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Employer & Expatriate Tax Solutions

EETS Bulletin - August 2011

Foreword

Welcome to the August 2011 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 trust you find these articles and the compliance calendar informative.

HMRC visits - the taxman is to be more open about perceived compliance risks

HMRC has published a revised version of its Litigation and Support Strategy (LSS). The LSS sets out the principles within which HMRC will handle all disputes about taxes, duties or credits where those disputes are subject to civil law procedures. As such, this is not just about the litigation of cases which are going to the tribunal or courts. It is about compliance work generally and all situations where taxpayers including employers (or their agents, on their behalf) have a disagreement with HMRC. It has relevance, therefore, to Employer Compliance (PAYE) reviews by HMRC.

In particular, the LSS says: "In any dispute HMRC will seek to establish and understand the relevant facts as quickly and efficiently as possible. A non-confrontational approach is likely to help identify and establish relevant facts. For example, HMRC will aim early on to articulate the basis of its enquiries - in terms of tax risks perceived".

Collecting tax underpayments through the PAYE code

New powers have been introduced to raise the threshold for recovering underpayments through PAYE codes from £2,000 to £3,000. These new PAYE regulations take effect from 20 July 2011 and the aim of enabling HMRC to collect the majority of tax debts through PAYE codes, where the taxpayer is an employee or receives a UK pension.

Another Tax Tribunal rule on how to define "reasonable excuse"

In this past year a number of employers who have not met their filing and payment obligations had what they considered a "reasonable excuse" for not doing so and appealed against penalties levied. In a number of adverse decisions for HMRC, employers have won their appeals.

The pressure appears to be rising on HMRC to adjust its interpretation of "reasonable excuse". For example, in the recent decision of *N A Dudley Electrical Contractors Ltd v R & C Commissioners* [2011] the Tribunal rejected HMRC's definition saying -

"HMRC argues that a reasonable excuse must be some exceptional circumstance which prevented timeous filing. That, as a matter of law, is wrong. Parliament has provided that the penalty will not be due if an appellant can show that they have a reasonable excuse. If Parliament had intended to say that the penalty would be due only in exceptional circumstances, it would have said so in those terms. The phrase reasonable excuse uses ordinary English words in everyday usage, which must be given their plain any ordinary meaning".

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Umbrella companies - HMRC warns against 'payday by payday relief' model

Umbrella companies and businesses supplying temporary workers are under fire again - this time for using a business model that applies tax relief and, in some cases NICs relief, on a "payday by payday" basis. Each payday the employee is paid gross pay that is at least equal to the relevant National Minimum Wage rate and the value of the travel and subsistence expenses incurred by the employee in the pay period is deducted from the gross pay in order to obtain the tax and NICs relief. Only the balance is subjected to PAYE tax and Class 1 NICs. In a statement issued by HMRC in July 2011, umbrella companies and employment businesses have been warned by HMRC that obtaining tax and NICs relief by deduction from gross pay breaks the law. HMRC is now seeking to identify those businesses that are currently operating "payday by payday relief" models.

Successfully defending against IR35

In recent months a number of taxpayers have taken their IR35 appeals to a First-tier Tribunal and on each occasion have successfully defended their position that no disguised employment exists - such that the IR 35 rules do not apply. The cases involved are:

- Mark Fitzpatrick/MBF Design Services Ltd (January 2011)
- Elaine Richardson/ECR Consulting Ltd (May 2011)
- Phil Winfield/Primary Path Ltd (July 2011)

Interestingly, each enquiry began as an Employer Compliance (PAYE) visit with the shortest running case taking five years to settle whilst the longest running (Primary Path Limited) started almost eight years ago!

International news - a new tax treaty between the Netherlands and the UK came into effect on 1 January 2011 (Netherlands) and 1 April 2011 (UK)

There are several changes to the provisions in the treaty which may affect taxpayers who are resident in one and receiving income or gains from the other. Whilst each situation should be considered carefully, there are two changes that are most likely to affect employers with employees working in the Netherlands or vice versa.

183 day rule - Article 14(2)(i) (New) v Article 15(2)(i) (Old)

There has been a significant change to the "183-day" condition in Article 14(2)(i) of the new treaty (previously Article 15(2)(i)). This is one of the three conditions that a Dutch resident employee must satisfy in order for his remuneration from UK duties to be exempt from UK income tax. The new condition (i) is far more restrictive in that the employee must not be present in the UK for an aggregate period exceeding 183-days in any 12 month period commencing or ending in the UK tax year concerned, whereas the old treaty condition (i) stated that the employee must not be present in the UK for an aggregate period exceeding 183-days in the UK tax year.

Tax relief on pension contributions - Article 17 (Pensions) (formerly Article 18 (Pensions and Annuities))

There is an addition of new clauses which allow claims for tax relief in the UK in respect of pension contributions paid to Dutch pension schemes, and vice versa. Historically, although there was a limited opportunity to secure such relief, the new treaty provisions offer this directly.

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PAYE and CIS

deadlines

Aug - Nov

2011



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PAYE and CIS Deadlines August to November 2011

Aug-11	
2	Forms P46(Car) for quarter ended 5 July to reach HM Revenue & Customs (HMRC) by this date.
19	Cheque payments for month ended 5 August should reach your Accounts Office by this date.
22	Electronic payments for month ended 5 August should have cleared into HMRC bank account by this date

Sept-11	
19	Cheque payments for month ended 5 September should reach your Accounts Office by this date.
22	Electronic payments for month ended 5 September should have cleared into HMRC bank account by this date

Oct-11	
1	National minimum wage annual rates increase from this date.
19	Cheque payments for month/quarter ended 5 October should reach your Accounts Office by this date.
19	Payment of any PAYE Settlement Agreement for 2010-11 should reach your Accounts Office by this date
21	21 October - Electronic payments for month/quarter ended 5 October should have cleared into HM Revenue & Customs bank account by this date.
21	21 October - Electronic payment of your PAYE Settlement Agreement for 2010-11 (if any) should have cleared into HM Revenue & Customs bank account by this date.

Nov-10	
2	Forms P46(Car) for quarter ended 5 October to reach HM Revenue & Customs (HMRC) by this date.
19	Cheque payments for 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



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