Evolution not revolution

Employment Tax



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Edmund Paul and Mike Herdman summarise the key changes in employment taxes in 2020 and the steps that businesses should be taking to prepare

The employment tax landscape is evolving with several changes being introduced that will increase the costs for businesses when providing benefits and engaging with workers.

Taxation of company cars

Cars registered from April 2020: changes to the measurement of CO2 emissions

When calculating the cash equivalent value of company cars, one of the key elements of the calculation is the CO2 emissions of the vehicle. The higher the CO2 emissions of the vehicle, the greater the appropriate percentage resulting in a higher cash equivalent of the car.

Previously, CO2 emissions were measured on the New European Driving Cycle (NEDC) standards. However, the CO2 emissions for cars (including bi-fuel cars) registered from April 2020 are based on the Worldwide Harmonised Light Vehicle Test Procedure (WLTP). The WLTP will better align reported CO2 emissions measured in the laboratory with those that are achieved during real world driving conditions.

Initial evidence provided by manufacturers suggests there is a significant difference between the two metrics, with half of cars expected to see an increase from NEDC to WLTP of between 10% and 20%. As an example, the emissions of a Vauxhall Corsa 1.2 Turbo 100PS was 96g/km when tested under the NEDC; however, this increases by c. 33% to c. 128g/km when tested under the WLTP.

In recognition of the impact of these changes, the government has introduced new rates for the 2020/21 and 2021/22 tax years for cars where emissions will be measured by WLTP. These can be found in Annex A of the Review of WLTP and vehicle taxes at bit.ly/34oLNn8. Whilst this will partially offset the impact of these changes, taken collectively there will be an increased taxable benefit for all company cars with the exception of ultra-low emission vehicles (ULEVs).

Cars registered prior to April 2020: changes to the relevant percentages

The government’s aim of incentivising low emission vehicles can also be found within changes to appropriate percentages for cars which remain in the NEDC regime.

Where an employee owns a car with CO2 emissions of 85 g/km or less, there has been an overnight decrease in the taxable benefit value of the car from 6 April 2020. The appropriate percentages for cars with CO2 emissions of above 95 g/km has risen by one percentage point up to a maximum of 37%.

A full list of rates for the upcoming tax year can be found in Annex A of the Review of WLTP and vehicle taxes at bit.ly/34oLNn8. In the 2020 Budget, the government also announced that the 2022/23 relevant percentages will remain in place for the next two tax years (i.e. the 2023/24 and 2024/25 tax years).

What steps should businesses be taking?

It is clear that the government has sought to incentivise the provision of ULEVs through a lower company car tax regime. Businesses should be reviewing the costs of existing fleets to determine whether the changes to the company car tax regime will mean that a shift of company car fleets towards ULEVs will result in lower overall costs.

Businesses should retain records of the registration date for vehicles in their company car fleets. This will ensure that the correct CO2 metric is used when preparing relevant end of year returns. If businesses are payrolling the provision of company cars, then the car benefit should be recalculated as a matter of priority.

The changes in relevant percentages will also impact the private fuel benefits reported on Form P11D. In the main, we would expect fuel benefits to be reduced for most company cars, but care will need to be taken to ensure the correct values are reported. In addition, the changes to the cash equivalent of company cars could impact whether the optional remuneration arrangement (OpRA) legislation can apply. From our experience, companies offer a cash allowance in lieu of the provision of a company car. Businesses are required to report the modified cash equivalent of the company car or the cash allowance that would have been available in lieu of the benefit. Where the cash equivalent of a benefit decreases, there is increased risk that the cash allowance could be higher and needs to be reported. It is worth noting that there is a specific carve-out from the OpRA legislation for ULEVs, defined as cars with CO2 emissions of 75 g/km or less.

Finally, businesses should consider how the changes are communicated to employees ahead of enrolment windows to reduce the number of benefit queries.

Class 1A payment on termination payments

Changes have been made to the national insurance treatment of termination payments following the introduction of the National Insurance Contributions (Termination Awards and Sporting Testimonials) Act 2019.

From 6 April 2020, Class 1A NICs are due on termination payments caught under the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) s 402B. Broadly, this captures ex gratia payments exceeding £30,000.
The NIC charge will arise at the earlier of the payment date or entitlement date of the ex gratia payment. The payment will need to be included within relevant real time information (RTI) submissions and paid alongside income tax and Class 1 NICs due under PAYE.

If the ex gratia payment is solely non-cash benefits provided without transfer to the employee, then the Class 1A payment will be due alongside the Class 1A NIC payment for benefits in kind. In addition, HMRC also requires a statement of particulars containing the same information as a P11D(b).

Where the termination payment is a mixture of cash and non-cash benefits, the draft legislation mirrors the income tax legislation, meaning that the £30,000 exemption first applies to cash payments, then assets transferred to the former employee and finally assets not transferred to the employee.

These changes could potentially represent a significant additional cost for terminating employees going forwards.

What steps should businesses be taking?

As a first step, employers may wish to consider whether ex gratia payments could be reduced going forwards to reflect the Class 1A NIC cost for businesses. This may also necessitate the need to review and renew redundancy policies and/or union agreements.

In addition, employers should ensure that their payroll software has been updated to allow the Class 1A NIC liability to be processed. We are aware of certain providers who have yet to include this within updated software.

Finally, these changes interact closely with the post employment notice pay (PENP) legislation previously introduced. Where a termination payment is made, employers should consider what element of the termination payment will constitute taxable PENP, which is subject to Class 1 NIC and income tax withholding. The remaining termination payment may then be exempt under ITEPA 2003 s 402(B), albeit where the payment is eligible for s 402(B), Class 1A NICs will arise to the extent the taxable component exceeds £30,000.

Employers should review internal processes to ensure that PENP is calculated correctly and, by extension, the correct amount is subject to Class 1A NIC.

Class 1A NIC on sporting testimonials

Currently, where a sporting testimonial is made for an individual, the tax treatment will depend on the contract and traditions of the organisation, as well as the quantum of the testimonial payment.

Where the testimonial is contractual or it is the custom of the organisation to have a testimonial, then the payment made to the player will be deemed earnings, thereby subject to income tax and Class 1 NICs.

However, if the testimonial is non-customary and non-contractual, then ITEPA 2003 s 226E brings the testimonial proceeds into the charge of income tax. This broadly apples where a sporting testimonial is held (being a single event or a series) to collect donations from fans for a player in order to recognise their service to the club and the sport in general. These proceeds must not otherwise be caught as general earnings.

A limited tax exemption is available under ITEPA 2003 s 306B for testimonials taking place after 6 April 2017. Broadly, the exemption applies to the first £100,000 of testimonial proceeds where the following conditions are met:

- the organiser of the event is independent from both the player and employer;
- there has been no previous testimonial income to which the exemption applied; and
- the exemption applies to income received from relevant events held in a maximum period of 12 calendar months only. This begins with the date the first event is held in a ‘testimonial year’, even if that year covers more than one tax year.

The National Insurance Contributions (Termination Awards and Sporting Testimonials) Act 2019 brings a Class 1A charge on the ‘general earnings’ received by the individual, which the government suggests is the amount subject to income tax under s 226E. The Class 1A NIC due is payable by the controller of the sporting testimonial (typically an independent committee). This new NICs charge is extended to any additional payment made by the controller to discharge any income tax liability on that recipient.

Where the employer is still making payments under PAYE, the Class 1A NICs due on the testimonial payment will need to be included within relevant real time information (RTI) submissions and paid alongside income tax and Class 1 NICs due under PAYE.

Otherwise, the Class 1A NICs payment will be due alongside the Class 1A NICs payment for the P11D(b). HMRC also requires a statement of particulars containing the same information as a P11D(b). For simplicity, employers may choose to report these costs within the P11D(b) and pay the associated Class 1A liability alongside this.

What steps should businesses be taking?

The taxation of testimonial matches is an area of complexity. In particular, the definition of 'customary' is vague – where a club has a practice of granting testimonials in certain circumstances (e.g. every five years), will that establish a practice of providing testimonials that captures all other circumstances (such as death or injury)?

Therefore, care must be taken in determining whether the payment falls into general earnings or into the remit of s 226E and the associated Class 1A NICs charge.

Income tax treatment of expenses for voluntary office holders

Within civil society, there are numerous individuals who undertake unpaid voluntary work. In order to perform their duties, they are often reimbursed expenses incurred in performing their voluntary duties (e.g. travel costs).

Many individuals who perform voluntary duties may hold an office at the voluntary organisation (e.g. magistrates). By concession, HMRC accepts that where the reimbursement does no more than compensate the individuals for expenses incurred by voluntary workers in doing the work of the organisation, no liability to tax will arise. The Finance Bill 2020 codifies this concession and a mirror NICs provision will be introduced by regulation.

Homeworking expenses

The maximum flat rate tax deduction available where employees incur additional household costs where they work at home under formal homeworking arrangements has increased from £4 per week to £6 per week. This is the rate at which employers

can reimburse homeworking expenditure without the requirement for employees providing receipts evidencing the nature of the expenditure. This measure took effect as at April 2020.

In addition, HMRC has very recently issued further guidance on the treatment of equipment purchased for employees when they are working from home (see bit.ly/2Vh5dGi).