

## JOINT EXPATRIATE FORUM ON TAX AND NICS: 10 OCTOBER 2011

### MEETING NOTE

#### 1. Note of June meeting and Q&A log

##### In-year penalties and reasonable excuse

- 1.1 As agreed at the recent subgroup meeting, HMRC had circulated with the agenda an illustrative example of what would be accepted as a reasonable excuse. This made clear that HMRC would mitigate penalties on the grounds of reasonable excuse where a UK employer had fulfilled all their PAYE monthly obligations, but is unable to pay the correct amount of PAYE to HMRC as the result of actions of an entity overseas. The UK employer would need to appeal any penalty imposed and provide HMRC with details of the reasonable excuse. They also stressed that whether or not penalties should be mitigated would be determined on a case by case basis.

##### 'Double click' remittances

- 1.2 HMRC confirmed their view that it was not possible to make an accidental remittance as a result of a double click on the SA online filing website. However, they also understood that the real issue for forum members concerned inadvertent remittances more generally and the scope which they had to disregard them under the principle established by the Roxburghe case. HMRC said section 809V(2) ITA was very clear and that their authority to disregard it was limited.
- 1.3 Separately, a legal argument had been proposed which would deal with the theoretical 'double click' scenario which HMRC agreed to respond to in the Q&A log for the next meeting.

**ACTION POINT:** HMRC to provide their position on inadvertent remittances at the January meeting

##### Repayments of overpaid PAYE

- 1.4 HMRC had circulated a note explaining that the existing non-statutory practice could continue whereby remittances arising as a result of repayments of overpaid PAYE to non tax-equalised employees were disregarded. This statement was based on new legal advice and meant there was no need to provide for this treatment in primary legislation.

## International NICs matters

- 1.5 As a result of recent HMRC management changes, a follow up NICs subgroup had not taken place, but HMRC reported that they aimed to hold a meeting before the end of October and report back to the forum in January. Members were again encouraged to provide examples of the types of difficulties which employees encounter as the result of differences between NICs and PAYE rules.

**Post meeting note:** The proposed NICs subgroup had not been convened in October, due to the need to resolve broader issues arising from the Government's announcement on 14 November of plans to consult on options to integrate the operation of income tax and NICs ([http://www.hm-treasury.gov.uk/d/condoc\\_integration\\_it\\_nics\\_contributions.pdf](http://www.hm-treasury.gov.uk/d/condoc_integration_it_nics_contributions.pdf)).

HMRC are keen to discuss with the forum the international issues arising from this document and will arrange subgroup to do so in the New Year.

## 2. Disguised remuneration

- 2.1 A number of detailed technical questions had been forwarded to HMRC on disguised remuneration which they had been unable to answer in time for the meeting, but planned to provide answers for the meeting in January.
- 2.2 HMRC reported that Regulations covering the interaction between disguised remuneration and NICs had been published for consultation. Following the end of consultation on 23 September, they were working through the responses received to establish whether any amendments were needed. Once the Minister had agreed the amendments, the aim was to lay the final regulations by the end of October in order for them to come into effect 21 days thereafter.
- 2.3 HMRC also reported that they had sent the final version of the disguised remuneration manual, incorporating comments made on the draft, to their web team for publication. They anticipated this would appear on the HMRC website by the end of October.

**Post meeting note:** The updated guidance was published on 31 October as part of the Employment Income Manual and can be accessed from EIM45000 onwards (<http://www.hmrc.gov.uk/manuals/eimmanual/eim45000.htm>).

### 3. Operational and Compliance Matters

#### Post

- 3.1 HMRC said that Personal Tax International were meeting their targets for replying to post. However, there had been some delays in the delivery of post after it leaves PT International. PT International said they were taking part in a trial to improve delivery times, which would be starting soon. In the meantime, they had extended by 10 days the normal deadline for customers to reply to letters. This meant that customers now had 40 rather than 30 days to reply from the date of a letter.
- 3.2 However, HMRC stressed that this extension does not apply to the time limit for making appeals to the Tribunal Service. This is outside HMRC's control and that specific time limit remains at 30 days from the date of HMRC's conclusion of review letter (see ARTG2420). While PTI will continue the existing practice of not opposing late appeals where the lateness of the appeal is as a result of postal delays, we cannot guarantee that the Tribunals Service will be prepared to accept a late appeal under those same circumstances.

#### Schedule 24 FA 2007 penalties

- 3.3 HMRC had been asked whether a penalty could be imposed under Schedule 24 FA 2007 beyond the £3,000 maximum in section 98(2) TMA for an incorrect P11D. HMRC explained that TMA applied in relation to inaccurate returns for tax years up to 2007/08 whilst Schedule 24 applied for tax years 2008/09 and beyond. Whilst Schedule 24 penalties do not have a £3,000 upper limit and therefore could exceed the maximum set out in TMA, in practice PTI rarely need to charge its customers such penalties.

**Post meeting note:** HMRC has reviewed the comments made at the meeting in response to a further question on this subject. Paragraph 12(1) Schedule 24 specifically excludes a document in respect of which a penalty is payable under section 98 TMA. As such penalties under section 98 will be imposed where appropriate in respect of incorrect P11Ds for 2008-09 and later years. HMRC guidance will be revised accordingly. PTI can confirm that it has not charged any of its customers a penalty under Schedule 24 with respect to incorrect P11Ds.

- 3.4 HMRC explained that a number of inbound expatriate employees are assigned to a UK employer who is a separate legal entity from their legal overseas employer with which the employee has a contract of employment. In such circumstances, the UK employer is obliged to operate PAYE as 'host' under section 689 ITEPA 2003. There is no equivalent regulation for P11D purposes and as such the completion of a form P11D is voluntary. Penalties would therefore not apply.
- 3.5 However, where the UK employer is a branch or other permanent establishment or the employee is given a UK contract for the period of UK assignment, P11D requirements apply under Regulation 85(1) of the Income Tax (PAYE) Regulations 2003. In such cases, PTI will normally invite an employer to volunteer to settle the liabilities arising as a result of submitting incorrect employee returns.

#### Repayments issued in error

- 3.6 A note had been circulated with the agenda explaining that a problem had been identified in HMRC systems which had resulted in a small number of tax equalised employees being sent PAYE repayments in error. The problem appeared to be that the systems could not recognise that the employee would file SA returns.
- 3.7 HMRC apologised for this problem and explained that they would be asking employers to return the repayments and then cleanse the employees' records to prevent the problem recurring. Any agents experiencing difficulties with incorrect repayments should contact PTI Manchester.

#### Mapping customer journeys

- 3.8 HMRC said that work was underway to streamline their PAYE processes, part of which would be to establish the knock-on effects of any changes for agents and other customers with the aim of making customer journeys more cost effective. They would be seeking volunteers to take part in this work.

#### Cleansing SA records

- 3.9 At the last meeting, HMRC said they had instigated a local IT approach towards cleansing SA records mid year. They reported that this was

proving successful and that they had so far managed to close 2,400 records. Forum members were encouraged to inform HMRC of any further cases which they became aware of.

- 3.10 Although the form was not available on the website, HMRC were willing to issue copies when requested to do so.

#### **4. Statutory residence test and non domicile taxation: consultation**

- 4.1 HMRC thanked members of the forum for their contributions to the recent consultations on the reform of non dom taxation and the introduction of a statutory residence test, both of which had ended on 9 September. Over 200 responses were received. HMRC and HMT are currently considering these in detail before seeking Ministerial decisions on the points raised.

#### **5. ITSA Late Filing Penalties**

- 5.1 HMRC gave a presentation on the new penalties regime for SA late filing whose aim is to encourage behavioural change and not to raise additional revenue. Following extensive consultation and broadly positive feedback, the regime will come into effect from the start of the 2010/11 tax year. The main features of the new regime include:
- the removal of capping penalties;
  - an automatic fixed £100 penalty and automatic daily penalties of £10 up to a maximum of £900 for filing late returns;
  - further tax geared penalties for filing returns three, six and twelve months late; and
  - tax geared penalties for late payments.
- 5.2 HMRC were asked if they were resourced to handle additional appeals potentially generated by the new regime. HMRC said that the project team had been working closely with operations colleagues to develop and streamline processes and they were confident they could manage the new regime effectively.
- 5.3 A concern was raised that some representatives of taxpayers outside the UK will be unable to file online because they do not have the necessary commercial software. As a consequence, they would have

to file a paper return and there was not enough time to do so within the 31 October deadline. HMRC agreed to look into this and report back.

## **6. Review of HMRC residence and domicile guidance**

- 6.1 HMRC explained they were about to start preparatory work on the new guidance that would be needed on the introduction of a statutory residence test. A first step would be to establish what internal and external customers would need from such guidance, and a workshop was planned in November to start this process. HMRC would be approaching interested agents and employers to take part in this workshop.

**Post meeting note:** a workshop on HMRC guidance was held on 5 December