

Employment Taxes

Year End Compliance and Planning Opportunities – 2015/16

Listed below are some of the key compliance areas and opportunities that employers should focus on prior to the end of the tax year on 5 April 2016. Some actions/changes may fall shortly after this date but we would recommend that due consideration is given to all matters.

For further information on this and other employment tax issues please contact Paul Spenceley on 07825 292546 or at paul.spenceley@taxadvisorypartnership.com.

Payroll

- Have you paid any Non-Executive director's fees without PAYE/NIC deduction? If so are you satisfied that this is correct as PAYE/NIC should usually be applied to such fees?
- Are you satisfied that anyone you are paying on a self-employed basis is genuinely self-employed? If not then we would recommend a review of their status as HMRC will pursue the payer for failure to withhold any PAYE/NIC due.
- Have you identified all payments of earnings and included them on the payroll including such things as termination payments and equity related events (exercise of options, lifting of restrictions etc.). These are two of the most common areas where employers fail to account for PAYE correctly.
- From April 2016 there will be no employer NIC payable for apprentice's under age 25, up to the Upper Secondary Threshold. Have you identified any employees in this category – if so we would recommend that you verify that their date of birth is correctly entered in the payroll system to ensure that you are getting this advantage and not claiming it for someone who is actually over age 25?
- Late filing and late payment penalties apply to payroll – There are a number of due dates over the next twelve months that fall on a weekend or very early in the week. You should ensure that arrangements are in place to make these payments on the last working day prior to the due date to ensure that you avoid any penalties.
- Do you have overseas workers working for you in the UK, even if they remain on an overseas payroll? Employers can be responsible for accounting for PAYE even when the employee is only present in the UK for one day. It is possible to relax the PAYE requirements in certain cases provided that the employer has entered into a short term business visitor agreement

with HMRC. Does this apply to you and if so have you agreed a short term business visitor agreement with HMRC?

- Where you are not withholding UK national insurance contributions in respect of overseas workers do you hold a valid exemption certificate (A1 document for European workers or a certificate of coverage for other reciprocal agreement countries)? If not you should be accounting for UK NIC or requesting such a documents to ensure that you are applying the rules correctly.
- From April 2015 new rules were introduced that affect the taxation of share related payments where the employee has been resident in the UK during a part of the vesting period. It will be necessary to apportion any taxable gain over the period that the employee was working in the UK even if the award was granted or vested whilst the employee was non-resident. You will need to track these awards to ensure that the UK PAYE/NIC obligation has been dealt with correctly. Have any taxable awards that arose in 2015/16 been dealt with correctly?
- Do you have any salary sacrifice arrangements in place for the provision of benefits? If so are these still operating correctly – it is often the case that although such arrangements are implemented correctly, over the passage of time people forget the importance of ensuring that the salary sacrifice is valid and take short cuts to improve efficiency that are a step too far. If you are using salary sacrifice it is worth reviewing your processes to ensure that they are still valid.
- From 6 April 2016 travel and subsistence payments that are paid under a salary sacrifice arrangement will no longer be tax free. A number of employers have introduced these arrangements to cover subsistence provided during the workday but these will need to be revised prior to 5 April 2016.
- From 6 April 2016 the government is introducing the National Living Wage for all those aged 25 and over. The rate will start at £7.20 per hour but expected to rise to £9 per hour by 2020.
- From April 2016 the National Insurance Employment Allowance will increase from £2000 to £3000 per annum. However it will no longer be available to “one man” personal service companies. Are you claiming this?
- From 6 April 2016 it will be possible to payroll benefits in kind – see benefits in kind section below for more information.
- From 6 April 2016 the Scottish Rate of Income Tax will be introduced for all “Scottish” taxpayers. HMRC will identify who is a Scottish taxpayer and signify this to employers by showing an “S” as a prefix to the employee’s tax code. The rate was announced in December 2015 and for 2016/17 will be the same rate as the rest of the UK.
- From 6 April 2016 changes will be made to the Student Loan arrangements. A new Threshold will be introduced for Plan 2 loans of £21,000 per annum. Separate thresholds will apply for existing loans (Plan 1 loans) and employers will be notified of which plan to apply on forms SL1. It will be necessary for employers to amend their starter declaration checklists to ask which plan type a new employee is under.
- From 6 April 2016 the contracted out rates of NIC will be abolished and employees will be moved to the not contracted out rates. This will increase the NIC payable by those employees and their employers as the rebates will no longer be available. Have you made

employees aware of this as the increased NIC may result in queries to payroll as to why it has changed?

End of year reporting

- You should provide any employee who was in your employment at the end of the tax year with a form P60. This should be provided by 31 May 2016 at the latest.
- You are required to report details of certain termination payments to HMRC by 6 July 2016. This applies where the total termination package exceeds £30,000 and includes an element that is not paid in cash.
- Forms P11d (b), P11d and P9d (benefit in kind returns) must be submitted to HMRC by 6 July 2016. We would recommend that a timetable is made to ensure that sufficient time is allowed to collate all the data, complete the forms and verify the entries with employees prior to the submission by 6 July 2016. The class 1A NIC is payable on 19 July 2016 or 22 July if paying electronically.
- You will need to file any share scheme returns (both approved and un-approved arrangements) by 6 July 2016. These must be filed on-line and if you have not already registered for on-line filing we recommend that you start the process as soon as possible to avoid missing the filing deadline.
- If you have entered into a Short Term Business Visitor Agreement with HMRC you are required to report certain details to HMRC by 31 May.

PAYE Settlement Agreements

- Do you have a PAYE Settlement agreement in place for 2015/16 tax year? If so you will need to collate the information required and prepare the gross up calculations to allow you to submit your computations before the filing date. The date for submission is shown on the agreement but is usually somewhere between 6 July and 31 August. Employers often settle on small amounts that could be excluded under a trivial benefits ruling (see below) which may result in them overpaying tax/NIC.
- If you do not have a PAYE settlement agreement in place and wish to introduce one for 2015/16 you will need to have the signed agreement in place with HMRC by 6 July 2016. If the agreement is not put in place before the benefit is provided this can lead to class 1 NIC (both employee and employer contributions) being payable on certain benefits rather than class 1B NIC (Employer only).
- If you are to provide benefits in the next tax year and wish to ensure that class 1B NIC (Employer only) is payable on the benefits we recommend that the PAYE settlement agreement for 2016/17 is entered into as soon as possible and certainly before the first benefit is provided.
- From 6 April 2016 PSA computations must reflect any different rates of tax between the normal tax rates and the Scottish Rate of Income Tax. It is therefore necessary that PSA data collection processes can identify Scottish tax payers. Whilst the rate of Scottish income tax remained at the same UK rate for 2016/17 processes should be reviewed to ensure that they can capture this information going forward.

Trivial Benefits

- Where an employer provides a taxable benefit which is trivial in nature, such as a small gift at Christmas or flowers on an employee's birthday etc. the employer should declare the cost of the benefit on the form P11d. However it is possible for the employer to apply to HMRC for a trivial benefit ruling which if granted by HMRC avoids any tax liability. An employer cannot simply decide that the benefit is trivial they must obtain HMRC agreement. It is therefore necessary to apply for a trivial benefit ruling in respect of any such benefits in 2015/16 and we would recommend that such applications are done as soon as possible.
- It was the government's plan to introduce a statutory exemption for certain trivial benefits from 6 April 2015. However this was delayed due to the General Election and will now be introduced from 6 April 2016. This means that for 2015/16 an employer will have to get HMRC agreement to a trivial benefit ruling and can only rely on a statutory exemption from the next tax year. Under the statutory exemption the trivial benefit must not be cash, must be less than £50, cannot be part of a salary sacrifice arrangement and cannot be a reward for service. An annual cap of £300 will apply to certain employees.

P11d dispensation

- Where an employer reimburses business related expenses they are required to report these on each employee's form P11d, unless they hold an appropriate P11d dispensation. If the employer does not hold a P11d dispensation for the 2015/16 tax year but wishes to have one the application must be made before 5 April 2016. HMRC cannot back date a dispensation into a prior tax year.
- If you have a P11d dispensation is it still valid and up to date? It is often the case with changes in staff and the passage of time that P11d dispensations get misplaced and although someone recalls having one the details of it are not known. This can lead to items omitted from the P11d which should be included. We would recommend that employers retain P11d dispensations in a safe place where they can be examined or produced as evidence if required – If you cannot find a copy HMRC should be able to provide you with one.
- From 6 April 2016 an employer will no longer be required to have a P11d dispensation as the government has introduced a statutory exemption for Qualifying paid or reimbursed business expenses payments. On that date all existing dispensations will be abolished - in the past some employers have obtained P11d dispensations to be satisfied that certain payments/benefits were not taxable. You should review any old dispensations of this nature to verify that the situation has not changed.
- The employer will still need to have a system in place to check that employees are incurring expenditure in respect of exempt expenses and that the deduction would be available. Employers will still be able to use the benchmark scale rates published by HMRC but if an employer has agreed a "bespoke rate" with HMRC it will be necessary to consider if these can still apply. HMRC has stated that any bespoke rate agreed with them after 6 April 2011 can continue to be used up until the end of the five year period and thereafter a new bespoke rate would need to be agreed. Any bespoke rates agreed prior to 5 April 2011 will need to be renewed before 6 April 2016. However, if the rates include travel and subsistence

that are paid under a salary sacrifice arrangement they will no longer be tax free from 6 April 2016.

Benefits in kind

- From 6 April 2016 the “lower paid employee” tax rules will be abolished and all employees will be taxable under the rules applying to “higher paid employees”. This is not a significant change because most employees were already classed as higher paid – defined by HMRC as a person earning at a rate exceeding £8500 per annum.
- With the exception of Living accommodation, beneficial loans and credit vouchers it will be possible to voluntarily collect PAYE on benefits in kind through the payroll. You must register before the commencement of the tax year that you want to start (if you want to include 2016/17 you must register before 5 April 2016) and once the tax year has started you must continue to payroll benefits for the full tax year. Although one of the benefits of entering in to this arrangement with HMRC is that you will not need to complete forms P11d for the employee (unless they are in receipt of other benefits that the company has not opted to process through payroll) you will still need to include the benefits in the P11d (b) and account for class 1A NIC in the usual way.
- In 2012 the government announced plans to abolish the 3% diesel supplement on company cars from 6 April 2016. However it has now deferred this until 6 April 2020 leaving company car drivers with diesel cars paying more than was expected. This supplement is also applied to private fuel benefits so employers should review this – see below.
- One of the most common benefits in kind is the provision of a company car for private use. Some employers require employees to make a contribution towards the car and these can vary from a capital contribution to a personal use contribution. We have often seen these mixed up or treated incorrectly. In some cases no reduction in the benefit is due because the payment does not meet the relevant conditions required by HMRC. We would recommend that you review any documentation that relates to an employee contribution to ensure that it is correctly treated for P11d purposes.
- Where employees are provided with a company car it may also be the case that the employer meets the cost of some or all of the private fuel. With the increases in car fuel benefits and the reduction of fuel costs we would recommend that employers review the provision of private fuel benefits as the employee may be paying more in tax than they are receiving in private fuel. Even where a benefit still exists it is likely that the cost to the employer is substantially greater than giving the employee a cash allowance to meet the difference. It is still possible to implement changes before 5 April 2016 that are effective for 2015/16.
- Many employers pay for all the fuel used by company car drivers but do not report a car fuel benefit on the grounds that the employee fully reimburses the company for the cost of private fuel. The fuel scale charge is an all or nothing charge and we would recommend that you ensure that your systems fully recover the cost of private fuel – including the basis of arriving at the fuel cost used and the accuracy of the employee’s business/private mileage recording.
- Some employers have opted to provide employees with a cash allowance rather than a car. This usually includes a lower mileage allowance that covers just the cost of business mileage.

The cash allowance is usually subject to both PAYE/NIC and only the business mileage rate is paid free from PAYE/NIC. Whilst the employee can claim a tax refund on the difference between what HMRC allow and what the employer pays many do not claim this. In addition to this the employee and the employer suffer NIC on the difference between the HMRC rates and the lower mileage rate paid by the employer. If this is the case it is worth considering if the car allowance can be regarded as a “relevant motoring expense” for NIC purposes and if not what needs to change to allow the NIC savings to be obtained.

- For expatriate employees it is often the case that they are provided with a company car and a private fuel benefit for ease of administration. The company will often settle the employee’s tax on a grossed up basis making the benefit very costly. Whilst it may be difficult to remove the car benefit we would recommend that the fuel benefit is reviewed as these employees are often required to live near the workplace and have low private mileage.
- Most employees who are required to use a van for work do not have a benefit in kind because any private use is restricted to “ordinary commuting”, which HMRC accept is not a benefit, provided that other significant private use is prohibited. You should review your policy or other documents to ensure that they prohibit the private use of the van other than ordinary commuting. It is also common for employers to ask employee’s annually to confirm that the van has not been used privately other than for ordinary commuting. If you use this method you should ensure that responses are provided in sufficient time to prepare any P11d forms that may be required.
- The Government has announced that the new proposal for providing tax-free childcare will now launch from early 2017 – it had planned to introduce earlier but due to a legal challenge delays have occurred. It has also been confirmed that employers can provide tax free child-care vouchers to new entrants until the new scheme is launched.

Auto Enrolment

- Many large employers have already dealt with Auto-enrolment but this is now starting to apply to smaller employers. If you have not gone through auto enrolment then we recommend that you find out your staging date and plan well in advance of this date for implementation. You can find out your date at www.thepensionsregulator.gov.uk/employers/tools/staging-date.aspx.
- A number of employers have taken the opportunity, when introducing auto enrolment, to also introduce salary sacrifice arrangements for pension contributions. This reduces both employer and employee NIC contributions and can result in savings of up to 25.8% of the employee pension contributions.

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