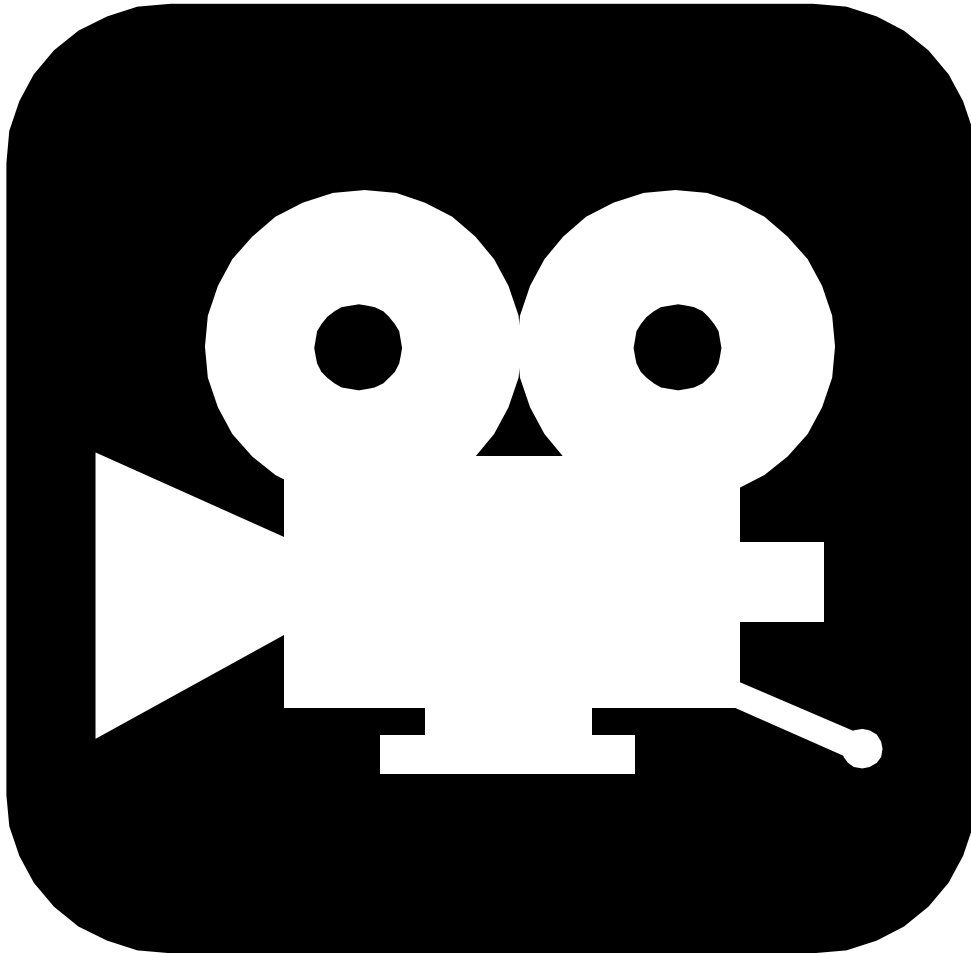


FILM, TELEVISION AND PRODUCTION INDUSTRY GUIDANCE NOTES



Revised April 2011

THESE NOTES PROVIDE FURTHER ADVICE WITH REGARD TO THE APPLICATION OF PAYE AND NATIONAL INSURANCE CONTRIBUTIONS TO NON-PERMANENT, CASUAL AND FREELANCE WORKERS IN THE FILM, TELEVISION AND PRODUCTION INDUSTRIES. THEY ARE INTENDED FOR GUIDANCE ONLY AND DO NOT HAVE THE FORCE OF LAW

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1. OPERATION OF PAYE

PAYE should be operated in accordance with the instructions in the '*Employer's Help Book* (Booklet E10) and in the '*Employer's Further Guide to PAYE*' (Booklet CWG2) subject to the modifications set out in these Guidance Notes.

Employers are visited periodically to ensure that PAYE is being operated correctly. You must maintain the necessary records and these must be kept and made available for inspection upon request.

PAYE must be applied to all payments made to permanent staff and to non-permanent, casual and freelance staff engaged under contracts of employment, except in the circumstances set out in the following paragraphs.

It should also be noted that there is specific legislation which can sometimes affect an individual's employment status position.

- **Social Security (Categorisation of Earners) Regulations 1978 (SI 1978 No, 1689) Regulation 2 and paragraph 2 in column (A) of Part 1 of Schedule 1.**
- **Income Tax (Earnings and Pensions) Act 2003, Part 2, Chapter 7, Sections 44-47.**

This legislation provides for *treating* someone as an employee in certain circumstances despite the fact they are not employed under a contract of service. Provided that certain conditions are satisfied, where a person gets work through an agency or other third party, and is not a direct employee of the client, they are *treated* as an employee of the agency or third party.

2. EXCLUSIONS FROM PAYE

2.1 STAFF WORKING IN SPECIFIED SELF EMPLOYED GRADES

You need not apply PAYE to payments made to non-permanent, casual or freelance staff working in the grades shown in Appendix 1 to these Guidance Notes, provided that they fulfil any specific requirements shown in the list. HMRC has reviewed the contractual and working arrangements applicable to these grades in detail and it is accepted that the terms of engagement do not normally constitute a contract of employment.

When deciding whether PAYE is to be applied you should consider only the grade in which the worker is currently engaged. Qualification for or previous engagements in a higher grade should be ignored.

Appendix 1 does not list every grade in the industry; it shows only those grades for which PAYE need not be operated. This list is currently under review by HMRC and representatives of the Film and TV Industry, with particular emphasis on the new technological grades. All parties are agreed that some of the new grades may fall to be self-employed whereas there will be others that will be appropriate to employee status. At this early stage in the review it is not possible to say with any certainty which grades might eventually be included in the self employed grading list.

2.2 LETTERS OF AUTHORITY

In certain circumstances where the overall pattern of a worker's activity comprises a large number of separate, short engagements, a worker may be regarded as self employed, even though each of his engagements, viewed in isolation, would suggest that he was an employee. Engagers are not expected to make any additional enquiries; these cases are identified by the Film & Production Industry Unit, Washington or the Television Broadcasting Unit Manchester and special letters are issued to workers for production to engagers before payment is made.

Employers should only accept without question letters that contain a valid expiry date.

ONLY letters issued by Film & Production Industry Unit, TV Broadcasting Unit or Foreign Broadcasting should be accepted.

Letters from any other HMRC Office or from Accountants must be ignored; as should Self-Assessment or any other Tax Reference Numbers provided by the worker.

There are two kinds of Letters of Authority:-

SPECIFIC LETTERS - Specific letters are occasionally issued to a small number of individuals working in a grade not normally recognised as self employed in accordance with the published list of self employed grades at Appendix 1. In those cases the worker has successfully demonstrated to HMRC that self employed status may be granted for this particular engagement only.

SPECIAL LETTERS (aka Lorimer or LP10 letters) have been issued to all workers who, although not usually working in a grade listed in Appendix 1, have satisfactorily demonstrated that their overall pattern of activity amounts to self employment. In these cases, the letter authorises you to make gross payment in respect of payments for **short** engagements. In this context, 'short' means ten days or less. You should however telephone the contact number shown in the letter:-

- if the engagement is expected to last for more than ten days, or
- If there is an arrangement for the worker to be engaged regularly for short periods.

When telephoning, you should provide the worker's full name and National Insurance number and the unique serial number shown on the letter of authority, together with brief details of the engagement. We will either authorise the use of gross payment or will give additional advice on the operation of PAYE. Workers who dispute the operation of PAYE should be referred to the Film & Production Industry Unit or the TV Unit if the engager is a Television Broadcaster.

Letters of Authority are not of course required where the worker is engaged in one of the self employed grades listed at Appendix 1.

Please remember to disregard letters from other HMRC Offices or from Accountants.

2.3 THE “SEVEN DAY” RULE

Because many employed workers in the Film, Production & TV Broadcasting Industry have short engagements with a succession of different employers, the normal operation of PAYE is impractical and would in many cases result in excessive deductions of tax. The Seven-Day Rule is intended to alleviate the hardship, which might arise from such excessive deductions.

You need not apply PAYE to payments made to workers engaged for less than one week - that is, for six consecutive days or less.

The period of six consecutive days includes rest days and weekends if these fall between the first and last days of engagement. For example, if a worker is engaged for Wednesday, Thursday and Friday and for the following Monday and Tuesday, the intervening weekend must be counted and the limit of six days will be exceeded.

The Seven-Day Rule applies only to Income Tax; it does not apply to National Insurance Contributions, which must be accounted for in the normal way. Operation of the Seven-Day Rule does not change the nature of the contract and the worker remains an employee.

Except in the circumstances set out below the Seven-Day Rule applies to each engagement separately. Successive engagements should not be aggregated, nor should PAYE be applied retrospectively.

The Seven-Day Rule does NOT apply:-

- **If it is known at the time of payment that the worker is to be re-engaged and the total period of engagement (inclusive of rest days and weekends) is more than six days.**
- **If there are arrangements for the worker to be engaged frequently or at regular intervals.**

In either of the above situations PAYE should be operated in the normal way.

3. ISSUE OF FORM P45

At the end of each engagement you are required to provide each **employee** with a statement of the income earned during that engagement. Workers will need this information when completing Personal Tax Returns.

This paragraph tells you what to do about issuing forms P45. Other reporting requirements are explained in Paragraph 11.

3.1 IF TAX HAS BEEN DEDUCTED UNDER PAYE

You should fill in form P45 in the normal way, detach Part 1 send it to your normal HMRC Office, and give Parts 1A, 2 and 3 to the worker.

3.2 IF TAX HAS NOT BEEN DEDUCTED UNDER PAYE

If you have not operated PAYE because:-

- the worker was engaged in a grade listed in Appendix 1, and all necessary conditions were met (see Paragraph 2.1), or
- the worker produced a valid letter of authority and you were authorised to make gross payment (see Paragraph 2.2).

You do not need to prepare a form P45, because the worker was not regarded as an employee.

If you did not operate PAYE because the engagement was covered by the Seven-Day Rule (see Paragraph 2.3), you should complete form P45, give Part 1A only to the worker, and destroy parts 1, 2 and 3.

4. PAYMENTS TO SERVICE COMPANIES (LOAN OUTS)

Some individuals have set up service companies or partnerships to provide the services of a single worker to production companies in circumstances where - if the worker had been engaged directly by the Film, Production or TV Broadcasting Company - a contract of employment would otherwise have existed. In the following advice, reference to a service company should be regarded as applying equally to a partnership. The use of service companies in the manner described above allows the Film, Production or TV Broadcasting Company to make payments to the service company instead of to the worker, so avoiding the deduction of PAYE or NI Contributions.

The Intermediaries legislation, more commonly referred to as IR35, seeks to ensure that what is properly employment income is taxed as such and tackles tax and National Insurance avoidance through the use of intermediaries, such as service companies.

The statutory provisions to counter such avoidance impose obligations directly upon the service company and do not affect the entitlement of the Film, Production or TV Broadcasting Company to make such payments gross.

It is not however sufficient that a service company exists; it is the duty of the Film, Production or TV Broadcasting company to satisfy itself that there is in fact a *bona fide* contract **with the service company** for the provision of the worker's services. In a majority of such cases reviewed in recent years, no such contract was found to exist. If you have any doubt about the existence of a valid contract, payment should be made directly to the worker and the PAYE and NIC provisions should be applied in the normal way. If you fail to exercise reasonable care in this regard, you may be held liable for the deductions that ought to have been made.

If the worker's services are provided in circumstances such that if the worker had been employed directly you would have been able to make payment gross by virtue of Paragraphs

2.1 or 2.2 above, you may make gross payments to the service company without further enquiry.

In any case of dispute or difficulty, engagers or workers may obtain further advice from Film & Production Industry Unit or TV Unit if the engager is a Television Broadcaster.

Workers who seek further information about the application of the statutory provisions mentioned above in relation to their service company should be referred to:-

IR35 Customer Service Unit
HMRC
Ground Floor North
Princess House
Cliftonville Road
Northampton
NN1 5AE

Telephone: 0845 303 3535 (8.30 – 16.30 Monday – Friday)
Fax: 0845 302 3535
Email IR35@hmrc.gov.uk

The telephone and fax numbers are available for IR35 queries only. Further information about IR35 issues can be found on the HMRC website at www.hmrc.gov.uk/ir35

A copy of the disputed contract will be required, and an initial contact by telephone is recommended so that callers can be advised of any further information which may need to be provided in particular cases.

5. CONSTRUCTION INDUSTRY SCHEME

Revised guidance will be provided at a later date.

6. OVERSEAS PRODUCTIONS

Please refer to Paragraph 121 of *'The Employer's Further Guide to PAYE and NIC'* (Booklet CWG2). Further guidance will be given on request.

7. PRODUCTION WORKERS FROM ABROAD

The procedure for dealing with **employees** coming into the United Kingdom from abroad is set out at Paragraph 120 of *'The Employer's Further Guide to PAYE and NIC'* (Booklet CWG2).

Workers from overseas engaged in the grades listed in Appendix 1, fulfilling the criteria, may however be regarded as self-employed and should be treated in the same way as United Kingdom workers engaged in those grades.

8. PAYMENTS TO OVERSEAS PERSONALITIES

Where overseas personalities such as actors or actresses, dancers, singers, sportsmen or sportswomen are engaged for a production, you must observe the requirements of Section 555 of the Income and Corporation Taxes Act 1988. You may be required to deduct Withholding Tax.

As soon as you engage an overseas personality, you should seek further information and guidance from:-

Centre for Non-Residents
Foreign Entertainers Unit
St John's House
Merton Road
Bootle
Merseyside
L69 9BB

Telephone: 0151 472 6488
Fax: 0151 472 6483
E-mail: Non-Residents@HMRC.gov.uk

9. COMPANY DIRECTORS

It is important to ensure that PAYE is correctly applied to the remuneration of your company directors. Detailed instructions are given in '*The Employer's Further Guide to PAYE and NIC*' (Booklet CWG2).

Advice should be sought from Film & Production Industry Unit or TV Broadcasting Unit before making any gross payment to a director of your company in respect of 'other work' performed for the company.

10. TAX TREATMENT OF EXPENSES PAYMENTS

The term 'Expenses Payments' embraces all advances or reimbursements of expenses incurred by your employees and all round-sum allowances, including meals, per diems, mileage and similar out of pocket expenses.

Please refer to "*The Employer's Further Guide to PAYE and NIC*" (Booklet CWG2) for further information.

Special rules apply to travelling and associated expenses, the treatment of which depends upon whether the outlay in question is a 'qualifying travelling expense'. Detailed guidance is given in '*Employee Travel – A Tax and NIC Guide for Employers*' (Booklet 490). If you are in any doubt as to whether any expense is a 'qualifying travelling expense' please seek guidance from Film & Production Industry Unit or TV Broadcasting Unit.

The following advice should be read in close conjunction with Booklet 490 and with '*Expenses and Benefits – A Tax Guide*' (Booklet 480).

10.1 GENERAL ADVICE

In principle, all payments or reimbursements of expenses should be included on the deduction document and subjected to PAYE and NIC in the usual way, except in the following circumstances, or where gross payment is authorised by Paragraph 10.2 below: -

- You do not need to deduct tax from expenses paid to workers in the grades listed in Appendix 1; the guidance in Booklet 490 does not apply to self-employed workers. You must however include full particulars of such payments on any form 46R-1 which you are required to submit at the end of the year - see Paragraph 11 below for further information. The expenses should be added to all other payments made to the worker in determining whether the *de minimis* limit for completion of form 46R-1 has been exceeded.

- You do not need to deduct tax from expenses paid to workers who produce a valid letter of authority - see Paragraph 2.2 above. The instructions above relating to completion of form 46R-1 will apply.
- You do not need to deduct tax from expenses that relate to an engagement that is covered by the Seven-Day Rule.
- You do not need to deduct tax from **reimbursements** of 'qualifying travelling expenses' or **reimbursements** of any other amount which the worker expended wholly, exclusively and necessarily in the performance of the duties of the employment. 'Qualifying travelling expenses' are defined in '*Employee Travel – Tax and NIC Guide for Employers*' (Booklet 490).

10.2 EXPENSES WHICH MAY BE PAID GROSS

10.2.1 MEAL ALLOWANCES – UNITED KINGDOM

In general, where an employed worker incurs 'qualifying travelling expenses' as defined in Booklet 490, tax relief will also be due for subsistence costs directly attributable to that travelling. In such cases you may pay round-sum allowances without deducting tax, provided that those allowances do not exceed the following limits:-

Breakfast	£ 6.00
Mid-day Meal	£ 7.00
Evening Meal	£12.00

If you make round-sum payments greater than these amounts, the excess must be taxed under PAYE unless you have a specific dispensation.

These limits are not generally negotiable and no variation can be considered where the temporary location is in or reasonably near to an urban area.

In the exceptional case of an extremely remote location with very limited facilities, consideration may be given to a request for authority to pay greater amounts without deduction of tax on production of evidence that the standard limits are inadequate.

10.2.2 ACCOMMODATION ALLOWANCES - UNITED KINGDOM LOCATIONS

In general, where an employed worker incurs 'qualifying travelling expenses' as defined in Booklet 490, and overnight accommodation is required in consequence of that travelling, you may also reimburse in full the actual accommodation costs which the worker incurs at the temporary location. Alternatively, you may pay a round-sum allowance without deducting tax, provided that the allowance does not exceed *either* of the following limits –

London	Per night, exclusive of meals	£75.00
	Per night, inclusive of all meals	£96.00
Elsewhere	Per night, exclusive of meals	£60.00
	Per night, inclusive of all meals	£85.00

If, in exceptional circumstances, it is essential to use more expensive accommodation, please contact Film & Production Industry Unit or TV Broadcasting Unit for advice before making any round-sum payment.

Unless express authority has been given for larger round-sum payments, any excess over the above limits must be included on the deduction document and taxed under PAYE.

10.2.3 PERSONAL INCIDENTAL EXPENSES

Tax-Free Limits

The maximum amounts of personal incidental expenses an employer may pay tax-free are

- £5 per night for overnight stays anywhere within the United Kingdom (Great Britain and Northern Ireland) **And**
- £10 per night for overnight stays outside the United Kingdom.

In calculating the total amount of expenditure any Value Added Tax (VAT) paid must be included.

If the employer exceeds these limits, the whole of the payment becomes taxable not just the excess.

Employee Repays Excess Over Limit

Employers are encouraged to introduce clear policies on the payments of personal incidental expenses and the refunding of overpaid amounts. Where a policy requiring repayment of any amounts in excess of the tax-free limits is in force, an employee has no entitlement to the excess. In these circumstances, the employee would not be taxed on the payment provided the excess was paid back. However, if the refund by the employee is not made within a reasonable time of the overpayment (whether in the same tax year or soon after the end of the tax year), there may be reporting consequences. Details may need to be given on form **P11D** – ask your HMRC office if this applies.

Employee's Unreimbursed Personal Incidental Expenses

The special exemption for personal incidental expenses is designed to reduce the burden on employers of identifying and reporting to HMRC what would otherwise be taxable expenses. So there is no relief for expenses, which are not reimbursed by the employer.

More Than One Night Away

The total of the exemptions for each night is simply compared to the total of the payments for that period. For example, where an employee claims £20 for a four night stay away from home in the United Kingdom:

The exemption would apply even if the employee spent £5 on the first night, £5 on the second, £6 on the third and £4 on the fourth because the total does not exceed the total exemption limit (four nights at £5 exemption per night).

This rule must be applied to an unbroken run of consecutive nights in its entirety. An employer may not choose to break up a period of say five nights into one consecutive period of four nights plus one stand alone night.

National Insurance Contributions

National Insurance contributions are not payable on any payments of personal incidental expenses qualifying for the income tax exemption.

Dispensations (See also 10.4)

Before 6 April 2002 dispensations were often given for payments on an approved scale of travelling and subsistence expenses for absences on business journeys, but new rules took effect from 6 April 2002 for payments employers make to employees who carry out business travel in their own vehicles.

Payments for personal incidental expenses within the exemption would not be liable to tax and so would not need to be included in a dispensation.

Some dispensations agreed in the past may include an element for personal incidental expenses – For example if the travelling and subsistence payments covered personal incidental expenses. It is not necessary to review such dispensations with a view to excluding the personal incidental expenses element. Such dispensations will be reviewed at the normal review date.

Working Rule Agreements

Employees in the construction and allied industries in receipt of payments under a Working Rule Agreement, are not normally undertaking journeys qualifying within the terms of the Section 198/Section 336 ITEPA general rule (see above). Employers wishing to make payments of personal incidental expenses, in addition to tax-free lodging allowances under a Working Rule Agreement will have to identify those journeys which qualify under Section 198/Section 336 ITEPA. Only in such cases will the personal incidental expenses be exempt from tax.

More Than One Employee's Personal Incidental Expenses On The Same Bill

The payment of personal incidental expenses should be made to individual employees within the limits of the individual exemptions. Sometimes a number of employees' hotel bills are aggregated and paid directly by the employer. If the individual expenditure cannot be readily identified, a reasonable apportionment will be accepted.

Employer's Checks

The employer should be satisfied that:-

- The amounts paid do not exceed the maximum amounts payable tax-free.

- There is no double payment of personal incidental expenses – for example, by paying the standard allowance for personal incidental expenses and reimbursing in full a hotel bill already including such charges as phone calls home.

Form P11D

If a dispensation exists and any personal incidental expenses are covered by the dispensation or within the exemption no entries are needed.

If there is no dispensation, enter on the form **P11D** the amount excluding any exempt personal incidental expenses for each employee who received expense payments. For example, if the employer paid a hotel bill for £87, which included £4 of personal incidental expenses, he or she would enter £83 on form **P11D** for that employee. If you do not have a dispensation and any personal incidental expenses are not within the exemption, the employer must show the whole amount on form **P11D**.

10.2.4 PAYMENTS TO EMPLOYEES FOR USING THEIR OWN VEHICLES FOR WORK

From 6 April 2002 there is a tax-free amount that employers can pay to employees using their own vehicles for business travel. If employers pay more than the tax-free amount the excess will be charged to tax. Employers will need to include the excess while completing form P9D or form P11D. The tax-free amount is expressed in terms of pence per mile, and is as follows:

Tax free amount	Motor Cars or Vans		Motorcycles	Bicycles
Pence per mile of Business Travel	First 10,000	Over 10,000	24p	20p
	40p	25p		

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

- They must be paid for the expenses of Business Travel in the employees privately owned car, van, motor cycle or bicycle.
- They must not exceed the amount that is equal to 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).

Employers do not need to send HMRC details of tax-free AMAPS. This means that if the payments for the expenses of business travel in the employee's vehicle are no more than the tax-free AMAP, the amounts paid do not need to be shown on form P9D or form P11D. Where the payments that employees make in respect of the expenses of business travel exceed the amount of the AMAP, the excess over the AMAP must be entered on form P9D or form P11D.

Summary Of Changes To Previous Arrangements

- Mileage allowance payments (payments to employees for the expenses of business travel in their own vehicle) can no longer be included in dispensations. Sections of current dispensations about mileage expenses are no longer effective (though the remainder of the dispensation is unaffected).
- The Fixed Profit Car Scheme (FPCS) and Car Allowances Enhanced Reporting Scheme (CAERS) have been withdrawn because they are replaced by the new rules.
- Employees using their own cars, vans, motor cycles and cycles for business travel can now receive a tax-free amount (the approved amount for mileage allowance payments) instead of being taxable on what they received and having to claim for expenses incurred.
- The tax-free amount depends only on business miles travelled. It is not related to the actual expenses incurred.
- There is a similar scheme for National Insurance Contributions, but the rates for NICs are slightly different - see booklet CWG (2010) for details.

The New Rules: Mileage Allowance Payments

- These are defined as “amounts (other than passenger payments) paid to an employee in respect of expenses in connection with the use by him for business travel of a qualifying vehicle”.
- They replace any claims for mileage-related expenses in relation to the car itself (such as fuel, servicing, road fund licence and insurance) but not other expenses (such as parking charges or accommodation). The normal section 198 rules continue to apply to expenses of this type.

Approved Mileage Allowance Payments (AMAPs)

- The AMAPs amount (the maximum that can be paid tax-free) is calculated as the number of business miles travelled by the employee (other than as a passenger, and whether or not they are reimbursed for them) multiplied by a rate expressed in pence per mile.
- Each kind of vehicle is dealt with separately, though different vehicles of the same kind are dealt with as though they were the same vehicle.
- Where an employee receives payments from two or more associated employments, all business travel is treated as though it related to a single employment when calculating whether the 10,000-mile limit has been reached.
- If you pay more than the AMAPs amount, the excess should be returned on form **P11D**. If you pay the exact amount, you do not need to notify the Revenue at all, whether on

forms **P11D**, **P9D** or otherwise. If you pay less (or nothing at all), the employee can claim a deduction for the shortfall as Mileage Allowance Relief - see next paragraph.

Mileage Allowance Relief (MAR)

- If an employee is paid less than the AMAPs amount, they can claim relief for the shortfall.
- Employers *will* still be able to agree with their HMRC office to make separate optional reports of negative amounts under a scheme called Mileage Allowance Relief Optional Reporting Scheme (MARORS). This is much the same as CAERS used to be, except that it only caters for negative amounts. Contact your HMRC office if you want to enter this scheme.

Passenger Payments

- There is an additional exemption from tax for payments to employees travelling on business journeys because they are carrying fellow employees, for whom the journeys are also business travel, as passengers. The payments must be made specifically because passengers are being carried and be in addition to any mileage allowance payments for the travel itself.

Passenger payments can be paid to:-

- Employees using their own car or van (and so eligible for approved mileage allowance payments)
- Employees using a company vehicle for which they are charged to tax for the benefit in kind (but not eligible for approved mileage allowance payments)
- The maximum that can be paid tax-free is calculated as the number of miles for which a passenger is carried multiplied by a rate expressed in pence per mile. The rate for 2002/03 is 5p per mile. Miles for which no passenger payments are made are excluded from the calculation.
- Payments can be made for each passenger on the same journey.
- If you pay more than the maximum amount, the excess should be returned on form **P11D**. If you pay the exact amount, you do not need to notify HMRC at all, whether on forms **P11D**, **P9D** or otherwise. If you pay less (or nothing at all), there is no equivalent to Mileage Allowance Relief - the employee cannot make any claim for the shortfall.

Record keeping

- Although payments within the above limits are exempt from tax, meaning that no report needs to be made to HMRC about them, employers should ensure that adequate records are kept to demonstrate that payments satisfy the conditions for exemption. Records should relate to miles travelled and not to actual expenses incurred

Employees Responsibilities

Employees, like other taxpayers, have to keep records

- So that they can complete a tax return fully and accurately if they get one
- If they do not get a tax return, so that they can notify the HMRC by 5 October after the end of the tax year if they have received income or gains which HMRC do not know about, or
- If they want to claim tax relief

They should retain these records for at least 22 months after the end of the tax year to which they apply.

Employees do not need to enter on their tax returns, any payments or provisions that are included in a dispensation or PSA. Where a dispensation or PSA is in place, employees are not taxable on the expense payments they receive under the terms of that dispensation. Where the employer pays or meets **less** than the full cost of business travel the employees are entitled to relief for the part of the cost of their business journeys that is not reimbursed or otherwise met by their employer under the terms of the dispensation or PSA.

It helps employees if their employers tell them about dispensations and PSA items, which apply to them. However there is no legal obligation on employers to do so.

With respect to travel, the most important things which employees should keep are:-

- P11D details of expenses payments and benefits in kind
- Details of claims for expenses they made to their employer and receipts which supported those claims (unless these are held by the employer)
- Records they make themselves, such as mileage details where they use a car (either their own or a company car) for business journeys.

If you pay meal allowances, accommodation allowances, personal incidental expenses payments or mileage allowances to an employed worker in circumstances in which the expenses incurred are not 'qualifying travelling expenses' as defined in Booklet 490. The full amount paid to the worker must be entered on the deduction document and taxed in the normal way.

10.2.5 MEAL AND ACCOMMODATION ALLOWANCES - OVERSEAS LOCATIONS

There are special rules governing tax relief for overseas travelling and subsistence expenses incurred by employed workers. Guidance is provided in Chapter 7 of Booklet 490. If subsistence costs at the overseas location are higher than comparable costs in the United Kingdom, and you are in consequence obliged to make payments which exceed the United Kingdom limits set out at 10.2.1 and 10.2.2 above, you should apply to Film & Production Industry Unit or TV Broadcasting Unit **in writing** for authority to pay all or part of the excess without deducting tax. You should provide full particulars of the location and of the payments you propose to make, together with some supporting evidence of local subsistence costs.

10.2.6 TRAVELLING EXPENSES - OVERSEAS LOCATIONS

There are special rules governing tax relief for overseas travelling and subsistence expenses incurred by employed workers. Guidance is provided in Chapter 7 of Booklet 490. The rules defining 'qualifying travelling expenses' have no application to overseas travel, and in general tax relief will be available in respect of the initial outward journey to and the final return journey from the overseas location.

10.3 PAYMENTS TO THIRD PARTIES

If you make payments to a third party for the benefit of an employed worker - for example, if you make a direct payment to an hotel to meet the cost of the worker's accommodation - the payment should be returned on form P11D unless a dispensation has been obtained. Further guidance may be found in Booklets 480 and 490.

10.4 APPLICATIONS FOR DISPENSATIONS

Because of the complex rules for determining whether payments are in respect of 'qualifying travelling expenses', applications for dispensations to cover a specific production should be accompanied by as much detailed information as possible. Including, for example - for each employed worker - details of the duration of the contract, the locations involved and the anticipated time to be spent at each location, (including the locations at which any pre- or post-production work is to be performed.)

10.5 NON-OPERATION OF PAYE ON EXPENSES PAYMENTS

In certain circumstances specific authority may be given for expenses payments other than those listed at Paragraph 10.2 above to be made to an employed worker without deduction of tax. Only Film & Production Industry Unit or TV Broadcasting Unit may give such authority.

10.6 SPECIFIC DISPENSATION

The TV Broadcasting Unit has a specific dispensation relating to overseas allowances.

If you fail to operate PAYE without such authority when making any expenses payment (other than payments which may be made gross by virtue of Paragraph 10.1 or 10.2 above) you may be held liable for the tax that ought to have been deducted.

11. RETURNS OF PAYMENTS MADE

In addition to the issue of forms P45 in the circumstances set out in Paragraph 3 above, you are required to make returns of payments made to your workers as instructed below.

11.1 SELF-EMPLOYED WORKERS

Workers engaged in grades listed in Appendix 1 who fulfil any specific requirements shown in the list (see Paragraph 2.1 above) and workers who have produced a valid letter of authority (see Paragraph 2.2 above) are regarded as self-employed. If requested to do so you should complete a Section 16 Return for each such worker to whom you have made payments exceeding £1000, **inclusive of any payments of expenses**, during the relevant return period. The necessary forms and instructions for their completion may be obtained from:-

HMRC
Centre for National Intelligence (CNI)
Ty Glas
Llanishen
CARDIFF
CF14 5TS
Telephone: (029) 2032 7456

11.2 EMPLOYED WORKERS NOT COVERED BY THE SEVEN DAY RULE

Documents should be completed in the normal way – see *'The Employer's Help Book*, (Booklet E10) and *'The Employer's Further Guide to PAYE*, (Booklet CWG2).

11.3 EMPLOYED WORKERS COVERED BY THE SEVEN DAY RULE

Where the engagement was covered by the Seven-Day Rule, a form P14 is still required for NIC purposes, even though no tax will have been deducted. Each form P14 should show the dates of commencement and cessation, the total pay for that engagement and the appropriate NIC deductions. **You should enter '7-DAY RULE' in the space for details of employment.** If you comply with the above requirements you need not complete a form P38A in respect of payments made without deduction of tax.

Please also remember to issue form P45 Part 1A on completion of each engagement covered by the Seven-Day Rule (Paragraph 3.2 above).

12. NATIONAL INSURANCE CONTRIBUTIONS

Where by virtue of Paragraphs 2.1 or 2.2 and Appendix 1 of these Guidelines a worker is to be treated as self-employed for tax purposes, the worker will also be accepted as self-employed for NIC purposes, and therefore responsible for his or her own Class 2 National Insurance Contributions and Class 4 National Insurance Contributions where appropriate. In any case of doubt or difficulty, please contact the Film & Production Industry Unit or TV Broadcasting Unit for specific advice.

National Insurance legislation does not permit the introduction of a system equivalent to the Seven-Day Rule. Unless self-employment can be accepted in accordance with Paragraphs 2.1, 2.2 and Appendix 1, Class 1 National Insurance Contributions will remain due and must be accounted for.

Please also refer to Booklet CWG5 as regards the application of Class 1 National Insurance Contributions to benefits provided to your workers.

13. SPECIAL NIC RULES FOR ENTERTAINERS

The Film & Production Industry Unit and TV Broadcasting Unit are collectively responsible for the affairs of most of the individuals who work in front of camera. They also retain responsibility for the film and TV companies engaging them. The following general information may be of assistance to those engaging entertainers, but specific advice should be sought in all cases of doubt or difficulty.

The harmonisation of treatment for tax and NIC purposes mentioned in Paragraph 12 above does **not** always apply to entertainers. The NICs treatment of entertainers can often be different from that which applies for tax.

Following the Special Commissioner's case of McCowen and West it was accepted that most performers/artists in the entertainment sector would generally be assessable to tax under self-employment. However, the Social Security (Categorisation of Earners) Amendment Regulations 1998 [Statutory Instrument 1998 No. 1728], which were introduced from 17 July 1998, created a liability for Class 1 NIC for entertainers when earnings consisted 'wholly or mainly by salary'.

'Entertainer' is defined by Regulation 2 as 'a person who is employed as an actor singer or musician, or in any similar performing capacity'. There is no statutory definition of 'salary', either in the Regulations or elsewhere, but decisions in the Courts have established that if a sum is to be so regarded it must meet certain conditions. We were therefore guided by what had been said in that respect, which broadly means that a sum will be a salary if is paid in respect of services rendered or to be rendered *and*

- is payable under the terms of a contract *and*
- is computed by reference to the time worked *and*
- payable at a fixed time *and*
- is in respect of services that have an element of continuity or recurrence *and*
- if paid in respect of services rendered.

Obviously, those who received rights payments higher than the salary element would, therefore, not be liable to pay Class 1. Also those who were engaged for only a day or two

would not be caught under the legislation since their payment would not come within the description of 'salary' derived from case law.

The aim of the above regulations was to ensure that most entertainers in the Film Industry continued to pay Class 1 NIC. However, it has become the norm for the majority of entertainers to receive, as part of their remuneration package, pre-purchase payments as compensation for the loss of future repeat fees, and rights and royalties worth many times the salary element. The consequence of which is that very few actors are paid 'wholly or mainly' by salary, therefore, the regulations were failing to achieve the object of bringing most entertainers into Class 1.

Therefore new regulations were introduced on 6 April 2003. These are The Social Security (Categorisation of Earners) Regulations 2003 [Statutory Instrument 2003 No. 736]. The new legislation reflects the fact that instead of a 'wholly or mainly' salary test, those entertainers whose remuneration includes any element of salary (as defined) would be treated as employed earners. It should be noted that where the regulations apply there will be liability for Class 1 NIC on all earnings from the engagement (including rights payments).

'Salary' is defined in the new regulations using four of the five tests, which formed the basis of the previous legislation:

- made for services rendered; and
- paid under a contract for services; and
- where there is more than one payment, payable at a specified period or interval; and
- computed by reference to the amount of time for which work has been performed

More detailed guidance on the new legislation can be found on the HMRC web-site under 'Publications – specialist'. However, specific advice should be sought in all cases of dispute or difficulty from the Film & Production Industry Unit or TV Broadcasting Unit.

14. VALUE ADDED TAX

Within the Film, Production & TV Broadcasting Industry, HMRC accept that any VAT registration requirement will follow from the status decision made in accordance with these Guidance Notes. This means that individuals will be liable to register and account for VAT if their income exceeds the prescribed limit (or if they elect to register voluntarily) provided that

- They are engaged in grades regarded as self-employed by virtue of Paragraph 2.1 above,

or

- They hold a Special Letter of Authority as described in Paragraph 2.2 above.

The view of HMRC is that regular working for short periods is indicative of self-employment and therefore of a potential liability to register for VAT. Workers whose earnings from short period contracts exceed the registration threshold and who request a status review with a view to obtaining a Special Letter of Authority (see Paragraph 2.2) should at the same time consider that they may be liable to register for VAT. The outcome of the review will be accepted as determining status both for Income Tax and for Value Added Tax.

Further information can be found on the HMRC website and in the HMRC Notice 700/1 '*Should I be registered for VAT?*'

This guidance does not limit the worker's right to make an application for VAT registration, nor to appeal to a Tribunal if that application is refused. Any queries about VAT can be dealt with by the VAT Excise and Customs Duties Helpline on 0845 010 9000 or 0845 000 0200 for those with hearing difficulties or 0845 010 0300 for those who wish to speak to someone in Welsh.

15. CONTACT ADDRESSES

General PAYE & Self Assessment enquiries in the Film, Production & TV Broadcast Industry should in the first instance be made to –

HMRC Contact Centre telephone number 0845 300 0627

All other enquiries, including, actors, 7 Day Rule, expenses, employment status of grades, special letters or dispensations in the Film & Production Industry should be made to -

Film & Production Unit
Floor 2
Weardale House
Washington
Tyne & Wear
NE37 1LW

Telephone: 0191 419 8800
Fax: 0191 419 8782
Email a.filmproductionunitmailbox@hmrc.gsi.gov.uk

Employment status queries about workers engaged by Television Broadcasting Companies should be addressed to –

TV Broadcasting Unit
4th Floor
Trinity Bridge House
2 Dearmans Place
SALFORD
M3 5BH

Telephone: (0161) 261 3254/3255/3691
Fax: (0161) 261 3197

Enquiries about workers engaged by Foreign Broadcasting Companies should be addressed to –

Specialist Employer Compliance
Grayfield House
5 Bankhead Avenue
Edinburgh
EH4 7DL

Telephone 0131 453 8780
Fax 0131 453 8806

APPENDIX 1

LIST OF ACCEPTED SELF EMPLOYED GRADES

IMPORTANT NOTES

1. SCOPE

This list applies to all sectors of the Film Industry and to Television Broadcasting.

2. MAXIMUM DURATION OF ENGAGEMENT

In certain circumstances the status of a worker may be influenced by the duration of an engagement. Workers in grades marked with an asterisk* in the following list may be regarded as self-employed provided that they are engaged on a temporary, casual or freelance basis:-

- for a one-off production such as a feature film or a single drama or documentary, **or**
- for less than 9 months on a series or a specific strand of a programme.

In exceptional circumstances the period of 9 months may be extended if specific authority is sought from this office.

Workers in grades not marked with an asterisk may be regarded as self-employed regardless of the length of the engagement, **provided that they are engaged on a freelance basis.**

3. ASSISTANTS

Assistant grades are **NOT** included unless specifically identified in the list.

4. OTHER GRADES

Payments to workers in grades not shown in the following list should be taxed under PAYE (except where the Seven Day Rule applies) and should be subjected to Class 1 National Insurance Contributions.

Remember that the Seven Day Rule does not apply to National Insurance Contributions!

5. DEFINITIONS

PREMISES PROVIDED BY THE ENGAGER

These embrace studios, locations or any other facilities provided by or at the direct expense of the engager, whether or not the engager is occupier of those premises.

SUBSTANTIAL PROVISION OF MATERIALS/EQUIPMENT

This means the provision of major items which play an important and fundamental role in the work of the grade in question and which are of significant value, such provision being an integral requirement of the contract of engagement. It does **not** include tools of the trade (see below). The significance of the provision of equipment in determining tax status is the financial risk which such provision entails. It follows that in general equipment must be owned by, or at the permanent disposal of the worker. Provision of hired equipment, whether or not hired in the worker's name, is relevant only if obtained entirely independently of the engager. Such provision should be disregarded if the financial risk is effectively underwritten by the engager. If a worker is treated as self-employed by virtue of the substantial provision of equipment, the engager must retain full details of the equipment provided for production to this office on request.

TOOLS OF THE TRADE

It is customary for most craftsmen to provide their own tools, whether engaged as employees or as self-employed contractors. Such tools should be disregarded in considering the value of equipment provided, even though the contents of a joiner's or electrician's toolbox may have substantial intrinsic value.

ADVANCE RIGGER	Where the contract requires substantial provision of equipment (See Note 5).
* ANIMAL HANDLER	
* ANIMATION DIRECTOR	
* ANIMATION PRODUCTION CO-ORDINATOR	
ANIMATOR	Where the work is performed other than on premises provided by the engager and the contract requires substantial provision of equipment (See Note 5)
* ANIMATRONIC MODEL DESIGNER	
* ART DIRECTOR	
ASSISTANT ART DIRECTOR	Where the work is performed other than on premises provided by the engager (See Note 5)
ASSISTANT COSTUME DESIGNER	Where the work is performed other than on premises provided by the engager or the contract requires substantial provision of materials (See Note 5)
* ASSOCIATE PRODUCER	Except where engaged primarily for general research
* AUDITIONER	
BACKGROUND ARTIST	Where the work is performed other than on premises provided by the engager (See Note 5)
CAMERA OPERATOR	Where the contract requires substantial provision of equipment (See Note 5)
CAMERAPERSON	Where the contract requires substantial provision of equipment (See Note 5)
* CASTING DIRECTOR	
* CHAPERONE/TUTOR	
* CHOREOGRAPHER	
* COMPOSER	
CONSTRUCTION MANAGER	Where the contract requires substantial provision of equipment (See Note 5)
CONTINUITY	Where script breakdown is an integral part of the contract
CONTRIBUTOR	Where payment is made on a per contribution basis.
* CO PRODUCER	
COSTUME DESIGNER	Where the work is performed other than on premises provided by the engager or the contract requires substantial provision of materials (See Note 5)
* CRICKET SCORER	
* DIRECTOR	
* DIRECTOR OF PHOTOGRAPHY	
DRESSMAKER	Where the work is performed other than on the premises provided by the engager (See Note 5)

DRIVER	Where the contract requires the driver to provide his own vehicle
* EDITOR	
* EXECUTIVE PRODUCER	
* FIGHT ARRANGER	
* FILM STYLIST	
* FIRST ASSISTANT DIRECTOR	
GAFFER	Where the contract requires substantial provision of equipment (See Note 5)
GRAPHIC ARTIST	Where the work is performed other than on the premises provided by the engager
GRAPHIC DESIGNER	Where the work is performed other than on the premises provided by the engager (See Note 5)
GRIP	Where the contract requires substantial provision of equipment (See Note 5)
HAIRDRESSER	Where the contract requires substantial provision of equipment (including wigs), or 50% or more of the work is performed other than on premises provided by the engager (See Note 5)
* HEAD OF ART DEPARTMENT	
HEAD OF DEPARTMENT RIGGER	Where the contract requires substantial provision of equipment (See Note 5)
HEAD OF DEPARTMENT RIGGER	
LANGUGAGE ASSESSOR	Where used on an occasional basis to check style and delivery of foreign language broadcasts
LETTERING ARTIST	Where the work is performed other than on premises provided by the engager (See Note 5)
LETTERING DESIGNER	Where the work is performed other than on premises provided by the engager (See Note 5)
LIGHTING CAMERAPERSON	Where responsible for designing lighting or photography
LIGHTING DIRECTOR	Where responsible for designing lighting or photography
* LINE PRODUCER	
LOCATION MANAGER	Where the contract requires provision of facilities by the worker
MAKE-UP ARTIST	Where the contract requires provision of a standard make-up kit by the worker, or 50% or more is performed other than on premises provided by the engager (See Note 5)
* MATRON	
MODEL CAMERA	Where the contract requires substantial provision of equipment (See Note 5)
MODEL DESIGNER	Where the engagement requires the provision of facilities and equipment/materials by the individual (See Note 5)

MODEL MAKER	Where the engagement requires the provision of facilities and equipment/materials by the individual (See Note 5)
* MODELLER	
MUSICAL ARRANGER	Where the work is performed other than on premises provided by the engager (See Note 5)
* MUSICAL ASSOCIATE	
MUSICAL COPYCAT	Where the work is performed other than on premises provided by the engager (See Note 5)
* MUSICAL DIRECTOR	
* MUSICAL SCORE READER	
* NURSE	
* PHOTOGRAPHIC STYLIST	
* POST PRODUCTION SUPERVISOR	
PRINTER	Where the work is performed other than on premises provided by the engager (See Note 5)
* PRODUCER	
PRODUCTION ACCOUNTANT	Where the contract requires provision of relevant facilities by the worker
PRODUCTION ASSISTANT	Where script breakdown is an integral part of the contract
* PRODUCTION BUYER	
* PRODUCTION DESIGNER	
* PRODUCTION MANAGER	
* PRODUCTION SUPERVISOR	
PROPERTY MASTER	Where the contract requires substantial provision of equipment (including props) (See Note 5)
PROPERTY HAND	Where the contract requires substantial provision of equipment (including props) (See Note 5)
PROVIDER OF OCCASIONAL INFORMATION	Embraces tip-offs, racing tips, news, sports news and similar information
* PUBLICIST	
SCENIC ARTIST	Where 50% or more of the work is performed other than on the premises provided by the engager (See Note 5)
SCENIC DESIGNER	Where 50% or more of the work is performed other than on premises provided by the engager
SCRIPT READER	Where the work is performed other than on premises provided by the engager (See Note 5)
SCRIPT SUPERVISOR	Where script breakdown is an integral part of the contract
* SCRIPTWRITER	Excluding reporting scripts
* SCULPTOR	
* SENIOR FLOOR MANAGER	

* SENIOR SPECIAL EFFECTS TECHNICIAN	
SET DECORATOR	Where the contract requires set design performed other than on premises provided by the engager.
SET DRESSER	Where the contract requires set design performed other than on premises provided by the engager.
SOUND MAINTENANCE ENGINEER	Where the contract requires substantial provision of equipment (See Note 5)
SOUND MIXER	Where the contract requires substantial provision of equipment (See Note 5)
SOUND RECORDIST	Where the contract requires substantial provision of equipment (See Note 5)
SPECIAL EFFECTS SUPERVISOR	Where the contract requires provision of necessary equipment by the worker
SPECIAL EFFECTS WIREPERSON	Where the contract requires provision of necessary equipment by the worker
SPECIALIST RESEARCHER	Where the worker has either an existing profession outside of the Film Industry (Academic, Legal Adviser, Doctor, etc) or specialist knowledge of the programme content to be researched and the worker is engaged for a specific project and is not a regular contributor
* SPORT STATISTICIAN	
STAGE MANAGER	Where the contract requires provision of equipment (including props) (See Note 5)
STILLS PHOTOGRAPHER	Where the contract requires provision of all cameras by the worker
* STORYWRITER	Excluding news reporting
STORYBOARD ARTIST	Where the work is performed other than on premises provided by the engager (See Note 5)
* STYLISTS	Film or photographic styling
TRACER	Where the work is performed other than on premises provided by the engager (See Note 5)
TRANSCRIPT TYPIST	Where the work is performed other than on premises provided by the engager (See Note 5)
TRANSLATOR	Where the work is performed other than on premises provided by the engager (See Note 5)
TRANSPORT MANAGER	Where the worker provides vehicles
* TUTOR	
VIDEO TECHNICIAN	Where the contract requires substantial provision of equipment (See Note 5)
WARDROBE	Where the work is performed other than on premises provided by the engager or the contract requires substantial provision of materials (See Note 5)
* WARM UP	

WIGMAKER	Where the work is performed other than on premises provided by the engager (See Note 5)
WIREPERSON	Where the contract requires provision of necessary equipment by the worker
WRITER	Excluding reporter