

In this month's enews we update you on the controversial new rules proposed by the government on residence and domicile.

We also include our usual round up of news. Please browse through this month's articles using the links below and contact us if any issues or questions arise.

- **Illegal working changes**
- **Update on residence and domicile**
- **Expenses for employees**
- **Employer and contractor returns interim penalties**
- **Funds to help dispute resolution**
- **Had problems filing your tax return on time?**
- **Employment rights - statutory limits**
- **Benefits in kind and expenses in the payroll**
- **No PAYE/NIC or CIS deduction payments due**

Illegal working changes

For many years, there have been requirements for employers to verify the identity of their workers, to prevent illegal working. The legislation was backed up with fines.

From 29 February 2008, the Immigration, Asylum and Nationality Act 2006 increased the civil penalty imposed on an employer to a maximum of £10,000 (previously £5,000) for every illegal worker employed in the UK. It also introduced a new criminal offence of knowingly employing an illegal worker, with a maximum penalty of two years in prison or an unlimited fine.

Employers can avoid both a civil penalty and committing a criminal offence by checking, on recruitment, that workers have a right to work in the UK. To obtain this protection, employers must make the checks before the worker starts work.

There are two lists of acceptable documents for checking identity, similar to the lists which employers have used since 1997. List A contains items such as a British passport, which have no time limits on working in the UK. List B contains a list of documents which carry restrictions on the amount of time individuals will be able to spend in the UK. A significant change is that employers will have to carry out annual checks for those workers whose documents appear on List B, such as work permit holders.

You may wish to review your procedures in light of these new rules.

Internet Link: [Home Office Guidance](#)

Update on residence and domicile

In the January issue, we reported on controversial new rules proposed by the government on residence and domicile.

As you may remember, the Pre-Budget Report announced that HMRC would be changing the rules on residence and domicile from 6 April 2008. The main proposals were:

- individuals who are resident (but not domiciled or ordinarily resident) will generally have to make a claim to be taxed under the favourable remittance basis;
- individuals who are taxed on the remittance basis will not be entitled to the personal allowance or capital gains tax annual exemption. There will be an exception to this rule where the unremitted foreign income and gains are less than £1000;
- individuals who are resident (but not domiciled or ordinarily resident) for longer than seven out of the past 10 years will only be able to use the remittance basis of taxation if they pay an annual charge of £30,000, again subject to the de minimis of £1,000; and
- amending the residence rules, so that days of arrival and departure to and from the UK will count towards establishing residence.

There are many concerns about the new rules and charges. The Daily Telegraph reported that:

'Low-paid foreign workers could be hit by the Chancellor's plans to tax non-doms, accountants have warned.

After an outcry from high-earning people, the Institute of Chartered Accountants in England and Wales (ICAEW) said the changes will lead to "a tax rise for large numbers of low-earning non-domiciles".⁴

HMRC issued a letter making some changes to the rules. Some media outlets reported a government climb down but that is certainly not the case. Whilst certain unintended consequences have been clarified, all of the above details look as though they will go ahead.

If you are potentially affected by these rules or have any questions or concerns please do get in touch.

Internet Links: [Telegraph article](#) [HMRC letter](#)

Expenses for employees

Normally, the payment or reimbursement of expenses or the provision of a benefit in kind is taxable on the employee. However, particularly with expenses, it may well be that the employee is entitled to tax relief personally on the same amount. In order to obtain the relief, the employee would have to write to HMRC or fill out a tax return.

To save all this paperwork, employers may request a dispensation from HMRC. If HMRC grant one, it means that they are happy that the reimbursement contains no profit element. In turn, this means that the expenses or benefits are not taxable but that the employee can not claim tax relief personally.

HMRC have issued a warning to employers regarding a change in their policy on dispensations. Normally, once a dispensation has been granted it would continue to apply until the qualifying conditions were no longer satisfied. If a dispensation had been operated incorrectly, it would only be revoked **retrospectively** in exceptional circumstances.

HMRC will now consider revoking a dispensation retrospectively where:

'... there is any evidence of misrepresentation or negligence by an employer, or other person paying expenses or providing benefits in kind. Examples of this can include:

- if an application for a dispensation did not provide all the relevant information; or
- if there was a change in the way the expenses and benefits were made available to employees meaning the qualifying conditions were no longer met, and we have not been informed of the change.'

There are two important points to note. Firstly, HMRC state that this change will not affect the great majority of employers who apply for and operate dispensations correctly.

Secondly, if you don't currently have a dispensation, please get in touch so that we can see if one would save you time (and money!)

Internet link: [HMRC Employer Bulletin](#)

Employer and contractor returns interim penalties

HMRC have announced that they have started sending penalty notices where their records show that they have not received 2006/07 forms P35 and P14 (the employer's annual return and end of year summary). Similar penalties are also being issued where 2006/07 form CIS36 (the contractor's annual return) is outstanding.

These returns were due by 19 May 2007 and it is likely that these penalties are a follow up to penalties issued in September last year. The penalty is likely to be £100 per 50 employees and/or subcontractors for each month the return is outstanding, running from September 2007 to January 2008 i.e. four months.

However, no penalties should be issued where an appeal has been received against the September penalty and the appeal is still outstanding.

It is not unusual for HMRC penalties to be issued in error. If this is the case or if there is a reasonable excuse for the delay in sending in the return, penalties can be reduced or even waived altogether.

If you receive a penalty notice that you believe is wrong, please get in touch with us as soon as possible so we can resolve the matter for you.

Internet Link: [HMRC annual returns note](#)

Funds to help dispute resolution

The government has announced up to £37m of funding to prevent work place disputes unnecessarily going to employment tribunals. The measures are part of a package designed to simplify the dispute resolution system.

The extra funding will allow Acas to boost its advice services to make sure it is never too late to choose an informal resolution instead of a tribunal hearing.

Minister for Employment Relations, Pat McFadden, said:

'The link between successful employment relations and productivity is clear. Early action can often prevent the need for tribunals, bringing enormous benefits to business and employees.

This new system will strike a balance between ensuring workers can protect their rights through employment tribunals while helping them to resolve disputes as early as possible.'

The changes are in addition to changes introduced by the Employment Bill, which is currently before Parliament. The Bill proposes removing fixed periods for conciliation after a claim is made to the tribunal, enabling Acas to get involved at any time until the tribunal reaches its verdict. The Bill is designed to deliver less formal processes to cut red tape and deliver quicker decisions on more straightforward claims. Initial estimates suggest that this approach could save businesses more than £175m a year.

Internet Link: [Press release](#)

Had problems filing your tax return on time?

It will come as little surprise that, once again, an HMRC online system crashed an important time of year. This time it was the self assessment online service that was disrupted on 31 January 2008 and 1 February 2008.

In response to these problems, HMRC have announced that any return (whether online or paper) received by midnight on 1 February 2008 would be treated as filed on time and so no penalty will be issued.

In addition, where taxpayers experienced problems with the service and were unable to file by midnight on 1 February 2008, HMRC will remove any late filing penalty and treat the return as filed on time where the problems with the HMRC service were the cause of the delay and the return was filed within a reasonable period afterwards.

In addition, penalty notices should not be issued for:

- online returns filed using the HMRC software on 2 and 3 February 2008; and
- paper returns received in local offices by close of business on 4 February 2008.

Finally, where a return is filed within a reasonable period and the delay was due to the problems with the HMRC service, HMRC will also remove the penalty for online returns filed on 4 February 2008, or later, and paper returns filed on 5 February 2008, or later.

As previously mentioned, it is not unusual for HMRC penalties to be issued in error. If this is the case or if there is a reasonable excuse for the delay in sending in the return, penalties can be reduced or even waived altogether.

If you receive a penalty notice that you believe is wrong, please get in touch with us as soon as possible so we can resolve the matter for you.

Internet Link: [HMRC advice](#)

EMPLOYMENT RIGHTS - Statutory limits

The limits on payments and awards made to workers in certain employment rights cases rose from 1 February 2008. The increased limits affect:

- statutory redundancy payments;
- the basic and compensatory awards for unfair dismissal;
- the limit on guarantee payment made when employees are not provided with work; and,
- the minimum basic award for unfair dismissal in health and safety and certain other cases.

The main increases include:

- compensation for unfair dismissal - £4,400 (£ 4,200);
- limit on amount of the compensatory award for unfair dismissal £63,000 (£60,600).
- Maximum amount of a week's pay for the purpose of calculating the basic or additional award of compensation for unfair dismissal or redundancy payment - £330 (£310).

Internet Link: [Statutory Instrument](#)

Benefits in kind and expenses in the payroll

HMRC have published a consultation document on payrolling benefits in kind. The idea is that payrolling benefits in kind would remove the need for employers to complete P11Ds.

Whilst this may seem like a good idea, particularly to HMRC, who would save massive administrative costs, there are many potential problems.

For example, how would a business which provides a company car to an employee cope, when the P11D calculations and reporting is currently done by their adviser after the year end? If the calculation is done at the beginning of the year, how will any changes to the company car be revised? How will reimbursed expenses be dealt with, particularly where an employee is able to claim tax relief personally?

The annual P11D/P9D/P11D(b) returns, together with the associated procedures, and the P46(CAR) could be abolished. Instead employers would be required to record on form P11 and report details of the value of the benefits and expenses they provide on a modified P14/P60, with a summary of the Class 1A NICs due being provided on the P35. There would be no need to report details of new company cars or changes in-year on P46 (CAR).

However, this system would involve information being reported earlier and tax due would need to be paid over sooner. For employees the most noticeable change would be in relation to the timing of payment of the tax due on their benefits and expenses.

As part of the proposals HMRC are also looking to abolish the £8,500 threshold, thus bringing all employees within the charge to tax on all benefits!

Whilst the plans to abolish P11Ds are not intended to take place until 2011, the removal of the £8,500 threshold is expected to take place before that.

Of course, we will keep you informed of any developments.

Internet Link: [Consultation document](#)

No PAYE/NIC or CIS deduction payments due

Even if no PAYE/NICs or CIS deductions payments are due for a given month or quarter, businesses are still generally required to notify HMRC by way of a 'nil' return.

In order to help with this, HMRC can be notified by completing an online form. This can be used to tell HMRC about a previous, current or future month/quarter where no payment is due.

This form must still be completed even if businesses have told the CIS helpline that they will not be paying any subcontractors for the coming months.

Internet Links: [HMRC CIS guidance](#) [HMRC how to pay guidance](#)