

# employers' update

keeping you informed

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## Editor's welcome

This issue of EU is crammed full of topical tips for managing your payroll, your staff and HMRC (if you have to)! As usual at this time of year, we are very busy advising clients on benefits in kind and expense payments in the run up to the P11D submission deadline on the 6 July. This is also the deadline for getting a PAYE settlement agreement in place for 2011/12.

Look out for two separate Employers' Update specials coming in the next few months. One edition for getting your business ready for

**Real time Information (RTI)**, and another edition on **Workplace Pension Reform or 'auto-enrolment'**.

We would like to thank Jenny Arrowsmith from Taylor & Emmet for her article on managing staff absence. Very timely given how the UK's social calendar is looking over the next couple of months.



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## Reducing the risk of an enquiry by HMRC - Business test for PSC's

**Personal service companies (PSC's) are being encouraged to use new 'business entity' tests in order to find out the likelihood of being investigated by HMRC.**

The key point about the introduction of the tests is that they have created a new step in tax planning for personal service companies. The business entity tests and the risk bands help you work out the level of risk of whether HMRC will **check** whether IR35 applies to you. But the tests will not tell you for sure **whether** you are caught by the IR35 legislation.

Basically, IR35 is legislation that can direct a company or a partnership, (the intermediary), to treat certain income into the business as if it was salary, which means that PAYE tax and NIC becomes due. IR35 will apply if you work through an intermediary, working for an end client on terms which would have made you an employee if the end client had engaged you directly.

The tests are scored 'high', 'medium' and 'low' risk. HMRC have stated that if you can satisfy them that

your business has scored a 'low' risk, the IR35 review will be closed down and not re-opened for at least three years as long as your working arrangements have not changed in that time, and the information you have given is accurate. The tests are voluntary,

and at this stage, are being piloted only. You can read more about the business tests on HMRC's website: [www.hmrc.uk/ir35/guidance.pdf](http://www.hmrc.uk/ir35/guidance.pdf)

We can expect to see more IR35 review cases shortly, as HMRC have set up three new specialist offices. Aside from carrying out compliance checks on those with the highest risk profile, they will give guidance on whether specific contracts are within IR35.



# Asking the impossible - dealing with underpayment notices

HMRC are issuing under and over payment notices much earlier this year. Our payroll bureau has already seen several with a peculiar similarity. Typically, there will have been an overpayment in 2010/11, which is then rolled forward to set off against liabilities in 2011/12. But at the end of 2011/12, an underpayment notice is received, showing an amount underpaid, which happens to be the same amount that was overpaid in the previous year. Spooky.

Usually when we get one of these notices, we call the accounts office. However, this year we have been told that we have to write to the Cumbernauld Accounts Office for all such enquiries and list out the payments. HMRC will now only 'check and confirm' these payments.

If you do write to HMRC for their 'check and confirm' service, ask them to give you details of any re-allocated payments as well because sometimes HMRC will move a payment and you won't know. Be sure to mention any overpayments from an earlier year that you have allocated to 2011/12.

We don't know how long it will take HMRC to respond to these requests but we have heard some worrying news that HMRC's post turnaround in the employers section in Newcastle is now 3 months. It could be a very long summer!

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## Late P35 penalties

Up until last year, the first penalty notices for non-submission of P35s were not issued until September, by which time, the penalties had already reached £400, or more if there were more than 50 employees. In many cases, the problem was that the employer wasn't aware that the P35 had not been filed yet, and by only being told about it in September, there was no way to reduce the level of penalty charged. HMRC have now undertaken to issue more timely reminders and warnings about penalties. The first interim P35 penalty letters will go out at the end of May.

## Setting off CIS deductions

CIS deductions taken from payments made to a limited company may be set off against PAYE, NIC and CIS liabilities due to be paid to HMRC. This is done through the P35. Where there are deductions that have not been set off, these are shown on the P35 at box 28. These may be set off against other taxes such as corporation tax or VAT but you have to write to HMRC and ask. The address to write to is Customer Operations Employer Office, Room BP4009, Chillingham House, Benton Park View, Longbenton NE98 1ZZ.

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## Updates

**Faster payments to HMRC** - HMRC now accept Faster Payments which means that cleared payments can be made on a weekend or Bank Holiday.

**Student loan repayment threshold** - From 6 April 2012, this has gone up to £15,795.

**Smart phones are phones** - HMRC has ended earlier confusion about how to treat smart phones for tax. They now accept that there is no benefit in kind on employer provided smart phones as long as the employee is only given one phone.

**Withdrawal of NIC table letters** - From 6 April 2012, certain NIC contracted out categories, identified as table letters F, G and S have been withdrawn, as contracting out has now ceased.

**Update on the Agar case - TC/2011/04910 - Late paid PAYE penalties** - The Tribunal asked HMRC to review tax legislation regarding issuing penalties for the late payment of tax and NI due for month 12 of the tax year (6 March to 5 April). HMRC have now finished their review and concluded that penalties cannot be charged for month 12. HMRC will be writing to all those employers who have been overcharged.

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## And they're off...

With the London 2012 Olympic Games now only a few weeks away, Jenny Arrowsmith, Associate Solicitor in the Employment Team at Taylor & Emmet LLP Solicitors, provides some helpful suggestions on how this may impact on the workplace and what employers should be doing to respond.

The Olympics, which are being held between 27 July and 12 August 2012, fall at probably the busiest time of the year for annual leave to be taken, especially those who have to plan their annual leave around school holidays. Therefore, additional requests for annual leave by the Olympic enthusiasts could have a significant impact on employers. Clearly, employers are entitled to reasonably refuse annual leave requests and it would normally be reasonable to do so where the refusal relates to insufficient cover at work. The exception to this is where refusal of holiday could prevent the employee from taking their statutory annual leave entitlement over the holiday year.

However, not allowing staff to take the day off may affect the motivation and morale of the workforce especially where a colleague's request for the same period is agreed. Also, during other major sporting events (such as the World Cup 2010) it was not uncommon for employees to take unauthorised leave, make false reports of sickness or be absent, due to self-induced over indulgence following heavy drinking celebrations.

So, here are some tips to overcome some of the difficulties which employers may face:

- Think ahead and develop a fair system of granting annual leave during the Olympic period.
- Ask employees to make any requests for annual leave as soon as possible and state that it may not be possible to approve late requests of whatever nature.
- Of those who make requests, ask employees whether they have tickets and secondly whether they have volunteered to help in the event. This might help decide whether it would be unreasonable to refuse certain annual leave requests.
- Consider what your position will be if tickets for the Olympics become available on the day of the event and last minute annual leave requests are made.

- Even if at work, employees may want to watch the games or keep up to date. This can result in taking unauthorised time off during the day, extending lunch breaks or just being distracted by regularly checking updates during work time on their PC.
- Consider whether you can give any flexibility, such as providing access to coverage during lunch or other breaks either on TV or their computer. Other options include, with agreement, coming into work earlier or staying later if there is an event that they wanted to watch in the morning or afternoon. This enables the business to continue to function and is likely to deter malingering or high absence levels. However, clearly it is not going to be an appropriate response for all businesses.
- In all cases, whether flexibility is offered or not, communicate clear ground rules as to what is and isn't allowed and ensure that your absence, holiday and disciplinary policies are effectively communicated to all employees. This should be done in writing and provided to all employees. If, having done so, employees act inappropriately or inconsistently with the guidance, employers have positioned themselves well for taking disciplinary action where relevant and appropriate. This would include unauthorised absence or suspected dishonest grounds for absence (malingering).
- For all periods of absence, ensure that return to work interviews take place, even those that are just a day or two. Consider disciplinary action if there is a reasonable belief that any absence is not genuine.



**For advice about any issues discussed here, or any employment matter, please contact Jenny Arrowsmith on 0114 218 4000 or [jenny.arrowsmith@tayloremmet.co.uk](mailto:jenny.arrowsmith@tayloremmet.co.uk) or ask for any member of the Taylor & Emmet LLP Employment Team.**

# Staff suggestion schemes

In recent editions of Employers' Update we have looked at a number of innovative ways of engaging and rewarding employees cost effectively in an era of wage freezes and economic uncertainty.

Another such opportunity is the Staff Suggestion Scheme. It has to be a formally constituted scheme and open to all staff, and as long as certain other conditions are met, awards of up to £5,000 can be made free of tax and NIC. The maximum amount that can be paid tax free is:

- 50% of the expected net financial benefit during the first year of implementation, or
- 10% of the expected net financial benefit over a period of up to 5 years.

In both cases, the maximum tax free total is subject to the £5,000 ceiling, although higher amounts can be paid, with the excess being subject to tax.

Where a suggestion has been made jointly by two or more employees, the exempt amount has to be divided between them.

HMRC also allow Encouragement Awards of up to £25 to be made free of tax and NIC. These can be made in respect of suggestions which have some intrinsic merit, but which, for whatever reason, are not going to be implemented. Encouragement Awards are often used for Suggestion of the Month competitions, seeking to encourage workers to think about their work and ways that it could be made more efficient. The amounts are not large, but can be a useful tool in engaging the workforce.

If you would like to discuss Staff Suggestion Schemes in more detail, please contact Nick Davies.



# Asking for clearance from HMRC



HMRC will give written confirmation of their view regarding the application of tax law to specific transactions or events, where there remains uncertainty after consulting current HMRC

guidance. The clearances are non-statutory but can be relied upon in most circumstances.

The most common applications for clearance are for

- Salary sacrifice schemes
- Share schemes
- Disguised remuneration
- Employment related securities
- Employee car ownership schemes
- Termination and redundancy payments

Most clearances can be given before the transaction has taken place, although evidence must be supplied to show that the transaction is genuinely

contemplated. Clearances for salary sacrifice schemes can only be given once the scheme has begun.

You can make a clearance application by completing a checklist and sending it, the relevant information and documents to HMRC. The checklist can be found at [www.hmrc.gov.uk/cap/annex-a-checklist.pdf](http://www.hmrc.gov.uk/cap/annex-a-checklist.pdf)

## core services

- audit & accountancy
- business advisory
- corporate finance
- tax & tax planning

## integrated services

- business recovery & insolvency
- employer solutions
- entrepreneurial advisory
- financial planning
- forensic accounting
- outsourcing
- private client
- trusts & estates
- vat & paye

## sector expertise

- automotive
- charities & not for profit
- creative, digital & ict
- leisure & tourism
- medical services
- metals, manufacturing & engineering
- pensions assurance
- professional practices
- real estate & construction
- retail & consumer goods

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