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Tax change 'could lead to more business failures'

The recent changes to corporation tax loss relief could lead to more business failures, according to the insolvency specialists, R3.

Following changes introduced in April, companies are only allowed to write off 50% of past losses from future corporation tax bills, rather than the previous 100%.

The changes are expected to raise £1.6bn over the next five years, but this could come at the cost of an increase in business failures.

Andrew Tate, the president of R3, said: "The loss relief reforms could damage business rescue in the UK. In some cases, business rescues will be hindered by hefty tax bills. More business failure and less business rescue will be the consequence.

"It's frustrating that while the government is considering reforms to boost business rescue, the failure to tweak the loss relief reforms could cancel out that work significantly.

"The impact on other creditors in situations where businesses have failed is problematic, too. The failure of one company can cause the failure of another if there is not enough money owed to it returned through an insolvency procedure.

By limiting loss relief so significantly, HMRC is essentially jumping the queue of creditors and will benefit from money

that could have been a lifeline for small businesses and other trade creditors."

The warning highlights the need for firms to keep a tight rein on credit control to ensure they are paid promptly. Invoices that are allowed to remain unpaid for long periods may prove impossible to recover if the debtor goes out of business.

A solicitor's letter is often enough to ensure payment. If not, the law provides several other ways to recover debts up to and including court action.

Please contact us if you would like help with debt collection and credit control.

Jaguar Land Rover must pay out £19,000 over 'racist slurs'

Jaguar Land Rover has been ordered to pay £19,000 compensation to a black employee who was subjected to racist slurs by staff and management.

Mr Paul Hoyte claimed he had regularly suffered abuse and harassment because of his race and disabilities.

The Employment Tribunal was told that Mr Hoyte suffered from depression, anxiety and irritable bowel syndrome. He had been off work for nearly two years before he was dismissed in March 2016 on the grounds of capability.

The tribunal rejected his claim that he was unfairly dismissed but accepted his claim of harassment and disability discrimination. It found that "racially offensive" terms were used by management and colleagues.

Judge Lloyd said: "One of those we think was the word 'Abo'. We think that word had probably been used sporadically of the claimant for some time during his employment by associate and management staff.

"Ironically, we do not think it was meant to be gratuitously offensive.

"But we cannot avoid the conclusion that it was bound to be very racially offensive to a black man like the claimant.

"We believe this was part of harassing conduct towards the claimant, which impugned his dignity significantly; even if it was not intended as a deliberate racial slur."

Mr Hoyte needed to take urgent toilet breaks due to his condition but was told that he needed to ask permission from his line manager before stopping work.

Judge Lloyd said: "Given the nature of his medical condition, that rule was both embarrassing and demeaning in a way that a non-disabled colleague would not be subjected to."

Mr Hoyte was awarded compensation of £19,152.

Please contact us for more information about the issues raised in this article or any aspect of employment law.

Queen's Speech: Brexit, employment and housing

The Queen's Speech announcing the government's plans for the coming two years was dominated by Brexit, as was widely expected.

Eight of the 27 new bills were related in some way to our future relationship with the European Union and the rest of the world.

The impact on business will largely depend on the outcome of complex negotiations that could last several years. However, there were some indications of the government's thinking and how that might affect business and employees.

The Repeal Bill will repeal the 1972 European Communities Act and convert EU law into UK law. This means that in the initial stages of the withdrawal, EU laws, directives and regulations will remain in place.

The government will then amend or repeal them over time. Any suggestion that this might lead to a reduction in employment rights seemed to be addressed in the speech.

"The National Living Wage will be increased so that people who are on the lowest pay benefit from the same improvements in earnings as higher paid workers.

"My ministers will seek to enhance rights and protections in the modern workplace.

"My government will make further progress to tackle the gender pay gap and discrimination against people on the basis of their race, faith, gender, disability or sexual orientation."

There was also a commitment to provide a better deal for tenants in rented

accommodation. "Proposals will be brought forward to ban unfair tenant fees, promote fairness and transparency in the housing market, and help ensure more homes are built."

We shall keep clients informed of developments.

Please contact us if you would like more information about any of the issues raised in this article.

Architect faces negligence case despite giving services free

Businesses and professionals need to take care when giving their services free to friends because they could find themselves facing a negligence claim if things go wrong.

That is what happened to an architect in a recent case that has gone all the way to the Court of Appeal.

The issue arose after the architect agreed to help her friends with a project to landscape their garden. For no fee, she secured a contractor, who carried out the earthworks and hard landscaping.

The architect intended to provide subsequent design work for which she would charge a fee. However, the project did not get that far because the friends were unhappy with the quality

and progress of the work. They brought proceedings claiming that the architect was responsible for the defective work.

A preliminary hearing was ordered to determine whether they could claim against the architect considering that she had given her services for free.

The judge determined that although there was no contract as such, the architect still owed a common law duty of care because she possessed a special skill and had assumed a responsibility on which her friends had relied. He held that she had acted as project manager, not as a mere facilitator between the contractor and the respondents.

The Court of Appeal has upheld that decision. It said the judge had been entitled to conclude that there had been an assumption of responsibility and that it was appropriate, fair, just and reasonable for a duty of care to arise.

The decision means that the architect's former friends can now pursue a claim against her to try to recover damages.

Please contact us for more information about the issues raised in this article or any aspect of professional negligence.

Builders win £700,000 payment dispute with developers

A building firm has won a dispute over a £700,000 payment after the High Court upheld a decision made by an adjudicator.

The firm had been contracted by some developers to provide pre-construction services for a proposed retirement village. Once the work was complete, it submitted an invoice but didn't receive payment.

The firm then served a payment notice under the Local Democracy, Economic Development and Construction Act 2009.

It received no response so it referred the matter to an adjudicator who found that the sum of £705,558 was due from the developers. The firm then asked the High Court for summary judgment to enforce that decision.

The developers argued that it was a breach of natural justice for the adjudicator to order payment of such an excessive sum where the operation of complex payment rules was in dispute. The adjudicator had also failed to ask why no building contract had been entered into after the pre-construction works.

The court found in favour of the building firm. The judge said there were only two grounds on which enforcement of an adjudicator's decision could be resisted: lack of jurisdiction and a breach of natural justice.

No issue had been taken as to the adjudicator's jurisdiction, and neither of the developer's arguments raised issues of justice. Therefore, the adjudicator's decision ought to be enforced.

Please contact us for more information about the issues raised in this article or any aspect of contractual disputes.

Court helps partners divide jewellery business

Company Law

The High Court has decided how two partners should divide their business after they fell out and could no longer work together.

The two men were brothers who had run a jewellery business through an English limited partnership based in London, two Thai companies, a British Virgin Islands (BVI) company, and a company registered in the US.

Richard managed the London and US businesses, while Robert controlled the BVI and Thai companies. Thai law imposed restrictions on the foreign ownership of Thai land and company shares so Robert had transferred the shares in the Thai companies to his wife and children, who were Thai nationals.

When the brothers' relationship broke down in 2012, Robert sought to exclude Richard from the Thai and BVI businesses.

Richard sought an equal division of the business as a whole, and compensation for any loss caused by Robert's breaches of fiduciary duty.

The court had to determine how the ongoing commercial relationship was to be brought to an end.

There were several issues including whether their interests in the partnership were 50/50 or 51/49 in Robert's favour, and whether the partnership extended to the Thai and BVI companies.

The court found in favour of Richard. It held that the evidence showed that they were equal partners. It decided that the partnership should be wound up while retaining each business as a going concern rather than have them sold off to realise cash.

Richard's assets in the Thai and BVI companies would be transferred to Robert, and Robert's interests in the London and US companies would be transferred to Richard.

Each would account to the other for half the value of, and his drawings from, the companies he had controlled, and Robert would pay compensation for his breaches of the duties he owed to Richard.

Please contact us for more information about the issues raised in this article or any aspect company law.

Landlord's terms judged too severe in Vivienne Westwood case

The terms of a rental agreement that would have meant fashion designer Vivienne Westwood having to pay an extra £100,000 on her flagship store in Mayfair were too severe to be enforceable, the High Court has ruled.

Vivienne Westwood Ltd leased the premises from Conduit Street Development Ltd in 2009 on a 15-year term with rent reviews after 5 and 10 years.

A side letter was entered into at the same time as the lease. Under its terms, the landlord agreed to accept a lower rate of rent, increasing gradually from £90,000 for the first year to £100,000 for the fifth year.

It would then be capped at £125,000 per annum for the following five years if a higher open market rent was determined upon the first rent review.

The lower rent set out in the side letter was terminable by the landlord if the tenant breached any of the terms and conditions of the side letter or lease, in which case the rents would be payable in the manner set out in the lease, as if the side letter had never existed.

The tenant failed to pay the rent in June 2015 and the landlord asserted that the side letter had been terminated and that the open market rent was payable.

The High Court rejected this argument. It held that the terms of the side letter amounted to a penalty and were therefore unenforceable.

Under the side letter, the same substantial financial adjustment applied whether a breach was a one-off, minor, serious or repeated, and without regard to the nature of the obligation broken or any actual or likely consequences for the landlord. That had long been recognised as one of the hallmarks of a penalty.

The extra financial detriment to the tenant seemed exorbitant and unconscionable.

Please contact us for more information about the issues raised in this article or any aspect of commercial property law.

Father wins claim over paternity leave

A father has won his discrimination claim against his employer after being denied his full paternity rights.

Call centre worker Madasar Ali wanted to take the leave to care for his baby daughter because his wife was suffering from post-natal depression. His employer, Capita, said he would only be granted two weeks on full pay even though women are entitled to 14 weeks.

Capita argued that Mr Ali wasn't entitled to the same leave as a woman because as a man, he couldn't give birth.

The Employment Tribunal rejected this argument and found in favour of Mr Ali. It held that Capita's actions contravened the Equality Act and parental rules introduced in 2015, which allowed parents to share up to 50 weeks of leave.

Employment judge Rita Rogerson said: "It was accepted that he was denied that benefit and was deterred from taking the leave and was less favourably treated as a man.

"Either parent can perform the role of caring for their baby in its first year depending on the circumstances and choices made by the parents."

The level of Mr Ali's compensation will be decided at a further hearing.

Please contact us if you would like more information about the issues raised in this article or any aspect of employment law.

Should workers be paid if on call or asleep?

The issue of whether workers should be paid the National Minimum Wage when they're on call or required to sleep on site has been addressed by the Employment Appeal Tribunal (EAT).

It said there was no definitive answer as each case would depend on its individual circumstances. However, it did highlight some of the factors that would be relevant when making a judgment.

Reason for engaging the worker

This would examine the regulatory or contractual obligation for the worker to be present on the site while on call or sleeping.

It would be important to ascertain whether the worker was required to remain on the premises during the period in question or had restrictions placed on his movements.

Worker's responsibility

The degree of responsibility would need to be considered.

A case involving a worker who was required to sleep at the premises to deal with emergencies such as a break-in or a fire might be treated differently to one where the worker might have more regular or routine duties to perform.

Primary or secondary responder in an emergency

A case involving a person who is woken in an emergency and has to respond to the issue himself may be treated differently to someone is only woken when needed by someone who has already assessed the situation.

The guidance was given by the EAT after it considered three separate cases that were heard together because they raised similar issues.

Please contact us if you would like more information about the issues raised in this article or any aspect of employment law.

Building firm limits liability for loss and damages to 10%

The High Court has upheld a legal agreement that limited a building firm's liability for damages to 10% of the total value of a contract agreed with a developer.

The issue arose after the developer hired the firm to carry out the design and construction of certain works.

The contract terms included the JCT Design and Build Sub-Contract agreement with bespoke amendments. A clause in the agreement covered the possibility of delays taking place in the work and limited the firm's liability for losses to 10% of the value of the contract.

Once the work got under way, there were various delays and disruption that led to the developer losing more than £2m. It sought compensation from the firm of £1.4m, that being 10% of the value of the contract.

However, it later went on to seek more compensation that went beyond the 10% cap. It argued that other claims for the financial consequences of delay and disruption, totalling £2,291,495, came under other clauses in the agreement outside the cap.

The court ruled in favour of the firm. It held that the cap was a straightforward provision seeking to limit the firm's liability for "direct loss and/or expense and/or damages" at 10% of the value of the contract. It didn't refer to claims under particular clauses.

Please contact us for more information about the issues raised in this article or any aspect of contract law.

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