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FACTOR**

**Employer & Expatriate Tax Solutions
EETS Bulletin - November 2010**



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Foreword

Welcome to the November issue of the Anderson Anderson & Brown LLP Employer and Expatriate Tax Solutions (EETS) newsletter. 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. Employment training costs - wholly, exclusively and necessarily?

Historically, it has been very difficult for employees to succeed in a claim for a tax deduction for training costs which they have met themselves. This is due to the requirement of meeting the test that the expense is incurred "wholly, exclusively and necessarily in the performance of the duties of the employment." A chestnut that has long been with us and always a difficult nut to crack! However, in a recent Court of Appeal case *Banerjee v HMRC* the court took a more relaxed view. It was held that by undertaking the training in question, the consultant dermatologist involved was fulfilling her contractual requirements and a failure to fulfil these requirements would lead to the termination of her employment. It was confirmed that as the consultant's sole purpose in attending the course was meeting the requirements of her employment contract, the costs would be deductible.

We wait to see how HMRC will react to training costs incurred personally by employees in light of this decision.

Arguably, the best solution, at the moment, may still be for employers to directly arrange and meet the costs of work-related training (i.e. not via any reimbursement of costs met contractually by the employee). This is because via the employer route there is a relatively wider exemption for "work related training provision" under a different tax provision that does not include the "wholly, exclusively and necessarily etc." test. Tax deductible training costs incurred in this way by employers may also be practically facilitated via salary sacrifice arrangements, which adds a further potential cost advantage to the overall benefit for both employee and employer.

As is often the way with a tax question - "How should training costs be treated for tax purposes?", the answer is ... it depends. It depends on the circumstances and different routes to providing training which can give different tax results and consideration of the tax and NIC position will be a positive addition when you are formulating employee training policies.

2. New online PAYE information source

Businesslink.gov.uk has been launched by HMRC to be the new place for employers to find information and guidance relating to the PAYE issues of their business. You can access a number of areas including:

- + a place to register and submit certain statutory PAYE returns to HMRC;
- + information about statutory pay regulations and submit statutory forms, such as the P46;
- + submit VAT and Business Self Assessment returns; and
- + other Government services, such as Companies House, Web Filing and Web Check.

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PAYE and CIS
Deadlines:
Nov 2010 to Jan
2011

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3. Travelling expenses - are they " in the performance of the duties "?

In a recent First-tier tribunal case *Wilkinson [2010] TC 00572* an employee has once again lost to HMRC in deciding whether mileage allowances qualified for a tax deduction. The surgeon concerned was employed by the NHS on a six-year training programme, which involved rotational placements at four different NHS hospitals. HMRC's case included arguments that each of the four different hospitals constituted a separate employment or, even if it were held to be one single employment, each location was in any event a separate permanent workplace. The Judge agreed with HMRC and found that the normal home to work journeys were not admissible as business travel - the mileage allowances were held to be taxable as earnings in full.

Where an employee has a mobile role, it is generally important to draw a distinction between travel that is an integral part of the duties (for example, the travelling salesman or service engineer who is often based at home and regularly travels from there) and the office-based employee who travels a lot in the course of their duties. For example, an office-based worker who has a number of temporary and irregular customers, appointments etc. which they must fulfil. The distinction is not always clear cut between what is business travel and what is ordinary home to work commuting for tax purposes. The *Wilkinson* case ably demonstrates this where mileage allowances to and from home on occasions of certain types of emergency call were held to constitute business travel and were eligible for a tax deduction.

Many varying circumstances can be involved in employee mobility and the categorisation of an employee's travelling may or may not be straightforward. Where, additionally, meal or accommodation costs are involved, their treatment will follow the status of the associated travel costs. Where the costs are significant and the PAYE and NIC compliance risk rises accordingly, there may be occasions where it will be prudent for an employer to seek HMRC's advance agreement as to the precise circumstances in which travel and subsistence sums may be paid gross to employees and have the form P11D dispensation updated accordingly.

4. PAYE - collection of 50% tax rate if remuneration over £150,000

Directors and employees with taxable earnings and benefits of more than £150,000 will be very much aware that from the current tax year 2010/11, income tax at a top rate of 50% will be due.

The PAYE codes issued by HMRC for 2010/11 do not take into account the 50% top tax rate. This should not matter where there is only one source of employment income and, generally, payroll software will take account of this and the correct deductions will be made automatically each month. However, there may be issues where there are second or multiple employments.

For multiple sources of employment income, the deductions made under PAYE may not automatically take account of the combined position and accurately detect where a cumulative liability at the 50% tax rate arises. Where there is a shortfall in the overall PAYE deducted at source, this may mean the balance of income tax due will be collected directly from the director or employee concerned. This will be done via the self assessment process and the underpayment for 2010/11 will become due for payment to HMRC by the 31 January 2012.

Employers may wish to consider notifying individuals who could be affected by this so that there is an awareness of this anomaly and the directors and employees concerned can plan accordingly.

5. Change to Dutch Social Security Legislation for Offshore Workers from 1 January 2011

At present, unless an employee is a Dutch resident, whilst working on the Dutch continental shelf, he will not be required to pay Dutch social security. This is because the Dutch continental shelf is not considered to be part of the Netherlands for social security purposes. Consequently, at present, UK employers and employees normally continue to pay UK national insurance when employees are working on the Dutch continental shelf.

From 1 January 2011, there has been a change in the Dutch legislation and from a social security perspective the Dutch continental shelf will be considered part of the Netherlands. From then, employees working on the Dutch part of the continental shelf will be liable to pay Dutch social security unless permission can be formally secured from their home country authority to allow the employee to remain in their home country scheme.

This means that UK resident employers will need to ensure that formal applications are made to HMRC on behalf of their employees working on the Dutch continental shelf to obtain the formal certification in appropriate circumstances (A1 certificates) to allow them to continue to pay UK national insurance and exempt them from Dutch social security.

Occasionally, it may be the employee's own responsibility to make an application for an A1 but normally the employer should make the application on behalf of the employee.



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PAYE and CIS Deadlines November 2010 to February 2011

Nov -10	
2	Forms P46 (Car) for quarter ended 5 October to reach HM Revenue & Customs (HMRC) by this date.
19	Cheque payments for the month ended 5 November should reach your Accounts Office by this date.
22	Electronic payments for month ended 5 November should have cleared into HMRC bank account by this date.

Dec -10	
19	Cheque payments for month ended 5 December should reach your accounts office by this date.
22	Electronic Payments for month ended 5 December should have cleared into HM Revenue & Customs bank account by this date

Jan -11	
1	HM Revenue & Customs will replace the Employer CD-ROM with a set of downloadable Basic PAYE Tools which will be available soon.
19	Cheque payments for month/quarter ended 5 January should reach your accounts office by this date.
21	Electronic payments for month/quarter ended 5 January must clear the HMRC bank account by this date.
End	Register to file your 2010-11 PAYE Return online.

Feb -11	
Early	Expect to receive your notification to file your Employer Annual Return (P14s and P35) for 2010-11.
2	Forms P46(Car) for the quarter ended 5 January to reach HM Revenue & Customs (HMRC) by this date.
15	If you haven't already registered for online filing HMRC suggest that you do so now so you are ready to file your Employer Annual Return (P14s and P35) online
19	Cheque payments for month ended 5 February should reach your accounts office by this date.
22	Electronic payments for month ended 5 February should reach HMRC bank account by this date.
End	The HMRC Basic PAYE Tools which replace the Employer CD-ROM can be downloaded now.

For further information on employer or expatriate tax or social security matters, please contact our EETS team on 01224 625111

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