



Changes in the Law

I recently attended an excellent course with a colleague, and I am keen to share with you some highlights of what we learnt...

Limited Companies

There are some forthcoming changes which are quite interesting....



1. The annual return is being replaced from April 2016 by a confirmation statement, now companies only confirm changes within the year, this will of course affect all Limited Companies; **however we can help you.**
2. A new register of persons with significant control the PSC Register (*think overseas oligarchs, lawyers as nominees, US hedge funds, tax evaders and such like*) is being introduced.
3. Disqualification of directors is to be made easier.
4. There are new duties for shadow directors.
5. The insolvency rules are to be changed to make it easier for creditors to pursue directors.
6. Bearer shares are prohibited from October 2015.

7. Corporate directors are prohibited from October 2015 for most companies (*I didn't know that corporate directors were a possibility until a few weeks ago, not for long as it transpires*).

Payroll & Holiday Pay

For businesses with employees on salary calculation of holiday pay is not an issue, but for those with employees in the following categories the calculation of holiday pay is a complex and changing issue...

- **Zero Hours contract** holiday pay is the average pay over the last 12 weeks
- **Part timer with voluntary overtime** holiday pay is the contractual basic (overtime not brought in)
- **Full timer with voluntary overtime** holiday pay is the contractual basic (overtime not brought in)
- **Where overtime is compulsory** if offered, or the job cannot be fulfilled without it, - holiday pay is average of last 12 weeks.



- **Where commission is a key part of the wage**, common in retail – holiday pay is average of last 12 weeks.

Clearly calculating holiday pay for many employees is a legal and mathematical minefield...

Hornbeam offers all payroll clients the option of recording and monitoring staff holiday entitlements. **Please ask if you would like us to do this for you.**

Self Employed Contractors

HMRC

recently won a case against a retired contractor for very substantial amounts of unpaid

PAYE and NI. Those who are Self-employed and feel they are vulnerable to HMRC assertion, that they are actually employed, need to consider that the risk of a backdated tax charge may rest with themselves.

If this sounds like you, please get in touch.



Auto Enrolment



The rules of the Auto Enrolment legislation exempt single director companies from registration and extend this to two or more director companies “unless one or more of the directors have contracts of employment”. This is not as straight forward as it seems. Whilst the parliamentary draftsman could have opted to say “written contracts of employment” to eliminate ambiguity, he did not do so!

We have in UK law the established concept of “Implied Contracts of Employment”. If the employee turns up for work each day, and is paid for their work, there is an Implied Contract of Employment. This of course covers the situation of many directors working for service companies or family companies.

It is unknown whether small companies with a couple of directors, one of whom works for the company and is paid, none of whom have a written contract, are caught by the Auto Enrolment legislation or not. The course lecturer was aware of this ambiguity and also unable to give a definitive answer.

After considering all aspects we are taking the view that although the parliamentary draftsman did not use the term “written contract” neither did they use terms such as “work for the company” or “are on the payroll of the company” and we believe the intention was to prevent the system (and in particular the pension providers) from being swamped by very small schemes of effectively self-employed directors.

Therefore on both literal and consequential interpretation we do not believe companies whose only employees are directors who do not have written contracts will have to operate auto enrolment. (Although both the legislation and our interpretation could change).

If you want to chat to me about any of these points call me on 01603 720424 or send an email to phil@hornbeam-accountancy.co.uk

Kind regards
Phil

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Whether you are a client or not, if we can provide further help or advice concerning any of the matters covered here, please do not hesitate to telephone us on (01603) 720424 or email info@hornbeam-accountancy.co.uk

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