Welcome from the Chair

Tax voice Welcomes

08 March 2021

The last twelve months have brought immense challenges with the pandemic turning our lives upside down. The Treasury's focus has been on providing extraordinary financial support to protect the economy in these unprecedented times, including key COVID-related tax easements. But there have also been other developments which have kept the Employment Taxes Committee busy and which will shape the agenda in the months and years ahead.

We knew that we were in for an extremely difficult time ahead when, on 17 March last year, the Government abruptly announced that the Off-Payroll Working ('OPW') rules, due to be introduced on 6 April 2020 for medium and large businesses in the private sector, would be deferred until 6 April 2021. But this was just the start and the Government soon moved to introduce the Coronavirus Job Retention Scheme (CJRS), the Self-Employed Income Support Scheme and an extensive range of other financial support in order to try and keep the economy afloat. This said, the CJRS does not extend to, amongst others, company owner-managers paid largely via dividends, as HMRC said it was concerned that they had no way of distinguishing dividends received from the business from other sources. Indeed, even micro-businesses operating in the private sector and caught by IR35, i.e. who operated PAYE/NIC on deemed employment income after the end of the 2019/20 tax year, don't qualify. This approach is surely inconsistent – if the worker is being taxed as if they were an employee, why shouldn't they benefit from state support as an employee, based on the recharacterized income? In any event the IR35 compliance net tightens and Jesse Norman, Financial Secretary to the Treasury, has confirmed that the delayed move to OPW will now happen for medium and large businesses in the private sector from 6 April 2021. Nicola Pitcher has more to say about this on pages 5 to 8.

The CJRS was introduced at breakneck speed and effectively put the PAYE system into reverse with HMRC delivering funds to employers rather collecting them. This was an enormous undertaking and HMRC is to be congratulated for the way in which it rose to the challenge. This included developing an on-line calculator to assist employers in claiming the right amount for the employees they had furloughed and continuously publishing and updating their guidance. At the same time, a key condition of receiving support under the CJRS is that where an employer makes a claim then the employees to whom the claim relates must not undertake any work for the employer during that time. In this respect HMRC has begun to publish names of those employers claiming under CJRS together with bandings of the amount claimed. Employees for whom claims are made are also now notified via their Personal Tax Accounts. This is all designed to add transparency and ensure that claims are genuine and justified (e.g. allowing employees to flag if they have been asked to work when on furlough). Certainly, CJRS claims will become a key focus in HMRC's future compliance activity. Susan Ball and Carolyn Brown consider the CJRS in more detail on pages 9 to 15.

The pandemic has meant that many employees who would normally work in an office environment have no longer been able to do so. In this respect the Government announced an easement for the reimbursement by employers of the cost of home office equipment purchased by their employees and used solely for work at home (mirroring the existing exemption for employer-provided home office equipment). This is time limited and will expire on 5 April 2021, albeit it is to be hoped this exemption will be extended given the current situation. Other easements have addressed the supply of PPE, the provision/reimbursement of antigen tests, confirmation that food/drink provided to staff attending virtual Christmas parties qualified within the £150 exemption for annual parties/functions, a limited relaxation on cycle-to-work schemes (given most are not currently cycling to work!) and HMRC acceptance of a £6 per week deduction for homeworking costs (for 2020/21) when having to work at home because of COVID-19. Rob Woodward discusses this further on pages 16 to 18.

But things have also been difficult for employees who have been working away from the country in which they normally live. There have been many cases where employees have been forced to return home unexpectedly, and conversely where they would have wanted to have returned home but transport disruption or lockdowns meant this was impossible. From a UK perspective the UK confirmed its position fairly early on as regards the Statutory Residence Test and what may count as COVID-related 'exceptional circumstances' under the '60 day rule' . More recently HMRC also addressed the position of non-UK residents stranded in the UK and unexpectedly having to work extra days here in these circumstances. This is all helpful though it is very important to appreciate the conditions that apply in order rely on HMRC's interpretation of the legislation. Matthew Fox examines remote working for the globally mobile in light of COVID-19 on pages 19 to 23.

It was a great relief that in the very last days of 2020 the UK agreed new arrangements with the EU around co-ordination on social security matters. The Protocol on Social Security Co-ordination takes effect from 1 January 2021 and deals with individuals moving between the UK and the EU from then onwards. Those who had previously exercised their right to freedom of movement were already covered by the Brexit Withdrawal Agreement, albeit provided their situation continues 'without interruption'. The basic idea under the Protocol is that social security is due in only one country, with the default being 'pay where you work'. This said, the existing rules in Articles 12 and 13 of the EU regulations on detached duty (up to 2 years) and multi-state workers are broadly reproduced. The position for the EEA states of Norway and Iceland is covered by existing bilateral agreements, with Liechtenstein becoming a non-agreement country. Switzerland is also covered by an existing agreement. So there's now a fair bit to think about and Eleanor Meredith comments further on the post-Brexit social security position on pages 24 to 26.

There have been some significant changes proposed to the Construction Industry Scheme which are due to take effect from 6 April. These follow from the consultation document "Tackling Construction Industry Scheme Abuse" in relation to which HMRC published their Summary of Responses, together with draft legislation, on 12 November 2020. The Employment Taxes Committee had various concerns with these proposals, but particularly on the proposal to limit a deduction for materials to costs incurred directly by a sub-contractor (without gross payment status), and not permitting a deduction for material costs re-charged up the supply chain to that sub-contractor. HMRC's Summary of Impacts itself notes that the resultant cashflow difficulties for sub-contractors 'could lead to…the failure of some businesses operating on very tight margins' – we very much echo this concern but are surprised that HMRC would then want to press ahead with this change. This is not least as we think that the present law is quite clear that material costs, whether incurred directly or indirectly by a sub-contractor, should be permitted as a deduction under the CIS. The logic being that, whilst the scheme is designed to accelerate payment of sub-contractor tax (for those without gross payment status), the ultimate tax due will always be computed after a deduction for all material costs. Patrick Crookes has more to say on the proposed CIS changes on pages 27 to 30.

In this edition of Employment Taxes Voice we also feature articles on termination payments and some significant changes in recent years by Paul Tucker (pages 31 to 34), the reporting of company cars for 2020/21 and beyond on by David Chandler (pages 35 to 37), and the withdrawal of the job-related accommodation representative occupier exemption by Susan Ball and Lee Knight (pages 38 to 41). I hope you will find it an interesting read and if you would like to get involved with the work of the Committee please do let me know.