Chair's View, Issue 2

Welcomes

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Highlights of a busy 2016… and where do we go from here?

In penning the Chair's View for our first edition of Employment Taxes Voice, twelve months back now, I said that we would not be short of things to do in 2016. And so it has proved!

The Employment Taxes Sub-Committee has been very busy responding to HMRC consultations including on the Apprenticeship Levy, salary sacrifice, termination payments, PAYE settlement agreements, the timing of making good on benefits-in-kind, disguised remuneration, the IR 35 rules & public sector and future policy on company car tax charges for ultra-low emission vehicles. And more recently we have been poring over the draft 2017 Finance Bill which reflects the Government's decisions and proposed legislation on a number of these fronts. But what has been the effect of our representations? Have we been able to influence Government thinking and make a real difference? This is what I want to consider in this Chair's View, as well as sharing thoughts on what may lie ahead in the next twelve months.

So on the Apprenticeship Levy, for example, we were pleased that the Government accepted our recommendation that it should be permissible to spread the £15,000 Levy Allowance across multiple employers in a group. As things stood previously no spreading was possible, so that for two group payrolls of £1 million each then a total Levy of £5,000 would have been due (0.5% x £1million), whereas spreading the £15,000 over the two payrolls will mean this now reduces to nil, the £5,000 being more than covered by the remainder of the £15,000 Levy Allowance. This approach will eliminate undue cost for smaller employers and reduce administration for Government – we approve!

But unfortunately we do not always succeed in persuading the Government to rethink. The proposals on salary sacrifice arrangements are a case in point. The Government said that, because some employers have introduced salary sacrifice and some have not, this creates an “uneven playing field”. This being because some employees are taxed (often favourably) on the benefits they receive under the benefit-in-kind rules, while others are taxed on their full salary out of which they then purchase such benefits. The Government’s solution is that, subject to limited exceptions for pensions, childcare, cycle-to-work schemes and ultra-low emission vehicles (the latter as a result of representations by the CIOT and others) then employers participating in salary sacrifice arrangements will be taxed on the higher of (a) the salary forgone and (b) the cost of the benefit. This change will apply from 6 April 2017 subject to transitional rules, as Lee Knight explains on page 22. But the overall effect will be that employees with benefits-in-kind (and employers, for Class 1A NIC purposes) could be (i) impacted soon into 2017/18, (ii) covered by the transitional rules until 6 April 2018 (or 6 April 2021 for cars, accommodation or school fees) or (iii) not impacted at all because the benefits are excepted or the benefits package is fixed and there is no sacrifice. I am not sure about levelling an uneven playing field but simple this will certainly not be!

Another key change that the Government has confirmed will apply from 6 April 2017 is the requirement for public sector bodies (or agencies in the supply chain) to assess whether the IR35 rules apply to labour engaged via PSCs and, if so, to account for PAYE and NIC at source as if the individual were their employee. We think this will give rise to real difficulties in the public sector, particularly in having to make judgment calls on IR35, in pretty short order, and further complicated where agencies are involved. But HMRC say that the new digital IR35 employment status tool they are developing, coupled with a legislative requirement for speedy

communication between the parties, will resolve these issues – well we shall find out very shortly! HMRC also say that they have no current plans to extend this approach to the private sector. I think the emphasis should be on “current”… watch this space! Lesley Fidler has more to say on page 11.

The focus of the HMRC consultation on termination payments was originally “simplification” (following proposals by the Office of Tax Simplification (OTS) which we supported) and not on increasing the tax take. And yet the result of the changes will be an estimated £1.4 billion additional taxes flowing to the Exchequer over the period up to and including 2021/22. In particular, from 6 April 2018 employer’s (but not employees’) NIC will apply to termination payments over the £30,000 tax exemption, non-contractual PILONS will be subject to PAYE and NIC (albeit, only to the extent they reflect basic pay – the Government did listen to us on this aspect) and Foreign Service Relief (FSR) as we know it will be abolished (except for seafarers). I think that an opportunity for real simplification has been missed which is a great shame – and there is also a concern that the additional NIC cost for employers may translate into lower compensation paid to those losing their jobs which clearly would not be good news. The loss of FSR will be costly too in relation to the globally mobile and, strangely, would seem to give a worse result than making a contractual payment, which would factor in the employee’s residence status and where he/she had been working. Mark Groom considers the new rules in more detail on page 6.

We had more success on the consultation on the timing of making good on benefits-in-kind. Here the Government agreed with us that 6 July should apply as the common date for all non-payrolled benefits in terms of making good. They also agreed that the special rules in Section 191, ITEPA 2003 on allowing claims for relief for late payment of interest on beneficial loans (to eliminate the benefit-in-kind charge) should remain unchanged. We were also successful in arguing that the “minor” category for items that can be settled under a PAYE Settlement Agreement (PSA) should remain, and other changes to the PSA process, including dispensing with the need to agree PSA items afresh each year and moving to a digital platform, are welcome. However, we are disappointed that the Government still do not accept that the types of benefits and expenses that can be covered by a PSA is too narrow. The OTS has made this point a number of times and we hope the Government will yet think again on this.

It is a virtual certainty that each year the Governement will make changes to the tax rules on pension saving. This time round in the Autumn Statement it was the turn of foreign pension plans with the Government looking to align their tax treatment more closely with the UK domestic pension tax regime. But with, amongst other things, the abolition of Foreign Service Relief for payments made to UK residents under Employer-Financed Retirement Benefit Schemes (from 6 April 2017) this comes with a real sting in the tail for those who work largely abroad. Eleanor Meredith has more to say on this on page 14.

And, as if all of this is not enough, Budget 2017 promises a consultation on the taxation of living accommodation and calls for evidence on the valuation of benefits-in-kind and the "use of income tax relief for employees' business expenses, including those that are not reimbursed by their employer". I think we can guess where the Government may be coming from on the latter!

But I want finally to return to a point I touched on last year on where we are with an overall, strategic approach to the taxation of labour, i.e. employees and the self-employed. The recent Uber case (ET 2202550/2015), while not a tax case, illustrates that business models are changing rapidly and that increasingly we are seeing combinations of technology platforms and people working with, (or for?) them and which challenge our traditional approach to assessing employment status, both from a labour law and tax perspective. There are a number of reviews currently looking at this from a labour market perspective (including by the BEIS Select Committee and the Review of Modern Labour Practices being undertaken by Matthew Taylor of the RSA) but I hope that the opportunity is also taken to think carefully about the position from a tax and NIC perspective. Surely, if we narrowed the fiscal differences between employment and self-employment then we could move away from the present sticking-plaster approach of increasingly complex and administratively costly rules in relation to such areas as employment intermediaries, IR35, salary sacrifice, the NIC categorisation of earners regulations etc. – a true levelling of an uneven playing field.