TAX TALK

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AUGUST 2020

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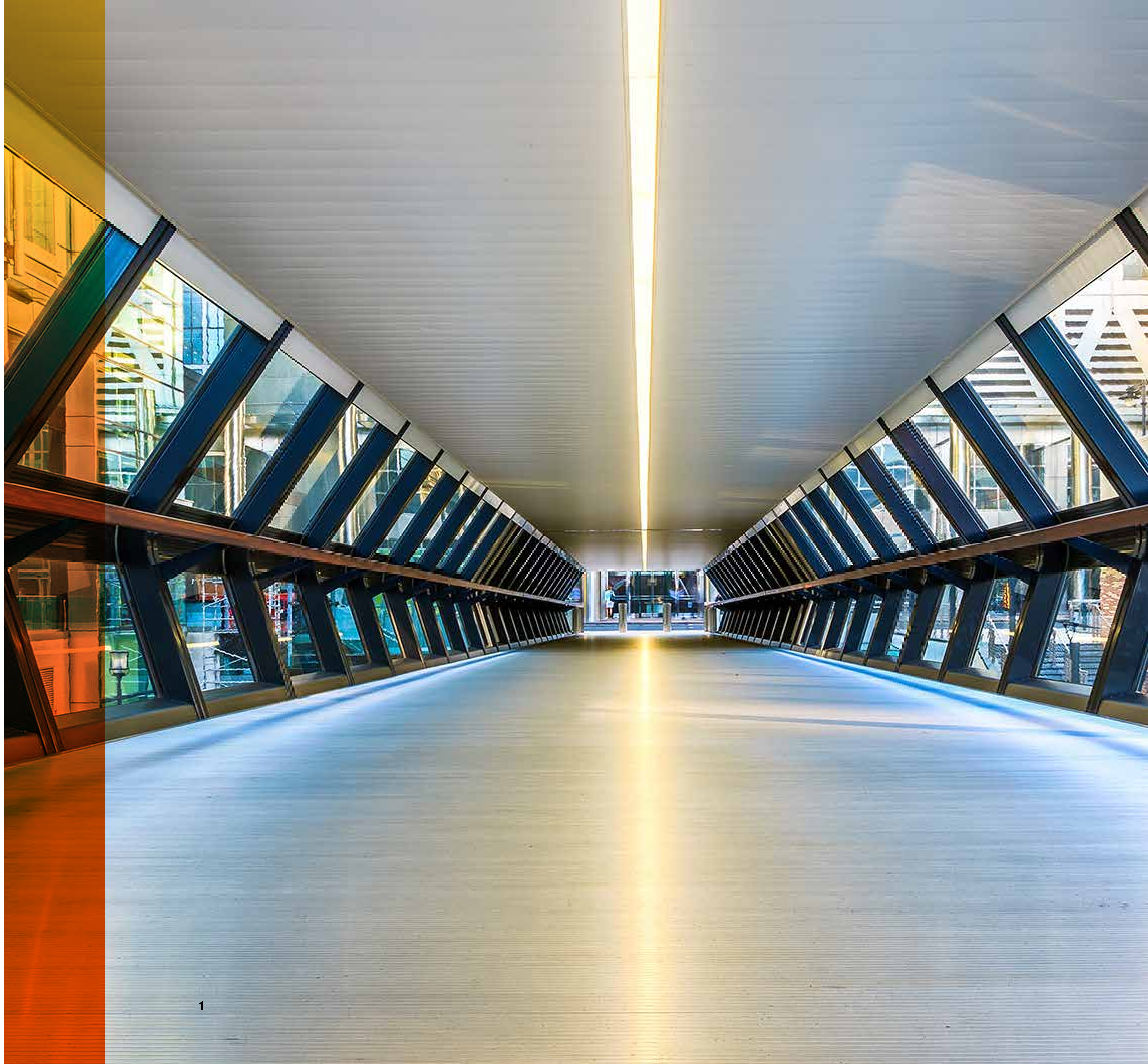

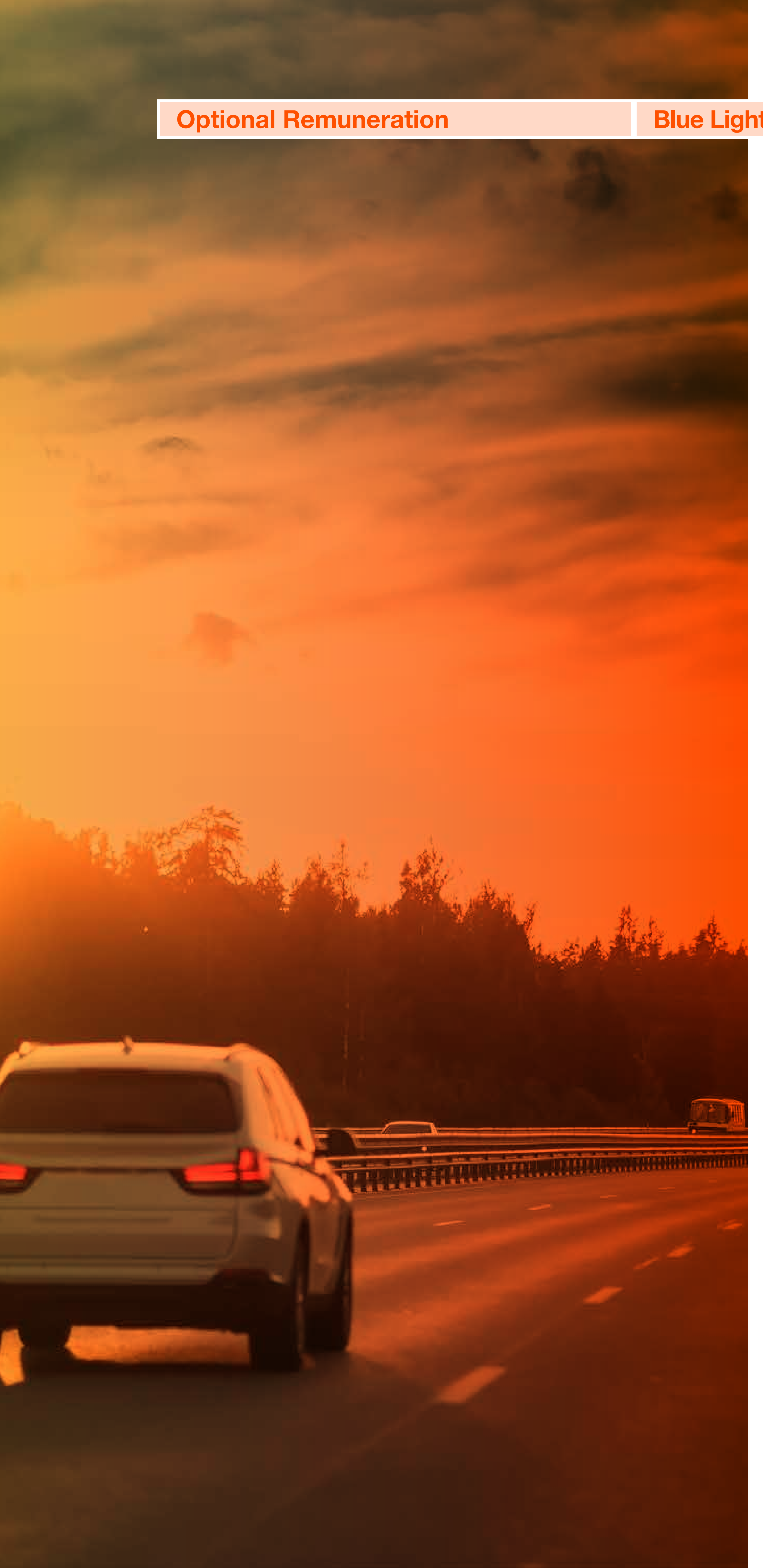

CASH OR BENEFIT AGREEMENTS - AKA OPTIONAL REMUNERATION

From 6 April 2017 the taxation of cash or benefit agreements changed but speaking with clients it is clear that these rules are often not fully understood, or worse that employers are unaware of the new rules entirely.

The Optional Remuneration Arrangements (OpRA) rules were introduced to address the tax and/or NIC advantages enjoyed where benefits are provided through arrangements where the employee gives up the right to an amount of earnings in return for a benefit, typically when under a salary sacrifice arrangement.

In general terms, if an employee has the option of being provided with a benefit in kind in exchange for a reduction in their cash earnings, the new rules require the taxable value of the benefit in kind to be the higher of the normal cash equivalent value, or the cash given up. For example, if an employee has the option of a car allowance of £10,000 a year, or a company car with a taxable value of £9,000, under the OpRA rules the taxable value of the company car benefit is £10,000, being the higher of the normal benefit and the cash forgone.

OpRA rules cover traditional salary sacrifice arrangements as well as other cash or benefit agreements.

The rules are quite complex, and there are transitional arrangements as well as some benefits that are entirely exempt from the OpRA rules.

The exemptions apply to:

- Death and retirement schemes
- Pension savings
- Company funded pension advice
- Bike to work schemes
- Childcare vouchers
- Ultra-low emission cars
- Buying holiday.

The transitional arrangements apply from the earlier of the date after 6 April 2017 of any change, modification or renewal of an arrangement under which a benefit is provided, or 6 April 2018. In addition, certain benefits (company cars, accommodation and school fees) have a later transitional date of 6 April 2021. By the start of the next tax year, the transitional arrangements will cease and all but the exempt benefits will fall entirely under the OpRA rules.

From our work acting for clients going through HMRC Employer Compliance Reviews, it is clear that the OpRA rules are a key issue that HMRC focuses on. Employers are often faced with significant unexpected tax and NIC liabilities arising from the application of the OpRA rules. This is also compounded by the fact that employers are unwilling to pass on the tax liability to their employees, and so have to settle the tax due with HMRC on a grossed-up basis.

Actions to be taken by the Employer

- Review what is currently in place for employees with cash or benefit arrangements. It is not uncommon for salary sacrifice or “flexible benefit” schemes to have been set up incorrectly at inception. Is there an “either/or” contract on record? Has this been agreed by the employee?
- Compile the P11D benefit changes so that the benefits are being correctly reported.
- It is important that employers communicate effectively and positively with their employees. What are the OpRA rules and how will they effect their benefits and tax liability? Are benefit offerings to be changed? What will the employer do, and what must the employee do? Bear in mind the possible negative staff relations arising from tax inequality between employees of different conditions for the same benefit.
- Consider what the business is currently offering, and whether in the light of the new OpRA rules it is beneficial to change them.

The Employer Solutions Team at PKF Littlejohn are here to help you work through the OpRA rules as they apply to you and your employees, and to give you reassurance that you are not going to end up with an unexpected large bill from HMRC for getting it wrong.

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'BLUE LIGHT' INHERITANCE TAX

The estate of medical staff who died due to COVID-19 contracted during their work may be able to claim an Inheritance Tax (IHT) exemption.

The exemption was originally introduced to support the families of soldiers who died in active duty, but since 2014 it has been extended to cover the deaths of emergency responders when responding to emergency circumstances.

Inheritance tax

In normal circumstances, on the event of an individual's death, the estate would need to assess their liability to IHT. Each estate would benefit from the Nil Rate Band of £325,000, which could be increased up to £650,000 for married couples or those in civil partnership, as well as the Residence Nil Rate Band if the estate transfers a property directly to descendants (such as children). After deducting further available allowances the balance will be liable to IHT at 40% (36% if at least 10% of the net estate is left to charity).

If the estate qualifies for 'blue light' relief, the normal IHT provisions will not apply to the estate; instead, the estate will be exempt from paying IHT.

When does it apply?

The 'blue light' IHT exemption can apply to an estate when:

- An individual dies from an injury sustained, accident occurring or disease contracted at a time when that individual was responding to emergency circumstances in that individual's capacity as an emergency responder; or
- An individual dies from a disease contracted at some previous time, the death being due to, or hastened by, the aggravation of the disease during a period when that individual was responding to emergency circumstances in that individual's capacity as an emergency responder.

Since the pandemic began thousands of NHS workers have contracted COVID-19 with many of them sadly losing their lives. Many more have contracted and survived the disease. The long-term health consequences of the disease on some of these individuals may not yet be apparent, but for those that have been badly affected by the disease, the exemption could be of relevance in the future.

With the COVID-19 pandemic ongoing, the disease will continue to have an impact on our lives for the foreseeable future and this exemption may become more relevant for certain individuals.

‘BLUE LIGHT’ INHERITANCE TAX (CONT)

Who qualifies?

‘Emergency responders’ is defined in the legislation, but importantly does not need to be paid employment and can be unpaid volunteering work. It covers individuals working in:

- Fire services or fire and rescue services
- Search services or rescue services
- Medical, ambulance or paramedic services
- Services for police purposes
- Services for the transportation of organs, blood, medical equipment or medical personnel.

The definition also includes providing humanitarian aid.

The legislation has not been tested sufficiently as to what jobs can be covered by medical services, but this would apply to doctors and nurses. We do not know whether support staff or care home workers, for example, would currently be included in the definition.

Other key workers continuing to support the country throughout the pandemic are not included within this definition. It has been reported that there have been 43 COVID-19 related deaths of transport workers. They would not be covered under this ‘blue light’ IHT exemption yet continue to provide essential services to the country.

Within the legislation it states that the Treasury has the power to extend the definition of ‘emergency responder’, we wait to see whether the government considers making amendments to the existing legislation.

A small but welcome comfort

The rules around IHT have become increasingly complex, so we would suggest you seek professional advice to support you in dealing with any estate administration.

Less than 5% of UK deaths result in an inheritance tax charge, but there may be some estates that could benefit from the ‘blue light’ exemption. An exemption from IHT will never make up for the loss of a life, however, it is a small acknowledgment of the sacrifice made by the emergency services and will remove a layer of officialdom at a time of great sadness.

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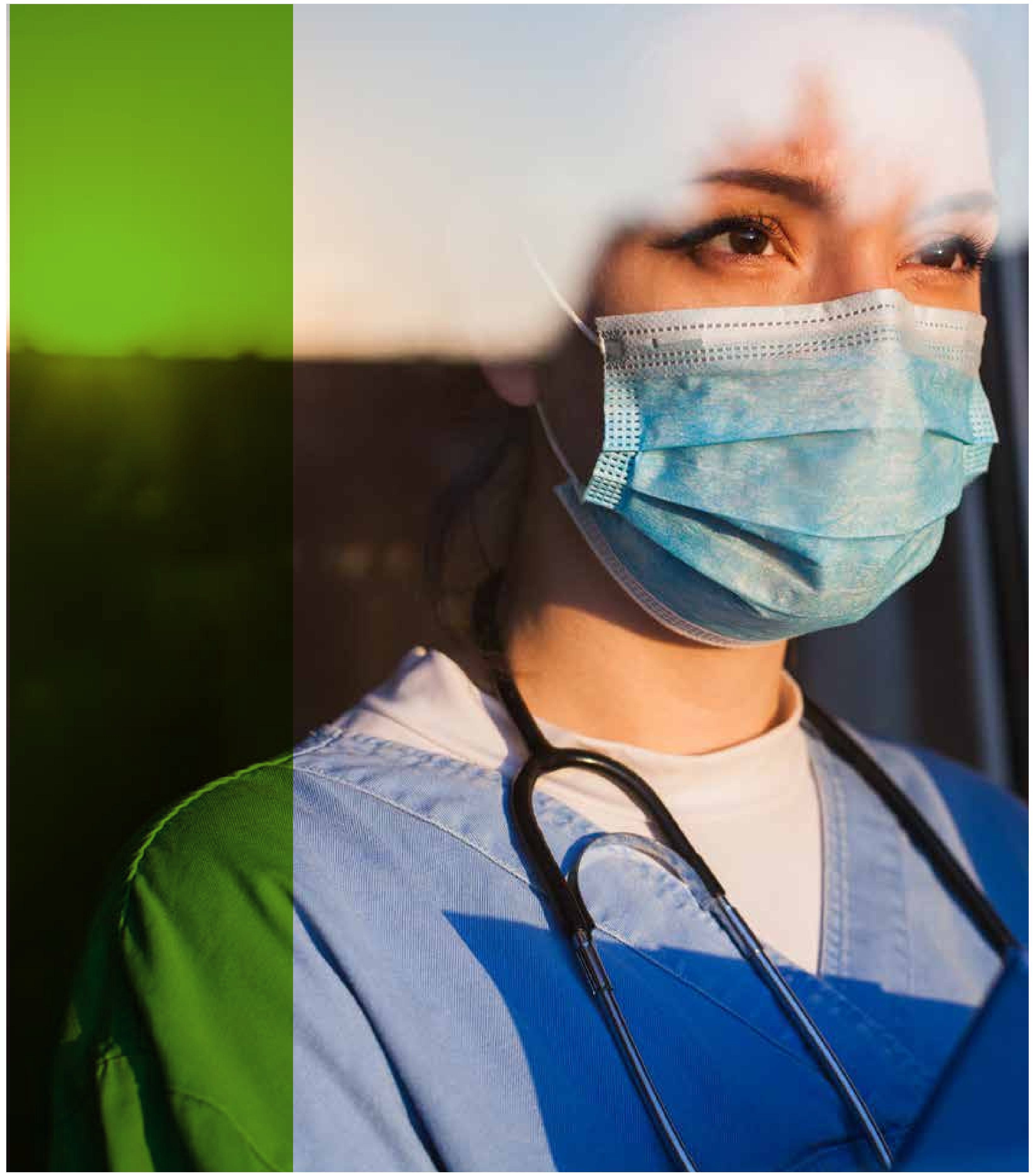

DIGITAL PUBLICATIONS – CHANGE IN VAT TREATMENT

The government-backed change in the VAT treatment of certain digital publications from standard to zero rated has been brought forward from 1 December 2020 to 1 May 2020. A recent ruling in the Upper Tribunal could open the door to publishers of digital publications making historic claims for significant recoveries of VAT.

Zero rating VAT treatment was applied to printed newspapers in 1973, when VAT was introduced in the UK, to help keep newspapers as affordable as possible. As technology has developed, news has increasingly become available online and the supply of digital publications has been subject to the standard rate of VAT of 20%.

This has often been a contentious issue, with printed publications being determined for VAT purposes as being a supply of zero rated goods but their digital counterparts being treated as a supply of standard rated services. This conflicting treatment was also apparent across various EU member states.

News Corp UK & Ireland Ltd VAT case

News Corp, publishers of The Times and The Sun newspapers, argued that ‘fiscal neutrality’ should apply – that the VAT treatment of the same or similar supplies in competition should be identical. HMRC rejected the claim but News Corp appealed and took its case to the First-Tier Tribunal which supported HMRC’s view that digital newspapers could not be classed as zero rated. News Corp appealed the case to the Upper Tribunal which found in News Corp’s favour in December 2019.

The tribunal ruled that zero rating could include both good and services, and that the supply of digital newspapers fell within this. The Upper Tribunal recognised the ‘always speaking’ doctrine to take account of technological advances when interpreting what the law intended. Digital newspapers did not exist when the zero rating was introduced, but the tribunal reasoned that the zero-rating intentions originally introduced to aid the population’s literacy should be interpreted to include digital newspapers in UK VAT law. The judgment allows for equal VAT treatment of digital versions of newspapers, therefore fiscal neutrality.

While HMRC has been granted permission to appeal the decision to the Court of Appeal, this is a major ruling that could result in many business launching protective claims against HMRC to recover historic overpaid VAT on digital supplies - something that was not addressed when the Government announced the VAT rate change effective from 1 May 2020.

HMRC is likely to try to overturn the ruling and has been granted permission to go to the Court of Appeal. The March 2020 Budget announcement by Chancellor, Rishi Sunak bringing forward the zero rate implementation date from 1 December 2020 to 1 May 2020 is unlikely to help HMRC’s appeal. It is unlikely that claims will be processed by HMRC until the News Corp appeal has been resolved, but we would advise businesses to make a protective claim to HMRC to safeguard your position pending the conclusion of the case.

Potential recovery

Businesses should now review their digital publications and prepare to launch a claim if the potential recovery is significant, subject to a 4 year cap. Providers of digital publications may also face the prospect of recipients of such supplies wishing to reclaim the VAT they have paid historically, so a protective claim will also prevent any further losses.

This may be a significant opportunity for those who sell digital publications, and those who purchase these for business purposes but cannot recover VAT in full on their costs, such as charities, not for profit entities/membership organisations, and partially exempt businesses.

If you are interested in submitting a protective claim for VAT overpaid on supplies of standard rated digital publications or would like further guidance on the impact of this change, please contact our Indirect Tax Team for assistance.

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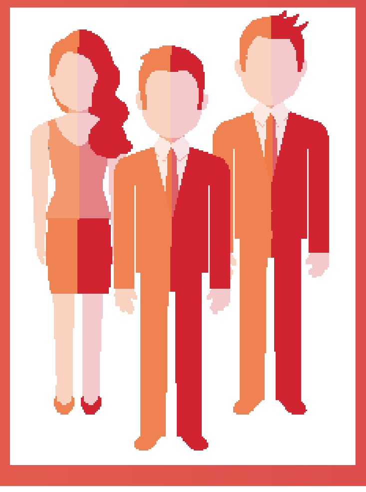
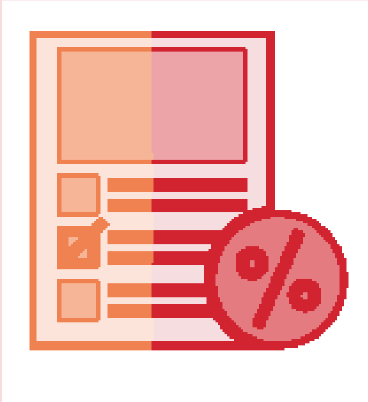
ABOUT PKF



PKF Littlejohn is a fast-growing firm of accountants and business advisers based in London's Canary Wharf.



We provide a full range of audit, accountancy, tax and advisory services, and are experts at simplifying complexity - we're particularly well-known for working with complex clients with challenging issues in fast-moving and highly technical areas.

Our aim is to understand people, the organisations they run, and what matters to them, so we can simplify complexity and help them achieve their ambitions.

We have three important principles that make a big difference in our business, and they also have a significant impact on our clients' organisations. They are really simple:

1. People matter; making a difference for the people we work with and the people we work for is our priority
2. We're relentlessly curious, because we want to know each client's organisation as well as they do, even better if we can
3. And we're good at getting things done.

We are the London office of PKF UK & Ireland, currently the 10th largest network in the UK with a combined fee income of over £140m.

OUR TAX SERVICES

> By bringing together the extensive expertise and experience of our tax specialists we can provide a fully rounded service that offers excellent value for money."

Cost-effective tax compliance, expert assistance for complex matters.

It's a corporate juggling act: how to keep up with ever-changing tax regulations, while minimising the amount you pay, running your business and handling your tax affairs efficiently.

PKF Littlejohn can provide bespoke advice in all areas of taxation helping our clients receive the specialist knowledge they need to make informed decisions. Our team has the expertise and capacity to take on all challenges, national and international.

WE OFFER THE FOLLOWING SPECIALIST TAX SERVICES:

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All issues concerning VAT in the UK, Europe and across the world

International tax services
Expert tax advice on your operations around the world, with access to tax expertise in around 125 countries through PKF International, our global network of independent accounting firms.

Tax compliance
The best way to minimise your tax liabilities and avoid penalties or fines is to hand your tax affairs over to professionals. Our processes are designed to ensure your return is completed on time and correctly

Customs duty
Assistance with trading across national boundaries in Europe

Global Mobility
Our Global Mobility team, together with the global network of PKF International, supports expatriate and internationally mobile individuals in over 150 countries

HMRC enquiries
Not only will we help you minimise the risk of an enquiry by HM Revenue & Customs, but should one be raised you can rely on our wealth of experience in resolving disputes and negotiating favourable settlements

Employee incentives
Encourage the best people to join you and stay with you

Tax planning
In our view, paying the right amount of tax means paying the minimum the law requires of you. We will help you achieve this with tailored strategies that suit your personal and business circumstances

Estate planning and trusts
We can provide sound advice on how to make the best possible use of tax-saving vehicles, ensuring that your family is properly provided for

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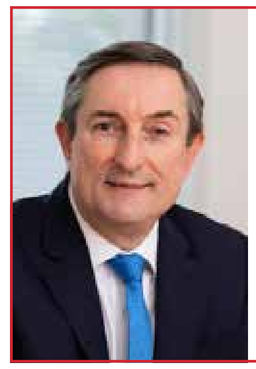

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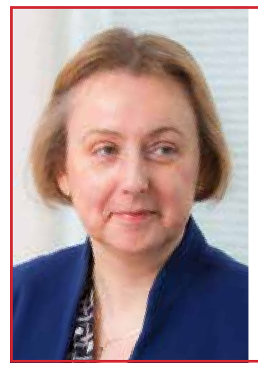

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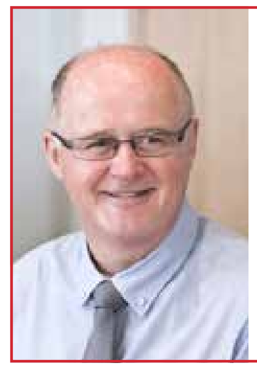

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