Welcome from the Chair

Tax voice Welcomes

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A missing Budget in 2019 but the changes to Off-Payroll Working and the Contractor Loan Charge take centre stage

**This article was written prior to the announcement that the implementation of the Off-Payroll Working rules are being delayed to April 2021.*

For the first time in a long time - reportedly 1768! – a calendar year went by in which there was no Budget. The Budget was scheduled for 6 November but this never happened as Brexit dominated debate in Parliament, the government lost its majority and a general election took place on 12 December. Nevertheless, the Employment Taxes Committee has remained very busy as you will see from the list of submissions which is included on pages 43 and 44. This is particularly so as regards the changes to Off-Payroll Working which are due to take effect from April this year. Susan Ball, Lee Knight and Steve Wade talk about these changes on pages 5 to 13. Draft legislation was published in July 2019 but there are still a number of points which remain to be addressed. This said, last year the Committee held detailed discussions with HMRC about the Check Employment Status for Tax (CEST) tool which we felt needed to be improved so as to provide businesses with better support in making the right call on the employment tax status of their contractors. Following these discussions we were pleased to see that an updated version of the CEST tool was released by HMRC last November, including an expanded set of questions together with detailed guidance and examples. Whilst it is inevitable that marginal cases will always cause problems we consider that the updated CEST represents a significant improvement on the previous version. Having said this, HMRC have lost a number of IR35 cases over the last couple of years and the points involved are often very finely balanced. Indeed, the recent case of RALC Consulting (RALC Consulting Limited v HMRC [2019] UKFTT 0702 (TC)), which involved an IT contractor working with Accenture and the DWP, ran to some 85 pages which underlines this point.

With this in mind, and to simplify things, why not legislate a statutory definition of employment, aligned for employment law and tax purposes, to avoid the need for an exhaustive and time-consuming exercise before arriving at a view on employed v self-employed? Lesley Fidler takes up this theme in her piece on pages 14 to 16. Surely, simplification and certainty would be a good thing for business, contractors and HMRC alike? The government began to look at this in responding to Matthew Taylor's Review of Modern Working Practice (Good Work: The Taylor Review of Modern Working Practices, July 2017) back in December 2018 and hopefully more progress will be made in the coming months. In fact Taylor went further and suggested that the ambition should be to align the taxation of the employed and self-employed so that distortions are removed, particularly as regards employer's NIC, and businesses and contractors have no tax reasons to prefer one over the other. I agree and it will be interesting to see if the government takes up this point.

A key development that took place towards the end of last year was the appointment of Sir Amyas Morse to conduct an independent review of the Contractor Loan Charge. This requires (subject to exceptions) that outstanding loans taken out from third parties since 6 April 1999 be treated as additional remuneration and taxed as such on 5 April 2019. In last year's Employment Taxes Voice I commented that the loan charge (in its then form) was arguably a *''blunt instrument that struggles to differentiate between those that have knowingly played with fire and others who were mistaken and/or given little choice but to enter into contractor loans''* and indeed this echoed what the CIOT said when the legislation was being enacted in 2017. In my view, Sir Amyas' recommendations, all of which bar one have been accepted by the government, are sensible and fair. They include restricting the loan charge to loans taken out on or after 10 December 2010, and excluding loans taken out in subsequent (unprotected) tax years up to and including 2015/16 provided there was reasonable disclosure to HMRC at the time. Sir Amyas also highlighted that many of the concerns about the loan charge were raised by the CIOT and other representative bodies soon after Budget 2016 and he added that ''had the views of such groups been better considered in implementing the policy, it is likely that at least some of the concerns raised by taxpayers would have been addressed''. Let's hope that in future when any similarly controversial measures are introduced then Sir Amyas' words are heeded and that feedback from consultation is effectively taken on board. Lewin Higgins-Green has more to say on the loan charge on pages 17 to 19.

Whilst the headlines have been dominated by Off-Payroll-Working and the Contractor Loan Charge, there are a number of other matters which we discuss in this edition of Employment Taxes Voice. David Chandler talks about electric cars and the dramatic reduction in the benefit-in-kind charge which will apply from 6 April 2020. The issue of climate change is fundamental and the importance of adapting our behaviour to take on board a cleaner way of doing things certainly applies in deciding what car we drive. The government clearly recognizes this and the employment tax incentive to make a cleaner choice is underlined by the fact that, in framing the anti-avoidance rules on salary sacrifice in Finance Act 2017, specific exception is made for ultra-low emission vehicles.

In other articles we cover the changes applying to short term business visitors from 2020/21, international pension plans, the construction industry scheme, salary sacrifice and pension contributions, statutory bereavement pay and leave, year-end employer reporting, payroll compliance issues for employers and I am grateful to all our authors for sharing their expertise on these topics.