AUTUMN STATEMENT – EMPLOYMENT TAXES

Tolley®Guidance

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Autumn Statement 2013 — Employment Taxes

Produced by Tolley

Summary

The Chancellor delivered his Autumn Statement to Parliament today. Among a number of tax announcements of general interest, there were a small number of new announcements and confirmation of previous decisions directly relating to employment taxes.

New exemptions and reliefs

Indirect employee share ownership exemptions

There is to be a package of three new tax reliefs to encourage wider use of indirect employee ownership structures, such as employee benefit trusts or employee share ownership trusts. Following on from a consultation in July of this year, the Chancellor confirmed in the Autumn Statement (see para 2.60) that Finance Bill 2014 will include legislation to provide three exemptions:

- from capital gains tax for disposals of shares that result in a controlling interest in a company being held by an employee ownership trust (from April 2014)
- from inheritance tax in respect of transfers of shares and other assets to employee ownership trusts
- from income tax on up to £3,600 per year in bonus payments made to employees of indirect employee-owned companies which are controlled by an employee ownership trust (from October 2014)

For more background to this proposal, see the Incentives for indirect employee ownership: consultation news article.

Exemption for occupational health treatment for employees

As trailed in a consultation in June this year, the Government is proposing to introduce an exemption for up to £500 paid by employers for medical treatment for employees where this is recommended by the new Health and Work Service. The Chancellor announced in the Autumn Statement (see para 2.49) that this exemption will also include treatment recommended by employer-arranged occupational health services. The legislation will be included in Finance Bill 2014.

Abolition of employer NIC for U-21 employees

In move to encourage employment of young people, the Chancellor announced a new NIC exemption for secondary National Insurance Contributions (NIC) in respect of payments to an employee who is under 21 years old. See para 2.48 of the Statement.

As things stand, an employer has to pay secondary Class 1 NIC at a rate of 13.8% on so much of an employee's earnings that exceed the secondary threshold (currently £148 per week). Under the new proposals, the employer would not pay any secondary contributions in respect of the earnings of an employee under 21 until that employee's earnings reach the Upper Earnings limit (currently £797 per week).

The legislation for this exemption will be included in the National Insurance Contributions Bill currently before Parliament (see the National Insurance Contributions Bill news article) and will take effect from 6 April 2015 onwards.

It seems likely that employers will still have to pay Class 1A contributions in respect of non-cash benefits paid to the under-21s.

Other positive changes

Rates and allowances

The Chancellor's statement also confirmed various rates and allowances for 2014/15 that had already been announced, either at the Budget or in last year's autumn statement.

- the personal allowance will increase to £10,000 for 2014/15 (the Chancellor also confirmed that this allowance will be indexed by the Consumer Price Index from 2015/16 onwards)
- the higher rate threshold (personal allowance plus basic rate band limit) will increase to £41,865 (the Chancellor also confirmed that this threshold will rise by 1% per year from 2015/16 onwards)
- the lifetime allowance for pension schemes will go down from £1.5 million to £1.25 million from 2014/15
- the annual allowance for pension scheme contributions will go down from £50,000 to £40,000 from 2014/15

The Chancellor also confirmed that Finance Bill 2014 will provide for Individual Protection for those with a pension pot already close to the level of current lifetime allowance — para 2.53 of the Statement

Share Incentive Plans (SIPs) and SAYE schemes

Currently the rules for SIPs allow for a company to offer employees participating in SIPs £3,000 of free-shares each year, without attracting any tax liability. Employees can also apply up to 10% of salary in acquiring partnership shares in a SIP, subject to a maximum of £1,500 of shares per year. The Autumn Statement included an announcement that these limits will be increased to £3,600 for free shares and £1,800 for partnership shares, as from April 2014.

The Chancellor also announced that the maximum monthly amount that an employee can contribute to a Save As You Earn share scheme will increase in April 2014 from £250 to £500.

See para 2.60 of the Statement.

Simplification of unapproved shares schemes

Following from a consultation earlier this year, the Government now proposes to implement a package of simplifications in the area of unapproved employee share schemes. See para 2.112 of the Statement.

As yet, there has been no response document published in respect of the consultation, so it is not yet clear what the exact ingredients of the simplification package might be, but the main recommendations covered in the consultation were to:

- apply a consistent tax treatment for all employment-related securities in share-for-share exchange and rollover situations
- allow corporation tax relief where there is a takeover by an unlisted company
- align the position of inbound and outbound internationally mobile employees and allow a corporation tax deduction in cases where income tax is payable
- extend the time limit for the employee to 'make good' tax due on a notional payment arising under an unapproved share scheme before a charge under ITEPA 2003, s 222 applies
- change the method of valuation of listed company shares to use the simple measure of closing price on the day of trading

Simplification of expenses and benefits

The Chancellor outlined the Government's response to the recommendations of the Office of Tax Simplification (OTS) in their interim report on employee benefits (see para 2.111 of the Statement). He reported that the Government has implemented 4 of the 'Quick Wins' identified in that report and announced that a further 9 would be delivered in January 2014, with consideration being given to another 10 by the end of the Parliament. He undertook to consider the OTS's final recommendations on receipt of its final report ahead of Budget 2014.

The OTS has published a table summarising the 'Quick Wins' and which ones fall within which tranche for implementation.

Apprenticeships

In an effort to encourage employers to take on more apprenticeships and to streamline and simplify the funding arrangements associated with apprenticeships, the Government is proposing to make a number of changes to the funding mechanisms for apprenticeships, which will include:

- a compulsory employer cash contribution for a significant proportion of the external training costs of an apprentice (excluding English and maths)
- an additional contribution to the costs of training for 16 to 17 year olds (the Statement includes a commitment, but no more, to consider the position of 18–year olds)
- caps on the maximum government contribution per apprentice, and
- a facility to withhold a proportion of the funding for a payment by results approach

There will be a consultation in early 2014 on the technical details of how to deliver apprenticeship funding direct to employers using HMRC's systems — the most likely of those systems being the RTI system. See para 2.166 of the Statement.

Anti-avoidance

Company car benefits

The Chancellor announced that Finance Bill 2014 will include two measures to tighten up on the car benefit rules (see para 2.131). These new measures will:

- make sure that taxable car benefits can only be reduced by payments for private use made in the relevant tax year

- ensure that where an employer leases a car to an employee at reduced rates, the benefit is taxed as a car benefit rather than as employment earnings

Dual contracts

Another area where the rules on employment income will be tightened up is in the use of dual contracts (see para 2.126 of the Statement).

Entering into dual contracts is a tax planning device that has proved useful for certain employees eligible to be taxed on the remittance basis on overseas earnings. Where such an employee has an employment that has some duties in the UK and some elsewhere, it may be possible for the employee to enter into two contracts, one in respect of the UK duties and one in respect of the overseas duties, so that remuneration under the overseas contract is only taxable when remitted to the UK.

HMRC has treated dual contracts with a degree of suspicion for a long time, frequently challenging them on the grounds that they do not reflect commercial reality. The measure announced in the Autumn Statement will, under provisions to be included in Finance Bill 2014, override the effect of a dual contract arrangement which in reality represents a single employment, applying UK tax on the full employment income where a comparable level of tax is not payable overseas on the overseas contract.

The new legislation, due to take effect from 6 April 2014, will not outlaw dual contracts, but will remove the tax advantage often previously delivered through their use.

Disguised employment

The third anti-avoidance measure specifically in the area of employment taxes is concerned with the use of Limited Liability Partnerships as part of an arrangement that HMRC describe as 'disguised employment'. Individual members of an LLP are taxed as if they are partners even if their membership terms are such that the individual would normally be regarded as being in an employer - employee relationship, ie where the individual has a fixed salary, no exposure to risk, has no substantive role in the management of the business and with no right to profits or assets if the partnership ends.

The new measure announced in the Autumn Statement (see para 2.129) will be included in Finance Bill 2014 so that an LLP would need to apply PAYE to payments to a member that meets one of two conditions:

- he would be regarded as an employee, or
- he has no economic risk, entitlement to share of profits and entitlement to assets on winding up

At the time of the consultation there were concerns expressed that the measures, as described, could affect many commercial arrangements beyond the intended 'abusive' arrangements. There has not yet been a formal response document following the consultation, but the Finance Bill clauses, when published, should show whether this concern has been taken on board.

Use of avoidance schemes

As previously announced in Budget 2013, if HMRC is successful in challenging an ‘avoidance case’ in court, it will be able to send a notice to taxpayers / employers who have used the same avoidance scheme or similar **requiring** them to acknowledge that the judgment applies to them and either:

- amend their Returns accordingly, or
- confirm to HMRC that their cases can be distinguished from the litigated case and that they stand by their original Returns

A tax-geared penalty would be charged if the taxpayer / employer takes the latter action but is later found not to have a reasonable basis for that conclusion.

Following a consultation which closed on 4 October 2013, Finance Bill 2014 is expected to contain these provisions. However, the Chancellor went further than this in Autumn Statement 2013 and announced that, in addition to the above, HMRC will also be able to issue ‘pay now’ notices. These notices will “initially” be used in relation to tax avoidance schemes which have already been defeated in the courts but there will be a consultation in 2014 to widen the criteria under which the notices can be issued.

See paras 2.138–2.139 of the Statement

High-risk avoidance promoters

As previously announced in Autumn Statement 2012, high-risk promoters of tax avoidance schemes are to be targeted with a raft of new measures including information powers, penalties and the power to publish the promoter’s details. Following the consultation which closed on 4 October 2013, draft legislation is expected to be released next week which will include objective criteria which will determine whether promoters are considered to be ‘high-risk’. Once a promoter is classified ‘high-risk’, their clients must identify themselves to HMRC. ‘High-risk’ promoters will find themselves subject to a higher standard of reasonable excuse and reasonable care. See para 2.137 of the Statement.

Given that clients of high-risk promoters will be required to identify themselves as such to HMRC, the likelihood is that these taxpayers will be under greater scrutiny by HMRC. This may lead to these taxpayers disassociating themselves from these promoters and, when combined with the provisions accelerating the tax payments in tax avoidance cases and requiring taxpayers to accept the ruling of a test case could put these promoters out of business if they do not moderate their behaviour.

There is a parallel here with the attitude that HMRC has been taking with regard to high volume agents. By seeking to get high volume agents to enter into a memorandum of understanding to apply specified standards of scrutiny concerning clients' business records and returns, HMRC is looking to change the behaviour of both the agent and the client. For more details, see ‘Sign here, or else ’ by Guy Smith in Taxation magazine 3 July 2013.