Basic mistakes are costly!

Employment Tax | Tax voice



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Paul Tucker provides an overview of some sensible systems and checks that should be put in place

Employers should always be ready for a challenge from HMRC. They should consider HMRC's hot topics and also ensure they have robust systems.

HMRC's latest questionnaire highlights current hot topics. Most of them are familiar. Basic mistakes often give rise to large liabilities. HMRC could go back six years, they will charge interest and could charge a penalty of up to 100%.

Employers should treat themselves to a health check. Take a step back to consider. Are they in good health or is there room to improve?

I have set out below a note of some of HMRC's hot topics from their questionnaire. These, along with the supplementary questions should enable you to consider whether all is well with your business or your client's business or whether treatment is needed!

Directors

HMRC often ask "who are they and how are they paid?" HMRC's first challenge is to understand the business. They will want to know how directors are paid. A quick check at Companies House will reveal to them current director details. They will check who is paid via the payroll and who is not.

Employers will need to explain payments to directors that are off payroll (paid outside the scope of PAYE). HMRC expects payments to directors to go through the payroll (subject to tax and NI). The only potential exceptions are payments via personal service companies and for consultancy services (although both will come under close scrutiny).

Another key question will be the application of the special director's NI rules. Employers have two choices. They may apply the special rules from the start of the appointment. Alternatively, they may use the normal rules, but they must reconcile the position at the end of the tax year.

HMRC will also consider director's expenses. In particular, non-executive director travel and subsistence costs. Their Booklet 490 clarifies their view that if all board meetings are at one location then that will be the director's permanent workplace. If those are reimbursed they should be subjected to tax and NI.

If an error has been made the employer needs to consider who is bearing the risk. Typically, this is likely to be the employer.

Payroll

Who is responsible for the payroll? HMRC will expect an employer to be in control, even if outsourcing. They may undertake a sample check. There have been many changes in the past few years (especially in relation to statutory payments). When

extrapolated, a basic mistake could give rise to a sizable liability. Their questions include:

- Have there been any payments of SMP, SPP, SAP or ShPP?
- If so, HMRC will expect employers to explain their processes.
- Are all statutory payments included within the payroll and returned within the FPS?
  If not, then again an explanation will be required.
- Are any employees being paid below the National Minimum Wage / National Living Wage?
  With the naming and shaming regime it is vital that employers are compliant. HMRC have significant amounts of data at their disposal via their RTI system. Errors could be costly both financially and also in terms of damage to reputation.

Off Payroll workers

Questions include:

- How many workers are paid off payroll?
- Do you use any workers on a casual basis?
- Have any directors or employees been paid consultancy fees?

HMRC are likely to require a full explanation of any positive answers. They will also ask for the names and amounts paid in the last 12 month period? Status is often a grey area. Engagers must give each engagement due consideration. They are responsible for determining the tax status of a worker, not the worker. They will need to explain their logic for reaching the conclusion that payment may be made without the need to account for tax and NI under PAYE. Engagers should also be familiar with HMRC’s status tool.

Termination and redundancy payments

HMRC asks for details of payments made in the last 12 months. Employers must consider how the package has been treated. They must be able to demonstrate that the correct tax and NI treatment has been applied to each element. HMRC are likely to sample check Settlement Agreements and contracts.

Payment In Lieu Of Notice (“PILON”) is likely to be high on their agenda. Given the complexity of the legislation and the forthcoming changes this may well be an area of potential exposure for employers. Equally, if an overcautious approach has been taken, especially in relation to PILON, they may be due a repayment.

Expenses and benefits

HMRC highlight the following for consideration and potentially further examination.

Payment of round sum allowances

Their main objective is to understand why the employer is making the payments. The employer will need to explain their rules and how they monitor claims (including any sampling). If they are being paid free of tax and NI they will need to explain why. If they are unable to satisfy HMRC they may face a significant liability.

Phone or broadband costs

Mixed use is the potential problem here. Typically HMRC will be looking for employee contracts. The costs are not usually high, but the tax and NI treatment are often messy. What is being reimbursed?

Entertaining

Employers must distinguish between business and staff entertaining. Record keeping and expense description is key. HMRC’s concerns usually centre around staff entertaining. Employers must be able to explain why any staff entertaining costs have been treated as tax and NI exempt. In many cases employers include taxable staff entertaining on their PAYE Settlement Agreement. HMRC may check those calculations and the application of any exemptions.

Home to work travel

With increasingly flexible working arrangements, employers should regularly review their employee’s permanent workplace. They need to ensure they are not reimbursing ordinary commuting costs (or indeed accommodation near the permanent workplace). HMRC will be looking in particular at employees who have more than one permanent workplace and those that work from home as a matter of

personal convenience.

Company car and van fuel

Employers who make mistakes with a fuel benefit charge typically pay the tax that is due to HMRC on the employee’s behalf. The grossing up basis makes that very costly.

Employers should take great care with this issue. They must consider how business fuel is reimbursed. If there is no fuel benefit shown on a P11D they will need to explain why not. If an employee uses a company fuel card or a company credit card do they make good private fuel? If so how do they do that? Do employees maintain mileage records? How accurate are mileage records? Remember, it only takes one private mile for a fuel benefit charge to arise.

Company vehicles (including pool vehicles)

Again, another high profile area. What employees are provided with company vehicles for private use? Are they all shown on P11Ds? What vehicles are not included on P11Ds and why not? Are records available to demonstrate the tax and NI treatment adopted? Are mileage records maintained? Are hire cars used and how is any private use monitored? Where are pool vehicles kept overnight? Are all pool vehicle conditions met?

Salary sacrifice

HMRC expects employers to provide details of all salary sacrifice arrangements. The new Optional Remuneration Arrangements rules were introduced from 6 April 2017. Under the new rules employers need to consider not only salary sacrifice, but also any benefit where there is an option to take something else instead (for example car or cash). The rules are complex and employers should carefully review their benefit packages (including exempt benefits). Employers should also consider any renewals or changes to ensure they do not fall foul of HMRC’s new rules.

Overseas employees

Given the complexity of international taxation and social security, HMRC will pay particular attention to any employees who are seconded from a subsidiary, parent or

associated company and any employees working abroad on assignment.

It is far better for an employer to take a step back, review their arrangements to ensure they are not making careless mistakes, rather than bury their heads in the sand and await a call from HMRC and be staring in the face of a potentially large liability.