

Notes of the Benefits & Expenses Sub-Group meeting held on Thursday, 23 January 2014, 1 Horse Guards Road

Attendees

Officials		Members
Jackie McGeehan (HMRC) (Chair)		Mark Groom (CIoT)
Anne Palmer (HMRC)		Shawn Healy (CBI)
Su McLean-Tooke (HMRC)		Jas Jhooty (BASDA)
Mike Adams (HMRC)		Will Silsby (ATT)
Lynn Carroll (HMRC)	Item 3 only	Colin Ben-Nathan (CIoT)
Helen Steer (HMRC)	Item 6 only	Simon Ross (CBI)
James Clarke (HMT)	Item 7 only	Samantha Mann (CIPP)
Mark Hannan (HMRC)	Item 7 only	Peter Bickley (ICAEW)
John Whiting (OTS)	Item 8 only	
Sarah Radford (HMRC)	Item 9 only	

Apologies

Ros Hendren (CIPP)
Norman Green (BCS)
Trevor Blackmur (ATT)
Tim Plant (HMRC)

1. Welcome and introductions

JM welcomed members to the meeting.

2. Minutes and Action Points from last meeting/future of the Group

AP1 - HMRC to refer question 7 from the latest log (Can HMRC give any guidance on its policy regarding whom it chooses to pursue for underpaid tax due on employment income?) to the Employer Consultation Forum.

‘Total People’ case – HMRC are looking for an appropriate case to take forward. - Members expressed concern that we were now 3 months on and still no progress, and asked if HMRC would support the costs of taking a case forward?

AP2 – SMT to investigate whether HMRC will support the costs.

3. Real Time Information

LC said that the roll out continues to go well.

- 47.6 million records now in real time, some 99% of ‘live’ employers. The vast majority of employers will be within RTI by April 14.
- ‘On or before reporting’ (up to 06/12/2013) 86.2% of payments were being reported ‘On or before’ the day of payment with another 7% being reported within 6 days of payment.
- An Employer Bulletin is about to be published and will include the importance of the ‘Final’ submission, and refer employers to a ‘You Tube’ video and webinar that are available with improved guidance.
<http://www.hmrc.gov.uk/payerti/forms-updates/employer-bulletin/bulletin46.pdf>
- Electronic warning messages are being sent to employers where filing dates have been missed.
- A package for micro employers was released in December 2013, with easement of ‘On or before’ reporting for employers with 9 employees or less until April 2016.

Key points raised by members were:

- 'On or before' reporting for 2014/15 - will HMRC be imposing RTI penalties where 'On or before' reporting has not been complied with by the employer, concerns about the volume of RTI penalties to be issued and will there be any monitoring by HMRC as these are issued?
- Difficulties around reconciling amounts HMRC say are due with the submissions that the employer has made;
- HMRC should specify the 'pecking order' of boxes to be ticked on the FPS where the submission is late and there is more than one reason for this.

AP3 – LC said would take questions and points raised away but these may be more appropriate for a different forum.

4. Autumn Statement 2013

SMT said that this was a busy Autumn Statement (AS):

- There are several measures involving company cars and vans, one involving private use adjustments which must be made within the relevant tax year, although HMRC will still accept employees making good by 5th July after the end of the tax year;
- Car benefits expressed in 'money's worth' could be taxed according to the rules in s62 ITEPA rather than under the car benefit rules - the 'Apollo' case highlighted this anomaly. There will be legislation to address this in FB2014;
- New company car rates will be announced in Budget 2014;
- Tax exemption for employer expenditure on recommended medical treatment;
- Tax incentives for employee ownership trusts – a complex piece of legislation cutting across Income Tax / Capital Gains Tax / Corporation Tax / Trusts;
- Beneficial Loan exemption is to be increased from £5000 to £10,000.

Key points raised by members were:

- If there will be a consultation on the Regulations for the exemption extended to Medical benefit

AP4 – SMT to confirm that this will be the case

- When would the next Employee Ownership Trust legislation be published?

AP5– SMT said we would send a link to the legislation to all members when it had been published

- Why the medical benefit measure will not be available through salary sacrifice; and
- Why generally, does the tone of the guidance about salary sacrifice arrangements emphasize the disadvantages for the employee?

AP6 – SMT said we would take these comments away and consider whether guidance on salary sacrifice arrangements should be made more positive, although employees ought to be made aware of the potential draw-backs.

5 - Remit of this Forum

JM said HMRC is reviewing its stakeholder engagement forums (not just the Benefits and Expenses Sub Group) to make sure there is the right level of representation on the right groups.

- Have we got the right people here?
- Are we discussing the issues that the members want to hear about?
- Were we cutting across other HMRC Forums in the employment arena?

Key points raised by members were:

- Involved in several other 'Employment' forums and found the Benefits and Expenses sub group useful;
- Some thought what was needed was an Employment Taxes group;
- Could this forum be longer so that agenda items were not rushed?

AP7 – HMRC to consider as part of the wider review. The next meeting will be longer.

6 - Standard HMRC Compliance letters.

HS apologised that **TP** couldn't make the meeting she had stepped in at short notice. Main points of her presentation were:

- Know Your Customer' letters are being sent to some employers, to request a meeting with the employer with a view to improving HMRCs understanding about how the employer complies with all of their obligations to HMRC in respect of its workforce. If risks are identified as part of these meetings then HMRC will enter into discussions with the employer about this. The letters are not standard, being tailored to each particular business.
- She has been discussing 'prompted or unprompted' disclosures with policy colleagues, but has not yet reached a definitive conclusion. Whether HMRC will treat a case as 'prompted or unprompted' disclosures are likely to depend on the individual case.

AP8 – **HS** said she understands that it is important to have clarity on whether disclosures will be treated as 'prompted or unprompted' and agreed to share HMRCs position with this forum.

Key points raised by members were:

- Concerns that an employer could have a penalty imposed if they volunteer information;
- Clients were unsure whether to disclose information or not and this may be because penalties could be imposed;
- For VAT purposes disclosures are treated as 'unprompted' and the policy here should be consistent with that.

7. Tax-free Childcare (TFC) Scheme

JC and **MH** talked through a presentation of the scheme.

Main points;

- £750M new funding for childcare costs for eligible parents
- Why is this being introduced? –
 - a) most employers do not offer employer supported childcare to their employees
 - b) Self employed people not currently covered
 - c) Tax-Free Childcare a significant improvement on the current scheme, offering support on a fairer basis
- Under the new scheme employer involvement is not mandatory but HMRC have worked with employers if they wish to be involved
- Employer Supported Childcare will close to new entrants when TFC starts
- HMRC want all employers included in communications about the new scheme
- It is expected that in Feb / March 2014 the results of the consultation will be published by HMT / HMRC
- Parliamentary Bill to be enacted before the Election
- A 'better off' calculator is to be developed for use by parents where they will input their details and the calculator will detail the best option for them

Key points raised by members were;

- Employers need to know what to do and the sooner the better

AP9 – HMRC to forward slides used during the presentation

8. OTS Review of employee expenses and benefits

JW gave an overview of where the OTS had got to:

- Report on next stage to be published 29/01/14 subject to Ministerial approval.
- OTS has talked to a lot of people, and have drilled down into some of the issues coming out, hopefully also getting to some of the solutions.
- Payrolling
 - there is support for Voluntary Payrolling with employers choosing to adopt payrolling or not.
 - Should 'Payrolling' apply to all benefits and to all employees?
 - 80% of Benefits in Kind are Medical benefit, Cars/vans and Car Fuel benefit.
 - Beneficial loans could be difficult to payroll unless the law was changed so there was only one interest rate applied for the whole of the tax year.
- NICs
 - most people say that in the long term they should be combined with income tax, and align the treatment of expenses and benefits for both Income Tax and NICs.
 - Have NICs on an Annual cumulative basis as Income Tax.
 - Charge Class 1 instead of Class 1A NICs on benefits in kind..
- Trivial Benefits – Everyone wants a set trivial benefit rule; below which no Tax or NICs is due.
- £8500 threshold – abolition is the best policy.
- PSAs – really broaden them out to cover a greater range of Benefits in Kind.
- Travel & Subsistence – Haven't found a new radical system, but improvements could be made to the way it works.
- The OTS next review will be on the competitiveness of UK business.

Key points raised by members were;

- Medical Insurance easy to payroll but Beneficial Loans and Car / Car Fuel more difficult where cars are changed during the tax year – need time to adjust
- Payrolling should take a measured approach - start with Medical Insurance and if successful extend further. Start with larger employers and then extend their experience to smaller employers.
- Concern around penalty implications of incorrect RTI submissions where the employer gets the calculation of the payrolled benefits in kind wrong.

AP10 – SMT to send link to OTS report when published.

9. Offshore employment intermediaries / IR35 / PSC's LLP's

SR said:

- Budget announcement to counter avoidance of UK workers employed by companies based abroad.
- New proposal with legislation out for consultation, stepping around Agencies legislation. S689 to clarify whose responsibility it is to operate PAYE.
- IR35 – The OTS reviewed IR35 in 2011, HMRC will retain IR35 but will improve its administration and remove uncertainty of whether it applies or not.
- HMRC will strengthen IR35 specialist teams
- HMRC will ask why someone thinks they are outside IR35
- HMRC will develop some illustrations why someone would be within IR35

- PSC's – HMRC has removed obligation for 'Personal Service'.
- LLP's – that all members of a LLP must in future be self-employed. If an LLP 'partner' has no or little significant risk and if rewarded by a fixed 'fee' they will instead be employees of the LLP – this is out for consultation at the moment.

AP11 – SMT to forward the IR35 mailbox address that has been set up by HMRC so that members can provide comments on IR35.

review.ir35@hmrc.gsi.gov.uk

The next meeting of the sub-group will be on Wednesday 18th June from 11.30 to 14.00.