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The new employee expenses and benefits reporting regime

This Briefing considers recent developments affecting the operation and reporting of expenses and benefits. A new exemption regime for such expenses replaces the need to report these items on P11Ds but only if the business satisfies itself that the employee would be entitled to full tax relief on expenses reimbursed to the employee.

A new regime

For many years the established treatment for employee incurred expenses has been to treat the expenses as earnings with the employer reporting them on the annual form P11D and then to allow an employee to make a claim for tax relief to the extent that the expenses were business expenses. Dispensations were invented as a way of streamlining the process. Employers could apply to HMRC to dispense with the need to report certain expenses on the P11D and so remove the need for employees to make claims.

The dispensation was only given where HMRC were satisfied that the employee would have been entitled to full tax relief on that payment or benefit. Whilst many employers did apply and use dispensations, many smaller or unrepresented employers did not participate.

The new exemption

From 6 April 2016 businesses will no longer be able to apply for a dispensation and all existing dispensations came to an end. Instead, a new exemption has been introduced which effectively means that businesses will not have to pay tax and NIC on paid or reimbursed expenses payments or put them on a P11D. In other words the introduction of the new exemption places the onus on employers to determine whether employee expenses are fully deductible for tax purposes.

Types of expenses

The main types of expenses to which the exemption applies are:

- travel and subsistence expenses
- fees and subscriptions
- business entertainment expenses.

All other non-allowable expenses will still be reportable on a P11D and/or subject to PAYE (and possibly NIC). Employees will still be able to claim tax relief in respect of unreimbursed business expenses.

The new exemption does not apply to expenses or benefits provided under a relevant salary sacrifice arrangement. This includes any arrangement where an employee gives up the right to receive earnings in return for tax free expenses payments or where the level of their earnings depends on the amount of any expenses payment.

Conditions of the new regime

In order for an employee reimbursed expense to be treated as an exempt payment, an employer needs to put himself in the position of the employee. The employer then asks himself the question - would that expense have qualified for full tax relief to the employee (were it not for the amount being exempt)? There is no explicit requirement in law for a checking system (but see scale rates later) but to answer the question above an employer will, in practice, have to operate a checking system.

An employer should consider:

- setting out a corporate policy of which type of expenses are reimbursable and the need for those expenses to be reasonable

- requiring the completion of a standard expense claim form
- the need for any expense claim to be supported by a receipt
- making checks on expense claims.
- requiring a senior person to authorise the claims.

One would expect HMRC to be looking for a checking system and that there is evidence an expense has actually been incurred by the employee (hence the need for receipts).

What about scale rates?

The dispensation system allowed amounts based on scale rates to be paid or reimbursed, instead of the employee's actual costs in certain



circumstances. Scale rates are generally for travel and subsistence expenses and consist of round sum allowable amounts for specific circumstances.

Two key types of scale rates were available for use by an employer:

- 'benchmark' rates and
- 'bespoke' rates.

As part of the changes, these options are still available as detailed below.

Benchmark rates

Benchmark rates are a set of maximum reimbursement rates for meals. These round sum amounts have now been included in Regulations and can be used by employers for payment or reimbursement of employees expenses where relevant qualifying conditions are met.

These rates apply only if the employee incurs expenditure in the course of 'qualifying business travel' as follows:

- one meal allowance per day paid in respect of one instance of qualifying travel, the amount of which does not exceed:
 - a) £5 where the duration of the qualifying travel in that day is 5 hours or more
 - b) £10 where the duration of the qualifying travel in that day is 10 hours or more, or
 - c) £25 where the duration of the qualifying travel in that day is 15 hours or more and is on-going at 8pm or
- an additional meal allowance not exceeding £10 per day paid where a meal allowance (a) or (b) is paid and the qualifying travel in respect of which that allowance is paid is on-going at 8pm.

Bespoke rates

These are rates negotiated and specifically agreed with HMRC in writing. If the business wants to pay bespoke rates for meals or other types of expense, it can apply to HMRC.

HMRC have issued a specific form:

<http://goo.gl/iz2qjE>

Transitional arrangements for bespoke scale rates apply, meaning that employers can continue to use any existing rates agreed since 6 April 2011, up until the fifth anniversary of that agreement subject to re-confirming specified information to HMRC.

Conditions for using approved rates

Employers must have a checking system in place if approved benchmark or bespoke rates are used to ensure that the employee is incurring and paying amounts in respect of expenses of the same kind and that tax relief would be allowed. Exemption is also

conditional on neither the payer, nor anyone operating the checking system, suspecting or reasonably being expected to know or suspect that the employee had not incurred an amount in respect of the expense.

HMRC have issued guidance on what checking systems they will expect employers to operate. We can assist you with this matter or in applying for bespoke rates so please contact us for more information.

Business mileage rates

The key travel and subsistence expenses for many employees are their costs in using their own car or van for business travel. Many employers and their employees use the statutory mileage allowances known as 'authorised mileage allowance payments' (AMAPs). These are scale amounts that employers can pay to employees using their own vehicle for business travel. For cars and vans, the scale rate is 45p per mile for up to 10,000 miles in the tax year and 25p per mile above this.

AMAPs are a separate statutory regime and do not come within the new exemption regime.

For employer provided vehicles the fuel advisory rates can be used to reimburse fuel costs incurred in travelling on business. These rates are updated quarterly throughout each tax year.

Qualifying travel expenses

Qualifying travel is a necessary condition for both travelling and subsistence expenses to be treated as an exempt expense (and also in the use of business mileage rates for cars and vans). A business journey is one which either involves travel:

- from one place of work to another or
- from home to a temporary workplace or vice versa.

However, journeys between an employee's home and a place of work which he or she regularly attends are not business journeys. These journeys are 'ordinary commuting' and the place of work is often referred to as a permanent workplace. This means that the travel costs have to be borne by the employee.

The term 'temporary workplace' means that the employee attends the place for a limited duration or temporary purpose. However, some travel between a temporary workplace and home may not qualify for relief if the trip made is 'substantially similar' to the trip made to or from the permanent workplace. 'Substantially similar' is interpreted by HMRC as a trip

using the same roads or the same train or bus for most of the journey.

There will be many variations of types of journeys undertaken by employees so ensuring that it is a business journey is critical especially as the term 'travel expenses' includes the actual costs of travel together with any subsistence expenditure and other associated costs that are incurred in making the journey such as toll or congestion charges. Detailed further guidance is available in booklet 490 at <http://goo.gl/RLQpRm>

Recent development

From 6 April 2016 new legislation affects the application of the travel expenses and subsistence rules for workers who provide their services through an 'employment intermediary' such as a recruitment agency, umbrella company or personal service company.

Where a worker personally provides services to a client through an employment intermediary and the manner in which the worker provides the services is subject to, or to the right of, supervision, direction or control by any person, then each assignment is considered to be a separate employment. Therefore travel and subsistence costs related to those assignments will not qualify for tax relief.

For personal service companies, it is only contracts within IR35 which are subject to the expenses restriction. There is also a general exception for services provided wholly in a client's home. If you consider this new development affects you then please contact us for further guidance.

Conclusion

The effect of the new regime is that all employers should have checking processes in place regardless of whether they use scale rates or specific reimbursement. If there is a lack of evidence that amounts paid to employees represent business expenses, the business may incur penalties for errors in completion of P11Ds. In some cases if the expenses are non-business expenses the employer may be responsible for PAYE and NIC underpayments. Please contact us for any further assistance or advice.

