

Spring 2012 Newsletter

In our Spring newsletter we provide details of recent topical developments, including an important reminder on salary sacrifice schemes, and details of HMRC's new Alternative Dispute Resolution process.

Updated IR35 guidance

It was intimated in the recent Budget that PAYE/NIC will be sought where senior office holders or 'controlling persons' are paid via their own limited company, though precise details of how this will work are subject to consultation. In the meantime, HMRC has very recently launched significantly updated guidance (<http://www.hmrc.gov.uk/ir35/guidance.pdf>) which includes, amongst other things, a new IR35 'points scoring' system. Whilst the new rules may be seen in some quarters as a 'blunt instrument', they are likely to give some help to contractors looking to ascertain whether they are caught within IR35 rules. Although IR35 risks generally fall on the limited company contractor, an awareness of these tests is useful for any hiring business wishing to avoid incurring unnecessary employment and other worker costs.

Salary sacrifice and dispensation wake-up call

The recently announced First Tier decision in HMRC v Reed provided a stark reminder of the need to make full and adequate disclosure when implementing salary sacrifice schemes. In the case HMRC argued that there had been no legally effective (i.e. mutually agreed and binding) salary sacrifice, and therefore PAYE/NIC was due on the full 'pre-sacrifice' income. This was despite the fact that HMRC had issued a number of different dispensations to the employer (after lengthy debate covering a number of years). In effect the Tribunal agreed with HMRC's assertion that individuals were not paid expenses 'in the circumstances as stated', and therefore the dispensation was invalid and in effect could be withdrawn retrospectively.

Salary sacrifices remain a highly effective way of delivering tax or NIC savings, for instance as a useful way of offsetting increases in employer costs due to NIC rises or the new pensions 'auto-enrolment' (due to be phased in later this year). However it is absolutely essential that all cards are placed face up on the table, in any HMRC clearance application, and that the scheme operates exactly as you have told HMRC it will.

Non-statutory clearance applications

On a connected point, HMRC has recently issued updated guidance on non-statutory clearance applications, confirming that salary sacrifice schemes (so long as they are already 'live') can be considered, along with share schemes, questions on the definition of 'disguised remuneration', and employee termination payments.

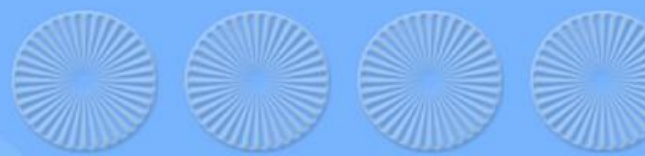
Alternative Dispute Resolution (ADR)

HMRC is running a trial scheme, providing Small and Medium sized customers with a possible method of resolving tax disputes. Trialing initially in North West & South West England, London and Wales, ADR involves an 'independent' HMRC facilitator reviewing the case papers to try to broker an agreement. Whilst offering no guarantees, initial indicators are positive. If ADR reduces the numbers of disagreements going to Tribunal the initiative should be welcome.

Late PAYE/NIC remittance employer penalties

HMRC appears to have acted rather cynically once the penalty regime for late PAYE remittances was introduced in April 2010. Rather than issuing penalty notices as soon as any 'failure' became apparent, these notices appear to have been stored up for over 12 months, i.e. until such time as HMRC could claim the maximum possible penalty. However the Revenue has at least now agreed that, in future, employers will be notified sooner if they appear to have defaulted.

Any employer receiving a penalty notice may be able to appeal if they have a 'reasonable excuse', however simple ignorance or 'lack of funds' is unlikely to be accepted. Following a recent Tribunal case, HMRC also now accepts that late payments which were actually due to be paid in the following tax year (but relating to the previous year) cannot be included in the previous year's penalty notices.

**Real Time Information (RTI)**

RTI commenced in April 2012 with a small number of employers, and the first pilot was said to have been 'successful'. The fact that this was informally announced by Mr Roarke (otherwise unemployed since the recession-enforced closure of *Fantasy Island*) only slightly detracted from the credibility of this feedback. On a slightly more serious tone, RTI is still expected to be introduced for everyone between April and October next year; therefore all employers should be looking to tidy up any inaccurate employee data. Whilst at the time of writing HMRC's YouTube help video (<http://bit.ly/xVazur>) has yet to 'go viral', it may still be worth a look.

P11D Quality Standard

HMRC has reissued details on its P11D 'quality standard' which is intended to ensure that P11D returns are not rejected. Perhaps surprisingly, employer produced lists are still permitted so long as they follow HMRC's prescriptive format (for instance using an easy to read font, and sorting the list by employee rather than by type of benefit). Particular care is needed with the P11D(b) and Class 1A NIC return form, and especially if any of the returned benefits have already been payrollled.

SMARTphones are mobile phones after all

HMRC now confirms that a SMARTphone is accepted as a mobile telephone for the purposes of the employee benefit exemption. For many this will simply be confirmation of existing custom and practice, but will be important news for any employer who has experienced a different interpretation in the past.

Pensions Annual Allowance calculations

In February HMRC launched a calculator to help employees ascertain how much of the £50,000 Pensions Annual Allowance has been used, and whether 'unused relief' is likely to be available to carry forward from earlier years. This may be a useful tool where the pension scheme is relatively straightforward, though the calculator does assume a certain amount of knowledge by the employee (e.g. how any lump sum entitlement accrues under their pension scheme). For more complex situations ET4B has developed its own calculator which can assist.

Newsround

There have been a number of additional noteworthy changes confirmed in the recent Budget and elsewhere, including the following:

1. Code OT non cumulative (rather than BR) now applies to any PAYE/NIC due on share based payments after leaving.
2. From 6 April 2012, the company car fuel benefit charge 'multiplier' increases from £18,800 to £20,200 (with the intention to increase the multiplier 2 per cent above RPI for the tax year 2013/14).
3. Age-related personal allowances are to be (controversially) phased out from 6 April 2013.
4. The statutory exemption for home working payments has been increased from £3 to £4 per week from 6 April 2012.
5. Advisory Fuel Rates for company cars were revised effective from 1 March 2012
6. Defined Contribution occupational pension members are no longer 'Contracted Out' of S2P from 6 April 2012 (perhaps all the more reason to now consider salary sacrifice).
7. On a happier note, the Treasury has decided not to withdraw the long standing exemption for taxis home, where provided to employees working late on an irregular basis.

Contacts

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