

Autumn 2010 Newsletter

In our Autumn newsletter we provide details of topical developments, including the recent Treasury announcement on restriction of pensions tax relief, some interesting case law developments, and other relevant areas of discussion.

Restrictions to pensions contribution tax relief - updated guidance now published

The Treasury has recently confirmed its revised intentions for the limitation of relief available to higher earners. Whilst the new proposals are now thankfully simpler in concept, they will still mean additional obligations for employers and (affected) employees. The main principles are now as follows:

1. From 6 April 2011, tax relief will be subject to a single Annual Allowance (AA), i.e. based on a maximum annual contribution accrual, of £50,000.
2. From 6 April 2012, the annual Lifetime Allowance (LTA), i.e. total permitted value of pension pot, will also be reduced to £1.5m from the current £1.8m limit.
3. For Defined Benefit (final salary) schemes, a flat multiplication factor of 16 will be applied, meaning that potentially an increase in the expected annual pension (before any lump sum commutation) of £3,125 each year, would be permitted, i.e. £3,125 x 16 = £50,000. However, somewhat confusingly, the multiplication factor applicable to the LTA is expected to remain at 20.
4. In order to permit some 'spikes' in annual contributions (e.g. on promotion, early retirement or redundancy), any unused AA in the previous 3 years may be carried forward. Additional discretion may also be exercised in the event of death (HMRC accepts this as one of the less obvious opportunities for tax avoidance), and also potentially in the event of serious ill-health retirements. However no specific extension of the normal carry-forward of relief will apply in the event of redundancy.
5. Where the new limits are exceeded, consideration is being given to permitting the individual to pay any charges out of their pension pot, rather than year by year from their other annual income.
6. The current arrangements on Employer Funded Retirement Benefit Schemes (EFRBS) are also being reviewed. It may well be that EFRBS become a less attractive way of 'topping up' pensions where the new limits are exceeded.

Potential NIC refunds on motoring allowances – Total People Ltd v HMRC

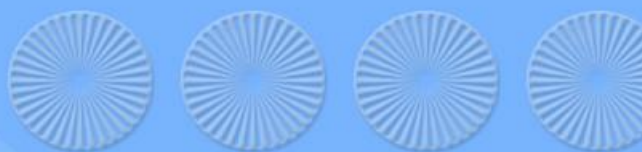
HMRC has always taken the view that Relevant Motoring Expenditure (RME) must be identified and calculated at the time of the payment, to be allowable for NIC purposes. However a recent First Tier Tribunal case involving Total People Ltd has suggested that, in effect, retrospective claims for NIC relief may be permissible.

Unsurprisingly the case has caused considerable interest in the tax community, as this potentially opens the floodgates for very substantial NIC repayment claims – for instance where the employer has assumed that 'fuel only' payments were allowable, and has paid other car payments (e.g. monthly car allowances) under full deduction of tax and NIC.

However, we do feel several words of caution are warranted. HMRC has indicated its intention to appeal, as it (and the Treasury!) potentially has a great deal to lose. Given that this is only a First Tier decision, it is unlikely any binding precedent will be established for several months if not years. Nonetheless, we would be pleased to assist any client who wishes to formulate a future strategy to maximise employees' RME and/or any repayment claim, which could (fairly simply) be made on a 'protective' basis, to prevent years going out of date.

Deductions for clothing – 'warmth and decency' still prevail

Anyone as long in the tooth as the ET4B team may recall the early 1980s tax case of *Mallalieu v Drummond*, which famously confirmed the difficulty in sustaining a tax deduction for clothing. In that case, it was decided that non-uniform or protective clothing did not have a wholly and exclusively business motive, as the clothing was also partly used for the dual purposes of warmth and decency. Spin forward almost 30 years, and a recent First Tier Tribunal case involving BBC presenter Sian Williams would appear to confirm the same principles still apply (irrespective of the



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high level of necessary clothing expense that TV presenters would usually incur nowadays – any presenter of 'The Naked Jungle' possibly excepted!)

Travelling expenses – training contracts

On the other hand, the recent Court of Appeal decision in HMRC v Banerjee did provide a chink of light in another notoriously difficult area. Generally HMRC would take the view that training and study expenses are incurred to put one in a position to perform duties, rather than in the actual performance of those duties. However, in the above case it was shown that training was integral to the contract and was therefore deductible.

Where an employee is expected to pay particular expenses as part of their job (whether clothing, travel, training, or other costs), in our experience it is usually preferable from a tax perspective for the employer to provide this. If the employee would otherwise normally meet such costs, provision by the employer can often be structured in conjunction with a salary sacrifice or other contractual reduction in pay. If you require assistance in formulating any such arrangements, please contact us.

Forms P800 – tax underpayment notifications

Few will have missed the publicity generated by HMRC's decision to issue (on a drip-feed basis over the coming months) 2 years worth of annual adjustments to employees. These are of course non-Self Assessment cases where the individuals tax coding did not collect the correct amount of tax, typically because forms P11D showed a different amount of benefit than included in tax codings. Whilst the Revenue's tardiness is disappointing, employees should always:

1. Ask for an explanation, if they do not know how a tax underpayment etc has arisen;
2. Ensure any claims for expenses deduction are submitted (e.g. claims for Mileage Allowance Relief for business mileage);
3. Enquire if there is scope for any such underpayment to be waived, if HMRC has failed to use the information in its possession, in effect causing the underpayment.

Construction Industry Scheme (CIS) definition of mainstream and deemed contractors

Many large non-construction businesses have successfully managed, with HMRC agreement, to deregister from CIS completely. This follows the rule (Regulation 22, SI 2005/2045) which permits deemed contractors to disregard expenditure incurred on property used in carrying on their day to day business. However we have recently seen evidence of HMRC back tracking on this. In effect HMRC argues that, if any business spends a significant enough sum on construction operations, the business must by definition include construction operations, and this makes them a mainstream (rather than a deemed) contractor. We believe this interpretation to be incorrect both in principle and in practice, and until the point is formally determined in law, we suggest this HMRC view be resisted.

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