Employment taxes and CIS Blog – August 2012

Hi everyone and welcome to the August holiday edition of my Employment taxes and CIS Blog. Last month my concentration was on submitting the 2011/12 P11Ds accurately and on time and ensuring that my Client's paid the Class 1A NICs arising from the brown box P11D entries by the 19 July 2012 cheque payment deadline. As usual, I sent reminders out to my Clients a few days before and actually ended up making an electronic payment for one very special Client. Next year I will remember to send an earlier reminder.

From the middle of July and up to now I have been busy with my Client's 2011/12 PAYE Settlement Agreements (PSA's); either checking their computations or preparing them myself. It is a sign of the times that nobody so far has enjoyed an annual staff function costing more than the £150 per annum exemption limit in Section 264, but one client had three functions in the year; which meant that one had to be included in the PSA. Some points to be careful with when thinking about PSA's and the exemption for annual staff functions, firstly the event must be an annual event and the 10th or 25th birthday or anniversary party cannot be an annual event; also the function must be open to all employees. An annual dinner for directors or managers, or for one department, cannot qualify.

Despite so many cut backs in these difficult times, many employers are still incurring costs on taxable staff entertaining or subsistence, such as food at or near the permanent place of work and some employers still provide taxable incentives or awards that need to be included in a PSA. AAT members that have attended the Business Expenses CPD Mastercourse run by Tim Buss and myself, will remember some of the points raised about 'business' lunches, dinners etc. that may be appropriate from a commercial point of view; but which cannot satisfy the test of being incurred wholly, exclusively and necessarily in the performance of the duties. I still have difficulty convincing some clients that such costs are taxable on the directors or employees and it is not sufficient to disallow the costs as business entertaining. Another PSA problem, again regularly mentioned when I talk to AAT members, is that any cost to be included in a PSA or on form P11D, must be VAT inclusive. I left a Client meeting earlier today where I had to explain to the Financial Controller why the VAT, which has been reclaimed and is not a cost to the employer, must be included in the PSA. PAYE regulations require VAT to be included in the cost and the reason is that employees of an employer, such as a Charity that cannot reclaim the VAT, would be taxed on a higher amount.

I will return to PSA's next month, reminding you about the payment deadlines and what to do if your Client has yet to receive a PSA payslip, but let me look at some 'what's new' items from the HMRC website. The first one I want to discuss is the announcement by HMRC on 18 July 2012 of the withdrawal of the form P38 (S) Student Employees. This is the annual return that employers do not have to submit to HMRC, but must retain for the minimum 3 closed tax years. The P38 (S) is to be withdrawn from 6 April 2013 and from that date students will be treated in the same way as all other employees for PAYE tax and NICs purposes regardless of when they work for the employer. A P38 (S) is still required for the current tax year (2012/13). If your employer or any employer clients are employing students in the current holiday period, the student employee (s) should have completed the P38 (S) student declaration at the start of the employment. If that did not happen, now is the time to insist on the student employee signing the declaration, or the employer must operate PAYE in the normal way. Also remember that the P38 (S) is not relevant to Class 1 NICs, which must be calculated and deducted in the normal way.

The announcement on the withdrawal of the P38 (S) makes reference to the introduction of Real Time Information (RTI) and on 25 July 2012, HMRC announced an update to its RTI frequently asked questions. The timetable provides for Employers and pension providers to begin to use the RTI service between April 2013 and October 2013; with all employers using the RTI service by

October 2013. In the autumn and during February and March, I will be visiting a number of AAT Branches to talk about the introduction of RTI and provide an update.

HMRC has published details of its plans to "simplify Extra Statutory Concession A19," which many of us use to argue that HMRC should not pursue underpayments of tax where the department has failed to act on information within its possession. The PAYE coding backlog in 2010 brought ESC A19 into the limelight and was a last resort for many taxpayers who found that they owed large amounts of income tax for back years. Currently ESC A19 is available where HMRC fails to act in a timely manner, or when the department notified the taxpayer 12 months after the end of the tax year to which the assessment applies, or where the taxpayer could have reasonably believed their affairs were in order.

The HMRC announcement states that the objective of the consultation exercise is to make ESC A19 more "user-friendly" and objective, but I am sure that this means that ESC A19 will be less effective for our Clients. The proposed changes will end concessions for exceptional circumstances within the tax year and remove hope for taxpayers who had a "reasonable belief" that their tax affairs were in order.

Another HMRC announcement, this time coming out of the 'Working Together post working group,' is to use 'signpost headings' on post we send, as agents, to HMRC for PAYE and Self-assessment. We are provided with a list of primary level and secondary level headings to use in corresponding with HMRC, aimed at speeding up the response times. The lists are not exhaustive, but Primary headings include 'complaints,' 'employer correspondence' and 'employer penalty appeal;' whilst Secondary headings include 'Appeals - penalty appeals' and 'share schemes.' The intention is that by identifying the point at issue, HMRC will be able to process the correspondence more quickly. I hope it works.

It brings to mind a problem that a number of my Clients have encountered, directly related to the 2011/12 PAYE annual returns. Some of my Clients have received underpayment notices, followed by demands for payment. In one case, there is no overpayment because the shortfall in 2011/12 relates to an overpayment in the previous year (2010/11). I was advised that HMRC will not set the overpayment against the underpayment, without my Client first writing to Newcastle to explain why the overpayment arose and requesting that it be set off in the following tax year. In that case it was simple enough to do that, but despite several telephone calls and two letters, the demands for payment persisted. It seems that the HMRC computer is very efficient at producing correspondence (demands), but HMRC is nowhere near as efficient at dealing with correspondence it receives. Perhaps the 'Signpost Headings' will help to reduce these problems in the future. I hope so!!

Nothing in the 'what's new' arena for CIS, so the last month has seen me dealing with the usual queries and problems and verification of subcontractors remains high on the list of problems requiring Mike's assistance. The first point I would make is that when a subcontractor changes his/her or its status, from sole trader to partnership or limited company or partnership to limited company, in other words when the subcontractor becomes a 'new business,' the old tax payment status is irrelevant. Contractors cannot continue to pay the 'new business' on the same basis that the old business was paid; whether gross payment or standard rate.

The next point and this applies whether it is a subcontractor used for the first time or a subcontractor whose business has changed from sole trader to partnership etc. is that the 'new subcontractor' must not be paid before they have been verified. Verification should be done as soon as the work is agreed, not waiting until payment is due, so that if the 'new subcontractor's' details do not match when verified with HMRC, there is time to sort it out before payment is made. If not, payment will have to be made with a 30% deduction. I cannot emphasise enough that the 'new subcontractor' must be verified before that first payment is made; even if we know we do not

have enough information for the subcontractor to be matched by HMRC. I will still verify and obtain the verification reference number to allow my Client to pay the subcontractor under 30% deduction. If the subcontractor does not want to have 30% deducted, the payment must be delayed until the verification is sorted. Yet again this month, I had to intervene with HMRC to ensure a subcontractor was matched and deduction could be made at 20%, instead of 30%. Yet again, the problem was that the information provided to the Contractor did not match the details held by HMRC. It is up to the Subcontractor to provide the information and the Contractor is only able to work with the information provided; so more care please at this early stage.

Well I have just heard about another Gold medal for team GB. Well done Kenny! I think I will buy a bike! Anyway, that's all for now folks. Hope you all get a summer break and thanks again for reading my Blog!

Cheers Mike