Issue 354 ■ July (1) 2013

Simon's Tax Briefing

Tax Agent Strategy

Andrew Goodall reports on where this is going.

The May 2011 consultation document *Establishing the future relationship between the tax agent community and HMRC* recognised the contribution that tax agents make to the smooth running of the system. It noted that the OECD said tax advisers played "a vital role in all tax systems, helping their clients understand and comply with tax obligations".

HMRC sought to make engagement with all agents as easy as possible, so as to reduce costs for customers, agents and itself. The tax agent strategy would involve tailoring services for paid agents to reflect "compliance risks inherent in their client portfolio".

There could be value in firms being expected to meet a minimum level of competence and professional conduct, the consultation document said. More than 70% of practising tax agents had a recognised accountancy or tax qualification, but there was no requirement for tax agents to hold a formal qualification, to be a member of a professional body, or to work to a set level of competence in order to be recognised by HMRC.

A minority of agents "may knowingly or unknowingly fall below the high professional standards expected by the tax agent community", HMRC said. Two main areas were identified for development: *self-serve* and *understanding agent engagement*.

The self-serve model would enable agents to undertake certain transactions on behalf of a client, while the agent view would include the compliance performance of the agent's clients and enable HMRC to:

- target technical updates, support services and compliance campaigns; and
- monitor like-for-like performance of represented taxpayers, and assess the extent to which the agent strategy achieved its objective of minimising tax at risk.

Agent and client statistics

HMRC is now evaluating an initial pilot of the agent view, now known as: *agent and client statistics*, focusing on self-assessment filing and payment issues. The outcome will be discussed with representative bodies.

An HMRC spokesman said: "We want to explore how HMRC's agent support officers can best provide support and help those agents who may need it. A second pilot is being planned looking at the performance of agents who specialise in high-volume repayment work."

Rely on our members' work

The ICAEW has called on HMRC to make better use of its budget by placing more reliance on work performed by ICAEW member firms.

"This should enable HMRC to concentrate its scarce compliance resources on that segment of the agent population which poses a proportionately greater risk," the ICAEW said in response to an update on HMRC's tax agent strategy.

The high professional standards required by professional bodies provided "an extremely important and valuable foundation upon which the UK tax system is built and upon which HMRC should place reliance," it added.

A public consultation would be

CONTENTS

Tax Agent Strategy
Andrew Goodall reports
page 97

Cost of workers for R&D
David O'Keeffe explains the law
page 99

Newsfile
Finance Bill 2013
RTI relaxation extended
HMRC warns employers
Mehjoo case implications
Tax avoidance
Inspecting the inspectors
Consultations
HMRC publications
Payroll guidance
Regulations
International tax
page 101

Points of law
Accounting standards manipulation
Grand prix trip not deductible
No NICs for overseas service
Back-dated class 2 NICs allowed
PAYE not applied
Civil service pension taxed in UK
page 103

launched during summer 2013, addressing "the question of standards and oversight of the profession".

Professionalism

HMRC said in December 2011 that many respondents to the consultation were concerned that the agent view was "a means to monitor more closely paid agents' performance in the first step towards regulation". Strong views were expressed, HMRC said, for and against a requirement for all tax agents to hold a tax qualification.

There was broad agreement that qualifications alone would not guarantee improved standards and that "HMRC must recognise the many competent agents who are qualified by experience".

HMRC's plans include recognising agents' professionalism, the department said in response to the ICAEW submission: "We aim to continue concentrating resources on the areas of greatest tax risk. There is no robust evidence from which conclusions can be drawn about the risks posed by agents who are or are not affiliated to a professional body."

The ICAEW had suggested that HMRC should concentrate its resources on monitoring tax agents who pose the greatest risk: "In particular this sector will include the 30% of agents who are not members of a professional body."

Peter Saxton, a London-based sole practitioner, told STB: "It isn't a good idea to rely on work solely because of qualification. There is so much more that determines whether the quality of work can be relied on. Some unqualified accountants have a lot of experience whereas others are less experienced and their work may not be of such a high standard. Qualified accountants may be more likely to have a higher standard of work, but they will quite often use inexperienced accountants to do the detailed work, and I'm not sure that the review process would always be adequate."

Paul Aplin, chairman of the ICAEW Tax Faculty technical committee, told STB that it was not just a question of examinations:

> *"It seems to me that there is a distinction to be made between those who are obliged to keep themselves technically up-to-date, carry professional indemnity insurance, comply with the guidance set out in* Professional Conduct in Relation to Taxation*, and be subject to disciplinary procedures if they fall short of the highest standards, and those who do none of these things."*

He added: "All of the professional bodies I have spoken to feel that these factors, as well as the fact that members have passed rigorous examinations, should figure in HMRC's risk analysis. A solicitor would be subject to similarly rigorous requirements."

Asked whether there was a risk that a new approach might penalise non-qualified tax agents, putting their clients at greater risk of investigation, Aplin said: "We are not saying that those who are not qualified are bad advisers. There are many highly competent advisers who are not members of a professional body. What we are saying is that those who commit to operating within a very strict professional framework should be given credit for that."

HMRC service delivery

HMRC acknowledged in the May 2011 consultation that in some areas its own performance had not been good enough. The leading professional bodies said an improvement in HMRC's own service standards was essential.

Provisional figures released in May 2013 suggest that HMRC customer service standards are now at their highest levels since 2005. HMRC's record on call handling and dealing with post had been a source of particular concern, but between October 2012 and March 2013 it handled more than 90% of call attempts, achieving some of the best monthly figures since 2009. The department achieved its target for the full year 2012/13, handling 75.2% of all call attempts.

HMRC also recorded its best ever performance in dealing with post. In 2012/13 it cleared 85% of post within 15 working days, against a target of 80%. "We are on track to clear 97% of post in 40 days, exceeding our 95% target," HMRC said.

The ICAEW Tax Faculty welcomed HMRC's progress in a number of areas, in particular a significant reduction in the number of penalties issued for late filed P35s and a significant redeployment of resource into call centres. **STB**

Joint Initiative on HMRC Service Delivery: May 2013 update

HMRC said it had made measurable improvements, but there was still a lot to do. Its customer charter recognised that taxpayers and agents should expect the cost of dealing with HMRC to be as low as possible.

Lin Homer, HMRC's chief executive, said both agents and HMRC staff had benefited from hearing first-hand about each other's experiences during visits and workshops.

The department said it was now focusing on further improvements, and on defining agreed service standards, in post and call handling. "Attention is also turning to getting things right first time and to the quality of HMRC's responses to customers' queries."

HMRC said the joint initiative had delivered:

- A better process for end of year P35 returns, aimed at reducing the number and size of penalties issued. This involved an extra reminder, employers being told sooner that returns were late, and better on-screen messages for employers.
- Publication of contact centre performance figures.
- Improved performance in contact centres, thanks to an additional investment of £34 million and more flexible deployment of staff.
- An email pilot to test the scope for wider electronic communication with HMRC.
- Better service and guidance for those dealing with HMRC after a bereavement.
- Better post handling procedures and advice on how to contact HMRC.
- For pensioners, better flow of information between the DWP and HMRC, and automatic issue of PAYE codes when state and occupational pensions are first paid.
- Improved processes for repayments, including a trial enabling some R40 cases to be filed electronically.
- Agreed improvements to debt management, to be implemented in summer/autumn 2013.

Andrew Goodall

Andrew Goodall is a freelance tax writer and journalist: acgoodall@me.com

Externally provided workers for R&D

David O'Keeffe explains the changes.

Employees or EPWs

When the research and development relief (R&D) legislation was introduced in April 2000, relief was only available for the qualifying costs of the claimant's own employees who carried out in-house R&D projects. This was fine in a lot of cases but many claimants soon discovered that they didn't have as much eligible expenditure as they had anticipated, as the individuals undertaking the R&D activity were third party workers. They were working side by side with the company's own staff on the R&D but they were not actually employees of the company.

The government recognised that this was not particularly satisfactory and FA 2003 introduced legislation to permit the costs of "externally provided workers" (EPWs) to be included in the claim. EPWs are essentially individuals who are not employees of the claimant company and are provided to that company via a third party. The classic example would be agency workers supplied on an as-needs basis.

Policy objective

The explanatory notes to the 2003 Finance Bill indicated that the intention of the new EPW rules was to ensure that:

> *"credit is given for staff working alongside one another on an essentially similar basis, regardless of how they are paid."*

You may think this should be a fairly straightforward outcome to achieve. What we actually ended up with was six sections of legislation that, unfortunately, failed to deliver the policy objective. It also took several years of lobbying to finally get the amendments that were needed to rectify that situation.

The operation of the legislation as originally enacted can be summarised (very broadly) as follows: a claimant company makes a payment (defined by the legislation as a "staff provision payment") to a third party (defined as the "staff provider") in respect of the supply to the company of the services of the individual worker (the EPW). One of several conditions was that the services of the individual had to be provided to the claimant under the terms of a contract between the individual and the staff provider. Thus, we had what came to be referred to as the 'tripartite arrangement'.

The practical problem with the legislation as originally enacted is best highlighted with a couple of examples.

Example 1: Group contracting company

Company A, which is undertaking R&D, is a member of a group. The group has a group contracting company (B), which enters into all contracts with external suppliers to the group. A needs specialist contractors to help with its R&D project, so it approaches B and asks it to source the contractors from a third party agency. B enters into the supply agreement with the agency, pays the fees and then recharges the cost to A.

The claimant company (A) makes a payment to B (the recharged costs) for the provision of the workers; B is, therefore, defined as the staff provider by the legislation. However, the services of the individual worker are being provided to A under the terms of a contract between that individual and the agency, not the staff provider (B in this example) as required by the legislation. There are four parties to the arrangement, not the required three and the claimant will not be able to include the cost of the EPWs in its claim for R&D relief.

Example 2: Personal service companies (PSC)

The claimant company (X) makes a payment to an agency (Y) for the provision of the services of an individual worker (Z). Z engages with the agency through a PSC (Z Ltd). In this case the individual's services are supplied to the claimant (X) under the terms of a contract between the PSC and the staff provider (or, possibly, between the individual and the PSC). Either way, the requirement, that the contract be between the individual and the staff provider, is not met.

This was, in my opinion, a significant failing of the legislation.

In my experience, examples 1 or 2 are not unusual. Indeed, I believe that it is quite common for agencies to insist that workers operate through PSCs (or an umbrella company). Many potential claimants who thought that they would be able to benefit from the EPW legislation found that their claims were being restricted because they did not have a tripartite arrangement. They could not include the costs of many of the people "working alongside [their own staff] on an essentially similar basis". This was, in my opinion, a significant failing of the legislation.

Key changes

In FA 2012, changes were made that corrected this defect for expenditure incurred on or after 1 April 2012.

The key change is that the requirement that the services of the individual worker be provided to

the claimant under the terms of a contract between the worker and the staff provider has been removed. The legislation now requires that the services are provided under the terms of a contract between "the worker and a person other than [the claimant]" (CTA 2009, s 1128 (7) as amended). This other person is then defined by that same subsection as a "staff controller".

If we look at the changes in the context of the previous examples, we can see how they have significantly improved the effectiveness of the EPW rules.

Example 3

The facts are as in example 1. The group contracting company will still be the staff provider as it is the one to whom A makes the payment for the provision of the workers; however, under the amended CTA 2009, s 1128 (7) the agency will be defined as the staff controller. The services of the worker will be provided to A under the terms of a contract between the worker and the staff controller (which is a person other than the claimant). Thus, subject to the other requirements being met, A will now be able to include the relevant cost of the workers in its R&D claim.

Example 4

The facts are as in example 2. In this example, Z Ltd will be the staff controller and the services of Z will be provided to X under the terms of a contract between Z and Z Ltd. Again, subject to the other requirements of the legislation being met, X will be able to include the relevant cost of the worker in its R&D claim.

It is important to note that these changes have not simply added another party to the equation; we haven't gone from needing a tripartite arrangement to needing a quadripartite one. The staff provider and the staff controller could be the same person. Indeed, there could even be multiple staff controllers (although there can only be one staff provider in any arrangement).

Example 5

Assume that the worker in example 3 decides to start operating through a personal service company (still using the agency). We now have five parties in the arrangement, with the new personal service company being the staff controller. Subject to the other conditions of the legislation being met, A will still be able to include the relevant cost of using the worker in its R&D claim.

Limits on EPW costs

How much qualifying expenditure in respect of EPWs can the claimant include in its R&D claim?

The rule in CTA 2009, s 1129 applies if the claimant, the staff provider and (if different) the staff controller (or controllers) are all connected and all of the staff provision payment and all of the relevant expenditure of the staff controller(s) have been brought into account (in accordance with GAAP) in determining the profits of the appropriate company. In such a case, the claimant's qualifying expenditure on EPWs is given by CTA 2009, s 1129 (2) as the lower of:

There must still be at least three parties in any EPW arrangement.

- the entire staff provision payment; and
- the aggregate of the relevant expenditure of each staff controller.

The "relevant expenditure" in this context is defined by CTA 2009 s 1129(3) and is essentially the staff costs or agency workers' remuneration incurred by the appropriate company in providing the EPWs.

Where the staff provider and (if different) the staff controller (or controllers) are not all connected, CTA 2009, s 1130 provides that the companies may jointly elect for the CTA 2009, s 1129 to apply. Beware, however, as such an election is irrevocable and means that the claimant will be dependent upon the other parties providing details of their relevant expenditure for the duration of the arrangement.

In all other cases, CTA 2009, s 1131 provides that the qualifying expenditure on EPWs is 65% of the staff provision payment.

At least three

In terms of numbers, it is important to remember that, even with the FA 2012 changes, there must still be at least three parties in any EPW arrangement: the claimant, the staff provider and the individual worker. There can now be more than three (with the addition of one or more staff controllers), but there cannot be fewer than three. If you have a scenario with only a claimant company and a self-employed individual contractor, then you do not have an EPW arrangement. At best you might (subject to the facts) have a subcontract arrangement, at worst you have expenditure that cannot be included in the R&D claim.

The changes in FA 2012 are extremely welcome and, from 1 April 2012, will make it much easier to include the relevant costs of using EPWs in an R&D claim. Given the preference of so many businesses to balance resource needs with external workers, rather than increasing/decreasing its own headcount, this is a very important change.

Finally, it is worth noting that HMRC have not yet amended the relevant pages of the *Corporate Intangibles Research and Development Manual* dealing with EPWs to reflect the FA 2012 changes. **STB**

David O'Keeffe

David O'Keeffe is a specialist R&D tax relief adviser, trading as Aiglon Consulting. tel: 07703 472569 email: djokeeffe@aiglonconsulting.com

newsfile

Finance Bill 2013

New clause 4 'Contribution allowances: plant and machinery' was added to the Finance Bill. Government amendments in the following areas were passed:

- cl 54 & Sch 22: employee shareholder shares;
- sch 28: close companies;
- cl 192: SDLT: pre-completion transactions: existing cases;
- cl 219: international agreements to improve tax compliance;
- sch 39: stamp duty land tax on leases;
- sch 42: trusts with vulnerable beneficiary;
- sch 43: statutory residence test; and
- sch 44: ordinary residence.

Clauses 91 to 172 concerning the annual tax on enveloped dwellings (ATED) had 20 separate government amendments. In particular, the exclusions from the charge have been widened for charitable companies and for interests held by connected persons. All the government amendments and the remainder of the ATED provisions, including the CGT charge in schedule 24, were passed without amendment.

All other clauses and schedules to the Finance Bill were passed without amendment by the Public Bill committee.

RTI relaxation extended

The temporary relaxation of RTI reporting requirements for small employers (see STB348) has been extended to 5 April 2014. Employers with fewer than 50 employers who pay staff weekly, or more frequently, but who run their payroll once a month, can submit their FPS at the time of the payroll run. However, this must reach HMRC by the end of the tax month (5th). This avoids the strict requirement to report on or before every payment to employees.

Colin Ben-Nathan, chairman of the CIOT's Employment Taxes Sub-Committee, commented: "This extension of the relaxation to April 2014 is very sensible. It will provide more time for the necessary research into whether permanent changes need to be made to the RTI process to take account of the needs of the smallest employers. The CIOT is keen to work with HMRC on this to ensure that unnecessary costs are not imposed on these employers."

HMRC figures show that one in six payments under RTI has been reported using the current relaxation. In addition, by 12 June 2013, 23% of the smallest employers had not yet submitted any reports under RTI. HMRC has reiterated that all employers must plan to make RTI reports on or before each payment day from 6 April 2014.

HMRC warns employers

HMRC is writing to SME employers saying they have already missed a deadline for reporting under RTI, where that employer has not submitted any RTI reports for 2013/14. However, if the PAYE scheme is no longer operating, or no one has been paid in 2013/14, an RTI reporting deadline has not technically been missed.

HMRC would like to receive an EPS for every month for which a payment has not been made, but that is not a legal requirement. Penalties for late RTI submissions within the tax year will not be applied until 2014/15. However, if HMRC does not receive an EPS, it may send the employer an estimated demand for PAYE based on a proportion of the previous year's liability.

Mehjoo case implications

The High Court case *Hossein Mehjoo v Harben Barker Ltd* [2013] EWHC 1500 has been reported in the main-stream press as imposing a duty on accountants to advise their clients on tax schemes. However, this is a simplification of the 66,000 word judgment.

The client (Mehjoo) claimed damages from his former accountants (Harben Barker) for not giving him appropriate advice to avoid CGT on the sale of his business. Mr Mehjoo was almost certainly not domiciled in the UK, but the accountants did not provide advice tailored to his non-dom status. The judge ruled that the accountants should have reasonably advised him to take specialist advice. The accountants are appealing the judgment.

The ICAEW has advised members that this case does not change how they should advise clients about tax planning. Accountants should clearly establish what tax advice will be provided by the firm, and avoid creating an impression that the firm will provide the client with comprehensive tax advice when it will not. Members are also urged to be aware of circumstances in which they should seek a second opinion or more specialised advice, and always ensure that non-domiciled clients receive appropriate tax advice at an early stage.

The Mehjoo case related to transactions in 2004/05, but tax legislation has developed since then. There are now a number of targeted and specific anti-avoidance rules, and the general anti-abuse rule (GAAR) comes into effect in July 2013. The ICAEW produced a helpsheet for members in July 2012 *Aggressive tax avoidance schemes – what you need to bear in mind which can be read* here: www.lexisurl.com/aggtax

Tax avoidance

HMRC has highlighted a tax avoidance scheme called 'Project 2010' on its spotlights page. This scheme exploits the Gift Aid rules, where money gifted by taxpayers takes a circular journey resulting in no effective gift. This scheme was previously highlighted in March 2010, but it is apparently still in use.

Inspecting the inspectors

Her Majesty's Inspectorate of Constabulary (HMIC) has reported on how HMRC complies with its legal obligations under the Criminal Procedures and Investigations Act 1996. There are seven urgent recommendations including:

- in some cases HMRC officers are not following the requirement of their Enforcement Handbook and are adopting their own different procedures for recording and revealing unused material, thereby jeopardising prosecutions and potentially wasting public funds; and
- refresher course training was required for disclosure officers to ensure their knowledge is up to date.

newsfile

Consultations

Pensions

The lifetime allowance is to be cut from £1.5 million to £1.25 million from 6 April 2014. This consultation looks at the detail and implementation of a regime to provide individual lifetime allowance protection at a higher level. Comments are requested by 2 September 2013.

CASCs

HMRC is holding a number of meetings to discuss the proposed amendments to the qualifying conditions for community amateur sport clubs (CASCs). The consultation closes on 12 August 2013.

Health-related interventions

A new health and work assessment advisory service is to commence in 2014, to provide advice to employers on how long-term sick employees can return to work. Where this service recommends a treatment or therapy to help an employee return to work, the employer will receive tax relief for the cost of that health intervention for up to £500 per employee per tax year. Comments on this proposal are requested by 16 August 2013.

HMRC publications

Trail commission

Following R&C brief 04/13 which requires tax to be deducted from payments of trail commission from 6 April 2013 (see STB348), HMRC has issued seven further pages of guidance. This is directed at life insurance companies and IFAs and includes some complicated diagrams to illustrate the flow of funds between the parties.

Helpline numbers

The HMRC helplines in the box below have been changed to 0300 numbers. The previous 0845 numbers will continue to work for about 18 months.

Toolkits

The following HMRC toolkits have been updated for the 2012/13 tax year:

- Business profits; and
- Capital v Revenue.

Consolidated tax voucher

The generic template for the consolidated tax vouchers used by investment funds and their custodians or platforms has been revised to allow for entries to be made where investments are held by more than a single investor.

Indexation Allowance

Tables of indexation allowance factors to be used for disposals by companies in March and April 2013 have been published on the HMRC website. The RPI for March 2013 stood at 248.7, and for April 2013 it was 249.5.

Machine Games Duty

A technical problem has meant some valid machine games duty (MGD) returns have been rejected by the HMRC online system, resulting in assessment of duty notices being issued. Taxpayers who have sent in their MGD returns should ignore any MGD assessments received.

Helpline numbers

National Insurance enquiries for individuals	0300 200 3500
National Insurance registrations	0300 200 3502
National Insurance deficiency enquiries	0300 200 3503
Newly Self-Employed Helpline	0300 200 3504
National Insurance enquiries for the self-employed	0300 200 3505
National insurance enquiries for non-UK residents	0300 200 3506
Contracted Out Pensions enquiries	0300 200 3507
Income Tax enquiries for individuals	0300 200 3300
Agent Dedicated Line	0300 200 3311
Tax back on bank and building society interest:	0300 200 3312
The National Claims Office	0300 200 3313
Self Assessment textphone service	0300 200 3319

Payroll guidance

Expenses and benefits reporting

Employers with fewer than 250 employees can now submit the annual returns of expenses and benefits (forms P11D and P9D) using a free online service provided by HMRC. The form P11D(b) to report class 1A NIC due can also be submitted in this way. Employers who previously used the HMRC software PAYE Basic Tools to submit forms P11D need to use this new online method, as PAYE Basic Tools does not include the P11D facility for 2012/13 or later years.

Employers who submit paper forms P11D and P9D are asked to send them to: HMRC (NIC&EO), Room BP2101, Lindisfarne House, Benton Park View, Longbenton, Newcastle upon Tyne, NE98 1ZZ

If employee's expense claims under ITEPA 2003, s 336 are submitted with forms P11D by the employer on behalf of the employees, both the section 336 claim and P11D should be submitted together to the NIC&E office above. If the section 336 claim is submitted separately it should be sent to:
HMRC, Pay As You Earn, PO Box 1970, Liverpool, L75 1WX

PAYE Basic Tools

Another edition of the PAYE Basic Tools software has been released (no. 13.1.13137). This version fixes some minor issues.

Incorrect 2012/13 returns

Employers who have used two payroll products from a certain (unnamed) software provider have incurred penalties for non-submission of a P35 for 2012/13. The confusion has arisen where the PAYE scheme was not in the RTI pilot for 2012/13, but RTI-compliant software was used to make the end of year return for 2012/13.

The software provider concerned will advise its customers how to make the correct end of year return (P35) for

points of law

Fidex Ltd v HMRC (No 2) TC2626

Accounting standards manipulation

Fidex Ltd has a 31 December year end. On 22 December 2004 it issued preference shares to Swiss Re, which were referenced to particular bonds owned by the company. Those bonds were relevant assets under the loan relationship rules and were recorded at their full value in the company's balance sheet. From 2005 Fidex changed its accounting practice from UK GAAP to the international financial reporting standards (IFRS). Following this change the preference shares were classified as liabilities for Fidex Ltd, and 95% of the value of the associated bonds was also de-recognised. This change in accounting treatment generated a debit of €83,849,399 to be deducted in its 2005 accounts.

HMRC rejected the claim on two grounds, firstly that the accounting under UK GAAP was incorrect to recognise the value of the preference shares and the bonds, and secondly that the debit should not be brought into account in 2005 as it was attributable to an 'unallowable purpose', within what is now CTA 2009, s 441.

The First-tier Tribunal allowed Fidex's appeal. Judge Walters held that the transactions which Fidex had undertaken in December 2004 had a 'tax avoidance purpose' within s 441, since 'it was the main purpose, or one of the main purposes of these actions for (Fidex) to secure a tax advantage'. However, he held that Fidex did achieve its tax avoidance purpose in 2004, and at no time during its 2005 accounting period did Fidex have an 'unallowable purpose' to which any part of the debit could be attributed.

Aeroassistance Logistics Ltd v HMRC TC2628

Grand prix trip not deductible

A UK company invited some of its clients to attend a powerboat grand prix in Tunisia. It claimed a deduction for the cost of this. HMRC issued an assessment

2012/13. If this was submitted by 25 June 2013, HMRC will cancel the late filing penalty.

Late filing penalties

Employers who took part in the RTI pilot for 2012/13 are to be treated equally with employers who did not, with regard to penalties for late filing of end of year returns. HMRC is sending warning letters to all employers who have not completed the 2012/13 end of year PAYE returns.

All 2012/13 late filing penalties will apply from 20 May 2013, although the RTI submissions (EPS or FPS) had to be submitted by 19 April 2013. Where the April filing date was missed, employers could submit an earlier year update (EYU) by 19 May 2013.

Annual schemes

If a PAYE scheme is registered as an annual scheme it should only submit full payment summaries (FPS) for the single month in the tax year in which payments are made. Several FPSs may be submitted for that month if all the payment dates are within the same tax month.

HMRC has received a number of FPSs from annual PAYE schemes for months in which the annual payment was not made. If FPSs are received for two or more months in the tax year, HMRC will automatically cancel the annual status of the PAYE scheme.

If you want to change the payment month for your annual PAYE scheme to an earlier month, submit the FPS for the earlier month, and make no further RTI submissions for other months.

If you want to change the payment month to a later month in the tax year, submit an EPS for the month in which HMRC expected a payment to be made, and submit an FPS for the actual payment month.

Regulations

Collective investment schemes

The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (SI 2013/1388) provide for the formation of a new class of collective investment scheme as defined by the Financial Services and Markets Act 2000, s 235. Regulations (SI 2103/1400) define the capital gains treatment of investors in collective investment schemes. These regulations came into effect on 8 June 2013.

Offshore funds

The Offshore Funds (Tax) (Amendment No. 2) Regulations 2013 (SI 2013/1411) make provision for the tax treatment of participants in offshore funds. The regulations came into effect from 28 June 2013. The list of reporting offshore funds has been updated for funds that entered the reporting fund regime as at 13 June 2013.

International tax

UK/ Netherlands agreement

A protocol to the double taxation convention of 2008, between the UK and the Netherlands, was signed on 12 June 2013. In addition, a new double taxation agreement concerning bank taxes was signed by these two countries.

DTA plans

In the next year HMRC plan to negotiate new double taxation agreements (DTAs) and protocols with: Bulgaria, Sweden, Tajikistan and Tanzania. In addition, negotiations will continue on improving DTAs with Austria, Belgium, Canada, Croatia, Germany, Iceland, Japan, Kosovo, Malawi, Panama, Portugal, Russia, Senegal, Thailand, Turkmenistan, the USA and Zambia.

Tax Transparency

The UK crown dependencies and overseas territories have agreed to join the *multilateral convention on mutual administrative assistance in tax matters*, which is the OECD's favoured instrument for sharing tax information across borders.

The Jersey government has issued an action plan to prevent the misuse of legal persons and legal arrangements. This adds to its existing transparency arrangements on beneficial ownership and systems for tackling tax evasion and fraud.

points of law

disallowing the claim on the basis that the expenditure constituted 'business entertainment'. The First-tier Tribunal dismissed the company's appeal against the assessment.

JA Garland v HMRC [2013] UKUT 471(TCC)

No NICs for overseas service

Mr Garland was born in Dublin in 1928. He moved to the UK in December 1948 and paid UK NICs from January 1949 until July 1950. He then worked in the Kenyan Police Force for 13 years, and subsequently lived in various countries including the Irish Republic.

In January 2009 he was allowed to pay backdated UK voluntary Class 3 NICs for 1984/85 to 1992/93 (the years in which he had lived in the Irish Republic), thus qualifying for a reduced UK pension. He lodged an appeal to the First-Tier Tribunal, contending that he should also be allowed to pay such contributions for the time he had spent in Kenya.

The First-tier Tribunal rejected this contention and dismissed his appeal, holding that Garland was not entitled to pay contributions for this period, because he had not met the requirements of the National Insurance (Residents & Persons Abroad) Regulations 1948 (SI 1948/1275), reg 5(2). The Upper Tribunal upheld this decision.

Dr J Schonfield v HMRC TC2658

Back-dated class 2 NICs allowed

Dr Schonfield commenced self-employment on 1 December 1986. He engaged an accountant who informed the Inland Revenue of the new self-employment but did not inform DHSS that Schonfield was liable to pay class 2 NICs. Schonfield realised in early 2010 that he should have paid class 2 NICs and applied to make a payment of back-dated contributions to enable him to qualify for a full State pension. HMRC accepted his application for 2003/04 onwards, but rejected his application for 1986/87 to 2002/03 on the grounds that his failure to pay contributions at the appropriate time was attributable to a failure to exercise 'due care and diligence'.

Schonfield appealed, contending that he had been misled by his accountant. The First-tier Tribunal accepted this contention and allowed the appeal. Judge Radford found that Schonfield had 'exercised due care and diligence by appointing an accountant to deal with all matters which arose in connection with his self-employment'.

Mr & Mrs Brown v HMRC TC2636

PAYE not applied

Mr and Mrs Brown ran the Gamekeeper Inn from 2003/04 and employed a number of part-time and student bar workers. Unfortunately they did not realised they had to complete forms P46 or P38S, to establish each worker's prior earnings in order to apply PAYE appropriately. The Browns paid all their part-time staff without deducting tax or NICs, on the assumption that the pay was well below the level at which any tax or NICs were due.

When HMRC discovered this in 2010 it requested that P46 forms should be completed, but many of the former staff could not be contacted. HMRC estimated that half the employees would have been due to pay tax, so issued determinations for tax due at the basic rate plus interest and penalties for the non-submission of end of year PAYE returns.

The First-tier Tribunal upheld the determinations in principle but reduced them in amount, finding that some of the employees had not been liable to tax. The penalties were discharged on the basis that the Browns had relied on their accountant's advice not to open a PAYE scheme, and thus had a reasonable excuse.

K Percival v HMRC TC2654

Civil service pension taxed in UK

Mr Percival is a British national who worked for the Inland Revenue for many years. In 2004 he became resident in the Irish Republic. His civil service pension is taxed in the UK, by virtue of article 18(2) of the Double Taxation Agreement (DTA) between the UK and the Irish Republic, but his private pension and savings are taxed in Ireland and not in the UK, under the same agreement.

Percival challenged the taxation of his civil service pension, and appealed to the First-tier Tribunal, contending that article 18(2) of the DTA was unfairly discriminatory, that this contravened EU law, and that his liability to UK tax should be restricted to the tax that would have been borne by an Irish citizen in his circumstances. The tribunal rejected these contentions and dismissed his appeal.

Judge Gammie observed that there was no double taxation, and that 'a Member State is not in breach of its Treaty obligations because it taxes differently and less favourably than some other Member State'.

Editor: Rebecca Cave
Production: Heather Pearton

Published twice monthly by LexisNexis, Halsbury House, 35 Chancery Lane, London, WC2A 1EL.

Telephone: 020 7400 2500
Fax: 020 7400 2842
Email: Rebecca@taxwriter.co.uk

© Reed Elsevier (UK) Limited 2013
ISSN 1468-9014

This publication is intended to be a general guide and cannot be a substitute for professional advice. Neither the authors nor the publisher accept any responsibility for loss occasioned to any person acting or refraining from acting as a result of material contained in this publication.

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the prior permission in writing of the publishers. Printed and bound in Great Britain by Hobbs the Printers Ltd, Totton, Hampshire.