Welcome from the Chair

Tax voice Welcomes

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Changes confirmed on IR35, re-visiting the meaning of employment, controversy around the disguised remuneration loan charge and more…there's a lot going on!

Welcome to the latest edition of Employment Tax Voices. This is a bumper issue and we cover a fair bit of ground including the latest on IR35 and the prospective changes in the private sector from 6 April 2020, the disguised remuneration loan charge, termination payments, business travellers, share schemes, the National Minimum Wage, non-resident directors and much more besides!

The extension of the public sector changes on IR35 to the private sector was predicted by many and came as no surprise. Even though, in commenting on the public sector changes in December 2016, the Government had previously said that they had "no current plans to extend the reform beyond the public sector"…how times change! In any event Steve Wade and Robert Woodward discuss the challenges that businesses and agencies will face applying the new approach in their articles, particularly as regards the thorny issue of determining the employment status of those concerned. Whilst we know that HMRC are committed to modifying the Check Employment Status Tool (CEST) so that it is better placed to provide the "right answer" as to whether someone is employed or self-employed, this is surely going to be very challenging. At the moment CEST is unable to reach a determination in 15% of cases, which I think is understandable as it only goes so far in probing the detail needed to form a more considered view. CEST is not industry specific and it does not consider factors such as mutuality of obligation and any work being undertaken outside of the particular engagement being assessed. It will be interesting to see how the tool is developed but striking the right balance between asking many more questions and increasing the time taken for businesses to gather the information needed to process each individual case will be key. In HMRC's recently issued consultation document on the implementation of the private sector off-payroll working rules, HMRC re-affirm their intention to work with

stakeholders to identify improvements to CEST and to issue wider guidance, and this is to be welcomed.

Alongside the changes on IR35 it was also very interesting to read the government's recently published Good Work Plan, which sets out its vision for the future of the UK labour market. This takes on board Matthew Taylor's comprehensive Review of Modern Working Practices and subsequent feedback to four consultations launched by the government last year, including the Employment Status Consultation. In terms of the latter, Taylor had recommended that the employment status frameworks for employment rights and tax should be aligned so as to reduce the differences between the two to an absolute minimum. I very much agree with this and so welcome the government's confirmation that this is the right ambition and that it "will bring forward detailed proposals on how the frameworks could be aligned". The government has also committed to "legislate to improve the clarity of the employment status tests, reflecting the reality of modern working relationships". And it seems they agree that this should build on Taylor's recommendation to include a greater focus on control with less emphasis on "the notional right – rarely in practice exercised – to send a substitute". This will clearly mark a fundamental re-evaluation of what we mean by employment and self-employment after so many years of relying on case law, much of which is now increasingly difficult to apply in the era of the gig economy. I look forward to participating in further discussion on the changes that need to be made.

This said, businesses that are now beginning to assess how they may be impacted by the changes to IR35 from April 2020 may well be wondering whether they should be considering "employment" version 1.0 or the upgraded version 2.0! Hopefully we will hear more about this shortly.

A brief word also on the disguised remuneration loan charge. This comes into force on 5 April 2019 and, broadly speaking, provides that employees and former employees who took out loans from employment intermediaries on or after 6 April 1999 will be treated (with exceptions) as having received outright pay at that point, unless the loan has previously been repaid. This will cover everything from loans to beneficiaries of Employee Benefit Trusts to individuals in receipt of so-called "contractor loans". Lewin Higgins-Green and Tina Riches have more to say, but the loan charge has undoubtedly attracted a lot of attention in the media and in parliament, particularly as regards contractor loans. The sense being that many, particularly the lower paid, may have been unaware of what they were letting

themselves in for and will now be hard-pressed to repay their loans or settle the tax involved. Indeed I think that the re-characterisation of “loans” as pay many years after the event does, in effect, allow the government to have a second bite of the cherry in that contractor loans were not challenged as being akin to pay when originally made (and noting that the arrangements are now invariably time-barred). Whilst the loan charge clearly signals a no-nonsense approach to tax avoidance, it is nevertheless arguably a blunt instrument that struggles to differentiate between those that have knowingly played with fire and others who were misled and/or given little choice but to enter into contractor loans. This being said, Finance Act 2019 now provides that the government should review and report on the operation of the loan charge and so perhaps there may yet be some smoothing of the edges. We shall see but time marches on and 5 April is fast approaching.

I hope you enjoy reading the articles in this edition of Employment Tax Voices and if you would like to learn more about what the Employment Taxes sub-committee does, or to get more involved, please do let me know.