Welcome from the Chair

Tax voice Welcomes

25 March 2022

Welcome to this 2022 edition of Employment Taxes Voices. I hope that you and your family are keeping well after what has been another difficult year with all the challenges we have had to face with the pandemic. Let's hope there is now light at the end of the tunnel and that we can return to normality – even if normality is not quite what it was pre-pandemic.

Something that has changed a great deal is the way technology has allowed for home-working to an extent few would have imagined a couple of years ago. And indeed the government responded to the need to work from home by exempting (on a time limited basis) the reimbursement of the cost of home-office equipment by employers, and confirming that a deduction of £6 pw is available for employees for the cost of home-working (or more if appropriately evidenced). The exemption for home-office equipment was legislated by regulation, though Finance Act 2021 subsequently included other pandemic-related employment tax easements (concerning EMI schemes, cycle-to-work and coronavirus testing) which had to be dealt with via primary legislation, which is more cumbersome. Finance Act 2022 includes a measure to address this by permitting employment tax changes in situations of national disaster or emergency to be legislated (on a time-limited basis) by regulation. This is sensible, though one would like to think it won't be called upon for many years to come! In any event Lee Knight takes a closer look at how things stand on the tax reliefs available to employees who work wholly or partly from home on pages 5-11.

The National Audit Office recently published a report (Investigation into the implementation of IR35 tax reforms - National Audit Office (NAO) Report) on how effectively the OPW rules were introduced in the public sector and the extent to which lessons were learned in the subsequent rollout to the private sector. The House of Lords Finance Bill sub-Committee also held an enquiry into the private sector rollout (at which I gave evidence on behalf of the CIOT) and recently published its findings as well (Off-payroll working rules have resulted in an increased

use of umbrella companies - Committees - UK Parliament). The fact that the accounts of a number of larger public sector bodies include significant financial provision for settlement of PAYE/NIC arising from OPW suggests that the rollout of OPW to the public sector left a fair bit to be desired. This said, the private sector rollout appears to have gone more smoothly, albeit after a year's delay due to the pandemic and not without significant cost for many businesses. And whilst HMRC's guidance and the Check Employment Status for Tax (CEST) tool is much improved, the reality is that defining 'employment' for tax purposes is not an exact science and can often involve a fair degree of subjectivity. Particularly given the increasingly fragmented nature of work these days, whereby people can be doing multiple jobs concurrently and with no set hours. This is borne out by the recent statistics for the CEST tool which record that it gives a 'cannot determine' result in some 21% of cases (Check Employment Status for Tax (CEST) usage data - GOV.UK (www.gov.uk)). In this light I think we should seriously consider codifying what we mean by 'employment' for tax purposes, whether or not this fully aligns with any definition that might (or might not) be introduced for employment law purposes. Indeed in its response to the Taylor Review of Modern Working Practices the last government committed to exploring this possibility, though with Brexit and the pandemic to contend with progressing this has inevitably been delayed (Government response to the Taylor review of modern working practices - GOV.UK (www.gov.uk) and Good work plan - GOV.UK (www.gov.uk)). Nicola Pitcher reviews the position on OPW in the public sector and the meaning of managed (contracted-out) services on pages 12-15. And Sarah Hewson considers OPW more generally and as regards the need for due diligence in the labour supply chain on pages 16-17.

As a result of the introduction of the OPW rules we have seen a marked increase in the number of workers being employed by 'umbrella companies'. Whilst the large majority of umbrellas are compliant with labour law and the PAYE/NIC rules, unfortunately some are not. HMRC issued a call for evidence on the umbrella company market in November 2021 which asked some thirty-eight questions on how and why businesses are increasingly engaging labour via umbrellas, as well as examining the position from the worker's perspective. Tighter regulation of umbrellas and protection of workers seems the likely way ahead and Rob Woodward examines the position more closely on pages 18-21.

Climate change is a pressing issue and government policy is increasingly and rightly focused on promoting the green agenda. From an employment taxes perspective

this manifests itself most clearly in relation to the taxation of employer-provided electric company cars. Not only is there a very low BIK charge, and no equivalent of the fuel scale charge where an employer provides electric charging facilities on site or via a local authority charge card, but the OPRA anti-avoidance rules on salary sacrifice are specifically disapplied. Peter Moroz explains where we are on electric cars on pages 22-25, and David Chandler updates us more generally on company cars on pages 26-29.

Overseas Workdays Relief (OWR) has been around for many years, though many would argue the time is ripe for streamlining and simplifying it. For example, if we want to encourage people to spend money on UK goods and services, why deny relief when pay for work done abroad is paid or remitted here? In any event Steve Wade takes a closer look at OWR on pages 30-33.

To round things off Susan Ball, Carolyn Brown and Paul Marcroft discuss compliance activity surrounding the Coronavirus Job Retention Scheme (CJRS) on pages 34-40. Although HMRC deserve credit for the speedy implementation of the CJRS, they nevertheless acknowledge that c8.7% of employer claims were overpaid due to error or fraud. HMRC is now chasing up and it's key that employers carefully review their claims to ensure that all is in order.

I thank all those who have contributed to this edition of Employment Taxes Voice and I hope very much that you will find it a worthwhile read. The Employment Taxes Committee has been very busy throughout the last year, both with HMRC consultations and in making proactive representations on a range of issues. If you would like to get involved in shaping the agenda on employment taxes in the months and years ahead please let me know.

Colin Ben-Nathan

Chair, Employment Taxes Committee