

PAYE and Semi-Professional Football





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Background

The operation of PAYE at semi-professional clubs has been of concern to the Inland Revenue for some time. In 1990 two Special Compliance Offices of the Inland Revenue were identified as those that would deal with professional and semi-professional clubs respectively. The office designated as dealing with the professional game was Solihull Special Compliance Office. The guidelines relevant to the professional game are outside the scope of this brochure, however some of the problem areas identified are also relevant to semi-professional clubs.

In June 1990 Leeds Special Compliance Office dealt with the application of PAYE procedures within the semi-professional game, that is within the Conference and the pyramid of football underneath. In the years following, Special Compliance Office asked the Inland Revenue PAYE Audit groups to complete questionnaires in respect of PAYE Audit inspections and also conducted in-depth enquiries itself into a number of clubs. The Inland Revenue concluded from its work that the guidelines which it had issued to clubs in 1990 were being exploited and in many cases used by clubs as a means of avoiding their PAYE responsibilities as employers.

In the last 10 years the Inland Revenue has not actively monitored the semi-professional game, although local offices still carry out PAYE reviews on a regular basis. Although this may be an indication that procedures have improved at the clubs, it would be wrong to assume that all clubs have their PAYE affairs in order.

The purpose of this brochure

The main purpose of this brochure is to update and summarise the PAYE obligations for clubs based on the experiences of the last ten years. Emphasis has been placed on the use of practical examples and checklists with the intention of making the brochure a user-friendly and convenient first point of reference for those semi-professional clubs with a query in respect of PAYE issues. It is important that club procedures adapt to any changes whilst continuing to correctly interpret the existing rules.

If clubs are in any doubt they should first contact their professional advisers and then their local PAYE tax district to confirm that the procedures that they are operating are satisfactory from a PAYE viewpoint. If clubs are found not to be operating proper procedures then it is likely that if audited and abuses are found, the Inland Revenue will once again step up its involvement.

PAYE obligations for semi-professional clubs

Any individual considered as an 'employee' must have PAYE deducted from payments made to them.

Payments subject to PAYE include all salaries, appearance money, bonuses, shares of transfer fees, signing on fees and any other payments derived from the provision of the employee's services to a club. Any club making payments of this nature and not operating a PAYE scheme should contact its local tax office for the issue of tax tables where it needs to do so. Before doing so the club should seek professional advice.

The following table summarises those individuals who will normally be considered to be employees and therefore PAYE should be applied to payments made by the club to them:

Position	Typical payments which should have PAYE deducted from them
a Manager, coach, physiotherapist, match stewards, gatemen, cleaners, bar staff, and any "casual" helpers.	Salary, bonuses, round sum allowances, payments for travel expenses between home and ground, any payment related to services for the club.
b Players (with a written, oral or implied contract).	Salary, bonuses, appearance money, share of transfer fees and signing on fees, payments for travel expenses between home and ground, any payment related to services for the club.
c Other individuals including non-contract players who receive payments that do not constitute specific reimbursement of actual travelling and other out of pocket expenses.	The Inland Revenue has agreed that players whose only payment constitutes specific reimbursement of actual expenses are playing purely 'for the love of the game' and should therefore be outside the scope of the PAYE regulations. However, if the club cannot retain sufficient documentation to justify specific reimbursement of expenses (for instance, travel or out of pocket expenses) then PAYE must be applied. Typical out of pocket expenses would include actual travelling costs and the costs of football boots and training gear.

In order for the club to satisfy the PAYE requirements it must meet its responsibilities which are to:

- keep adequate payroll records;
- deduct the correct amounts of PAYE and NIC from gross salaries and pay them over on time; and
- send in forms (see **Appendix 1**) and returns which are completed accurately and on time.

This is often a minefield for club officials, who do not always have the time or expertise to deal with this complex and administratively time consuming area of tax. It is therefore vital for the club to establish procedures covering these responsibilities and to check that they are operating properly.

Time limits are set for the payment of tax and the submission of forms and returns with automatic penalties for failure to complete them on a timely basis. There is strict enforcement of the time limits and minimal scope for reducing the penalties for getting things wrong, although good professional advice will help in this regard.

Details of the time limits for submitting PAYE returns and returns of expenses and benefits, together with the penalties for non-compliance, can be found in **Appendix 1**. The Inland Revenue issue Employer's Packs before the start of each new tax year setting out the relevant time limits and penalties applicable for that year.

Common problem areas – PAYE

(a) Gross cash payments

These are payments made to employees, without deduction of tax under PAYE or accounting for NIC, and problems can arise principally in two situations:

- i) where the club does not treat the individual as an employee, but under tax law he is; and
- ii) payments to employees such as players, managers etc, sometimes outside their normal responsibilities and in addition to their normal salary.

These are the areas of greatest risk, since tax should be deducted by the club from them. The Inland Revenue will seek to recover the tax and NIC from the club in these examples

With regard to category (i), the Inland Revenue have it within their powers to review the relationship between

individuals and companies to see whether they are in fact employees and not self-employed 'consultants'. The tax status of such individuals does not depend on what label the club puts on the relationship, since all the facts and circumstances will be reviewed by the Revenue. The status of various commercial agents such as Lottery Agents can be difficult to establish. In order for self-employed status to be substantiated the individual needs to be genuinely in business on his own account.

Appendix 2 sets out the tests, which can be used to determine the employment status of an individual.

Problems can also arise in relation to match day staff such as stewards and gatemen who may be classed as employees. If PAYE and NIC is not being deducted then a substantial cost can be assessed on the club itself. A not untypical example is given in **Appendix 3**.

The categories of workers generally designated as 'casuals' by the club are also within the PAYE net and are not exempt. These may include bar staff, certain consultants and others helping out at the club.

If the Inland Revenue finds payments made to staff that have not been properly accounted for under the PAYE system, they may investigate other areas. For example, if payments are not recorded in the books they may review whether the club's accounts have been produced in accordance with the appropriate legal and accounting requirements.

With regard to category (ii), cash payments made without deduction of tax, in addition to normal salary payments to employees also cause problems. These are perhaps not quite so common but may very well arise if, for instance, a member of the office staff comes in on a match day to help and gets paid cash. Petty cash payments in particular are generally at risk and will be reviewed in detail by the Revenue since they usually indicate areas where tax has not been deducted and, therefore, they provide a ready source of tax revenue in an investigation.

(b) Round sum allowances

Often clubs pay 'expenses' in the form of round sum allowances. In reality these payments may not be expenses at all, but disguised salary.

The Revenue regards such round sum allowances as pay in relation to which PAYE and NIC should be accounted for.

If there are genuine expenses to be reimbursed these need to be identified, accounted for, and if appropriate, cleared with the local Inspector of Taxes. Such expense payments must be justifiable; and if clubs are currently paying round sums without the necessary documentation

in support they should review their procedures as a matter of some urgency.

(c) 'For the love of the game': non-contract players

Undoubtedly individuals help out at many clubs 'for the love of it', and in many cases expense payments are made to cover genuine travel (see (d) below) and other expenses. In such situations it may be possible to establish that an individual is involved 'for the love of the game' and is therefore not an employee because he is not making any money out of it. This may also be the case for national minimum wage purposes (see (o) below).

Such an approach has been agreed with the Revenue in relation to non-contract players other than those mentioned at category (c) in the table on page 2.

It will, however, be necessary to demonstrate that there is no written or oral contract of employment with the player concerned and that the expense payments do no more than reimburse actual costs incurred. What is required is for each club to have a system for controlling, reporting and reimbursing specific expenses for individual players including appropriate documentation. It must be demonstrated that the particular player does no more than receive reimbursement of his actual expenses incurred. 'Love of the game' players should therefore not receive expense payments for games or training sessions they do not attend. They are also not able to receive signing-on fees or other bonuses in the course of a season. If they do, then they have ceased to play as a 'love of the game' player, and all their earnings should be subject to tax.

Where an expense claim system is in place and is operating effectively in relation to individual non-contract players, PAYE need not be applied to payments made to those players. Where clubs are not able to comply with these rules then the whole amount paid to the player should be subject to PAYE. (see **Appendix 4**).

(d) Travelling expenses

The Inland Revenue has agreed that players who receive only specific reimbursement of actual expenses are playing purely for the love of the game and should therefore be outside the scope of the PAYE regulations, i.e. in that they are not 'employees'.

The Inland Revenue has agreed that these individuals may be reimbursed for legitimate travel at up to 40p per mile (for 2004/2005). This is calculated by reference to the Inland Revenue Authorised Mileage Allowance Payment rates released annually by the Inland Revenue - your local Inland Revenue district will be able to advise you of the rates from year to year. The Revenue will insist on a lower

rate where there is more than 10,000 miles of business travel. This rate is currently 25p.

It should be noted that where an individual has a company car by virtue of his full time employment then he must only claim reimbursement of the fuel cost as opposed to the 40p per mile reimbursement mentioned above. The Inland Revenue published rates for reimbursement of fuel costs for company cars per mile are set out below.

Engine Size	Petrol	Diesel	LPG
1400 cc or less	10p	9p	7p
1401 cc 2000 cc	12p	9p	8p
Over 2000cc	14p	12p	10p

These rates are reviewed by the Inland Revenue and it is important to ensure that clubs are using the most up to date rates. Should the rates be reduced and the club continue paying higher rates this could result in the individual making a profit and becoming taxable on the whole payment.

Some employees may also have their fuel paid for them by their main employer. In this case, there should be no reimbursement of fuel costs.

Where players are classed as 'employees' of the club then reimbursement of travel costs are taxable if they relate to travel from their home to the club's home ground or training ground.

However, reimbursements of travel costs in respect of journeys from home to an away ground (therefore, not to the individual's normal place of work) are not subject to PAYE.

Again, if a company car is available then only the out of pocket fuel costs may be reimbursed without PAYE being applied. A dispensation should be obtained from the local tax office to cover such payments when they are made to employees. (see **Appendix 5**).

On any expense reimbursement form, the player should state whether the car is his personally owned vehicle or whether it is a company car.

(e) Students

Students can be classified as 'employees' of a club like any other individual. If this relationship exists, their payments should be subject to the PAYE regulations. However it may be the case that where a student is employed during vacation periods and his earnings are not likely to exceed his personal allowances then PAYE need not be applied. It will be necessary for the student

to complete form P38(s) in such an instance.

The club will also be responsible for complying with the student loan legislation by deducting loan repayments from the net salary of relevant employees, where relevant.

(f) Individuals with a second employment

A substantial number of contracted players will have a second employment. These individuals should be subject to PAYE deductions by the club as the second employer in most instances. As the individual's personal allowances are likely to be set against the income from his main employment then his income from the club will be taxed at basic rate. If tax is due at the higher rate then further tax will be due upon submission of a tax return by the individual.

If an employee is likely to pay the maximum National Insurance contributions from his main employment then he can apply to have his wages from the club paid without deduction of NIC. If the application is allowed, the Inland Revenue National Insurance Contributions Office will send form CA2700 to the employer authorising them to deduct only 1% as employee's contributions. Employer's contributions are still payable.

(g) Individuals with no other employment

It has been known for some contract players to refer to themselves as unemployed as their wages from the club are their only source of income. If the individual is a contracted player receiving payment for playing football then he is an employee of the club - not unemployed. Ultimately no tax will be due if the player's income is less than his personal allowances; however a deduction card should be maintained.

There have also been instances of footballers describing themselves as self-employed footballers. It is not possible to be a self-employed footballer - if the individual has either a written or oral contract then he is employed by the club and subject to the PAYE rules.

It should be noted that it has been agreed with the Inland Revenue that referees and linesmen may be classed as self-employed and so they are able to receive payment gross. They are taxed on this income as self-employed individuals who report their income on a tax return.

(h) Telephone rental and calls

There will be instances when a team manager or other officials of the club will conduct club business using their domestic telephone. Where this is the case then the cost of such calls may be reimbursed by the club, however,

telephone rental charges should not be reimbursed. The telephone bill should be split and allocated between personal and club business and a photocopy of the telephone bill should be supplied to the club pending reimbursement. A dispensation (see Appendix 5) could be sought to cover this type of expense.

(i) Uniforms

Players and officials may be provided with a club uniform - blazers etc. Provided such clothing is adorned by the club crest then this should not be a taxable benefit to the employee.

(j) Testimonials/benefits

Players may be granted 'testimonial or benefit matches' receiving the proceeds personally. In order for the proceeds of these matches to be free of tax in the player's hands a number of conditions must be met. In particular there must be no contractual entitlement (written or verbal) to the benefit and no custom must exist in respect of it.

For instance, if there is an understanding (whether written or verbal) that when a player has been with a club for a certain period then he is granted a testimonial, this would indicate the existence of a custom.

Such a match should usually be organised by a 'testimonial committee' independent of the club and using its own bank account that is independent of the club and player.

It is essential that any club holding such a match should consult their professional advisers in order to establish the correct tax status.

(k) Kit allowances

Players may be reimbursed for the cost of necessary equipment such as football boots, training gear etc. However clubs must obtain documentary evidence of the actual expenses. It must be demonstrated that the amounts paid to a player on an individual weekly basis are no more than the actual costs incurred. (See illustration 7 - **Appendix 4**).

Please refer to **Appendix 5** for a checklist of expenses and benefits which the Inland Revenue regularly focus on and where difficulties can arise.

(l) Statutory Sick Pay

Contract players, as employees of the club, will be entitled to Statutory Sick Pay (SSP) in the same way as other employees.

For the year 2004/2005 an employee earning over an average of £79 per week is able to receive a weekly amount of £66.15 for a 7 day qualifying week. Inland Revenue guide E14/E15 (Statutory Sick Pay and Statutory Maternity Pay Tables) explains in detail how to account for different circumstances depending on each individual situation.

It should be noted that clubs might qualify for a reimbursement of Statutory Sick Pay under the Percentage Threshold Scheme. This scheme is designed to help employers who have a high proportion of their workforce sick at any one time. To calculate if the club qualifies it should compare the total SSP it has paid in a tax month with 13% of the total Class 1 National Insurance (employers and employees) liability for that tax month. You are entitled to a reimbursement of any SSP paid over and above 13% of your Class 1 National Insurance liability. Inland Revenue guide E14/E15 provides working examples of how to calculate and claim this relief and should be referred to in this regard.

(m) Tax Credits

Clubs should ensure that they are compliant with the regulations where employees are entitled to tax credits. Prior to 6 April 2000, these payments were claimed by employees from the DSS. However, these payments should now be paid with the employee's salary. This has placed significant additional responsibility on the club as the employer. The system is policed by the Revenue and if clubs fail to comply penalties may be levied.

(n) Honoraria

Committee members and unpaid officers are sometimes awarded honoraria in recognition of their services to the club. Extreme care should be taken with such awards since often, notwithstanding the label which the club puts on the payment, it amounts to no more than a reward for services which is regularly paid to the office holder and taxable as ordinary earnings. Clubs should not pay such honoraria without accounting for PAYE and NIC before confirming that they may do so with their Inland Revenue PAYE district.

(o) National Minimum Wage ("NMW")

Clubs should ensure that where individuals undertake work under a contract of employment (either written, oral or implied) they must be paid in accordance with the NMW regulations.

This is a particularly complicated area for semi-professional clubs where it is common to have a number of individuals assisting the club on a voluntary basis. Discussions are taking place with the Inland Revenue to

assist clubs in understanding the rules and separate guidance will be issued by the Football Association when available.

If a player is issued a standard player's contract this will constitute employment for NMW purposes and clubs must ensure that the rate paid amounts to at least NMW. If a player or other individual assists the club on a voluntary basis receiving nothing in return, (cash or benefit) then it is unlikely that the individual will be treated as a worker and the NMW does not have to be paid.

The most complicated area is an individual (including a non-contract player) who receives some payment or benefit. This may even be expenses which are in excess of costs incurred (see sections (c) and (d) above). This will classify the individual concerned as a 'worker' for NMW purposes, and indicate that they must be paid the NMW for each hour they work. This includes playing in the game, travelling to away games and training time.

The rates of the NMW from 1 October 2004 are £3 per hour for 16 and 17 year olds and £4.85 for those aged over 18.

If an individual or the Inland Revenue challenge a club over NMW payments it is up to the club to demonstrate that it has paid NMW to each person for every hour worked. If a club does not have records to substantiate this position it is likely that the courts will favour the individual. It is a criminal offence if the club do not keep records. This can lead to fines being levied on the club or individual officials and in extreme cases criminal prosecutions.

This is a difficult area that is developing through discussions with the Inland Revenue. Clubs should consult their professional advisors or the Inland Revenue if they are in any doubt about the NMW regulations. Further details can be obtained at www.tiger.gov.uk.

(p) Casual staff

Where employees are engaged on a casual or part-time basis, problems with the operation of PAYE can arise. Where an employee does not have a form P45 from their previous employer the club must provide a form P46 and ask the employee to consider if any of the statements on that form apply to the employee. The completed form P46 must be handed back to the club and any appropriate action regarding tax codes followed by the club.

If the club hold neither a form P45 nor P46, the PAYE regulations state that tax at basic rate (currently 22%) must be withheld irrespective of the size of the payment. It is therefore important that clubs establish a procedure for issuing and receiving forms P46 as soon as possible.

(q) Agents fees

The Inland Revenue and Customs & Excise have continued to show interest in agents fees paid by a club. The position is complicated since, under football's rules, an agent should be acting only for one party in the transfer of a player. The payment of agents fees by clubs has been the subject of significant discussion with the Inland Revenue and Customs, but it has not been possible to reach an agreement acceptable to all clubs. If clubs have paid any agents fees in respect of a player and not reported them for tax purposes, they will need to discuss their own particular position with the Inland Revenue in respect of previous tax years. We recommend that clubs seek professional advice in negotiating with the Inland Revenue.

In relation to the current and future years, clubs must ensure that contracts with agents make it clear who the agent is acting for. If a club pays an agent in respect of his work for a player, it should ensure that it discloses any benefit on form P11D, or if appropriate, arranges for NIC to be accounted for.

For the VAT position on agents fees we recommend clubs see the brochure "VAT and Football" published by the Football Association.

(r) Holiday Pay

An employee is entitled to a minimum of four weeks paid holiday per "leave year". Unless a contract states differently a leave year commences 1 October. This applies to all employees and if clubs are in any doubt about its application they should consult their professional advisors. Holiday pay is treated as normal pay and subject to both PAYE and NIC.

(s) Expenses

Attached at **Appendix 7** is a pro-forma expense claim form that clubs may use if they do not have a standard expense claim form.

(t) Class 1A National Insurance contributions

From 6 April 2000 class 1A NIC was extended to cover the majority of benefits in kind that an employer is required to show on forms P11d. Previously it covered only company car and fuel benefits.

With the removal of the upper NIC limit for employees clubs need to be aware of whether or not a benefit attracts a class 1 or 1A NIC charge. If the club is paying an employee's personal liability or reimbursing the employee through expenses it is likely that a class 1 NIC liability will

arise. This would involve both employee and employer NIC whereas a class 1A NIC charge would be employer only.

The Class 1A NIC liabilities will be calculated using the value for tax purposes declared on the end of year form P11D and a box will need to be ticked on this form to confirm that the Class 1A is due by the club. The return (form P11d (b)) must be submitted by 6 July following the end of the tax year with payment been made on 19 July.

Abuses found in the past by the Inland Revenue

While the attention of the Special Compliance Office has reduced over the last few years this must not be taken as an indication that all is well. All clubs must ensure that their PAYE and NIC procedures are in order since it is inevitable that if bad practice is found at even a small number of clubs this can lead to the Inland Revenue increasing their focus on semi-professional football clubs as a whole. The clubs who are not acting in accordance with the guidelines are likely to be visited by the Inland Revenue at some point.

It is strongly recommended that any club that has not agreed their procedures with the Inland Revenue should approach the PAYE district dealing with its affairs (after taking advice from its professional advisers as appropriate) to ensure that the Inland Revenue is happy with the procedures that they are applying.

In the past the Inland Revenue have identified a number of abuses of the PAYE guidelines. In particular, they felt that many players who, on the face of it, are playing for the love of the game as identified at (c) above were in fact being paid a wage, i.e. a reward for services for playing soccer.

In certain cases clubs may operate a pooling arrangement under which the team manager is given a sum of cash each week and for that sum he would be expected to field the team. He will approach different players to get them to play for the club and make payments to each player out of the pool of money without any recognition of that particular individual's actual expenses. However, the documentation kept by the club justifies the total amount paid out of the pool in terms of expenses incurred by individual players. The Inland Revenue has also come across cash sums being paid to first team players that are justified in the accounts of the club as expenses paid to

reserve and youth team players. **The pool basis of reimbursement is not an acceptable practice. Pooling arrangements indicate a lack of internal control and would, when discovered encourage further investigation into the financial affairs of the club.**

The following specific examples of practices that the Inland Revenue has found in the past would result in it seeking to operate PAYE. Most of these arise because the conditions for tax free motor mileage allowances at agreed rates are not adhered to, i.e. the player must use his own private car upon which he bears all the running costs and payments to him must be properly controlled and made on a reimbursement basis. These practices are:

- 1) Two or more players travel together in one car and multiple expense claims are made.
- 2) Company or employer provided vehicles are used by the player and a claim for full reimbursement of motor mileage is made.
- 3) An estimated motor mileage is calculated at the beginning of the year on the basis of say, three visits a week to the ground from a player's home. This is multiplied by the number of weeks in the year and divided into a suitably round weekly figure which is paid week in, week out, regardless of whether or not the player concerned plays or attends training sessions and is even paid where the player is injured so does not attend the club either on match days or for training.
- 4) Motor mileage payments are made to players who do not drive or do not have their own transport.
- 5) Motor mileage payments are made to players who live within walking distance from the ground.
- 6) Payments of motor mileage are made to players to travel to away games when they travel on a team coach.
- 7) Motor mileage payments are made to players for home to ground travel even when the club has no record of the home address of the majority of the players.
- 8) Clubs pay motor mileage allowances unrelated to length of journey.
- 9) A substantial proportion of clubs inspected had paid reimbursed motor mileage expenses yet had no record of claims made.

Other problems found by the Inland Revenue in the past have been:

- 1) Bonuses paid without deduction of tax.
- 2) Clubs paying kit allowances as expenses where it was thought to represent a reward/wage and there was no accounting for the expenses actually incurred nor any agreement with the Inland Revenue that such allowances could be paid tax-free.
- 3) Clubs found to be paying termination payments, signing on fees, match fees etc. to players without deducting tax.
- 4) Clubs found to be making payments that were linked to results. The total payments made over the year would then be documented as expenses spread evenly over the year.
- 5) Amounts paid to players directly by a wealthy benefactor of the club. These payments were not documented in the club's accounts. The players viewed the payments as being made by the club. The Inland Revenue believe these payments may arise by virtue of an employment and are taxable. The Inland Revenue suggest that all such payments be made through the club and fully documented. Individual cases must be judged on their facts and it is suggested that the local tax office be approached for clearance.

If any club is involved in any of these practices (or has been in the past) they should seek advice from their professional advisers in order to limit the damage of any Inland Revenue investigation.

Action Required

Appendix 6 sets out an action plan for clubs in ensuring that their PAYE and NIC procedures are in order.

Any club whose PAYE affairs are not being managed properly should have cause for concern if it is selected for a PAYE audit. It will be in a much better position if it adopts voluntary disclosure since this is an important factor in mitigation of any financial penalty that may be due.

In those instances where it could be construed that a club has deliberately set out to make payments that contravene Inland Revenue regulations on PAYE, then The Football Association may decide to charge the club for a breach of FA Rules. It is also appropriate at this juncture to emphasise that clubs must forward details of all remuneration of players under written contract to the FA in accordance with the rules. The relevant FA Rules are shown in Appendix 8.

Appendix 1: PAYE Returns – Time limits and penalties

Deadlines

Forms	Date		Penalty provisions
P14,P35,P38	19 May following tax year	Income tax (PAYE) regulations 2003 (SI 2003/2682)reg. 73, 74	TMA 1970, s. 98A
P9D, P11D, P11D(b)	6 July following tax year	Income tax (PAYE) regulations 2003 (SI 2003/2682)reg. 85	TMA 1970, s. 98

Penalties that may be imposed for late returns

Forms	Initial	Continuing	Delay exceeds 12 months
P14,P35,P38, P11D(b)	£100 per 50 employees	£100 monthly per 50 employees	Penalty not exceeding 100% of the tax or NICs payable for the year of assessment but not paid by 19 April following the end of the year of assessment
P9D, P11D	£300 per return	£60 per day, per return	

Penalties that may be imposed for incorrect returns

Forms	Provision TMA 1970	Penalty
P14,P35,P38	s. 98A	Maximum of 100% of tax underpaid (s. 98A(4))
P9D, P11D	s. 98	Maximum penalty £3,000 (s. 98(2))

Interest on unpaid PAYE/NIC

Interest Rate	Date	Statutory provision
Interest Rate of 7.5% (as at 6 September 2004)	Accrues from 19 April following end of tax year	TMA 1970 s 86

Appendix 2: Contract of service and contract for services

Employment status is a question of law, to be decided on the facts in each case. One of the main factors is the nature of the contract, which may be written or oral, expressed or implied, between the payer and the payee. The contract will be either a contract of service or a contract for service. The former means simply a contract of employment - it creates a relationship of master and servant. The latter is that which exists between the employer and an independent employee, (self-employed person).

The issues that will be considered are:

Control

Tests of control include whether the following apply:

- the payer has control over what work is to be carried out and when and how it is to be performed;
- the payee is expected to work set hours or a given number of hours per week or month;
- the payee is subject to the payer's disciplinary code and the payer has the right to suspend or dismiss the payee (with dismissal being subject to a period of notice);
- the payee is paid on a weekly or monthly basis, is able to earn overtime pay, is entitled to holiday and sick pay and/or is able to join an employers' pension scheme.

These are indications that a contract of service exists.

Economic Reality

The test of economic reality is whether or not the person performing the work is in business on his own account, (i.e. is he self-employed). Questions to be asked include the following:

- does he work for more than one employer? It should be noted that it is quite possible for someone to have two or more sources of earnings and to be an employee in respect of one or more sources of earnings.
- does he incur personal financial risk?
- is he required to make good unsatisfactory work in his own time and at his own expense?

- is he expected to provide his own equipment to perform the work (meaning major items of equipment as opposed to small tools which many employees provide)?
- does the contract enable him to provide a substitute or engage helpers for whom they are responsible and who they pay to assist them in providing services?

Obtaining Official Guidance

If in any doubt, employers should seek a ruling from their local tax office. Each local office has a nominated officer to deal with enquiries and to decide on employment status. Decisions will be confirmed in writing if requested. The fact that an employer has sought official guidance may protect him from an accusation of negligence if it is attempting to mitigate any potential unpaid taxes.

Appendix 3: Potential cost of a PAYE settlement - an illustration

Assume:

- 12 players
- 1 manager
- 1 coach/physio
- 40 matches per season
- All 14 individuals are paid on average £100 per week with an additional £10 for expense reimbursements
- 3 match day staff treated as casuals paid £10 per day

Potential liability: 2004/2005 tax year

Annual payments	
14 x (£100 + £10) x 40 weeks	= £61,600
3 x £10 x 40 weeks	= £ 1,200
	<u>£62,800</u>
Income tax at, say 22%	
£62,800 x 22%	= £ 13,816
National Insurance Contributions*	
Annual payments	
14 x ((£100 + £10) – 91) x 40 weeks	= £10,640
Employees at 11%	
£10,640 x 11%	= £1,170
Employers at, say 12.8%	
£10,640 x 12.8%	= £1,362
	<u>£2,532</u>
Total Annual cost (£13,816+2,532)	= £16,348

If PAYE has not been deducted for six years the assessment could be extrapolated across the whole period, and may reach £98,088 on top of which penalties and interest would be payable. This settlement only relates to the staff mentioned above, and could be even higher than this if PAYE and NIC has not been applied to payments to other individuals such as bar staff.

** National Insurance Contributions (NIC) are calculated on payments made in excess of £91 per week (2004/2005). Therefore, for payments to an individual who earns £100 per week plus £10 expenses, the difference between £110 minus £91 is liable to NIC. Match day staff are not liable to NIC as they earn less than the £91 weekly threshold.*

Appendix 4: Illustrations of reimbursement of expenses

Illustration 1:

A contract player lives 10 miles away from his club ground. Each week he travels 60 miles from home to ground for two training sessions and one match. He is reimbursed each week by the club at the agreed rate of 40p per mile and receives £24.00. He also receives £25 appearance money.

As a contract player, he is regarded as an employee by the Inland Revenue and the full £49 is subject to PAYE.

Illustration 2:

The player in Illustration 1 travels fortnightly to away grounds from home.

Since this travel is not classed as being from home to his normal place of employment then the reimbursement of the away mileage only is not subject to PAYE.

Illustration 3:

A player without a written or oral contract is in the same circumstances as the contract player in Illustration 1 and also receiving £25 per week appearance money.

By receiving something more than reimbursement of his out of pocket expenses, the player is making a profit from the game and PAYE should be applied to all the money received. i.e. £49 (£24 travelling expenses plus £25 appearance money).

Illustration 4:

A player without a written or oral contract is in the same circumstances as the player in Illustration 1 except that he does not receive any appearance money.

The player is not regarded as an employee and does not make a profit out of the game. Consequently, the £24 of expense reimbursement is not subject to PAYE, as long as he makes the three trips each week

Illustration 5

A player is in the same circumstances as in Illustration 4 but receives an allowance in respect of his travelling expenses of £30 per week.

Since the payment more than reimburses his actual travelling expenses computed on a reasonable basis, the entire amount is subjected to PAYE.

Illustration 6

A player is in the same circumstances as in Illustration 4 except that he is living some way from the ground, say 30 miles, and is, therefore, travelling 180 miles per week. He completes a signed expense claim form that is reviewed and authorised by the club.

Providing that each week the payment to him does not exceed the allowance for miles travelled during the week, (in this case 180 miles at 40p = £72) then the sum paid to him should not attract PAYE. He is then considered to be playing for the love of the game.

Illustration 7

The Inland Revenue may be prepared to come to an agreement over a figure to be allowed each week to cover expenses incurred by players on items such as kit. This might be must be agreed in advance with the Inspector. It must be demonstrated that expenses reimbursed do not exceed actual expenses incurred. In the absence of such agreement expenses can only be reimbursed on a specific basis.

Appendix 5 – PAYE and P11D reporting

In recent years, tax legislation in respect of earnings and benefits for directors and employees has been significantly tightened up. Also, **PAYE and P11D responsibilities** for the collection of tax on earnings and the reporting of benefits have become more onerous.

Although income tax liabilities attach to individuals, the Inland Revenue can, and frequently do, look to employing clubs for any tax which has been lost due to their failure to collect tax or to report benefits. Failure to comply with these responsibilities can therefore result in substantial costs for clubs particularly since the Inland Revenue can go back and collect tax for the previous six years. In addition to the tax lost, penalties may be levied and this can result in substantial sums being owed to the Inland Revenue. The message is to be prepared for a detailed Inland Revenue review, particularly in the current environment, and avoid problems if possible.

Dispensations

A dispensation is a notice from the tax inspector that relieves employers from the obligation to report expense payments on year end PAYE returns. A dispensation may be given where it can be shown that:

- No tax would be payable by the employees on the expenses payments; and
- Expense claims are independently checked and authorised by the club and, where possible, receipts go with the claims. Dispensations may be given for routine expenses such as travelling expenses however a dispensation can never be obtained for 'round sum' expense allowances.

Leaflet IR69 available from the Inland Revenue explains in greater detail how dispensations work and includes the relevant application form. They also publish a leaflet for employees, IR125: "using your own car for work" which explains the tax position where the employee uses his own car to make business journeys.

Checklist

There follows a checklist of major items where difficulties can arise which should be used as the basis for discussion with the club's professional advisers. Many of the items shown will also give rise to NIC liabilities which may be picked up as a result of a control visit.

1 Employees

Are P11D's prepared for such employees or has a dispensation been granted by the **Inland Revenue**?

Are any of the following provided and if so do they appear on P11D's?

- (a) Travel and subsistence expenses.
- (b) Round sum allowances.
- (c) Payments out of petty cash.
- (d) Specific expenses which are not supported by vouchers.
- (e) Entertaining facilities and expenses.
- (f) Cars.
- (g) Clothing including ties, blazers.
- (h) Petrol.
- (i) Payment of home telephone bills.

Of course, some of the above may be covered by a specific dispensation or subject to a claim by the individual that the expenses have been incurred wholly, exclusively and necessarily in the performance of their duties.

2 Casuals/consultants

- (a) Are consultants engaged on a regular basis? If so, are they truly self-employed or are they employees? Have the arrangements been documented/cleared with the Inland Revenue?
- (b) Is tax being deducted from payments to match day staff e.g. gatemens, stewards, etc? Alternatively, have the Inland Revenue been notified of the payments and are they happy with them? Are details of payments recorded as required by the PAYE Guide for Employers - payments to casuals?
- (c) Are lottery agents, representatives and commercial people employed or self-employed? Has the treatment been agreed by the Inland Revenue and proper documentation been prepared?
- (d) Is tax being deducted from payments to other casuals, e.g. barmen?

3 PAYE and payments to all categories of employees

Is PAYE applied to the following payments?

- (a) Salaries.
- (b) Bonuses.
- (c) Share of transfer fees.
- (d) Signing on fees.
- (e) Round sum allowances.
- (f) Payments for travelling to and from home to the ground.
- (g) Ex-gratia and other termination payments.
- (h) Any other cash payments.

Appendix 6: Action plan for clubs

1. Review your PAYE and NIC procedures now, get them in good order; obtain advice from professional advisors experienced in this area, give your club a 'health check'. Pay particular attention to gross cash payments to match day staff, round sum allowances and expenses and benefits. As regards business expenses, if everything is in order, seek a dispensation where appropriate.
2. If a Revenue visit is forthcoming and you have not carried out your own review, try to delay the visit until you can arrange for your own review of the position or at least discuss the matter with your professional advisers.
3. Get professional help to assist you with the investigation and, in particular, get expert support during the negotiations and at the settlement meeting.
4. During the investigation, co-operate with the Revenue, make sure that your information is accurate and keep detailed notes of conversations and meetings with the Revenue.
5. Do not accept the Revenue's calculations; prepare your own figures and negotiate. Our experience shows you can often achieve a substantial reduction in the settlement and in any penalties.
6. Following settlement, put matters right from then on; the settlement itself may provide a useful basis for dealing with problem areas in the future.

Appendix 8: Extract from the Rules of the Football Association

C: Rules Relating to Players

Players with Written Contracts

1(b)

- (i) Subject to paragraph (a) and (b) (ii) to (vii) of this Rule, and to the Rules and Regulations of the League of which the Club is a member, any Club in membership of the Association or an Affiliated Association may negotiate a financial arrangement with its players.
- (ii) All players under a written contract must be registered with the Association.
- (iii) All payments and benefits due to the player should be shown in the contract.
- (iv) All payments made to players must be made by the Club and fully recorded in the accounting records of the Club.
- (v) All salaried payments must be subject to PAYE and National Insurance.
- (vi) All salary payments due on written contracts must be stated gross, before PAYE and National Insurance deductions.
- (vii) Any players paid expenses should be reimbursed via an expense claim form. The Club should retain all expense records in a format acceptable to the Inland Revenue.

Players Without Written Contracts

2(b)

- (i) All payments made to players must be made by the Club and fully recorded in the accounting records of the Club.
- (ii) All salaried payments must be subject to PAYE and National Insurance.
- (iii) Any players paid expenses should be reimbursed via an expense claim form. The Club should retain all expense records in a format acceptable to the Inland Revenue.



Deloitte.

The Football Association Financial Advisory Unit

Colum McGinley, Lee Champion, David Newton
and Neil Prescott
25 Soho Square, London W1D 4FA
Telephone: 020 7745 4654
Facsimile: 020 7745 5654
Email: colum.mcginley@TheFA.com

Sports Business Group at Deloitte

London: Richard Baldwin, Jane Curran, Jason Hargaden,
Mark Roberts or Matt Ashley
Hill House, 1 Little New Street, London EC4A 3TR
Telephone: 020 7936 3000
Fax: 020 7583 8517
E-mail: sportsteamuk@deloitte.co.uk

Manchester: Dan Jones, Gerry Boon, Robert Elstone,
Paul Rawnsley or Sarah-Jane Howitt
201 Deansgate, Manchester M60 2AT
Telephone: 0161 455 8787
Fax: 0161 455 6013
E-mail: sportsteamuk@deloitte.co.uk

For further information, visit the Deloitte website at
www.sportsconsulting.co.uk

The Football Association
25 Soho Square
London W1D 4FA

Telephone
+44 (0)20 7745 4545
Facsimile
+44 (0)20 7745 4546

E-mail
info@TheFA.com
Visit
www.TheFA.com



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