

## New tax on pensioners' benefits

Do you provide benefits to retired ex-employees? If so, these benefits are now likely to be taxable, and you have a new reporting obligation from the tax year 2006/07 onwards.

Typical examples of benefits provided to pensioners by their ex-employers include living accommodation, Christmas gifts, annual parties, and gifts on retirement. Since 6 April 2006 these benefits to pensioners have all become taxable in much the same way as benefits to employees. Group schemes, such as group medical insurance attract no charge to employment tax, as a pension is not an employment. The measure by HM Revenue and Customs (HMRC) was slipped on to the statute book at the same time as the major reform of the tax treatment of pension funds and pension contributions. The motivation for the new tax on pensioners seems to have been dislike of a growing practice of employers giving valuable gifts in kind on retirement. This practice was in response to an earlier HMRC ruling that cash gifts to retirees could not enjoy the £30,000 exemption for termination payments, but gifts in kind could. Now the distinction between the tax treatment of gifts on retirement in cash and in kind has been removed, and the net that has been spread to catch the gifts in kind has also trawled up all other benefits to pensioners.

So what do you, as an employer, have to do if you provide taxable benefits to retired ex-employees? There are two new reporting requirements (imposed by Statutory Instrument 2005/3453). The first is to report to HMRC that this "employer-funded retirement benefits scheme" exists. You have to do this by 31 January 2008. The second requirement is to make an annual return to HMRC on what might be described as the pensioner equivalent of a P11D, giving the names, addresses and NI numbers of the recipients of the benefits, and the tax value of the benefits they receive. The deadline for making this return for 2006/07 is 7 July 2007. (Bizarrely, this is before the deadline for reporting the existence of the "scheme"!)

It appears that HMRC has not yet published any forms for making these returns, but perhaps a new form "P11P" will emerge when the end-of-year employers' packs for 2006/07 are distributed. One important difference between this new return and the P11D is that there will be no NIC charge on the benefits.

An obvious question is whether the exemptions and non-statutory practices that apply to employee benefits will apply equally to pensioner benefits. If you give your employees a small gift in kind at Christmas, or give flowers at the time of a bereavement, etc, then HMRC is likely to ignore the benefit as *de minimis*. Presumably the same non-statutory exemption will apply to small gifts to pensioners, but we have not seen any pronouncements by HMRC on this. (In fact, HMRC seems to have been silent on the whole subject of this new tax.) If you give your employees a Christmas party to which they are all invited, then the benefit will not be taxed if the cost of the party does not exceed £150 per attendee. (The tax treatment is more complicated if there is more than one annual staff function.) We have not seen any explicit HMRC statement that this exemption also applies to pensioners' parties, but the wording of section 398(2) Income Tax (Earnings and Pensions) Act 2003 seems to imply that it does. So if (a) it is an annual party and (b) all pensioners are invited, and (c) the aggregate (VAT-inclusive) cost per attendee of all such pensioner parties in the tax year does not exceed £150, the benefit should be exempt.

Where pensioner benefits are taxable, your reporting obligation is only to HMRC. There appears to be no equivalent of the P11D requirement to send a copy of the return to the recipients of the benefits. However, it would seem to be good practice to send the pensioners a copy, as they will need the information for their tax returns. Although the first report is not due until July next year, you might wish to tell pensioners about the new tax now. They may then decide to give up future benefits on the basis that the tax charge exceeds the value to them of the benefit – or indeed, that they simply cannot afford to pay the tax.

If you would like further information about this new tax on pensioners, please contact the tax team, [tax@pesconsulting.co.uk](mailto:tax@pesconsulting.co.uk) who will be happy to answer your questions on this or any other tax-related matter.