



ADDING VALUE THROUGH THE PLUS FACTOR

Employer & Expatriate Tax Solutions Bulletin

August 2010

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Foreword

Welcome to the August issue of the Anderson Anderson & Brown LLP Employer and Expatriate Tax Solutions (EETS) bulletin. Covering a number of topical changes recently introduced, or in the pipeline we hope you find these articles and compliance calendar useful and informative.

1. VAT MAN HITS SALARY SACRIFICE SCHEMES

Businesses which operate salary sacrifice arrangements for their employees may face increased VAT costs following a recent landmark ruling by the European Court of Justice. The ECJ upheld HMRC's argument that VAT was due when *Astra Zeneca UK Ltd* provided retail vouchers to its employees under a salary sacrifice arrangement.

In broad terms, the basis of the Court's decision was that *Astra Zeneca* was effectively paid for the vouchers by the employees giving up an element of their salaries which resulted in a supply on which VAT was due.

While the case focused on the provision of retail vouchers, there are likely to be implications for other goods and services provided to employees under similar arrangements. It is therefore advisable for businesses with salary sacrifice arrangements to seek advice on what this development will mean for them.

Please contact Mike Whittall or Joyce Nicolson for further information on 01224 625111 or email VAT@aab.co.uk.

2. EMERGENCY BUDGET - JUNE 2010

- a) Changes to the restrictions on pensions tax relief
- b) Changes to pension taxation - NEST
- c) Regional employer NIC holiday for new businesses
- d) Review of the Pay As You Earn (PAYE) system
- e) Review of powers: financial security for PAYE and NIC
- f) Enterprise management incentive plans
- g) Seafarers' earnings deduction

(a) Changes to the restrictions on pensions tax relief

The Government has announced its intention to introduce new legislation to restrict pensions tax relief for high income individuals and its objective is to raise at least the same amount of extra tax but without unnecessary complexity to the tax system.

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PAYE and CIS
deadlines -
Sept - Nov
2010

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It is evident that the Government has listened to the concerns of the pensions industry and employers about the incredible complexity of the new regime with the associated administration that will result.

The proposal to introduce a less complex system is welcome and the Government has indicated that it will seek input from employers, pension schemes and other representatives to determine the best design of the new regime to be effective from 6 April 2011.

(b) Changes to pension taxation - NEST

Legislation is to be introduced to allow the National Savings Employment Trust (NEST) to register with HMRC as an occupational pension scheme and to be subject to the same tax rules as other tax-registered pension schemes.

The Pensions Act 2008 places an obligation on employers to ensure that their employees are active members of a pension scheme and to make employer contributions. NEST is the default pension scheme for employers who do not already operate a company pension scheme and is due to be introduced in October 2012.

(c) Regional employer NIC holiday for new businesses

The Government has announced that a scheme will be established no later than September 2010 to help new businesses set up in Scotland; Wales; Northern Ireland; the North East; Yorkshire and the Humber; the North West; the East Midlands; the West Midlands; or the South West to reduce the costs of employer Class 1 NIC. New businesses setting up in these areas for a three year qualifying period will not have to pay the first £5,000 of employer's Class 1 NICs due in the first 12 months of employment for each of the first 10 employees hired in the first year of business.

Some employees such as those operating under companies caught by IR35 rules or those engaged through managed service companies will be excluded as will employees engaged by individuals for personal domestic services, such as nannies etc. Businesses in the coal sector are excluded and certain restrictions will apply to the agriculture and fisheries' sectors.

(d) Review of the Pay As You Earn system

The Government wishes to explore how the PAYE system can be improved to reduce costs, ensure accurate tax calculations and make it easier for employers and HMRC to administer. As a first step in the process, HMRC published a discussion document on 27 July 2010, entitled "Improving the operation of PAYE". The document explores options for moving to a system that collects information on PAYE deductions monthly or weekly at the time employees are paid in substitution for an annual end of year return. The process is called "Real time information). A longer term proposal is for HMRC to take the process further and handle tax and NICs deduction calculations centrally - "Centralised deductions"!

(e) Review of powers: financial security for PAYE and NIC

The Government has decided to continue with the consultation announced in the March 2010 Budget regarding the proposal to introduce powers for HMRC to require a financial security from employers who have a history of serious non-compliance in terms of late or non-payment of PAYE and/or NIC.

The consultation will ask for comments on the sanction of a new offence for failing to provide a financial security, which would be penalised by a fine of up to £5,000.

The consultation will take place later this year and the draft clause and regulations will be published as part of the consultation document.

(f) Enterprise management incentive plans

The Government restated the amendment announced in the March 2010 Budget, which was required to comply with EU guidelines.

In March it was announced that, in order to comply with EU State Aid guidelines, the requirement that a company granting qualifying EMI options must carry on a trade 'wholly or mainly' in the UK, (or in the case of a group, that at least one group company satisfy this requirement) be replaced by the requirement of having a 'permanent establishment' in the UK.

The Government anticipates that the change of definition to 'permanent establishment' for these purposes should allow more companies to operate EMI plans in the future.

(g) Seafarers' earnings deduction

Seafarers' earnings deduction (SED) will be extended to European Union (EU) and European Economic Area (EEA) residents who pay UK tax on their earnings as a seafarer.

SED can provide 100% UK tax relief on earnings from duties performed as a seafarer wholly or partly outside the UK during an eligible period. One of the qualifying conditions is that the seafarer must be ordinarily resident in the UK. This condition will be extended so that EU/EEA residents can claim SED on their earnings as a seafarer that are liable to UK income tax.

The measure was originally announced in the 2009 Pre-Budget Report and the Government has stated that the deduction will be in force from 6 April 2011.

3. EMPLOYER PROVIDED CARS - NEW ADVISORY FUEL RATES FROM 1 JUNE 2010

The advisory mileage rates for employer provided cars are relevant where employers:

- reimburse employees for business travel in a company car; or
- require employees to repay the cost of fuel used for private travel.

In addition, for fuel scale charge purposes providing that all private travel has been properly identified, HMRC will accept that there is no fuel benefit charge. Therefore, no Class 1A NICs liability arises where the employer uses the appropriate rate from the current table (or any higher rate) to work out the cost of fuel used for private travel.

The new rates announced by HMRC apply to all journeys on or after 1 June 2010 until further notice and they are:

<i>Engine Size</i>	<i>Petrol</i>	<i>Diesel</i>	<i>LPG</i>
1400cc or less	12p	11p	8p
1401cc to 2000cc	11p	10p	15p
Over 2000cc	21p	16p	14p



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4. EXPATRIATE EMPLOYEES AND FORMS P86

In the May edition of the EETS newsletter, we advised that the modified PAYE Appendix 6 arrangements introduced by the taxman in respect of foreign national employees who are subject to tax equalisation, had removed the requirement to submit forms P86 (leaving the UK) and P85 (arriving in the UK).

HMRC have now indicated that the form P86 has been withdrawn from the HMRC website altogether. This form P86 was formerly only mandatory for the employees included on an Appendix 6 arrangement, but typically was also used by UK expatriates on a voluntary basis to advise HMRC of their return from a posting overseas. Since this method of notification is no longer available, anyone returning to the UK and wishing to advise HMRC of their return and to confirm their UK tax residency position will need to find an alternative method to communicate this.

Without submitting a form P86, there is no readily available alternative to the UK tax return, to advise HMRC of the date of return and of any changes to residency status in UK. This could be particularly important for anyone monitoring their days or average number of days spent in the UK over a specific timeframe as one factor in relation to their UK tax residence status. Anyone wishing to "draw a line in the sand" and establish a date that their UK residency resumed or began and their non resident period ended, may wish to consider notifying HMRC of their return or arrival in the UK in writing, especially where they do not ordinarily complete a UK tax return and do not have any obvious requirement to do so.

From an employers perspective, you should continue to use, as appropriate, form P46 or form P46 (expat), to report employees returning to or arriving in the UK to work. Although the information contained in these forms is used to assign an initial PAYE code based on published HMRC guidelines, employers with tax equalised employees returning or arriving in the UK and more generally all individual expatriates concerned may well wish to check that the tax position is finalised correctly, particularly for the first tax year of arrival in the UK.



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PAYE and CIS Deadlines September to November 2010

Sept-10	
19	Expect your post-Budget Employer Pack from HMRC.
22	Electronic payments for month ended 5 September.

Oct-10	
1	National minimum wage annual rates increase from this date.
19	Cheque payments for month/quarter ended 5 October.
19	Payment of your PAYE Settlement Agreement for 2009-10.
22	Electronic payments for month/quarter ended 5 October.
22	Electronic payment of your PAYE Settlement Agreement for 2009-10.

Nov-10	
2	Forms P46(Car) for employer provided cars in the quarter ended 5 October.
19	Cheque payments for the month ended 5 November.
22	Electronic Payments for month ended 5 November.



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