HMRC’s IR35 and Expat Tax Forums – recent meetings

Employment Tax

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Following on from May’s round-up we report on three further regular meetings our volunteers have attended on behalf of the CIOT.

Joint Forum on expatriate tax and NICs

The expat tax forum met in late April to discuss domicile, NICs, the personal savings and dividends allowances, and the personal tax account.

HMRC confirmed that the previously announced changes to the domicile rules will be legislated for in Finance Bill 2017, with draft legislation published for consultation this summer. On the transitional arrangements for those who left the UK before the changes to the domicile rules were announced in 2015, HMRC said they should not be subject to them, assuming they did not return to the UK.

Concerns were also raised that the apportionment rules for share-related income could lead to many instances of double liability to NICs since other countries impose social security on awards vesting while employees are in their social security scheme. HMRC is looking at this and discussing the position with other countries. The expectation is that guidance will be published to address the issues that typically arise.

Although there is no ordering rule for the dividends allowance for individuals who have UK and non-UK source dividends, it is understood that HMRC will allow the taxpayer to offset UK dividends against the allowance first leaving foreign dividends with associated tax credits to be taxed at the dividend tax rate.

IR35 Forum

The forum met before the 26 May publication of the consultation document, O*ff-payroll Working in the Public Sector: reform of the intermediaries' legislation*. There is considerable concern with the government's position that the responsibility for getting the IR35 status right is to rest with the employment intermediary (agency) if there is one. Many believe that the responsibility (and therefore financial liability) for ensuring public sector workers' IR35 status is correct should lie with the engager (the public body), not the agency.

At the same time as consulting on legislating for the above change, HMRC is working on an 'online tool and employment status indicator' to determine whether the employment intermediary has to account for tax. Development of this will not be just about asking the right questions in the right way but giving each answer an appropriate weight, taking account of all factors. Insurance may be essential in some areas but unnecessary in others, for example.

The CIOT will be responding to the consultation and we would welcome your views on the government's proposals. Email them to technical@ciot.org.uk.

Pensions sub-group of the Expat Tax Forum

The above group also met in May to discuss particular pensions-related issues arising in the context of non-UK pension schemes. The issues discussed were in four main categories: annual allowance issues, distributions and lump sums payable, UK-US treaty issues, and registered overseas pension schemes (ROPS). A Q&A will be produced by HMRC in due course.

During the meeting HMRC confirmed that for annual allowance purposes the transitional rules applying to registered pension schemes also applied to relevant non-UK schemes, so there was the potential for up to £80,000 of relief for 2015-16. HMRC added that there should be full carry-forward for non-UK schemes in the same way as for UK-registered schemes. HMRC also indicated that unauthorised payment charges might be displaced by double tax treaties. This would be the case if they would be due on something regarded as pension income under the treaty, where the treaty allocated full taxing rights to the country of tax residence.