

Mike Evans Employment taxes Blog – March 2012

Hello blog readers and welcome to the March 2012 edition of my Employment Taxes and CIS Blog.

Since my last Blog I have been travelling around the Country meeting lots of AAT members at Branch meetings in Canterbury (East Kent), Ealing (West London), Guildford (West Surrey), all the way to Newcastle (Tyne & Wear) for a longer Branch meeting on a Saturday morning and closer to home at Brentwood in Essex and Ipswich for Suffolk Branch. In between Tim Buss and I jointly presented the Business Expenses CPD Mastercourse in York. The main theme of my Branch meeting talks has been Payroll Year End or P11Ds, but the members at Suffolk asked me to talk about a few unusual payroll items, which I thought I should share with you.

Employer sponsored Suggestion Schemes can offer some tax-free cash to employees who come up with useful suggestions that are likely to lead to savings for the Employer. Awards that meet certain conditions can be provided tax and NICs free without having to report anything to HMRC. The scheme must be open to all employees or to an entire group of employees, such as everyone based in a particular office and the suggestion leading to the award must relate to the business. The employee couldn't reasonably be expected to have made the suggestion in the course of his or her normal duties and the suggestion cannot have been made at a meeting held for the purposes of proposing suggestions. The award must then be either an 'encouragement award' or a 'financial benefit' award.

An encouragement award is an award made to an employee for a suggestion that has merit or that shows special effort on the employee's part and is exempt for income tax and Class 1 NICs up to a limit of £25. Any amount paid in excess of the £25 limit has to be taxed and Class 1 NICs must be deducted.

A financial benefit award is an award made to an employee for a suggestion that meets three conditions, first that it relates to an improvement in efficiency or effectiveness, secondly the employer must have decided to adopt the suggestion and finally, the employer must reasonably expect the suggestion's implementation to lead to a financial benefit for the business. Financial benefit awards are exempt from income tax and NICs up to the greater of the 50% of the financial benefit the Employer reasonably expects the suggestion to lead to in the first year following its adoption or 10% of the financial benefit the Employer reasonably expects in the first five years following adoption. However, there is also an overall limit of £5,000, which is not bad if you can get it; so come on employees, put your thinking caps on!

Another topic I was asked to explain was Payroll Giving and I was surprised at the number of Agencies involved in providing this facility. Tax relief is given at source for individuals giving to charity by deduction from their pay or occupational pension. Any PAYE employee whose employer has contracted with a Payroll Giving Agency to run an approved scheme can take part. The Employer deducts the authorised amount from the employee's pay before deducting tax under PAYE and sends the payment to the agency. Class 1 NICs, however, are calculated on gross pay before Payroll Giving donations are deducted; similar to there being no NIC relief on employee pension contributions. There is no statutory limit on the amount of donation that an employee can give.

The Agency distributes the employee's donations and must do so within 60 days of the receipt of the funds from the employer. The Payroll Giving donations are exempt in the charity's hands providing that the donations are used for charitable purposes. The Scheme operates through an Agency, like the Charities Aid Foundation (CAF). There are a number of Agencies that operate Give As You Earn schemes and the Agency will charge an admin fee (0-4% per donation for CAF). There is no statutory obligation on employers to offer Payroll Giving. Employees should ask their

Employer for an application form. Chosen Charities do not have to be revealed to the Employer and the Charities do not have to be told who the donor is. Some care is needed because the Charities must not provide benefits, such as free admission, in return for the donations; otherwise the tax relief may be lost.

Another topic that has proved very popular at the Branch meetings is Real Time Information (RTI), which is clearly a concern to many AAT members. I have attended a couple of RTI Presentations myself recently, including one Chaired by me where two HMRC officers faced a barrage of questions, some of which they could not answer. There are a lot of concerns about the additional burdens to be imposed on Employers, what appear to be some gaps in the understanding of what will be required and how this will actually work. Many people are concerned that the timetable is too 'tight.' What is clear to me is that we need to tell our Clients about this and be ready to help them. The starting point has to be a clean-up of the payroll and HR/Personnel data/information we hold to ensure that RTI submissions are not rejected when this kicks in. There will be penalties, but of greater concern to a lot of you is the delay in employees getting the new Universal Credit if the RTI submission is rejected.

Last month I told you that HMRC has had a rethink on RTI and has decided to retain the P45 for all employees. HMRC has now confirmed that the form P46 for new employee's, who are unable to provide a P45 from their former employers, will also be retained. However, both forms will be for issue to employees only and will not need to be submitted to HMRC. Watch this space, because over the coming months I will do my best to keep you up to date with any further changes.

Well, what else is new? HMRC has announced that it now accepts that smartphones, like the iPhone and the BlackBerry is actually a telephone. HMRC previously regarded smartphones as outside the exemption for mobile phones on the basis that they were not devices that are designed or adapted for the **primary purpose** of transmitting and receiving spoken messages and used in connection with a public electronic communications service. HMRC now accepts that smartphones satisfy the conditions to qualify as 'mobile phones'. HMRC's changed view only applies to smartphones as configured and understood at the start of 2012 and because this is an area of rapidly changing technology, HMRC cannot be certain about the application of the definition of 'mobile phone' to new forms of Smartphone.

There are many types of devices that have telephone functionality which do **not** qualify as mobile phones. The definition does not cover apparatus that is designed or adapted for a primary purpose other than transmitting or receiving spoken messages, even if that apparatus is also capable of being used in this way, for example a laptop. What does this change in view mean? HMRC has said that if an employer has provided a Smartphone in 2011-12 it should be treated like any other mobile phone, only including a benefit on form P11D for any mobile phones/smartphones that are either over and above the first one provided to the employee or that are provided to a member of the employee's family or household rather than to the employee personally. It may be possible to claim a refund for back years, but had you taken my advice you would have treated the Blackberry as provided for business purposes only.

Now please don't get too excited, but HMRC is increasing the 'guideline rate' that employers can use to reimburse employees for additional household expenses incurred because they have to work from home. From 6 April 2012 the rate will increase from £3.00 per week to £4.00 per week, wow! Employers will need evidence to justify paying in excess of these rates and failing that should treat the excess as additional earnings and put it through the payroll.

Another tax year is coming to an end and two famous football clubs are in the news for the wrong reason, at least in part because of millions of pounds of unpaid PAYE and NICs. Well let me

remind you that HMRC now has some new powers to target employers who are considered to be a serious risk of not paying their PAYE and Class 1 NICs. These new powers will come into force on

6 April 2012 and will be targeted at employers who deduct PAYE/NICs from the wages of employees' but in the view of HMRC, have no intention of paying those monies over. Some employers build up substantial PAYE and NICs debts, ignore HMRC's attempts to contact them and in many cases the business becomes insolvent to avoid paying the tax and NICs and set up a new company to continue trading (known as a "phoenix company").

The new powers are an extension of powers that have been successfully used for VAT, insurance premium tax and environmental taxes and HMRC points out that it will not affect employers who have genuine payment difficulties. Employers with genuine problems paying their PAYE and NICs should contact HMRC as soon as possible (www.hmrc.gov.uk/payinghmrc/problems/cantpay.htm).

Under the new powers, the required security will usually be either a cash deposit from the business or director, or a bond from an approved financial institution that is payable on demand. HMRC will calculate the amount of the security on a case-by-case basis, depending on the amount of tax at risk, the employer's previous behaviour and other risks. Businesses that fail to provide a security face a fine of up to £5,000, which will be enforceable by the courts. I must say that we have been warned, but I doubt that many of us will encounter these new powers, providing Clients who have genuine payment problems do contact HMRC for help at an early stage.

I wonder how many of you or your Clients were keenly awaiting the announcement of HMRC's Advisory Fuel Rates, to be effective from 1 March 2012? I certainly was and so was one of my Client's where some of the 'troops were becoming restless,' feeling that they were being ripped off by too low rates of reimbursement for business mileage in their company cars. In recent weeks we have been hearing in the news of record prices for diesel and petrol at the pumps and yet when the announcement of the new AFR's came, I was surprised to see no increase in any of the petrol rates and only a 1p increase in the diesel rates for small and large diesels, but nothing for medium diesels. My Client and I have had discussions about using higher rates of reimbursement and I am in favour of this, providing my 'golden rule' is adhered to! My 'golden rule' and a strict warning that has to be given to all the employees concerned is that business mileage recording and private mileage too if employees are purchasing all their fuel and then reimburse the private mileage element, must be accurate.

HMRC has previously indicated that if an employer does not recover enough to cover the full cost of all private fuel or reimburses employees more than is required to cover the cost of their business mileage, the excess will be taxed and fuel scale charges will not be sought; providing business mileage records are adequate. I am frequently telling AAT members that I all too often see business mileage records that are inadequate and all too often I think the reason is that employees inflate their mileage claims when they feel the rate of reimbursement is insufficient to cover the cost of their business mileage. So let's start by getting the mileage records right and clamp down on rounded and inflated mileage claims, then let's get the rate of reimbursement right to ensure employees are not out of pocket.

As I have already said, you will see from the table below that the only increases this month was a 1p per litre increase for both small and large diesel cars, all other rates remaining unchanged, despite the increases in the price of petrol and LPG. Full details of the new rates are shown below, with the previous rates in brackets:

Engine Size	Petrol (135.2p)	Diesel (143.2p)	LPG (74.1p)
Up to 1,400 cc	15p (15p)	13p (12p)	10p (10p)
1,401 to 2,000 cc	18p (18p)	15p (15p)	12p (12p)
Over 2,000 cc	26p (26p)	19p (18p)	18p (18p)

There is not a lot happening on the CIS front at the moment, although I know HMRC are still actively looking at Subcontractors, as I have a number of issues at the moment where my help is

being sought. HMRC is still accepting requests for s102 mitigation of the old penalties, but expect them to decrease now that the new penalty regime has been launched successfully.

HMRC is also looking at the process of repaying limited company subcontractors through the P35 to see if the process can be speeded up. The work was centralised in Newcastle last year and many subcontractors experienced long delays in getting repayments. HMRC has set up a group within HMRC and have invited some accountants to join them in looking at the whole end to end process. HMRC is looking at one or two possibilities for fast tracking cases where the risk is low, but the problem is caused by subcontractors claiming one amount and the returns from contractors either showing a different amount or nothing at all. HMRC consider this an area that is ripe for fraudulent claims, which I have to agree with, so there is a need to get the balance right and it is hoped that some new procedures may be in place by May. Let's hope they manage that.

Well folks I have exceeded my quota of words this month, but I hope it is worthwhile and I am looking forward to seeing AAT members at the Oxford Branch meeting this week, then I am off for a holiday and will be watching the Budget from afar. I will be back to comment on the Budget in next month's Blog

Cheers

Mike