



FORM P11D EMPLOYER ANNUAL RETURN OF EMPLOYEE EXPENSES & BENEFITS

Issued 10 January 2023

Text of letter sent on 19 December 2022 to HMRC about form P11D employer annual return of employee expenses and benefits

We recommend that:

- improvements be made to
 - the form P11D to make it easier for employers to complete, and
 - surrounding processes, relating to, for example, coding out one-off payments, how to amend returns, taxable value of payrolled BiK, P11Ds for unpaid employees,
- consideration be given to modifying the law to make it possible to payroll beneficial loans and accommodation, and that
- HMRC sets out a clear timeline for abolishing the form or undertakes a proper review to fix known issues with it and surrounding processes.

For questions on this response please contact the Tax Faculty team at taxfac@icaew.com quoting REP 01/23.

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TEXT OF LETTER SENT ON 19 DECEMBER 2022 TO HMRC

We welcome the fact that draft form P11D and working sheets for 2022/23 have been issued [to software developers] earlier than last year.

We would like to take this opportunity to propose some improvements to the form to make it easier for employers to complete. This would help to ensure that correct code numbers can be issued (as noted in the **ABAB 2022** report) and employees' P800 reconciliations are right first time.

We also suggest below how some surrounding processes and rules for reporting BiK might be modified to ease administration for HMRC, employers and employees.

The P11D form

We welcome the fact that P11D now includes in section F a means to report wholly electric cars. We recommend making the following other adjustments to the form:

- Cross-refer in the 'Note to employer' box to the guidance **How to complete forms P11D and P11D(b)**. This would help employers to put entries into the right boxes, especially sections B, C and N which look similar.
- Given that several of the headings on form P11D are similar, we suggest that the headings in the aforementioned guidance cite the box letters used on form P11D.
- Add a box to report which BiK have ceased and when where there is no cessation date box. This would help prevent longstanding BiK which have ceased and one-offs (eg relocation allowances) being automatically included in later years' code numbers.
- Add boxes to tick for Class 1 NIC. Presently the absence of a Class 1 option leads many employers to assume that some items are NIC-free when they are in fact liable to Class 1.
- B is called 'Payments made on behalf of employee' and N is called 'Expenses payments made on behalf of employee'. What is the difference?
- Why have vouchers and credit cards in the same section – C – then guidance indicating that payments made by credit card can be included by expense category in N?
- Add an extra page to enable employer to submit employee's s336 claim at the same time unless HMRC will give an auto-dispensation in such cases.
- Stop using the same box for amounts made good and amounts subjected to PAYE. The result on the taxable benefit is the same but the impact on NIC is different. For example, if the full amount of the benefit-in-kind is made good there would be no net taxable benefit and no NIC charge but if the full amount of the benefit-in-kind was payrolled again there would be no taxable amount but there would be an amount subject to NIC. This difference is confusing for employers.

We suggest that HMRC publishes the form at the start of the tax year rather than at the end, so that employers know what will need to be reported when they start providing benefits. This is particularly true when there is a law change affecting benefits-in-kind.

Surrounding processes and policy

Please fix the 'glitch' whereby one-off payments such as a bonus or relocation allowance are treated as ongoing monthly payments, resulting in HMRC's estimates of pay for the year (used to calculate code numbers) being overstated and consequential restrictions to code numbers.

Amendments to forms P11D by employers and their agents must be made using paper forms. This leads to processing delays, and mistakes can be made when HMRC staff manually transfer the data into HMRC's records. We recommend that an end-to-end online process is introduced which automatically links amendments by employers and agents to employees' records on HMRC's databases.

For all payrolled BiK, we suggest that, to provide earlier finality and align with HMRC's guidance, and to simplify SA tax return reporting by employees, the law needs to be changed so that the taxable value of payrolled BiK is the value reported on form P60.

Please confirm what steps an employer needs to take to get HMRC to accept and process a P11D for an individual who is not on payroll (eg an unpaid director), bearing in mind that if a record on NPS is a prerequisite, some software, including HMRC's Basic PAYE Tools, does not allow a full payment submission to be made showing a payment of £nil.

The future

We are aware that HMRC wishes to abolish the form P11D, both electronic and paper. While this is an admirable aim, it cannot be achieved until all BiK, ie beneficial loans and accommodation, are capable of being payrolled. This could be achieved by simplifying the rules governing how these BiK are calculated, and/or by changing the rules under which these BiK are payrolled, for example, by allowing employers to use the previous year's BiK values in-year and trueing-up in, say, the first two months of the subsequent year.

We would note that, even if payrolling of all BiK were mandatory, form P11D will still be needed for employers who are exempt from having to submit online returns.

Conclusion

The current form P11D has not had a proper review for many years. We believe HMRC needs to:

- set out a clear timeline for abolishing the form, which would include consulting on new ways to tax and payroll beneficial loans and accommodation, and making consequential changes to processes, or
- undertake a proper review of the form to make it fit for purpose and fix the known issues with it and its surrounding processes.

We look forward to hearing from you and we are very happy to discuss this further if that would be helpful.

APPENDIX 1

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.
4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see <https://goo.gl/x6UjJ5>).