Employer Support for Employees

Employment Tax | Tax voice



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Rob Woodward looks at what tax breaks are available for employers to help their employees during these trying times

The current pandemic and its associated impact on employees' health, both physical and mental, has led to many employers asking what support they can offer to staff without giving rise to a benefit in kind charge. This article highlights some of the key tax and NIC exemptions available for non-cash benefits – for the avoidance of doubt I will not cover cash payments or support measures designed to maintain employment or assist employees working remotely such as the CJRS or working from home allowances.

Covid-19 tests

Healthcare, essential workers and other frontline staff are regularly tested and the Government has confirmed at these tests are not considered taxable benefits in kind (BIKs). Similarly, many employers will also pay for antigen testing to supplement the national testing programme – for example, professional sports clubs regularly test their players and coaching staff as part of the continuation of elite level sport.

In addition to confirming employer paid for testing for key workers is not considered a taxable BIK, at https://www.gov.uk/guidance/how-to-treat-certain-expenses-and-benefits-provided-to-employees-during-coronavirus-covid-19 the Government also confirmed employer paid for antigen testing kits for employees, either provided directly or by purchasing tests that are carried out by a third party, will not result in an income tax or Class 1A NIC charge. Similarly, employers and their employees will not be liable to any income tax or NIC, where an employee is reimbursed by their employer when they purchase a test.

For the purpose of this exemption, an ‘antigen’ test means a test which detects the presence of a viral antigen or viral ribonucleic acid (RNA) specific to Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2).

Health screening

These Covid-19 test exemptions are in addition to employer provided health screening where Section 320B ITEPA 2003 provides an exemption to income tax and NIC for one health screening or medical check-up per employee per year to identify any risk of illness or determining an employee’s state of health. The screening/check-up must be either paid for directly by the employer or the employee provided with a non-cash voucher to pay the healthcare professional in order for the BIK exemption to apply.

This exemption only applies to health screening/check-ups and any other employer provided or paid for medical treatment in the UK will be considered as private medical treatment and therefore taxable. How the medical benefit charge is applied depends whether the employer contracted for the service (income tax operated via the P11D process and the employer pays Class 1A NIC), contracts for private medical insurance (income tax and Class 1A NIC again through the P11D process) or the employer reimburses the employee’s treatment/insurance cost (the payment is considered additional salary liable to PAYE and Class 1 NIC via the payroll).

Due to the risk of health screening developing into private medical treatment, and therefore becoming taxable, employers should take care in agreeing the scope of the screening. It is important to check what will and will not be provided and the point at which the employee must either pay for additional services (to seek to "make good" any taxable cost to the employer) or be referred to the medical insurance (which the associated tax charge deals with under that benefit in kind provision).

Vaccinations

While Covid-19 vaccinations are only available through the NHS and can only be provided through the state-run vaccination programme, employers can pay for vaccinations against more "regular" strains of influenza. It is HMRC policy that employer paid for flu jabs or the provision of a non-cash voucher for a flu jab can fall within S323A ITEPA 2003 and therefore could be exempt from a BIK charge. However, the provision of a cash voucher, cash payment or cash reimbursement for an employee purchased flu jab would be liable to PAYE/NIC.

Welfare Counselling

The pandemic has had a significant impact on the mental wellbeing of many employees and in addition to the physical health exemptions outlined above, employer provided welfare counselling will also not be considered a BIK.

To meet the exemption for welfare counselling under the relevant Statutory Instruments enacted as part of the minor benefits exemption under Section 210 ITEPA 2003, the counselling must fit within the HMRC accepted range of support. That range is listed at https://www.gov.uk/hmrc-internal-manuals/employment-income-manual/eim21845 and includes counselling for stress, problems at work, debt problems, bereavement and ill-health. Since April 2020, the scope of non-taxable counselling services also includes related medical treatment, such as Cognitive Behavioural Therapy or Interpersonal Therapy, when provided to an employee as part of an employer's welfare counselling services.

The exemption does not though cover tax or financial advice (except debt problems), advice on leisure or recreation or legal advice. The challenge is determining where counselling goes beyond just support and becomes advice and therefore outside the scope of the exemption.

Employee Assistance Programmes

Employers often provide the welfare counselling services via an Employee Assistance Programme (EAP) - a “one-stop shop” which provides welfare and counselling services but also other advice and support services. Care is required to ensure that the other range of services does not undermine the BIK exemption thus making the whole EAP taxable, especially where it is difficult to determine where to draw the line between counselling which falls within the exemption and counselling which is outside of the exemption.

HMRC will take a common sense approach to considering the EAP so that the exemption will apply when the EAP consists substantially of facilities that satisfy the terms of the exemption but also to a not significant proportion of the services provided which do not satisfy the exemption.

Often the EAP is structured in a way to provide the initial service at no cost to the employee, but if further bespoke advice or guidance is required the employee will be obliged to pay for that separately. Such an approach can ensure the EAP itself does not give rise to a BIK although of course if the employee’s cost of that further advice is met by the employer, that payment/reimbursement will give rise an income tax and NIC charge.