

# Employer bulletin

Spring 2024

## 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](mailto:enquiry@larking-gowen.co.uk)

## The following measures were announced in the March 2024 Budget

### National insurance contributions (NIC)

As revealed in the Budget on 6 March 2024, there will be an additional reduction in National Insurance rates starting from 6 April 2024. This adjustment lowers the rate from the existing 10% to 8%, resulting in savings of £18.72 per month for an employee on the National Living Wage (effective April 2024) working 40 hours a week.

### National Minimum Wage and National Living Wage

Effective from 1 April 2024, we will see not only an increase in the rates being paid for National Living/Minimum Wage but also a change to the age brackets they apply to. The National Living Wage rate will now apply to all employees aged 21 years and over (previously 23 years and over).

Below are the current and new rates, including the increase percentage rate.

	23 years and over	21-22	18-20	Under 18	Apprentice
<b>Apr 2024 new rates</b>		£11.44 (9.8%)	£8.60 (14.8%)	£6.40 (21.2%)	£6.40 (21.2%)
<b>Apr 2023 current rates</b>	£10.42	£10.18	£7.49	£5.28	£5.28

### 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 **Employment Allowance: Check if you're eligible - GOV.UK (www.gov.uk)**

If you do qualify, you'll need to send a submission from your payroll software to HMRC to claim EA. No employers' 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 will show as being credited. The P32 report will apply the credit before arriving at the amount payable to HMRC.

## The following measures were announced in the March 2024 Budget

### HMRC Payment Booklets

For the 2024/25 tax year onwards, HMRC will no longer issue the payment booklets which were provided to assist when making payment by cheque. HMRC are encouraging businesses to pay online but there are still other methods available which can be found here: **Pay employers' PAYE: Overview - GOV.UK ([www.gov.uk](http://www.gov.uk))**

### Approaching deadlines

5 April 2024	Payrolling benefits in kind must be registered for the 2023/24 tax year
31 May 2024	employees should receive form P60 from their employers
5 July 2024	application must be received by HMRC for a PAYE Settlement Agreement (PSA) for 2023/24
6 July 2024	expenses and benefits forms P11D and P11D(b) and employment related securities (ERS) returns for 2023/24 should be filed and information given to employees

### Statutory parental leave and pay

Effective from 7 April 2024 (the first Sunday of the new tax year), the rates for Statutory Parental payments will increase to £184.03 (previously £172.48 per week).

Parental Leave includes Statutory Maternity Leave, Shared Parental Leave, Statutory Paternity Leave and Statutory Adoption Leave.

The rules around taking Statutory Paternity Leave have also changed and will now allow for the two weeks' pay and leave to be taken in separate week blocks. Previously the two weeks' leave had to be taken consecutively. Employees will also now have 52 weeks from the birth date to take their leave (as long as appropriate notice is given).

### Carers' leave

From 6 April 2024, employees will now be entitled to take one week of unpaid leave to give or arrange care for a 'dependant'. They are entitled to one week each year and the entitlement is a day one right. The one 'week' will be determined by their usual working pattern, so could fluctuate amongst employees. Employees will need to provide their employer with notice of the leave required with a minimum of three days' notice.



## Cars vs Vans – what is a car and what is a van?

The rules surrounding cars and vans, and how to distinguish between the two is often a tricky area in tax.

Company cars tend to be more expensive for employees where they are made available for private use, whereas vans are the more tax efficient of the two.

It is easy to look at a vehicle and conclude that it is a van. However, that is not the way HMRC classify these vehicles. The first test HMRC uses in determining whether a vehicle is a car or van, is looking at the construction of the vehicle, not what the vehicle is used for.

The legislation states that a van is a mechanically propelled goods vehicle which has a design weight not exceeding 3,500 kilograms. The meaning of a goods vehicle is that the construction of the vehicle is primarily suited for the conveyance of goods of any description.

For example, a combi van looks like a van from the outside, but behind the driver's seat it has rear windows and seats. HMRC would argue that the vehicle has the ability to carry several passengers, and cannot primarily have been constructed for carrying goods. Therefore, HMRC will take the view that this is in fact a car, and the primary purpose is not that of a goods vehicle.

The benefit in kind on a company car used privately is based on the list price of the vehicle including any additional accessories, which is then multiplied by a percentage based on the CO2 emissions of the car.

The van benefit is a standard value every tax year, which is not based on CO2 emissions. This standard value is £3,960 for the tax year 2023/24. If private fuel is provided, the standard value is £757.

Although there are potential savings to be achieved by having a van as opposed to a car, electric vehicles offer a particularly tax friendly alternative for businesses which provide a company car to employees. For electric cars with zero emissions, or a hybrid vehicle with CO2 emissions of 1-50 kg/m and electric mile range of 130 miles +, the benefit in kind is 2% of the vehicle list price. In addition to the low benefit in kind, the charging of an electric vehicle is not classified as fuel. This means that if you reimburse employees the cost of private mileage, or allow employees to charge their vehicle at work, there is no fuel benefit for zero emission cars.

There are considerable savings available to both employers and employees when choosing a van over a car, but it is important to classify the vehicle correctly. If the vehicle looks like a van, it doesn't automatically mean that it is, and as an employer you need to make sure that the vehicle is classified correctly as this affects the tax reliefs available to the business and the benefit in kind charged on the employee.



## Car allowances and national insurance contributions

A case concerning car allowances and national insurance contributions (NICs) was decided by the Upper Tribunal (UT) in 2023.

HMRC did not appeal the decision and have recently issued guidance for applying the judgement and making claims flowing from it.

### Summary of the decision

The UT decided that car allowance payments were Relevant Motoring Expenditure (RME) and therefore a qualifying amount (QA) should be deducted for business mileage in calculating the Class 1 NICs due. The QA is the number of business miles driven multiplied by the statutory mileage rate of 45p per mile.

The decision means that, if an employee receives a car allowance and receives business mileage payments of less than 45p per business mile, the employee can make a claim for income tax relief (via a tax return or form P87) on the difference between the mileage rate paid and 45p per mile, and the employer must disregard the QA in arriving at the amount of the car allowance that is subject to NICs.

The employer and employee need to demonstrate what the QA is, and to calculate the correct amount of car allowance chargeable to NICs, so they will need to have a mileage recording system to evidence the number of business miles driven and the rate(s) paid per business mile.



### Claims for refunds of overpaid NICs

If Class 1 NICs have been incorrectly calculated and overpaid, a claim for a refund is possible.

A claim for a refund of Class 1 NICs paid in error must be made within six years from the end of the relevant tax year.

The ability to make a claim depends on having complete and accurate records of the business miles driven and the rate(s) paid per business mile in place over the potential reclaim period. Because the understanding and practice have been that car allowance payments were liable to tax and NICs, you may not have sufficient business mileage records to make and support a claim.

### HMRC requirements for claims

HMRC state that any businesses with a similar fact pattern to the UT case will be able to correct any overpayment.

A claim may be made via a Real Time Information (RTI) return, through Customer Compliance Managers (for large businesses) or in writing.

A claim will need to be substantiated on a pay-period basis with the prescribed evidence, which we can explain to you.

### Paying car allowances to employees in the future

If you pay car allowances to employees in the future, you need to apply this ruling, which means making sure the correct amounts of Class 1 NICs are calculated and deducted.

### Action

Please contact us if you need any further information or want to discuss the implications of this decision.

We recommend that you contact us if:

- You have paid car allowances and business mileage payments at less than 45p per mile to employees since April 2017, so we can assess whether you have a claim for overpaid Class 1 NICs and have sufficient business mileage records to make and support a claim.
- You are paying car allowances and business mileage payments at less than 45p per mile to employees now, so we can review your calculation of Class 1 NICs and provide advice on any changes required.

## Off payroll working (IR35)

There are two recent developments in relation to the reformed off-payroll working rules (IR35 rules).

### Setting off tax paid

The Government is introducing a change in policy that may affect organisations with an open compliance check.

Currently, when HMRC find that an engager has made a mistake in applying the IR35 rules (for example an incorrect categorisation of a worker), they assess how much the engager (the deemed employer) owes in income tax and national insurance contributions (NICs).

From 6 April 2024, HMRC will be able to set off the taxes the worker and/or their intermediary has already paid against the amount the deemed employer owes.

The policy applies to income tax and NICs assessed on or after 6 April 2024, from IR35 errors in payments since 6 April 2017.

Organisations may be able to pause the settlement of their open IR35 compliance check until after 5 April 2024.

HMRC will only consider a pause if: the compliance check has reached settlement, and: the organisation has acknowledged in writing an error in applying the IR35 rules, the deemed employer's gross liability including any penalty has been agreed, and the organisation gives HMRC the information they need to work out a set-off, including the name and registration number of the personal service company, and the worker's full name and NI number.

For organisations with open IR35 compliance checks, HMRC will carry on with their compliance check as normal.

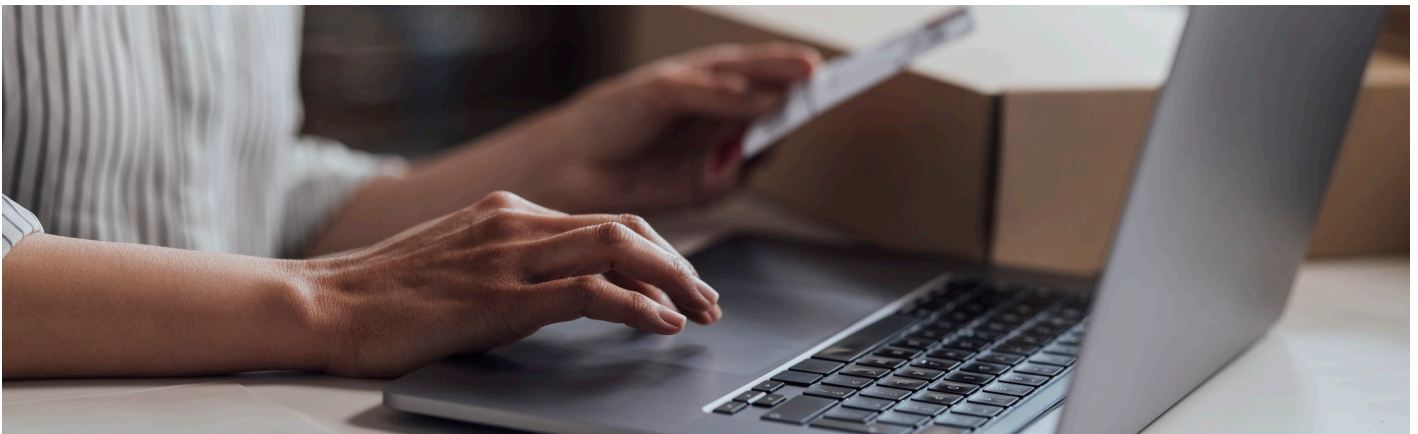
If an organisation meets the above conditions when HMRC are ready to agree a settlement, HMRC will ask the organisation if they want to pause. If HMRC agree to pause, HMRC will contact organisations again after 6 April 2024 to settle the compliance check.

Organisations don't have to pause their settlement if they don't want to. If an organisation chooses to pause, HMRC advise the organisation to make a payment on account for the full amount, to stop statutory interest accruing.

You should be aware that these changes don't remove the risks to the end client and therefore don't remove the potential risks to them of engaging workers off payroll.

The changes reduce the income tax and NI payable by the end client if an error arises under IR35.

But the changes don't reduce the potential penalties which HMRC may charge end clients. Penalties are calculated on the income tax and NICs liability of the end client before any reduction for amounts paid by the worker and/or the intermediary.





## Guidelines for compliance

HMRC have published new guidelines to assist compliance with the reformed IR35 rules.

A link to the guidelines is here <https://www.gov.uk/Government/publications/help-to-comply-with-the-reformed-off-payroll-working-rules-ir35-gfc4>.

These guidelines set out practical steps, including best practice and examples of good systems and processes which can be adapted to help organisations reduce the risk of making an error when determining a worker's status for tax purposes.

These guidelines are for organisations which fall within the scope of the reformed IR35 rules, introduced in 2017 and 2021.

The guidelines are primarily for clients and deemed employers who are responsible for operating the IR35 rules and engage workers who provide their services through their own intermediary, for example their personal service company or partnership.

HMRC have developed the guidelines to help organisations understand what HMRC considers good practice. The guidelines contain examples of good systems and processes that HMRC considers will help to reduce the risk of error when determining a worker's status for tax.



## Background to the IR35 rules

The reformed IR35 rules were introduced for clients in the public sector in 2017, and extended to include medium and large-sized clients in the private and voluntary sectors in 2021.

The reforms shifted responsibility for determining employment status for tax from the worker's intermediary to the client engaging them. A worker's employment status for tax determines the taxes the worker and the deemed employer need to pay. This will depend on whether a worker is determined as employed or self-employed for that engagement. The rules also place responsibilities on the deemed employer to make sure the correct tax and NICs are paid to HMRC.

Where a medium or large-sized private or voluntary sector client, or a public sector client, engages a worker who is providing services through their own intermediary, the client is responsible for determining the worker's employment status for tax.

If the client determines that the engagement falls inside the IR35 rules (the worker is deemed to be employed for tax purposes), they should communicate that decision to both the worker and any third party the client contracts with. This should be in the form of a status determination statement, and should include the reasons for the client's determination.

If the worker is deemed to be employed for tax purposes, the deemed employer must deduct income tax and employee NICs from fees paid to the worker's intermediary. The deemed employer must also pay to HMRC employer NICs and Apprenticeship Levy, if applicable.

## Car benefit in kind - double cab pickups

On 12 February 2024, HMRC announced a change in the treatment of double cab pickups for tax purposes from 1 July 2024. The change meant that, from 1 July 2024, double cab pickups with a payload of one tonne or more would be treated as cars rather than goods vehicles for the purposes of both benefits in kind and capital allowances.

On 19 February 2024, HMRC announced a reversal of the change, meaning that

double cab pickups with a payload of one tonne or more will continue to be treated as goods vehicles rather than cars. Double cab pickups with a payload of less than one tonne continue to be treated as cars.

The tax on the benefit in kind will now not increase when employers provide these vehicles to their employees, and the capital allowances available in the first year of use will now not be reduced

when a business purchases this type of vehicle for use in its trade.

The Government will be legislating for double cab pickups with a payload of one tonne or more to continue to be treated as goods vehicles for tax purposes. The Government will consult on the draft legislation to make sure that it achieves that outcome before introducing it in the next available Finance Bill.



### Background to the treatment of double cab pickups

A double cab pickup normally has:

- a front passenger cab that contains a second row of seats and is capable of seating about four passengers, plus the driver
- four doors capable of being opened independently, whether the rear doors are hinged at the front or the rear (two door versions are normally accepted to be vans), and
- an uncovered pickup area behind the passenger cab

There is nothing about these vehicles that renders them unsuitable for private use, so they are not excepted from car benefit in kind charges.

When deciding whether double cab pickups count as cars or vans, HMRC interpret the legislation that defines car and van for tax purposes in line with the definitions used for VAT purposes.

Under this measure, a double cab pickup that has a payload of 1 tonne (1,000kg) or more is accepted as a van for benefits purposes. Payload means gross vehicle weight (or design weight) less unoccupied kerb weight (care is needed when looking at manufacturers' brochures as they sometimes define payload differently). The 1 tonne rule only applies to double cab pickups, not to any other vehicle.

Under a separate agreement between Customs and the Society of Motor Manufacturers and Traders (SMMT), a hard top consisting of metal, fibre glass or similar material, with or without windows, is accorded a generic weight of 45kg. Therefore, the addition of a hard top to a double cab

pickup with an ex-works payload of 1,010 kg will convert the vehicle into a car (net payload reduced to 965 kg). Under this agreement, the weight of all other optional accessories is disregarded. HMRC have also adopted this treatment. Potential purchasers can obtain advice about the payload of a particular model from the manufacturer or dealer.





## Payslip deductions and how they are calculated

### Tax PAYE (Pay As You Earn) deductions

This is the income tax you pay on your earnings from your job.

Each employee has a personal allowance which is calculated using their tax code and is the annual pay they can earn before paying tax. The current 'standard' tax code is 1257L which equates to £12,579 of personal allowance. 1/12th of the personal allowance is allocated against a person's wages/salary each month (or 1/52nd per week) and the balance is taxed at 20%, 40% or 45% depending on the level of salary (see HMRC Tax Thresholds for 24/25).

Calculations usually are made cumulatively so year-to-date (YTD) earnings are compared to YTD personal allowance each pay period – this can result in tax refunds if monthly pay dips or if a new tax code is issued.

Calculations can be made non-cumulative, and this is indicated by an X or M1/W1 next to their tax code. For these employees only the current periods (one week or month) personal allowance can be used before calculating the tax due.

### National insurance contributions (NIC)

This is money you contribute towards things like your state pension and benefits like healthcare.

NIC becomes payable once an employee's monthly earnings reach £1047 (£242pw) (known as the Primary Threshold) and are calculated at 10% of earnings over this amount. Employees also have an upper cap (known as the Upper Earnings Level) of £4167 per month which leaves a band of income of £3142 per month (£725pw) at 10%; any earnings more than this are charged at 2%.

Employers also pay NIC at 13.8% on all earnings over £758pm (£175pw) (known as the Secondary Threshold).

### Student Loan Deductions (SLDs) – if relevant

SLDs are levied at 9% on monthly pay in excess of the following thresholds (which are determined by the Loan Plan type the employee had) (2024/25 values):

Plan 1	£2082
Plan 2	£2274
Postgraduate	£1750
Plan 4	£2616
Plan 5	£2083



## Holiday entitlement and pay – changes

The Government has introduced some changes to Holiday Accrual and pay for leave years starting on or after 1 April 2024 affecting:

**Irregular hours workers** – (workers where their hours are wholly or mostly variable)

**Part-year workers** – e.g. seasonal farm workers, term-time only workers (n/a if paid an annualised flat salary over 12 months)

Irregular hours and part year workers will accrue holiday entitlement based on 12.07% of the worked hours – rounding to the nearest whole number.

The changes are not relevant to workers with regular hours (who continue to accrue 1/12th of the annual 5.6 weeks entitlement for each month) nor to any worker whose holiday year started before 1 April 2024.

### Working example:

Daphne works irregular hours and is paid monthly. Her leave year starts on 1 April 2024. She is entitled to the statutory minimum holiday entitlement only.

In April, she works 65 hours. To work out how much holiday she accrues in April you will need to calculate 12.07% of 65 hours.  $65 \times 12.07\% = 7.85$  hours rounded up to 8 hours.

The 12.07% figure is calculated as all workers are entitled to 5.6 weeks' statutory leave. An employee's total working weeks in a year is 46.4 (52 weeks in a year minus 5.6 weeks of leave). 12.07% of 46.4 (weeks) totals 5.6 (weeks).

If a worker subject to these new rules is entitled to more than the minimum 5.6 weeks holiday the percentage will be different. For example: if a part-year worker is entitled to 7 weeks of leave per year, their contract the calculation would be  $7 \div 45 = 0.1555 = 15.55\%$

These changes are not compulsory but appear to be the most convenient and 12.07% is the 'go-to' method for casual workers' holiday calculations.

As mentioned above, this is the method to use for calculating holiday accrued. If you wanted to pay the accrued holiday each week/month alongside the worked hours, you now can. The holiday pay would need to be shown as a separate line on the payslip and described as 'Rolled-up Holiday Pay.'

### Working example:

Louise worked 33 hours totaling £363.00 and 4 hours totaling £60 (night rate) which gives her a gross pay of £423.00. Her Rolled-up Holiday Pay was calculated using the 12.07% method.  $£423.00 \times 12.07\% = £51.06$  Holiday Pay. This would show on the payslip as per the below:

Hours worked	33	£11.00	£363.00
Night hours	4	£15.00	£60.00
Rolled-up Holiday Pay	1	£51.06	£51.06

Please be aware that you would need to have advised the employee that you are using Rolled-up Holiday Pay (it may require a contract change) and that they will not receive any pay when they take time off (because they have already been paid for it).

#### Please note:

If your holiday year begins before 1 April 2024 (i.e 1 January 2024) then the above changes don't apply until the start of your next holiday year (i.e 1 January 2025).

## The benefits of salary sacrifice

Salary sacrifice arrangements offer a range of advantages, providing tax efficiencies and enhanced benefits for both employers and employees. This means that by offering tax-free (or low-value) benefits, it can be a win-win solution for all involved.

Employees can leverage salary sacrifice by directing a portion of their salary towards non-cash benefits such as pension contributions or electric cars. This results in a reduction of taxable income, leading to lower income tax and Class 1 national insurance contributions on their salary.

It's important to note that the Class 1 national insurance savings are also advantageous for employers. These savings

can be retained by the employer or redirected to enhance the value of the employee benefits package, such as through additional pension contributions, at no additional cost. However, it's essential to keep in mind that salary sacrifice arrangements cannot reduce an employee's pay below the relevant National Minimum Wage rates, meaning such schemes are not available to everyone.

Implementing salary sacrifice arrangements requires careful consideration and proper implementation to maximise tax effectiveness. If you're interested in exploring how salary sacrifice can benefit your organisation and your employees, don't hesitate to get in touch with your usual contact.

## Navigating international employment: understanding tax and national insurance differences

Managing the tax and national insurance obligations of international workers presents a nuanced challenge for employers. While taxes are typically governed by double tax treaties, national insurance isn't, being separately governed by social security agreements. These agreements ensure that mobile employees are subject to national insurance/social security in only one jurisdiction. It's therefore not unusual for tax and social security withholding (and reporting) obligations to arise in different jurisdictions.

Understanding these distinctions is crucial if you have employees working abroad and if you are an employer with international workers. It's essential to stay informed and compliant to avoid potential pitfalls in both the UK and abroad.





## Improving the non-reimbursed expenses service

Every year, HMRC handle 1.1 million tax relief claims from employees, regarding their expenses. These claims are currently made through various channels such as online platforms or physical forms, leading to a portion of claims being processed manually.

In order to streamline the process for employees seeking tax relief on their expenses and enable HMRC to automate the claims process, the Government is developing a new online service. This service will allow employees to submit claims for tax relief on all of their expenses in a single, centralized platform.

HMRC will release further details regarding this new service later in the year.

## Payrolling benefit in kind

Benefits in kind, also known as 'perks' or 'fringe benefits', are non-monetary benefits provided by an employer to an employee as part of their overall remuneration package. Examples of these are: company cars, private medical insurance and health and wellness programmes.

The Government has announced that mandatory payrolling of benefits in kind will be in place from April 2026. Some employers already operate this way, and this can be actioned by advising HMRC, prior to the start of the tax year, which benefits you will be payrolling.

### Changes that will occur when you switch from P11D reporting to payrolling benefits in kind:

#### For employers:

- **Reporting method:** Instead of reporting benefits and expenses on P11D forms annually, employers will report them in real-time through their payroll system.
- **Cash flow:** Employers will need to account for the cash flow implications of paying the Class 1A national insurance contributions (NICs) throughout the tax year, rather than as a lump sum after the tax year ends.
- **Administrative burden:** Payrolling benefits may reduce the administrative burden of year-end reporting, as benefits are reported along with regular payroll processes.
- **Accuracy:** Employers must ensure accurate reporting of benefits and expenses throughout the tax year.

#### For employees:

- **Tax deductions:** Employees may see more consistent tax deductions throughout the year, as benefits are taxed in real-time rather than through adjustments at year-end.
- **Visibility:** Employees may have greater visibility into the taxation of their benefits, as they are reflected in their regular payslips.

Under the current system employees pay tax on benefits a year in arrears via a reduction in their tax code. When switching to Payrolling BIKs, it should be noted that in the first year employees will suffer the tax effect of the previous year (via the lower tax code) and have the tax deduction on the benefit in the current year.

More details on payrolling benefits will be issued later this year.