Car allowances, relevant motoring expenditure and claiming back NIC on business mileage

Employment Tax | Tax voice



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Peter Moroz provides an update on this important issue

I wrote last year about how several companies had lodged claims for the repayment of NIC where their car allowance drivers had business mileage and the drivers were consequently able to claim Mileage Allowance Relief on their tax return. The level of Mileage Allowance Relief a driver can claim for tax purposes cannot exceed 45p per

business mile (25p per mile if the mileage exceeds 10,000) less any amount already paid tax free to the driver. The maximum relief for NIC is always 45p per business mile.

The claims for reimbursement of NIC effectively provide for a mirroring of the tax relief enjoyed by the driver. This is done by reducing the amount of NIC charged on the cash allowances or fuel card expenses if any, paid by the company.

The technical aspects relating to the claims can be found in last year's article. HMRC are still arguing that car allowances do not fall within the definition of Relevant Motoring Expenditure (RME) unless there is a direct linkage between total miles driven and allowance paid to each employee. They also contend that if the car allowance is in part paid for the acquisition of a car, then it cannot be a payment for the "use" of a car.

Both contentions will doubtless be debated at Tribunal as there are no such requirements set out in the definition of RME given at SI 2001/1004 Reg 22A(3); part (c) of which states:

"It is any form of payment, except a payment in kind, made by or on behalf of the employer, and made to the benefit of the employee in respect of the use by the employee of a qualifying vehicle."

HMRC's recent approach appears to be one of requesting companies withdraw claims entirely or else proceed to either an internal review or Tribunal. A sensible response would be to park any claim rather than withdrawing it, pending any Court hearing on the topic. Freedom of Information Requests have revealed that the total number of outstanding claims has however, decreased over the past couple of years from over 100 to about 55. HMRC have also admitted to settling "fewer than 5" claims.

The current position to move forward on the deadlock is that a number of companies are agreeing sample employees with HMRC in respect of which a formal decision is made under s8 of the Social Security Contributions (Transfer of Functions, etc) Act 1999 and appealed within 30 days in order to take the matter forward to Tribunal.

Car Allowances, Optional Remuneration (OpRA) and the Company Car Benefit-in-Kind

The latest Finance Act 2019 makes changes to the calculation of the company car benefit where a cash alternative is offered. For tax years up to 2018/19, it is possible to allocate the cash allowance into elements that relate to insurance/ servicing the car as opposed to the part of the cash allowance that relates to the provision of the piece of metal with 4 wheels attached. This must be done on a just and reasonable basis. The effect of this is that most cash allowance alternatives will be lower than the “old” way of calculating the company car benefit.

This, however, is due to change in April 2019 when the whole of the cash alternative must be considered unless the grandfathering provisions apply or the car has CO2 emissions of 75g/km or less.

Electric Vehicles

Last year I also wrote about the difficulties created as there was no Advisory Fuel Rate (AFR) for electric only vehicles.

It is good to see that HMRC have taken practical action on this point and have now published an Advisory Electric Rate for business mileage reimbursement at 4 pence per mile on such company vehicles. This is designed to recompense drivers who charge their vehicles at home.

However, we are noticing other discrepancies with published AFR rates when it comes to hybrid vehicles.

There are no separate rates for petrol/ electric hybrids and the normal AFRs based on petrol/diesel/engine size. At the time of writing this can vary between 10ppm and 22ppm.

It appears that the actual rates of fuel consumption vary enormously from published AFR. This is because for some hybrids, we find that when driving high mileage, the cars are only using the petrol engine which in turn can make them inefficient.

HMRC do allow the reimbursement of business mileage in company cars at a rate higher than AFR, but will allow it to be paid without tax only if there is a robust system for calculating the true cost of mileage.

Alternatively, where the car is used to optimum efficiency with the electric engine, the AFR can be generous compared to the true cost of fuel used. Some companies

also have facilities for tax-free charging of the electric batteries at work – and this is quite independent from and can be provided in addition to the reimbursement of business mileage using an AFR.

One further welcome change brought in by Finance Act 2019 is the exemption to tax for workplace charging of privately owned electric vehicles (and the batteries of plug-in hybrids) where the employee is the driver or a passenger. The exemption applies from April 2018 but only on condition that the facility is not part of an arrangement caught by OpRA.

In addition, the charging facility must be “at or near the workplace” and available to employees generally.