Employment tax changes

Employment Tax | Tax voice



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Susan Ball asks: Are you prepared for the employment tax changes in April 2016?

The employment tax rules are changing significantly from 6 April 2016. It is important that practitioners and employers are aware of these changes and have revised their processes and procedures accordingly. Below are some of the key changes:

- The replacement of dispensations with an exemption for paid or reimbursed expenses.
- The abolition of the £8,500 threshold for taxing certain Benefits-in-Kind (BIK).
- The voluntary payrolling of BIK.
- Trivial benefit limit.

The abolition of dispensations post 6 April 2016

From 6 April 2016 existing dispensations will no longer be in effect. Almost all expenses or benefits that might previously have been covered by a dispensation will be covered by legislation (sections 289A – D, ITEPA 2003 covering payment of tax-allowable expenses) and therefore exempt from 6 April 2016.

However, **if employers pay any bespoke scale rate or round sum** (other than under HMRC agreed working rule agreements or the new HMRC benchmark scale

rates) they **MUST take action before 6 April 2016**.

This includes using an industry approved rate such as the Road Haulage Association rate for lorry drivers. Any employer with an existing bespoke rate agreed in their dispensation will need to reapply for approval of the rate with HMRC before 6 April 2016. If they don't they will no longer be valid and the amounts will therefore be subject to tax and NIC.

Expenses and benefits will not be tax/NIC exempted if they are provided under a relevant salary sacrifice arrangement.

Employers who pay any non-allowable expenses or provide non-exempt benefits will still need to put those through the payroll and deduct tax and NICs or put them on form P11D as they would now.

Expenses covered by legislation post 6 April 2016

In December 2015 HMRC published guidance on the expenses exemption (see HMRC's manuals beginning at EIM30210). This stated that employers may reimburse expenses that fall within the exemption in one of three ways:

- on an actual, receipted basis
- at the approved benchmark scale rates as set out in HMRC guidance (EIM30240)
- at rates agreed with HMRC under a bespoke agreement (EIM30250).

For all three methods, employers will have to maintain records of the expenses and ensure that employees are not reimbursed beyond the costs actually incurred. However, the guidance makes clear that where employers reimburse employees at either the approved benchmark scale rates, or at rates agreed under a bespoke agreement, a checking system that complies with HMRC guidance must be put into place. This is a new requirement for employers.

HMRC benchmark rates

The HMRC benchmark scale rates have also been slightly amended from 6 April 2016. These can be used by employers for meals while employees are travelling on business without prior approval from HMRC (see below.) If employers reimburse

more than the benchmark scale rates they should subject the excess reimbursement to tax and NIC or seek to agree a bespoke rate with HMRC.

> *“One meal allowance per day paid in respect of one instance of qualifying travel, the amount of which does not exceed:*
>
> *(a) £5.00 where the duration of the qualifying travel in that day is five hours or more;*
>
> *(b) £10.00 where the duration of the qualifying travel in that day is 10 hours or more; or*
>
> *(c) £25.00 where the duration of the qualifying travel in that day is 15 hours or more and is ongoing at 8pm.”*

An additional allowance of £10.00 can also be paid where a meal allowance is paid under (a) or (b) and the qualifying travel is ongoing at 8pm.

Employers who are considering using these rates from 6 April 2016 do not need to apply for an approval notice (EIM30240), however they do need to make sure that they meet the new ‘checking system’ requirements.

Bespoke agreements

Employers who wish to reimburse employees for expenses at a rate higher than the approved benchmark scale rates or under different circumstances (even if they have previously agreed the rate with HMRC) must apply to HMRC for approval before 6 April 2016, or the rates will cease to be allowed to be paid tax and NIC free from 6 April 2016.

Those with previously agreed rates, under five years old, will be approved for five years from the initial date of grant. Any over five years old, or where the application is for a new rate, will require a sampling exercise as detailed in EIM30250 (circa 10% of the workforce, over a period of one month). Any new rate will be agreed for a maximum of five years.

HMRC is currently developing an online form for employers to use when applying for approval of bespoke rates, which we understand should be available shortly.

Checking systems

Employers and advisers should note there is a new requirement in the legislation for a ‘checking system’. This relates to both payments covered by legislation and HMRC agreed bespoke rates. EIM30270 states that employers must have a system in place for checking that all reimbursements under the terms of the exemption are properly within its scope. The extent of the checking required will depend on the size and scale of the business. Employers will need to demonstrate that someone other than the employee is responsible for ensuring that the reimbursements in fact relate to qualifying expenses, do not include disallowable items, and are not excessive.

The checks will need to incorporate a review of records and receipts, and be undertaken regularly during the year. HMRC has provided models of checking systems at EIM30275 to assist employers in implementing compliant systems. HMRC may ask to review the checking system at any time.

The HMRC guidance can be found on the GOV.UK website.

Abolition of £8,500 earnings threshold for benefit reporting

The £8,500 threshold for reporting purposes will be removed from 6 April 2016. After this date, all employees will need to be considered when determining the end of year P11D position.

This measure was announced at Budget 2014, as part of a package aimed to simplify administration of employee BIK and expenses.

Payrolling of Benefits-in-Kind (BIK)

From 6 April 2016, HMRC will give employers the option to process benefits in kind through the payroll.

Where the relevant tax and national insurance is then collected through the payroll, there will be no need to complete P11Ds for these benefits.

The original draft regulations were discussed over the summer, and revised to make payrolling easier for employers.

An HMRC online registration facility that allows employers to include employees' BiK in the payroll from 6 April 2016, rather than completing P11D forms, has been up and running for some time now.

HMRC guidance at PAYE58701 indicates that the benefits that cannot be included are:

- vouchers and credit cards
- living accommodation
- interest-free and low interest (beneficial) loans

Employers must register before 5 April 2016 if they wish to payroll benefits during 2016/17: once agreed, the benefits will not need to be reported on the form P11D for 2016/17.

Employers who currently have an 'informal' agreement with HMRC to payroll certain benefits must register in order to continue to do so from 6 April 2016.

The regulations which amend the Income Tax (Pay As You Earn) Regulations 2003 can be found here.

The scale rate regulations are a standalone instrument, which can be found here.

Trivial benefits

Dropped in the run-up to the general election, the draft Finance Bill 2016 contains the statutory basis to exempt low-value trivial benefits under £50 from income tax and NICs.

These new rules will replace the current regime under which employers are required to agree with HMRC whether certain BIK can be treated as trivial on a concessionary basis.

The HMRC guidance at EIM21860 sets out how to determine whether a benefit provided to an employee should be regarded as a trivial benefit.

The draft includes comment that qualifying trivial BIK provided to directors and other office holders of close companies is also subject to an annual cap of £300. Where the director’s or other office holder’s family or household member is also an employee of the company, they will be subject to a £300 cap in their own right. This change addresses a potential loophole.

Conclusion

Employment taxes have never been so interesting. Over the last few years many changes, including the agency rules, intermediary reporting and the Scottish rate of income tax, have affected the fundamentals of how employers manage their financial structures. But these changes don’t show signs of stopping and across this year alone we expect to see developments announced covering termination payments, employment status, accommodation benefits and travel and subsistence to name just a few!

Some of the changes will be costly to employers and employees. As a result, employers and practitioners would do well to implement clear communication strategies to minimize any potential disruption from exiting or amending existing arrangements.