Autumn Statement November 2016 – ARC Commentary

There were numerous announcements in the Autumn Statement 2016 that are relevant to the recruitment sector. Here ARC looks at what the proposals may mean for your business:

Fairness in tax
For some time ARC has been campaigning for greater fairness within the tax system (click here for more details regarding ARC's Fairer Tax Relief Campaign, including how to get involved).

The Autumn Statement policy paper indicates that the Government may be following ARC's thinking: "The government will […] consider how the system could be made fairer between workers carrying out the same work under different arrangements and will look specifically at how the taxation of benefits in kind and expenses could be made fairer and more coherent".

ARC's campaign is for all agency workers to be taxed under a simplified, single tax system, regardless of how they provide their services. In addition, we argue that supplied workers should be entitled to some tax relief on home to work travel expenses, so maximising the flexibility and benefit of the full staffing resource for employers nationwide.

IR35 in the public sector
The government has announced that the proposals to reform the IR35 rules in the public sector will go ahead, with implementation in April 2017. The body that is paying the worker's company (in most cases the agency) will be responsible for operating the new rules and using an online tool developed by HMRC to verify whether the engagement is 'caught' by IR35.

The fact that there has been no amendment to the scheduled delivery of the change suggests that the government is confident that the new online tool will produce a definitive result; it has previously been confirmed that the outcome will be binding on all parties, including HMRC.

The proposals are expected to increase administration and other operating costs for agencies and possibly make the PSC model less attractive. More importantly, the proposals suggest that agencies will also be required to ensure that the right amount of tax is paid. Legislation is to be published in December which we trust will clarify how an agency is expected to assess whether it is required to use the online tool, particularly if there is doubt as to whether or not the arrangement is a 'public sector' one.

What remains unclear is whether the cost of paying a contractor, deemed to be caught by IR35 as a result of the test, will form part of the agency's payroll for the purposes of the Apprenticeship Levy. If so, this measure could have a far broader effect and scope than was first anticipated, making many more supply agencies subject to the Levy, and further highlighting its disproportionate effect on the sector.

Removal of tax allowances in the public sector
Agencies supplying PSC contractors to the public sector may also have to meet additional costs arising as a result of the removal of the 5% tax-free allowance for applicable PSCs, regardless of whether the arrangement is caught by IR35.

The government is suggesting that this change is a time saving measure, which reflects that 'workers will no longer bear the administrative burden of deciding whether the [IR35] rules apply'. However, ARC's position is that this is simply the removal of another allowance.

This could lead to public sector contractors demanding an increase in their rate to compensate for the loss of the allowance, putting pressure on agencies' margins, and making the use of such contractors less attractive to hirers.

Flat rate VAT

Changes to the flat rate VAT scheme (FRS) were also announced. The government will introduce a new (higher) 16.5% rate from April 2017 for 'limited cost traders' i.e. businesses which provide mainly labour.

Guidance published with the Autumn Statement indicates that these are to be defined as organisations whose VAT inclusive expenditure on goods is either:

- less than 2% of their VAT inclusive turnover in a prescribed accounting period; or
- greater than 2% of their VAT inclusive turnover but less than £1,000 per annum if the prescribed accounting period is one year (if it is not one year, the figure is the relevant proportion of £1,000)

This measure seems to be a reaction to the proliferation in limited company models offered by service providers, following the changes to travel and subsistence tax reliefs in April 2016. Many of these PSC arrangements take advantage of the existing flat rate scheme (where the flat rate is set by sector). The existing provisions will remain, but the new test will also have to be applied, meaning that fewer companies will be able to claim the existing lower rates and will instead have to pay back VAT to HMRC at 16.5%, leaving a VAT saving of only 3.5%.

Any participants in VAT fraud will also be subject to new fixed rate penalty of 30%, under measures to be set out within the Finance Bill 2017. Businesses and company officers would also be liable for a new penalty where they knew, or should have known, that their transactions were connected with VAT fraud.

Tackling tax avoidance – disguised remuneration

The government will introduce a new penalty for any person who has enabled another person or business to use a tax avoidance arrangement that is later 'defeated' by HMRC.

The consultation on the new penalty, which closed last month, indicates that an 'enabler' will be defined quite broadly and will catch anyone who develops, or advises/assists with the development of tax avoidance arrangements, as well as persons who earn fees and commission in connection with marketing such arrangements. The new penalties will apply if:

> a) there is a final determination of a tribunal or court that the arrangement does not achieve its purported tax advantage; or
> b) in the absence of such decision, there is an agreement between the taxpayer and HMRC that the arrangement does not work.

The government has also announced further investment in HMRC, to widen its activity on countering tax avoidance and taking cases forward for litigation (including National Minimum Wage enforcement, in relation to 'gig economy' issues).

In light of HMRC's increased interest in tackling tax avoidance, evasion and general non-compliance with tax legislation, recruiters are advised to take professional and tailored advice on any new models to make sure that they are fully compliant with legislation and not exposed to unnecessary risk.

Other measures worth noting

- *Termination payments* – from April 2018 termination payments over £30,000, which are subject to income tax, will also be subject to employer NICs, increasing the cost of settlements. The first £30,000 of termination payments will remain exempt from income tax and National Insurance.
- *Increase in insurance premium tax* (general insurance premiums, including home insurance, car insurance and travel insurance) from 10% to 12%.
- *Self-employed disguised remuneration* – tackling the use of disguised remuneration avoidance schemes by the self-employed
- *Corporation tax* will fall to 17%
- *Salary Sacrifice schemes* - from April 2017, the tax and employers' National Insurance advantages of salary sacrifice schemes will be removed from all arrangements, except for ones relating to pensions, childcare, Cycle to Work and ultra-low emission cars.
- *Personal Allowance* will increase to £11,500 in April 2017, and £12,500 by the end of this Parliament.

Next steps

The government will publish draft legislation, including Draft Finance Bill clauses, on 5 December 2016, providing further information on all tax changes and updates on tax consultations.