Draft FB 2015: employee benefits and expenses

Technical

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As part of the draft Finance Bill, the government published draft legislation in respect of four employee benefits and expenses consultations conducted during summer 2014. The ATT, the CIOT and LITRG have all responded.

Abolition of the £8,500 threshold and P9D

The changes included in the draft legislation will take effect from April 2016. The delay is welcome, as time is essential to enable effective communications with affected employers and employees. In addition, the time should allow HMRC to develop clear guidance.

Although we recognise the simplification that the abolition of the £8,500 and P9D will bring, LITRG are pleased that HMRC have taken on board its comments in respect of care and support workers and ministers of religion.

There will be a specific exemption from income tax and NICs for workers who are providing ‘personal care’ and receive reasonable board and lodging from their employer. This recognises the fact that care and support employers are ‘accidental’ employers, who have not chosen to employ someone but have been forced to in order to ensure they receive the care they need. Low-paid ministers of religion will, as now, be exempt from income tax in respect of certain benefits-in-kind; for benefits that are not exempt, the employer will provide a P11D rather than a P9D.

HMRC also confirmed their view that unpaid volunteers will not usually be engaged under a contract of employment and therefore these volunteers can continue to receive tax-free reimbursement of their out-of-pocket expenses. The CIOT has also asked HMRC whether the reimbursement of interns’ travel and other out-of-pocket expenses can be treated similarly.

Introduction of a statutory exemption for trivial benefits

The draft legislation introducing the exemption takes effect from April 2015. LITRG has welcomed the statutory exemption as drafted, describing it as principles-based, brief and objective. It should meet the main objective of assisting employers to identify trivial benefits. However, the CIOT is concerned that the requirement that the benefit 'is not provided in recognition of particular services' will mean that, for example, a bottle of wine to thank an employee for dealing with a particularly difficult complaint would be a taxable benefit-in-kind but a bottle for six months' hard work may not be. Guidance is urgently needed from HMRC on what they now view as taxable and non-taxable trivial benefits-in-kind.

We welcome the decision to include a monetary limit on the value of a trivial benefit (£50 including VAT), but not to introduce an annual cap. It is pleasing that HMRC have taken on board comments made by the ATT, CIOT and LITRG – for example, the exemption will apply to non-cash vouchers and the monetary limit will be able to be uprated by a negative resolution.

Introduction of an exemption for paid or reimbursed expenses

Although the draft legislation is contained in Finance Bill 2015, it will only take effect from April 2016. We welcome this delay because employers and employees will have more time to find out about the change and prepare for it, and for HMRC to consult on guidance. However, not all employees will benefit, in particular those who incur qualifying expenses that their employer does not reimburse. For these employees, we think it is essential that HMRC improve the process by which they can claim tax relief (currently, employees can use form P87, but not all are aware of this).

LITRG also calls on HMRC to provide guidance for employees who receive tax credits or welfare benefits so that the position in terms of qualifying expenses is clear (whether or not the employer reimburses them). The CIOT has also called on HMRC to clarify the position of existing custom-scale rate agreements.

Voluntary payrolling of benefits in kind

The draft legislation serves to introduce powers for HMRC to make regulations to authorise employers to deduct income tax through PAYE on benefits-in-kind. HMRC will need to develop and introduce regulations to provide a framework for voluntary

payrolling. This decision is welcome because it should ensure time for proper consultation.

LITRG has emphasised the need to avoid confusion for employees, particularly those who receive more than one benefit-in-kind, one payrolled and one not, or for those with more than one employment or changing jobs, who may find themselves subject to different treatment of similar benefits. Clear guidance for employees and employers will be essential. An addition, LITRG suggest that employee guidance should be comprehensive, covering the effects of income tax, NICs, tax credits, universal credit and welfare benefits.