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### 1. HMRC is conducting research with tax agents

HMRC has commissioned independent research company TNS BMRB to survey a random sample of 1700 paid agents by telephone interview which will be conducted between 10 March and 25 April. HMRC want to understand more about agents' use of digital services now – and the support tax agents may need in future, as HMRC increasingly offer more services online.

Invitation letters will be issued to agents by HMRC prior to the telephone call.

### 2. HMRC help employers by publishing their basic tools for 2014-15

HMRC plans to make its **Basic PAYE Tools product for the 2014-15** tax year available on 3 April 2014. The new 3 April 2014 version of Basic PAYE Tools will allow users to produce P60s for 2013-14, start the 2014-15 tax year and claim the new National Insurance contributions (NICs) Employment Allowance of up to £2,000.

Continuing with their attempts to help, HMRC has published a **3-step guide on YouTube** to help employers make a successful final PAYE submission. HMRC has also produced **two help sheets on getting ready for April 2014** and the tax year ahead. The help sheets cover:

- what employers need do to get ready for their final 2013-14 submission and the start of 2014-15 - and the changes they will see in 2014-15
- in-year interest charges being introduced from 6 April 2014

### 3. Cars taken home by directors cannot be pool cars

There is quite a lot of evidence that HMRC are trying to clamp down on any significant private use of allegedly 'pool cars'. In **Vinyl Design Ltd & Ors v Revenue & Customs [2014] UKFTT 205**, the issue was an appeal against a decision issued by HMRC on 5 October 2010 to charge Class 1A NIC for car and fuel benefits for the periods 1 August 2007 to 5 April 2010 inclusive as a result of vehicles being provided for two directors (Mr Hanmer and Mr Templeman) of Vinyl Design Ltd ("the company"). There are three company cars, an Audi, Mercedes and an out of use Renault Laguna. The Audi is used by Mr Hanmer and the Mercedes by Mr Templeman and each car is supposed to be used only for business. The two directors have other cars which they can use for their private motoring. The cars are not left at the company's premises due to issues of security and vandalism. The cars are taken to the director's respective homes at night. All fuel for the cars is purchased by the company.

The company argued that the cars satisfy all the conditions of section 167 **Income Tax (Earnings and Pensions) Act 2003** to categorise them as pool cars.

There are five conditions, all of which must be satisfied in order for a car to be considered a pool car. These conditions are:

- (1) The car was made available to, and actually used by, more than one of the employees
- (2) The car was made available, in the case of each of those employees by reason of the employees' employment
- (3) The car was not ordinarily used by one of those employees to the exclusion of the other
- (4) In the case of each of those employees, any private use of the car made by the employee was merely incidental to the employee's other use of the car in that year
- (5) The car was not normally kept overnight on or in the vicinity of any residential premises where any of the employees were residing, except while being kept overnight on premises occupied by the person making the car available to them.

HMRC had evidence that the vehicles are taken home each and every night which suggests substantial private use. When at the home of the director, they are available for private use and the journey home is private use. Accordingly, the company is due to pay Class 1A of NIC £7,743, Mr Hanmer is due tax of £2816 and Mr Templeman is due tax of £9394.

The car benefits legislation is a tax trap for the unwary. The Audi was registered in 2003 and was purchased on a second hand value of £6,000 in 2006. It is said to be currently worth £2,000. Its price when new was £21,540. The Mercedes was first registered in 1996 and purchased in November 2004 for £3,000. It is said to be currently worth only scrap value. The list price when new was £42,050. In other words the tax bill is considerably more than the vehicles cost.

Hindsight is a wonderful thing and as soon as the taxable benefit exceeds the cost or value of the car, it would have been better to own these vehicles privately and perhaps claim mileage allowances.

On a balance of probabilities, the Tribunal thinks it more likely that the cars were used by the directors individually. There were two cars and two directors and no other employees. The legislation states that a journey between a person's home and their place of business is not a business journey it is ordinary commuting and private travel. The private use of the cars was not therefore incidental to the business use.

The tax and NIC sought by HMRC was therefore due. I cannot help but feel sorry for the appellants.

#### **4. Budget 2014: brief review**

The Chancellor, George Osborne MP, delivered his Budget Report on Wednesday 19 March but the detail is to be found from a careful scrutiny of the **Finance Bill** which was published on 27 March 2014 and runs to 601 pages with 117 clauses and 34 schedules.

This was a political budget with most of the good news postponed until 2015 but there were a few rabbits which appeared out of the hat. The one on pension reform, doing away with the need to buy an annuity and giving greater access and flexibility to defined contribution schemes was interesting. **You can read more about this on the Gov.uk website.**

As set out in the **Overview of Tax Legislation and Rates (OOTLAR)** legislation will be introduced during the passage of Finance Bill 2014 on the following measures:

- Bank levy redesign (banding model), which is subject to a **consultation**.
- Theatre tax relief, which is subject to a **consultation**.
- UK oil and gas: bareboat chartering – draft legislation will be published on 1 April 2014, the date from which changes will have effect.

The government has also **published guidance and technical notes** on the following measures:

- Social investment tax relief
- Partnerships: mixed membership partnerships; alternative investment fund managers; transfer of assets and income streams through partnerships
- Partnerships: salaried member rules

## 5. HMRC toolkits redesigned to offer more help to agents

HMRC toolkits provide agents with guidance on areas of error that HMRC sees in the returns submitted by agents. HMRC recently held a short series of workshops and an online survey to better understand what agents think about HMRC's Agent Toolkits.

Agents stated that they would like to be able to complete the checklist section for a particular client and have the option to save it electronically or print it to save in a client's file. As a result HMRC are introducing enhanced functionality to each toolkit as part of its annual maintenance cycle to review and refresh content.

The first two toolkits to incorporate the new functionality are the [Expenses and Benefits from Employment Toolkit \(PDF 232K\)](#) and the [National Insurance Contributions and Statutory Payments Toolkit \(PDF 237K\)](#) both due to be published on 6 April 2014. Other toolkits will be enhanced when they receive their annual update.

## 6. Assets placed into trust may not be earnings for NIC purposes

In [The Commissioners for HMRC \(Respondents\) v Forde and McHugh Limited \(Appellant\) 2014 UKSC 14](#), the Supreme Court gave a unanimous decision in favour of the taxpayer that sums placed into a discretionary trust were not earnings for the purposes of NIC.

The context is the payment of an employer's contribution to a Funded Unapproved Retirement Benefits Scheme until 2006 such schemes were commonly used to top up sums available through tax-approved pension schemes. Mr McHugh was the intended beneficiary of a discretionary trust. The trust received from the company an initial cash contribution to the scheme of £1,000 and Treasury Stock with the nominal value of £162,000.

The taxpayer's submission was that the payment of "earnings" under section 6 of the [Social Security Contributions and Benefits Act 1992](#) did not extend to the employer's transfer to a trust of funds or assets in which the earner had at the time of the transfer only a contingent interest.

Lord Hodge gave the leading judgement and he had three reasons for rejecting HMRC's contention that the transfer into the trust fund was earning for the purposes of NIC. The first and principal reason is that the ordinary man on the underground would consider it to be counter-intuitive that a person would earn remuneration both when his employer paid money into a trust to create a fund for his benefit and again when at a later date that trust fund was paid out to him. HMRC's argument also failed to recognise that if Mr McHugh died before he retired the benefits within the trust would pass to others at the discretion of the trustees. In other words he had a contingent right only.

Derek Allen  
31 March 2014

Set your diaries for the next edition of the general tax update which will be published on 30 April 2014

The views expressed in these podcasts are Derek Allen's personal views and do not necessarily represent AAT policy or strategy.