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Simon's Tax Briefing

Expatriate tax and NIC update

Amanda Sullivan reports on the issues discussed at the July 2013 meeting of the Joint Forum on Expatriate Tax and NIC.

New form P85

A new version of UK departure form P85 includes boxes that indicate that the individual will be working abroad for a UK employer and is expected to be either not resident, or resident and entitled to split year residence treatment on the basis of working sufficient hours overseas. If Box 11 shows that the individual is UK-resident, additional entries in Boxes 12–16 must be made to show that the employee is expected to meet the conditions for split year treatment (in particular, that their UK days in the part-year following UK departure are within the limits in FA 2013, Sch 45, para 44(8)).

NT codes

A PAYE no tax code (code NT) should be issued by HMRC within 15 days of receipt of form P85. In future, where an NT code request is denied by HMRC after processing form P85, this will be notified to the employee and to any agent for which HMRC holds a 64-8 authority.

Employers can apply the NT code to all payments made from the date notified by HMRC, including any earnings that relate to the pre-assignment period. Alternatively, payroll can operate two entries for the employee in the tax years that their assignment starts and ends, to accurately allocate earnings to the UK and non-UK residence periods and use the appropriate tax codes for these periods.

In future, where an NT code request is denied by HMRC after processing form P85, this will be notified.

NT code applications for UK employees assigned abroad should be sent to HMRC PAYE, PO Box 1970, Liverpool, L75 1WX. Those for expatriates dealt with by the Expatriate Team (expatriates leaving at the end of a UK assignment) go to HMRC PTI, Operations SO733, PO Box 203, Bootle, L69 9AP. The letter accompanying the P85 should include:

- a request for an NT tax code;
- the anticipated duration of the overseas assignment, if known;
- details of any UK employer paying earnings or responsible for PAYE;
- the PAYE scheme reference for the payroll in which the employee will be included during their assignment;
- whether the employer will continue to account for NIC; and
- the basis of the request, where the employee is not expected to be non-resident or to work sufficient hours overseas.

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Employers using PAYE tax code NT for a short period between the start of an overseas assignment and the receipt of HMRC's code notification do so at their own risk. However, in this situation penalties will not apply to an incorrect RTI submission where the NT code letter authorises the operation of the code from a date which covers the period for which the employer operated the NT code unilaterally. The HMRC computer system does not produce a report when an incorrect code is used by the employer under RTI, therefore this is only likely to be picked up in a PAYE audit.

Residence from 6 April 2013

The priority rules for the split-year residence cases that apply for 2013/14 onwards are set out in FA 2013, Sch 45, paras 54–55. HMRC's view is that these rules make it impossible to split a tax year more than once.

HMRC has confirmed that where an individual meets the conditions of both split year case 5 (starting full-time work in the UK) and case 6 (ceasing full-time work overseas) in a particular tax year, split year case 7 (the partner of someone ceasing full-time work overseas) can apply to their accompanying spouse or partner even where the priority rules mean that the individual's split year is determined under case 5.

New guidance

The HMRC guidance in RDR3: *Guidance Note: Statutory Residence Test* (SRT) released in May 2013, was issued before the final version of the FA 2013 legislation was published. This guidance and the RDR4 guidance on overseas workday relief will be updated and re-issued later in 2013. HMRC is working on a replacement to leaflet HMRC6, which will be called RDR1, and updates to its *Residence, Domicile and Remittance Basis Manual* which will reflect the FA 2013 changes.

The HMRC online tax residence indicator (TRI) for determining residence from 6 April 2013 is likely to be launched as a final version in September 2013. In the meantime, HMRC has indicated that it will not be bound by the output of the current, pilot version of the TRI. Once the final TRI is available, if it gives a wrong answer HMRC will usually be bound by this (subject to the full facts being correctly entered into the TRI and any differences in the interpretation of grey areas).

HMRC has indicated that it will not be bound by the output of the current, pilot version of the tax residence indicator.

Overseas workday relief

In determining the amounts assessable under ITEPA 2003, ss 15 (arising basis earnings for UK duties) and 26 (remittance basis earnings for non-UK duties) from 6 April 2013, the employee's earnings must be apportioned between on a "just and reasonable" basis (ITEPA 2003, s 41ZA). HMRC has confirmed that this involves no change to the approach for apportioning earnings that it applied up to 2012/13. Normally this will involve a working day calculation based on the individual employee's employment contract and their UK and foreign workdays in the tax year.

UK days for the apportionment of earnings are not based on the definitions of days and work that apply for the Statutory Residence Test (SRT). Instead, the following HMRC apportionment practices continue to operate after 5 April 2013:

(1) The pragmatic "rule of thumb" in the HMRC *Employment Income Manual* at EIM77020 for determining the extent to which the individual has performed duties in the UK or abroad during international travel days.
(2) The practice of counting half work days as such. HMRC has indicated that it does not think that a day on which an individual does, say, 3.5 hours of work is necessarily a full workday either in the UK or abroad for the purposes of apportioning earnings.
(3) Treating a day on which a UK-based individual travels to a foreign business meeting that lasts most of the day and uses early morning and late evening flights to return to the UK on the same day as a non-UK workday. This is in direct contrast with the SRT rules which would make this a UK workday if the individual spent more than three hours on UK travel that qualified for a business expense deduction.

HMRC has emphasised that any approach adopted in apportioning an employee's earnings must be used consistently for all tax years.

Mixed earnings accounts

The special rules for dealing with remittances from a mixed fund of earnings held in a qualifying account changed from 6 April 2013 (ITA 2007, ss 809RA–809RD). On 26 June 2013 HMRC released Frequently Asked Questions (FAQs) on this subject.

HMRC has confirmed that a qualifying account can be used from one tax year to the next (see FAQ10). However, the account nomination date is the date when mixed ITEPA 2003, s 15 arising basis earnings for UK duties and s 26 remittance basis earnings for non-UK duties are first paid into the account. This means that an account previously used as a qualifying account which later ceases to be one, cannot be a qualifying account in the future (see FAQ5 and FAQ10). HMRC has agreed to consider the practical problems that this rule will present for expatriate employees.

Remittances from a qualifying account will be treated as made from s 15 UK earnings in priority to s 26 non-UK earnings (see FAQ25). How this operates for a split payroll arrangement will be covered in future guidance, based on HMRC's interpretation of the legislation. This interpretation is that a mixed fund exists when earnings are allocated by the employer to the employee for the transfer of funds. In a split payroll situation, a qualifying s 809RB account and a non-qualifying account will both hold a mixture of UK and non-UK earnings for the tax year. A UK remittance from the qualifying account will be made from UK earnings in preference to non-UK earnings, until the UK earnings are exhausted.

The HMRC guidance on qualifying special mixed earnings accounts will be integrated into the HMRC *Residence, Domicile and Remittance Basis Manual* later in 2013. **STB**

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RTI: the specified charge

Kate Upcraft explains what this is and how it arises.

What is it?

A "specified charge" is raised when HMRC decides an employer has forgotten to submit an RTI return for a month, so estimates the PAYE it believes the employer owes. In this article I explore how this happens and what to do if you or your client finds a specified charge has been applied. For "employer" in this article please also read pension or annuity provider. "Scheme" means PAYE scheme in all cases.

The basics

Under RTI, HMRC requires that a return is made each tax month. This can be:

- a Full Payment Submission (FPS) reporting any changes to year to date (YTD) values for employees as a result of a payroll run; or
- an Employer Payment Summary (EPS) indicating there is no activity for the PAYE scheme for that tax month.

Unless the scheme is classed as annual (see below), where neither return has been received, HMRC assumes the employer has simply forgotten to file and estimates the PAYE due; this estimate is known as the "specified charge".

Accounting problems

As part of the rollout of RTI, HMRC developed a new accounting system: the Enterprise Management Platform (ETMP) to replace the longstanding Business Review of the Collection Service (BROCS) database. ETMP calculates the monthly liability for a scheme based on the movement in the YTD values for the scheme from one tax month to the next. That's why it is vital that payroll software submits records for all payees when their YTD values have changed since the previous month, even if they have not received any actual cash pay. For example an employee might have a salary advance recovered this tax month as they have received a cash advance since the last FPS was sent to HMRC.

It is perfectly acceptable for details of ad-hoc cash advances to be sent on the next available FPS (see www.lexisurl.com/RTIoob16066). In this scenario the advance recovery will have correctly inflated the YTD values, but there may be no cash to pay to the individual if the whole of the next payment had been advanced. Unfortunately some payroll software has been omitting records from the FPS with a zero net pay but increased YTD value, so understating the scheme's liabilities.

HMRC plans to issue specified charge notices for June 2013 from 19 July 2013 onwards.

The total of the YTD values for all records in the scheme this tax year are totalled from all the FPSs received from 12.01am on the 6th of each month to midnight on the 5th of the following month. On the 6th of the month ETMP is given the scheme's initial liability for the month. The employer then has until the 19th of the month to submit any further FPSs for additional amounts or to correct errors and to submit an EPS to reduce the scheme liability for permitted reductions.

What the EPS does

The EPS is used to:

- claim compensation for statutory payments (SMP, SAP, OSPP, ASPP or SSP);
- reduce the scheme's PAYE liabilities, as tax has already been paid as a deduction from an invoice for sub-contractor work paid by a construction industry contractor; and
- to inform HMRC that there are no payments for this scheme for this tax month.

At 12.01am on the 19th the liability for the scheme for the tax month is crystallised, taking into account any additional FPS and EPS files that have been received. The liability is crystallised on the 19th as that is the earliest payment date for those paying by cleared cheque.

If by midnight on the 19th no RTI files have been received for the scheme, and the scheme is not an annual scheme, HMRC creates a specified charge that is posted to ETMP. The specified charge is 1/12th of the total liability for the scheme for the previous tax year. This may of course bear no relation to what is actually due for the scheme, and in fact for the vast majority of schemes it won't come close, as there are so many variables month on month, even if the scheme has been in place for the whole of the previous year.

Notification of the specified charge

HMRC is required to inform employers in writing of the specified charge in order to enforce it (SI 2012/812, reg 75A). For April and May 2013 HMRC has not done that. The Debt Management and Banking (DMB) arm of HMRC has simply telephoned those employers that appear to have the biggest underpayments showing on ETMP when compared to the payments received; there has been no written notification of specified charges.

A clue as to why HMRC did not start to notify specified charges from April 2013 may lie in the findings of the NAO report into HMRC's 2012/13 accounts which was published on 2 July 2013 (see newsfile p117). This exposes the fact that HMRC went live with RTI without the financial accreditation for its accounting systems that is a prerequisite of any HMRC IT project being rolled out. It is not clear why this was permitted, but HMRC told the NAO that the accounting system will have accreditation by October 2013, as current problems will be fixed. HMRC plans to issue specified charge notices for June 2013 from 19 July 2013 onwards.

HMRC accepts that the employer may simply have forgotten to file RTI reports. As RTI is new to all employers, HMRC allows for a seven-day grace period from the date of issue of the specified charge notice, for the employer to submit an FPS or EPS that will effectively cancel the specified charge. If at midnight on the seventh day no RTI file has been received, the specified charge becomes legally enforceable for that tax month. This means that a penalty could be raised based on the scheme being in default for that month, if payment is received for less than the specified charge for the month. If the employer sends in an FPS after the seven-day grace period it will be applied to the relevant month but any penalty would not be recalculated. The employer would have to appeal against the penalty.

Given the vagaries of HMRC's post, seven days may well be insufficient time for the employer to react. It is therefore vital the employer pays the correct liability by the 22nd of the month (according to their own records) such that once an amending FPS is sent there will be no default, as the FPS will balance to the payment made.

Viewing the specified charge

Employers, but not tax agents, can view PAYE payments, liabilities and specified charges on the liabilities and payments (L&P) viewer. This is part of the HMRC PAYE online system and is available to employers who have registered and have a login ID.

It is understood that tax agents will not have access to the L&P viewer until 2015, when it will be provided as part of the Tax Agent Strategy. In the meantime tax agents have to rely on the client taking the time to look at the viewer.

Those employers who have used the L&P viewer in this tax year may have received a nasty shock. The liabilities on the viewer do not match the figures that have been submitted on the FPS and EPS files, or a specified charge may be shown that they were not expecting. I am aware of discrepancies that range from 1p to £1.2m for one month!

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The NAO report referred to above indicates what might have caused these discrepancies. HMRC has told the NAO that by mid-May 2013 it had already created 10,000 duplicate employment records. A duplicate record is where HMRC fails to match a record submitted in the FPS to an active record they are holding for the scheme. HMRC assumes that this mis-match is a second employment for that individual within the scheme. This in turn means the YTD values on the record are now incorrectly held twice on the scheme by HMRC. It's easy to see on a payroll with a few thousand employees with high YTD values how corrupting the FPS data like this can lead to an overstated liability of over £1m.

The problem with duplicate records has been known since the RTI pilot began in April 2012, but its scale has not been acknowledged, and little investigation appears to have taken place to rectify it. In the meantime Debt Management is still contacting employers demanding payment without being able to substantiate the figures it is holding.

Annual schemes

The only schemes that do not have to file an FPS or EPS each month are those that have annual schemes agreed with HMRC. An annual scheme is one where all payees are paid once a year in the same month – typically director only schemes. Once annual scheme status is granted, HMRC only expects an FPS in the month agreed with the scheme, no other return is required and no specified charges should be displayed on the L&P viewer.

Tips for employers

- Ensure you can access the totals within your FPS files to prove to HMRC what the file totals were when they left you.
- Retain all success messages that indicate when the RTI files were received by HMRC.
- Check the L&P viewer on the 6th and 20th of each month to ensure it reflects the total for the files and the payment made.
- React to any specified charge notices promptly with the submission of an FPS or EPS and ensure payment on the 22nd is for the correct amount.

STB

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NAO report

The National Audit Office (NAO) has published its audit report on HMRC's 2012/13 accounts (www.lexisurl.com/NAO), for which it gave a qualified audit opinion for the 13th year in a row. The NAO report also charts progress on stabilising the PAYE service and the launch of RTI.

The RTI pilot attracted 66,240 employers, which was short of the pilot target of 250,000 employers, although 73% of the employers in the pilot had nine or fewer employees. The testing of the transfer of data between the RTI system and the main PAYE computer (NPS) system was not undertaken as part of the RTI pilot.

RTI went live without full accreditation of the system that reports financial information about PAYE. Weaknesses in that system mean that HMRC cannot correctly allocate and account for some PAYE payments received from employers or identify and collect amounts of PAYE outstanding. David Heaton, employment partner with Baker Tilly, reported that employers have been contacted by HMRC's debt management team who are chasing phantom underpaid PAYE liabilities. The amount showing as underpaid on the HMRC computer is sometimes two or three times the true liability reported under RTI, which indicates the PAYE due figures have been posted more than once by HMRC's computer.

David added: "HMRC's system has been applying specified charges, to employers' records, which are estimated liabilities of PAYE due, imposed when no RTI filing has been made. In some cases HMRC has not been able to explain why some of the specified charges have been applied and has told the employer that it is the employer's responsibility to prove that the payment was correct, despite the error appearing only in HMRC's records."

Another significant problem arising from the RTI pilot and live roll-out, is the creation of duplicate employment records. The NAO report says that over 10,000 duplicate records have been identified so far, but HMRC is working to address all the cases that arose from the pilot period. It has also developed methods to identify and correct such duplicate records arising in the future.

RTI pilot report

In its own report on the RTI pilot (www.lexisurl.com/RTIpilot) HMRC paints a positive view of the RTI pilot process. However, some statements appear to contradict those in the NAO report on the HMRC accounts (see above).

For example HMRC say: "The pilot as a whole involved a mix of employer scheme sizes, sectors, software users and those with or without agents, to thoroughly test virtually all aspects of the new process".

The NAO report says: "There were some limitations to the scope of the RTI pilot, which means that certain functions of the system have not yet been fully tested". Employers who operate within the construction industry scheme (CIS) reported that they were not permitted to join the RTI pilot, so the interaction of RTI and CIS was not tested.

The HMRC report says: "Regular feedback to and from the employer and wider stakeholder community is essential. This revealed that different users need different types of guidance in addition to online guidance".

Kate Upcraft, director of ISIS Support Services Ltd, was a member of the customer user group (CUG) mentioned in the report, and she says: "Our biggest battle in the CUG was around guidance, and only at the last minute did we convince HMRC to update the leaflet E13: Guide to day to day payroll. Standard guidance like the CWG2 has not been properly updated, as it is still littered with pre-RTI references. We asked for, and failed to get, an online filing guide to RTI that had worked so well previously for end of year PAYE filing."

A particular difficulty for employers learning to use RTI has been the need to submit an EPS or FPS every month. The EPS is required to report nil payments, or to reclaim statutory pay, or CIS deductions. HMRC admits the EPS is not a mandatory submission for RTI. But the HMRC systems expect an EPS to be submitted if there has been no FPS, otherwise the PAYE payment made by the employer doesn't match the FPS figures. In the absence of an FPS or EPS for a tax month HMRC will issue estimated PAYE demands (specified charges) which are immediately collectable (see Kate Upcraft's article on p115). In the RTI pilot report HMRC warns: "there is a risk that, when automatic late payment penalties are implemented from April 2014, HMRC's systems will create penalisable payment defaults in the absence of an EPS reporting adjustments to the employer's liability".

HMRC stakeholder conference

The first annual HMRC stakeholder conference was held on 18 July 2013. Around 150 invited representatives from the tax profession heard the Treasury Minister, David Gauke MP, and a number of HMRC leaders, discuss HMRC's performance and plans for the future. The open and frank question session was televised by Sky News.

Finance Act 2013

The Finance Bill 2013 received Royal Assent on 17 July 2013. The published Finance Act 2013 can be accessed here: www.lexisurl.com/FA2013.

GAAR panel

The general anti-abuse rule (GAAR) came into effect on 17 July 2013. The following members of the GAAR advisory panel have been appointed:

- Michael Hardwick, Partner, Linklaters solicitors
- David Heaton, Partner Baker Tilly
- Brian Jackson, VP Group Taxation, Burberry Group plc
- Sue Laing, Partner, Boodle Hatfield solicitors
- Gary Shiels, adviser to SMEs
- Bob Wheatcroft, Partner, Armstrong Watson accountants

Taskforce teams

HMRC taskforce teams are targeting the following industry sectors for tax enquiries in these regions this summer:

- the restaurant trade in Lincolnshire and Tyneside, Yorkshire and Humber areas;
- the haulage industry in Milton Keynes, Oxford and Northampton;
- the holiday industry in North West and South West England and Wales; and
- the fishing industry in Scotland.

Consultations

Class 2 NIC

It is proposed that class 2 NICs should be collected through the self-assessment process, alongside class 4 NICs. The aim is to reduce the administrative burden on the self-employed. Responses are requested by 9 October 2013.

Coding out

Tax debts of up to £3,000 can currently be collected through a taxpayer's PAYE code, in a process known as "coding out". The government is proposing to replace this cap with a scale for taxpayers with differing means:

Taxpayer's annual PAYE earnings	Coding out limit:
Up to £30,000	£3,000
£30,000– £40,000	£5,000
£40,000–£50,000	£7,000
£50,000– £60,000	£9,000
£60,000– £70,000	£11,000
£70,000– £80,000	£13,000
£80,000– £90,000	£15,000
Over £90,000	£17,000

The application of these new limits for debt collection will be restricted by the requirement that no more than 50% of the taxpayer's earnings can be deducted through the PAYE code for a pay period, whatever tax code the taxpayer has, not just for K codes.

Currently HMRC does not split a tax debt of over £3,000 to collect part through PAYE and part by other means. Under these proposals HMRC will split debts where appropriate, so the maximum amount can be collected through PAYE. These changes would take effect from April 2015. Comments are requested by 5 September 2013.

Close company loans

Although FA 2013 has closed some perceived weaknesses in the legislation concerning the taxation of loans made to participators of close companies, the government is now reviewing all the rules which govern loans or advances from close companies to participators. It has proposed four alternatives:

1. Keeping the current rules.
2. Retaining the current tax charges under CTA 2010, s 455 and related sections but increasing the rate from 25% to 40% of the outstanding loan.
3. Imposing the tax charge annually at a lower rate on the amounts outstanding at the end of every accounting period less amounts repaid within nine months of the year end. There will be no mechanism for reclaiming the tax charge when the loan is repaid to the company.
4. Imposing the tax charge annually at a lower rate on the average amounts outstanding during the accounting period, with no mechanism for reclaiming the tax charge when the loan is repaid to the company.

Under option 4 the test points for the outstanding loan balance will be the beginning and end of the accounting period, and not, as currently, nine months after the end of the accounting period. Responses are requested by 2 October 2013.

DOTAS hallmarks

Draft regulations to amend the hallmarks in the disclosure of tax avoidance scheme (DOTAS) regime, have been released for discussion.

The confidentiality hallmark is amended such that it will apply to any scheme that HMRC would be likely to take action to counter, if it knew about it. That hallmark will also apply if the promoter imposes specific conditions of confidentiality on the client.

The employment income hallmark is new, and will apply where the scheme is intended to circumvent the disguised remuneration rules in ITEPA 2003, Pt 7A. Comments are requested by 28 August 2013.

In addition, a new DOTAS hallmark is proposed, for the disclosure of schemes which attempt to avoid the annual tax on enveloped dwellings (ATED). The draft regulations, tax information and impact note have been released for comments by 27 August 2013.

Purchased life annuities

Tax relief is currently available for interest paid on loans taken out to purchase a life annuity before 9 March 1999. This tax relief was only ever available to taxpayers who were aged 65 or over, so taxpayers who have qualifying loans outstanding will now be aged at least 79. The government is proposing to abolish this tax relief as recommended by the Office of Tax Simplification. Comments are requested by 30 September 2013.

Transfer of assets abroad

The government accepts that the current rules in this area can give rise to uncertainty and the new FA 2013 provisions may not provide an equitable result in some cases. Options for reform include:

- amending the December 2012 draft legislation;
- providing greater clarity and certainty through guidance;
- amending the current legislation (that in force prior to FA 2013); or
- introducing a new set of matching rules.

Responses are requested by 10 October 2013.

Tax data sharing

HMRC is seeking views on whether the department should share aggregated and anonymised data which is not intended to identify specific taxpayers. It is also proposing to release more specific information on VAT registered businesses which would identify those businesses. Responses are requested by 24 September 2013.

newsfile

Bank levy
The bank levy was introduced with effect from 1 January 2011, by FA 2011, Sch 19. The government is now reviewing the operation of the levy to ensure it operates efficiently. Views are requested by 26 September 2013.

Regulatory capital
Draft regulations and a technical note concerning the taxation of financial institutions' additional tier 1 and tier 2 regulatory capital securities, have been released. These regulations will ensure that these securities are taxed as loan relationships and the coupons paid are taxed as interest. Comments are requested by 15 September 2013.

Shale gas
These are proposals for a shale gas site (or "pad") allowance, which would exempt a portion of production income from the supplementary charge on ring-fence profits. The exemption would be applied to the proportion of capital expenditure qualifying for 100% first-year allowances. Responses are requested by 13 September 2013.

HMRC publications

IHT guidance
New restrictions for the liabilities which can be deducted for inheritance tax purposes came into effect for deaths and other chargeable events that occur on and after 17 July 2013. Also from that date non-domiciled individuals who are married or in a civil partnership with UK domiciled person can elect to be treated as UK domiciled. Guidance on both these changes has been published on the HMRC website and will be incorporated into the *Inheritance Tax Manual* in due course.

BPRA scheme
HMRC has highlighted tax avoidance schemes that abuse the business premise renovation allowance (BPRA) on its "Spotlights" webpage (Spotlight 21). The schemes typically involve:

- limited recourse or circular loans;
- claims for costs other than the actual direct capital costs of renovating the building; and
- expenditure contractually incurred when the building is not vacant, or has only recently been vacated.

HMRC is conducting a technical review of the BPRA scheme, to make the rules more certain and less susceptible to attempts to manipulate them. Comments on the technical review note are welcome, and should be made by 30 September 2013.

CT600 guide
A new version of the company tax return guide to form CT600 has been released.

SDLT pre-completion
New stamp duty land tax (SDLT) rules for pre-completion transactions were introduced into FA 2003, Sch 2A with effect from 17 July 2013. Guidance on these rules has been released and will ultimately be incorporated into the SDLT manual.

Draft NIC Bill
This Bill includes provisions to make:

- GAAR apply to NICs;
- offshore employment intermediaries liable to NICs;
- changes to LLP tax arrangements in relation to NICs; and
- office holders who receive earnings liable to NICs.

Employer advice

PAYE week 53 payments
New guidance on how to report "week 53" payments has been released. Such payments can occur when employees are paid weekly, fortnightly or four-weekly.

P11D forms
HMRC has acknowledged there were difficulties with the online P11D and P11D(b) forms made available on its website from 24 June 2013. As a result it has extended the deadline for submission of the 2012/13 P11D forms to 4 August 2013.

If the employer submits the 2012/13 forms P11D by this date and subsequently receives a penalty for late submission, HMRC will cancel that penalty if a written request is sent to:

HMRC
Customer Operations Employer Office
Room BP4009
Chillingham House
Benton Park View
Newcastle Upon Tyne
NE98 1ZZ

List 3
The list of professional bodies and societies approved by HMRC for the purposes of subscriptions claimed as deductions allowed under ITEPA 2003, s 344, has been updated.

RTI: hours worked
Employers are asked to record the hours worked by employees in their full payment submissions (FPS) under RTI. One of four bands of hours (A to D) should be selected. However, HMRC would like employers to only use option D "other hours" when the payment relates to a pension or annuity, or the employee does not have a regular pattern of employment such as a zero hours contract. This information is used to counter fraud for tax credit claims. It will not be required for claims under universal credit.

RTI: harvest casuals
HMRC is aware that employers are having problems reporting payments made to harvest workers under RTI. There is a concession in place for casual workers paid in cash, so reporting is only required once a week. Employers with less than 50 employees including casuals, can use the concession for small employers to report pay details under RTI once a month.

SAYE schemes
The seven year savings period of Save As You Earn (SAYE) Share Option Schemes is withdrawn with effect from 23 July 2013. The bonus rates remain at zero for the three and five year periods.

points of law

S Tracey v HMRC TC02681

Missing NICs allowed

Stephen Tracey had been a director of several associated companies from 1978 to 2008. He lodged an appeal to the First-tier Tribunal, contending that he should be credited with payments of NICs which had been deducted from his salary but had not been included in HMRC's records.

The First-tier Tribunal reviewed the evidence and detail and dismissed Tracey's appeal for 1981/82 to 1986/87, but allowed his appeal for 1987/88 to 1991/92. Judge Hellier found that for 1987/88 to 1991/92, the companies had employed a bookkeeper, who had had a close relationship with the companies' principal director. On the evidence, HMRC had not shown that the failure to account for contributions for those years was attributable to any negligence on the part of Tracey, so that he should be credited with payment of Class 1 contributions.

C Murfitt v HMRC TC02684

Class 2 rate change not retrospective

Colin Murfitt lived and worked in the UK from 1960 to 1968, when he emigrated. He subsequently moved to Alderney. In 2009 he applied to make a backdated payment of Class 2 NICs, to enable him to qualify for a UK pension. HMRC accepted his application, and Murfitt sent a cheque which HMRC accepted as payment of 12 years' contributions.

Murfitt appealed to the First-tier Tribunal, contending that, when the weekly rate of Class 2 contributions had been reduced from £6.55 to £2 in 2000, the reduction should be treated as having retrospective effect, so that the cheque which he had sent should be treated as payment of 24 years' contributions rather than 12 years' contributions. The First-tier Tribunal rejected this contention and dismissed Murfitt's appeal.

HMRC v JN Hanson [2013] UKUT 224 (TCC)

Farmhouse qualified for APR

Under a settlement, a farmhouse was occupied by the son of the settlor until his death in 2002. HMRC issued a notice of determination charging IHT on the property. The trustee of the settlement appealed, contending that the farmhouse qualified for agricultural property relief (APR). The First-tier Tribunal accepted this contention and allowed the appeal.

Judge Walters at the FTT declined to follow *obiter dicta* of the Special Commissioner in *Rosser v CIR*, and held that the effect of IHTA 1994, s 115(2) was that "cottages, farm buildings and farmhouses in the third limb of the definition must be of a character appropriate to agricultural land or pasture (including woodland and any building within the second limb of the definition) in the same occupation, but that it is not required that the cottages, farm buildings and farmhouses should be in the same ownership as the agricultural land or pasture (as expanded by the second limb of the definition)".

The Upper Tribunal upheld this decision. Warren J held that there had to be some nexus to establish that the agricultural land was "connected in a relevant way with the cottage, farm building or farmhouse". However, the "ownership nexus" which HMRC had propounded was not an essential condition for the relief. On the facts here, where the land and the farmhouse were both occupied by the settlor's son, there was a sufficient functional connection between the land and the farmhouse.

Blenheims Estate & Asset Management Ltd v HMRC TC02696

Goodwill not deductible

In 2006 David Marshall incorporated his estate agent business, which he had carried on since before 1 April 2002, into the newly formed Blenheims Estate & Asset Management Ltd (B). Marshall subsequently sold the shares in B to an unrelated company.

In 2008 B claimed a deduction for the amortisation of the goodwill which it had acquired from Marshall under the corporate intangible assets regime in CTA 2009, Pt 8. HMRC rejected the claim on the grounds that Marshall and B had been "related parties" at the time of the acquisition, so that the deduction was prohibited by what is now CTA 2009, s 882(1)(b). The First-tier Tribunal dismissed B's appeal against this decision, finding that Marshall had been a participator in B at the time when B acquired the goodwill from him. Also as the goodwill had been created before the commencement date of the corporate intangible assets regime, so it could not be brought into that regime.

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