

UK Year-End Employer Compliance Reporting - Key Reminders For Tax Year 2021/22

For those employers who work in tax and with tax, you will be aware that deadlines are ever present. Within the UK these deadlines are generally linked to the UK tax year – April 6 to April 5. The deadlines and actions required vary depending on the subject matter, the forms involved, and the situation.

In addition to standard/regular Pay As You Earn (PAYE) employment deadlines for employers, there are further requirements imposed on employers in relation to individuals in receipt of benefits and employment related securities. Where individuals work across borders, special PAYE arrangements exist to provide greater flexibility for employers.

Inevitably HM Revenue and Customs (HMRC) will apply penalties and interest where forms are submitted late or not at all, and where any tax due is paid late.

Seeking to navigate your way through these myriad reporting requirements can be complex. Details are generally not in one place, are fragmented in reference material, and sometimes hard to locate. Within this article we have sought to bring many such reporting requirements together for easy future reference. We have focused purely on UK deadlines, but in so doing this demonstrates the wide-ranging imposition placed on employers. Naturally where cross border moves occur then employer filings may be required in other countries.

Standard UK Employment Deadlines In Relation To Benefits

As an employer you will be aware that where you provide benefits to employees or meet certain expenses then you will need to make annual returns to HMRC, together with any associated tax and National Insurance payments.

Forms P11D

Employers must report any non-payrolled taxable expenses and benefits-in-kind (BIK) provided to employees during 2021/22 using forms P11D. Employers will need to complete a form P11D for each employee provided with a non-payrolled BIK. In addition, you

will need to file the employer return P11D(b) if you have a Class 1A National Insurance Contribution liability or because you payroll expenses and benefits.

Key Deadlines

- Submission of P11D/P11D(b) to HMRC – 6 July 2022
- Payment of employer Class 1A NIC – 19 July 2022 (extended to 22nd if payment is by electronic means).

- Payment of income tax and Class 1B NIC – 19 October 2022 (extended to 22nd if payment is by electronic means).

Other Key Considerations: COVID-19 and P11Ds – what do employers need to know now?

HMRC agreed certain relaxations to exemptions from P11D reporting which will end on 5 April 2022. As a summary:

Home working costs - employees may claim tax relief for un-receipted allowance of up to £6 per week (£26 per month) either via reimbursed expenses or directly from pay where certain tests are met.

Home-working equipment - there is an exemption for the reimbursement of employee's costs or purchasing equipment obtained for the sole purpose of enabling the employee to work from home as a result of COVID-19.

Mobile phone costs: employees who did not have access to their work phone, may have used their personal mobile phones more frequently during 2021/22. Claims for the costs of itemised business calls, texts and data only (and this is evidenced), are not taxable. The normal exemption for the provision of a mobile phone by the employer is not affected.

Employer-provided COVID-19 testing for employees: The costs of antigen tests are not treated as a benefit subject to tax and NIC. Similarly, the cost of PPE provided to employees relating to their work is non-taxable and need not be reported on P11Ds.

It is important for employers to ensure that any policies in place which have been designed to utilise these temporary tax exemptions have been revised in time for the new tax year commencing 6 April 2022.

P11D's and PSA's might be a little light in content this year due to Covid restrictions, working from home and the absence of traditional expenses such as Christmas/festive parties and late-night taxis. The gradual return to a new 'normality' and the ending of the Covid-19 related tax exemptions, will see an increase in expenses and reporting requirements as we move forward. It is as important as ever to ensure that you can tax benefits and expenses correctly and make the appropriate returns to HRMC.

The deadlines and actions required vary depending on the subject matter, the forms involved and the situation

PAYE Settlement Agreement (PSA)

Sometimes as an employer you may decide that you would prefer to meet the employee's tax liability arising on benefits rather than have them pay the tax due through the payroll or via the P11D process. In this case you will need a PSA.

A PSA is an agreement entered into between an employer and HMRC. It is used to cover all the tax and National Insurance due on minor, irregular or impracticable expenses or benefits for employees which are neither payrolled nor included on the P11D. If this is the first year for which an employer wishes to enter into a PSA with HMRC (i.e., for the 2021/22 tax year), the employer will need to have the PSA in place by 5 July 2022.

Key Deadlines

- Application to HMRC for PSA (usually using form P626 which includes the items required for the application) – 5 July 2022

Employment Related Securities (ERS) - Share plan reporting

If you operate a share plan, or there has been any type of equity transaction involving UK employees or directors, you will almost certainly have to submit a return to HMRC by 6 July to report all transactions in Employment Related Securities (ERS), also known as Share Plan Reporting. Private and listed companies should report annually. Where plans are operated by parent companies, the parent or a UK employing company should report.

In order to file the relevant returns, employers must register each plan or arrangement with HMRC via the ERS Online Services. There are specific registrations for UK tax-advantaged plans (CSOP, SAYE, SIP and EMI) which must be completed separately where relevant, and then a single registration for non-tax-advantaged or other arrangements.

What To Report

Reportable transactions range from formal share plan activity to the acquisitions of securities such as shares or loan notes either on subscription, purchase or gift (regardless of whether there is any tax to pay) and taxable disposals of shares such as sales for more than market value. The reporting obligation exists for private and listed companies and HMRC is increasingly looking at the correlation between payroll, corporation tax deductions and share plan reporting. HMRC can use the information provided in the share plan returns to compare to employer payroll reporting and withholding in connection with employment related securities, corporation tax relief claims and employees' own Self-Assessment tax returns, and check for any potential errors.

There is often a disconnect between whether there is a reporting requirement and whether there is any tax due or payable, so employers should be cautious in assessing what might need to be submitted in an ERS return. Employees or directors may subscribe for shares at full value, and they may separately acquire securities through corporate transactions or reorganisations, and in all of these cases, a reporting obligation is likely to arise where there may be no employment tax to pay. Similarly, the grant of new options under a share plan may not create an immediate tax charge but will still need to be reported on a year-end ERS return.

If you have plans that are already registered with HMRC, but there have not been any reportable events during the 2021/22 tax year, you are still required to submit a nil return to advise HMRC accordingly. Failure to submit a nil return will still attract late filing penalties. If the scheme has formally ceased, then you need to tell HMRC about the cessation of the scheme and give a final

event date; you must submit any outstanding returns through to the date of cessation.

International Employees

Internationally mobile employees can cause additional complexity in ERS reporting, particularly in view of the Covid-19 pandemic and the potential for displaced employees working outside their country of employment. An ERS reporting obligation could be triggered by a non-UK participant of an ERS plan if the employee was working in the UK at any time during the earnings period(s) of the award(s), so it is important to understand and track where all of your participants have been working, potentially over prolonged periods of time (e.g., for awards with three or five year vesting periods). This will also be important to consider for any payroll reporting requirements.

It is also the case that, for non-UK parented international businesses, the UK business may not have full visibility on activity for all individuals where there is in fact a reporting obligation because the individual may have left the UK, may be working remotely in the UK but

not be a UK employee, or there may be confidentiality around participation in the long-term incentive plan. In all these cases, international groups need to liaise to ensure that the reporting obligations can be met.

Deadlines And Penalties

Transactions for each tax year should be included in the ERS return for that year which must be submitted by 6 July following the end of that tax year – 6 July 2022 for the tax year ending 5 April 2022.

Penalties increase over time with £100 penalty for missing the 6 July deadline, £300 penalty issued on 6 October and a further £300 issued on 6 January. Daily penalties can then be applied from 6 April or 9 months after the deadline, however, we have never seen these applied in practice. The biggest risk for late returns is the additional attention from HMRC and we are seeing increasing levels of ERS compliance checks. Don't take the risk of submitting your return late – now is the time to get prepared. Latest HMRC figures show that over one third of returns were submitted late last year.

Special Arrangements For International Assignees

The end of the UK tax year brings with it a number of reporting deadlines for employers in relation to international assignees who may have 'special' payroll arrangements and also for international business travellers.

The impact of Covid and related restrictions on international movement may have limited the number of people affected by such special arrangements in the last 2 years, but as we move beyond Covid and borders reopen, do remember that such arrangements exist and are designed to provide employers with greater flexibility than standard PAYE arrangements which would otherwise apply.

Modified Payroll

A Modified Payroll arrangement is suitable for expatriate non-domiciled employees sent by their overseas employer to work in the UK, and who are covered by a tax equalisation agreement.

Known as Appendix 6, the arrangement to operate a Modified Payroll avoids having to use the normal UK PAYE procedures and allows for best estimates of employment income and tax reliefs to be used.

PAYE tax and NIC calculated under a modified payroll arrangement must be paid to HMRC by the 19th of each month unless there are five or fewer employees on the modified payroll, in which case payments are due on a quarterly basis.

Year-end is the opportunity to re-visit best estimates and true-up the calculations such that all relevant compensation has been reported and taxes paid.

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Modified NIC Schemes

Where a UK company operates a Modified Payroll for its tax equalised employees working in the UK, a similar arrangement can be put in place for the payment and reporting of Class 1 and Class 1a National Insurance Contributions (NIC) where due. This is known as an Appendix 7a arrangement.

As with the modified payroll taxes, NIC payments under this special arrangement must be paid to HMRC by the 19th of each month unless there are five or fewer employees on the modified payroll, in which case payments are due on a quarterly basis, by the 19th of April, July, October and January.

There is a further arrangement (an Appendix 7b arrangement), for employers who have a UK payroll obligation relating to their UK outbound employees who remain liable to UK NIC. UK employers can enter into a special arrangement with HMRC whereby the strict real-time NIC requirements are relaxed for employees who have been sent to work on an overseas assignment. This allows employers to operate the payroll on a best estimate basis during the year, followed by a reconciliation at the year-end in order to true-up the NIC liability.

Annual returns together with appropriate payment of NIC are due by 31 March.

Ongoing tracking of Business Travellers is required in order to make the annual reports and to reduce the reconciliation exercise that can be needed at year-end should relevant information not be easily accessed

Business Traveller Compliance: Short-Term Business Visitor Agreement and annual reporting

Strict PAYE obligations exist for employers in the UK such that PAYE withholding is required in circumstances where an employee from an overseas parent, subsidiary or associated company visits the UK to work either for a planned project or on an ad-hoc basis. There is no de-minimus limit for this and as such PAYE is due from the first day of work in the UK.

To assist with the administration in this area, HMRC introduced the Short-Term Business Visitor Agreement to enable the PAYE obligation to be relaxed in situations where individuals coming to the UK originated from countries with which the UK had a Double Taxation Agreement and would therefore not be subject to UK tax. Organisations are required to sign an agreement with HMRC which requires annual reporting of business visitors in exchange for a relaxation of the PAYE obligation (by 31 May following the end of the tax year).

Ongoing tracking of Business Travellers is required in order to make the annual reports and to reduce the reconciliation exercise that can be needed at year-end should relevant information not be easily accessed.

Annual PAYE Scheme (Appendix 8)

The Short-Term Business Visitor Agreement only relaxes the PAYE requirements for individuals that meet the criteria of a relevant Double Taxation Agreement. It therefore does not cover non-resident employees employed by a foreign branch of a UK company, individuals coming from non-tax treaty countries, or where the treaty conditions are not met (e.g., due to a costs recharge). In these circumstances, the only option for a company is to operate PAYE.

The Annual PAYE Scheme was introduced in order to combat the impracticality for employers of having to deal with employees that do not qualify for STBV treatment by allowing them to account for their visits to the UK for the whole tax year and operate PAYE at the tax year-end, with tax due and the associated RTI reporting to happen at month 12. This applies only to limited categories of visitors.

It is necessary to make an application to operate a scheme, then to report, calculate and pay the appropriate tax by 31 May following the end of the tax year.

Summary

The above commentary helps to demonstrate the extent and complexity of employer reporting that may be required following a UK tax year end. Please do schedule the various deadlines in your calendar and be prepared to file the necessary reports and forms on a

timely basis. As indicated earlier, HMRC may charge interest and penalties for failures to submit forms or pay taxes when due. In certain circumstances, HMRC does, however, permit a number of relaxations to operation of strict PAYE rules so do register for these where appropriate.

Good luck with tax year-end and in meeting your employer PAYE obligations.

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