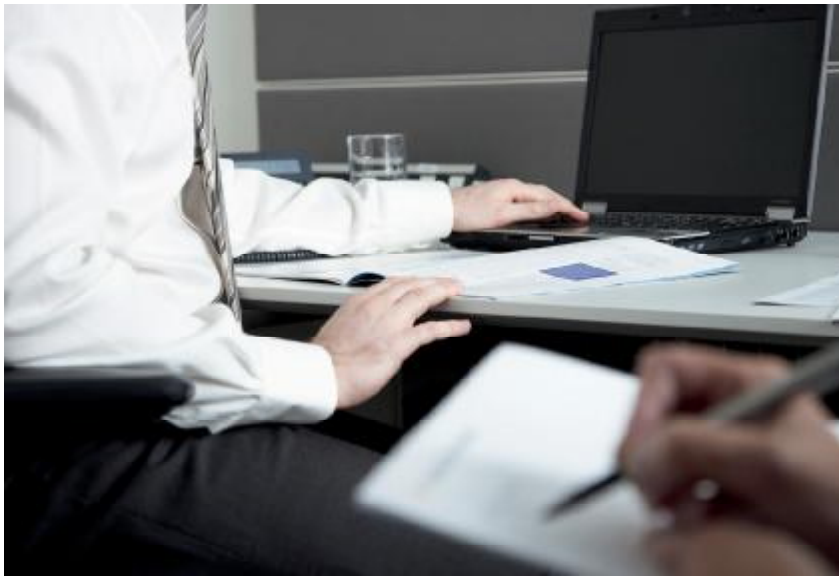


Employer's Briefing



A refund of NICs on car allowances?

If you pay monthly car allowances plus mileage payments to employees who use their own cars on business, there's a chance that both you and the employees may be entitled to a refund of Class 1 National Insurance Contributions for up to six years. This is thanks to a case heard by the First Tier Tribunal in September this year – Total People Ltd v HMRC.

The case concerned the calculation of NICs where the employee was in receipt of a car allowance plus business mileage payments. The normal practice hitherto was that car allowances were treated as

earnings for tax and NIC purposes but the mileage payments were not, provided they came within the statutory limit of 40p per mile. Where the employee got a mileage payment of less than 40p a mile, tax relief could be claimed on the shortfall, usually via the Self Assessment procedure, however, the NIC position was unaffected.

The Total People case has potentially changed all the above. The argument centred on the interpretation of "relevant motoring expenditure" (RME) in Regulation 22A of the Social Security (Contributions) Regulations 2001. HMRC has always

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accepted that mileage payments constitute RME but car allowances do not. The Tribunal ruled that the car allowances were also RME rather than pay because they were not linked to salaries or annual pay reviews.

The decision means for each business mile that an employer reimburses at, say, 12p, 28p of the car allowance can be 'disregarded' for NIC purposes. For an employee who travelled 8,000 miles on business in the tax year, the potential 'disregard' would be £2,240, so the NIC saving would be £246.40 for the employee and £286.27 for the employer, a total of £533.12.

A refund of NICs may be due if you satisfy the following conditions:

- ▶ You pay a monthly car allowance towards the employee's business use of the car.
- ▶ You reimburse business mileage at less than the statutory rate (40p per mile for the first 10,000 business miles in the tax year and 25p per mile after that).
- ▶ Business journeys are accurately recorded.
- ▶ There is no direct link between the car allowance and the employee's salary.

Is there a catch? Well, yes – HMRC have sought permission to appeal against the decision in the Upper Tribunal, so things are not settled just yet. Nevertheless, if you think you are potentially entitled to a refund, why not register your interest with your regular Crowe Clark Whitehill contact? We can then keep you updated and help you pursue your claim if and when the decision is upheld.



Important changes to childcare tax rules

The Government has decided to restrict tax relief on childcare vouchers and employer-supported childcare to the basic rate of tax. This will only affect employees who join their employer's scheme on or after 6 April 2011. Existing scheme members will continue to enjoy the same tax and NIC reliefs as before. Places at workplace nurseries will remain tax-free.

With effect from 6 April 2011, the tax-free and NIC-free amounts you can provide to new joiners will be as follows:

	Basic rate (20%) taxpayer	Higher rate (40%) taxpayer	Additional rate (50%) taxpayer
Weekly	£55	£28	£22
Monthly	£243	£124	£97
Annual	£2,915	£1,484	£1,166

There will be no restriction on the value of vouchers or childcare that can be provided, only on the tax-free and NIC-free element. To determine which tax band a new joiner falls into, employers will be required to carry out a "basic earnings assessment" at the date of joining and then annually at the start of each tax year. This involves taking the employee's anticipated income for the year – basic salary, guaranteed bonuses, regional weighting, taxable benefits, etc. – and then working out the employee's likely marginal rate of tax after taking account of personal allowances in accordance with the employee's tax code at the beginning of the year. Income from other sources, including pay from a previous employment, does not come into the calculation.

In case you were wondering, HMRC has no plans to provide you with an online calculator to make this task any easier!

National Insurance Contributions Bill introduced

The NI Contributions Bill was introduced in the House of Commons on 14 October 2010. Amongst other things, it sets out the proposed rates of Class 1 contributions for the 2011/12 tax year. The standard rate of Class 1 contributions (Table A) will be 12% for employees and 13.8% for employers. The employee's rate on earnings above the Upper Earnings Limit will rise to 2%. Class 1A and Class 1B contributions (on P11D benefits and PAYE Settlement Agreements respectively) will rise to 13.8%.

New tax code on its way

With effect from 6 April 2011, HMRC will be issuing some employees with a new tax code, D1. This will denote that tax has to be deducted at the Additional Rate of 50%. It is most likely to affect executives and directors with multiple employments or directorships.

Worldwide subsistence rates – some good news

You may recall that in the May 2010 issue of Employers Briefing we reported that the writing was on the wall for the Foreign & Commonwealth Office (FCO) worldwide subsistence rates. For any readers unfamiliar with the FCO rates, these are daily allowances that can be paid to employees on overseas trips instead of reimbursing actual expenses against receipts. HMRC has been happy to grant dispensations for these rates without the need for employers to first carry out a sampling exercise to justify the amounts.

In May we reported that the FCO was planning to discontinue production of the rates and that HMRC had said that employers could continue to use the current rates (published in October 2009) until the end of the 2010/11 tax year, after which they would review their policy and make an announcement.

The good news we can report is that updated worldwide subsistence rates, dated October 2010, have been published on HMRC's website. Whether this signifies a change of heart by the FCO or discovery of an alternative source by HMRC, we cannot say. In the meantime, you can get details of the new rates from HMRC's website at this address:

<http://www.hmrc.gov.uk/employers/emp-income-scale-rates.htm>

Approaching deadlines

17 December 2010	Deadline for paying your Month 8 remittance to the Accounts Office (or 22 December if you pay electronically)
17 December 2010	Deadline for contractors to submit their CIS300 return for Month 8

We hope you find this newsletter of interest. If you have any questions about any of the topics covered, please call your regular Crowe Clark Whitehill contact.

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