

# Notes of the Benefits and Expenses sub-group meeting held on Wednesday 6 October 2010 at 100 Parliament Street

## Members

Trevor Blackmur	ATT
Jas Jhooty	BASDA
Jim Clark	BCS Payroll Group
Simon Parsons	BCS Payroll Group
Steve Clarke	CBI
Shawn Healy	CBI
George Northall	CBI
Simon Ross	CBI
Mark Groom	CIOT
Peter Arrowsmith	ICAEW

## HM Revenue & Customs

Val Hennelly	(VH)
Carolyn Howes	(CH)
David McDowell	(DMcD)
Su McLean-Tooke	(SMT)
Graham Ramsden	(GR)
Suzanne West	(SW)

### 1. Minutes and action points

The minutes of the previous meeting were agreed. VH gave an update on the action points from the last meeting.

The action point report led on to discussion around the coding of one-off benefits. members raised some issues around P11D expenses and section 336 claims, specifically the inconsistent treatment of reimbursed expenses reported on P11D returns.

Issues about the two year accommodation rule for expats where they qualify for detached duty in the UK and some conflicting guidance as to whether these could be included on a dispensation were also raised.

SW said that these issues had been raised through the Working Together arrangements and she understood that PSN had been contacted by one of her colleagues to ascertain whether a review of the process was needed. SW will find out what has happened. The issues around expats may be more appropriate to the expat forum.

**AP 01: S336 issues: SW to find out what is currently being done.**

### 2. Taxing benefits at source

DMcD advised that HM Revenue & Customs (HMRC) have been unable to make much progress since we last briefed the forum. Other higher priorities have had to take precedence. HMRC is aware of the importance of being clear regarding the administration of tax on BiKs etc when reform to PAYE more generally is under consideration, for example RTI and centralised deductions, they intend to pick this

work up again shortly and be in a position to brief members again early next year. The forum can rest assured that HMRC's recent silence is attributable to nothing more than using resource on higher priority work. HMRC will brief the forum on the conclusions reached from our next phase of analysis and reflect the forum's views in any briefing we offer ministers.

The period for commenting on the initial discussion document for RTI has recently ended and members enquired as to what responses have been received. CH explained that it is too early to publicise a final picture but that the general view is that RTI is perceived as being practical though there is a sense of apprehension about Centralised Deductions.

Questions were raised as to why HMRC had not included considerations to payrolling BiKs when making initial proposals. CH said that the discussion paper only set out what HMRC would like in principle and that Centralised Deductions was an example of something they could work towards. She said that it was clear that people want us to look at BiKs and encouraged feedback as there needs to be discussion as to what this means in reality.

VH added that her team works closely with the RTI team and HMRC would want to see a move towards this next. However anything that is likely to complicate the system, given that employers wouldn't want to payroll all BiKs, will increase the overall cost - the austerity measures may prevent this.

A general discussion on RTI followed and members raised the following issues:

- concerns were expressed that changes would be rushed in and members gave a plea that HMRC tested systems 'to death' before going live
- members felt that NPS should be stable first - they saw the link to payrolling and felt that this would have to be properly thought through given problems with reporting on time now and concern over new penalty regime
- there was apprehension that RTI was a precursor to Centralised Deductions and it was generally felt that businesses need reassurance from HMRC that RTI and centralised deductions were separate - although this is made clear in the discussion document most employers will not have read this and it was asked if HMRC could publish a simple note on our website to this effect
- members also had little confidence that HMRC could manage a centralised deductions system and that the risk of a centralised deductions system failing was not acceptable

VH reassured the group that implementation was still some way down the line and HMRC is very sensitive to the issues and concerns raised.

Finally members asked if there was a timetable for RTI. CH advised there was no implementation timetable as yet but that the consultation document was the next step. VH said that an update will be provided at the next meeting and brought discussions of RTI to a close.

**AP 02: Taxing benefits at source - progress and interface with other PAYE proposals: DMcD to provide an update at next meeting.**

**AP 03: RTI: HMRC to update on progress at next meeting.**

### **3. Update on payroll of benefits and how to prevent NPS coding one-off benefits for future years**

SMT explained that HMRC is exploring changes to the P11D but early indications are that these are likely to be expensive, perhaps prohibitively so in the current climate. The only possible alternative is to use existing boxes on the P11D instead but this is not ideal. VH said that the team will keep an eye on this and update at the next meeting.

Members pointed out that although it is for an individual to notify HMRC of this, employers are generally better able. In many cases employers would want to help their employees by contacting HMRC directly on their behalf but are unable to do so because of confidentiality. SW reassured the group that HMRC is alive to this issue. It was also pointed out that this is even harder for an agent acting on behalf of the employer, acting on behalf of the employee.

On a similar note, frustrations were raised that there is no dedicated priority line for agents acting on behalf of employers, similar to those for agents acting on behalf of individuals. They have to contact the same service as everyone else which isn't designed to cope with the more complex issues they need to deal with. SW advised that she will take this up with Customer Contact – she is aware that some employer work is being centralised and this may provide opportunities.

**AP 04: Preventing NPS coding one-off benefits for future years/changes to P11D: HMRC to provide update at next meeting.**

**AP 05: Agents dedicated priority line: SW to speak to Customer Contact about a dedicated priority line for agents acting on behalf of employers similar to priority lines already in place.**

### **4. Employer supported childcare: next steps**

SMT advised the group that HMRC is currently working on guidance which will be available at the end of October and thanked all those who had inputted. SMT will try to get a draft to the group before submitting this to the minister. VH added that this would be preferable to HMRC as we value input from members but is dependant on approval.

**AP 06: Employer supported childcare: SMT to provide group with draft if possible.**

### **5. Pension tax relief proposals: Is this limited to Self Assessment or will it affect PAYE payroll or P11D returns?**

SMT stated that HMRC does not expect the new approach to affect PAYE payroll or P11D returns directly. Within the existing annual allowance provisions, if an individual is liable to an annual allowance charge then they will need to complete an Self Assessment tax return to report this.

The group was concerned that this would mean running more people through the Self Assessment system. SMT stated that either way this would be better dealt with under Self Assessment than PAYE. HMRC does not anticipate any changes to this

process if the annual allowance is reduced, although more people are likely to be liable to the annual allowance charge, the majority of these are likely to already be within the Self Assessment system.

## **6. Under and overpayments: are these predominantly P11D catch-up driven?**

CH told the group that there were no clear stats as yet though obviously there will always be a significant number of P11D related reconciliations in any year. This will of course continue until such time where real-time reporting of BiKs is possible.

HMRC will have larger numbers to deal with this year primarily because of the delay in processing P11Ds through EOY while the ECS interface underwent testing and because of reconciling two years at once. In addition HMRC assumes that there will be cases where BiKs information held on COP for one employment hasn't been merged with information about other jobs and the overall liability has therefore been underestimated. However, NPS will allow HMRC to identify and reconcile these quicker.

The group asked how P11Ds were processed onto our systems and had assumed these were automatically electronically captured. CH advised that these we're either scanned or manually inputted onto the system and matched to the appropriate employee's record. Problems can occur if HMRC can't match these properly, though NPS improves upon this as there is more data to match on.

## **7. AstraZeneca**

This was in relation to a recent ECJ judgment relating to VAT on retail vouchers. AstraZeneca applied to reclaim all the input tax on the vouchers they had bought under an employee benefit package. The ECJ determined that salary sacrifice arrangements were sufficient to make the supply of retail vouchers from AstraZeneca to their employees a supply of services liable to output tax.

SMT anticipated that the group would want to know whether this decision will effect how HMRC sees salary sacrifice and whether this will have any implications in an employment income context. SMT advised members that HMRC does not yet have a view either way and is considering the implications of this decision and monitoring any developments. The only point which is clear is that if any changes were brought about as a result they would not be applied retrospectively.

VH added that HMRC are waiting on VAT solicitors and technical analysis. The ECJ decision was fairly specific in that some benefits have VAT implications. Members asked if HMRC could quickly decide whether any effect to current BiKs is on the page and VH will take this up with VAT colleagues.

**AP 07: AstraZeneca: provide update at next meeting. VH to relay concerns to VAT colleagues.**

## **8. Total People Ltd: motoring expenses and National insurance contributions**

This follows a recent court case about the reimbursement of Relevant Motoring Expenditure (RME) to employees using private vehicles for business purposes and whether reimbursements paid as an annual lump sum qualify as RME (which are

National Insurance contributions free and usually paid as a mileage rate). In this particular case the judge found that the lump sum car allowance paid by Total People qualified as RME.

SMT advised the group that our National Insurance colleagues are currently considering this case. In the meantime, HMRC's position remains unchanged on RME and lump sum allowances. HMRC will continue to consider each case on its own facts and merits when determining whether payments are RME within the meaning of Regulation 22A.

Members asked whether HMRC is likely to appeal this decision but SMT was unable to comment at that time.

**AP 08: Total People Ltd: SMT to find out if HMRC is likely to appeal.**

## **9. Any other business**

### **In year penalties and share awards**

Employers have a problem with share vestings and option exercises that take place toward the end of the month, after payroll has been run. In many cases it is simply not physically possible for employers to process income gains arising through PAYE until the next payroll period. It had previously been asked if HMRC could provide some flexibility on this in the form of an administrative easement, whereby employers should not be penalised for late submission in defined circumstances.

VH advised that it is not possible for HMRC to introduce a new concession outside its powers of discretion under 'collection and management'. The new late payment penalty regime for PAYE is part of a broader reform of all penalties. Any changes to this would need to be reflected across all taxes and duties administered by HMRC to maintain a harmonised regime.

Members were concerned that employers would be unfairly penalised for something they can not physically do and reiterated the need for an administrative easement where this occurs after payroll has been run but before the end of the month. The guidance in form CWG2 was quoted as describing a concession along these lines and questions were raised whether this is superseded by the new penalty regime. VH will look into this further.

### **National insurance contributions categorisation of earnings**

Members asked what the rules are when training is imparted to provide a skill as opposed to a qualification. VH advised that this would be passed to the appropriate team in PSN.

### **Voluntary disclosures**

Members felt that employers who voluntarily make a disclosure to HMRC as a result of identifying a genuine mistake are treated no more favourably under the penalty regime than if this was picked up through HMRC's own compliance reviews should HMRC decide that it was a careless error. Members questioned the incentive to make voluntary disclosures and clarity on how HMRC determines carelessness. VH will look into this and discuss with compliance colleagues.

### **Christmas parties**

With Christmas approaching members wanted clarification on the specifics of the exemption that applies to annual events provided for employees where the cost per head isn't more than £150. Members wanted to know whether the exemption would still apply where the actual cost was greater than £150 per head but employees paid the difference or purchased food/drinks to the same value etc. Similarly, if the exemption would still apply if the excess was made up by another business in the form of sponsorship.

VH suggested that this exemption was essentially an easement and HMRC will have to do some detailed thinking around this; they will try to provide some information by November.

### **Terms of reference**

VH enquired as to whether there were any terms of reference agreed for the forum and reiterated that she would like to apply a more structured approach and have agenda items agreed earlier so that there is time to gather together relevant material and have more active discussions. HMRC will also include items that we think will be of particular interest to the group.

Members advised that this sub-group was born out of the Employment Consultation Forum due to the finer details specific to BiKs.

**AP 09: In-year penalties and share awards: VH to check concession described in CWG2.**

**AP 10: NIC categorisation of earnings: raise issues with NICs policy team.**

**AP 11: Voluntary disclosures: VH to look into points raised and discuss with compliance colleagues.**

**AP 12: Christmas parties: provide a response to the question of whether the exemption would still apply where the actual cost was greater than £150 per head but employees paid the difference or purchased food/drinks to the same value etc (by November).**

### **Next meeting**

The next meeting will be on Wednesday 2 February 2011 from 14.00 until 17.00. This will be held in the Chancellor's Room (2/39), 100 Parliament Street, London, SW1A 2BQ.