

Bulletin

National Insurance Update

We all know that the world of tax is ever-changing but do we give as much thought to National Insurance (NI)? There are some important changes taking place this April and, for a small number of affected people, just a short time to make some particular refund claims. Also, there continue to be difficulties with the authorities as to the treatment of various transactions.

This bulletin explores these and some other areas of current interest.

Act now to reduce NI and benefit in kind charges on employer provided vans

The NI rules will be changing from 6 April 2005 in line with the previously announced tax changes where there is limited private use of a van. As a reminder, the table on the right summarises the taxable benefit over forthcoming years. Whilst the tax due is payable by the employee, the Class 1A NI payable at 12.8% on the benefit is the liability of the employer, so both parties have an interest in getting the van use policy right.

| Usage | 2004/05 | 2005/06 | 2006/07 | 2007/08 |
|--|--------------|--------------|--------------|---------|
| Business use only (ie van kept on employer's premises) – van and any fuel | £0 | £0 | £0 | £0 |
| Business use and home to work only (ie van kept at or near employee's home) – van and any fuel | £500/£350(*) | £0 | £0 | £0 |
| Business and full private use – van only | £500/£350(*) | £500/£350(*) | £500/£350(*) | £3,000 |
| Business and full private use – van and fuel | £500/£350(*) | £500/£350(*) | £500/£350(*) | £3,500 |
| * = under four years/four years and over | | | | |



Of particular value are the two new let-outs concerning certain private use of a van. The first is that there will be no longer be a tax charge (and therefore no NI either) where the private use is – to quote the legislation – ‘substantially ordinary commuting’ and any other private use is ‘insignificant’. ‘Ordinary commuting’ can be very complicated to define but, at its simplest, it means home to work travel.

However, this only applies if the terms on which the van is provided prohibit use other than for ordinary commuting, so **employers may wish formally to change their policy/contracts of employment before April 2005.**

The second let out is where the van is not in fact used for home to work travel but, again, any private use is insignificant.

These changes are all well and good and will have been welcomed by many a van driver and employer but what does insignificant actually mean? The Inland Revenue has recently indicated that the following would be insignificant:

- taking an old mattress or other rubbish to the tip once or twice a year
- regularly making a slight detour to stop at a newsagent on the way to work
- calling at the dentist on the way home.

And the following are NOT insignificant:

- using the van to do the supermarket shopping each week
- taking the van away on a week’s holiday
- using the van outside of work for social activities.

Even with this guidance though there will still be many shades of grey.

After the £3,000 charge comes along in 2007, we can expect the Inland Revenue to police

these rules with their usual vigour. A small disagreement as to whether private use is or is not insignificant could create a lot of back duty for them to potentially collect. If the P11D is completed incorrectly it will, in practice, be the employer who pays any tax arrears as well as any additional Class1A NI liability, probably with interest and penalties as well.

You need to make sure that you have evidence of your rules and procedures and, of course, the actual usage of the van.

Childcare

As with vans, the NI rules will be changing from 6 April in line with tax changes. The NI treatment generally follows the tax rules and there are three main elements to the relief:

- a) full tax and NI relief for employer organised nurseries (not necessarily on the business premises but they often will be)
- b) other employer contracted childcare (eg a childminder)
- c) childcare vouchers.

With regard to b) and c), the relief is on the first £50 per week in which childcare is provided (ie not necessarily therefore £2,600 per annum).

Whilst the excess over £50 per week goes on the P11D for tax purposes, only in situation b) is it subject to Class 1A NI (ie employer only). In the case of childcare vouchers, any excess cost instead attracts Class 1 NI on a pay-period-by-pay-period basis (in line with other types of vouchers).

One further change that has recently been announced is that the £50 per week childcare voucher limit will be applied on the face value of the voucher rather than the cost to the employer

(the latter will invariably include an administration charge, which would therefore have otherwise reduced the real value of the reliefs available).

Some employees may wish to take advantage of the new £50 per week tax and NI exemption. Employers may like to offer this tax and NI free benefit by way of a salary sacrifice. It is important that employees only give up the right to future salary and understand that the sacrifice will have implications for example for other NI related benefits such as statutory sick pay and statutory maternity pay. The salary sacrifice would probably not be appropriate for employees in receipt of Working Tax Credit and the childcare element of Child Tax Credit. This is because part of the entitlement to these credits is based on childcare costs paid personally rather than by the employer. Please contact us if we can offer further help and advice.

Wot! No NINO – watch out for new electronic filing penalties and incentive payments

If you send in your end of year employees’ returns (P35 and P14) without National Insurance numbers (NINOs), or the wrong numbers, you need to be aware that the Inland Revenue will be charging you extra for that privilege.

There are two stages to the get-tough process. First, for 2004/05 (to be submitted by 19 May 2005) you should no longer use temporary NINOs. Up to now these have been used where no real NINO is available. A temporary NINO appears in the format TN, date of birth and gender; eg date of birth 12 April 1956 female would be TN120456F. Numbers in this format will not be accepted, nor will NINOs with a prefix PZ. The latter prefix has never been issued as a valid NINO.



Forms containing temporary NINOs which are filed electronically will not be accepted and the employer will have the opportunity to correct the matter, hopefully before the due date of 19 May 2005 is reached. If not corrected by 19 May, there will be significant implications for both large (more than 250 employees) and small (up to 50 employees) employers. Large employers face penalties of between £900 and £3,000, depending on the number of employees, for missing the deadline. At the other end of the scale small employers who are eligible for a £250 tax free incentive payment for successful and timely electronic filing will miss out.

Returns made on paper will also be rejected but this will almost certainly be after the filing date has passed. In either case, the return on the P35 is not treated as validly made until the matter is dealt with satisfactorily. If this is after the filing date, then a late filing penalty will be incurred. For 2005/06 and subsequent years returns (ie filing by 19 May 2006 and annually thereafter), NINOs prefixed NC, NK, NO, ZZ, XX and QQ (which are all artificial numbers of a different kind) will also not be accepted.

You can find missing NINOs in respect of your employees by using the Inland Revenue's 'tracing service'. You will need to complete form CA6855, which can be obtained from the Employers Orderline (08457 646646), on the annual Inland Revenue CD-Rom for employers or at www.inlandrevenue.gov.uk/employers

Alternatively, if you have a large number of missing NINOs you can send a list setting out the affected employees' title, surname, first name, address, date of birth, gender, works/payroll number, date employment started, date employment ended (if applicable) and the employers' PAYE reference. The schedule should be sent to Inland Revenue, National Insurance Contributions Office, Additional Business Workstream, Room H3002, Benton Park View, Newcastle upon Tyne, NE98 1ZZ.

NI – paying electronically

Large employers (those with 250 or more employees in an individual PAYE scheme) are now obliged to make monthly remittances of Class 1 NI and PAYE electronically. However, a lot of smaller employers also started making payments electronically last year. So many, in fact, that it caused the Inland Revenue some administration problems! Either category of employer has an extra three days (ie up to the 22nd of each month) for an 'e-payment' to reach the Inland Revenue. Where the 22nd is a non-working day, the payment must arrive before that date and not after the weekend or holiday.

In 2004, the extra three days were not available for electronic payments of Class 1A NI (on benefits in kind on the P11D) and Class 1B (on PAYE Settlement Agreements) but for 2005 they will be. For large employers, though, there is no compulsion to use electronic remittances for these two liabilities.

However, please note (following the non-working day rule mentioned above) that as 22 October 2005 is a Saturday, in practice an electronic Class 1B payment will need to be received by 21 October 2005.

Other current NI issues

Tips and gratuities

The Inland Revenue continues to seek large arrears of NI from employers where employees receive tips from customers. Sometimes the demands are sufficiently large to threaten the very existence of the business. This particularly affects (but is in no way confined to) the catering trade. The Inland Revenue's interpretation of the legislation is in fact based on a National Minimum Wage case and is certainly open to challenge. We may be able to assist you if you receive such a request for arrears.

Payment of personal school fee bills

On the basis of two legal cases over the past couple of years the Inland Revenue is currently seeking to collect employer's and employee's Class 1 NI, particularly for 1999/00 and earlier years. In the cases where the Inland Revenue has had success, the employer had merely paid the employee's (usually a director's) own liability. However, if (as was intended in the two cases mentioned but without successful implementation and supporting paperwork) the contract is genuinely between the employer and the school, rather than the parent and the school, then no Class 1 NI should be due (although there is, of course, Class 1A NI for 2000/01 onwards instead).

Statutory Maternity Pay

Following an unfortunate European Court judgment last year the Statutory Maternity Pay (SMP) rules are being amended from this April.

It will now be necessary, having originally computed SMP entitlement over the standard eight week period of earlier employment, to take into account all subsequent pay increases that are awarded up to the end of the maternity leave period (ie not just to the end of the SMP payment period).

It will, of course, be the case that where the usual practice of annual pay reviews is followed, there will be at least one review required to the rate of SMP in many cases, the only exceptions being where full leave is not taken and pay rises were just before and just after leave.

Since the period in question could be as long as 17 months, in some cases two recalculations of SMP could be required, although arrears will only arise once if pay reviews are no more often than annually.

Continued overleaf



If you have an occupational maternity scheme that tops up SMP, you may also need to consider whether the judgment in question affects the legality of your own scheme.

International matters

There are changes in the European Union (EU), with new member states having joined last May and changes to the temporary secondment rules expected in the future. There are also new procedures now for health care certificates when travelling in Europe on business. The old form E111 is now invalid. A temporary new style E111 can be obtained, which is valid until 31 December 2005. There is also an option on the new E111 to apply for an EU Healthcard, which will be replacing the E111 in the future. Any or all of these changes may affect you if you have workers going to or coming from other EU member states.

Refund claims

Two opportunities to make applications for the refund of Class 1 National Insurance contributions expire on 5 April 2005. If your business has made contributions to a Funded Unapproved Retirement Benefit Scheme (FURBS) or if you are an actor or entertainer or someone who uses the services of actors/entertainers then you need to read this section.

FURBS

The NI treatment of employers' contributions to FURBS has been fraught with difficulty since the mid-1990s. No final agreement has been reached between the authorities on the one hand and the accountancy and legal professions on the other as to the correct treatment. It is not currently clear whether any legal challenges are in the pipeline. Incidentally, when we talk about

FURBS here we mean a real FURB that provides genuine retirement benefits to those of a suitable age who are genuinely retiring (as opposed to some supposed schemes that were used as avoidance devices and erroneously called 'FURBS').

The view of the Inland Revenue has been that Class 1 NI should have been paid on contributions to FURBS from 6 April 1998 (or 6 April 1999 in some more unusual circumstances).

Given the disagreement, the approach adopted by employers over the years has varied. Some have paid Class 1 NI, some have paid nothing, and some have paid Class 1A NI since 2000.

Amidst all the uncertainty, there is one certainty. Those employers who complied with official instructions issued to employers and paid Class 1 NI for 1998/99 have only until 5 April 2005 for a protective refund claim to be made. Should anyone else take a legal case subsequent to that and be successful, as they might well be, then any refund claims made at that later time in other cases would be time-barred. **Act now and beat the six-year time limit for refund claims.**

Actors and entertainers

Some actors, etc and their engagers (to use a more neutral term than employer) may need to make refund claims, again by 5 April 2005, in respect of the period from 17 July 1998 to 5 April 2003 inclusive.

The reason for this is that special rules, which deem certain actors and entertainers to be employees for NI purposes even though they are not really employees, proved to be partially ineffective and were rewritten from April 2003.

Those likely to be affected are those film actors and, to a lesser extent, TV actors who receive

pre-purchase payments in lieu of future rights and royalties/repeat fees as part of their remuneration package. A typical instance where a refund can now be claimed is, for example, an individual whose 'remuneration' was made up as to 60% rights payments and 40% salary.

Both the engager and the individual can claim a refund of the Class 1 NI paid on the strength of earlier, incorrect, rules. However, some actors like to pay Class 1 NI as it enables them to claim contribution-based jobseekers allowance when they are 'resting', as well as earnings-related state pension. The Inland Revenue will allow individuals to forego reclaiming their personal portion of contributions without it prejudicing the ability of their engagers to make their own refund claims.

If you are affected, don't leave it too late. Claims, whether for individuals or their engagers (or both), are likely to have to be accompanied by evidence that may take some time to gather.

Act now!

We do find that many businesses struggle to a greater degree with NI matters than with tax. If we can help you regarding any of the matters covered in this bulletin or if you need any further information on any of the subjects please get in touch.

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