

Employment Taxes and CIS Blog – July 2012

Welcome to my July Blog, where I should be saying something like I hope you are coping with the heat and that distracting sunshine outside your window whilst you try to work. I wish! I hope instead that you are coping with the wet weather and that none of you have been affected by the flooding that has hit many parts of the country. Can I also say hello to everyone who attended the Business Entertaining Course at the Holiday Inn, Bloomsbury, recently! It was good to see so many people there, including so many friendly faces and some members new to me. I presented this course, or one very similar, three times in the space of a week and the AAT audience was by far the biggest, so thank you for coming and I hope everyone found it useful.

My priorities for last month and the start of this month has been preparation and submission of the 2011/12 P11D Expenses and Benefits returns and the P11D (b) Class 1A NIC return and Employer declaration. I submitted most of my P11Ds online this year, although it is not compulsory, but using the PKF P11D software and HMRC's PAYE online service, it was very easy and you might think about using it in the future, if you are not already doing so. I started writing this Blog during my lunch break at a Client's where I was helping with the finalisation and submission of the 2011/12 P11D schedules, which cannot be submitted online. I doubt that many of you or your clients will use P11D schedules, but I have previously mentioned HMRC threatening to reject my Client's P11D schedules if the font size is smaller than Aerial, 11, which I was careful to use as a minimum this time. I submitted the schedules by post, using guaranteed next day delivery, on Thursday 5 July 2012 and took the next day off; only to get very wet playing a rare round of golf!

You will be reading this Blog after the 6 July 2012 submission has passed, but even if you have missed that deadline, my advice is not to panic and try to get the P11Ds and P11D (b) return submitted and payment made of the Class 1A NICs by 19 July 2012. There are no automatic penalties for late P11Ds and HMRC should not seek penalties for the late filing of the P11D (b) return because of an extra statutory concession that will not apply from next year. HMRC made the following announcement earlier this year:

Filing extension for form P11D(b)

By concession, HMRC does not issue penalties for late filing of P11D(b) returns provided they are received by 19 July following the end of the tax year. HMRC will withdraw this practice from 31 March 2013. P11D(b) returns filed after this date must be made by the deadline of 6 July following the end of the tax year in order to avoid penalties.

I have known HMRC to issue a penalty notice and subsequently appealed successfully on the basis of the concession, so it is as well to be aware of it.

Subsequent to the submission of the 2011/12 P11Ds and the issue of copy information to employees; which was required by the same 6 July 2012 deadline, I have already seen some queries from employees, claiming that the P11Ds are wrong. As I have said many times, there is no problem with submitting amended P11Ds and once the 19 July Class 1A payment deadline has passed, I would wait at least until the end of July, if not end of August, before submitting amended P11Ds and an amended P11D (b) return and adjustment payment (if any).

AAT members who have attended the Business Entertaining Courses may remember my advice to think about applying for a new or updated P11D dispensation as soon as the P11Ds are out of the way. It's too late to think about this at the end of the tax year, because HMRC will not back date a dispensation beyond the start of the current tax year. This is the best time to think about P11D dispensations, having just gone through the process of analysing the costs and preparing and submitting the P11Ds. How much of that work seemed pointless? Applying for a P11D dispensation for 2011/12 and future years will make it much easier next time, so take action now before you go on summer holiday.

P11D dispensations can be obtained through the new online application form and postal applications can be made to the Employer Support Team at HMRC, Bowback House, 299 Silbury Boulevard, Witan Gate West, Milton Keynes, Buckinghamshire, MK9 1NG.

Now let me turn to PAYE Settlement Agreements or PSA's, which many of you will be familiar with and where the deadline for registering a PSA or amending a PSA for 2011/12 also passed on

6 July 2012. You will have previously been advised by me how important it is to get a PSA registered before the start of the tax year to which it is to relate and for my Clients I have not had to worry about that 6 July registration deadline. However, one Client wanted to make a late amendment to the 2011/12 PSA to include the costs of renting a flat for an employee seconded from abroad. HMRC's initial response was that the benefit could not be included in the PSA. This is because it is not a minor benefit and is not a benefit that is impractical to allocate individual employees, indeed it only relates to the one employee.

That leaves us with it being an irregular benefit if it is to be included in a PSA and I did regard this as coming within the meaning of irregular payments or benefits. The employee was temporarily seconded to the UK and under the temporary workplace (detached duty) rules the provision of accommodation was not taxable, until the decision was made to extend the secondment beyond 24 months. The benefit is now taxable and as the provision is still a temporary measure, because the employee has been asked to stay on and finish a project, I have asked that it be treated as an irregular payment. The message is don't assume that anything can be included in a PSA.

I have been quite busy visiting Clients or chasing for the information that I need to prepare the 2011/12 PSA computations, as well as answering technical questions and giving some practical advice. Clients often overlook the urgency of submitting PSA computations, thinking that this can be done close to the 19/22 October payment deadline, but HMRC needs time to review and agree the PSA computations; then issue the special PSA payslips. There is no statutory deadline for submission of the PSA computations, but you need to look at the P626 PSA registration forms and see what was agreed when the forms were signed. I have never accepted 6 July as a reasonable date and have tried to get 31 August as the agreed date, but some of mine have been agreed as 31 July 2012, so we need to get moving.

RTI (Real Time Information) is a big issue at the moment and I will be visiting some AAT Branches in the autumn and talking about this. HMRC has issued a consultation document on securing compliance with RTI, including proposals for the late filing and late payment penalty models. I will be giving this some thought and no doubt the AAT will be providing comments. HMRC recently announced that new PAYE schemes which are set up after November 2012 and existing employers who become clients of pilot software providers, bureaux or agents will be able to join the pilot from November 2012. Joining the Pilot seems to make sense to me.

I was pleased to go to Ipswich last month to do a CIS update, which was one of the AAT webinars and let me again apologise to everyone who had to wait because my 45 minute journey took over two hours and I was nearly half an hour late starting. I managed to get through loads of questions and also dealt with a few from members who contacted by email in the following days. One CIS query that illustrates one of the difficulties for AAT members and your clients concerned a 'Scrap Yard,' yes a Scrap Yard; which you would think has nothing to do with CIS. However, the point is that they also do some demolition work, which is within the scope of CIS and if using self-employed subcontract labour at the Scrap Yard and on the Construction site, CIS applies to all the work unless there are separate contracts for the different type of work. The rule is "part in, all in" and using separate invoices alone does not work.

I did also point out to the AAT member that I would be looking at the employment status of the subcontractor, especially for the work in the scrap yard where the provision of labour may be perceived as an employment, but should it involve skilled work such as welding and cutting, it may be easier to argue for self-employment if other features of the contractual arrangements stack up as self-employment.

Well folks, I think I am running out of time and space, so its goodbye from me until the next time, when I will be penning my comments during the Olympics; which hopefully will be a great success; not only for London but for the whole Country. Come on Dai Greene and Ryan Giggs (Welsh bias!!) and the whole of the GB team!

Mike Evans