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Client Briefing

NI continues to affect our businesses and finances and there continue to be a number of developments and opportunities. This briefing looks at recent and forthcoming changes as well as some other current areas of interest.

National Insurance - What's changing?

Vans

The annual benefit in kind scale charge that applies where there is private use of an employer provided van increased from £500 to £3,000 on 6 April 2007. The old £500 benefit also covered the provision of free fuel for private as well as business motoring but this is now charged for separately with a further benefit in kind of £500. The reduced benefit of £350 for older vehicles no longer applies.

No benefit in kind charge arises if there is restricted private use of the van. This means that the only private use allowed is for ordinary commuting, which is to and from work. Any other private use must be insignificant, eg an occasional trip to the tip.

To qualify for no benefit in kind charge an employer's policy restricting the private use should be set out in writing, communicated and re-enforced periodically. We also strongly suggest that a mileage log be maintained and subjected to regular review to ensure that it can be demonstrated that the employer's policy is being adhered to.

Where the employer has not put a policy in place to restrict the private use of the vehicle it is still possible to take action for the future. Otherwise, the employer's Class 1A National Insurance Contributions (NIC) payable at 12.8% on the value of most benefits in kind will increase significantly as will the employees' personal tax liabilities. The employees who have the use of the vans should have received new

tax codes for 2007/08 showing the increase in the value of the benefit with the result that their tax code will have dropped significantly.

If you are yet to be convinced, the following example may help.

incidental work, such as an odd days training or to go into work occasionally to 'Keep in Touch', without the loss of a whole week's SMP which would have been the case in the past. The employer is

Example

An employee has unrestricted use of a van which is five years old. He is provided with all the fuel for the vehicle both for business and private use.

2006/07

Employee's tax - £350 x 22% = £77

Employer's NIC - £350 x 12.8% = £45

TOTAL TAX AND NIC FOR 2006/07 £122

2007/08

Based on the new van benefit and fuel charges of £3,000 and £500

Employee's tax - £3,500 x 22% = £770

Employer's NIC - £3,500 x 12.8% = £448

TOTAL TAX AND NIC FOR 2007/08 £1,218

Unless the employer can demonstrate that they have enforced the policy of restricting the private use, then costs for both employers and employees will have increased between six and ten-fold. Given that the scale charge has increased significantly, we expect HMRC compliance officers to pay increasing attention to this in forthcoming years.

Statutory Maternity Pay

For babies due from 1 April 2007 the period for which Statutory Maternity Pay (SMP) can be paid has been extended to a maximum of 39 weeks. In due course this will be extended to 52 weeks with the option to transfer 13 weeks to the father by way of Statutory Paternity Pay. The government has deferred the option to transfer part to the father until at least 2009.

Keeping In Touch ('KIT') days have also been introduced, up to a maximum of ten per pregnancy. These allow mothers to do some

allowed to pay the mother for the time worked in addition to paying the SMP due for the week.

Deficiency notice letters

Deficiency notice letters are issued by HMRC's National Insurance (NI) Contributions Office to employed persons whose earnings and NI contributions have not been sufficient in a particular tax year for that year to count as a 'qualifying year' i.e. one that earns state benefit entitlement.



The letters invite payment of voluntary Class 3 contributions to make up the shortfall. Class 3 contributions count only for state pension and bereavement benefits entitlement, not short term benefits such as incapacity benefit. Over four million deficiency notices were issued for 2004/05.

There were two main issues with the letters. Firstly, some were sent to individuals who had sufficient - even substantial - earnings. Although the employer's P35 and P14s for 2004/05 were submitted on time, the forms had not been processed following the problems with the introduction of employer e-filing. Inevitably, where this occurred, every employee of a business received a letter in error. By now most affected employees should have received a further letter confirming that the correct contributions have been posted to their NI Account.

Secondly, for others where there is a genuine deficiency for 2004/05, or indeed any other year, there is now a dilemma. Current rules require specified amounts of earnings or NI credits in 90% of the years in a person's working life (broadly for 44 years for a man and - for now - 39 years for a woman) in order to get a full rate state pension. The issue is further complicated as between 2010 and 2020 the state pension age for women is being gradually increased to 65 so the number of qualifying years a woman needs will gradually increase to 44 years (90% of 49 years).

However, this may all change as the Pensions Bill, which is making its way through parliament at the moment, proposes that the current 90% requirement will be reduced to 30 years for those reaching state retirement age from 2010. This therefore presents a difficulty for many people thinking of paying voluntary contributions. If payment is made now, then come 2010 under the new rules it could easily prove to have been unnecessary.

No refunds would be given under such circumstances so rather than pay now, affected individuals may prefer to wait a year or so until the legislation is passed and matters become clearer. This will result in any contributions then paid for 2004/05 being due at a slightly higher rate but this is perhaps better than paying now in the knowledge that it may become a wasted payment.

Please get in touch, if you or your employees, would like to discuss your options.

Special NI treatment for certain workers

Many employers and affected individuals remain unaware of the Social Security (Categorisation of Earners) Regulations 1978. These overturn the common law employment status of certain workers with the result that the employed/self-employed status may be different for tax and NI.

Of particular concern - and great cost if the wrong treatment is adopted - is the group of people that the Regulations specify must be treated as employees for NI purposes. These are:

- office cleaners
- telephone box/apparatus cleaners
- most agency workers
- employment of a person by their spouse or civil partner
- most lecturers, teachers and instructors
- most ministers of religion
- many actors, musicians and other performers.

As is clear from this list, the Regulations do not affect every business but for those it does affect the costs can be significant.

HMRC have also been known to try to attack the most unlikely activities; for example, stretching the category of teachers and instructors to approach driving instructors, first aid trainers and those running summer playgroups. We believe that many of these approaches are incorrect.

We are also expecting renewed activity in the leisure and entertainment fields in the near future.

If your business engages people carrying out any of the activities mentioned above you need to be aware that the special rules exist. If you are not already applying them, you would be well advised to seek guidance as to whether your own circumstances require their application. Otherwise a visit from the taxman might come as a costly shock!

Tips and gratuities

HMRC have issued a fourth version of its booklet 'Tips and Gratuities' (E24). There were issues with previous versions and after representation by interested parties the booklet has been amended. Although written in the

expectation that it will be read and used by restaurants, the rules are equally applicable to other trades where the receipt of tips is customary; for example, employed taxi drivers and, in some instances, hairdressers.

HMRC had made a number of assertions that they now accept were incorrect and agreed settlements with many businesses based on their earlier guidance. If this applies to you and you have not been contacted by them to offer you a refund, contact them urgently. Please get in touch if you would like us to help you do this.

International matters

On 1 January 2007, Bulgaria and Romania joined the EU. Where staff were on secondment between one of these countries and the UK at that time it is possible that their NI treatment should have changed. Please do get in touch if you need further advice in this area.

And finally ...

Some of your employees will face big increases in their NI liability in April 2008 and April 2009. In Gordon Brown's final Budget he stated that the Upper Earnings Limit (UEL) would increase ahead of inflation in both years, so that by 2009 it will be in the region of £43,000 per annum - nearly £830 per week. The reason given for this increase is the 'harmonisation' with the point at which the higher rate of 40% income tax will apply.

Unfortunately income tax and NI harmonisation will not be simple as many staff earning above the current UEL of £670 per week will have a car, medical insurance or other benefits in kind. These benefits in kind will be included in their tax codes for income tax purposes and effectively reduce the availability of their personal allowances and basic rate bands. Their 40% income tax liability, on their pay, will therefore commence at a lower level than the point at which their NI rate will fall from 11% (if not contracted-out) to 1%. This means that they will effectively pay a marginal rate of 51% on some of their pay.

We find that many businesses and individuals struggle to a greater degree with NI issues than with tax. If we can help you regarding any of the subjects covered in this bulletin or if you need any further information on any of these matters please get in touch.