

TaxZone Newthwire

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(1) The Form P11D

The Inland Revenue Form P11D and now associated Form P11D(b) are, in effect, part of the self assessment regime, of which PAYE was the forerunner. These forms are designed to ensure that directors and employees are taxed, where relevant, on taxable expenses and benefits received from the employer.

The current Form P11D is headed 'P11D expenses and benefits 2004-05.' It now incorporates the obligation to disclose what are known as 'third party benefits', where the employer is aware of them. It is obligatory for the employer to submit a return for all employees earning £8,500 a year or more and all directors, whatever their earnings.

Form P9D is an information return, which lists benefits and/or round sum allowances paid to employees (not including directors) who are paid at a rate of less than £8,500 a year. It should be noted that, following the case of *Alcock v King* SpC 396, it was established that the figure of £8,500 is the sum of salary, benefits (including car benefits and fuel benefits) and also credit card payments to purchase fuel etc. In effect there is 'double counting' for the fuel payments in this connection.

Form P11D(a) can be completed by the employer in cases where a dispensation is in operation and there are no other items to report. It is a list of employees with a certificate appended stating that no forms P11D are applicable in respect of the employees concerned.

Form P11D(b) is the 'return of Class 1A National Insurance contributions due – return of expenses and benefits – Employer's declaration.' It reflects the fact that, since 6 April 2000, the Class 1A National Insurance regime has been extended to most benefits, and not merely car and fuel benefits.

(2) Filing obligations

Section 15, Taxes Management Act 1970 imposes a duty on the employer to complete and submit a form P11D, Form P9D and Form P11D(b) for every relevant employee. It should be noted that forms must be completed on a 5 April year basis.

The filing date is 6 July following the end of the tax year, which means that 2004/2005 forms must be submitted by 6 July 2005. Class 1A national insurance contributions must be paid by 19 July 2005.

An additional copy of the relevant form must be supplied to the employee by 6 July. Where an employee has left the firm during the year, this procedure is not mandatory, but many employers will forward the copy P11D or P9D to the last known address. An ex-employee may request a copy of the form P11D from his former employer.

It should also be mentioned that an employee who is obligated to complete a self assessment tax return must declare the items on the Form P11D on the self assessment return form, and make the appropriate claim (where relevant) for allowable expenses under sections 336-338, ITEPA 2003. It is not sufficient for the employee to rely on the disclosure by the employer, as happened in pre-self assessment days.

This underlines the importance of making sure that the entries on the Form P11D are correct. The employee may not agree with the entries, and the employer may not be willing to provide detailed information of how the entries were calculated. Ideally, there should be a case for liaison between employer and employee in such instances before completion of the form is finalised. The P11D entries are also important for employees who do not have to file a self assessment return, as the P11D entry will form the basis of the benefits included in the code number.

Planning point

Employers and practitioners who deal with clients' P11Ds should be aware of the filing dates, the necessity to provide copies to employees, and the relationship between the forms and individual taxpayers' self assessment returns.

(3) Penalties

The maximum penalties that can be imposed for late or incorrect forms P11D, P9D and P11D(b) are quite draconian. Although the filing date is 6 July, the Inland Revenue will not seek penalties unless the forms are received after 19 July.

For forms P11D and P9D the late filing penalty is a mitigable amount of up to £300 a form, and a continuing mitigable penalty of £60 a day, by virtue of section 98(1), Taxes Management Act 1970. The daily penalty is only imposed by the Commissioners and it should be noted that any penalties will be cancelled if the forms are submitted before the penalty notice is issued.

In the case of the Form P11D(b) the late filing penalty is a monthly penalty of £100 per 50 employees. The total of this penalty cannot exceed the Class 1A NICs due for the year but not shown on the return.

In the case of P11Ds and P9Ds the penalty for submitting a form negligently or fraudulently is imposed by section 98(2), Taxes Management Act 1970. The penalty is a mitigable amount of up to £3,000 per form. For a form P11D(b) the penalty for an incorrect return is a mitigable amount of up to the amount of Class 1A NICs due but not shown on the return.

In all instances interest on unpaid tax will be imposed under section 178, Finance Act 1989, and interest will also be imposed on unpaid penalties.

Planning point

Employer clients should be made aware of just how stringent the penalty regime for P11Ds is. Practitioners who deal with client forms should also bear this fact in mind.

(4) Dispensations

It is too late to do this for 2004/2005, but employers should consider obtaining a dispensation for tax allowable benefits and expenses. Provided the Inland Revenue accepts that the expenses and benefits are well controlled and authorised, no P11D reporting is required. Before granting a dispensation the Revenue may seek to review the books of the business.

A dispensation considerably reduces the administrative burden associated with reporting business expenses. Additionally, it also saves employees from having to enter this information on their self assessment tax returns and make claims under sections 336-338. All items included within a dispensation are not liable to Class 1 or Class 1A NICs.

The dispensation does not cover taxable items such as the scale motor benefit or private medical care. It also excludes round sum allowances. However items within the dispensation are likely to include travelling and subsistence and home telephone calls made for business purposes.

In the past the Inland Revenue has been unwilling to grant a dispensation for a one man limited company, but it is understood that this rule has been relaxed to some extent.

What is clear is that a form P11D will still have to be prepared for each relevant employee and director, but limited to 'taxable' items.

It is possible that an application made for a dispensation in June 2005 could be agreed to be backdated to 6 April 2005.

Planning point

Practitioners should consider recommending an application for a dispensation to suitable clients, and to initiate the process.

(5) PSAs

PAYE Settlement Agreements (PSAs) are a procedure by which employers can settle in a single payment the income tax liabilities of their employees for minor non-recurrent benefits in kind and expenses payments. The employer agrees to accept responsibility for payment of the tax, and items included in the PSA then cease to be income of the employees concerned. The tax must be paid by 19 October, so that tax for 2004/2005 must be paid by 19 October 2005. The way in which this works is that the relevant expenses and benefits are 'grossed up' in order to establish the tax liability.

PSAs have a major drawback. There is no obligation on the employer to inform the employee of what has been covered in a PSA, or even if one exists. If the employee includes an item on his personal tax return on which tax is deducted but which has already been taxed under a PSA, the Revenue will not take any action and the employee will have paid tax unnecessarily.

Class 1B national insurance contributions are paid on a PSA at 12.8%, and are also due, with the tax, on 19 October following the tax year.

A PSA must be arranged before the item in question is provided because if a PAYE and Class 1 NIC liability arises it is fixed and cannot be changed by a PSA being agreed afterwards. This may mean agreeing the PSA before the start of the tax year in question. PSAs are annual agreements and must be renewed annually. They are initiated by writing to or telephoning the Inland Revenue office that receives the employer's P11Ds.

Planning point

Advise relevant clients about the possibility of arranging PSAs, and the advantages and pitfalls. Consider taking one out for your own practice.

(6) Employment Termination Settlements

Employment Termination Settlement is a term given to the 'termination package' that employers may agree with outgoing employees at the time of cessation of employment. The Form P11D should not be used in this connection.

The normal procedure is for employers to make a 'one off' report of cash and benefits that are estimated to be worth more than £30,000 (deducting PAYE as appropriate) given to an employee in connection with termination of employment.

Employers must make a report to the Inland Revenue by 6 July following the tax year of termination of employment. Assets transferred or other benefits on cessation of employment are ignored for the purposes of calculating the PAYE and when considering the £30,000 tax exemption under sections 401-403, ITEPA 2003. If the total package exceeds £30,000 and is provided over a number of tax years, the benefits and payments are taxed in the year that the benefits are enjoyed or the payments received.

Planning Point

Advise relevant clients of the report regarding termination of employment that needs to be submitted to the Inland Revenue, and the due date.

(7) Expenses claimed by employee

Where a dispensation is not in existence, the copy of the Form P11D given to the employee may include items that are reportable to the Inland Revenue, but are non-taxable if the employee makes the appropriate claim. An example of this is travelling and subsistence in connection with the business, reimbursed by the employer.

This situation is recognised by legislation, and the employee is permitted to make a claim under sections 336-338, ITEPA 2003 in connection with expenses that are incurred 'wholly, exclusively and necessarily in connection with the employment'.

Items that may form part of such a claim include:

- # Business travel (excluding home to business travel).
- # Professional subscriptions
- # Agreed deductions in connection with the particular trade, business or profession.

It should be noted that a claim actually has to be made. In the case of a taxpayer who completes a self assessment tax return, this can be done through the tax form. An employee outside self assessment will need to make a written claim to the tax office.

Practical point

Practitioners who deal with the personal tax affairs of employees should ensure that the relevant claims are made under sections 336-338, ITEPA 2003.

(8) P11D entries

It is beyond the scope of this wire to consider in detail all the P11D entries, so I intend to list them briefly, as follows:

- # Assets transferred (cars, property, goods or other assets).
- # Payments made on behalf of the employee.
- # Vouchers or credit cards.
- # Living accommodation.
- # Mileage allowance and passenger payments.
- # Cars and car fuel.
- # Vans
- # Interest free and low interest loans
- # Private medical treatment or insurance.
- # Qualifying relocation expenses payments and benefits.
- # Services supplied
- # Assets placed at the employee's disposal
- # Other items (including subscriptions and professional fees).
- # Expenses payments made to, or on behalf of the employee. This can include travelling and subsistence expenses, entertainment, a general expenses allowance for business travel, home telephone and non-qualifying relocation expenses.

Other items that need to be taken account of include:

- # Certain scholarships provided for the child of an employee.
- # Private minibus or coach costs, unless the bus exemption applies.
- # Staff discounts on the employer's own goods. This is assessed on the basis of marginal cost, following *Pepper v Hart* [1992] STC 898, and could be very low.
- # Free legal, financial or tax advice.
- # Disallowable business entertaining and gifts.
- # Expenses or liabilities incurred by the employee and paid by the employer.
- # Income tax not deducted from the remuneration of a director, but paid to the Revenue by the employer and not reimbursed by the director.
- # Other benefits such as hotel and restaurant facilities, holidays, non-exempt childcare, non-exempt sporting facilities and the cost of work carried out on the employer's residence.

There are a whole list of exceptions and exemptions from the taxable benefits legislation, and these are listed in Newthwire No. 6 on Benefits in Kind. This went online on 22 July 2002.

Other previous wires that have some relevance to the subject of P11Ds are:

Issue 18 – Motor and Travelling Expenses – 20 January 2003
Issue 51 – Remuneration and Loan Account Issues – 12 May 2004
Issue 75 – Business Entertainment – 25 April 2005

Planning point

Practitioners should be aware of, and clients informed, of the items that need to be reported on Form P11D.

(9) Any Answers

The importance of this subject is reflected by the number of Any Answers queries submitted on Tax Zone. A selection of these is as follows:

Pitfalls in applying for P11D dispensations – 12 March 2003 – 105354

Niam Chawla asked about this, and also enquired regarding what paperwork needs to be in place to satisfy the independent check. Sally considered that the key was a good system of internal control. Phil Barbasiewicz agreed. It would help speeding up applications by the Inland Revenue if a copy of the expenses policy was included on the form that can be downloaded from the Inland Revenue website. Some IR offices ask for a questionnaire to be completed regarding expenses procedures, which is time-consuming but worth it in the long run.

P11D and Company Credit Cards – 18 May 2004 – 126452

The use of credit cards by staff used for purchasing business stock was queried by Michael Kirk. His business did not have a dispensation. How does one avoid employees getting taxed on the reimbursed expenses?

Sally suggested, as her inspector would not allow such items to be included in a dispensation, that employees' claims under sections 336-338, ITEPA 2003 should be completed at the same time as the P11Ds, signed by the employees and sent in with the P11Ds. Nicki Ross Martin confirmed that the total credit card expenditure should be put in the 'vouchers' section of the P11D.

Another approach was outlined by Dave Grimley. One could phone the tax district for 'advice' with reference to page 21 of the CWG5 (available on HMIT website). Quote the section on credit card use/goods and services on employers' behalf – it doesn't need an entry.

Incorrect P11D - 16 June 2004 – 127434

An employee of a client of Simon Jeremy Lewis received P11Ds for 2001/2002 and 2002/2003 showing a fuel benefit. The employee now says that no fuel benefit was received. If matters are put right, what is the penalty position?

Andrew Meeson observed that, in theory there is a potential penalty of £3,000 on the employer for each incorrect form. However, the penalty is mitigable, and should be remitted in full. In the case of the employee, putting matters right results in a tax repayment and therefore does not involve any penalty.

Use of home – P11D entry – 1 July 2004 – 128002

Nick Farrow asked whether, where a director was paid a nominal amount for use of home as office, but in excess of £2 a week, whether this sum was reportable on the form P11D.

Stuart Jones considered that the amount should be disclosed on form P11D, but make sure that the expenses are 'provable'. They should only be for additional light and heat. Obviously the director can make a claim under section 336, ITEPA 2003 and, as suggested above, this could be prepared, signed and submitted at the same time as the P11D.

P11D benefits in kind – exclude VAT? – 2 November 2004 – 132868

In some instances a company pays professional fees in respect of personal tax on behalf of a director. Paul Drohan asked whether, in such circumstances, the benefit to be included on the P11D should be VAT inclusive or exclusive. Both Ken Curran and Graham Kemp confirmed that the amount to be reported on the P11D should be VAT inclusive.

P11D – 15 March 2005 – 138508

Liz asked whether it was compulsory to report all expenses claimed by an employee/director (subject to the £8.5 earnings limit for employees) on a form P11D, unless a dispensation was in place.

Richard Willis stated that the answer was 'yes', and also that the National Minimum Wage will now put all full-time employees in the P11D bracket. Neil Wilson stated that P11Ds are not just about expenses paid to the employee, but to payments made by the company that are reportable. The rules are complex, and not all are logical. Some require employers to apply PAYE to payments, others do not.

P11D – 13 April 2005 – 139667

Jwm has run a personal service company not within IR35 for two years, and has not yet been paid any salary. In connection with contracts Jwm has worked in another part of the country. Expenditure on flights, car hire, subsistence and accommodation have been incurred. These expenses have been claimed by the company but paid for by the director and credited to the director's loan account. Should forms P11D have been completed?

Neil Wilson confirmed that forms P11D should be completed, and I would add that at least some of these expenses can be subject to a section 336 claim. Neil also observed that it was much more efficient for the company to contract for the various services and pay the costs. This reduces the P11D entries.

(10) Conclusion

Forms P11D are an accepted, complex and now vital part of the tax system. This wire gives little more than a brief overview of this complicated subject, but hopefully gives practitioners some positive guidelines.

Ask a question

Readers with a current case should post their query in Any Answers.

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