haysmacintyre

Employment taxes newsletter January 2023

Welcome to our first employment taxes newsletter which is intended to bring clients up to date employment tax news. The newsletter will be a quarterly edition but may be more frequent should we consider there are important updates to share.

There's only two months until the end of the 2022-23 tax year. We have listed some tasks you should undertake to remain compliant.

Christmas costs

With Christmas now a blur, have you considered the costs and how they should be treated for income tax and National Insurance (NI) purposes? For instance, have you had a Christmas party and/or given gifts to your staff? If the relevant criteria are met, there are annual function and trivial benefit exemptions which can be utilised so that neither you or your employees are left with unintended tax and NI consequences.

Tax free annual event exemption

To be eligible for annual event exemption, the following must apply:

- The event must be annual and open to all staff.
- The event should not exceed more than £150 per head, including VAT and associated costs. To work out the cost per head, divide the total cost by the number of attendees (staff and any other guests). Frequent errors we have come across are cases where companies have omitted VAT when considering the costs.
- The £150 should not be treated as an allowance – it is an exemption. If the cost per head goes over £150, then the full amount is taxable and not just the excess. You will need to watch out for attendees dropping out last minute as this could breach the £150 limit.

What if we have two or more annual events?

Let's say the first party is budgeted at £130 per head. The second party will cost £70 per head. The £150 limit can be used against the first party since it is more costly leaving the second party as a fully taxable benefit. Additionally, proper records of the events must be kept, especially on the number of attendees, and all costs must be included such as VAT when calculating the £150 per head.

What are trivial benefits?

There is no tax liability on a benefit for your employee if all of the following apply:

- It cost you £50 or less to provide (including VAT, postage, etc)
- It is not cash or a cash voucher
- It is not a reward for their work or performance
- It is not in the terms of their contract

This means you can give a Christmas gift to your staff tax/NI free as long as the trivial benefits exemption rules are satisfied. So typical gifts include a bottle of wine or a box of chocolates. Non-cash retail vouchers would also be exempt from tax.

How regularly can we use a trivial benefit?

The trivial benefits exemption can apply to any other gifts provided to employees throughout the year where the conditions are met. This can include Easter eggs, wedding gifts, new baby presents, etc. They cannot apply to any thank you/leaving gifts, as these would be classed as a reward for service. However, care needs to be taken - we are aware of HMRC challenging anything provided regularly under the trivial benefit exemption, as it might create a 'legitimate expectation'. An example of this could be pay-day drinks.

What if the gift exceeds this value?

By using a PAYE Settlement Agreement (PSA) with HMRC, you can continue to give gifts worth more than £50 without causing a taxable benefit to the employee. The employer would pay tax on the benefit on the employee's behalf, on a grossed-up basis. Class 1B NI (employer only NI) is also payable on the grossed-up tax and the taxable benefit. This is costly (up to 80% more expensive), so appropriate costings should be considered first.

There are additional rules for directors and other office holders of close companies, who are subject to a £300 annual cap. If the benefit is provided to a member of the employee's family or household who is not an employee of the employer, it will count toward the £300 limit. Where the director's or other office holder's family or household member is also an employee of the company, they will also be subject to their own £300 cap.

Reduction in Class 1 NI rate from 6 November 2022

The temporary increase in NI of 1.25% from 6 April 2022 to pay for health and social care was reversed by former Chancellor Kwasi Kwarteng from 6 November 2022 - the current Chancellor Jeremy Hunt has not changed this decision. This means that the employee and employer NI rates revert to 2021/22 rates. The rates for annual NI payments of Class 1A, Class 1B and Directors will be assessed at a composite rate of 14.53%. Director's NI calculations if not using the alternative calculation method are detailed below:

Category	Rate
National Insurance category letter	A
Earnings above the primary threshold up to and including the upper earnings limit (UEL)	12.73%
Balance of earnings above UEL	2.73%
Employers NI	14.53%

HMRC also requested that employers remove the generic message on payslips which explained the NI uplift.

Payrolling benefits

You can payroll all benefits except:

- Employer provided living accommodation
- Reportable interest free and low interest loans

The registration must be made before the start of the tax year, for example, before the beginning of the 2023/24 tax year. You can find further guidance and link to registration here.

Changes to company car tax from April 2025

Currently, company car tax rates are set until the 2024/25 tax year. The new company car tax rates announced in the Autumn Statement will come into effect in 2025.

Company car tax rates for zero-emission vehicles and ultra-low emission vehicles, emitting less than 75g of CO_2 per kilometre, will increase:

- In 2025/26 by 1%
- In 2026/27 by a further 1%
- In 2027/28 by a further 1%, up to a maximum appropriate percentage of 5% for electric cars and 21% for ultra-low emission cars

Rates for all other vehicle bands will be increased by 1% for the 2025/26 tax year up to a maximum appropriate percentage of 37% per cent. These rates will then be frozen for tax years 2026–27 and 2027–28.

HMRC has details of the new company car tax rates on its website.

Termination payments

From 6 April 2018, the way termination payments were calculated changed and it now involves a complex formula which considers relevant termination awards. These termination awards are split into two elements:

- Post-employment notice pay (PENP) (see EIM13876)
- Relevant termination awards subject to Section 403 ITEPA 2003 (see EIM13878)

We are often asked to advise on the income tax and NI treatment of termination payments contained in Settlement Agreements (SA). One of the omissions that we regularly come across when SAs are drafted by employment lawyers is that the Class 1A NI liability on non-contractual termination payments made under Section 401 ITEPA 2003 which exceeds the £30,000 threshold is not mentioned. This can lead to an omission of a potentially large liability which will incur penalties and interest, in addition to the underpayment, should HMRC identify the error.

From April 2020, any non-contractual termination payments are subject to Class 1A NIC if they exceed the existing £30,000 exemption, which also applies for income tax. This means that if the payment exceeds the £30,000 threshold, the employee is liable to tax above this amount and the employer would be liable to Class 1A NICs.

Employers must account for the additional costs that this charge will impose on termination packages. Furthermore, unlike other Class 1A NI liabilities that can be reported via the annual P11D process, any Class 1A NIC due on a termination payment must be reported and paid in year via the Real Time Information (RTI) payroll process. This amount is then included in your PAYE payment for that period and reported on the next RTI Full Payment Submission (FPS).

Employers who payroll their benefits in kind (BiKs) must still complete a P11D(b) to capture any Class 1A NICs due on these benefits. The capability of reporting Class 1A NIC on termination payments via an FPS must not be used for this purpose.

Intermediaries legislation (commonly referred to as IR35)

The former Chancellor Kwasi Kwarteng's announcement to repeal the IR35 Off Payroll Working (OPW) legislation caused widespread turmoil. His successor, Jeremy Hunt, has since reversed the proposed change.

We are now back in a position where the responsibility for undertaking the employment status of the off payroll worker will rest with medium/large end user businesses in the private sector, and all relevant entities, regardless of size, in the public sector. This also means that the fee payer (i.e. the entity which is responsible for paying the intermediary) needs to operate PAYE should the worker's contract be deemed to be inside IR35.

As a business who may use intermediaries, it is important that you are compliant with the legislation including:

- How are you dealing with workers who fall inside the IR35 legislation?
- How are you managing contentious cases?
- Where the legislation needs to be operated, are you correctly operating the deduction of income tax and NI on the fees you are paying?
- Have your ensured that all those in your labour supply chain are compliant?

According to recent HMRC statistics, they collected £56 for every pound spent investigating large businesses. However, HMRC believes that they are still not collecting everything, as the tax gap stood at £3.6 billion in the fiscal year 2021/22. This means that HMRC is more likely to target large corporations.

The story does not end there, as HMRC has seen increasing success in its investigations into individuals and small businesses, with the amount of extra tax collected per pound spent on those investigations rising from £11 in 2020/21 to £16 in 2021/22. As a result, SMEs can expect HMRC to launch more investigations this year as it seeks to close the £15.bn small business tax gap. HMRC believes small businesses make up 48% of the UK's entire £32bn tax gap. HMRC's success is due to becoming more sophisticated with its risk and research.

Employment status

Employment status considers the situation where individuals who provide services to you directly (i.e. not via an intermediary) on a 'self-employed' or 'consultancy' basis. You as the engager will remain responsible for considering the basis upon which the services are being provided and the subsequent income tax and NI treatment on the payments you make to the contractor. Any incorrect employment status determination will result in closed tax year income tax and NI liabilities collected as well as interest and penalties being levied by HMRC. The assessment can be raised for the past six closed tax years. However, as we expect HMRC to carry out more enquiries, with particular attention to where the people you may work with are paid 'outside of the payroll', then we recommend a review of the arrangements you currently have in place.

We hope that you found the newsletter useful but please do let us know should you have any questions using the contact details overleaf.

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Shortlisted 2019 National Firm of the Year

Shortlisted 2019 Tax Team of the Year

Highly Commended Partner of the Year

Winner: Audit Team of the Year

Top 15 auditor to quoted companies in Adviser Ranking Listing

An eprivateclient top accountancy firm 2022

Top adviser to the top 5,000 charities, Charity Financials' league table 2021