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United Kingdom – HMRC Publishes Draft National Insurance Contributions Bill

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HM Revenue & Customs (HMRC) in the U.K. has published a draft NIC bill¹ which will be introduced into Parliament in the autumn of 2013. Draft explanatory notes to the bill have also been published².

Anti-Avoidance Provisions

The bill contains various anti-avoidance measures, designed to help ensure that companies and individuals pay the correct National Insurance Contributions (NIC), the U.K. social security contributions. The bill contains, amongst other things, provisions on the following measures:

1. Application of the General Anti-Abuse Rule (GAAR)

The Finance Bill 2013 – which received Royal Assent on 17 July 2013 to become the Finance Act 2013 – introduced a GAAR that applies to various U.K. taxes. The draft NIC bill discussed here contains provisions to include NIC within the scope of the GAAR. Should the GAAR be modified at a later date, the bill also allows for new regulations to be introduced ensuring any modifications also apply to NIC.

2. The Creation of a NIC Liability for Offshore Employment Intermediaries

The bill provides that a liability to pay NIC arises where individuals are employed by an offshore intermediary company but work in the U.K. for a company that is not their employer. The offshore company will be responsible in the first instance for making payment of the NIC and deducting the employee contributions through Pay As You Earn (PAYE). Where this obligation is not met, the liability falls on the U.K. entity that made arrangements for the individual to work in the United Kingdom. If such an entity does not exist, the liability passes to the company receiving the services.

KPMG Note

These provisions are in line with the announcements made in the Budget in March 2013 that a review would be undertaken into the use of offshore intermediaries and are broadly as expected (see [Flash International Executive Alert 2013-052](#), 21 March 2013). The difficulty will be in determining what amount is actually caught by these provisions and on whom the obligation is imposed.

As mentioned above, the measures introduced state that "...if the offshore employer fails to pay the NICs due or make PAYE deductions, HMRC can move these obligations to any U.K.-based intermediary that arranged for the employee to work for someone in the U.K. Where there is no such intermediary business, or the intermediary business becomes insolvent, HMRC can move the responsibility to the end user of the labour."³

The transfer of the liability can only apply when "... a person ("the offshore employer") does not have a registered office or place of business in any EEA state or Switzerland."⁴

KPMG Note

There is a considerable amount of power and discretion given to HMRC and the draft bill refers to the inclusion of earnings within these measures that "HMRC consider to be just and reasonable." It is possible that HMRC and employers may disagree on what is just and reasonable.

The bill does not contain the equivalent tax changes that are expected to be introduced to apply to offshore employers. The notes to the bill state "Equivalent legislation imposing obligations to make income tax deductions through PAYE and allowing HMRC to transfer PAYE obligations and liabilities if the offshore employer fails to pay NICs or deduct PAYE, will be introduced in Finance Bill 2014."⁵

3. The Reclassification of Members of Limited Liability Partnerships as Employed Earners for Purposes of NIC

These provisions remove the application of a section of the Limited Liability Partnerships Act for the purposes of categorizing "earners" to whom the NIC regulations apply. NIC will now be payable where members are covered by the provisions.

KPMG Note: Particular Circumstances of Oil and Gas Sector

There is nothing in the draft bill specifically regarding the oil and gas sector because HMRC and HM Treasury are still consulting on how the regulations relating to offshore intermediaries will apply to the specific circumstances of the businesses in this sector, and, in particular, the implications that arise from operating in the North Sea. We will endeavour to provide further updates on this consultation as it proceeds.

There has been no publication of any new tax rules in conjunction with the bill, but we understand that the PAYE regulations are to be amended in line with the NIC regulations. Again, we will endeavour to provide further updates as soon as more information is available.

Footnotes:

1 See: <https://www.gov.uk/government/organisations/hm-revenue-customs/series/national-insurance-contributions-bill> .

2 See:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/222604/Draft_EN_2013_Bill_F.pdf .

3 Paragraph 12 of the Explanatory notes reference at note 2.

4 Section 4(2) of the draft bill.

5 Paragraph 13 of the Explanatory notes reference at note 2.

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Save the Date!

KPMG's 2013 Global Mobility Forum will be held in Barcelona, Spain from 8-10 October 2013, at the Hilton Diagonal Mar Hotel.

The 2013 Global Mobility Forum is designed to provide insights, leading practices, and ideas to help turn marketplace challenges into opportunities. We have invited corporate professionals – with experiences ranging from international human resources and tax, to immigration and employment law – to join together and discuss new strategies for integrating global mobility and talent management.

Please 'Save the Date' in your calendar today and join us in Barcelona, Spain, at KPMG's 2013 Global Mobility Forum. We have planned a fantastic line-up and look forward to seeing you there!

For more information, please contact your local KPMG IES/People Services professional.

The information contained in this newsletter was submitted by the KPMG International member firm in the United Kingdom. The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

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