JOINT EXPATRIATE FORUM ON TAX AND NICS: 27 October 2016

The Chartered Institute of Taxation, 11-19 Artillery Row, London SW1P 1RT
Secretary: Joanne Pilling (HMRC) - standing in for Jade Coppin

MEETING NOTE

1. Introductions

1.1 Introductions were given.

2. Consultation on salary sacrifice for the provision of benefits in kind

2.1 HMRC confirmed that the closing date for comments in respect of the consultation on salary sacrifice for the provision of benefits in kind was 19 October 2016.

2.2 HMRC explained that benefits in kind were originated for employee engagement and employee retention and were not tax motivated. This gave employee's access to benefits that they wouldn't normally be able to receive for example, a company car.

2.3 Benefits in kind have a cost to the employer, which includes the cost of the item, the administration of the scheme and Class 1A National Insurance Contributions (NICs).

2.4 HMRC advised that salary sacrifice has been growing in respect of the number of schemes and users and the types of schemes therefore, this is increasing the cost to the Exchequer. HMRC confirmed that the consultation was considering the value of the benefit in kind for tax and NIC purposes.

2.5 HMRC advised that this will not include salary sacrifice arrangements for the following:

- Employer provided pensions savings and advice;
- Childcare vouchers and workplace nurseries;
- Cycle to work schemes.

2.6 HMRC explained that the benefit in kind will be valued as the higher of the cash forgone or the current taxable value per Part 3 The Benefits Code ITEPA 2003. This is regardless of Part 4 Employment income – exemptions.

2.7 HMRC confirmed that cash allowances under salary sacrifice arrangements will be treated the same as salary.

2.8 HMRC advised that as "expats" are employees under UK law, the system would work as it normally does for employees. With split contracts, this would be referring to the framing of the UK contract. As with all benefits in kind, the usual rules apply on time apportionment.

Questions

Q. Does the time apportionment include overseas workday relief?

A. HMRC confirmed that the time apportionment does include overseas workday relief.

Q. How are individuals on a dual contract arrangement impacted by the proposed changes?

A. HMRC confirmed individuals in the UK will be treated the same as UK employees.

3. Making Tax Digital (MTD) – update

3.1 HMRC confirmed that MTD aimed to put HMRC's customers at the heart of what we do, transforming tax administration into a personalised service, tailored for the needs of each customer.

3.2 HMRC explained that MTD will;

- Improve customer service;
- Increase compliance revenue;
- Reduce costs to HMRC and its customers;
- Help customers to get their tax affairs right first time.

3.3 HMRC advised that the MTD vision is underpinned by four foundations:

1. Better use of information

- Customers will not have to tell HMRC information we already hold, or should be able to get from elsewhere.
- Customers will see the information that HMRC holds through their digital tax accounts, and be able to check at any time that their details are complete and correct.
- Information will be used more effectively to avoid significant under- and over-payments.
- HMRC will use this information to tailor the service it provides, according to each customer's individual circumstances.

2. Tax in real time

- Customers should not have to wait to the end of the tax year or longer to know how much tax they should pay.
- HMRC will collect and process information affecting tax as close to real time as possible, to help prevent errors and stop tax due or repayments owed building up.

3. Single financial account

- At the moment most customers cannot see a single picture of their liabilities and entitlements in one place. MTD will change that.
- Customers will be able to see their complete financial picture in their digital account, just like they can with online banking.

4. Interaction digitally with customers

- Individuals and businesses (and their agents) will interact with HMRC digitally, and at any time to suit them.
- They already have access to digital accounts, which will present individual taxpayers with an increasingly personalised picture of their tax affairs, along with prompts, advice and support through webchat and secure messaging.
- Digital record keeping software will be linked directly to HMRC systems, allowing customers to send and receive information directly from their software.

3.4 The MTD roadmap was launched in December 2015. Since then HMRC have set up business tax accounts and personal tax accounts. These are two of the fastest growing services in the UK.

3.5 HMRC has 6 MTD consultations, which are as follows:

- Bringing business tax into the digital age;
- Simplifying tax for unincorporated businesses;
- Simplifying cash basis for unincorporated property businesses;
- Change to Tax Administration;
- Voluntary Pay As You Go;
- Transforming the tax system through better use of information.

3.6 Over the next five years, the changes outlined in these consultations will bring about the end of the tax return for millions of customers:

• A new system of online billing will collect outstanding tax which can't be collected through PAYE (for example, small pensions) with no need for Self Assessment tax returns.
• Those who currently choose to complete tax returns simply to check their tax is in order will find all the information they need in their digital account.
• Most businesses will keep their records using digital tools and send that information at least quarterly to HMRC.
• HMRC will consult on where it might obtain information directly from third parties, removing the need for customers to report it.
• Customers with changes to report or other information to submit will do so through their digital tax account.

3.7 HMRC advised that due to the complexity of their tax affairs "expats" will be enrolled towards the end of the MTD programme.

<u>Personal Tax Account (PTA) access</u>
3.8 HMRC advised that for "expats" access to personal tax accounts was likely to be divided into two groups of people;

1. Those who have lived in or had a presence in the UK and therefore have a footprint for example, a National Insurance number, bank account, residual HMRC records etc.
2. Those who have never lived in the UK but for example, may be visiting for work.

3.9 HMRC explained that group 1 will be able to access their PTA just like anyone else, there is no restriction to logging in from abroad.

3.10 Group 2 will need to overcome some hurdles before they can access PTA for example, register for a National Insurance number, obtain a P60 from their employer, have a UK address.

3.11 HMRC explained that customers can access PTAs if they have (or can obtain) Government Gateway credentials. Customers have to be able to go through 2 factor authentication (code issued to their mobile or landline) and answer the questions about their identity. If they do not have any of that information then for non-UK passport holders there is scope to access their PTA through a service provider called Call Credit, which will be able to ask the individual questions about their financial information.

3.12 HMRC advised that people living abroad will only be able to use the repayment service developed in PTA if they have a UK bank account to which the repayment can be sent.

Questions

Q. Forum members asked if National Insurance numbers are required to get reliable information for PTA how will this impact on “expats” who do not have one.

A. HMRC confirmed that they were further considering this along with exploring other possible options. HMRC advised that they do not wish to build a system that is not appropriate or fit for purpose.

Q. Forum members raised concerns with the speed by which changes were taking place. Forum members also commented that for “expats” a lot of the information HMRC requires is outside of the UK.

A. HMRC noted forum members concerns and confirmed that they wanted to ensure the product is right before rolling this out to “expat” customers. It was agreed by all parties that a sub-group would be helpful to further discuss MTD.

Action Point – HMRC to organise a sub-group for MTD for “expats”.

4. NIC – update

4.1 HMRC provided a brief update following the previous forum meetings.

4.2 HMRC confirmed that in respect of termination payments there will be an employer’s NIC liability placed on the excess of termination payments over £30,000. This has been shared in the consultation.

4.3 An update in respect of abolishment of Class 2 NICs will be shared towards the end of the year.

4.4 For S1 certificates HMRC has responsibility for Article 24. The process for S1 certificates is currently being reviewed to determine if HMRC will continue with this or if this process will be moved to another Department.

4.5 The UK entered into a new reciprocal agreement with the Isle of Man, (The Social Security (Reciprocal Agreement) (Isle of Man) Order 2016), which came into force on 6th April 2016. This removes State Pension provisions from the existing social security agreement between the Isle of Man and the UK for those that reach State Pension age on or after 6th April 2016. The main effect of the new agreement is that individuals who reach State Pension age on or after 6th April 2016 and have already paid NICs in both the UK and the Isle of Man may receive a state pension from both the UK and the Isle of Man. The Social Security (Isle of Man) Order 1977 remains in force for all other elements of the original agreement. The new agreement was necessary as the Isle of Man have not introduced 'new State Pension', which was introduced in the UK on 6th April 2016. Without introducing the amended agreement, there may have been a monetary impact on customers under the previous approach of awarding a single pension based on the records of the individual in both countries.

5. Modified PAYE Schemes and the Apprenticeship Levy

5.1 HMRC shared their 3 examples of how the apprenticeship levy would apply for modified NIC arrangements.

Questions

Q. Once the levy is paid and credited to the account is the time limit still 18 months for the money to be spent?

A. HMRC confirmed that this time limit has now changed to 24 months.

Q. There are concerns around adjustments. Once an adjustment is made how will this impact the funds in the levy account taking into account the 24 month time limit? Does this commence when the adjustment is made or at another time?

A. HMRC referred to two examples about offsetting refunds against other PAYE liability. Forum members advised that the examples do not reflect a normal PAYE modified scheme. This is because a modified scheme mostly involves payrolling benefits and almost all individuals will have apportionment benefits, which will bring out the Class 1 NICs. HMRC explained that the examples were to illustrate the main point however noted the comments. HMRC advised that they would review the examples to see if they can be enhanced to better reflect the position in these types of cases.

Action Point – HMRC to review the two examples and see if they can be updated.

Q. If the figure changes how does this affect monies that might have been spent?

A. This will only be an issue if near the threshold boundaries. If more levy is payable the clock would start from the paper being amended however, HMRC will check and clarify the position.

Action Point – HMRC to check if the figures change how this affects the monies that might have been spent.

6. AOB

6.1 HMRC advised forum members that they have identified common areas of disclosures, which they would like members to share with their clients.

[POST MEETING NOTE: Further details can be found below under "Common Pay as You Earn (PAYE) errors for Employers of Inbound Foreign Nationals on Assignment to the United Kingdom (UK-Great Britain and Northern Ireland)".

Short Term Business Visitors (STBVs)

There are two issues identified with STBVs:

1) Individuals from non-treaty countries being included within the appendix 4 agreement.

2) The STBVs have been missed all together when PAYE applies on their income. For example, where a non-UK resident employee of an overseas branch has workdays in the UK, HMRC's position is that those workdays will be taxable in the UK, even for visitors with fewer than 60 days in the UK in total.

HMRC confirmed there are other issues with STBVs however these two are the main ones.

Tracking of Assignees

This is often an issue when individuals receive benefits, shares and bonuses that are still being calculated by the home country and they do not inform the UK employer.

NICs

There are two main issues in respect of NICs;

1) Employers are not aware when the certificate of coverage expires and do not deduct Class 1 NICs.

2) Rest of the world assignees. They are exempt for the first 52 weeks and systems are not in place to monitor when this expires.

Q. Does HMRC seek to understand why there are failings for example, unclear guidance?

A. HMRC advised forum members that if they felt the guidance was unclear to let HMRC know. When a disclosure is received HMRC need to consider the customers behaviour and any lack of HMRC guidance on the issue would inform HMRC's considerations on this point.

HMRC advised forum members that the guidance in respect of STBVs was updated in October 2013 and that there is certain criteria for the 52 week exemption.

Q. Forum members noted that when an appendix 4 agreement had been applied for this generated a lot of questions from HMRC and the language and tone used in the letters felt accusatory.

A. HMRC advised that going forward the questions will be covered online. Dependent on the information available this will determine whether follow up questions are required. If a customer has identified a disclosure is required it would be helpful if this information is provided when applying for an agreement as this will prevent further questions. HMRC suggested including this information in a covering letter explaining the position.

Questions

Q. A question was raised in a previous forum about how the dividend allowance and personal savings allowance impact on the remittance basis.

A. The personal savings allowance and dividend allowance cannot be set against relevant foreign income that is chargeable under s832 ITTOIA2005 – this is on the remittance basis. The personal savings and dividend allowances can be set against foreign interest and dividends if individuals are paying tax on that income on the arising basis. ITA2007 sections 18 and 19 outlines the meaning of 'savings income' and 'dividend income' for the purpose of the allowances.

Q. Forum members asked why was there a delay with publishing the notes of the previous meetings?

A. HMRC explained that this was due to various periods of purdah. HMRC advised that they seek to share and publish the notes at the earliest opportunity however, the issues involved within the minutes can impact on publication.

POST MEETING NOTE:

Common Pay as You Earn (PAYE) errors for Employers of Inbound Foreign Nationals on Assignment to the United Kingdom (UK-Great Britain and Northern Ireland).

Short Term Business Visitors – International Employments

What is a Short Term Business Visitor (STBV)?

STBVs are individuals employed by an overseas entity of a group of companies. They normally work outside of the UK, but temporarily spend time working in the UK.

Examples of STBVs include;

- Short Term Assignees – who may be employees on an international assignment of up to 6 months;
- Business Travellers – employees travelling frequently to countries outside of their home country on regular business trips;
- Project Workers – employees assigned to work on specific projects of variable lengths in countries outside their home country and
- Multi-State Commuters – employees living in one country but travelling to and working in a second country on a regular basis (for example weekly).

Some employers are not aware that they may need to operate PAYE on STBVs. You MUST operate PAYE from day 1 if any of the following conditions 1 to 3 are met. If in any doubt contact HMRC on 03000 533148 and choose option 3.

There are several points to consider:

1. Is the inbound foreign national from a country with which the UK has a double taxation treaty agreement? If not, you MUST operate PAYE from day 1. www.gov.uk/government/collections/tax-treaties.

2. Have you met the employment costs of the STBV? You might have met them through a recharge to the UK Company. If you do not know the answer, you must talk to the overseas business. You need the information to decide if you must operate PAYE. If you have met the costs operate PAYE.

3. Are STBVs coming to the UK from an overseas branch of the UK Company? If so, the exemption in the Double Taxation Agreement (DTA) won't apply. You must operate PAYE.

   A branch is simply an extension of the main Company undertaking work in an overseas tax authority. It is not a separate legal entity (unlike a subsidiary) and it is not a resident of the overseas tax authority. HMRC views the UK Company as the ultimate employer.

4. Do you have a system in place to track visits made by STBVs to the UK? You need a reliable method to keep track of the visits to the UK. Some of the ways you could track them are:

   - Travel information – their flights/travel in and out of the UK.
   - Security logs – sign in and out of the UK premises.

   These are only two examples of information you might use.

5. Is there a STBV arrangement in place? If not you MUST deduct Income tax (and National Insurance Contributions (NIC) if they are not in their home country Social Security Scheme) from day 1.

You may be able to apply for the arrangement if you can answer 'YES' to numbers 1 and 4 and 'NO' to 2 and 3. More information about this arrangement is available at www.gov.uk/hmrc-internal-manuals/paye-manual/paye82000.

NIC

Employers often don't deduct NIC because

1. The inbound assignee is from a country in the European Economic Area (EEA). This is not right. You must have a certificate A1.
2. The inbound assignee is from a country with which the UK has a reciprocal arrangement. This is not right. You must have a certificate of continuing liability.
3. The inbound assignee is from a rest of the world country. This is not right. You MUST deduct PAYE after the first 52 weeks.

Information is available at www.gov.uk/guidance/new-employee-coming-to-work-from-abroad.

Inbound Assignees - Taxation of Rewards or Incentives

Bonuses

When an inbound assignee comes to work in the UK, you must find out if they will receive a bonus. You will also need to know when they will receive it and for what period. The bonus will be taxable in full in the UK if they worked here for the full bonus period. If they worked here for part of the bonus period then that part will be taxable in the UK. This is true even if they have gone back overseas.

Income from Share Awards

The most common errors occur when employees move in and outside the UK and have share based income. It is important to keep track of the awards and payments.

Inbound assignees awarded share based income while working in the UK will need to pay Income tax and NIC (if applicable). Income tax and NIC will generally be due when the employee receives the shares or the corresponding cash value. This applies when they are in the UK or overseas.

Share based income awarded before coming to the UK will generally be taxable if the employee is working at any point in the UK between the date of the award and the date the employee gets the shares or corresponding cash value.

There are times when Income tax and NIC (if applicable) is due on share based non-cash payments. If this applies, we recommend using the guidance available at Chapter 5 of the CWG 'Further Guide to PAYE' available on www.gov.uk/government/publications/cwg2-further-guide-to-paye-and-national-insurance-contributions and also www.gov.uk/hmrc-internal-manuals/employment-related-securities.

Salary paid from overseas

The UK Company must find out about all salary, bonus and other cash payments from overseas for an inbound assignee. You must deduct Income tax and NIC (if applicable) in the UK.

Guidance is available at, but limited to, Chapter 4 of the CWG2 'Further Guide to PAYE and National Insurance Contributions' www.gov.uk/government/publications/cwg2-further-guide-to-paye-and-national-insurance-contributions.

'Presence' is in the UK for PAYE

Some companies do not understand when to operate PAYE. A presence in the UK can be, but is not limited to:

- a branch in the UK;
- an agency in the UK;
- A UK representative office.

Even if Corporation tax is not due, it does not automatically mean there is no requirement to deduct PAYE. You need to take into account all your circumstances to reach your decision. The following information may help you

www.gov.uk/hmrc-internal-manuals/paye-manual/paye81610
www.gov.uk/hmrc-internal-manuals/employment-income-manual/eim40203
www.gov.uk/hmrc-internal-manuals/employment-income-manual/eim40204
www.gov.uk/hmrc-internal-manuals/national-insurance-manual/nim33515
www.gov.uk/hmrc-internal-manuals/national-insurance-manual/nim33545

What next?

If, after reading the article you find you haven't declared the right amount of Income tax or NIC for your inbound foreign nationals, you may want to make a disclosure. You should send it to:

CHARITIES, SAVINGS AND INTERNATIONAL 3
HM REVENUE AND CUSTOMS
BX9 1AJ
UNITED KINGDOM

Please quote reference EF27/10/2016 and your PAYE reference.

For all **non-inbound expatriate disclosures** you should refer to
https://www.gov.uk/government/publications/hmrc-your-guide-to-making-a-disclosure.