Disabled people and their carers

Technical | Employment Tax

01 February 2015

An update on the tax rules

In recent years there has been a substantial growth in the number of elderly or disabled people employing a care worker or personal assistant to attend to their day-to-day needs.

Many such roles are funded by local authorities and increasingly by NHS England through personal budgets held by the service user, although some may be funded privately. In nearly all cases the relationship between the personal assistant and service user is one of employee and employer. This means that the employer must operate PAYE and NIC on their care worker's wages and pay them statutory sick pay and other statutory payments. Clearly, this can be a high expectation on some service users, and another family member will often take on the role of employer.

Easing the regulatory burden for so-called 'care and support employers' (C&S employers) has been a constant theme of LITRG's work in recent years. With the aid of HMRC funding we provide information on the tax and other obligations of being a C&S employer and a basic PAYE tool on our website www.tinyurl.com/pnadhjh. We have also persuaded government to give easements to people with personal budgets to make compliance with their obligations easier. The easements are as follows:

Exemption from online filing of PAYE returns

Unless they are already an RTI employer making electronic returns, C&S employers may instead make a quarterly paper PAYE return for each employee for whom a deductions working sheet is maintained. This will detail the payments made to the employee during the quarter (PAYE Regulations (SI 2003/2682) reg 67D). This return must be filed within 14 days of the end of the quarter.

A C&S employer for this purpose is defined as an individual who employs a person to provide domestic or personal services at or from the employer's home where the recipient of the services, who may be the employer or a member of the employer's family, has a physical or mental disability, or is elderly or infirm. The exemption can only be claimed if it is the employer who delivers the return, not some other person on the employer's behalf.

This exemption from online RTI filing recognises that many disabled and elderly individuals who employ carers are unable to use computer technology. This might be because their disability makes the process painful or difficult, or they are computer illiterate (see *LH Bishop Electrical Co Ltd & Others v HMRC Commissioners* [2013] UKFTT 522 (TC)). But it does mean that if the carer or personal assistant is entitled to universal credit they will have to self-report their monthly earnings from that employment to the Department for Work and Pensions (Universal Credit Regulations (SI 2013/376) reg 61(2)).

Employment allowance

When the employment allowance (the £2,000 exemption from secondary NICs) was introduced in April 2014, domestic employers, including those in C&S, were excluded because the relief was intended to help growing businesses.

At the same time, the percentage threshold scheme (PTS), which enabled some employers who paid their employees statutory sick pay to claim it back, was abolished, causing hardship to some C&S employers whose local authority funders may not have been able to make up the shortfall. Together, the abolition of the PTS and the denial of the employment allowance delivered a double blow to C&S employers.

LITRG and charity Disability Rights UK campaigned hard on this issue, and were delighted when, in the Autumn Statement, it was announced that the £2,000 employment allowance would be extended to care and support employers from April 2015. We have asked HMRC to take a lenient view of C&S employers who may have claimed the allowance accidentally under the automatic RTI procedures, and not charge them the inaccuracy penalty which they will have incurred in 2014/15.

Board and lodging allowance

The Autumn Statement and draft finance bill clauses have also announced an income tax exemption for board and lodging provided to ‘home care workers’, so that a carer will be able to take a meal with their employer, or spend the night in their home without incurring a tax liability on the benefit. This, again, was the outcome of an LITRG representation, and will take effect from 2016/17 when the £8,500 threshold for the charge on benefits in kind is abolished.

For this purpose a ‘home care worker’ is defined as ‘an individual employed wholly or mainly to provide personal care to another individual at the recipient’s home, where the recipient is unable to care for themselves because of old age, mental or physical disability, past or present dependence on alcohol or drugs, or past or present illness or mental disorder’.