

Autumn 2011 Newsletter

In our Autumn newsletter we provide details of recent topical developments, including some further details of the RTI proposals, an update on the move to outlaw 'disguised remuneration', and potential changes to VAT on salary sacrifice schemes.

Moving to Real Time Information (RTI)

Under the RTI proposals employers are expected to submit details of employee payments and deductions to HMRC each payday, rather than after the year end. However the originally suggested aim for HMRC's systems to interact with, and perhaps even calculate, the PAYE/NIC deductions, is acknowledged to be more of a long term objective.

One *unsurprising* development in the recent RTI consultation is that software developers were not alone in considering the proposed timescales to be, at best, optimistic. HMRC however intends to press ahead with a pilot scheme from April 2012 and, if successful, make RTI mandatory sometime between April and October 2013. The main driver for this short timescale appears to be that RTI is a 'cornerstone' for introduction of the new Universal Credit (intended to replace various benefits, tax credits, and income support) in October 2013. The badly botched introduction of the Tax Credits system in 2003 readily springs to mind here, and given the expected timescale for the next general election, there may yet be some 'flexibility' on the introduction date.

Disguised Remuneration

HMRC has published further explanations of its attempts to outlaw so called disguised remuneration, i.e. typically payments via Employee Benefit Trusts, or to 'not' registered pension arrangements. Although the latest lengthy guidance is particularly heavy going (the first 10,000,000 pages are the worst, to misquote Douglas Adams), it cannot be ignored.

As a minimum, for PAYE/NIC to apply within the new rules, there needs to be a third party involved in the arrangement, and a sum or asset must be 'earmarked' for an employee. HMRC's comments, that Employee Car Ownership Schemes and salary sacrifices are expected to be part of permitted exclusions for normal employee benefit arrangements, are welcome. However the onus will effectively be on the employer to show the exclusion applies, and that no 'tax avoidance' is involved. Particular care will be needed with any employee loans (especially if provided by a third party), deferred remuneration planning (which must meet very specific tests to be excluded), employee share plans, and all kinds of trusts providing employee benefits.

Salary sacrifice schemes – further update on VAT position

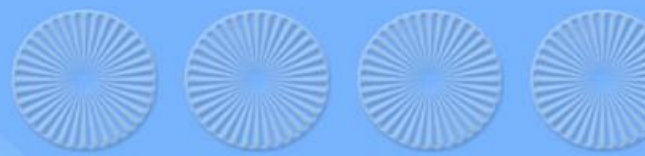
Avid readers may have noticed that, a couple of months ago HMRC sought to clarify the VAT position where external goods or services are purchased for staff as part of a flexible benefits or salary sacrifice scheme. In essence HMRC now considers there is a direct link between the provision of the benefit by the company, and the sacrificed salary, such that 'output' VAT is due when the goods or services etc are supplied. The practical effect would be that (based on HMRC's revised rules) salary sacrifice VAT savings are removed or significantly reduced.

As childcare vouchers are an exempt supply, there is no output VAT due if provided via a salary sacrifice scheme. However HMRC has said that recovery of any input VAT paid on childcare voucher commission may also be affected, as the commission is directly attributable to that exempt supply.

The initial announcement suggested that affected businesses should apply the new treatment from 1 January 2012, However HMRC has now further advised that, if the scheme had already been entered into between employer and employee before 28 July 2011, the existing VAT treatment may be retained for the remainder of any fixed term agreed under the salary sacrifice scheme, or up to any annual etc renewal or renegotiation date if otherwise appropriate.

NIC reclaims on mileage allowances - into reverse gear

Outstanding claims for refunds of NIC on motoring allowances currently look less likely to succeed, following HMRC's successful appeal to the Upper Tier tribunal in the case involving



CESDL (formerly Total People Ltd). A final decision on whether further leave to appeal will be sought by, or granted to, the taxpayer is still awaited, and we suspect it may still be some time before the issue is clarified beyond doubt.

Third Party Benefits

HMRC has clarified the position where benefits are provided by a third party to employees, the most common examples being 'air miles', petrol tokens and credit card points. So long as an ordinary member of the public would be able to qualify for the same reward (assuming they spent the same money), this is accepted as tax free. However anything intrinsically linked to the employment or provided as specific reward will remain taxable.

We note this view is slightly more generous than other opinions on the subject, previously expressed to us by HMRC. The announcement therefore provides a good opportunity for employers to review the provision of credit cards and other facilities to staff and to ensure, wherever possible, that any incidental rewards are indeed treated as tax free where appropriate.

Contracting Out of S2P – employee 'Defined Contribution' (DC) pension schemes

A recent HMRC Employer Bulletin reminded us that, from April 2012, employee DC schemes will no longer be regarded as contracted out of the Second State Pension (S2P). Employers must therefore ensure their payroll software is adjusted so that NICs are calculated at the full rates and be aware that employee and employer NIC rebates will no longer be available.

Pooling of pay records

In a recent discussion document, HMRC broached the idea that closely connected employers might be given the option of being treated as a single entity for PAYE purposes. We believe this already happens with many group structures (i.e. where for convenience one entity within the group operates a single payroll, to cover employees of two or more companies). However HMRC's confirmation would be welcome, especially if this eradicates some of the more inconsistent stances witnessed from HMRC, e.g. in relation to group dispensations.

Umbrella payroll companies – tax relief on subsistence

At the other end of the compliance spectrum, a number of umbrella payroll companies have come under further HMRC scrutiny. Whilst the more blatant examples of non-compliance involve paying workers in 'alphabet' dividends or via offshore companies (i.e. for UK work), a more subtle variation involves paying workers by means of a combination of tax free 'travel expenses' plus pay. The HMRC challenge is threefold; firstly any variable 'sacrifice' of salary is often legally ineffective, secondly the evidence of employees actually incurring allowable expenses on each day or week etc is often sadly lacking, and thirdly HMRC does not in principle usually permit employers of this type to receive dispensations for scale rate expenses.

Whilst not directly relevant to all employers, this is a useful reminder that great care is needed for any business operating a salary sacrifice scheme, especially one including 'variable' sacrifices. Furthermore if engaging workers via one or more intermediary businesses (e.g. an employment agency) hiring companies should avoid directing workers down any particular engagement structure and potentially falling foul of the Managed Service Company rules. Essentially these rules may result in PAYE/NIC liabilities being transferred up the supply chain, if the paying company defaults on its obligations and the 'end user' of the service is seen to be complicit in the failure.

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