Week to Wednesday, 5 April 2017

Welcome to our round up of news of interest to clients working in HR and employment taxes. Our summary is arranged according to those items of interest to reward professionals, those working in employment taxes and payroll and those working in global mobility.

Employment law

Indirect discrimination The scope of indirect discrimination has been difficult to pin down in recent times and the Supreme Court has recently considered how the law should be interpreted. Our employment law alert looks at the judgment in two recent cases which provides clarity on the law for organisations and practitioners alike.

Gender pay gap reporting A reminder that The Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 come into force today, 6 April 2017. The regulations impose mandatory gender pay gap reporting for large private and voluntary sector employers, who will be required to analyse their gender pay gap every April. From this, the employers will need to publish a gender pay gap report, in the first case no later than 4 April 2018 and annually thereafter. They will also need to publish overall gender pay gap figures, the proportion of males and females sitting within each of the four pay bands based upon the employer’s overall pay range, information on the employer’s gender bonus gap and the proportion of males and females who received a bonus in the same 12-month period.

Reward

Occupational pensions A consultation has been published seeking views on draft regulations which would introduce restrictions on early exit charges for certain members of occupational pension schemes and prohibit existing member-borne commission charges. The consultation (which follows an earlier Government consultation in February 2016) is a direct consequence of the pension freedoms for individuals aged 55 and over, which have increased the attractiveness for individuals with non-flexible benefits of transferring or converting these benefits into a form which can be accessed flexibly. The Government has had to amend Schedule 18 of the Pension Act 2014 so that it has the power to override any terms of a contract between the trustees / managers of certain occupational pension schemes and the service provider, but only where it conflicts with provisions of the regulations, as this is where the member-borne charges arise in these cases. The consultation runs until 31 May 2017.

Government action on taxation of image rights As part of its response to the report by the Public Accounts Committee ‘Collecting tax from high net worth individuals’ the Government has set out its upcoming actions on image rights. A recommendation of the PAC was that the Government should take action to address image rights taxation. This topic was mentioned in the Spring Budget, but no detail was given. In its response to the PAC, HMRC says that making new guidance publicly available will improve compliance by clarifying what an image right is and the tests to determine whether payments can be treated as image rights payments or must be subject to PAYE as earnings. In addition it also says that to ensure that the rules on image rights are applied consistently in football, HMRC has initiated a specific football compliance project. Dedicated technical experts will visit all English Premier League, Championship and Scottish Premier League clubs over a three year period and review all compliance risks including payments to players. Please click here to read a copy of the report.
Employment taxes

Optional remuneration arrangements The new Optional Remuneration Arrangements (OpRA) legislation also came into effect from today, 6 April, for certain benefits where these are provided in conjunction with a Type A (salary sacrifice) arrangement or Type B (cash alternative) arrangement. The new legislation will also apply where there is a variation to an existing grandfathered benefit. The long awaited HMRC guidance, which was published on 20 March just days before the new legislation became effective, is not as comprehensive as many had hoped it would be. As a result there is still considerable uncertainty on the practical application of the legislation both in terms of the grandfathering provisions and the application to certain benefits and exemptions. We also understand that HMRC is in the process of considering providing additional guidance.

The implications with regard to company cars and car alternatives can be particularly complicated, perhaps more so where there is a Type B arrangement, where an employee is provided with a car but has the ability to take a cash alternative instead. The legislation as drafted sits more comfortably with a Type A (salary sacrifice) arrangement and as a consequence there appears to be a number of unintended consequences for more traditional company car schemes that provide for a cash alternative. Some of these have now been addressed in the final legislation which now recognises both ‘private use’ and ‘capital’ contributions, however, others, for example ‘periods of unavailability’ are not dealt with.

The implications for employees that are provided with a combination of cash and Authorised Mileage Allowance Payments (AMAPs), a mechanism that is often used in conjunction with employee car ownership arrangements, has not been adequately addressed. We understand that the intention of HMRC was to capture those arrangements where employees sacrificed a cash entitlement and received tax-free AMAPs in place of cash, but this is not necessarily how the schemes will work. It is therefore important for employers to fully consider how the arrangements work both contractually and in practice. If there is neither a Type A or Type B arrangement in place, the legislation will not apply. Similarly, HMRC guidance confirms that where a cash equivalent is withdrawn the OpRA rules will no longer apply.

If you would like to discuss how OpRA will impact your remuneration arrangements please liaise with your usual EY contact, Gary Hull or Brian Cooper.

Global mobility

Scotland The Scotland Act 2016 (Income Tax Consequential Amendments) Regulations 2017 make changes to ensure that income tax rules operate as intended with the introduction of the further Scottish income tax powers. These regulations make amendments in order to make the existing UK wide income tax legislation work in respect of Scottish taxpayers. Click here to go to the relevant pages on the Government's website.

Italy The Italian tax authorities have released guidelines for the new tax regime designed for foreign nationals wishing to transfer their tax residence to Italy and returning Italian citizens. A checklist has also been published which individuals may file with the tax authorities in order to obtain a pre-assessment of eligibility for this beneficial regime. As previously highlighted, the new regime allows taxpayers, who have not qualified as Italian tax residents for at least 9 of the past 10 years, to opt for the application of an annual substitute tax of Euro 100,000 on their foreign-sourced income, irrespective of the actual income and its remittance to Italy. When considering the special regime, the overall costs need to be carefully considered as a foreign tax credit cannot be claimed on foreign income that is subject to the substitute tax regime. In addition, regular progressive taxation (at rates up to 43% in addition to local taxes) still applies to Italian source income. The tax authorities have now also confirmed that the election must be made by the tax return filing deadline for the fiscal year in which an individual becomes Italian tax resident. This would be 30 September 2018 for the 2017 fiscal year. Our Mobility: tax alert looks at the changes in more detail.

South Africa Proposed changes have been announced to the taxation of South African tax residents working outside the country which will make them liable for South African tax unless they pay foreign tax in the country where they are working. Under existing South African law it has been possible for individuals working abroad to be exempt from South African income tax on income earned in relation to duties rendered outside South Africa. The current proposals do not make clear whether foreign tax should be levied at a specified minimum rate for the exemption to apply, however, the proposals will negatively impact overseas assignments due to the potential tax due in South Africa. Whilst the proposed changes are not expected to become law until 1 March 2018, affected employees and their employers should review their circumstances to understand how they may be affected after that date and adapt policies and procedures accordingly. Our Mobility: tax alert looks at the changes in more detail.
Immigration

UK With effect from today, 6 April 2017, the Tier 2 (Intra-Company Transfer: Short Term Staff) scheme will be closed to new applications and extensions. It had previously been announced that the scheme would close to new entrants. As summarised in our Mobility: immigration alert this has far reaching implications for employers who should take steps to assess whether existing short term assignees in the UK with a Short Term Staff visa, can remain in the UK for the maximum 12 month period. Given the 6 April deadline, the only remaining available option to extend these visas where there is a need to extend the UK assignment, is by utilising the exemption from the cooling off period for applicants ‘switching’ from a Tier 2 (Intra-Company Transfer: Short Term Staff) visa to a Tier 2 (Intra-Company Transfer: Long Term Staff) visa outside the UK. This provision would normally enable an assignee to return to the UK soon after their departure, provided their UK salary package is £41,500 or more. Such applications would be subject to the Immigration Skills Charge and the Immigration Health Surcharge, both are part of previously announced changes to Tier 2 of the Points Based System effective from 6 April 2017.

In addition, our Mobility: immigration alert summarises the current UK immigration position following the UK triggering Article 50 on 29 March.

Contact
Nigel Duffey, 020 7951 9586
nduffey@uk.ey.com

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