



Abolition of the dispensation regime

As was already known P11D dispensations for expenses will be repealed from 6 April 2016 and will be replaced with other legislation (sections 289A – D) covering payment of tax-allowable expenses. Draft Clause 12 in the Finance (No. 2) Bill 2015 proposes repealing sections 65 and 96 of ITEPA 2003 (which cover dispensation notices) with effect from 6 April 2016. This is an important change and one that employers should consider seriously.

Employers should still consider making applications for dispensations that will apply prior to April 2016, and in addition should maintain processes to ensure compliance, and to ensure that HMRC have no reason to revoke existing dispensations. An important consideration will also be looking forward to the post dispensation period.

P11D dispensation

HMRC are currently able to grant dispensations from reporting certain expenses under section 65 and 96 ITEPA 2003. A dispensation, once granted by HMRC, removes the requirement for relevant expenses to be reported to HMRC on form P11D. In order to be granted a dispensation, an employer needs to make an application to HMRC and put processes in place to ensure that the expenses covered by the dispensation are expenses which will be allowable for tax purposes. Dispensation notices are also generally accepted as applicable for National Insurance (NIC) purposes as well.

Typically an employer will set up a process to be followed to ensure compliance (which may include an expenses policy) and an authorisation process (via a claim form, electronically etc) to check that the terms of a dispensation have been complied with by claimants. This can include the inclusion of relevant receipts, and a requirement for sufficient detail to be provided to clearly show the purpose of the expenditure and that it would be allowable for tax purposes. Where flat rate expenses (e.g. benchmark or custom scale rates) are included, HMRC have required that a certain number of claims are reviewed in more detail to show it was a legitimate claim. A dispensation is valuable for many businesses as it removes both the need for them to report the expenses, and for their employees to subsequently have to make claims against their individual tax liabilities.

Why remove dispensation notices?

As part of its work the Office of Tax Simplification recommended that specific legislation was introduced to cover the payment of business related expenses. This has been accepted and the new legislation (sections 289A – D) will be applicable from 6 April 2016. Therefore there is no continuing need for dispensation notices and hence they are being removed with effect from 6 April 2016.

Draft clause 12 Finance (No. 2) Bill 2015

This repeals the legislation at section 65 and section 96 ITEPA 2003 with effect from 6 April 2016 (under which HMRC could issue dispensation notices). The clause also covers the removal of references to dispensation notices from other relevant parts of the legislation. Clause 12(5) states that amendments will apply for tax years 2016/17 and subsequent tax years. Clauses 12(6), (7) and (8), however, state that the power of an officer of HMRC to revoke a dispensation, in force prior to 6 April 2016, will still apply even after 6 April 2016. Clause 12(7) states sections 65(6) to (9) and sections 96(5) to (8) will continue to have effect to a pre-commencement dispensation (per clause 12(8) a dispensation notice in force prior to 6 April 2016).



Period to 6 April 2016

HMRC can still issue dispensation notices, in appropriate cases, until 6 April 2016. Therefore it is important that businesses paying expenses which could be covered by a dispensation notice assess whether they wish to apply for a dispensation to cover the period to April 2016. Those with existing dispensations should continue to monitor their systems and processes to ensure that sufficient records are held to prove that they are being operated compliantly and that HMRC have no reason to consider revoking them. HMRC have the power to revoke a dispensation retrospectively from the date it was originally granted (section 65(7)(a) and section 96(6)(a)). Remember also that HMRC will still have the power to review and remove a dispensation notice in place prior to 6 April 2016 even after that date.

Post 6 April 2016

Dispensation notices will no longer apply after 6 April 2016 but as stated above could still be revoked by HMRC even after 6 April 2016. HMRC will be able to review dispensation notices for as long as a tax year is open (so for a minimum of four years).

It will be prudent to look at existing dispensations in place prior to 6 April 2016 and to consider any changes that will be required to be made to processes and systems to ensure that expense payments are dealt with correctly going forward. This will apply to paid or reimbursed expenses and any flat rate expenses that may be covered by the existing dispensation. You may need to consider what communications will be required with workers who incur or are likely to incur expenses which will be tax allowable.

KPMG comment

Dispensation notices have provided some employers with comfort that what they were paying was correct and compliant; and their abolition will remove this. However, recent cases, such as the *Reed Employment* Upper Tribunal decision, have highlighted that dispensation notices should not be taken for granted.

It will be prudent for businesses to protect any existing dispensations leading up to 6 April 2016 and also look forward to the post dispensation period as it is more important than ever that they have robust processes and controls in place. We recommend that businesses take the opportunity now to look critically at existing dispensations and in particular the supporting processes in place to ensure compliance. As stated above it may still be useful to apply for new or revised dispensations leading up to 6 April 2016.

Such an exercise now can also start to consider process changes that may be required to remain compliant in the post-dispensation period and, could also extend to a wider consideration of the expense environment in the business.



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