



Winter 2018 Newsletter

In our Winter Newsletter we take a look at the planned overhaul of employment termination payments, and employment status updates in the public sector and elsewhere. We also consider some important National Living/Minimum Wage matters, along with other Budget updates and recent topical employment tax items.

Termination payments: new rules and obligations

From April 2018 basic Pay in Lieu of Notice (PILON) will be subject to payroll tax and NIC in full. For many employers there has previously been little or no need to identify what is and isn't PILON when making a severance payment. However the new process will require identification of the date notice was effectively served, the employee's contractual or statutory notice period (whichever is higher), and any unworked notice (defined in statute as "post-employment notice period), in order to identify any PILON outstanding upon termination.

The proposed charging of Class 1A (employer's) NIC on other sums over £30,000 has been delayed to April 2019 (due to unforeseen parliamentary delays aka 'Brexit'). However other measures, including the abolition of Foreign Service Relief, are still expected to apply from April 2018. Overall we are told the changes are intended to bring some 'fairness and clarity' to a complex area! However the previous pretences of 'simplification' and tax neutrality have been dropped from the latest guidance; in practice each of the new measures will only increase the Treasury's tax/NIC take, as well as the employer's costs and responsibilities.

Off-payroll payment obligations for Public Authorities (and elsewhere)

In cases where payments are made to Personal Service Companies (PSCs) by Public Authority bodies, from April 2017 the public body rather than the PSC is required to make an 'IR35' decision, as well as ensuring any appropriate deductions are made if the contract is 'within IR35'.

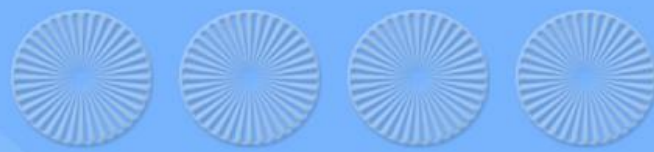
In any large organisation, one significant difficulty is whether the person having to make the 'IR35 decision' has enough detailed knowledge of how contracts operate in practice, to make an informed call. Unsurprisingly this has resulted in mixed success for the new scheme, where it seems some public sector payers assume IR35 applies 'by default', and some are burying their heads hoping the problem goes away. The more proactive have sought to implement an effective due diligence process which seeks to ensure that IR35 is considered at the outset (or renewal) of any contract with a supplier.

We suspect the government has no accurate data as to the success or otherwise of the new process, nonetheless, consideration is now being given to extending the IR35 obligations to hirers in the private sector, and wider consultation is expected later this year. The government is also expected to produce a more general consultation paper 'considering options for reform to make the employment status tests for both employment rights and tax clearer'. However, as with the termination payment changes, the term 'clarity' may be a euphemism for 'tax/NIC increases'.

To assist in determining the IR35 position HMRC issued an updated online employment status tool last March. Whilst well-intentioned, trying to condense decades of employment case law into a few questions was always going to be a challenge, and of course if any of the questions are misunderstood and therefore answered incorrectly, HMRC will not be bound by the result.

National Living Wage (NLW) and National Minimum Wage (NMW)

Within the last 24 months we have seen HMRC add significant additional resources to its NLW/NMW review teams. The 'success' of these HMRC teams is due in no small part to the public identification of those employers who are found to have underpaid minimum wage. However the term 'name and shame list' coined in the popular press is misguided; the large majority of employers do not underpay their staff deliberately and if HMRC does find a 'problem', in most cases this is based on technical interpretation. Often this will simply be where the employer's payroll and time recording systems do not tally with HMRC's (complex) view of how the minimum wage legislation should apply. For example, there may well be 'overpayments' in one pay period which match 'underpayments' in another pay period, but unfortunately, in many circumstances HMRC will not permit the two to be offset against each other.



One undoubted advantage HMRC's minimum wage teams have, over say their counterpart Employer Compliance Review officers, is in relation to penalty charges. Penalties are virtually automatic in most NMW review cases, and the current rate (200%) may create a significant extra cost (in addition to the time and cost of repaying 'underpaid' workers). Such penalty charges are also not dependent on whether HMRC establishes careless or deliberate employer 'behaviour'.

Optional Remuneration Arrangements (aka flexible benefits or salary sacrifice)

Under controversial new rules introduced in April 2017, employees may be taxed on the amount of cash benefit they could have opted to enjoy, if that is higher than the taxable benefit they actually receive. Employers must now distinguish carefully, between certain benefits currently excluded from this regime (e.g. pensions, employer supported childcare, and bikes-to-work schemes) and other benefits, some of which may be excluded only temporarily due to 'grandfathering' arrangements.

For those in the latter category, the pre-April 2017 tax treatment may possibly be maintained (i) up to 5 April 2021 for cars, living accommodation and most school fees and (ii) up to 5 April 2018 for other benefits. However in either scenario the grandfathered relief is withdrawn from the point there are any subsequent changes to the contract (if earlier than the above dates). There are many ways contracts can be altered, including for example annual flexible benefits renewals if the employee can opt to alter that particular benefit, hence the actual date from which the new rules apply may well vary from employee to employee.

Tax treatment of employee expenses

The Autumn Budget announced certain planned reforms to the tax treatment of employee expenses. We have yet to discover how some of the proposals will take shape (for example a planned review of the rules for claiming work-related training costs and a more general review on the rules for employees claiming non-reimbursed expenses). One supposed concession is to remove the requirement from April 2019, for employers to check receipts for expenses paid under the benchmark scale subsistence rates system (whilst this is welcome, why HMRC ever considered such a requirement was necessary in the first place is perhaps more difficult to fathom). The corollary overseas scale rates for accommodation and subsistence, previously based on HMRC concession, will also be placed on a statutory basis from April 2019. However, it is understood, current proposals do not include removing the requirement to check receipts where bespoke or industry scale rates apply.

The main test, in ALL cases, to be satisfied before making a scale rate expenses payment, that the employer needs to be sure the employee was travelling on business and has incurred an expense (i.e. bought their own meals etc.) during the relevant period, will be retained.

Percentage uplift on diesel company cars

From April 2018 the benefit in kind uplift for diesel company cars will be increased from 3% to 4%, but only for those vehicles which 'are not certified to the Real Driving Emissions 2 (RDE2) standard'. We have almost become inured to the significant year on year tax hikes on company car drivers. However this one should not go below the radar, because (as well as the increase in Class 1A NIC) it creates an extra employer record keeping requirement, i.e. to confirm whether each diesel vehicle is RDE2 compliant and therefore exempt from this additional diesel supplement. This will presumably apply with immediate effect from 6 April e.g. as regards any P46(Car), as well as P11D, reporting obligation.

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

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