Expenses and benefits in the post-form P11D dispensation era

Employment Tax | Tax voice



12 March 2019

Nigel Morris identifies the key issues to look out for

From 6 April 2016 all existing Form P11D dispensations ceased to be effective and were replaced by new legislation.

What was a dispensation?

A dispensation was a notice from HM Revenue & Customs (HMRC) that removed the requirement to report certain expenses and benefits to them on the end of the year P11D and P9D forms. There was also no need to pay tax or Class 1A National Insurance contributions (NIC) on any items covered by the dispensation i.e. travel, including subsistence costs associated with business travel, business entertainment expenses, etc.

What does this mean for employers?

Employers must now ensure that they have a system in place for checking that all payments made or benefits provided under the terms of the exemption are properly within its scope and to ensure that where they are not, the relevant items are either included in the payroll or included on Forms P11D or in an annual PAYE Settlement Agreement (PSA).

The requirements are that:

- employees are in fact incurring and paying expenses of the kind reimbursed, and
- that a deduction would (ignoring the exemption) be allowed under the legislation in respect of those amounts.

Expenses and benefits are not, however, exempted if they are provided under salary sacrifice.

Benefits that are only partially exempted need to be put through the payroll in full and employees need to claim a deduction on the exempt part.

What are the difficulties?

There have been occasions where items that were typically included in dispensation are not covered by legislation. A couple of the more troublesome ones have been:

- contributions to spectacles for VDU users and
- items covered under national agreements between trade bodies and HMRC, e.g. lorry driver allowances agreed with the Road Haulage Association (RHA).

A potential liability could exist if items are not identified and specific approval notices are not obtained from HMRC. Approval notices were introduced in April 2016 to allow employers paying ‘bespoke’ rates, which are a reasonable estimate of the amounts that their employees are actually spending, to obtain an agreement to do so from HMRC. They last for 5 years unless the employer seeks a revised agreement in the meantime or HMRC issue a revocation notice.

We have also seen confusion in relation to the new Trivial Benefit exemption and advice from advisors suggesting its use for in-house meals or long service awards,

where other specific and potentially more generous legislation already exists. Alternatively, we have not seen the new exemption being applied where it could have been! Examples seen include Christmas gifts to staff and wedding gifts.

HMRC’s existing penalty regime links the behaviours of the business and the seriousness of the error to the level of penalty applied. So the action or inaction of the employer can impact on the ability to mitigate the HMRC action and penalties imposed where something goes wrong.

What should employers do?

We recommend that employers undertake periodic checks of their policies and procedures to help assess their ongoing level of compliance and to highlight weaknesses that need addressing, before HMRC find them.