Spring 2011 Newsletter and Budget update for employers

In our Spring newsletter we provide details of topical developments, including the Treasury's move to outlaw 'disguised remuneration', the further obligations for employer provided childcare, updated commentary on the new pensions tax relief regime, and March 2011 Budget updates.

'Disguised' Remuneration

Following the introduction of the 50% additional tax rate and the new limits on pension contribution tax relief, it is perhaps no surprise that the 2011 Finance Bill will seek to prevent individuals trying to sidestep these rules. Particular targets include payments made available to employees via an Employee (or Family) Benefit Trust ('EBT' or 'FBT'), or as an Employer Funded Unapproved Retirement Benefit Scheme (EFRBS).

From 6 April 2011 these so called 'disguised remuneration' payments will attract PAYE/NIC in full. However HMRC has acknowledged that certain payments will not be caught, e.g.:

- Where no particular sum is earmarked, or otherwise available, to any particular individual.
- Where there is no third party Trust etc set up and the arrangement is simply run by the employer on an 'unfunded' basis.
- Deferred bonus schemes, where only 'legitimate' payments, to be made to the employee within 5 years, are possible.
- Payments of normal tax-favoured benefits in kind, provided under salary sacrifice arrangements.

Employer sponsored childcare

From April 2011 tax relief on most (newly provided) employer funded childcare will be limited to the equivalent of basic rate tax relief. Unfortunately a new, and potentially onerous, regime has been introduced in order to regulate this. From 6 April, employers must 'assess' how much tax relief the employee can get at the start of the tax year (or when they join the voucher arrangements), and then either limit the amount of vouchers etc provided or return the excess on forms P11D. The rate of tax liability at the start of the year is a straight cut off test (i.e. it will not be revised if the employee's income later changes), and some fairly confusing rules have been introduced on how the employer will establish the employee's rate of liability.

Thankfully a 'grandfathered' relief allows employees, who are already in the scheme by April 2011, to retain their existing position and continue to receive full tax relief. In addition, the exemption on workplace nurseries (i.e. provided at the employer's site or paid for and managed by the employer) will be unchanged.

Pension Contribution tax relief rules

As previously mentioned, 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. Also from 6 April 2012, the annual Lifetime Allowance (LTA), will be reduced to £1.5m.

The AA ceiling is surprisingly easy to exceed; for instance a Defined Benefit (final salary) member earning £75,000, receiving an extra 1/60 pension for each year, who also receives a 10% pay rise (e.g. from promotion, move on pay spine, inflationary uplift etc), could easily trip over the £50,000 limit. However, if it is possible to alter the pension scheme rules so that the same pension benefits would be accrued over a slightly longer period, this might significantly mitigate the impact.

Advisory Fuel Rates (AFRs) and Approved Mileage Allowance Payments (AMAPs)

A welcome increase in AFR 'fuel only' rates paid to company car drivers has been announced with effect from 1 March 2011, to reflect the recent surge in fuel costs. The full details are available at; http://www.hmrc.gov.uk/cars/advisory_fuel_current.htm.

The recent Budget also confirmed an increase to AMAP rates from 6 April 2011, i.e. paid to drivers using their own vehicles on business, from 40p to 45p for the first 10,000 business miles. The 25p per business mile rate thereafter remains unchanged.

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NIC on mileage allowances – HMRC appeals Total People Ltd case
HMRC has now confirmed it is appealing the First Tier tribunal decision, involving claims for refunds of NIC on motoring allowances. The case is unlikely to be resolved for some time, and many employers who have paid a combination of allowances for motoring expenditure, and who have not already received the maximum 40p NIC relief, have therefore made protective NIC refund claims to ensure years do not go 'out of date'.

Tax code 0T replaces BR in specified cases
In a surprising turn, it has been decided that from 6 April 2011, the tax code required in specified circumstances should now be 0T (week1/month1) rather than BR. These circumstances are:

- Where a new employee has no P45 and fails to complete form P46
- For an outgoing employee receiving taxable payments after leaving (however latest HMRC announcements suggest an exception for taxable share scheme payments after leaving, i.e. they will retain code BR)
- Where a pension commences but the individual remains in your employment

These moves seem to be less (rather than more) likely to result in the correct tax being deducted. We therefore assume that HMRC feels the cash flow advantage, of receiving greater PAYE deductions up front, will offset the time spent on dealing with additional enquiries and claims for repayment.

HMRC Returns and Communications
HMRC has previously allowed 7 days additional grace from the strict P35 return date, before any penalty would be considered. However this Concession was originally intended to alleviate postal delays and, given that most P35 returns are now made electronically, the Concession is now regarded as obsolete and has been withdrawn. This means that for 2010/11, P35 returns must now be submitted by 19 May 2011, to ensure no penalty is charged.

On a more positive note, HMRC has now accepted in principle that forms P60 can be provided to employees electronically. However there will be certain minimum formal requirements (to be agreed with HMRC), and it may be some time before payroll software suppliers are able to comply.

In the latest move to place greater onus on the employer, HMRC has also now decided that no further hard copy versions of the Employer Pack, Budget Pack, Employer Bulletin and Employer CD-ROM will be posted. These are now being replaced by online guidance and downloadable applications. It is recommended that employers avail themselves of HMRC's new 'email alert' facility, to help them keep up to date, as ignorance of changes etc will not be an acceptable excuse for failure.

Moving to Real Time Information (RTI)
Under the RTI proposals it is envisaged employers will send details of net employee payments to HMRC each payday, rather than after the year end. Because of this there would be no need for further reconciliation, meaning P35s and P14s could be phased out. With supreme optimism, HMRC envisages bringing all employers onto the new system by October 2013. We suspect HMRC may not yet have spoken (or rather listened) in detail to any payroll software providers, large employers, or indeed anyone who has previously been involved in other public sector systems-based initiatives!

Contacts
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