



# ADDING VALUE THROUGH THE PLUS FACTOR

## Employer & Expatriate Tax Solutions EETS Bulletin - February 2011



**ANDERSON  
ANDERSON  
& BROWN LLP**

CHARTERED  
ACCOUNTANTS

### Foreword

Welcome to the February 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. End of year returns processes

The completion of P35, P11d/P11d (b) returns and PAYE settlement agreement calculations is sometimes viewed as a straightforward exercise. In the light of a changing approach by HM Revenue & Customs as to how employer compliance reviews will generally be conducted via a systems based risk assessment, this year it may be worth employers taking a closer look at how the systems and processes that generate the numbers for these returns are organised. Particular areas perhaps worth some consideration include:

##### (i) A good time to update form P11d dispensations

Most employers will have a P11d dispensation as it removes the requirement to report specific expenses and benefits at year end. HMRC will have regard to the precise terms on which this was applied for and if there have been any changes in systems, processes or rates etc., since the application was originally made. It will be useful to update the dispensation in advance of 5 April 2011 and before the end of year returns for 2010/11 are submitted.

##### (ii) Per diems and scale rates for meals

Per diems and scale rates using HMRC's published policies and rates are often used by larger organisations to cut down on administration. However, any relating to travel within the UK and using HMRC's published policies and associated scale rates must also be included within the form P11d dispensation to eliminate that end of year reporting responsibility.

##### (iii) Making good the cost of private fuel

For both company car drivers and own car users there can be a variety of policies and procedures that employers and employees follow in making good the full cost of fuel for private use. HMRC can be expected to challenge on the use of any round sum percentages applied particularly where there is limited information on the specific business journeys undertaken. HMRC will generally also consider any home to work travelling costs paid or reimbursed to ensure these are not ordinary commuting to a permanent workplace. Any mis-categorisation by employees of private travel as business could impact on the accuracy of forms P11d, Class 1 or Class 1A NIC calculations.

##### (iv) P11d and PAYE workshops

We are currently running end of year P11D and PAYE workshops for clients. These are on a one to one basis and tailored to match each employer's requirements. If you would like more information, please contact [gordon.robertson@aab.co.uk](mailto:gordon.robertson@aab.co.uk) - 01224 625111.

AUDIT

ACCOUNTING

TAXATION

CORPORATE  
FINANCE

MANAGEMENT  
INFORMATION  
SOLUTIONS

ACCOUNTING  
OUTSOURCING

**LAST PAGE**

PAYE NIC and CIS end of  
year deadlines for  
2010/2011

9 QUEENS ROAD  
ABERDEEN  
AB15 4YL

TEL: 01224 625111  
FAX: 01224 626007

email: [accountants@aab.co.uk](mailto:accountants@aab.co.uk)  
web: [www.aab.co.uk](http://www.aab.co.uk)

## 2. Freelancer wins his IR35 appeal

An engineer working on a contract basis for Airbus UK has won his appeal against HMRC's determination that he should be taxed as an employee under IR35 rules rather than as self-employed. The First-tier Tribunal found in favour of MBF Design Services, the trading company operated by Mr Fitzpatrick. In February 2009, he appealed against HMRC's decision that his employment status for the years 2001-07 fell within the terms of the Social Security Contributions (Intermediaries) Regulations 2000 and Income Tax (Pay As You Earn) Regulations. Judge Malachy Cornwell-Kelly, held that Mr Fitzpatrick was clearly not a disguised employee of client Airbus and his contracts were found to be outside scope of both Class 1 NIC and IR35 for tax purposes. Key factors of the ruling included:

'No notice' termination clause in one of the contracts, which the judge described as "quite foreign for the world of employment". Mr Fitzpatrick paid for his own training, with one exception. Both the written and oral evidence confirmed the contractor was not controlled and had the right of substitution, which *could* have been exercised. Contractors worked on specific projects and did not have a specified role within Airbus. Mr Fitzpatrick had in fact declined offers of work from Airbus. Mr Fitzpatrick is clearly an expert professional, and his "status as a freelance specialist...is entirely credible". Contractors had no disciplinary or grievance procedure and had to rectify errors at their own expense. The work had to be done on site with the client's equipment because "there was no other sensible way to do it".

## 3. PAYE annual statutory declaration - P35 deadline

The 7 day period of grace permitted by Extra Statutory Concession B46 will come to an end on 31 March 2011. From that date, employers filing their 2010-11 and subsequent years' return must make sure it is filed by the required statutory deadline on 19 May as HMRC have indicated there will be no extension of the filing deadline.

## 4. PAYE forms and guidance now online

As part of HMRC's drive to move more of its business online and reduce the cost of the services it currently provides, it will no longer routinely send employer information by post. It has replaced the Employer and Budget Packs with online guidance and all the forms and guidance you need to operate payroll can now also be accessed online.

## 5. Official rate of interest

The official rate of interest will remain frozen at four per cent, and has applied since 6 April 2010. This will be frozen for the 2011-12 tax year, subject to review in the event of significant rate changes.

## 6. Advisory fuel rates for company cars

In light of the recent level of increases in UK average fuel pump prices since 1 December 2010, HMRC will shortly be publishing new advisory fuel rates to take effect from 1 March.

## 7. Special notice about electronic Pay As You Earn (PAYE) payment dates

For employers to avoid paying late make sure HMRC has cleared funds by the due date. If paying electronically this is the 22<sup>nd</sup> of the month. If the 22<sup>nd</sup> falls on a non-banking day (weekend or bank holidays) HMRC should have the cleared funds by the last bank working day before the 22<sup>nd</sup> to avoid any late payment penalty defaults. You will not be charged a penalty if only one PAYE amount is late in a tax year - unless that payment is over 6 months late.

## 8. Tax code changes from 6 April 2011

Code OT assumes that no personal allowances are due and charges tax at basic and higher rates. Code OT week 1/month 1 is to become the default code to be applied automatically by employers in the following circumstances -

- (i) P46 box C, where an employee has not completed or signed section 1 of the P46 in time for their first pay day. If an employee does sign, code BR cumulative can be applied;
- (ii) to be operated on payments after the employee leaves the employment after the issue of the P45 instead of code BR. This will impact particularly on lump sum termination payments; and
- (iii) for P46 (Pen) where an employee starts to receive a company pension whilst still working for the same employer.

This information is published without the responsibility on our part for loss occasioned to any person acting or refraining from action as a result of any information published herein.



**ANDERSON  
ANDERSON  
& BROWN LLP**

**CHARTERED  
ACCOUNTANTS**

AUDIT

ACCOUNTING

TAXATION

CORPORATE  
FINANCE

MANAGEMENT  
INFORMATION  
SOLUTIONS

ACCOUNTING  
OUTSOURCING

9 QUEENS ROAD  
ABERDEEN  
AB15 4YL

TEL: 01224 625111  
FAX: 01224 626007

email: [accountants@aab.co.uk](mailto:accountants@aab.co.uk)  
web: [www.aab.co.uk](http://www.aab.co.uk)

## PAYE NIC and CIS end of year deadlines for 2010/2011

Must be completed by	Task
19 April	Outstanding PAYE tax and Class 1 NICs - postal payments must reach HMRC Accounts Office
22 April	Outstanding PAYE tax and Class 1 NIC - cleared electronic payments to reach HMRC bank account
19 May	File Employer Annual Return (P14s and P35)
31 May	Give each relevant employee a form P60
6 July	File expenses and benefits annual return (forms P11D, P9D and P11D(b)). A copy of the P11D must also be given to the employee concerned by this date.  File share scheme related annual returns - forms 35, 39 and 42.
19 July	Class 1A NICs - postal payments to reach HMRC Accounts Office
22 July	Class 1A NICs - cleared electronic payments to reach HMRC bank account



**ANDERSON  
ANDERSON  
& BROWN LLP**

CHARTERED  
ACCOUNTANTS

AUDIT

ACCOUNTING

TAXATION

CORPORATE  
FINANCE

MANAGEMENT  
INFORMATION  
SOLUTIONS

ACCOUNTING  
OUTSOURCING

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

Richard Britten  
Gordon Robertson

Partner  
Senior Manager

[richard.britten@aab.co.uk](mailto:richard.britten@aab.co.uk)  
[gordon.robertson@aab.co.uk](mailto:gordon.robertson@aab.co.uk)

9 QUEENS ROAD  
ABERDEEN  
AB15 4YL

TEL: 01224 625111  
FAX: 01224 626007

email: [accountants@aab.co.uk](mailto:accountants@aab.co.uk)  
web: [www.aab.co.uk](http://www.aab.co.uk)