

Spring 2013 Newsletter

In our Spring newsletter we consider a number of topical items including the ever-popular question of employment status, an RTI update, and details of recently announced changes to childcare tax reliefs.

Status of employees and office-holders

Last year there were 'startling' revelations that even public servants may seek to reduce their personal tax bills if allowed to do so (e.g. to channel their earnings via a Personal Service Company). Following this, additional guidance was issued to ensure that all senior staff in public office were now placed 'on payroll', and to ensure that the correct 'status' of other contractors is properly considered. However, after the initial furore died down, the government did at least recognise that substantial additional legislation was not actually needed, all that was required was that the existing (IR35) rules be applied consistently. One change in legislation introduced from 6 April 2013 does confirm beyond doubt that 'office holders' are treated the same as employees for IR35 purposes, however arguably this was already the case.

Outside the Public Sector focus, HMRC has set up a small number of 'IR35 review teams' and we are just starting to see the initial impact of this trickle through. The responses to any such review (whether made in writing or at interview) must of course be handled extremely carefully and we would suggest professional representation (for both the contractor and engager) is vital.

One relaxation worth noting is that, from 6 April 2013, small sole trader and non limited liability partnership businesses (if turnover is below the VAT registration limit, currently £79,000) are now permitted to use the informal 'cash' basis of accounting, rather than the normal 'earnings' basis which usually requires knowledge of double entry principles. Whilst this arguably makes self-employment more attractive including the potential to save on professional costs, engagers should remember that an unrepresented 'contractor' is more likely to be seen as a 'soft target' for an HMRC status review.

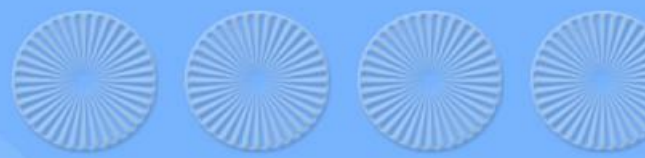
Real Time Information (RTI)

A month into RTI and HMRC is claiming a resounding 'success' story for the launch of the scheme. However, with due deference to the late *Benny Hill*, the department does at least acknowledge it is 'learning all the time'. As we await the main event i.e. the introduction of the Universal Tax Credit later this year, we would prefer to keep the bunting in the drawer at this stage. For the present it is worth reminding ourselves of some of the main changes that RTI has introduced:

- a) A Full Payment Submission (FPS) is now formally required 'on or before' the date of each payroll run, rather than at the end of the month (subject to a handful of minor relaxations for small businesses). Other aspects of the system, including basic PAYE/NIC calculations, PAYE, NIC & CIS monthly remittance dates, and CIS monthly returns, are unchanged.
- b) An Employer Payment Summary (EPS) will be needed for any month where no FPS is due.
- c) Data on starters and leavers will now be incorporated into each FPS, in effect replacing the submission of forms P45 and P46 to HMRC (though employers will still have to retain equivalent records, and the requirement to pass form P45 onto the outgoing employee remains).
- d) Employees paid below the NIC Lower Earnings Limit must now be included in each FPS – this is an easy one to miss.
- e) With hardly a trace of irony, HMRC reminds us that employers will now save time as they no longer have to prepare annual year-end PAYE returns (forms P35/P14). This overlooks the obvious fact that the obligation to submit one statutory return annually is now replaced by at least one per month, and that declarations equivalent to form P35 are in any case now required with each year's final FPS submission.

P11D reporting arrangements

Recent communications from HMRC has reminded us that P11Ds must pass a certain 'Quality Standard' in order to avoid rejection. Some of the reasons for rejection seem fairly obvious (e.g. using the wrong year's form) and others less so (failing to tick the 'director' box where



appropriate). There are a number different P11D formats currently permissible, which are as follows:

- i. Details may be submitted via HMRC's Electronic Data Interchange (EDI) facility; however strict data formatting must be observed and you would normally need to purchase proprietary software in order to do this. Intriguingly HMRC still permits employers to actually send this data to them on removable media but (with a nod to the 1990s) adds that only 3^{1/2} inch floppy disks may be used for this purpose!
- ii. Employers may still complete and submit the forms manually, after downloading and printing them off – see <http://www.hmrc.gov.uk/forms/p11d.pdf>.
- iii. P11Ds may also be sent in list format, however there are very specific requirements including the use of readable type font (Arial 11 or larger) and that lists must primarily be sorted by employee rather than say by benefit type.
- iv. HMRC is also introducing and refining a web-based methodology for creating P11Ds electronically and submitting these to HMRC on line. The service is only intended for use by smaller businesses. At the time of writing it appears that the facility is unlikely to be fully operational until June; hence we assume few employers will be 'holding their breath' on this option.

Changes to Childcare tax reliefs

The 2013 Budget confirmed that a new scheme to support the childcare costs of working families will be phased in from Autumn 2015. The new scheme will pay for 20% of up to £6,000 of childcare costs per child per year. It will gradually replace the existing system of tax relief for 'employer sponsored childcare' (i.e. vouchers and other childcare externally purchased by the employer), which many observers believe to have been poorly targeted and which now suffers from over-complexity. Whilst the new rules are subject to clarification and consultation, it is understood that there are no plans to abolish the existing (potentially unlimited) tax relief available for employers who provide and/or manage their own workplace nurseries.

Beneficial loans deminimis limit

The Budget also introduced a welcome increase to the non-taxable beneficial loan limit, from £5,000 to £10,000; unfortunately however (and for no obvious reason) this increase will not apply until April 2014. With the Official Rate (for loans in excess of the deminimis limit) holding at 4% for the last 3 years, beneficial loans now potentially represent a cost-effective benefit in kind, especially if incorporated within say season ticket or Employee Car Ownership schemes.

Recent First Tier Tribunal (FTT) cases

Do negative earnings exist? In the recent case of *Martin v HMRC*, the FTT came to the unusual conclusion that the wording of a bonus repayment clause in the employment contract created negative taxable earnings. As the original bonus had been taxed, the repayment was in turn deemed to create loss relief. This goes against the received HMRC 'wisdom' that the receipts basis of employment taxation is in effect non-reversible. Whilst the case does not (yet) create binding precedent, employers will wish to bear it in mind if creating repayment clauses in contracts (these are commonly inserted on employment commencement, to apply in the event that certain criteria are not met).

Slightly more predictably, the FTT recently reported the case of MP Jim McGovern, which was an appeal against a denial of an expenses claim. Under the 2011 MP's Expenses Scheme, a Member was only permitted to claim for travel in the performance of his Parliamentary duties (which were not for instance considered by the FTT to include travel to party political meetings). The FTT decided that the Expenses Scheme follows the basic tax principle that travel between unconnected employments (even if 'loosely associated') is non-deductible.

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