

## Part 5 – Special cases

This part deals with uncommon situations and benefits where special rules apply.

### 27 Employees going or coming from abroad

#### SSCBA 92, S1(6)(a)

Benefits may be:

- provided to employees whilst they are abroad
- left behind for their use once they return
- available to family members whilst they are abroad.

For employees going or coming from abroad, who are provided with benefits, two factors decide whether Class 1A NICs are due. For Class 1A NICs to be due:

- the benefit must be chargeable to Income Tax under ITEPA 2003 on an amount of general earnings as defined at Section 7(3) ITEPA 2003 (even though tax may not actually be paid), and
- there must be liability for employer's Class 1 NICs for any part of the tax year in which the benefit was provided.

In some cases a person's liability for Class 1 NICs, when they are abroad, may end part way through the year.

This can happen where:

- UK Social Security legislation no longer applies under the terms of European Community regulations, a Reciprocal Agreement or Double Contribution Convention, or
- the person is working abroad in a country where the UK has no agreements and they have been employed there for more than 52 weeks.

Guidance on Class 1 NICs for people working abroad can be found on our website.

Go to [www.hmrc.gov.uk/nic/work/index.htm](http://www.hmrc.gov.uk/nic/work/index.htm)

When a person no longer has to pay Class 1 NICs under these rules for people abroad, the liability for Class 1A NICs will also stop. If liability ends part way through the tax year, you have to pay Class 1A NICs on the taxable benefits but adjust the calculation to take account of Class 1A liability ending part way through that tax year.

To adjust the Class 1A NICs calculation for the part year:

- calculate the Class 1A NICs using the rules described in parts 1 to 3 of this guide, and
- treat the benefit as being unavailable in the days when the UK National Insurance liability ended.

Class 1A NICs are calculated on a pro rata basis, using the number of unavailable days. You should use the adjustment facility provided on form P11D(b) if you need to adjust the amount of Class 1A NICs due.

If you are unsure of the rules for people coming in to the UK contact your HMRC office or the Employer Helpline. For help with National Insurance for people going overseas, contact the HMRC Residency (Newcastle) Helpline on **0845 915 4811**.

### 28 Company cars or vans and fuel benefit

Company cars or vans and fuel benefits are taxed under special rules contained in Part 3 Chapter 6 of ITEPA

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2003. Class 1A NICs on these benefits follow the normal Class 1A NICs rules, but there are special Class 1A NICs rules for cars or vans provided in unusual circumstances.

Examples include:

- a car or van shared by two or more employees
- sharing the cost of providing a car or van between two employers.

If you provide cars or vans in special or unusual cases, read booklet CA33 *Class 1A National Insurance contributions on Car and Fuel Benefits*.

### 29 Childcare

#### SSCBA 1992, S10

Liability for Class 1A NICs on the provision of childcare benefits has been aligned with the tax position since 6 April 2005. For information on the tax position see booklet 480(2011) *Expenses and benefits - A tax guide*.

Broadly, employer supported childcare is exempt from NICs in line with the tax treatment under S318 and S318A - D ITEPA 2003. So long as the qualifying conditions are satisfied, NICs are only payable on the cost of the childcare which exceeds the exempt amount of £55 per week.

Workplace nurseries where you provide childcare in a nursery or playscheme on your premises (or on premises you provide jointly with others that you are wholly or partly responsible for financing and managing), will not be liable for Class 1A NICs where that is in line with the tax treatment.

These exemptions do not extend to:

- school fees
- cash which you give to employees to help them meet the cost of their own childcare arrangements
- paying an employee's childcare bills on their behalf.

In these cases Class 1 NICs are due.

From April 2011 changes are being made to employer supported childcare. These changes will reduce the exempt amount for childcare vouchers for some employees. For more information go to [www.hmrc.gov.uk/thelibrary/esc-qa.htm](http://www.hmrc.gov.uk/thelibrary/esc-qa.htm)

### 30 Fees and professional subscriptions

#### SSCBA 92, S10

#### SS(C)R 2001, Regulation 40 and paragraph 11 of Part 10 of Schedule 3

Some subscriptions and fees paid to certain approved professional bodies and societies are exempt from NICs in line with the Income Tax treatment under S343 and 344 ITEPA 2003.

#### Subscriptions and fees not exempt from tax under S343 and 344 ITEPA 2003

NICs are due where employers meet the costs of subscriptions and fees paid to a body or society.

Class 1A NICs are payable if you contract with the body concerned to provide membership for your employees.

Class 1 NICs are payable if you reimburse the cost of membership arranged by the employees themselves.

## 31 Incidental overnight expenses

SSCBA 92, S10

SS(C)R 2001, Paragraph 4 of Part 10 of Schedule 3

Employees who have to stay away from home overnight on business may incur additional expenses of a personal nature. Examples include newspapers, laundry and phone calls home.

There is an exemption which provides that employers can pay these incidental expenses free of tax and NICs as long as they are within prescribed limits and certain conditions are met. Full details of the qualifying conditions are set out in Appendix 8 of booklet 480(2011) *Expenses and benefits - A tax guide*.

The exemption covers all possible ways in which an employer can meet these expenses, including payment by non-cash voucher, credit card, cash payments and by way of a benefit.

Where you pay or provide an incidental expense which exceeds the prescribed limit or fails the qualifying conditions, the whole amount (not just the excess) is liable to tax and NICs under the normal rules. For the purposes of determining whether the prescribed limit is exceeded, the various elements of the incidental expense must be added together.

The NICs liability will depend upon how the incidental overnight expense is paid. Where it consists:

- wholly of cash, non-cash vouchers or credit card payment, Class 1 NICs are payable
- wholly of a benefit, Class 1A NICs are payable
- of a combination of various elements
  - Class 1 NICs are payable on the cash payments, non-cash vouchers and credit card payments
  - Class 1A NICs are payable on any benefit.

### Example 1

An employee spends four nights away from home in the UK and receives incidental expenses totalling £32.00. The expenses are made up of £12.00 cash, an £8.00 non-cash voucher, and the inclusion of a laundry charge in the hotel bill met by the employer amounting to £12.00.

As the incidental overnight expenses exceed the prescribed maximum of £20.00 (four nights at £5.00), the NICs liability is calculated as follows

Class 1 NICs on £20.00

- the total of cash and non-cash voucher elements

Class 1A NICs on £12.00

- the benefit of the laundry charge.

### Example 2

An employee spends three nights away from home in the UK and receives incidental expenses totalling £12.00. The expenses are made up of £9.00 cash, and a £3.00 newspaper charge included in the hotel bill met by the employer.

As the incidental overnight expenses do not exceed the prescribed maximum of £15.00 (three nights at £5.00), there is no tax or NICs liability.

## 32 Relocation expenses and benefits

SSCBA 92, S10

SS(C)R 2001, R40

Details of when Class 1 NICs are due on relocation expenses are in booklet CWG2(2011) *Employer Further Guide to PAYE and NICs*.

As well as any Class 1 NICs that may be due in connection with relocation expenses you pay, Class 1A NICs may be due if you:

- provide any type of relocation benefit which is not exempt from Income Tax
- pay any exempt expense after the relevant day
- provide a relocation package which exceeds the prescribed maximum of £8,000, whether the excess comprises benefits and/or expenses.

Class 1A NICs are not due on any exempt relocation benefit or expense which counts towards the £8,000 tax exemption limit.

Exempt benefits and expenses are listed in Appendix 7 of booklet 480(2011) *Expenses and benefits - A tax guide*.

### Example

An employee is relocated to a new job in May 2010. The employer pays the following relocation expenses and benefits which are all paid before the relevant day:

1 Legal and estate agent's fees	£2,500
2 Removal costs	£1,000
3 Travel costs for visiting the new location	£500
4 Temporary living accommodation	£3,000
5 School fees for the children of the employee	£3,000
6 Domestic goods purchased by employer to replace items unsuitable for use in the new home	£2,500
7 Landscape gardening provided by employer	£1,500
	<b>Total £14,000</b>

### NICs liability:

- Class 1 NICs on item 5
  - school fees are not an exempt removal expense (£3,000)
- Class 1A NICs on item 7
  - gardening services are not an exempt removal benefit (£1,500)
- Class 1A NICs are also due on £1,500
  - relocation expenses and benefits paid in excess of the prescribed £8,000

maximum:	£14,000
less items 5 and 7 as NICs are due on these items	£4,500
less maximum	£8,000
	<u>£1,500</u>

### **33** Shared benefits

#### **SS(C)R 2001, R36**

Special rules apply when calculating Class 1A NICs for shared benefits.

A shared benefit can be:

- made available for use by two or more employees at the same time
- made available to one employee by reason of two or more employed earners' employments with the same or different employers.

If the benefit provided is a shared car see the example in booklet CA33 *Class 1A National Insurance contributions on Car and Fuel Benefits*.

In all other cases, use the figure you have entered on the P11D for each employee's share of the cash equivalent of the benefit, to work out the amount of Class 1A NICs due.

### **34** Securities – includes shares and share options

Details of when Class 1 NICs are due on shares and other securities can be found in booklet CWG2(2011) *Employer Further Guide to PAYE and NICs*. In some circumstances, however, Section 446S of ITEPA 2003 can apply where an employee acquires securities (includes shares and share options) for less than the market value.

The difference between what the employee pays for the securities and the market value of the securities is treated as an interest-free loan. Income Tax may be due on the benefit from that interest-free loan. Where Income Tax is due Class 1A NICs liability arises on the same amount that is chargeable to Income Tax.

### **35** Staff suggestions

If staff suggestion awards meet the conditions set out in Section 321 ITEPA 2003, no NICs are due.

If the conditions are not met, the NICs liability will depend upon the nature of the award.

Where the award is:

- a cash payment or a non-cash voucher, Class 1 NICs are due
- a benefit, Class 1A NICs are due
- a combination of cash, non-cash voucher and benefit
  - Class 1 NICs are due on the cash and the non-cash voucher
  - Class 1A NICs are due on the benefit.