John M Taylor & Co
Chartered Accountants & Business Advisors

9 Glasgow Road, Paisley, Renfrewshire, PA1 3QS
Tel: 0141 848 7474 Email: mail@johnmtaylor.co.uk
www.johnmtaylor.co.uk

Essential employer update 2024

Taxable benefit? HMRC shifts ground on electric charging

HMRC has a new position on employees charging an electric company car or van at home. It had previously maintained that where an employer reimbursed the cost of charging a company-owned wholly electric car available for employee private use, this was taxable as earnings. Now, however, it accepts that reimbursing part of a domestic energy bill, used for these purposes, falls within an exemption in the tax legislation and means that no separate charge to tax as a benefit arises.

It's important to note the small print: the exemption only applies if it can be shown that the electricity was used to charge the vehicle in question, and any reimbursement must relate only to the charging of the vehicle. Accurate electricity reading and record keeping is, therefore, a must.

Employee expenses: key recording check to make

HMRC increasingly uses 'nudge' letters to highlight areas where it thinks there may be widespread compliance problems.

It did this recently to draw attention to instances where employees inadvertently make mistakes in expense claims, wrongly classifying business entertainment costs as work-related travel and subsistence. Whilst work-related travel and subsistence costs are allowable, business entertainment generally is not. It's an area of frequent confusion, and the compliance risk is that employers then inappropriately claim a tax deduction or reclaim VAT input tax on the misclassified expenditure. HMRC's letters asked businesses to check how such expenses are recorded; confirm that these comply with tax and VAT rules; and identify any errors in returns this has created.

HMRC always has a keen interest in the treatment of staff and business entertainment, and the reimbursement of expenses; errors here can be expensive. We are on hand to help you check that your procedures are set up to handle these things correctly.

Payroll errors and what to do about them

In outline, the procedure to put things right depends on when the mistake happened and when you discover the issue.

Where wrong pay or deductions are reported in the current tax year, the year-to-date figures in the next regular Full Payment Submission (FPS) should be updated. Rules are different if the mistake is in the final FPS of the year. Where there are errors in previous tax years, another FPS or Earlier Year Update may be required; we can advise further here.

Where errors impact deductions for employee National Insurance contributions (NICs), similarly, the FPS year-to-date figures should be updated in the next FPS, or an additional FPS submitted. If the employee has paid too much, the excess should be repaid to them. If NICs are underpaid, employers should make this good to HMRC straightaway. Note, however, that there may be a timing difference in recouping this from the employee. A restriction limits the NICs that can be deducted in a month to make good a shortfall and you cannot deduct more than an amount equal to the employee NICs due: the total NICs should be no more than double their usual level. Any difference should carry into subsequent months. Deductions can only be made in the tax year when the mistake was made and in the following year.

Employee pension contributions

HMRC has flagged concerns over employer handling of tax relief on employee pension contributions. There are two main ways that such tax relief is given: under a net pay arrangement (NPA), or via what's called relief at source (RAS), and HMRC suggests the two are sometimes confused.

- With NPA, contributions are taken from gross income. The employer deducts the pension contribution before operating PAYE, and the employee pays tax on the remainder. Those paying tax at higher rates have no need to claim additional relief.
- With RAS, the employee pays tax on all their pay. The employer deducts an amount representing the pension contribution minus basic rate tax relief after this. The pension scheme provider then claims basic rate tax relief from HMRC and adds this to the worker's pension pot. If tax is paid at higher rates, the further relief due must be claimed as a separate exercise.

It is important that employers know which type of tax relief their pension scheme provider uses, and that this is in fact what their payroll is set up to do.

It seems that some employers are mistakenly entering RAS (not under net pay) contributions through RTI in the data fields for a NPA scheme. This has the potential to be messy. Tax relief is given through payroll incorrectly, with tax relief being given twice: once via the pension scheme provider and once through payroll. In these circumstances, the employer is liable for the tax under deducted.

HMRC is advising employers to check with their scheme provider as to how the scheme is registered. If reporting errors have been made in RTI returns, these should be corrected immediately as regards future payments. Errors in previous periods should be reported through the HMRC digital disclosure facility. Mistakes in employer reporting where salary sacrifice arrangements are linked to pension contributions have also been highlighted. These can also lead to relief being overclaimed.

Tax tips to help employees through the cost of living crisis

Given that the tax rules sometimes seem like one compliance hurdle after another, it's good to know that some of them can be used to benefit your employees.

The 'trivial benefits' rules are an example. Correctly applied, they allow a benefit costing not more than £50 (including VAT), to be given to an employee, free of both tax and National Insurance. Some employers give gift cards, others a bottle of wine: the morale boost is at your discretion. There is no limit to the number of times you can make a gift under the scheme, and no need to notify HMRC. There are, however, conditions to meet:

- the benefit must not be cash or a voucher that can be redeemed for cash
- it must not be given as a reward linked to particular services or work performance
- it must not form part of the terms of the worker's contract, nor be part of a salary sacrifice arrangement.

Trivial benefits can also be used for the directors or office holders of close companies (one with five or fewer shareholders). There are special rules for such individuals, including a £300 cap on the total value of benefits that can be received in any one tax year.

Optional remuneration, often known as salary sacrifice arrangements, can also help your employees. In outline, they mean that an employee's remuneration is reduced in return for a specified non-cash benefit. These mainly comprise employer pension contributions to approved schemes; pensions advice; cycle to work schemes; qualifying low emission cars and specific childcare provision. The financial benefit to the employee comes because of a reduction in pay subject to Class 1 NICs; and certain exempt benefits, like pension contributions, can also result in savings for the employee and employer. Note, however, that the sacrifice should not take cash earnings below the relevant minimum wage rate.

Minimum wage: new rates

April 2024 sees a substantial cash increase to the National Living Wage (NLW); and for the first time, workers aged 21 and 22 become eligible for the NLW, rather than the lower National Minimum Wage (NMW) rate.

New rates from 1 April 2024

National Living Wage: aged 21 and over	£11.44 per hour
National Minimum Wage: 18-20 year old rate	£8.60
NMW: 16-17 year old rate	£6.40
NMW: apprentice rate	£6.40
Accommodation offset	£9.99

For convenience, we use the term 'minimum wage' to cover both NLW and NMW.

Employers risk reputational damage if they are named for errors; as well as penalties for non-compliance and the prospect of having to make underpayments good to workers. It is important to remember that HMRC regularly encourages workers to check their pay, and it considers all complaints received.

The compliance journey begins with ensuring workers are correctly categorised according to the type of work they do. For minimum wage purposes, this means salaried hours work; time work; output work or unmeasured work: calculations are different for each. A number of employers named in the latest round of government compliance made mistakes categorising their workers. Other common errors included paying the wrong apprenticeship rate; deductions from pay that took it below minimum wage; and failure to pay for working time correctly.

Employers must be able to recognise and record all working time for their workers. Working time can include time when workers are required to be at work, or to be available at, or near, a place of work. Simply paying a worker's rota or contracted hours may not be enough to prevent underpayment. Time spent putting on or taking off personal protective clothing and equipment; time going through security checks on entry and exit; and time in team handovers between shifts, for example, are all areas where additional time can be added to someone's shift. Each of these counts as working time for minimum wage, and should be included in calculations of hourly rates of pay.

Please do contact us with any minimum wage queries you have.

Fines for illegal working triple

A key strand in government policy on preventing illegal immigration, right to work checks place a duty on employers to ensure job applicants have the legal right to work in the UK before they are employed. It will come as no surprise that compliance activity, including visits targeting illegal working, has increased significantly since 2022.

A new code of practice on preventing illegal working should be applied to all right to work checks from 13 February 2024. This sets out the right to work checks required in order to avoid a civil penalty in the event of illegal working. The methods available to carry out checks, however, are not new: the new element is the increase in civil penalties that can be imposed for employing someone without the right to work in the UK. The new rates, applying from the same date, rise to:

- a maximum of £45,000 (rather than £15,000) per worker for a first offence
- a maximum of £60,000 (rather than £20,000) per worker where rules have been broken before
- note that the actual amount of penalty hinges on previous employer compliance history.

As well as correctly carrying out the required checks before employment takes place, employers must also be able to show that this has been done, and that robust right to work checking practices are in place.

Working with you

As always, employers face a complex compliance landscape, and we are happy to assist with any of the issues outlined here. From advice on minimum wage; PAYE issues; or tax efficient benefits and remuneration, we are here to help, whatever your needs. Please don't hesitate to get in touch.