HMRC crackdown on the tax treatment of salaried members of LLPs

On Tuesday 10th December 2013, HMRC published draft legislation for inclusion in the Finance Bill 2014, which is likely to have a significant impact on construction professionals operating as limited liability partnerships.

A member of an LLP that meets all of the following conditions will be treated as an employee for tax and NICs purposes, rather than as self-employed:

- The member performs services in return for fixed remuneration (or remuneration that is variable otherwise than by reference to the profits or losses of the LLP) (known as “disguised salary”) – HMRC’s guidance states that the condition will be met unless at least 20% of the member’s remuneration is related to the profits and losses of the business as a whole;
- The member does not have significant influence over the affairs of the LLP – HMRC’s guidance acknowledges that where an LLP has a management committee, any member that is not a part of the committee is likely to meet this condition; and
- The member’s capital contribution to the LLP is less than 25% of his disguised salary for the relevant tax year.

The changes apply from 6 April 2014.

James Hutchinson, Partner at Beale & Company, said:

“The changes announced by HMRC constitute a fundamental change to the current position of salaried partners and members. The new rules are far tougher than were proposed in the original consultation and are likely to have a significant financial impact on firms and members.

Engineers, architects and surveyors that are just coming out of recession will now have to go to the expense of deciding whether to restructure their LLPs or accept that some self-employed members will be treated as employees for tax and national insurance purposes.

The new provisions will have effect from 6 April 2014, so LLPs only have a few months in which to review which of their members are at risk and obtain tax and legal advice on legitimate steps which might be possible to restructure their arrangements.”

James Hutchinson is a Partner in the Corporate team of Beale & Company and is a member of the Association of Partnership Practitioners.

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