised that the new realities for employers create a multitude of considerations
- ▶ Review of hybrid and distance working with a call for evidence.

Key areas of interest



- ▶ How businesses are operating now, both for international workers and UK based workforce
- ▶ Internal policy and procedure changes that companies have made
- ▶ Extent to which employers have had to consider their corporate permanent establishment position.

Future Reform?



- ▶ An OTS review may spark the Government to take forward reforms.
- ▶ This type of review is likely to be replicated across multiple countries in the coming years.

HOMWORKING ARRANGEMENTS V HOME AS A WORKPLACE

- ▶ Why is it important to differentiate between the two?
- ▶ Often causes confusion for employees
- ▶ tax-free reimbursement from employer
- ▶ Ability to claim a deduction against earnings

HOMEWORKING ARRANGEMENTS

Two tests:

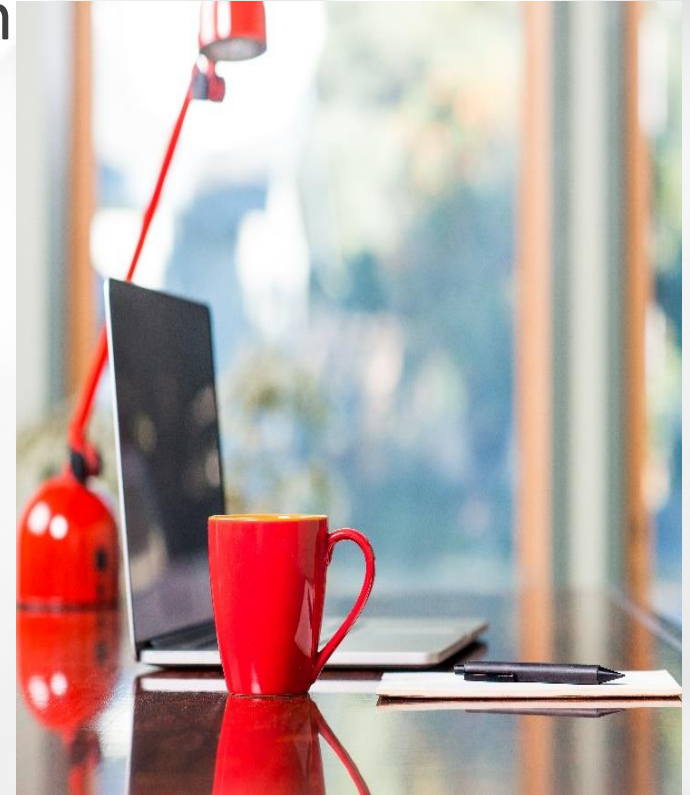
1. There must be arrangements between the employer and employee
2. The employee must work regularly at home

If conditions are met, employer can make tax-free payments to cover additional costs BUT employee cannot claim a deduction for anything not reimbursed by the employer.

HOME AS A WORKPLACE

When would HMRC accept that an employee's home can be treated as a workplace?

- ▶ **Substantive duties** of the employment are performed at home:
 - duties that an employee has to carry out and that represent all or part of the central duties of the employment
 - **No such facilities** are available to the employee on the employer's premises



HOME AS A WORKPLACE CONT.

- ▶ Those duties cannot be performed without the use of appropriate facilities
- ▶ At no time either before or after the employment contract is drawn up is the employee **able to choose** between working at the employer's premises or elsewhere.



HOME AS A WORKPLACE CONT.

- ▶ If conditions are met employees can claim a deduction for **expenses incurred** but not reimbursed and/or
- ▶ Employer can make **tax-free payments** to cover additional costs



POTENTIAL ISSUES WHERE EMPLOYEES OVERSEAS

- ▶ Key issues that potentially impact employers:
 - Permanent Establishment
 - Payroll/withholding tax
 - Social Security
- ▶ Employee considerations:
 - Income Tax and DTA's
 - Social Security – contributions and benefits



CONCLUSION

- ▶ Identify your remote working population whether in UK or overseas
- ▶ Think about the key questions for overseas employees to identify areas of risk
- ▶ If UK based employees home working arrangement or working from home?
- ▶ Review your contracts to ensure that they match working practices
- ▶ Do you want to respond to the OTS consultation?

OFF-PAYROLL WORKERS ("IR35")

How they will work from April 2023

OFF-PAYROLL WORKERS ("IR35")

How they will work from April 2023?

- ▶ The intention was to repeal off-payroll working rules from April 2023
- ▶ U turn so you need to meet your off-payroll requirements going forward provided that you meet 2 out of 3 criteria
 - Your turnover is £10.2m or more
 - Balance sheet is £5.1m or more
 - 50 employees on average over the year

OFF-PAYROLL WORKERS ("IR35")

Recap

- ▶ Concept was first introduced for public bodies from April 2017; BUT
- ▶ New rules introduced April 2021 applying to the private sector including charitable sector (and bringing new compliance requirements for public sector)
- ▶ The status decision is made by the end user
- ▶ Status Determination Statements, ("SDS") must be sent by end user - no set format but reasons why this decision has been made **MUST** be included
- ▶ Appeal process
- ▶ SDS are required for all PSCs arrangements
- ▶ All PAYE/NIC obligations remain with the engager until SDS made (having taken reasonable care).

HMRC - STATUS TEAMS

Areas of focus and what we are seeing



Policies and processes - not always clearly documented



Lack of ownership, HR, payroll, tax, finance, procurement?



Engagers bypassing the process



Reliance placed on agencies



Challenges in retaining evidence



Difficulties in making decisions even where using CEST

OFF-PAYROLL WORKERS ("IR35") CONCLUSION

What charities should focus on



Make sure that status is determined at the outset and don't rely on agencies



Document processes and procedures and provide training for engagers



Where inside scope of the off-payroll rules operate
Real Time information



Implement an appeals process



Evidence,
evidence, evidence



ANY QUESTIONS?



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THANK YOU FOR JOINING US TODAY

CONTACT INFORMATION

CAROLINE JONES
Tax Director
caroline.jones@bdo.co.uk

Julia Ascott
employment tax specialist
julia@bufdg.ac.uk





FOR MORE INFORMATION:

Caroline Jones

t: 07866 178226
e: caroline.jones@bdo.co.uk

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