Are you ready for the 'big five'?

Employment Tax



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Mark Groom looks at some expected changes to employment taxes

Key Points

What is the issue?

A number of significant employment tax changes are being introduced this coming tax year and next, and others are proposed for the longer term. This includes a fundamental review of travel and subsistence and possibly employment status, the abolition of tax relief for travel expenses of workers engaged by intermediaries and separately, travel expenses reimbursed in conjunction with salary sacrifice (‘travel schemes’); the abolition of dispensations; and extensive new reporting requirements for intermediaries. Certain other changes are also being introduced including a statutory footing for exempt trivial benefits and the optional payrolling of certain benefits

What does it mean for me?

Here we focus on just a few of the most significant of the changes that will have a more immediate impact on employers and employees. But employers will want to keep abreast of all the impending changes and consider their financial impact and the extent to which HR policies and tax accounting systems and processes should be updated in response

What can I take away?

Some of the changes will be costly to employers and employees and clear communications programmes should help to minimise any potential disruption from exiting existing arrangements. New business models may need to be considered by those relying on travel schemes for a large part of their income. Those impacted by the problem of multiple permanent workplaces will need to continue to be vigilant; the government is aware of the issue but we don’t yet know if any change will emerge from its review. Businesses which supply individuals to clients should review the extent to which the new quarterly reporting rules apply to them and ensure they are capturing the requisite information with effect from 6 April 2015, for completion of the new returns

Over the next few years, we can expect a number of changes to employment taxes. They are:

- new restrictions on tax reliefs for workers engaged by intermediaries;
- an overhaul of the rules on travel and subsistence (T&S);
- new reporting requirements for intermediaries;
- abolition of dispensations; and
- a possible new approach to determining employment status.

I am calling them the ‘big five’. The changes follow a number of consultations by the Office of Tax Simplification (OTS), the Treasury and HMRC, and those responsible for employment taxes in industry and their advisers will have to be alert to these.

At the time of writing, the OTS has just published its 188-page review of employment status. Numerous short- and long-term recommendations for guidance and change have been made and it will be interesting to see how the government of the day takes them forward. The abolition of dispensations is a big and welcome simplification. Apart from a pressing need for employers to understand what they must do to check expenses, and how bespoke industry agreements will be migrated into the new regime, it shouldn’t be too complex. So, for now, I’d like to take a closer look at just the first three of the subjects noted above.

Travel expenses and workers engaged by intermediaries

In the chancellor’s Budget 2015, the government announced it would consult on proposals to prevent workers engaged by intermediaries from claiming tax relief for their travel expenses.

Readers may be more familiar with HMRC’s original discussion paper, which considered an approach whereby workers employed under an overarching contract of employment (OAC) would not qualify for relief. This now appears to have been dropped in favour of a two-tier test, that is, tax relief for travel expenses will not be due for workers who are (a) engaged by an intermediary and (b) come under supervision, direction or control (SDC) by an end client (or possibly by any person). The detail will need to be worked through during the consultation process.

In short, it is considered that there is little difference between a temporary worker engaged by an intermediary travelling to work at different client sites, and a permanent employee travelling to work at a single workplace. In either case, the policy intention is to allow tax relief only for travel expenses incurred while working; not for getting into work.

Although present beneficiaries will not relish the loss of tax relief, the SDC-based test provides an approach for travel expenses consistent with that applied for PAYE/NIC purposes. This at least should prove easier to understand and comply with, rather than having to consider whether or not a contract is an OAC.

I hope that ‘intermediary’ will be defined carefully to avoid collateral damage as far as possible, otherwise, innocents such as employees of business services firms who are seconded to their clients may also lose out on relief. However, a new development is that it is now intended that personal services companies (PSCs) will be caught by the new rules. An increase in PSC costs may have knock-on commercial effects for businesses engaging workers through PSCs (as indeed it may also do for businesses engaging workers through agencies or umbrella companies whose workers are impacted by the loss of this tax relief).

Another problem relates to workers typically in the construction industry, who may be assigned to a client, where the client requires the worker to attend at different sites. A permanent employee with a normal workplace who works at different temporary workplaces would qualify for relief for travel expenses when attending the latter. Why then, should a temporary worker be prevented from claiming relief in similar circumstances?

Some umbrella companies and agencies currently derive significant financial savings from the current tax reliefs available. Businesses which have been dependent on these savings may need to consider new business models, and develop clear communications programmes to inform workers of the financial impact from April 2016. A phase of industry consolidation may also help to compensate through economies of scale.

T&S

Two changes are being considered in relation to T&S, both separate from the proposal. The first is a short-term change with effect from 6 April 2016, and will

require employers to operate PAYE on any T&S expense payments made to employees in connection with a ‘relevant salary sacrifice arrangement’. At present there is no corresponding abolition of NIC relief on T&S expenses, but we should expect that this will follow because the proposed tax changes in isolation are unlikely to have much impact on such arrangements.

Unlike the proposal for intermediaries, these proposals will continue to allow employees to claim tax relief through self-assessment on T&S expenses incurred. This is fine in theory but in practice most employees are unlikely to claim the relief to which they are entitled. Most individuals who benefit from such arrangements are site-based workers who, before 1998, were not entitled to tax relief when travelling from site to site. Then the rules changed allowing them to claim relief but, for various reasons, they did not do so. Their employers did not reimburse their expenses before 1998 and weren’t about to start doing so because the tax rules had changed. As a result, salary sacrifice in exchange for reimbursement of T&S expenses was born.

If salary sacrifice is taken away, it will most likely return employees to their pre-1998 position. Having become used to retaining receipts for their T&S expenses in order to benefit under T&S salary sacrifice schemes, they will have the requisite evidence to make personal claims under self-assessment, but whether they will do so remains to be seen.

Some employers have noted that the draft legislation only outlaws ‘relevant salary sacrifice arrangements’, whereas their arrangements do not involve salary sacrifice. Where employees are paid by formula eg, an amount £x plus expenses £y plus a bonus £z, might such arrangements continue? It would be naïve to think that HMRC will not include provisions to prevent the alternative formulation known as a ‘relevant flexible remuneration arrangement’ in the final legislation. This was last seen when tax relief for subsidised meals in a staff canteen was abolished if provided with either of these two relevant arrangements. On this basis, T&S reimbursements would remain subject to PAYE where they were in any way substituted for another form of employment income.

Employers contemplating ending these arrangements will need to think about an orderly exit. It shouldn’t take much to switch off the payroll entries used to process tax-free T&S payments and the associated salary sacrifice adjustments, but the adverse impact on net take-home payments will need to be carefully managed. An

employee communications programme should be developed and discussions with unions are advisable, where appropriate.

To be fair, HMRC have said it will make it easier for employees to claim their own tax relief under self-assessment, but details of how this will work in practice are not yet known. It would be helpful if employers could submit coordinated T&S claims on behalf of all their employees, for example in spreadsheet format or as negative P11D entries similar to the MARORS scheme for mileage allowance payments. Otherwise, if employees can claim an adjustment to their PAYE code based on HMRC benchmark scale rates, this might also help to soften the impact of the loss of employer-facilitated relief through salary sacrifice.

The second change is a longer-term review of the fundamental rules governing tax relief for travel and subsistence expenses. This is a much bigger project with little for employers to do now other than to engage with HMRC in relation to any consultation on the subject that may emerge. A particular issue arises when an employee is asked to spend some of their time working in another location, and find they have created a second permanent workplace. The tax liabilities arising on reimbursed T&S expenses in relation to the second workplace can be substantial. For now, it is enough to note that the government is aware of the difficulty that the current rules cause, but we do not yet know if any change will emerge from its review.

Quarterly reporting for intermediaries

The third of my ‘big five’ changes relates to the new reporting regime that will apply to intermediaries from 6 April 2015. Before going any further, please note that the new requirements apply to any business that supplies a worker who personally provides services to a client.

This is not something that only employment agencies have to worry about.

The first quarterly return will be due on 5 August covering 6 April to 5 July 2015, so businesses will soon need to start recording the personal and financial data to be reported. The first step is to understand when a worker is considered to be ‘personally providing services’ to a client and to review the worker population to determine whether anyone falls into this category.

My understanding of the term ‘personally providing services’ is best explained by comparing with other legislation relating to workers who are ‘personally involved in the provision of services’ to a client (sometimes called ‘composite services’). This is intended to apply a broader test in order to impose an NIC liability when an individual is employed by a foreign employer and ‘personally provides services’ or is ‘personally involved in the provision of services’ to a UK client. The latter wording was dropped from the first draft tax legislation so that the new rules should not apply to a worker who is only personally involved in the provision of a service as opposed to personally providing the services themselves. It’s still not always easy to understand this distinction in practice and it helps me to think about who the worker is ‘working for’. If the worker is working for the client and possibly under the client’s management and control, they are almost certainly personally providing services to the client. If they are under the supplier’s management and control, they are likely to be working for the supplier and then personally involved in the provision of the service to the client. This may not be a failsafe test but it can provide a good start to identifying the nature of the services.

A second point is that, even if a worker personally providing services is not subject to PAYE/NIC because they are not subject to supervision, direction or control as to the manner in which they provide their services (the SDC test), they still need to be included in the quarterly return.

Businesses will no longer need to include workers who are their own employees. This will be a welcome change for employers who regularly second their employees to other group companies or clients.

However, professional partnerships beware! Should you second an equity partner to a client, the current rules require you to include the partner in quarterly returns. One interpretation of these would also result in the fees payable by the client to the partnership being subject to PAYE/NIC; an absurd outcome for partners receiving a profit share and one that surely cannot have been intended.

Another welcome change is that payment details are no longer required (although personal details still are) to the extent payments to a worker have been included in an RTI return by any other organisation. How a business satisfies itself that payments have been treated correctly by another organisation is something that will need to be addressed contractually, with appropriate warranties and indemnities if an omission results in liability of any kind.

No return appears necessary for any quarter where no more than one worker is supplied to a client. Similarly, personal service companies (PSCs) will not have to file returns unless they supply more than one person to their clients. An agency that engages workers through a PSC will still need to include details of the company on its return.

Given that workers can sometimes be supplied through a chain of more than one employment business, a question I have often been asked: how does the employment business know where it sits in the chain, whether it needs to report and, if so, how does it get the requisite information from businesses further down the chain? A combination of a common sense approach and contractual protection is necessary here. Again, appropriate warranties and indemnities should be included for more complex cases, but generally a business should know whether it is supplying a worker to an end client or to another employment business. Intermediaries at the top of a supply chain will also want to secure the contractual right to be supplied with the requisite information from intermediaries further down a supply chain.

I know of at least one agency (A) that supplies workers who, when not working for clients, can work for the agency (A), recruiting other candidates. Where those candidates are supplied by another agency (B), two outcomes are possible. At times, B will be supplying workers to work for A, and B will be the last agency in the chain required to report. However, at other times those workers will be supplied by A to clients and A will need to report. If B 'over-reports', technically that would be an incorrect return attracting penalties; but I would hope that HMRC would also take a common sense approach in such cases, concentrating on under-reporting rather than over-reporting.

Reports must be submitted online using HMRC's report template and will be subject to penalties for late or omitted reports at the rate of £250, £500 and £1,000 for the first, second and third or later offences respectively in any 12-month period. Penalties will become daily for persistent non-compliance and further penalties will apply for incorrect returns on a case-by-case basis.

Details of HMRC's personal and financial data requirements as noted in the latest guidance (subject to the final PAYE Regulations) can be found at here.