Simplifying the PAYE Settlement Agreement process

Employment Tax

01 December 2016

In addition to a new digital filing option and the removal of the requirement to prior agree items to be included in a PAYE Settlement Agreement (PSA), HMRC has proposed narrowing the scope of PSAs by removing the ‘minor’ category and, potentially, to also bring the filing date forward to 6 July. CIOT and ATT both responded to this consultation.

HMRC published a consultation in August 2016 on proposals to ‘simplify’ the process employers’ use for agreeing and reporting items to them through a PAYE Settlement Agreement (PSA).

These proposals included:

- Removing the requirement to agree the items in a PSA with HMRC;
- Introducing a digital PSA return process;
- Aligning the PSA payment date with the Class 1A NICs payment deadline;
- Removal of ‘minor’ from the PSA criteria; and
- New guidance on interpreting the ‘irregular’ and ‘impracticable’ categories.

In response, the CIOT expressed disappointment that the government is not considering whether to widen the scope of PSAs but is, instead, potentially proposing to narrow their scope. PSAs provide employers with the flexibility to pay tax and NICs on items that would be administratively difficult to process through PAYE or include on a P11D.

CIOT agreed that the government’s proposed new PSA process, which removes the requirement to agree the items in a PSA with HMRC in advance of making the PSA return, represents a real simplification but made the point that a process will still be required for employers to discuss with HMRC whether certain items can or cannot be

included in a PSA where this is not clear from published guidance. ATT also asked HMRC to consider introducing an advance assurance facility that could be used on a voluntary basis by employers needing further guidance on particular expense items.

ATT also agreed that the new proposals should provide significant simplification, especially as it will remove the differing treatment that can currently exist between the NIC and tax treatment depending on whether the benefit or expense is provided at a point in the year before or after a PSA has been agreed with HMRC.

CIOT agreed that giving a warning to employers where an item has been included in a PSA in error rather than immediately penalising the employer would be fair and proportionate. CIOT suggested that this encompasses all items wrongly included, for whatever reason, rather than just ‘good faith’ errors. Similarly, ATT commented that it would not want to see any employers being put into a penalty position because of a move away from clarifying the eligible PSA items upfront.

CIOT agreed that a digital return option for submitting the PSA return should be introduced, subject to consultation as to how this process would work and the retention of a paper process for those employers that are unable, for whatever reason, to file electronically.

ATT also agreed that a digital return could provide efficiencies and cost savings for both employers and HMRC. However, it also pointed out in its response that a large proportion of the 30,000 employers submitting PSAs (as identified by HMRC) are likely to have agents who prepare and administer the PSA on their behalf. Therefore, it will be extremely important that any new digital process is fully accessible for agents.

CIOT did not believe that the PSA return and payment deadlines should be aligned with that of the P11D process (that is a deadline of 6 July following the end of the tax year) as this would place too much of a burden on employers’ staff resources in too short a time frame. ATT commented that whilst it understood HMRC’s desire to streamline the number of deadlines employers must meet, and acknowledged that there will be some employers who do complete both the P11Ds and the PSA at the same time, there will be others for whom this will be a detrimental change. ATT suggested that further consultation should be undertaken to assess and understand the implications for all employers before any change is made.

CIOT and ATT both disagreed with the proposal to remove ‘minor’ benefits in kind (BIK) from the PSA criteria because of the new ‘trivial’ BIK exemption. There are items which are ‘minor’ which would not fall within the ‘trivial’ BIK exemption. For example, one of the conditions in the trivial BIKs exemption is that the benefit is not provided in recognition of ‘particular’ services. If it is then the BIK is taxable as it does not meet the requirements of the trivial BIK exemption.

While it would be helpful for HMRC to provide in guidance some principles and examples as to how ‘irregular’ should be interpreted we do not agree with the proposal to exclude all contractual items from the scope of the ‘irregular’ category. For example, removing all ‘contractual’ items from PSAs would potentially mean that items such as relocation costs, late night taxis and tax return preparation fees for international assignees would fall outside the scope of PSAs, as usually the employer will have agreed contractually to pay for such items.

CIOT considered that HMRC guidance on what is/is not considered to meet the ‘impracticable’ criteria would make it easier for employers to decide whether the criteria is satisfied. ATT added to their response that the definition of what meets the ‘impracticable’ criteria needs to be drawn more widely and only if this is done can any consideration be made for removing the ‘minor’ criteria. The example given was the cost of an annual staff function that falls outside of the usual exemption. If there is an attendance list then it is not ‘impracticable’ to divide that cost between the number of employees who attended. That cost per head, though, might only come to £30. Without the retention of the ‘minor’ category or a widening of the ‘impracticable’ criteria, the employer would not be able to include the costs of that function in a PSA and each employee who attended would have to be taxed on it. This would be detrimental to the employer-employee relationship and staff morale.

Both CIOT and ATT did not think that there should be an exception or cap in respect of office holders, nor that any new safeguards are needed to prevent abuse of PSAs.

Finally, CIOT highlighted the success of PSAs since they were introduced and recommend that the government builds on that success by widening, not narrowing, the scope of PSAs.

The government’s response is expected later this year.

The full CIOT response can be found on the CIOT website.

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