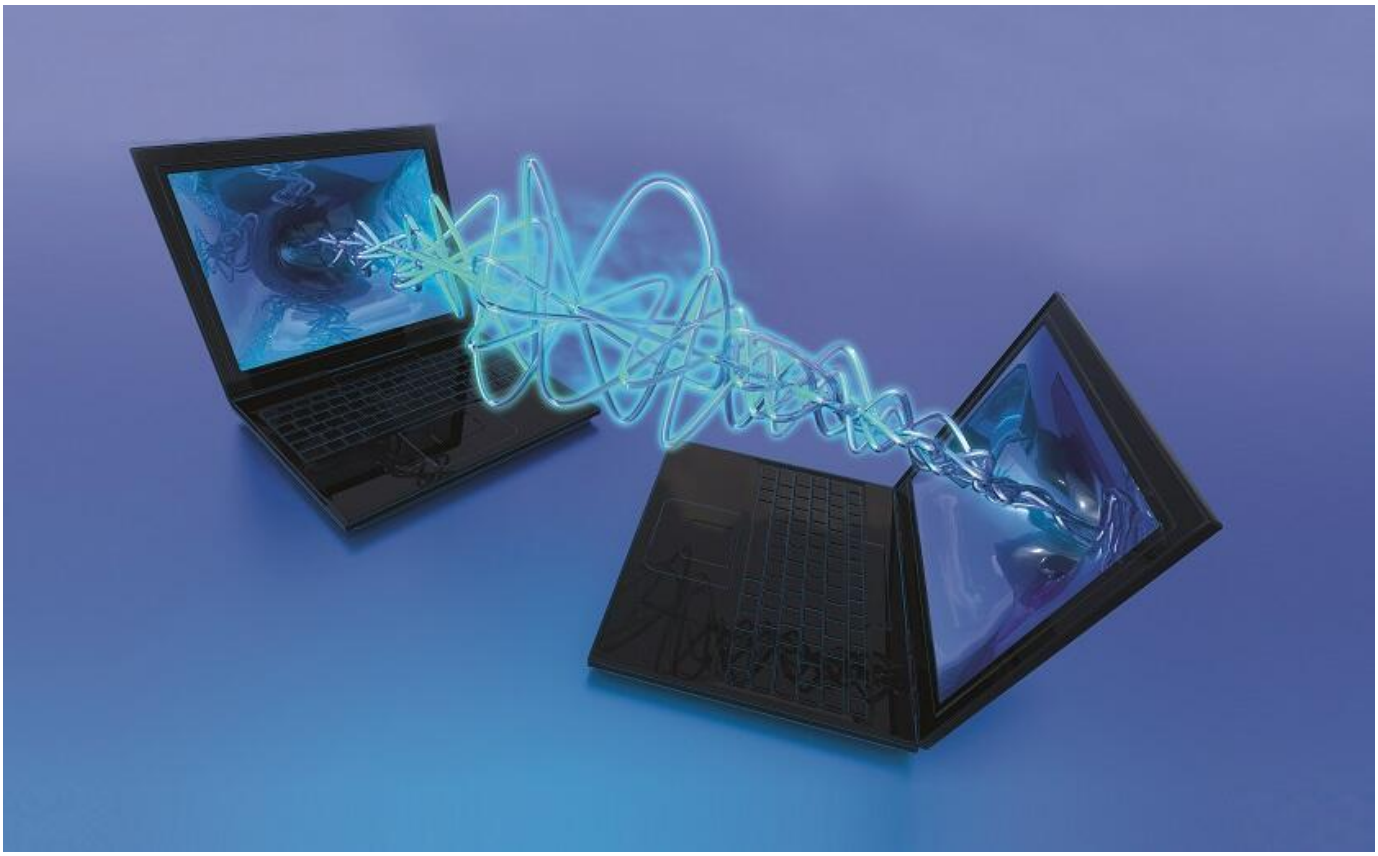
Compliance and the cost of mistakes!

Employment Tax | Tax voice



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Vaneeta Khurana discusses HMRC's compliance reviews processes and its efforts to close the tax gap

People costs are one of the largest costs for most employers. These include salary, bonus, benefits, gifts and reimbursement of expenses, all of which have tax and national insurance contribution (NIC) consequences and/or are required to be reported to HM Revenue & Customs (HMRC). With a more active and aggressive approach by HMRC to employment tax compliance and tax avoidance, many employers find it increasingly challenging to manage their employment tax risks.

This article discusses HMRC's focus on employment tax; areas of high risk and the impact of non-compliance.

HMRC's focus on employment taxes

Each year, HMRC publishes the 'tax gap' which is the difference between the amount of tax that should, in theory, be paid to HMRC, and what is actually paid. The latest tax gap published by HMRC in June 2019 (https://tinyurl.com/udz8v2o) reported a tax gap of £35bn for the 2017/18 tax year of which £12.9bn related to employment taxes (IT, NIC and CGT) (the largest tax gap). £.6.4bn of the total tax gap was in relation to the failure to take reasonable care.

As HMRC continues to close the tax gap with the introduction of new legislation to tackle non-compliance, automation to collect taxes in real time and increased compliance activity, there is greater onus on employers to ensure that appropriate and robust policies, processes and controls are in place to evidence the tax and NICs treatment applied and that reasonable care has been taken.

What does an HMRC review cover?

Those most commonly seen at present are Business Risk Reviews (BRR) for large and complex employers, National Minimum Wage (NMW) audits, PAYE compliance reviews and/or 'check of records' for mid-sized and smaller businesses.

The items which typically create the highest risk of non-compliance are those which are processed outside of the payroll. These include, but are not limited to, the following:

- short term business visitors to the UK creating a PAYE/NIC risk for the UK employer;
- payments to directors (executive, non-executive and non-UK tax resident director);
- whether tax exemptions properly apply to termination payments;
- misclassification of the employment status of contractors;
- reimbursement of expenses (including confusion over homeworkers and temporary workplaces and the difference between client entertaining, staff entertaining and subsistence); and
- the provision of benefits, rewards and incentives (including share arrangements and optional remuneration arrangements).

The responsibility for employment taxes often sits across several departments: HR, Payroll, Accounts Payable and Finance with Tax normally owning the HMRC

relationship. Therefore, it is even more important to understand (and document) the end-to-end processes and data flows from one department to another.

What is the impact of non-compliance?

There is a financial impact associated with non-compliance. HMRC wants to understand whether reasonable care was taken by the employer and this influences the number of years under consideration for any unpaid taxes (mainly being four or six years). It also impacts the penalty position which is then discounted for what HMRC deem to be good behaviors. Sometimes, penalties are levied but suspended on the condition that appropriate processes and policies having been implemented to mitigate the risk of non-compliance going forward.

There is also a reputational impact which needs to be considered particularly with ‘naming and shaming’ penalties associated with for example NMW audits.

Conclusion

This article highlights HMRC’s efforts in closing the tax gap, its compliance activity and consequently the requirement for businesses to have robust policies, processes and controls in place, particularly as employment taxes are often not the responsibility of one department alone. Given the financial and reputational consequences are potentially significant, it is important to get this right.