Larking Gowen

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Employer bulletin

Spring 2023

Need help?

If you'd like to speak to someone about any of the points covered in this newsletter, please get in touch with your usual Larking Gowen contact or email us at enquiry@larking-gowen.co.uk

The following measures were announced in the March 2023 Budget

National Insurance contributions (NIC)

The thresholds and rates of NIC for 2023/24 are on the **Larking Gowen website**.

National Minimum Wage and National Living Wage

Rates effective from the first pay reference period following 1 April 2023.

	23 and over	21-22	18-20	Under 18	Apprentice
Apr 2023	£10.42	£10.18	£7.49	£5.28	£5.28
Apr 2022	£9.50	£9.18	£6.83	£4.81	£4.81
Annual increase	9.7%	10.9%	9.7%	9.7%	9.7%

Employment Allowance (EA)

HMRC's Employment Allowance (EA) allows eligible employers to reduce their NIC liability by up to £5,000.

Reasons why you might not be eligible:

- If a business does 50% or more of its work for the public sector (care homes, children's nurseries, NHS, etc.).
- If you employ someone for personal, household or domestic work (nannies, gardeners, etc.). Care or support work qualifies.
- If a director is the only employee (a company with two or more directors would qualify).
- If your total NIC bill in the previous tax year was over £100,000. For a group of companies, it would be the group's total NIC.
- If you receive de minimis state aid over certain limits – see **here** for more information.

If you do qualify, you'll need to send a submission from your payroll software to HMRC to claim EA.

No employer's NIC are payable until your £5,000 allowance has been used up. Some employers may not reach £5,000, in which case their EA is capped at the employer NIC for the year. Your software will still calculate employer NIC and show it on reports, but the first £5,000 can be ignored. The P32 report will ignore it in arriving at the amount payable to HMRC.

Company cars and fuel

The basis of charging company cars and car fuel for private use for 2023/24 is on the **Larking Gowen website**.

The charges are currently fixed until 5 April 2025, and the increased rates until 5 April 2028 have been confirmed.

The rates continue to incentivise the take-up of electric vehicles, which have lower benefit-in-kind charges.

New advisory fuel rates for company cars

HMRC has announced new fuel-only rates for company cars.

These can be found **here**.

The rates only apply to employees using a company car.

The rates can be used for reimbursing employees for business travel in their company cars and for employees repaying the cost of fuel used for private travel. They shouldn't be used for any other purposes.

The new rates apply to all journeys from 1 March 2023 until further notice.

For one month from the date of change, employers may use either the previous or new rates.

Hybrid cars are treated as either petrol or diesel cars for this purpose.

Pension contributions

There are a number of changes from 6 April 2023.

The annual allowance (AA) for pension contributions to registered schemes is increased to £60,000 per annum.

The AA is reduced where earnings exceed a threshold, which is now £260,000 per annum.

The minimum AA is now £10,000 per annum.

Contributions above the AA by the employee and/or the employer are subject to a tax charge.

The lifetime allowance is removed.

Company share ownership plans (CSOP)

The limit on the value of shares which can be subject to CSOP options when granted to employees is £60,000 from 6 April 2023.

There are some other relaxations of the rules so CSOP shares are more closely aligned with Enterprise Management Incentive (EMI) schemes shares.

Childcare

There will be significant increases in free childcare to encourage more people to enter or re-enter the workforce.

From April 2024, working parents of two-year-olds will be able to access 15 hours of free childcare per week. This will be extended to working parents of children aged nine months to two years from September 2024.

From September 2025, all eligible working parents of children aged from nine months to three years will be able to access 30 hours of free childcare per week. These provisions will apply for 38 weeks per year.

Other news

Rates of tax and National Insurance for 2023/24

HMRC have published the thresholds and rates of tax and National Insurance for 2023/24 for employers operating payroll and providing expenses and benefits to employees.

See the Larking Gowen website for details.

PAYE coding

HMRC now have the facility to code out self-assessment underpayments in the **current year**, rather than the **next year**.

HMRC are apparently using this facility to collect potential underpayments for the current year for non-self-assessment cases. This can result in large PAYE deductions over a few months.

The reduced coding may cause financial difficulty. If so, the individual can contact HMRC with an explanation of why the coding restriction will cause hardship and a proposed extended recovery period.

The individual is also able to appeal against this treatment and request that the inclusion of the underpayment is reversed, with agreement over how the underpaid tax will be collected.

New official interest rate from 6 April 2023

The official rate of interest was 2.0% per annum until 5 April 2023.

The new rate of interest is 2.25% per annum from 6 April 2023.

The official interest rate is announced by HMRC. It's used for various purposes under the tax legislation, including calculating the benefits in kind for loans and living accommodation provided to directors and employees.

PAYE notices of coding for 2023/24

HMRC expected to complete the process of sending PAYE notices of coding for 2023/24 to employers by early March and mailing paper notices by late March.

If employers didn't receive these notices in time for the first pay period on or after 6 April 2023, they can request a duplicate by calling the HMRC employers' helpline.

PAYE Direct Debits

From 19 September 2022, HMRC have introduced the option for employers to pay their PAYE via a variable Direct Debit. This will remove the hassle of making BACS payments by the deadline and allow the process to be automated. It can be fully managed online and cancelled at any time.

Should you wish to take advantage of this option, it will need to be set up by the employer within their online HMRC login. Please note, agents are unable to set up the Direct Debit on behalf of the employer.

The Direct Debit will automatically take payments when they're due for the following liabilities:

- Full Payment Submission
- Employer Payment Summary
- Earlier Year Updates
- Construction Industry
- Scheme Returns
- Apprenticeship Levy
- Class 1A National Insurance

Please note, the Direct Debit will not claim Class 1B NIC, interest accrued or penalties, and these will still need to be paid manually.

Employers need to allow at least three extra days to arrange any new variable Direct Debits to pay their PAYE liabilities, because of delays in processing times.

HMRC's current guidance says that Direct Debits should be set up at least six working days in advance of the payment due date.

However, in view of the latest recommended dates from HMRC, we suggest that Direct Debits are set up at least nine working days in advance of the payment date.

Find out more **here**.

HMRC's Income Record Viewer service

HMRC have rolled out their Income Record Viewer service, making it easier for agents to access the details of clients' pay.

The online service allows agents to see clients' pay and tax details.

To access the information, clients must first have a Government Gateway account, enabling agents to complete a digital handshake.

It's possible to access the following information about a client using the Income Record Viewer:

- PAYE information for the current tax year and the four previous tax years
- Employment details
- Student loan repayments
- Tax code
- Taxable benefits
- State and private pensions
- Tax and other debts

Find out more **here**.

Voluntary National Insurance contributions (NIC)

The Government has extended the deadline for paying voluntary NIC for the tax years April 2006 to April 2017.

The original deadline was 5 April 2023 and the new deadline is 31 July 2023.

As part of the transition to the new state pension, individuals have been able to make voluntary NIC for any incomplete years in their NI record in order to increase the amount of state pension they receive when they retire.

After 31 July 2023, individuals will only be able to pay voluntary contributions for the past six years.

Individuals can check their NI record, obtain a state pension forecast and decide whether making voluntary contributions is worthwhile.

See the HMRC guidance at :
www.gov.uk/check-national-insurance-record
www.gov.uk/check-state-pension
www.gov.uk/voluntary-national-insurance-contributions.

Salary sacrifice and group income protection schemes

In December 2022, HMRC announced that they had revised their position on the taxation of group income protection policies funded through salary sacrifice arrangements.

The result is that employees could be faced with a double taxation charge.

This is a complex area and you should consult us if this issue is relevant to your business.

P11Ds

Regulations have been laid to make it mandatory for employers to deliver P11D and P11D(b) information electronically.

The form P11D is used by employers to report expenses and benefits in kind provided to employees.

The form P11D(b) is used by employers to report Class 1A National Insurance contributions due on the expenses and benefits.

Approaching deadlines

31 May 2023 – employees should receive form P60 from their employers.

5 July 2023 – application must be received by HMRC for a PAYE Settlement Agreement (PSA) for 2022/23.

6 July 2023 – expenses and benefits forms P11D and P11D(b) and employment related securities (ERS) returns for 2022/23 should be filed and information given to employees.

31 July 2023 – voluntary National Insurance contributions for the tax years April 2006 to April 2017 must be paid.

Features

Travel and subsistence

Employers should consider whether their travel and subsistence policy needs to be updated, particularly to accommodate new working practices implemented since the pandemic.

There's a growing number of workers who are home based.

The tax rules relating to travel and subsistence are complex.

If any employee is based at an office or factory, any costs of travel from home to the base location are normally not allowable for tax purposes.

If the employee is required to undertake a business journey straight from home, this is allowable travel, except for any part of the journey which mirrors the commuting journey to work.

Employees who are territory based can claim costs of travel and subsistence while travelling in the area in which they're based.

Employees who are home based or who have no base are normally permitted to claim any journey they take on business when they leave their home.

Employers should:

- Look at employees' contracts of employment to determine where they're based and consider whether this needs to be revised to reflect current working.
- Make sure the expenses policy of the business makes clear that travel and subsistence expenses can be claimed.
- Ensure the payroll process can identify any travel and subsistence expenses which are chargeable to tax and National Insurance.
- Consider whether there's any potential exposure from previous claims for travel and subsistence which may need to be disclosed to HMRC.

Holiday pay

The UK Supreme Court recently delivered a judgement in the case of Harpur Trust v Brazel (2022) UKSC 21.

Mrs Brazel was a part-year worker on a permanent contract.

The Supreme Court said that Mrs Brazel was entitled to the full statutory minimum of 5.6 weeks' (28 days') paid holiday per year, based on her average earnings.

An example would be an exam invigilator on a permanent contract and who works one week a year earning £100. If the individual remains employed for the entire year, he or she would be entitled to 5.6 weeks of holiday x £100 = £560.

Following the Harpur Trust case, the Government has consulted on the calculation of holiday entitlement due to individuals who work part of the year only (part-year workers) and/or irregular hours.

The Government proposes to introduce a holiday entitlement reference period for part-year and irregular hours workers to ensure that their holiday entitlement is directly proportionate to the time they spend working.

This will deal with the disparity between part-year and part-time workers and formalise the method of calculating holiday entitlement for irregular hours workers.

The consultation closed in March 2023 and a quick response from the Government is expected.

Until the Government proposals come into law, holiday entitlement for part-year workers should be calculated in line with the principles set out by the court in the Harpur Trust case.

Off-payroll working (IR35)

The intermediaries legislation (also referred to as the off-payroll working legislation and the IR35 legislation) was introduced in April 2000.

The legislation was reformed and extended in April 2017 and April 2021.

In this article, the legislation is referred to as the off-payroll working rules (OPWR), which is the term used by HMRC.

It's important to appreciate that the OPWR **do not apply** to contracts between the client and the worker, but **they do apply** to contracts between the client and the intermediary.

HMRC have published new guidance notes on off-payroll working for intermediaries, contractors and clients; a summary is below.

The OPWR make sure that a worker (a contractor) pays broadly the same Income Tax and National Insurance as an employee would pay.

The rules apply if the worker provides services to a client through their own intermediary and would have been an employee if they were providing their services directly to the client.

The rules apply to:

- A worker who provides their services through their own intermediary to a client.
- A client who receives services from a worker through their intermediary.
- An agency or other supplier providing workers' services through their intermediary.

There are different rules that apply to those working for a small business and those working for medium and large businesses.

The client (also known as the engager, hirer or end client) is the person who's receiving the services of a worker.

The worker may provide services through a limited company (usually known as a 'personal service company' or PSC), a partnership or another individual.

The OPWR apply if the worker provides services through an intermediary.

The person responsible for determining whether the worker is employed for tax purposes depends on the status of the client.

If the client is in the public sector, or is a medium or large organisation in the private sector, the client is responsible.

The client is a medium or large organisation if it meets two or more of the following conditions: an annual turnover of more than £10.2 million; a balance sheet total (gross assets) of more than £5.1 million; more than 50 employees.

If the client is outside the public sector and is a small organisation, the worker's intermediary is responsible for deciding the worker's employment status and if the rules apply.

The rules about size apply to clients. All agencies will have some responsibilities where the OPWR apply, particularly where the agency is the deemed employer.

The OPWR are unlikely to apply if the worker is employed by an umbrella company.

An umbrella company is a business often used by recruitment agencies to pay temporary workers. In most cases, the umbrella company employs the worker and pays the worker's wages through PAYE. It doesn't find temporary work for the worker; this is done by the recruitment agency (the employment business). Although the umbrella company is the worker's employer and pays the worker, the work carried out is for one of the recruitment agency's clients.

The party responsible for applying the rules must determine whether the worker is employed for tax purposes. The HMRC's Check Employment Status for Tax (CEST) software can be used to help make a determination. A worker's employment status for tax determines the taxes the worker and deemed employer need to pay, depending on whether the worker is determined as employed or self-employed.

The OPWR apply to each contract. A worker may have some contracts which are within the OPWR and some which aren't. A contract for the purpose of the OPWR is a written, verbal or implied agreement between parties.

If the rules apply, the client is responsible for determining the worker's employment status for tax, and they should produce a Status Determination Statement (SDS) including the reasons for the determination.

There are 12 issues to consider when assessing employment status.

The three most important issues are set out in the Ready Mixed Concrete case and are personal service, control and mutuality of obligations.

If the worker is deemed to be employed for tax purposes, the deemed employer must deduct Income Tax and employee National Insurance contributions from fees paid to the worker's intermediary. Employer NIC must be paid to HMRC by the deemed employer.

Organisations that are engagers of workers need to review their contracts with workers and their working practices, assess the employment status for all their workers and, if workers are engaged through intermediaries, ensure that they have procedures in place to comply with the OPWR.

Stay in touch!

Click here to stay up-to-date with all the latest news.

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Salary sacrifice

A reminder about the potential benefits flowing from salary sacrifice arrangements.

A salary sacrifice is a contractual agreement between the employer and employee which exchanges part of the employee's gross pay for certain benefits.

The optional remuneration arrangements (OpRA) legislation made salary sacrifice generally ineffective from 6 April 2017.

However, there are a few exceptions which remain effective, including salary sacrifice for electric vehicles (EVs) and pension contributions.

Salary sacrifice cannot take an employee's pay below relevant National Minimum Wage rates, so it may not be suitable for all employees.

Salary sacrifice arrangements require proper consideration and implementation to be tax effective.

An effective salary sacrifice reduces an employee's salary and saves Income Tax and National Insurance.

Tips and gratuities

Tips are commonly received in the hospitality and leisure sectors.

The Employment (Allocation of Tips) Bill imposes new obligations on employers and establishes new rights for employees.

The Bill is expected to become law in Spring 2023.

The new law will oblige employers to ensure that the total amount of qualifying tips is allocated fairly between workers.

All tips and service charges received by employees are taxable but employers need to consider how the tax is collected and whether National Insurance contributions are due.

Compulsory service charges are always treated as part of pay when they're distributed to employees.
A tronc is a special arrangement which allows tips to be distributed through PAYE with Income Tax deducted but not charged to National Insurance.

Tips should not be included as pay for the purposes of ensuring compliance with the National Minimum Wage legislation.

Share schemes

Following the pandemic, businesses are relying on share schemes to attract and retain talented employees.

A share scheme is an excellent tool to motivate employees while remaining cost effective and tax efficient for both parties.

The main scheme for small and medium sized entities (SMEs) is the Enterprise Management Incentive (EMI) scheme. However, sometimes an EMI scheme is commercially inappropriate or unavailable if the qualifying conditions aren't met.

An alternative solution is a growth share scheme. Growth shares are flexible with no specific limits or qualifying conditions and the recipient benefits directly from the growth in the issuing company's value from the point they are issued, without diluting the existing shareholders' value in the company.

Growth shares are a special class of shares created to facilitate the share scheme. They'll typically have no capital rights to participate in the current equity value of the company, only having a capital right to an interest in the company's future growth. As there are no specific tax requirements to meet, there can be flexibility as regards other rights, including voting rights and rights to dividends. However, as the general aim is to ensure that up-front value is low, since the participants will have to pay a market value subscription price for their shares, or employment Income Tax will arise, care will normally be taken to avoid the inclusion of rights which would give the shares a significant value at the time of acquisition.

A growth share scheme will be most appropriate for companies that don't qualify for approved share schemes like EMI and/or where there are funding issues for the proposed participants because the intended initial value of the planned share award is too expensive.

Growth share schemes can also be implemented for non-employees, including investors. This can be attractive as it may be possible for these recipients to be eligible for investors' relief.