Chair's view, Issue 1

Employment Tax | Tax voice



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A period of unprecedented change…with more to come!

Welcome to this very first edition of Employment Taxes Voice. Well, 2015 was certainly a very busy year for the Employment Taxes Sub-Committee with our representations to HMRC and HM Treasury covering a whole range of issues. Everything from termination payments to IR35 to tax relief on travel & subsistence to the future of registered pensions. And 2016 promises to be equally busy with a call for evidence by HMRC on living accommodation, work by the Office of Tax Simplification on the alignment of income tax and National Insurance Contributions (NICs), a cross-government study on employment status, the introduction of voluntary payrolling of benefits-in-kind, the move from Form P11D dispensations to an exemption for business expenses, the new HMRC reporting regime for taxable Short Term Business Visitors (STBVs) and more. Simply listing what's on the agenda leaves me breathless!

But I think it is worth pausing to consider the themes cutting across all these changes. Why is this such an unprecedented period of change? Well, I think it's because we are seeing a series of factors coming together around four main headings: simplification, austerity, shaping employment taxes for the 21st century and anti-avoidance.

The move from Form P11D dispensations to an exemption for business expenses is clearly a move to simplify. And the related changes on abolishing the £8,500

threshold for Form P11D benefits, introducing a statutory exemption for trivial benefits (to be legislated in Finance Act 2016) and voluntary payrolling of benefits follow in much the same vein. Susan Ball elaborates on the position. Simplification is also behind the introduction of an annual mechanism for employers to account for PAYE on STBVs to the UK where treaty exemption does not apply. Eleanor Meredith has more to say on these changes. In contrast, the pension changes from 6 April 2016, tapering the annual allowance down from £40,000 to £10,000 for those with incomes between £150,000 and £210,000 and the lowering of the lifetime allowance from £1.25 million to £1million, are clearly driven by austerity and the need to target tax relief in a rather more focused way (remember the halcyon days of a £255,000 annual allowance!). And with the Government now reviewing the whole area of pensions tax relief (and the £50-60 billion per year which they say this costs) it looks like there may well be more fundamental change to come… will we be talking about Pension ISAs in but a few months' time? Teresa Preece brings us up-to-date on the pension's world.

Ensuring that the employment tax regime is fit for purpose in the 21st century is vital. The recent HMRC discussion document on travel and subsistence for employees seeks to do this by revisiting some key areas around multiple workplaces, the "intention" aspect of the 24 month rule and the rules on how tax relief is given for those working from home. At the same time, and not so popular, is the suggestion that tax relief for day subsistence may be removed in order to balance the books. The CIOT's representations on the Government's proposals can be found here and it will be interesting to see how things develop. Mark Groom, my Vice-Chair, warms to the theme.

And, finally, we come to the area of anti-avoidance. Perhaps one of the most worrying points which came to light in 2015 is that the IR35 regime originally enacted in Finance Act 2000, is clearly broken. Or, as HMRC puts it, "the government estimates that non-compliance…. will cost the Exchequer £430m in tax and NICs receipt this year and without reform, it expects this loss to continue to grow". Clearly £430m is a very significant leakage of tax each year by any standards! The CIOT's response to the suggestions put forward by HMRC to address this situation can be found on the CIOT website. Whilst we do not think the idea of imposing a withholding obligation on business is the right way to go, we do think it would be appropriate to tighten up on reporting so that HMRC has a much clearer view on what is going on and can take action accordingly.

But I think the problem with IR35 illustrates a real issue with the underlying tax treatment of employments, self-employment and PSCs. And that is one of “boundaries”. By “boundaries” I mean differences in tax treatment across these three modes of engagement; and in my view the more boundaries we have the more likely it is that people will try and game the system by positioning themselves on the tax advantageous side of the line.

As I have said, we currently have an OTS project looking at the alignment of income tax and NIC and a cross-government study examining the whole area of employment status, and it seems to me that the more differences that can be removed between employment, self-employment and PSCs, the less opportunity there will be to finesse the rules and so the less likelihood of £430 million holes appearing in the government’s finances.

There is, of course, the fair point that entrepreneurs should be rewarded for the extra business risk that they take on but the question is whether the premium for that risk should be borne by the tax system or by the marketplace. Well, recognising that people work in so many different ways these days and that it’s not always so easy to determine who is being entrepreneurial and who isn’t, personally I think there is a good argument to have done with it and level the tax playing field across the board. Indeed it will be very interesting to see what emerges from the work being done on employment status and on the alignment of income tax and NICs on this front, particularly around the thorny issue of employer’s NIC. Might we see a gradual transition away from this “tax on jobs” to other sources of revenue, or is that just wishful thinking on my part?

Anyway one thing is for sure and that’s that the Employment Taxes Sub-Committee will not be short of things to do in 2016. If you would like to get more involved please do let me know.