

TAX AND NIC TREATMENT OF CLERKS' EXPENSES AND BENEFITS

1. Now that all clerks are (or should be) subject to PAYE it may be useful to summarise the way that HMRC deals with various 'benefits' provided to clerks and other employees of local councils and how expenses that they incur are dealt with. The rules for income subject to PAYE are completely different from (and much stricter than) the rules for self-employed people and there is very little read-across from one to the other.
2. Clerks need to be clear about the tax treatment of benefits and expenses, not just because of their own tax liability but also because of the reporting requirements imposed on the local council as employer, which the clerk or a colleague will need to deal with. Please note that SLCC cannot advise on individual tax circumstances. Members who are in doubt about their tax position should contact their tax office, preferably in writing.
3. The expenses and benefits system does not exist in order to enable HMRC to persecute employers and employees but to minimise the risk that the wrong amount of tax and NICs will be paid. Parish councils with a satisfactory system of internal control should have no difficulty administering PAYE, including expenses and benefits.
4. Not many links to specific pages on the HMRC website <https://www.gov.uk/government/organisations/hm-revenue-customs> are included in this note as the website has a very efficient search facility. However one very useful set of pages is the 'Expenses and Benefits A-Z' at <https://www.gov.uk/expenses-and-benefits-a-to-z> which sets out clearly the tax treatment and reporting requirements for all the common expenses and benefits.
5. The key points if the council wants to avoid problems with the system are:
 - Do not reimburse the cost of private travel, which includes all travel between home and a permanent workplace such as an office (including returning from home to an office or a nearby building for evening meetings)
 - Do not reimburse any part of monthly rental for an employee's personal mobile phone or landline; instead provide the employee with a mobile phone with the contract being with the employer and the bills paid by the employer
 - Do not make payments to compensate for 'depreciation' of an employee's personal computer or other office equipment; instead the council should provide the employee with the necessary equipment
 - Where an employee is provided with a computer or other office equipment, the council should make it clear that it is for business use only

- Do not reimburse household expenses other than the ‘additional costs’ where an employee has to work from home because they have no office elsewhere
- Do not pay round sum ‘expense allowances’ intended to meet unspecified expenses
- Do not reimburse childcare costs
- If possible, avoid a tax and NIC charge on payments for the use of the employee’s own car for business travel by paying no more than the HMRC approved limit (45p per business mile). If the council decides to pay more than the HMRC approved limit be aware that there will be a reporting requirement and tax and NIC charges.

Key concepts

6. The PAYE system relies on the employer for its administration. So even though you as clerk will probably be doing the administration you are doing it on behalf of the council as employer.
7. The employer must (among other things) account for PAYE income tax and NICs on earnings and report any potentially taxable benefits at the end of the year.
8. The employee must pay any income tax on taxable benefits such as payments for the use of the employee’s own car which exceed the HMRC approved limit. If the employer administers the system properly there should be no further tax charge on the employee in respect of employment income.
9. From 6 April 2016 all employees are subject to the same rules as regards expenses and benefits and there is no longer any distinction between ‘higher-paid’ and ‘lower-paid’ employees.
10. Earnings are monetary payments by the employer on which PAYE income tax and NICs are due. Most monetary payments by the employer to the employee are earnings.
11. Earnings include:
 - Salary
 - Overtime
 - Reimbursement of non-deductible expenses such as:
 - the cost of private travel including all travel between home and a permanent workplace such as an office
 - household expenses which are not ‘additional costs’ of homeworking
 - childcare costs such as babysitting when an employee is required to attend evening meetings

- payment of any part of an employee's personal mobile phone or landline bill (including any part of a monthly rental) apart from the actual cost of business calls
 - payments to compensate for 'depreciation' of an employee's personal computer or other office equipment
 - Round sum allowances intended to meet unspecified expenses
12. Benefits are payments or things provided by the employer to the employee which are not earnings. Benefits may or may not be taxable. In practice most clerks will have no taxable benefits unless the council makes payments for the employee's use of their own car in excess of the approved HMRC limit.
13. Expenses are payments made by an employee (less any amount reimbursed by the employer) in connection with their employment, such as phone bills, travel expenses and a subscription to the SLCC. Some expenses incurred by an employee are 'deductible', that is, they reduce the total income chargeable to income tax. Where an employee incurs deductible expenses which are not reimbursed by their employer they can claim a tax repayment after the end of the tax year. Alternatively, if they have incurred or know they will incur a deductible expense they can write to their tax office during the tax year and HMRC will give effect to the deduction by an adjustment to their PAYE code. Claims can be made by letter unless total expenses in a tax year exceed £2500 but if you like you can use HMRC Form P87 (downloadable from the HMRC website) which sets out the requirements clearly.
14. The reimbursement of a tax-deductible expense by the employer does not give rise to a tax charge. Up to 5 April 2016 some reimbursements were only tax-free if the employer had a 'dispensation' from HMRC. Dispersations have been abolished as from 6 April 2016.
15. There follows a list of the most common benefits and expenses. The information is correct as at December 2019.

SLCC subscription

16. The SLCC appears on the HMRC list ('List 3') of subscriptions that are tax-deductible. It follows that:
- If you pay your own subscription you can claim a deduction from your taxable income
 - If your council pays or reimburses your subscription this is not a taxable benefit
17. The same rule applies to any other professional organisation that appears on List 3 and where membership is of direct benefit to the duties of your employment. There is no tax relief for trade union subscriptions unless the union appears in List 3.

Mobile phones and landlines

18. The provision of a single mobile phone, including a smartphone, or a single SIM card to an employee, with the contract being with the employer and the employer paying the bill, does not give rise to any tax charge or reporting requirement whether the phone is used for business calls or private calls or both.
19. Where an employee has to work from home because they have no office elsewhere there is no tax charge and no reporting requirement where the employer provides a landline and/or broadband access, provided that:
- the contract is with the employer and employer pays the bills
 - the landline or broadband access is provided for business use only (the employer should say explicitly that private use is not permitted)
 - private use is insignificant
20. The employee can claim a deduction for the cost of business calls from their personal mobile phone or landline (but not for any part of monthly rental). Alternatively there is no tax charge if the employer reimburses the cost of business calls from an employee's personal mobile phone or landline.
21. Any other payment by the employer towards an employee's personal mobile phone or landline bills, including any part of monthly rental, counts as earnings.

Homeworking

22. If an employee has an office away from their home
- they cannot deduct anything for the cost of working from home apart from the actual cost of business phone calls
 - the reimbursement by the employer of any costs of working from home other than the actual cost of business calls counts as earnings.
- An employee cannot claim that they have an office at home and another office elsewhere.
23. If on the other hand it is necessary for the employee to work from home because they have no office elsewhere they can claim a deduction for the 'additional costs' of homeworking. Alternatively if the employer reimburses the additional costs of homeworking there is no tax charge or reporting requirement.

24. 'Additional costs' mean costs solely attributable to the fact that the employee works from home. So they could include extra heating and lighting costs because the employee is at home instead of being at work in an office. They do not include any costs that the employee would have incurred whether they worked from home or not such as a share of council tax, a phone line or broadband access (but see paragraph 19 above where the employer provides a landline and/or broadband access to support homeworking).
25. If additional costs do not exceed £4 per week HMRC will accept them as reasonable without any evidence. If they exceed £4 per week the employee may be asked for evidence.
26. Any payments in excess of additional costs, for example a share of council tax or decorating costs or an employee's personal broadband subscription, count as earnings.

Childcare

27. The cost of childcare, for example babysitting when an employee is required to attend evening meetings, is not deductible and reimbursement of childcare costs counts as earnings¹.

Computers and other office equipment

28. There is no tax charge or reporting requirement for computers, other office equipment and supplies (e.g. stationery) provided by the employer for use by an employee provided that (a) any private use is insignificant (b) if it is provided for use otherwise than on the employer's premises (e.g. at home) the provision is solely for business purposes.
29. Where a computer or other office equipment is to be used otherwise than on the employer's premises the employer should tell the employee explicitly that it is provided solely for business purposes.
30. If an employee has to use their own computer because their employer refuses to provide one they may be able to claim 'capital allowances' for business use of the computer. The rules are complex and working out the proportion of 'business use' can be difficult. Payment by an employer to compensate for 'depreciation' of an employee's personal computer counts as earnings.

¹ Up till October 2018 it was possible for an employer to set up a scheme under which an employee could give up part of their taxable salary in exchange for tax-free 'childcare vouchers' which could then be used to pay approved childcare providers such as registered childminders or day nurseries. Babysitters were not approved childcare providers. With the introduction of Tax-Free Childcare in October 2018 new schemes can no longer be set up but employers already enrolled in a scheme can continue to provide vouchers to existing employees who qualified as at October 2018 unless they claim Tax-Free Childcare instead.

Books and magazines

31. An employee cannot claim a deduction for the cost of any books or magazines they buy even if they help the employee do their job better. On the other hand there is no tax charge if the employer buys books or magazines relevant to their work and the employee has access to them in the course of their employment.

Training

32. An employee cannot claim a deduction for

- the cost of training such as ILCA, CiLCA training or CPD courses even if the employer requires them to undertake the training
- travel and subsistence expenses connected with training.

33. On the other hand if the employer pays for work-related training for an employee

- there is no tax charge on the cost of training and no reporting requirement
- reimbursement of travel and subsistence expenses by the employer is dealt with under the rules for business travel and not private travel (see paragraph 36).

Pension contributions

34. Tax relief (but not NIC relief) is available for contributions by an employee to an approved pension scheme such as the Local Government Pension Scheme ('LGPS') or NEST. There are two ways in which tax relief can be given and the employer needs to find out from the pension scheme which method they adopt:

- Under 'net pay' arrangements the employee's gross pay for income tax (but not NIC) purposes is reduced by the employee's contribution. This is the method typically adopted by public sector pension schemes such as the LGPS.
- Under 'relief at source' the employee's gross pay is not reduced but instead the employee's contribution is paid over net of basic rate tax relief. This is the method that has been used for many years by personal and stakeholder pension schemes but is now also used by NEST and other 'master trust' schemes. An employee liable at higher rate will need to claim additional relief in their tax return or by letter to their tax office.

Travel expenses

35. This is the most complex area, partly because of the unusual work pattern of many clerks.

36. Travel falls into two classes:

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- Business travel, which is itself divided into:
 - Travel 'in the performance of the duties of the employment'. This includes most travel during the working day such as driving round putting up notices
 - Travel (from home or anywhere else) to and from a 'temporary workplace' such as travelling to and from a meeting at the district council offices
 - And also in practice includes travel to and from work-related training (paragraph 33 above) but only where the cost is met by the employer
- Private travel which is all other travel.

37. The crucial thing is that private travel includes 'ordinary commuting' which means all travel between home and a 'permanent workplace' such as an office. It remains ordinary commuting however often you do it so if a clerk goes home and then returns to the office for an evening meeting this is still ordinary commuting and thus private travel. A journey is also ordinary commuting if it is 'substantially the same' as ordinary commuting, for example if a clerk travels from home to attend a parish council meeting in a village hall in the same village as their office.

38. Do not try to avoid the rules on ordinary commuting by finding business tasks to do on the way to and from work such as picking up supplies. The HMRC official guidance manual has a wealth of gruesome examples showing why (in HMRC's view) this does not work (search the HMRC website for 'safeguards against abuse').

39. The cost of private travel, including travel between home and office, is not deductible. Reimbursement of private travel, including travel between home and office, counts as earnings.

40. On the other hand if the employee has no office and works from home, but attends meetings elsewhere, for example in a village hall, the village hall will be a 'temporary workplace' and travel between home and the village hall will be business travel.

41. An employee can claim a deduction for expenses they incur on business travel less any amount reimbursed by the employer (but for the use of their own car the only deduction that can be claimed is mileage allowance relief, see paragraph 45 below). Alternatively there is no tax charge if the employer reimburses the cost of business travel (other than the use of the employee's own car, see paragraph 46 onwards).

42. For travel by public transport the deduction or permitted reimbursement is the actual cost incurred. Business travel expenses include not only the cost of

travelling but also the actual cost of meals while travelling and the actual cost of accommodation if the travel includes an overnight stay.

Use of the employee's own car for business travel

43. Payments such as parking, congestion charge and toll charges are subject to the normal travel expenses rules. Fines and penalties for motoring offences, including parking penalties, cannot be deducted even if they were incurred while travelling on business and reimbursement of fines or penalties counts as earnings.

44. The costs of owning and driving a car for business purposes are dealt with by reference to the number of miles driven on business travel, and cannot be dealt with in any other way, nor is the size, age or efficiency of the car of any relevance.. For this reason employees should keep accurate records of business mileage and employers which reimburse employees for the cost of using their own car for business travel should have a copy of those records.

45. If an employee uses their own car for work and pays for their own business travel they can claim a deduction ('mileage allowance relief') of

45p x (number of miles driven on business travel during the year)

less any amount reimbursed by the employer by way of MAPs (below). No other deduction or capital allowances relating to owning or driving a car can be claimed and it makes no difference whether actual expenditure, depreciation, &c, is more or less than this.

46. The treatment of payments made by an employer on account of business travel by an employee in their own car is more complex and the tax treatment differs from the NIC treatment. In brief:

- There is no charge to tax or NICs and no reporting requirement (and you need read no further) if the only payment made by the employer is the reimbursement of business mileage at a rate of no more than 45p per mile.
- There probably will be a charge to both tax and NICs (and you need to read on) if payments are made at a higher rate or under a scheme such as the NJC 'essential user' scheme.
- The employee (not the employer through PAYE) is responsible for paying income tax on business mileage payments which exceed the HMRC limit
- The employer is responsible for Class 1 NICs each time there is a business mileage payment which exceeds the HMRC limit

Income tax

47. First, in order to avoid an income tax charge a payment must be a 'mileage allowance payment' ('MAP'). A MAP can be
- a lump sum (whether or not payable by instalments) at a reasonable rate to reflect the business proportion of the standing costs of keeping a car (for example, the NJC 'essential user' rate)
 - a payment based on actual or estimated business mileage at a set rate or rates
 - or any combination of these.

MAPs should be paid without deducting PAYE income tax (but the employer may have to account for Class 1 NICs, see below). Some employers apply PAYE income tax to lump sum instalments but this is not correct and can result in the employee paying too much tax.

48. Payment of a round sum allowance each month intended to meet the cost of business travel but not related to mileage is not a MAP and neither is any payment on account of private travel, including home to office travel. Such payments will be earnings subject to PAYE income tax and Class 1 NICs.

49. Second, for there to be no income tax charge the total MAPs paid in respect of use of the employee's car during the tax year must not exceed

$45p \times (\text{number of miles driven on business travel during the tax year})$

50. If the MAPs paid are less than this limit the employee can claim mileage allowance relief (see paragraph 45) for the shortfall.

51. There is no reporting requirement if MAPs do not exceed this limit. MAPs in excess of the limit are a taxable benefit and the employer will need to complete a P11D. The employee will then be asked to pay tax on the benefit. Councils which pay allowances under the NJC 'essential user' scheme may find there is a taxable benefit each year.

NICs

52. The NICs position has to be considered for each earnings period (e.g. a month) in which a payment for use of an employee's own car is made, not at the year end.

53. There is a charge to Class 1 (not Class 1A) NICs on the amount by which the total payments by the employer in an earnings period on account of the employee's use of their own car exceed

$45p \times (\text{business mileage to which the payments relate})$

So, for example, if an employee is paid in July for travel between April and June the calculation for July is based on the total business miles driven between April and June. 'Business mileage' is defined as for income tax.

54. The excess is added to other earnings, e.g. salary, in the earnings period to determine the gross pay liable to Class 1 NICs.
55. Each earnings period must be considered separately; if an employer pays less than the limit in one earnings period and more in another the employer cannot 'net off' one against the other.