

Late payments of tax and NICs on deemed payments

If intermediaries were not able to calculate the actual amount of the deemed payment for 2008–09 by either 19 April or 19 May, they were instructed to aim to finalise matters as soon as possible after those dates, and send a correction to the Return and accompanying documents with a final payment, or request for repayment.

Interest was charged on late payments from 19 April when the original payment was due, but no penalties were charged for sending the Return late if:

- the P35 *Employer Annual Return* was received by 19 May with question 6 completed and showing remuneration paid during the year, plus an amount on account of the deemed payment, with tax and NICs correctly calculated on that additional figure, and
- it was made clear in a covering letter that the amount was provisional pending finalisation of the deemed payment, and
- correction to the Return and accompanying documents, notifying the correct final amount for the deemed payment and the tax and NICs due was sent to us by 31 January 2010, and
- any additional tax and NICs due as a result of the correction to the Return were paid by 31 January 2010.

If these arrangements are withdrawn, or change, notification will be given.

Further information about the legislation can be found at www.hmrc.gov.uk/ir35 or, contact the 'IR35' Helpline on **0845 303 3535**.

Managed Service Companies

Separate legislation applies to income received from 6 April 2007 by workers providing their services through Managed Service Companies.

A Managed Service Company (MSC) is a company through which a worker provides their personal services and:

- the worker's entire income is not treated as employment income, and
- there is a person who carries on a business of promoting or facilitating the use of service companies (an MSC Provider), and
- the MSC Provider exercises influence or control over the company, or benefits financially on an ongoing basis from the provision of the worker's services, or promotes an undertaking to make good a tax loss.

For the purposes of the legislation, a company means a limited company, a Limited Liability Partnership or a General Partnership.

Deemed employment income/earnings

Where a worker provides their services through a Managed Service Company, the existing rules which outline the boundary between employment and self-employment for tax and NICs purposes do not apply. Payments or benefits received by the worker or an associate, which can reasonably be taken to be in respect of the services of the worker, are treated as employment income and earnings.

On each occasion when the worker or their associate receives a payment or benefit, the Managed Service Company must calculate the deemed employment payment in accordance with the legislation and operate PAYE and Class 1 NICs on the deemed employment payment. Guidance on calculating the deemed employment payment can be found at www.hmrc.gov.uk/employment-status/msc.htm

Please note that NICs only became due on deemed employment payments from 6 August 2007.

Expenses

When calculating the deemed employment payment, a deduction can be made for allowable expenses. Expenses incurred in providing services at the client's premises: for example, travel, subsistence or accommodation costs, are not an allowable expense.

Payment of tax and NICs on the deemed employment payment

A Managed Service Company (MSC) must pay the PAYE and NICs in respect of the deemed employment payment to us on a monthly basis. Where a MSC fails to pay the tax and NICs, and the sum is irrecoverable from the company, we may transfer the debt to a number of third parties. These include:

- the company's director or other office holder or an associate of the company
- the MSC Provider, its directors or other office holders or associates
- a person who encouraged or was actively involved in the provision of the worker's services through the MSC.

Further information about the legislation can be found at

www.hmrc.gov.uk/employment-status/msc.htm

124 – 129 not used - reserved for future use

What to include as gross pay on form P11

The chart which follows tells you what to include as gross pay on form P11 for PAYE and Class 1 NICs purposes. It lists the main type of payments that can be made to employees.

Some entries will refer you to more detailed information elsewhere. This is because there may be special conditions for that type of payment.

If the chart does not show the type of payment you are making or if you are not sure whether to include the payment on form P11, phone the Employer Helpline on **08457 143 143**.

Important Even if the payment does not need to be shown on form P11 it may need to be shown on forms P9D or P11D for tax and Class 1A NICs purposes. For details of what to include on forms P9D or P11D see pages 84 and 85 and the chart at paragraph 136 (pages 86 to 88).

Type of payment	Include on P11 for	
	NICs	PAYE
Car/van fuel supplied for private motoring when the fuel is supplied using your credit card, or garage account or an agency card	No, if the conditions outlined below and over for credit cards, charge cards and so on are satisfied, but there may be Class 1A liability – see the booklet CA33 <i>Class 1A National Insurance contributions on Car and Fuel Benefits</i>	No
Car parking fees for business related journeys paid or reimbursed to employees	No	No
Cars or vans made available for private use	No, but there may be Class 1A liability – see the booklet CA33 <i>Class 1A National Insurance contributions on Car and Fuel Benefits</i>	No
Childcare vouchers: <ul style="list-style-type: none"> • up to £55 a week/£243 per month where the qualifying conditions are met • over £55 a week/£243 per month where the qualifying conditions are met • any amount not meeting the qualifying conditions 	No Yes (the excess over £55 a week/£243 per month) Yes	No No No
Christmas boxes in cash	Yes	Yes
Clothing or uniforms: <ul style="list-style-type: none"> • clothing or uniforms provided by you • payments to employees for non-durable items such as tights or stockings • other payments to employees to purchase clothing or uniforms which can be worn at any time • other payments to employees to purchase clothing or uniforms which can be worn only at work 	No, but there may be a liability for Class 1A, see booklet CWG5(2009) No, but there may be a liability for Class 1A, see booklet CWG5(2009) Yes No	No Yes Yes Yes
Council tax on employee's living accommodation: <ul style="list-style-type: none"> • employee provided with accommodation which is within one of the categories where the value does not have to be included for tax purposes on form P9D or P11D (see the chart on pages 86 to 88) • all other circumstances 	No Yes	No No
Credit card, charge cards and so on – employees use your card to purchase goods or services bought on your behalf: <ul style="list-style-type: none"> • prior authority given by you to make the purchase and the employee explained in advance of the contract being made, and the supplier accepts that the purchase is made on your behalf • above condition not fully satisfied 	No, but there may be a liability for Class 1A, see booklet CWG5(2009) Yes	No No
Credit card, charge cards and so on – employees use your card for expenditure other than goods or services bought on your behalf: <ul style="list-style-type: none"> • payments relating to business expenses actually incurred • readily convertible assets 	No See page 100	No See page 100

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Type of payment	Include on P11 for NICs	PAYE
<ul style="list-style-type: none"> any other payments not reimbursed to you 	Yes, at the date you decide not to seek reimbursement	No
Credit card reward payments made to employees for detecting and withdrawing lost or stolen cards: <ul style="list-style-type: none"> made by you to your own employees made to your employees by a third party 	Yes No	Yes Yes
Damages or similar payment made to an employee injured at work: <ul style="list-style-type: none"> there is a contractual liability to make it all other circumstances 	Yes No	Yes No
Director's personal bills charged to loan account: <ul style="list-style-type: none"> the transaction makes the account overdrawn (or more overdrawn) and it is normal practice for you to pay the director's earnings into the same account all other circumstances 	Yes, on the overdrawn (or additional overdrawn) amount No	No No
Director's remuneration , salary, bonuses, fees and so on, including any advance or anticipatory payments paid, voted or credited	Yes	Yes
Dividends from shares	No	No
Employee liability insurance - reimbursements of payments made by employees for insurance cover or uninsured liabilities (such as legal costs) for claims against the employee arising out of his or her work	No	No
Employment Tribunal Awards	See page 98	See page 98
Eyecare vouchers to obtain: <ul style="list-style-type: none"> an eyesight test corrective appliance (for example, glasses or contact lenses) which the test shows are necessary where <ul style="list-style-type: none"> the eyesight test is required under Health and Safety at Work regulations, and the eyesight test and corrective appliance are available generally to employees 	No	No
Expenses payments or reimbursements covered by a dispensation	See page 89	See page 89
Guarantee payments under the Employment Rights Act 1996	Yes	Yes
Holiday pay	See page 28	See page 28
Honoraria	Yes	Yes
Incentive Awards	See page 24	See page 24
Incidental overnight expenses (IOEs)	See booklet 480 and booklet CWG5(2009)	See booklet 480
Inducement payment such as 'golden hello' to recruit or retain employees	Yes	Yes
Insurance premiums for pension (but see page 62), annuities, or health cover (but see page 93) and so on, paid or reimbursed by you where contract is between: <ul style="list-style-type: none"> you and the insurance provider employee and the insurance provider 	No, but there may be a liability for Class 1A, see booklet CWG5(2009) See 'Personal bills paid' on page 82	No See 'Personal bills paid' on page 82
Loans	No, but there may be a liability for Class 1A, see booklet CWG5(2009)	No
Loans written off	Yes, at time of write off	No

Type of payment	Include on P11 for NICs	PAYE
Long service awards: <ul style="list-style-type: none"> awards in the form of cash or cash vouchers other awards 	<p>Yes</p> <p>No, if they satisfy certain conditions. Ask us for details</p>	<p>Yes</p> <p>See table on page 87</p>
Lost time payments: <ul style="list-style-type: none"> payments made by a third party or by you on behalf of a third party such as payments for jury service all other circumstances 	<p>No</p> <p>Yes</p>	<p>No</p> <p>Yes</p>
Maternity suspension payments made under the Employment Rights Act 1996 to an employee suspended from work on maternity grounds	Yes	Yes
Meal allowances and vouchers: <ul style="list-style-type: none"> cash payments for meals vouchers redeemable for food and drink or a cash alternative vouchers provided for food and drink provided on your business premises or any canteen where meals are generally provided for your staff vouchers redeemable for meals only which cannot be transferred to another person, and <ul style="list-style-type: none"> are worth no more than 15p per working day are worth more than 15p per working day 	<p>Yes</p> <p>Yes (also see pages 25 and 26)</p> <p>No</p> <p>No</p> <p>Yes (on the excess amount – also see pages 25 and 26)</p>	<p>Yes</p> <p>Yes</p> <p>No</p> <p>No</p> <p>No</p>
Medical suspension payments made under the Employment Rights Act 1996 to an employee suspended from work on medical grounds	Yes	Yes
Mobile phone vouchers to obtain one mobile phone for private use	No	No
Mortgage payments met directly by you for employees: <ul style="list-style-type: none"> mortgage provided by you or mortgage contract is between you and mortgagee mortgage contract is between employee and mortgagee 	<p>No, but there may be a liability for Class 1A, see booklet CWG5(2009)</p> <p>Yes</p>	<p>No</p> <p>No</p>
Parking fees at or near the normal place of employment paid for or reimbursed to employees	No	No
Payments in kind (but not readily convertible assets – see page 100) <ul style="list-style-type: none"> which can be turned into cash by surrender such as Premium Bonds, and so on which can be turned into cash only by sale such as furniture, kitchen appliances, holidays and so on 	<p>Yes</p> <p>No, but there may be a liability for Class 1A, see booklet CWG5(2009)</p>	<p>Yes</p> <p>No</p>
Payments you make to an employee whilst he or she pursues a claim for damages against a third party for loss of earnings following an accident: <ul style="list-style-type: none"> employee must repay you, even if the claim for damages is unsuccessful employee not required to repay you 	<p>No</p> <p>Yes, but if the employee later receives damages and repays you, NICs can be refunded</p>	<p>No</p> <p>Yes</p>
Pensions from registered pension schemes employer-financed retirement benefits schemes	<p>No</p> <p>No, if the payment satisfies certain conditions. Ask us for details.</p>	<p>Yes</p> <p>Yes</p>

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Type of payment	Include on P11 for NICs	PAYE
Personal bills paid for goods and services supplied to employees, club memberships and so on: <ul style="list-style-type: none"> contract to supply goods and services is between you and the provider contract to supply goods and services is between the employee and the provider <ul style="list-style-type: none"> – payment made direct to the provider – payment made or reimbursed direct to the employee 	No, but there may be a liability for Class 1A, see CWG5(2009) Yes Yes	No No Yes
Premiums for health cover, pensions, annuities and so on	See 'Insurance premiums'	See 'Insurance premiums'
Prize money paid in cash to employees for competitions you run in connection with your business, which are not open to the public	Yes	Yes
Readily convertible assets: remuneration provided in non-cash form such as stocks and shares, gold bullion, commodities, fine wine and so on	See page 100	See page 100
Redundancy payments	See page 96	See page 96
Relocation payments	See page 92	See page 92
Retirement benefits schemes – payments you make into such schemes <ul style="list-style-type: none"> registered pension schemes employer-financed schemes 	No No	No No
Retirement benefits schemes – lump sum payments out of such schemes <ul style="list-style-type: none"> registered pension schemes employer-financed retirement benefits schemes 	No No, if the payment satisfies certain conditions. Ask us for details	See paragraph 20 See paragraph 20
Round sum allowances	See page 92	See page 92
Securities or interests in securities	See 'readily convertible assets'	See 'readily convertible assets'
Sickness, maternity and other absence from work payments	Yes	Yes
Statutory Sick Pay (SSP), Statutory Maternity Pay (SMP), Statutory Adoption Pay (SAP), Statutory Paternity Pay (SPP)	Yes	Yes
Stocks and shares	See 'readily convertible assets' and 'shares and other securities'	
Subscriptions or fees to professional bodies paid or reimbursed by you which: <ul style="list-style-type: none"> are allowable tax deductions under S343 & S344 ITEPA 2003 are not allowable tax deductions under S343 & S344 ITEPA 2003 	No Yes	No Yes
Suggestion schemes awards to employees	No, if the award satisfies the conditions for exemption from tax. Ask us for details. If you make awards in the form of benefits, see also booklet CWG5(2009)	Awards which satisfy certain conditions are exempt from tax. Ask us for details

Type of payment	Include on P11 for NICs	PAYE
Phone calls and/or rental cost Employer is the subscriber Employee is the subscriber but, employer meets the cost of calls and/or rental: <ul style="list-style-type: none"> phone used exclusively for business use phone used exclusively for private use phone used for both business and private use 	No Class 1 liability, but there may be a liability for Class 1A NICs, see booklet CWG5(2009) No Yes Rental: yes – on the full amount of the rental Calls: yes – on the full amount of the cost of private calls. Any amount in respect of business calls, supported by appropriate evidence, can be excluded	No No See Personal bills paid on page 82 No No
Third party payments made to your employees	See booklet CWG5(2009)	See page 24
Tips and service charges	See page 32	See page 32
Training – payments for such things as course fees, books and so on: <ul style="list-style-type: none"> training is work related or is encouraged or required by you in connection with the employment training is provided for an employee who is leaving to enable them to find alternative employment all other circumstances 	No See page 97 Yes	No See page 97 Yes
Transport vouchers , such as season tickets and so on, provided for: <ul style="list-style-type: none"> employees of a passenger transport undertaking under arrangements in operation on 25 March 1982 where the employee is earning less than £8,500 in the year any other employee 	No Yes	No No (and see page 26)
Travelling time payments	Yes	Yes
Trivial commutations from registered pension schemes	No	Yes
Vouchers which can be redeemed or exchanged for: <ul style="list-style-type: none"> both goods and cash or cash alone goods alone (but not readily convertible assets) use of sporting or recreational facilities readily convertible assets 	Yes Yes No See page 100	Yes (and see page 26) No (and see page 26) No See page 100
Wages, salaries, fees, overtime, bonuses, commission and so on	Yes	Yes

Giving us details of your employees' benefits and expenses

The paragraphs below tell you what forms you have to complete to give us details of your employees' benefits and expenses.

- Paragraph 130 tells you about the form P46(Car) you must send during the tax year, to give us the details we need about certain employees who are provided with a car which is available for private use.
- Paragraphs 131 to 133 tell you about the forms P9D, P11D and P11D(b) you must send at the end of the tax year, to give us the details we need about the expenses you have paid and the benefits provided for your employees during the tax year and the amount of Class 1A NICs you are due to pay. You must send these forms in time to reach your HMRC office by 6 July. You can, if you wish, send them with your Employer Annual Return but if you do, remember that forms P35 and P14 must be sent in time to reach your HMRC office by 19 May.

130 Form P46(Car)

Complete a form P46(Car) or online equivalent to give details of all employees/directors for whom form P11D is appropriate, who are provided with a car which is available for private use.

The completed form P46(Car) must be sent within 28 days of the end of the quarter to 5 July, 5 October, 5 January or 5 April in which **any** of the following take place:

- the employee/director is first provided with a car which is available for private use
- a car provided to the employee/director is replaced by another car which is available for private use
- the employee/director is provided with a second or further car which is available for private use
- a car provided to the employee/director is withdrawn and not replaced
- an employee/director provided with a car available for private use who was previously an employee for whom form P9D was appropriate, becomes an employee for whom form P11D is appropriate.

Full guidance and information on the tax and NICs aspects of company cars can be obtained from the following publications:

- *480 Expenses and Benefits - A Tax Guide*
- *CWG5(2009) Class 1A National Insurance contributions on benefits in kind*
- *CA33 Class 1A National Insurance contributions on Car and Fuel Benefits.*

131 Form P11D

Complete a form P11D or online equivalent Return (see page 4) to give details of all expenses payments and the cash equivalent of any benefits provided for the following types of employees, or their families, dependants and guests.

- Employees who earn at a rate of £8,500 or more in the year. Where an employee has more than one employment with you or with any other business under the same control, you must fill in form P11D if the total of his or her earnings from all such sources are at a rate of £8,500 or more in the year.

To work out whether an employee has earned at a rate of £8,500 or more in the year:

- take the employee's annual rate of gross pay
 - deduct any payments to which the employee is entitled to tax relief under the 'Net pay arrangement', that is contributions to a registered pension scheme; authorised donations to a payroll giving scheme for charities
 - add all expenses payments and benefits provided.
- Employees who are directors of another company under the same control.
 - Directors of a company or business – excluding directors covered by the exemption below – but including:
 - anyone who manages the affairs of a body or society
 - anyone on whose instructions directors usually act, but not those who are only professional advisers.

You do **not** have to fill in a form P11D for either full-time working directors or directors of a non-profit making body, if they satisfy **all** of the following conditions:

- they earn at a rate of less than £8,500 in the year
- they do not have a material interest in the company. Broadly speaking they do not directly or indirectly control more than 5% of the share capital
- they do not have any other directorships with another business under the same control as yours, for which a P11D is needed.

P11Ds are also used to help you calculate the amount of Class 1A NICs that may be due on taxable benefits you provide to your employees. See *CWG5(2009) Class 1A National Insurance contributions on benefits in kind.*

Guidance on what to enter on form P11D is given at paragraph 134.

132 Form P11D(b)

Complete a form P11D(b) or online equivalent:

- to confirm that by 6 July all forms P11D you should have completed have been sent to us
- to declare the total amount of Class 1A NICs you are due to pay.

The return date for both the P11D and the P11D(b) is 6 July following the end of the year in which the benefits and expenses have been provided.

The P11D(b) can also be used to make adjustments to the total benefits liable to Class 1A NICs taken from forms P11D.

133 Form P9D

Complete a form P9D to give details of the expenses payments and benefits of more than £25 that have not been treated as pay for employees who:

- are not directors, and
- earned at a rate of less than £8,500 in the year. Paragraph 131 shows you how to work out whether an employee has earned at a rate of less than £8,500 in the year.

Class 1A NICs are not payable on benefits you report on forms P9D.

Guidance on what to enter on form P9D is given at paragraph 134.

134 What to enter on forms P9D or P11D

Complete forms P9D or P11D to give us details of your employees' benefits and expenses. The chart at paragraph 136 (pages 86 to 88):

- sets out the various types of expenses that could be paid to employees and benefits that could be provided to them
- tells you whether or not you should enter the particular type of expense or benefit on form P9D or P11D.

135 Reporting termination packages where amounts over £30,000 are taxable

You need to report packages which are taxable only on amounts over £30,000. You do not need to do this if the package consists of cash only or, where it includes non-cash benefits, if it has an estimated value of £30,000 or less.

You should make a report to us, at the latest by 6 July following the tax year in which the termination takes place, if a package is provided, which includes non-cash benefits and is estimated, over its lifetime, to exceed £30,000. In working out the cash equivalents of non-cash benefits for future years,

so as to determine whether a report is needed or not, you only need make reasonable estimates using the rules in force in the year in which termination occurs.

You do not need to wait until 6 July if you want to send the report earlier. You can send it at any time after the termination has occurred.

You can prepare your report in whichever way suits you best. There is no prescribed form or format. A copy should always be given to the employee.

If you make a report it must contain the following information:

- the total estimated value of the package
- details of the cash payments made and the cash equivalents of non-cash benefits provided in the year in which the termination took place (where the report is made in the tax year best estimates should be supplied)
- an estimate of the cash payments to be made in future years
- an estimate of the total lifetime of the package with details of any contingency factors (for example, payments or benefits ceasing if the employee finds alternative employment)
- details of the type of benefits to be provided after the first year and the terms of their provision (for example, car for three years, medical insurance for ten years, and so on).

If, after you have made your report there is a variation in the package and the total value increases by more than £10,000 you will need to make another report. This has to be made by 6 July following the end of the tax year in which the variation takes place. The report should only contain details of the variation.

A report will also need to be made if, having originally decided that you do not need to make a report, there is a variation in the package so that it includes non-cash benefits and exceeds £30,000. In these circumstances, you should send a report to us at the latest by 6 July following the end of the tax year in which the change takes place. The report, however, should be for the year in which termination occurred as if one had been required in the first place.

If you make such a late report remember to provide a copy to the employee.

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136 P9D/P11D Chart

Important This chart gives general guidance only. It does not cover all expenses or benefits. Booklet 480 *Expenses and Benefits – A Tax Guide*, gives more information as does the *P11D Guide*. If you are not sure what to enter on P9D or P11D contact us.

Expenses and benefits can also attract a Class 1 or Class 1A NICs liability. Guidance on Class 1A NICs can be found in CWG5(2009) *Class 1A National Insurance contributions on benefits in kind*.

The chart on pages 95 to 97 also gives information on when Class 1A NICs may be due on payments of expenses and benefits.

Type of expense or benefit	P9D	P11D
Assets given to the employee, or transferred at less than market value	Yes	Yes
Assets provided for the employee's use such as yachts, aircraft, furniture, kitchen appliances and so on	No	Yes
Benefits or payments:		
• which could be turned into money	Yes	Yes
• any other benefit	No	Yes
Business expenses met wholly or partially by you	Yes	Yes
Car or van fuel supplied for private motoring in company vehicles	No	Yes
All Car or van fuel and all other benefits supplied for private vehicles	No	Yes
Car parking facilities:		
• at or near the place of work	No	No
• elsewhere	No	Yes
Cars or vans made available for private use	No	Yes
Childcare help provided by:		
• childcare vouchers up to £55 a week/£243 per month where the qualifying conditions are met	No	No
• childcare vouchers over £55 a week/£243 per month where the qualifying conditions are met	Yes (the excess over £55 a week/£243 per month)	Yes (the excess over £55 a week)
• childcare vouchers (any amount) not meeting the qualifying conditions	Yes	Yes
• places in qualifying nurseries or playschemes	No	No
• other registered or approved childcare up to £55 a week/£243 per month	No	No
• other registered or approved childcare over £55 a week/£243 per month	No	Yes
• any other means	see www.hmrc.gov.uk/paye/stepbystep-childcare.htm	
Credit card, charge card payments made by you or credit account payments made by you	Yes	Yes
Entertaining allowances	Yes	Yes
Expenses in providing any pension, annuity, lump sum, gratuity or similar benefit which is given to an employee or to his or her spouse, civil partner, children or other dependants on retirement or death	No	No
Expenses payments or reimbursements:		
• covered by a dispensation	No	No
• not covered by a dispensation	Yes	Yes
Food, groceries, farm produce and so on	No	Yes
Goods or services (including professional services) supplied at less than their full cost	No	Yes

Type of expense or benefit	P9D	P11D
Holidays	No	Yes
Incidental overnight expenses (IOEs)	No	No
<ul style="list-style-type: none"> • within the terms of the special exemption (see booklet 480) • in all other circumstances 	Yes	Yes
Income Tax paid but not deducted from a director	No	Yes
Income Tax paid in respect of a readily convertible asset if the tax is not recovered from the employee within 90 days	Yes	Yes
Living or other accommodation provided by you	Yes	Yes
<ul style="list-style-type: none"> • services provided with it such as heat, light, repairs, domestic services • value of the accommodation itself <ul style="list-style-type: none"> – where there is a special threat to the security of the employee who lives there as part of special security arrangements – where it is necessary for the employee to live in that accommodation to do his or her job properly or it is provided so that the employee can do his or her job better and it is customary for employers to provide living accommodation for this type of job – in all other circumstances 	No	No
	No	No
	Yes	Yes
Loans (including notional loans, that is, securities acquired for less than market value) that are:		
<ul style="list-style-type: none"> • interest-free or at low interest • written off 	No	Yes
	Yes	Yes
Long service awards in the form of:		
<ul style="list-style-type: none"> • cash or cash vouchers • readily convertible assets • non-cash awards which satisfy certain conditions • other awards 	No – see page 81 No – see page 100 Ask us Yes	No – see page 81 No – see page 100 Ask us Yes
Meals provided by you:		
<ul style="list-style-type: none"> • at a canteen open to your staff generally • on your business premises, on a reasonable scale and all employees are able to obtain free or subsidised meals or meal vouchers • in any other circumstances 	No	No
	No	No
	No	Yes
Meal vouchers given:		
<ul style="list-style-type: none"> • which cannot be transferred to another person, are used only for meals and are not worth more than 15p for each working day • in any other circumstances 	No	No
	Yes	Yes
Medical, dental treatment or insurance to cover the cost of such treatment:		
<ul style="list-style-type: none"> • outside the UK for treatment necessary while an employee was abroad • in all other circumstances 	No	No
	No	Yes
Mobile phones , meaning one mobile phone used by an employee for private calls	No	No

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Type of expense or benefit	P9D	P11D
NICs (employee's share) borne by you	Yes	Yes
Office accommodation, supplies or services such as ordinary office accommodation, equipment, typists, stationery and so on provided for an employee on your premises and only used by the employee in doing his or her job	No	No
Private expenses met wholly or partially by you	Yes	Yes
Private phone rental and costs of calls	Yes	Yes
Relocation expenses payments and benefits: <ul style="list-style-type: none"> • expenses which are not exempt • exempt expenses of £8,000 or less • exempt expenses in excess of £8,000 	Yes No Yes	Yes No Yes
Retirement benefits schemes (employer-financed) – payments by employer	No	No
Round sum allowances	See page 92	See page 92
Scholarships awarded to students because of their parents' employment	No	Yes
Security measures provided by you	No	Yes
Social functions: <ul style="list-style-type: none"> • annual functions such as Christmas dinners, summer parties and so on, open to staff generally where the cost per head of the function is £150 or less. (Where more than one such function is held in a year and the aggregate cost per head of the functions is more than £150 per head, exclude details of any function(s) that total £150 or less and include details of all other functions) • any other type of function 	No No	No Yes
Sporting facilities such as shooting, fishing and horse racing: <ul style="list-style-type: none"> • covered by special exemption • all other circumstances 	No No	No Yes
Subscriptions and professional fees	Yes	Yes
Third party payments to discharge employee's personal liability	Yes	Yes
Transport vouchers , tickets, passes and so on of any description which provide transport by any passenger transport undertaking given to <ul style="list-style-type: none"> • employees of passenger transport undertakings under arrangements in operation on 25 March 1982 • any other employee or director 	No Yes	Yes Yes
Vouchers , meaning any voucher, stamp or similar document which can be exchanged for money, goods or services except vouchers on which PAYE has already been operated. Do not include vouchers that can only be used to provide benefits that are exempt from tax. For example, any non-cash vouchers or credit tokens provided with a 'qualifying mobile phone' to facilitate its use.	Yes	Yes

Dispensations

137 What is a dispensation?

A dispensation is a notice sent to you by your HMRC office, authorising you not to report on forms P11D the expenses payments and benefits specifically covered by the dispensation. Your HMRC office will issue the dispensation if they are satisfied that:

- your employees would be able to obtain a deduction for the expenses or benefits in arriving at their tax liability, and
- payments are properly controlled by you.

A dispensation can cover any type of expense payments and most benefits in kind. For instance:

- qualifying travel expenses
- reasonable scale rate payments for subsistence
- entertaining
- subscriptions to professional bodies or learned societies.

The following cannot be included in a dispensation:

- company cars and company vans that are taxable
- private medical insurance
- cheap loans
- round-sum allowances
- mileage allowance payments to those who use their own cars for business travel.

138 How to apply for a dispensation

To apply for a dispensation you can either:

- complete a form (P11DX) and send it to your HMRC office
- write to your HMRC office setting out
 - the employees or groups of employees for whom you would like a dispensation
 - the types and amounts of expenses payments or reimbursements which you wish to be covered by the dispensation
 - your system for controlling and authorising payments of expenses and reimbursements.

Your HMRC office will then let you know what further information, if any, is needed for your request to be considered.

You can get further information and an application form P11DX from:

- your Employer CD-ROM
- www.hmrc.gov.uk/forms/p11dx.pdf
- us.

139 Using a dispensation for NICs purposes

If you have a dispensation for tax purposes, you may also take it into account for NICs purposes provided that the conditions under which it was issued have not changed. When you take account of a dispensation for NICs purposes, we will accept it as evidence that the payments it covers:

- are expenses incurred in carrying out the employment, and
- do not need to be included in gross pay for NICs purposes.

Class 1A NICs are not payable on benefits in kind included in a dispensation.

140 Information and guidance for holders of a dispensation

Note that:

- a dispensation is only valid in relation to
 - the circumstances disclosed before it was issued
 - the types of expenses payment or reimbursements it covers
- you must inform us if
 - your system for controlling payments alters, or
 - the amount(s) of any scale rate payments included in the dispensation change
- a dispensation normally continues to be effective until we withdraw it.

PAYE Settlement Agreements

A PAYE Settlement Agreement (PSA) is an agreement between you and your HMRC office under which you agree to pay the tax in a lump sum on certain expenses payments and benefits in kind you give your employees. You do not have to include items covered by a PSA on form P9D or P11D.

In addition to making lump sum payments of tax, you can also make lump sum payments of NICs on items included in PSAs by paying Class 1B contributions.

PSAs normally apply to items which are:

- minor
- given by you on an irregular basis, or
- where it is impracticable for you to apply PAYE to them or include them on forms P9D or P11D.

PSAs do not apply, for example, to wages and salaries.

To find out more go to

www.hmrc.gov.uk/pay/exb-intro-psa.htm

More information about Class 1B NICs

Class 1B NICs are payable on PSAs at the same time as tax, using the same payment slip.

Class 1B NICs are payable at the appropriate secondary employer's percentage rate on the total value of:

- all items covered by the PSA which would give rise to a Class 1 or Class 1A NICs liability, **and**
- the tax payable by the employer under the PSA.

For further details, see

www.hmrc.gov.uk/pay/exb-intro-psa.htm

Chapter 5

If one of your employees fails to qualify for SSP, SMP, SAP or SPP because their average weekly earnings are too low, you will need to reassess their average weekly earnings taking account of items covered by a PSA which would have given rise to a Class 1 NICs liability.

For more information on calculating an employee's average weekly earnings for SSP, SMP, SAP or SPP purposes, see Employer Helpbooks:

- E14 *Employer helpbook for Statutory Sick Pay*
- E15 *Employer helpbook for Statutory Maternity pay*
- E16 *Employer Helpbook for Statutory Adoption Pay*
- E19 *Employer Helpbook for Statutory Paternity Pay.*

Taxation of mileage expenses payments

(See paragraph 141 for the NICs treatment of motoring expenses payments and passenger payments.)

You can pay up to an 'approved amount' tax free to employees using their own vehicles for business travel. This is calculated as follows:

Kind of vehicle	Rate
Car or van	40p per mile for the first 10,000 business miles 25p per mile after that
Motor cycle	24p per business mile
Cycle	20p per business mile

There are two main conditions for payments to be free of tax:

- they must be paid to the employee (not merely for the benefit of the employee) for the expenses of business travel in the employee's privately owned car, van, motor cycle or cycle
- they must not exceed the number of business miles multiplied by the appropriate mileage rate.

Payments that meet these two tests are known as approved mileage allowance payments (AMAPs).

If you do not pay more than the approved amount, all payments are tax-free AMAPs. You do not need to include them on form P9D or form P11D.

If you pay more than the approved amount, the excess will be charged to tax and you must include it on form P9D or form P11D. Excess mileage payments can no longer be included in PSAs.

Meaning of business travel

This is explained in booklet 490 *Employee travel – A Tax and NICs Guide for Employers.*

Associated employments

Where an employee gets motoring expenses payments from two or more associated employments, aggregate the mileage to work out when 10,000 business miles is reached.

Dispensations

Mileage expenses payments are no longer included in dispensations.

Any existing dispensation or part of a dispensation that related to payment of expenses for business travel in employees own vehicles ceased to be effective after 5 April 2002. Other parts of the dispensation are not affected.

Record keeping

Even if you pay amounts that are at or below the AMAPs limit and so are not taxable, you will still need to keep records of the payments made and the business journeys to which they relate.

Passenger payments

There is an additional exemption from tax for 'passenger payments'. These are payments you make to employees travelling on business journeys specifically because they carry as passengers fellow employees for whom the journeys are also business travel. The exempt amount is 5p per mile per fellow employee travelling as a business passenger.

The exemption applies only where the vehicle used is a car or a van, but is not restricted to employees' privately owned vehicles. It can also apply where the vehicle used is a company car or van, provided the employee is chargeable to tax on car or van benefit.

Exempt passenger payments do not need to be included on form P9D or form P11D (though any excess does). But you should keep adequate records to demonstrate that payments made satisfy the conditions for exemption.

Treatment of expenses payments for NICs purposes

If you pay an employee expenses, you must include them in gross pay unless they are specific and distinct payments of, or contributions towards, expenses actually incurred by the employee in carrying out their work. If you pay an employee expenses for using a privately owned vehicle for business purposes, there are special rules for working out whether you need to include these payments in gross pay, see paragraph 141.

Evidence

To prove that they are expenses actually incurred by employees in carrying out their work you must be able to provide evidence of the actual business expense.

The type of evidence will depend on the item of business expenditure. For example, evidence could include:

- a log of business phone calls or visits
- credit card bills
- receipts
- work diaries showing the employee's engagements
- HM Revenue & Customs dispensations
- a representative survey of the costs involved (that is a scale rate).

This is not a complete list and any evidence will be considered.

Using a scale rate

Payments based on a scale rate, which covers the costs likely to be incurred, should not be included in gross pay.

For scale rate payments to be excluded from gross pay the scheme you operate must satisfy all the following conditions:

- the scheme must not have an overall profit element
- the payments must be based on an accurate survey of the costs involved
- the scheme must allow for a movement in prices
- the payments must be reasonable in relation to the employment involved
- the employee must make a claim for each payment made.

Details of the scheme and its provisions must be available for inspection. NICs will be charged on all payments made under the scheme if the scheme is not supported by written evidence or is not considered sound.

If the payment you make is higher than the established scale rate include the excess in gross pay.

141 NICs on motoring expenses payments

There is a statutory amount which can be paid to employees who use their own cars, vans, motor cycles or cycles for business travel without incurring a NICs liability. If you pay more than the statutory NICs free amount, the excess amount must be added to any other earnings the employee receives in the earnings period in which you make the motoring expense payment. Class 1 NICs are then calculated on the employee's total earnings.

To work out whether NICs are due, you must multiply the amount of business miles travelled by the statutory mileage rate and compare that figure to the amount that you have paid. For privately owned cars and vans, the rate to use is the one which applies to the first 10,000 business miles. This rate is shown in the table on page 90 and must be used irrespective of the number of business miles actually travelled. In working out whether NICs are due, you must include in the calculation of the NICs free amount all business miles travelled, even if you do not pay the employee for all of his business mileage. For employees who use their own motor cycles and cycles for business travel, or who carry passengers, use the appropriate rates on page 90.

The rules for:

- paying the new passenger rate and
- what counts as business travel

are the same for both tax and NICs, see page 90.

Further guidance on these rules for NICs, including examples of how NICs are calculated on motoring expenses payments, is included in booklet 490 *Employee travel – A tax and NICs guide for employers*.

Payments towards additional household costs incurred by employees who work at home

For both PAYE and NICs purposes

Do not include in gross pay any payments made in respect of reasonable additional household expenses incurred by employees in carrying out duties of their employment at home.

You may pay up to £3 per week (£156 per year) without supporting evidence of the costs. If you choose to pay more, you must retain supporting evidence to show that the payment is wholly in respect of additional household expenses incurred by the employee in carrying out the duties at home.

142 – 147 not used – reserved for future use

Round sum allowances

If you pay a round sum allowance to an employee, you must treat the payment as follows.

For NICs purposes

Where a **specific and distinct business expense** is identified, do not include the business expense element of the allowance in gross pay.

If you cannot identify the business expense include the whole allowance – whether or not an expense is actually incurred – in gross pay.

For PAYE purposes

Include the whole allowance in gross pay. Where a round sum allowance is **clearly** meant to do no more than reimburse an employee for an expense actually incurred in doing his or her job, and the expense was incurred only because of the job, we may be prepared to authorise you to pay the expense without deducting PAYE. However, before doing this we will need to be satisfied that the allowance is equivalent to the reimbursement.

If you pay a round sum allowance which you believe may qualify to be paid without deduction of PAYE, you should let us have details of the amount you pay and what the allowance is intended to cover.

Where we agree that you may pay some or all of an allowance without deducting PAYE, you must:

- nevertheless include the allowance when completing form P9D or P11D
- notify your HMRC office of any change to
 - the amount of the allowance
 - the circumstances in which the allowance is paid.

Travel and subsistence payments

The rules on the tax and NICs treatment of business travel by employees are explained in detail in booklet 490 *Employee travel – A tax and NICs guide for employers*.

Chapter 9 of booklet 490, covers employers' reporting requirements and explains when you need to operate PAYE on payments for travel and subsistence.

Chapter 6 of booklet 490 explains the limited circumstances in which you need to account for NICs on travel and subsistence payments.

Relocation allowances or expenses

Payments you make to or for an employee who has to move residence as a result of being relocated in the UK by you, should be treated as follows.

For PAYE purposes

Do not include in gross pay any exempt relocation expenses payments.

What constitutes an exempt expense payment is described at Chapter 5 of booklet 480 *Expenses and benefits – A tax guide*.

Include in gross pay any expenses that are not exempt. Amongst other things this will include any payments not listed as eligible in Appendix 7 of booklet 480, *Expenses and benefits – A tax guide*.

For NICs purposes

The NICs treatment for the payment of relocation allowances/expenses changed with effect from 6 April 1998.

Follow the guidance below, appropriate to whether an employee started work at the new location before, on, or after 6 April 1998.

Employee started work at the new location before 6 April 1998

Follow the guidance below, appropriate to whether or not you operate a scheme for making relocation payments.

You operate a scheme for making relocation payments

Details and the provisions of your scheme must be available for inspection; ask the National Insurance Contributions Office for advice if you have any doubts or queries.

NICs are not payable if you base your payments on an estimate of the costs likely to be incurred and **all** the following conditions are satisfied:

- your scheme has no overall profit element
- payments are based on an accurate survey of the costs involved
- your scheme is designed to allow for movements in prices
- the payments are reasonable in relation to the employment involved.

In **any** of the following circumstances, NICs are due on all the payments you make. Your scheme:

- does not satisfy all of the above conditions
- is not supported by written evidence
- is not considered sound.

You do not operate a scheme for making relocation payments

Where you do not operate a scheme for making relocation payments:

- include in gross pay
 - any payment (either periodic or lump sum) you make to cover a **general** increase in an employee's cost of living
 - any payment (either periodic or lump sum) you make to an employee for the **extra** cost of occupying **improved** accommodation
 - any payment or reimbursement you make to an employee for expenses which were **not absolutely necessary**.
- do not include in gross pay
 - any payment (either periodic or lump sum) you make to cover a **specific** additional expense incurred by the employee as a result of the move (for example, higher mortgage or rent)
 - any payment (either periodic or lump sum) you make to an employee for the extra cost of occupying **comparable** accommodation but in a higher housing cost area
 - any payment or reimbursement you make to an employee for expenses which were **absolutely necessary** (for example, solicitor's bill, estate agent's fees, removal expenses.)

Employee started work at the new location on or after 6 April 1998

Do not include in gross pay any expenses payments that are eligible for tax relief as listed in Appendix 7 of booklet 480 *Expenses and benefits – A tax guide*.

Include in gross pay any relocation expenses you pay that are not eligible for tax relief as listed in Appendix 7.

If you provide:

- a relocation package worth more than £8,000
or
- relocation benefits

see CWG5(2009) *Class 1A National Insurance contributions on benefits in kind*.

If you make any payment towards a relocated employee's council tax ask the Employer Helpline on **08457 143 143** for advice.

Allowances or expenses to employees relocating abroad

For both PAYE and NICs purposes

Do not include in gross pay any **exempt** allowances and expenses paid to employees relocating abroad.

Allowances or expenses to employees working abroad

For both PAYE and NICs purposes

Treat payments of expenses to employees working abroad like other expenses payments. In addition, include in gross pay:

- payments described as compensation for working abroad
- sums paid as an inducement to work abroad
- any bonus paid for working abroad.

If you pay an employee a general allowance to compensate for the higher cost of living abroad, commonly known as a cost of living allowance/cost of living addition, that sum must be included in gross pay.

But, do not include in gross pay any payment you make towards expenses incurred in:

- providing an employee with medical treatment outside the UK where the need for the treatment arises while the employee is outside the UK working for you
- providing insurance for the employee against the cost of such treatment.

You will need to get advice if you pay the travelling expenses for employees and/or their families returning to the UK on home leave.

Contact the Employer Helpline on **08457 143 143**.

Payments you make when an employee stops working for you

The guidance below tells you what you should do if you make additional one-off payments such as on redundancy or retirement. Guidance on 'standard' payments such as salary, wages, SMP, SAP, SPP and so on is given on page 15.

148 Type of payment

The treatment of a payment made when an employee stops working for you varies according to the type of payment. This is true for both PAYE and NICs purposes.

A **single payment** is often made up of more than one element. For example, one payment might cover:

- redundancy pay
- accrued holiday pay, **and**
- a payment in lieu of notice.

Each element must be considered **separately**. First decide the appropriate tax and NICs rules to apply to each element. Then add these separate results together.

For PAYE purposes

Most payments fall into one of the following three categories:

- payments which are taxable in full
- payments which are taxable only on amounts over £30,000
 - if there is more than one sum in this category, you must total all such payments before applying the £30,000 limit
 - if payments are made by instalments, the exemption does not just apply to the year in which the termination takes place. Any unused balance after setting off both cash payments and non-cash benefits may be carried forward to set against payments in a later year
- payments which are completely tax-free.

For NICs purposes

Payments are either included or not included in gross pay.

149 Action to take when you make such payments

The chart on pages 95 to 97 lists the most common elements included in a leaving payment, and tells you what the appropriate tax and NICs treatments are.

If you need more information about how to value non-cash benefits, see Chapter 27 of booklet 480 *Expenses and benefits – A tax guide*.

Contact us for guidance on calculating the taxable amount if:

- you intend to provide anything other than cash when an employee leaves – for example, an asset (such as a car) or the use of an asset
- any payment (or part payment) is to be paid by a third party, for example, another employer.

If you are not sure which list entry applies to the type of payment, contact the Employer Helpline on 08457 143 143 for PAYE and NICs advice.

Type of payment	Include in gross pay for	
	NICs purposes	PAYE purposes
<p>1 Payment made under terms and conditions of employment – unless the payment is listed separately later in this chart <i>'Terms or conditions' means anything governing the employment relationship so, as well as any written contract, verbal terms, Handbooks and Agreements may well be included.</i></p> <p>For example:</p> <ul style="list-style-type: none"> • compensation for loss of office provided for under terms or conditions • accrued pay due • pay during a period of notice. <p>If it is your normal practice to make a payment on termination, it should be treated in the same way as one made under terms or conditions (even if there is no legal obligation to pay it).</p> <p>Note: Payments in lieu of notice:</p> <ul style="list-style-type: none"> • paid under a legal entitlement (or paid automatically) • paid under an employer's discretion which is in terms and conditions • paid as damages. <p><i>Redundancy payments are dealt with at 6 on page 96</i></p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>see 7</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>see 7</p>
<p>2 Lump sums paid on retirement or death from:</p> <ul style="list-style-type: none"> • a pension scheme registered by HM Revenue & Customs, or • an employer-financed retirement benefits scheme. 	<p>No</p> <p>No if the payment satisfies certain conditions. Ask us for details.</p>	<p>No</p> <p>See paragraph 150</p>
<p>3 Other lump sums paid on retirement</p>	<p>Include only earnings received from the employment.</p>	<p>Yes in full but see paragraph 150</p>
<p>4 Other lump sums paid on the death of an employee</p>	<p>No</p>	<p>Yes in full but see paragraph 150</p>
<p>5 Lump sums to compensate for loss of employment through disability, injury, or ill health which prevents the employee carrying out the duties of the employment. Where such a payment is over £30,000, you may wish to agree with us before you pay the whole amount tax-free</p>	<p>No</p>	<p>No</p>

Type of payment	Include in gross pay for NICs purposes PAYE purposes	
<p>6 Payments for redundancy</p> <ul style="list-style-type: none"> • due under statutory redundancy payment rules, or • paid from your non-statutory scheme to compensate for loss of employment by reason of redundancy. <p><i>Redundancy has a special legal meaning. Broadly, there must be a reduced need for employees which causes the termination of the employment.</i></p> <p>This would not include, for example, a payment in lieu of notice provided for by such a scheme.</p> <p>The redundancy may be indirect. For example, an employee leaves as a result of a reduced need for employees elsewhere in the business.</p>	No	On amounts over £30,000 only. See also paragraphs 148 and 151
<p>7 Payments made as damages</p> <p>if the termination was a breach of contract. For example:</p> <ul style="list-style-type: none"> • you did not give the employee proper notice, and there was no entitlement or option to make payment in lieu of notice. A payment in lieu then made is damages for the breach • you agree, or the Courts or an Employment Tribunal rule, that the employee was unfairly or wrongly dismissed. If you pay something which is due under the terms or conditions of employment, it will not be damages. For example, you may be ordered, or agree as part of a settlement of damages, to pay wages due under such terms. In these circumstances that element of the payment must be included in gross pay for NICs and PAYE purposes. 	No	On amounts over £30,000 only. See also paragraphs 148 and 151
<p>8 Payments for the employee giving a restrictive covenant</p> <p>A restrictive covenant is an undertaking which restricts the employee's conduct.</p>	Yes	Yes
<p>9 Employee's legal costs</p> <p>These are costs incurred in bringing a claim to compensation for loss of employment.</p>	No	May be tax free, ask us about Extra Statutory Concession A81
<p>10 Cost of 'outplacement counselling'</p> <p>This includes such things as:</p> <ul style="list-style-type: none"> • a course or advice to assist the employee in finding new employment • a course to help the employee adjust to the termination of employment <p>provided that the counselling</p> <ul style="list-style-type: none"> • is generally available to employees. <p>Reimbursed costs and associated travelling expenses are treated in the same way.</p>	No	No

Type of payment	Include in gross pay for	
	NICs purposes	PAYE purposes
<p>11 Cost of retraining courses</p> <p>This covers the payment or reimbursement of retraining course expenses for an employee who is about to leave, or who has recently left your employment. The course must be:</p> <ul style="list-style-type: none"> • full time, or substantially fully • last for no more than one year, and • be designed to provide the employee with skills or knowledge which will help them to find alternative employment (including self-employment). <p>There are further conditions relating to the time when the employee starts the course, and the period for which the employee has worked for you ask us for details.</p>	No	No
<p>12 Pension</p> <p>From registered pension schemes Employer-financed retirement benefit schemes</p>	No No if the payment satisfies certain conditions, ask us for details	Yes Yes

For NICs purposes

If you make payment:

- **when the employee leaves**, work out NICs based on the regular earnings period for the employment
- **after the employee has left**, work out NICs based on a weekly earnings period. If the payment is made together with a standard payment, treat it as an 'irregular sum' and follow the rules on page 15.

For PAYE purposes

Where no tax is due (because the payment is not taxable or the payment is a 'taxable on amounts over £30,000' payment below this limit) do not include in gross pay on either form P11 or form P45.

Where tax is due (because the payment is taxable in full or the payment is a 'taxable on amounts over £30,000' payment above this limit), and:

- you make the payment to the employee **when or before the employee leaves**
 - include the taxable amount in gross pay on form P11 and operate PAYE in the normal way
 - include the taxable amount in gross pay on form P45
 - write to us enclosing Part 1 of the form P45 advising us of the amount and date of the lump sum payment; we can then contact the employee if any repayment is due
- you make the payment to the employee **after the employee leaves**
 - include the taxable amount in gross pay on form P11 for the tax week or month number

in which you make payment

- operate PAYE by using Code BR (non-cumulatively)
- do not issue a further form P45. Instead write to us advising us of the amount and date of the lump sum payment and the amount of tax deducted
- provide the employee with a copy of the letter you send to us.

Guidance on reporting termination packages where amounts over £30,000 are taxable is given at paragraph 135.

150 Lump sum payments on retirement or death which are not from registered schemes

A lump sum retirement or death payment will be tax-free if it is from an employer-financed scheme, and:

- in the past the employee has been charged to tax on the employer contributions which funded the lump sum and no employer contributions have been made since 5 April 2006, or
- it is a payment on death which happened as a result of an accident whilst the person was an employee (including accidents outside work), or
- it is for ill-health or disablement during service.

Where a lump sum retirement or death payment is not tax free and it is paid to any person or body other than an individual (for example, to a club or society) the payer is charged to tax at 40% and PAYE does not apply.

Certain payments from overseas retirement benefit schemes may be tax-free. If you think this may apply, ask us about Extra Statutory Concession A10.

151 Foreign service

A payment which is 'taxable on amounts over £30,000' may qualify for an **additional** Income Tax relief. This relief applies if, during the employment, there was 'foreign service'. Broadly, this means that the employee was not '**resident and ordinarily resident**' in the UK at some time during the employment. If you think this relief may apply, you may wish to speak to us before taking account of any relief.

Employment Tribunal Awards

The guidance below tells you what you should do if an Employment Tribunal (in Northern Ireland, an Industrial Tribunal) requires you to make payments to an employee under:

- a reinstatement order or a re-engagement order, or
- an order for the continuation of employment, or
- a protective award.

Payments due under such awards count as gross pay for both NICs and PAYE purposes. See paragraphs 152 to 154 for details.

You must calculate Class 1 NICs and PAYE tax on the full amount of the award. That is, on the amount awarded before any deductions ordered by the tribunal. If you do not know the full amount of an award, contact the Clerk to the tribunal that made the award.

If the actual amount you have to pay the employee is less than the amount of NICs and PAYE tax due on the full amount of the award, see paragraph 11 on page 17 of this guide. This gives guidance about recovering underpayments of NICs and PAYE tax from an employee.

152 Reinstatement order or re-engagement order

If a Tribunal decides that an employee was unfairly dismissed, it may order the employer to pay notional 'arrear of pay' to the employee relating to a period when the employment did not exist. Such amounts count as gross pay for NICs purposes. For PAYE purposes, the payment is taxable on amounts over £30,000 only (see also paragraph 148).

For NICs purposes

Payment made to an employee

Where you make a payment under an order to an employee:

- you must treat it as a separate payment and not add it to any other payment of earnings you make to the employee at the same time
- assess the amount of NICs due on the payment using an earnings period which is the longer of
 - the period to which the order relates, or
 - a week.

Use this earnings period no matter how you make the payment that is, in a lump sum or by instalments.

- Use the contribution Table letter, NI percentage rates and earnings limits current at the time you make payment (or when the payment is due to be made if nothing is actually paid because of adjustments to the gross amount by the tribunal).
- Record the payment, NICs details etc, on the P11 in the tax week/month in which you make payment. This means that if you make another payment of earnings to the employee at the same time, you will have two lots of entries for the same tax week/month.

Payment made to a director

Where you make a payment under an order to a director:

- add the amount of the payment to any other earnings paid to date in the year
- assess the amount of NICs due on the total amount of earnings to date
- use the earnings period which you are using to assess NICs on any other payments you make to the director that is, an annual earnings period or a pro-rata annual earnings period. For further information, see the booklet CA44 *National Insurance for company directors*
- use the contribution Table letter, NI percentage rates and earnings limits current at the time you make payment
- record the payment, NICs details etc, on the P11 in the normal way.

For PAYE purposes

- Treat the employee as a new employee and follow the procedures at Employer Helpbook E13 *Day-to-day payroll*.
- Operate PAYE at the week or month number that you make any payment(s).

153 Order for the continuation of employment

A tribunal may order that:

- an employee's employment must continue whilst it deals with a complaint of unfair dismissal, and
- specify the amount that the employer must pay

the employee.

Such amounts count as gross pay for both NICs and PAYE purposes.

For NICs purposes

Follow the guidance in paragraph 152 under 'Payment made to an employee' or 'Payment made to a director', as appropriate.

For PAYE purposes

- Treat the employee as a new employee and follow the procedures in the Employer Helpbook E13 *Day-to-day payroll*.
- Operate PAYE procedures the week or month number that you make any payment(s).

154 Pay due under a protective award

A tribunal may decide that an employer has broken some rules in making, or proposing to make, an employee redundant. If so, it can order the employer to pay the employee for a certain period. This is called the 'protected period'.

Amounts paid under a protective award count as gross pay for both NICs and PAYE purposes.

For NICs purposes

Payment made to an employee

Where you make a payment under a protective award to an employee:

- you must treat it as a separate payment and not add it to any other payment of earnings you make to the employee at the same time
- assess the amount of NICs due on the payment using an earnings period which is the longer of
 - the protected period, or
 - that part of the protected period in respect of which the payment is made, or
 - a week.

Use this earnings period no matter how you make the payment, that is, in a lump sum or by instalments.

Example

An employee is made redundant on 31 October. The employer pays their wages up to 30 November.

A tribunal decides:

- the protected period is 31 October to 31 December (62 days)
- the employer must pay the employee their wages for the period 1 December to 31 December (31 days).

Assess the amount of NICs due on the wages paid for the period 1 November to 31 December using a 62-day earnings period, as this is the longer period of:

- the protected period (62 days), or
- that part of the protected period in respect of which the payment is made (31 days), or
- a week (7 days).

For guidance on how to work out the NICs using this 62-day earnings period, see the middle row on page 10 of this guide.

- use the contribution Table letter, NI percentages rates and earnings limits current at the time you make payment (or when the payment is due to be made if nothing is actually paid because of adjustments to the gross amount by the tribunal)
- record the payment, NICs details etc, on the P11 in the tax week/month in which you make payment. This means that if you make another payment of earnings to the employee at the same time, you will have two lots of entries for the same tax week/month.

Payment made to a director

Where you make a payment under a protective award to a director:

- add the amount of the payment to any other earnings paid to date in the year
- assess the amount of NICs due on the total amount of earnings to date
- use the earnings period which you are using to assess NICs on any other payments you make to the director that is, an annual earnings period or a pro-rata annual earnings period. For further information, see the booklet CA44 *National Insurance for Company Directors*
- use the contribution Table letter, NI percentages rates and earnings limits current at the time you make payment
- record the payment, NICs details etc., on the P11 in the normal way.

For PAYE purposes

For tax purposes these payments are taxable on amounts over £30,000 only. Apply PAYE to the excess. See paragraph 148.

Providing an employee with a non-cash payment

The following paragraphs provide a guide to operating PAYE where assets other than cash are provided to an employee and are treated as earnings of the employee. In general PAYE and NICs will have to be operated where the asset is a 'readily convertible asset' (RCA) or where certain cash sums are paid in connection with securities even where those securities are not RCAs.

155 'Readily Convertible Asset' (RCA)

A 'readily convertible asset', for the purposes of this Guide, is one which:

- is capable of being sold on a recognised investment exchange, the London Bullion Market or the New York Stock Exchange. For example, stocks, shares and other financial instruments, gold bullion and other precious metals and so on, or
- is a right over a money debt. For example, trade debts assigned by an employer to an employee, or
- is subject to a fiscal warehousing regime, such as a bonded warehouse. For example, oriental carpets stored in 'bond', or
- gives rise to a right to enable an employee to obtain money. For example, an interest in trust which comes to an end shortly after being assigned to an employee, resulting in an automatic right to cash, or
- is subject to a trading arrangement, either at the time of provision or likely to come into existence in future under an arrangement or understanding in place when the asset is provided. For example, shares or jewellery which can be sold either under an arrangement existing at the time of provision or under future arrangements for which steps have been taken at the time the shares or jewellery are provided, or
- is already owned by the employee and whose value is enhanced by the employer. For example, an employer may pay an additional premium to an employee's life assurance policy, considerably increasing the value of the policy, or
- is an asset consisting in securities which are not shares that are 'Corporation Tax deductible' (Schedule 23 Finance Act 2003). (Most shares will already be RCA under one of the criteria above.) 'Securities' include shares of any body corporate, corporate or government loan stock, and other securities defined in Schedule 22 Finance Act 2003.

Shares cannot be 'readily convertible assets' if:

- they represent the exercise of rights obtained before 27 November 1996, or
- they represent the exercise of rights from an approved Savings Related Share Option Scheme, or
- they represent the exercise of rights from an approved Company Share Option Plan and exercise occurs between 3 and 10 years from the date of grant or less than 3 years from grant by reason of injury, disability, redundancy or retirement at the age specified in the scheme.

156 Valuation of assets

Payments in the form of readily convertible assets must be included in gross pay for both PAYE and NICs purposes. The amount on which PAYE should be operated and NICs assessed is the best estimate that can reasonably be made of the amount of income on which the employee is likely to be chargeable to tax in respect of the provision of the asset.

For most assets, including shares or other securities provided directly to an employee, the value to be ascertained is 'money's worth', with reference to:

- the cost of the asset to the employer
- the value of the asset when it was awarded
- where the employee has already sold the asset, the amount received for it – if known
- where the employee has contributed towards the cost of the asset – the amount of that contribution should be deducted.

Where, however, the event is one charged to tax under the securities legislation (for example, exercise of option or lifting of restriction on a security) the market value must be obtained by reference to the Capital Gains Tax (CGT) value (see Sections 272 and 273 TCGA 1992).

If income is provided in the form of unquoted or restricted shares employers may wish to check whether the amount on which they propose to operate PAYE is reasonable. They can do this by writing, with full details of the transaction, to

Shares & Assets Valuation (PAYE Valuation)
Fitz Roy House
Castle Meadow Road
Nottingham
NG2 1BD

Any difference between the employer's 'best estimate' and a finally agreed value will be dealt with through the employee's self assessment.

Shares and other securities

157 Securities options

PAYE and NICs will normally be due where:

- securities are acquired by an employee (or associated person) pursuant to an employment related securities option, or
- such an option is assigned or released for consideration (even if the security is non-RCA, if the consideration is cash or an RCA then PAYE and NICs will be due), or
- the employee (or associated person) receives a benefit in cash or money's worth in connection with the option (for example, compensation for loss of option following take-over).

For employees who are resident in the UK there is no longer any possible charge on the grant of an over-10-year option.

Tax advantaged schemes: CSOP, SAYE and EMI

The gain made on the exercise, of a right to acquire shares under an HM Revenue & Customs approved scheme is generally exempt from PAYE and NICs liability (subject to the paragraphs below). If an approved option is assigned or released for cash or a RCA then PAYE should be operated as for non-approved arrangements (see above).

Exercise of CSOP option on or after 9 April 2004

If an employee exercised an option and it was less than three years after the date it was granted and it was not exercised within six months of the employee leaving employment because of:

- injury
- disability
- redundancy (as defined by law), and
- retirement on or after reaching the age specified in the plan rules (which must not be less than 55), or
- it was exercised more than 10 years after grant.

PAYE and NICs must be accounted for on any gain if the shares acquired are RCAs. If you need help phone the Employee Shares and Securities Unit on **0207 147 2853**.

Share options pre-6 April 1999

Special provisions apply to share options awarded prior to 6 April 1999 and rolled over after 5 April 1999. For guidance, phone the Employee Share and Securities Unit on **0207 147 2853**.

158 Restricted (conditional shares pre 16 April 2003) shares

Up to 16 April 2004

If a conditional share (one where the value is liable to forfeiture in whole or in part) was issued before 16 April 2003, then it remains within the old scheme of taxation on its full value (less anything already paid or charged to tax) when the forfeiture condition is lifted. PAYE and NICs should be operated accordingly (subject to the share being a RCA).

Conditional shares awarded before 9 April 1998 do not incur a further NICs charge when the conditions are lifted.

From 16 April 2003

Securities (including shares) are restricted if they are subject to forfeiture or have other restrictions which means that the market value of those securities are less, due to the restriction. If securities are subject to a forfeiture provision that lasts for less than five years then Income Tax will not arise at the time of acquisition unless an election has been entered into to disregard the restriction. PAYE and NICs should be operated accordingly (subject to the security being a

RCA). If there is no election then Income Tax will arise at the time when the restriction is lifted and PAYE and NICs applied if securities are a RCA. For restricted securities without a forfeiture restriction, Income Tax will arise at the time of acquisition on the value of the securities taking into account the value of the restrictions. Further charges to Income Tax will arise when those restrictions are lifted. It is also possible to enter into an election to disregard the restrictions at the time of acquisition in order to avoid further charges to Income Tax. PAYE and NICs should be applied if securities are RCAs.

159 Special charges on employment-related securities

The following charges on events are subject to PAYE and NICs where the securities are RCAs.

- Chargeable events in relation to restricted securities and restricted interests in securities.
- Chargeable events in relation to convertible securities and interests in convertible securities.
- Charge on acquisition where market value of securities or interest artificially depressed.
- Charge where market value of securities artificially enhanced.
- Charge on discharge of notional loan where securities or interest acquired for less than market value (but not the annual charge).
- Charge where securities or interest disposed of for more than market value.
- Chargeable benefits from securities or interest.

Even if the securities are not RCA, if the consideration takes the form of cash or a RCA then PAYE and NICs should be operated.

Practical considerations on non-cash payments

160 PAYE and NICs on RCAs

Payment in the form of readily convertible assets must be included in gross pay for both PAYE and NICs purposes. The amount on which PAYE should be operated and NICs assessed is the amount of income which counts as employment income for Income Tax purposes. Include such notional payments in gross pay for the pay period the payment is deemed as paid. Work out PAYE in the normal way. If the employee is on a K code, ignore the 50% overriding limit when calculating the PAYE due on the payment.

For chargeable events in relation to securities options, restricted securities and convertible securities, employees may enter into an agreement or election with the employer to meet some or all of the liability for employer's NICs. In these circumstances employer's NICs met by the employee

is a deductible amount for Income Tax purposes but is not deductible in calculating the NIC due.

161 Deducting PAYE from non-cash payments

Recover from the employee the PAYE due on the non-cash payment by deducting it in the following way:

- first, from any net wages, salaries, commission, fees and so on paid at the same time as non-cash payment, even if this reduces the employee's pay to nil
- then from any later payments made in that pay period until the full amount of PAYE due on the non-cash payment has been recovered.

Any PAYE which you do not recover from the employee, must be made good by the employee within 90 days of receipt of the non-cash payment.

If the employee does not do this, then you must show the unrecovered amount as further remuneration on forms P9D and P11D after the end of the tax year.

162 Deducting NICs from certain non-cash payments

From 6 April 1999 the employer's right of recovery from subsequent cash payment in the same tax year where an under deduction occurred because of non-cash earnings was extended.

The rules provided for the recovery of NICs following a payment to an employee or ex-employee who received, completely or partially, non-monetary earnings from which the full amount of NICs could be deducted at the time of payment.

There have been further changes although these do not affect the general rule that recovery of an underpayment of employee NICs must be made in the same tax year from any further cash payment of earnings to the employee and the amount cannot exceed the contribution due on that further payment. In addition, they do not affect the employer's responsibility to account for NICs at the time payment is made.

However, with effect from 10 June 2003, the employer's right to recover NICs from subsequent cash payments was extended to the end of the tax year following the year in which a non-monetary payment was made but only where the under deduction has occurred because a payment of earnings:

- has been made by an intermediary, or
- comprises a beneficial interest in shares, or
- comprises of securities or an interest in securities.

In addition there is no limit on the amount that the employer can recover from subsequent earnings to recover the under-deduction.

Intermediary is defined as:

- a person acting on behalf of the employer and at the expense of the employer, or
- by a person connected with him, or trustees holding property for any person who include, or class of persons which includes, the employee.

163 Sending remittances to the Accounts Office

At the end of the month or quarter you must account for **all** the PAYE and NICs due, including any PAYE on non-cash payments, regardless of whether or not the employee had sufficient actual pay to allow all the deductions to be made in that pay period.

164 Recording a non-cash payment

Regardless of whether or not the employer has borne the PAYE and employee's share of NICs you must include the value of the readily convertible asset with the related PAYE and NICs due, on your payroll records for the employee and the end of year forms P14, P35 and P60 as appropriate.

If the employee leaves your employment during the year in which the readily convertible asset was provided, include the value of the asset and all PAYE due when completing the form P45.

165 P9D/P11D

Readily convertible assets liable to PAYE should not be reported on forms P9D or P11D, but tax not recovered from the employee may need to be reported on forms P9D or P11D, see paragraph 161.

166 onwards not used - reserved for future use

Appendix – other useful forms and guidance issued by HM Revenue & Customs

480	Expenses and benefits – A tax guide	E10	Employer Helpbook: Finishing the tax year up to 5 April 2009
490	Employee travel – A tax and NICs guide for employers	E11	Employer Helpbook: Starting the tax year from 6 April 2009
CA33	Class 1A National Insurance contributions on Car and Fuel Benefits – A guide for employers	E12	PAYE and NICs rates and limits for 2009–10
CA37	National Insurance Contributions Tables: Simplified Deductions Scheme for employers	E13	Employer Helpbook: Day-to-day payroll
CA38	Not Contracted-out Tables: National Insurance contributions Tables A and J	E14	Employer Helpbook for Statutory Sick Pay
CA39	National Insurance Contributions Tables: Contracted-out contributions for employers with Contracted-out Salary Related schemes	E15	Employer Helpbook for Statutory Maternity Pay
		E16	Employer Helpbook for Statutory Adoption Pay
		E17	Employer Helpbook: Collection of Student Loans
CA40	National Insurance Contributions Tables: Employee only contributions for employers or employees authorised to pay their own contributions	E19	Employer Helpbook for Statutory Paternity Pay
		E24	Tips, Gratuities, Service Charges and Troncs: A guide to Income Tax, National Insurance contributions, National Minimum Wage issues, and VAT
CA41	National Insurance Contributions Tables: National Insurance contributions Tables B and C	EEC1	Expenses and Benefits Returns on Magnetic Media: Submission Instructions and Technical Specification
CA42	National Insurance Contributions Tables: Foreign-Going Mariner's and Deep Sea Fisherman's contributions for employers	Employer CD-ROM	Most of the forms and guidance you will need can be found on your CD-ROM. There are also useful calculators such as the PAYE Tax and NIC Calculators and the Car and Car Fuel Benefit Calculators. For more information see the 'Help & Further Guidance page' on the inside cover of this manual.
CA43	National Insurance Contributions Tables: Contracted-out contributions and minimum payments for employers with Contracted-out Money Purchase schemes		
CA44	National Insurance for Company Directors		
CWG5(2009)	Class 1A National Insurance contributions on benefits in kind – A guide for employers	P6	Forms sent to employers by the HM Revenue & Customs office with coding or amended coding instructions. These are used throughout the tax year
E3	Employer Orderline 2009 Order Form		
E4	Employer Orderline 2009 Fax Order Form	P6T	Budget Coding Notice (in year)

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P9D	Return of employee's expenses and benefits paid during the tax year. See also form P11D	P38/P38A	Employer's supplementary statement with details of employees who were paid over £100 in total for the year but for whom a deductions working sheet was not completed or who were not entered on the P35
P9(T)	A notice issued towards the end of one tax year giving coding instructions for the next tax year		
P9X	Instruction to an employer giving authority to amend certain suffix codes from the start of the new tax year when the Government has changed personal allowances	P38(S)	For use when students are employed during holidays
P11	Deductions working sheet used to record the weekly/monthly tax and NICs of employees	P39	End of year statement of people who are employed by non-resident employers
P11D	Return of employee's expenses payments and benefits paid during the tax year. See also form P9D	P45	For use when an employee leaves a job and when an employee starts a job. This is a four part form
P11D(b)	Covering certificate for forms P11D	P45W	Welsh version of notes on form P45 Part 2, available on request
P11D (Guide)	Notes on how to fill in form P11D	P46	For use when a new employee does not produce a P45 on commencement of employment
P11D(INT)	Tells you the average and official rates of interest for the year and enables you to calculate the cash equivalent of any interest-free or low interest loans	P46(Car)	Advance details of a car and/or fuel provided for directors and employees who earn at the rate of £8,500 a year or more including expenses and benefits
P14	End of year summary showing totals of individual employee's pay, tax, NICs and statutory payments paid and deducted during the year. This is a three part form	P46(Pen)	For use when someone is starting a pension
P30B	Payslips for sending payments to the Accounts Office	P46(Expat)	For use when an employee is seconded to work in the UK
P30BC	Payslip booklet containing payslips	P60	Certificate of Pay, Income Tax and NICs
P32	For recording weekly/monthly totals of tax, NICs, Student Loan deductions and statutory payments (you may use this in addition to the P30BC)	P61	End of year notification to an employee of tax refunds withheld during a trade dispute
P35	Employer Annual Return	P62	End of year advice to an employee involved in a trade dispute
P35(CS)	Continuation sheet for P35	P403	For use by funds paying holiday pay to employees
P35(TAS)	Returns of awards under a Taxed Award Scheme	P440	Analysis of totals on P35(TAS)

P440(CS)	Continuation sheet for P440
P443	Certificate to employee giving details of Taxed Incentive Award
RD1	Specification for employer's PAYE substitute end of year documents
Code Lists	Replacing form P9 by arrangement with HM Revenue & Customs office
TAS Payment Advice	Advice note sent out with P35(TAS)
Tax Tables	For working out an employee's tax each pay day – consisting of Tax Tables A: Pay Adjustment Tables Tax Tables B to D: Taxable Pay Tables Tax Tables G: Free of Tax Tables

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