Review of employee benefits and expenses: draft legislation

Employment Tax

01 October 2015

CIOT and ATT comment

On 8 July 2015 HMRC published draft legislation on these points:

1. the abolition of the £8,500 threshold for benefits in kind and therefore the removal of a requirement to file a form P9D because forms P11D will be required instead;
2. a framework to allow authorised employers to payroll many benefits in kind and removing the need to file forms P11D when benefits in kind are payrolled;
3. the approved rates that an employer may use when paying meal allowances; and
4. the removal of the requirement for employers to report expenses paid to employees (whether deductible or not) on forms P11D.

The proposed changes will be incorporated into the Income Tax (Pay As You Earn) Regulations 2003 as a new Chapter 3A. References to regulations throughout this account are to the new draft regulations set out in the consultation document.

Point 1. Since the main purpose of the regulations is to remove all references to 'P9D' and 'excluded employment', both of which will become redundant terms from 6 April 2016, neither the ATT nor CIOT had any comments.

Point 2. Several concerns have been raised with HMRC. First, we think that further thought is needed to reg 61H, which modifies the basic rule for payrolling benefits in kind when there is a continuing benefit after employment ceases. For example, the ATT notes that, in most cases, if an employee continues receiving a benefit once they have stopped being employed it is their understanding that it ceases to be a benefit in kind because there is no longer an employment relationship. Hence, in accordance with guidance provided at Employment Income Manual paragraph 20040, the remaining value of the benefit does not need to be taxed at all.

However, if the benefit still qualifies as a benefit in kind after employment has ceased (such as the waiving of a loan), then, when looking at Step 4 in the calculation set out in reg 61H to determine the number of remaining main relevant payments to be made in the employment, the most likely figure would be just one, that being the final one. Hence the 50% rule for PAYE deductions would apply in many instances if the employer attempted to collect the remaining value of the benefit for the rest of the tax year in just one pay period.

We have also pointed out to HMRC that reg 61I – which modifies the basic rule that applies when there is an in-year charge to a benefit – does not account for changes made to benefits mid-month. This deficiency has been acknowledged and revised legislation is expected. The ATT reasons that trying to factor in changes mid-month adds too much complexity to the system. It feels it is adequate to consider for how many complete pay periods a benefit will be made available when recalculating the taxable amount to include in an employee's monthly pay.

Regulations 61K, 61L and 61M deal with situations that arise when there is insufficient income from which to pay the tax due on payrolled benefits, making good the insufficiency in subsequent pay periods, and what happens if it is not possible to do so. For example, under reg 61K, if the monthly deduction for benefits is nil because an employee has insufficient income in some months but the income increases again, the monthly deduction has to be recalculated over a much shorter time. This is likely to mean that in many cases the 50% rule will apply and therefore the whole of the benefit cannot be payrolled in that year. The ATT suggests that in such cases it may be wiser to permit an employee to be removed from the payrolling of benefits system and for a form P11D to be completed for that tax year.

If an employee fails to make good an employer's expense in a tax year (if the employer was expecting a payment and has reduced the value of a benefit in kind to take into account the amount expected to be made good) reg 61L requires the employer to include the amount not made good in the tax year in the calculation of the tax due from the first payment in the next tax year. By contrast, reg 61M permits a 'making good' payment for a fuel benefit charge that was expected to be received in the tax year but is received from an employee within 30 days of the end of the tax year to be treated as paid within the tax year. It is unclear why this extended period for making good applies for the fuel benefit charge only.

Point 3. This permits meal allowances to be paid at a fixed rate if an employee has undertaken qualifying travel. The amount depends how long the journey took. Clearer guidance is needed on the evidence an employer needs to retain to satisfy itself that an expense has been incurred. Will a receipt for the cost of the meal(s) have to be available in all cases (in which case, a claim for actual cost may be better) or will it be enough to have evidence that the travel took place coupled with an occasional sampling exercise to prove that the expense was incurred? The ATT also notes that the £5 and £10 allowances for journeys of five and 10 hours respectively may be insufficient in many cases.

Point 4. Neither the CIOT nor ATT had any comments on the draft legislation to remove the need to include on a P11D employer reimbursed expenses if the expenses qualify for tax relief. The ATT did, however, note with disappointment that HMRC expect every employer with a current bespoke scale rate agreement to contact them before 6 April 2016 and obtain permission to continue to use the scale rates until the fifth anniversary of their agreement.

Our full responses can be found on the CIOT website and the ATT website.