

Winter 2014/15 Newsletter

In our Winter newsletter we consider a number of topical items including the current round of HMRC PAYE reviews, details of HMRC's changed approach to IR35 review matters, and an update following the Chancellor's Autumn Statement.

When is a PAYE Audit not a PAYE Audit?

The use of euphemisms is an everyday occurrence, certainly for politicians anyway, therefore we should not be surprised if HMRC joins in. After going rather quiet on the 'PAYE Audit' front for a few years, HMRC has now introduced a new round of employer reviews under the title of 'Know Your Customer' (KYC). Whilst these sound like a bit of a cosy chat, we should not overlook the reality - that they are for all intents and purposes Employer Compliance Reviews in another guise.

KYC reviews initially involve a high level review of the employer's policies. This may happen before or after an initial KYC meeting with HMRC. From there we can expect HMRC to focus in on what it perceives to be the main areas of risk. Whilst those areas will vary depending on the worker profile, experience suggests that HMRC will always wish to consider the following common risk areas:

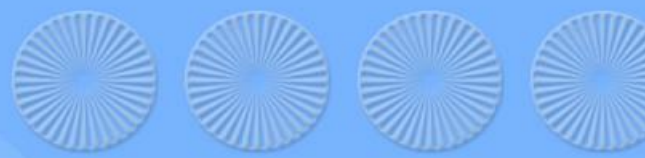
- Employment status: recent changes to the employment agency or 'employment intermediary' rules (see further detail below) seem to have re-focussed HMRC's minds on the risks associated with temporary workers, self-employed, and limited company engagements.
- Termination payments: businesses that have seen substantial staffing changes can expect HMRC to take a particular interest in severance packages paid, with the usual focus on Pay in Lieu of Notice and any other payments on termination potentially arising from the contract (rather than simply from the severance).
- Company expenses policies: including those applying to company vans, company cars and private fuel (the last one is a particular HMRC favourite as this represents an all or nothing benefit when linked to company vehicle use).

On the plus side, with a bit of advance planning it is usually possible for an employer to retain control of much of the process, and therefore to approach any KYC review with a fair amount of equanimity, rather than simply 'hoping for the best'.

IR35 and the Business Entity Tests

As most readers will know, the 'IR35' legislation provides that if a worker supplied by a Personal Service Company (PSC) contractor would be an employee of the 'end user' of the service, but for the use of the PSC, then virtually all the income from the contract must be subjected to PAYE and NIC by that PSC. In 2012 HMRC announced a series of 'Business Entity Tests' (BETs) which would enable PSCs to self-assess whether they are at high, medium, or low risk of an 'IR35 review' by HMRC. However the 'IR35 forum' (a body consisting of personnel from both HMRC and external interested parties) has now confirmed that the BETs will in fact be withdrawn from April 2015.

Whilst it may be tempting to think the whole IR35 process may now be 'withering on the vine', this is not quite how we see it. Indeed in June 2014, a Government response to a House of Lords Select Committee review on this subject said that it was unconvinced that the resources currently allocated by HMRC 'were sufficient to ensure compliance with the IR35 legislation'. However, at the same time, some positive noises were made to suggest that HMRC guidance and requirements would be updated to ensure these become more pertinent. The abolition of the BETs follows this intention. Within the Public Sector there has been a misguided tendency to treat the BETs as if they are an accurate (perhaps the only) barometer of IR35 compliance, yet within the private sector there has been a reluctance to accept the BETs provide any sort of valid guide to IR35 and in practice have been ignored (potentially most PSCs who take the tests would be deemed to be at 'high risk', but very few of these contractors actually see themselves as within IR35).



Therefore, whilst we cannot expect the HMRC IR35 review teams to simply 'go away', we can assume that in future HMRC will not simply rely on the (erroneously slanted) Business Entity Tests as justification for commencing or continuing with a review.

Employment businesses and agencies – new legislation and reporting obligations

From April 2015 'Employment Intermediaries' will be required to submit quarterly returns in line with anti-avoidance legislation enacted earlier this tax year. This legislation primarily targets arrangements where workers are paid on a 'falsely self-employed' basis or are paid offshore for work performed in the UK.

Although most of the new legislation is legally effective from April 2014, HMRC indicates that full implementation is being delayed for 12 months to permit a 'soft landing' for affected businesses. However it appears that one reason for this delay is that HMRC has yet to decide precisely what should (and should not) be included in the returns, and has not worked out how to filter wholly compliant arrangements from those which may be non-compliant. As an example, it is common ground that most payments made by employment businesses to UK Personal Service Companies (PSCs) do not create any particular tax risk; however it seems HMRC has yet to decide properly whether such payments are required within the returns. In the meantime employment businesses should provisionally assume that they may have to submit returns in the precise format as outlined in the [draft return regulations](#).

For other businesses which utilise temporary workers, the main responsibility will be to ensure that the payee business is a UK-registered limited company which is contractually responsible for hiring and paying the worker (e.g. they are not merely acting as a payroll bureau for the end user of the service). Furthermore, the end user will not wish to offer the agency any false assurances (e.g. that the worker is not being supervised, directed or controlled) as this could result in any unpaid liabilities being transferred up the engagement chain to that end-user business.

On a connected point, in December 2014, a consultation document was issued which expresses a desire to limit the extent to which employment intermediaries may pay tax-free expenses to temporary workers. In addition, the government has expressed an intention to more generally remove the potential for employees to claim a tax deduction when receiving travelling expenses in conjunction with a salary sacrifice arrangement.

Other Chancellor's Autumn Statement updates

A number of recommendations made Office of Tax Simplification (OTS) almost 12 months ago also now seem more likely to come to fruition. These include:

- Abolition of £8,500 'Lower Paid' threshold from 6 April 2016. Whilst there will be some specific exemptions (e.g. for accommodation provided to ministers of religion and carers) in most cases this represents if anything a tax/NIC increase, albeit a simplification.
- Abolition of the requirement for employers to apply for a formal dispensation in respect of allowable expenses from April 2016. Our understanding is that HMRC's necessary guidance on this matter has yet to be formulated; therefore employers who already have agreed 'unusual' items with HMRC will wish to follow this tight timescale closely.
- Payrolling of benefits on a voluntary basis will also be permitted from April 2016. However HMRC acknowledges there are practical considerations (e.g. on payroll software) which will require additional consideration and consultation.
- Trivial benefits, if not paid as a reward for specific achievement etc, will be subject to a £50 statutory exemption from 6 April 2015. The 'all or nothing' nature of exemptions generally would however have to be watched carefully.

If you would like our further assistance on any of these matters, please contact us.

Brian Ackerley: 07712 527355

Dave Cooper: 07833 218569

Email: brianackerley@et4b.co.uk

davecooper@et4b.co.uk

Website: www.et4b.co.uk

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