P11DS/PSAS – All change?

Employment Tax | Tax voice



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Paul Tucker leads us through the major changes

2016/17 is a year of significant change for P11Ds and PAYE Settlement Agreements (PSAs). Employers and advisers must ensure they are ready.

2016/17 P11Ds

As well as the usual technical issues, employers need to consider the impact of:

- Dispensation abolition;
- Introduction of Approval Notices and sampling; and
- Payrolled Benefits in Kind.

Dispensation abolition

Business expenses

Historically, an employer needed HMRC's agreement, in the form of a written dispensation, to exclude pure business expenses from their P11Ds. Those without an agreement had to include all expenses on their P11Ds.

Under the new regime, from 6 April 2016, all dispensations have been abolished. HMRC have introduced an exemption, as part of simplification, under S289A ITEPA 2003. Employers may exclude pure business expenses from their P11Ds, but the exemption will not apply if the expense is provided as part of a salary sacrifice arrangement. Employers are still responsible for demonstrating that the expenses are covered by the exemption as highlighted in HMRC's Employment Income Manual (EIM) paragraph 30210.

Employers who had a dispensation at 5 April 2016 should see little or no change. They should, however, review their dispensation to ensure that all items are now covered by HMRC's exemption.

Employers who did not have a dispensation could see major changes as:

1. They will no longer need to include pure business expense on a P11D; and
2. There will be no need to prepare draft S336 ITEPA 2003 tax relief claims for employees.

Mixed purpose expenses or personal expenses

This is one area that has been clarified and changed for all employers. It is no longer possible to include mixed use expenses where the business element is identifiable or pure personal expenses on the P11D. HMRC issued the following guidance in their October 2016 and February 2017 Employer Bulletins.

Employers must process these expenses through the payroll and subject them to PAYE tax and National Insurance (NI) as follows:

a. Those that are wholly personal:

   Process the whole expense through the payroll.

b. Expenses that are partly personal:

   i. If the employer cannot identify the business element

      Process the whole expense through the payroll. The employee will need to contact HMRC to claim any tax relief they consider is due. However, there appears to be an inconsistency in HMRC's February 2017 Bulletin as it appears to give employers an option in relation to the tax treatment of

these expenses as it states they could instead be included in Section N of the P11D.

ii. If the Employer can clearly identify the business element

Process the non-business element through the payroll.

Employers who reimburse these expenses will need to process them through the payroll. They will need to act very quickly if they are to do so for 2016/17.

Introduction of Approval Notices, sampling and checking

Employees who wish to pay tax and NI free subsistence allowances have a number of issues to consider, as set out below. Allowances paid under salary sacrifice arrangements cannot be paid free of tax and NI.

Employee must incur an expense and employers must have adequate checking systems in place if an allowance is to be paid tax- and NI- free (EIM 30220).

1. HMRC's benchmark rates (EIM 30240)

   The current rates are as follows:

   a. Minimum journey time 5 hours – £5 maximum meal allowance;

   b. Minimum journey time 10 hours – £10 maximum meal allowance;

   c. Minimum journey time 15 hours and ongoing at 8pm – £25 maximum meal allowance.

   If the £5 or £10 rates are paid and the journey finishes after 8pm, the employer may pay a supplementary rate of £10.

   There is no need to obtain HMRC's approval for these rates or undertake a sampling exercise, but the employer must have a checking system in place.

2. Bespoke allowances (EIM 30250)

Employers who wish to pay a bespoke rate in excess of HMRC's benchmark rates must agree the rate with HMRC. They will usually need to undertake a sampling exercise and will also need to have a checking system in place (EIM 30270). If HMRC agree they will issue an Approval Notice under S289B ITEPA 2003.

PAYE (tax and NI) will be payable if a bespoke rate is paid without an Approval Notice or the employer is not able to apply the transitional arrangements shown below.

Approval notices, unlike dispensations, cannot be backdated to the start of a tax year. They will last for five years and the end date will be shown on the Approval Notice. Under transitional arrangements employers who had agreed a rate in their dispensation may continue to apply that rate until the expiry of the five year period (EIM 30280).

3. Industry Scale Rates (EIM 30255)

   There has been some confusion in respect of these rates. HMRC has confirmed, however, that Approval Notices must be obtained, subject to the requirements above, by individual employers for industry scale rates.

Payrolled Benefits in Kind (PBIK)

Employers who entered into PBIK from 6 April 2016 will not need to prepare a 2016/17 P11D for any benefit that has been payrolled.
Employers must remember that the benefits are still liable to Class 1A NI. Those benefits should be included on a P11D(b) and reported to HMRC by 6 July after the end of the tax year with Class 1A NI due on or before 19 July.

2016/17 PSAs

Many employers use PSAs. A benefit or expense that is included in a PSA does not need to be shown on a P11D or processed through the payroll. An expense or benefit may only be included on a PSA if it is either:

1. Minor;

2. Irregular; or
3. Impractical (to work out the value).

With the end of the tax year approaching employers need to be aware of the following:

1. The deadline for applications; and
2. The impact of the trivial benefit exemption from 6 April 2016.

Deadline

The deadline for agreeing the content of a PSA is usually 6 July after the end of the tax year. If however, an employer is including an item that is liable to Class 1 NI, such as a non-cash voucher, then the agreement needs to be in place before the NI is due.

Trivial benefit exemption

PSAs are expensive, as tax and NI is calculated on a grossed up basis. This equates to an effective rate of over 40% for a basic rate taxpayer and over 90% for a higher rate taxpayer.

Two of the most common items included on a PSA are staff entertaining and staff gifts. HMRC introduced a new trivial benefit exemption from 6 April 2016 and some of these costs may now be exempt.

From 6 April 2016, non-cash gifts and staff entertaining costing up to £50 per occasion (including VAT) will be exempt from tax and NI if:

1. They are not part of a salary sacrifice arrangement; and
2. They are not a reward or in recognition of work undertaken by the employee.

Non-cash vouchers of up to £50, such as store vouchers are also now exempt. Historically, vouchers have always been taxable and liable to NI.

There is no limit to the number of gifts an employee may receive (with the exception for directors of close companies where there is an annual limit of £300).

EIM paragraphs 21864 to 21871, set out more information and provide some useful examples. The exemption could significantly reduce the tax and NI that needs to be

settled by way of a PSA.