

P11d: key issues (Lecture B1320 – 20.21 minutes)

For each company, the issues which might be relevant when completing P11ds (or indeed deciding whether to complete them) will be different. Whilst we cannot consider all aspects which might be relevant for everyone, the aim of this session and these notes is to consider some areas which we know cause problems for employers or where we know HMRC are very concerned about compliance.

General issues

The PAYE manual published by HMRC sets out the requirements which each P11d must meet and the Quality Standard checks that are carried out based on these standards. It requires that the P11d must include:

- the employer's reference
- the employee's name and National Insurance number (Ex-pat scheme employees often have no NINO and so the P11D should not be rejected for this reason);
- if the employee's National Insurance number is not known, it must provide their date of birth and gender;
- where a car that has been provided to an employee, it must include its list price;
- where box 10 in section F (total cash equivalent of car fuel provided) is completed, box 9 (total cash equivalent of cars provided) must also be completed;
- where a beneficial loan to an employee has been provided and it is reported in section H, box 15 (cash equivalent of loans) must also be completed (in cases where an employee has more than two loans, the employer is allowed to attach a copy of the P11D WS4 working sheet and write 'see attached' in box 15 in section H and so the form should not be rejected for this reason);
- where the P11D information is submitted in list format rather than on P11D forms, then HMRC's quality standard requires it must:
 - be presented in an easy-to-read format using a font size no smaller than 11-point Arial when printed
 - be organised by employee, not by type of benefit
 - include the employer's reference
 - include each employee's name, national insurance number, date of birth and gender
 - include all the expenses and benefits provided to an employee on the same list – HMRC cannot accept separate lists for each benefit
 - show the code letters assigned to each benefit as on form P11D – these are the letters in the dark blue boxes at the left of each section of the form
 - where the list contains payrolled benefits, the front of the list and each of its pages, must be clearly marked 'PAYROLLED'.

The following is a list of the common errors made when submitting P11Ds:

- *duplicated information submitted*, for example where P11D information has already been filed online, the employer may submit the same information on paper to 'ensure HMRC have received it';
- using a paper form that relates to the *wrong tax year*;
- not ticking the '*director*' box if the employee is a director;
- not including some form of description or abbreviation, where amounts are included in sections A, B, L, M or N of the form;
- leaving the '*cash equivalent*' box empty where a figure has been entered in the corresponding 'cost to you' box;
- where a benefit has been provided for mixed business and private use, some employers only enter the value of the private-use portion but *full gross value of the benefit must be reported*;
- not completing the *fuel benefit* where this applies.

Other areas of interest

The number of areas where there are potential issues is endless in reality but there are some common areas where problems occur more regularly.

Qualifying business expenses

Since 6 April 2016, business expenses that are deductible by employees became exempt if reimbursed by employers, subject to conditions. They are not reportable by anyone. In the case of tax-deductible allowances, these and any other bespoke matters previously included in dispensations, need to be covered by separate agreements with HMRC (called approval notices). At the same time, any reimbursement of travel and some other expenses and certain benefits in conjunction with salary sacrifice schemes became taxable.

Conditions A and B must be met in order for the exemption to apply:

- A. The payer or another person operates a system for checking that the employee is incurring and paying amounts in respect of expenses of the same kind and that a deduction would be allowed under the above exempt headings, e.g. travel.
- B. Neither the payer nor any other person operating the system knows or suspects, or could reasonably be expected to know or suspect, that the employee has not incurred and paid an amount in respect of the expenses or that a deduction as above would not be allowed.

Benchmark rates

Regulations were also issued in 2015 which define the approved way of calculating and paying or reimbursing standard meal allowances for the purposes of the new expenses exemption and apply to payments made in 2016/17 and subsequent tax years.

For these purposes, a sum is calculated and paid or reimbursed in an approved way if it is paid or reimbursed to an employee in respect of meals purchased by the employee in the course of qualifying travel and either:

- 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 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 in sub-paragraph (a) or (b) is paid and the qualifying travel in respect of which that allowance is paid is on-going at 8pm.

‘Qualifying travel’ means travel for which a deduction from the employee’s earnings would be allowed under Chapter 2 or 5 Part 5 ITEPA 2003.

There is a further condition, which was introduced in 2019/20:

- the payer or another person operates a system for checking that the employee has undertaken the qualifying travel in relation to which the amount is paid or reimbursed; and
- neither the payer nor any other person operating the system knows or suspects, or could reasonably be expected to know or suspect, that the travel was not undertaken.

There is now also a statutory ability to use the FCO subsistence rates of overseas travel.

Trivial benefits

The exemption for trivial benefits commenced from 6 April 2016 and again it is another area where there is much confusion as to what is covered. HMRC have issued some guidance on the operation of the exemption which stresses that the rules are as follows:

- Cost of the benefit must not be over £50 (including any VAT, whether recoverable by the business or not);
- The benefit must not be in the form of cash or a voucher redeemable for cash;
- The benefit must not be provided as part of salary sacrifice arrangements or any other contractual obligation; and
- The benefit must not be provided in recognition of particular services.

The following examples were given.

Tip 1 – Other contractual obligation

Contractual obligations can take a variety of forms, so the phrase should be read widely to include anything the courts would deem as a contractual agreement, for example:

- *A side letter to the main contract document*
- *A staff handbook*
- *A letter of appointment*
- *A redundancy agreement*
- *An employer union agreement*
- *Any legitimate expectation.*

A 'legitimate expectation' might apply even where there is not a strict contractual obligation. For example, your employees may be provided with a cream cake every Friday. Although there is no contractual obligation, there would be a legitimate expectation – your employees expect to be provided with a cream cake every Friday.

Tip 2 – Digital platforms

If you pay for an 'app' which enables your employees to access discounted products or services which the employee then pays for, the benefit provided by you is not the actual product or service supplied by the digital platform, for example, the provision of medical advice or the hailing of a taxi. The benefit is the access to the 'app' itself.

For the exemption to apply the total cost of providing the 'app' must be no more than £50, as well as meeting all the rules detailed above. If, however, you pay for the products or services obtained by your employees, the total cost should be considered for the purposes of 'the benefit'. For example, if medical advice obtained through an app is charged to you at £49 per session, once an employee obtains more than one session of medical advice in the year the benefit for that employee is no longer 'trivial' for the purposes of applying this exemption. This is because the cost of the benefit will exceed £50.

Tip 3 – Particular service

If a benefit has been provided to an employee as a reward for services, or because it is in recognition of something they have had to do as part of their employment duties then the benefit will not qualify as a trivial benefit.

As an example, an employer may require some of its employees to work through their lunch hour and provide them with lunch. The meal has been provided because of the work they are undertaking. The benefit does not satisfy the trivial benefits condition, so the exemption will not apply.'

Temporary Workplaces

s.338 ITEPA 2003 denies a deduction from earnings for travel expenses incurred in 'ordinary commuting', which is travel between:

- the employee's home and a permanent workplace; or
- a place that is not a workplace and a permanent workplace.

A permanent workplace is defined in s.339 as a place the employee regularly attends in the performance of the duties of the employment and which is not a temporary workplace.

A temporary workplace is a place the employee attends to perform a task of limited duration or for some other temporary purpose.

A workplace is not regarded as temporary if the employee's attendance is during a period of continuous work of a significant extent (being at least 40% of working time) lasting:

- More than 24 months; or
- Comprising all, or almost all (i.e. at least 80%) of the period for which the employee is likely to hold the employment.

It becomes permanent at the time that it is reasonable to assume one of the above is true. This could be at the start of the work, or during it (for example, if an existing 18-month secondment is extended by another 12 months).

Example

Karen works for a firm of architects at its Petersfield branch. She is sent to work full-time at the branch in Andover for 15 months, at the end of which she will return to the Petersfield branch. Andover is approximately 36 miles north-west of Petersfield.

Although she is spending all her time at the Andover branch, it will not be treated as her permanent workplace, as her period of attendance will not exceed 24 months. Therefore, Karen can claim a deduction for the costs of travel to and from her home to the Andover branch.

The allowable travel is from Karen's home (or other starting point) to the temporary workplace, even if this is shorter than the journey to her permanent workplace, or she drives past her permanent workplace to get there. If her employer only reimburses the difference in mileage between the two journeys, the employee can claim a deduction for the balance.

Note that if Karen was recruited on a 15-month contract to work at the Andover office, this would be her permanent workplace (as she would be working there for all of her period of employment) and no travel would be deductible.

Subsistence costs

Where travel is deductible, any reasonable subsistence costs (for example hotels and evening meals) will also be deductible, although this is not likely to be relevant in Karen's case, given the distances involved.

Separate temporary workplaces or one permanent workplace?

It is possible for different workplaces situated close together to be regarded as one (s339(7)). This says that, when determining where a temporary workplace is, you should ignore any modification of the place at which duties are performed if it does not, or would not, have any substantial effect on the employee's journey, or expenses of travelling, to and from the place where they are performed.

In the recent case *Narinder Sambhi v HMRC* (TC07717), the appellant was on a long-term secondment from Birmingham to London, working at various different sites in south and central London, whilst staying in east London.

The First Tier Tribunal found that

- the journey times to each site from his accommodation differed by no more than half an hour; and
- the cost varied by no more than £14.

In the Tribunal's view, the change of worksites was not substantial. His work at various sites in Greater London would therefore be treated as one workplace, which had become a permanent workplace after he had been in London for more than two years.

What does the employment contract say?

Contractual terms are very important in establishing whether somewhere is a permanent or temporary workplace. For example, if an employee is being taken on to carry out several short-term assignments at various sites, they will all be permanent workplaces if each location is dealt with under a separate contract. In contrast, if all the work is covered under a single contract, it is likely that many of the locations will be regarded as temporary workplaces, with travel allowable.

In both *N Ratcliffe v HMRC* TC2814 and *Paul Nowak v HMRC* (TC07307), the appellants worked at various locations for their employer, but where work at a particular site was covered by a separate contract, that site was held to be a permanent workplace, with travel not allowable for the employee.

Other issues

Sometimes the completion of P11ds throws up questions about the way that things are being treated now or have been treated in the past. Here are a few questions which I have been asked over recent years.

Leased cars

There was a recent tax case about the tax treatment of leased cars and this is an arrangement which has been common in the past as a mechanism for avoiding the car benefit which arises where an employer provides a car for the private use of the employee. Care should be taken to follow the decision when completing this year's P11ds.

In this case, the company had entered into lease agreements to lease cars to be used by the two directors, with all costs being debited to the joint directors' loan account, which was always in credit. The company remained the registered keeper of the vehicles at DVLA. The vehicles were treated as if they were effectively private vehicles with the company paying a mileage allowance when the cars

were used on company business. They were not included on the company's balance sheet as assets of the business.

HMRC wanted to charge a benefit in kind. The company initially argued they were merely acting as an agent for the directors but then also argued that there was no benefit to the directors as they had paid all of the costs relating to the cars.

The FTT agreed there was a benefit in kind as the directors had derived a benefit due to the beneficial rates at which the vehicles could be leased by their company. The costs they incurred were deductible from the benefit calculated under general principles but there was still a benefit to be taxed.

School fees

A large household name firm had been paying the school fees for one of their employees. The company was paying the school fees directly to the school under a signed vendor form with them. They had assumed that this meant that the contract was with them. They had also assumed that this meant that there was no tax and NIC implications for the payments.

What is the correct position?

The issue about who is liable to pay the school fees is relevant as it determines whether or not the employer is meeting the pecuniary liability of the employee. If that is the case, the value of the benefit is liable to tax and Class 1 primary and secondary NICs as it forms part of the employment income of the employee. In practice, the NICs would be collected via the payroll with the tax being collected via coding adjustments after having been put on the P11d.

Simply having a vendor agreement with the school would not be sufficient to avoid this as it would depend on who the contractual agreement with – in very basic terms, who would the school go after if the fees were not paid? It is almost always the parents. It is increasingly difficult to find that schools are willing to actually agree contracts with the employer to the entire exclusion of the parents.

If the contract is with the employer, there are still tax implications, but it is a benefit in kind so that it goes on the P11d with Class 1A NICs being paid by the employer.

The same is true of any other payment being made by the employer where the actual liability rests with the employee. The most common example is mobile phone contracts in the name of the employee rather than the employer.

Company 'training' event

Another large company held a company conference which involves team building events as well accommodation/dinner/ drinks/transport. Event schedule as per below.

Travel 9.30 – 12.00

Lunch 12.00 - 13.30

Conference 13.30 – 15.00

Team Activities 15.00 – 18.00

Check in Hotel 18.00 – 19.00

Evening Dinner/Drinks 19.00 – 22.00

Band/DJ 22.00 – 01.00

The company was asking the following questions. They were intending to pay any tax on a PAYE settlement agreement rather than via the P11d route although the technical arguments are the same:

- 1) The company is paying for staff to travel to the conference venue, buses, trains etc- would these need to be declared on the PSA as part of the teambuilding?
- 2) We have a few temporary staff who will be attending- they are not on the payroll - do we have to pay a special higher tax rate for them? Or approach it with the income tax bands based on the equivalent yearly salary? Or is this not allowed?

Does this also have an impact on the VAT we are allowed to claim back? Does there need to be some proportional allocation with both PSA and VAT?

- 3) The staff are being given branded merchandise e.g. jackets, rucksacks and water bottles - do these need to be declared on the PSA as gifts? Or does the fact they are branded exempt them? or they are uniform related?
- 4) Where the setting up costs for the conference itself, e.g. sound, lighting & lecterns etc, can we exclude this from the PSA as part of the conference? – but any similar equipment needed for the team building/ entertainment side of things we would need to declare as part of the teambuilding?
- 5) How we deal with the lunch and evening dinner/drinks?

In reality the tax treatment is going to depend on the extent to which the primary purpose of the event is training or whether it is going to be argued by HMRC that it is really just entertaining of staff with a notional amount of training involved. If it is split between the two, then it may be that the entertaining part can fall within the £150 annual party exemption if it is to happen every year although I suspect the cost per employee would be more than that if it includes accommodation and hospitality.

Contributed by Ros Martin