Nothing stands still

Employment Tax



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In the second of two articles on key employment tax changes, Edmund Paul and Jonathan Berger consider the representative occupier rules for accommodation and the cessation of grandfathering provisions for certain employer provided benefits

Key Points

What is the issue?

The 2021/22 tax year sees the introduction of several significant employment tax legislative changes.

What does it mean for me?

Taken together, the changes will significantly increase the complexity, costs and challenges for businesses.

What can I take away?

Awareness and preparation are key in ensuring that businesses can comply with the new rules.

Several significant pieces of employment tax legislation have been updated and/or introduced effective from 6 April 2021. The first part of this article was published in the May issue of Tax Adviser, considering the off-payroll working rules and amendments to the Construction Industry Scheme. This month, we examine the representative occupier rules for accommodation, the cessation of grandfathering provisions for certain employer provided benefits caught by the optional remuneration arrangements legislation, and other changes of note.

Cessation of grandfathering provisions for certain employer provided benefits

With effect from 6 April 2017, the government introduced the optional remunerati on arrangement (OpRA) legislation, to combat the perceived loss of income tax and NIC from salary sacrifice arrangements. Whilst the rules were originally designed to target salary sacrifice arrangements, the government widened the scope of the legislation to also counter arrangements where there is a cash alternative in lieu of the benefit.

When the rules were introduced, HMRC incorporated transitional rules which protected certain grandfathered benefits, such that employers could continue to calculate the benefit value based on the cash equivalent rules prescribed in legislation.

However, 6 April 2021 has seen the end of the final transition period for the remaining grandfathered benefits, being company cars (with CO2 emissions above 75g/km), living accommodation and school fees. Going forward, the taxable benefit in kind is based on the higher of the cash foregone on that benefit and the taxable benefit in kind value.

Key considerations for the 2021/22 tax year

Cost implications

The OpRA changes could result in higher benefit in kind values arising for these remaining grandfathered benefits, costing employees in receipt of these benefits more in tax and the employer more in NICs.

At a high level, this is because the OpRA rules require the benefit to be taxed at the higher of the cash value foregone in lieu of the benefit and the benefit value under the normal benefit in kind rules.

Reporting administration

Businesses need to review benefits on a per employee basis to determine whether the OpRA rules apply. To determine the correct benefit in kind value, employers need to consider:

- when the employee entered the arrangement;
- what allowances they are enti tled to; for example, based on their contract or departmental handbooks;
- whether there is a right to choose between the cash allowance and the benefit in kind (either contractually or implied); and
- whether the cash alternative exceeds the modified cash equivalent of the benefit.

This will increase the time that a business must spend on administration, at least during the transition year. To reduce employee queries, communication is key so that employees can understand the potential impact on their tax codes and therefore their pay.

Withdrawal of the representative occupier concession for employer provided living accommodation

HMRC had a long held extra statutory concession (ESC) under which certain roles would be exempted from income tax where living accommodation was provided to a ‘representative occupier’. The ESC related to posts which existed before 6 April 1977 where:

- the employee lives in accommodation provided rent-free by the employer (or by a third party by reason of the employment);

- as a term of their employment contract, the employee must reside in that particular living accommodation and is not allowed to reside anywhere else; and
- the employee is reasonably required to reside in the accommodation for the better and more effective performance of their duties.

The changes could cost employees in receipt of these benefits more in tax and the employer more in NICs.

After a public call for evidence, the government confirmed that it would not legislate this ESC and it would be withdrawn with effect from 6 April 2021.

Key considerations for the 2021/22 tax year

Businesses which have been relying on this exemption for many years should review the basis on which accommodati on has been exempted to determine employees impacted by this change. Whilst there are statutory exemptions for employer provided accommodation which may be utilised to exempt the accommodation going forward, not all representative occupiers will meet them. These exemptions include where accommodation is provided to an employee:

- where it is necessary for the proper performance of duties;
- for the better performance of the duties of employment and it is also customary for the employer to provide that accommodation; or
- where there is a special threat to the security of that employee and special security arrangements are in place which require that employee to reside in that accommodation.

The conditions that must be satisfied in order for the customary test to apply are significant, particularly given HMRC’s view on the exemption stated within its December 2018 employer’s bulletin. As such, careful consideration is needed to determine whether other statutory exemptions can apply. Otherwise, where the provision continues, the benefit in kind cost is likely to significantly increase, and this will be potentially further inflated by related benefits provided, such as furniture and the cost of utilities.

Other changes of note

Termination payments

The government has introduced two changes to the post employment notice pay legislation with effect from 6 April 2021.

The first change is that non-resident employees will be subject to income tax and NICs on their post employment notice pay, based on the proportion of their notice period that would have been served in the UK.

Secondly, the legislation also introduces a simplified calculation where the employee is paid on a monthly basis. This calculation applies when the employee's last pay period before the trigger date is a whole month, the employee is paid in equal monthly instalments and the notice period or post-employment notice period is not a whole month.
In this case, the legislation provides that 30.42 (being the mean average number of days in a month) may be required to be used as 'P' (the number of days in the pay period) in the post-employment notice period calculation.

Secondary class 1 contributions for employing ex-services personnel (veterans)

Employers are able to claim NICs relief on earnings paid to veterans they employ for their first 12 months of civilian employment up to the upper secondary threshold for NICs.
A person qualifies as a veteran if they have served at least one day in the regular armed forces, including completing at least one day of basic training, with no age limit.
Employers can claim the relief if they employ a veteran during the qualifying period. Broadly, the qualifying period starts on the first day of the veteran's first civilian employment since leaving the regular armed forces and ends 12 months later (even if the employment began before 6 April 2021).

For the 2021/22 tax year, businesses will need to pay the secondary Class 1 NICs as normal and then claim it back retrospectively from 6 April 2022 onwards. From 6 April 2022 onwards, employers will be able to apply the relief in real time through PAYE.

Company car tax changes

The van benefit charge and fuel benefit charges for cars and vans is uprated by the Consumer Price Index from 6 April 2021.

The uprate for the charges takes effect as follows:

- Van benefit charge: from £3,490 to £3,500
- Car fuel benefit charge multiplier: from £24,500 to £24,600
- Van fuel benefit charge: from £666 to £669

In addition, the relevant percentages for the calculation of company car benefit in kind increase by 1% across all bands. The cap of 37% remains in place.

With effect from 6 April 2021, vans that produce zero carbon emissions have a nil van benefit charge.

Easement for employer-provided cycles exemption

Employees who joined a Cycle to Work scheme and were provided with a bicycle or cycling equipment on or before 20 December 2020 are permitted to an easement to the requirement to use the bicycle for the majority of time for commuting, and do not have to meet the 'qualifying journeys' condition until after 5 April 2022.

PAYE thresholds

The personal allowance and the basic rate limit increases to £12,570 and £37,700 respectively for the 2021/22 tax year. The higher rate threshold increases to £50,270 for 2021/22. (There are separate thresholds applicable to Wales and Scotland, set by the devolved assemblies.)

The NICs upper earnings limit remains aligned to the UK higher rate threshold at £50,270 for 2021/22.

Exemption for employer provided and employer reimbursed coronavirus antigen tests

Employees who are provided with, or reimbursed for the cost of, a relevant coronavirus antigen test by their employer will not be liable to an income tax or NICs charge for the 2021/22 (or 2020/21) tax year.

Exemption for home-office expenses

The government introduced a statutory exemption for the 2020/21 and 2021/22 tax years to remove a liability where employers reimburse employees for the costs of certain homeworking equipment used when working from home. This typically

covers items such as desks, chairs and IT equipment, such as monitors. The following conditions must be met in order for the exemption to apply to employee use:

- The equipment is obtained by the employee for the sole purpose of enabling them to work from home as a result of the coronavirus outbreak.
- The provision of the equipment would have been exempt from income tax under the Income Tax (Earnings and Pensions) Act 2003 s 316 if it had been provided directly to the employee by or on behalf of the employer.

Nothing stands still in the tax world and employment tax in the 2021/22 tax year is no exception to that. Our articles do not cover every change taking place in the employment tax space, therefore businesses should ensure they take the time to understand how they might be impacted and what they might need to do in order to ensure continued compliance. Nothing is permanent but change itself.