

The importance of professional football clubs operating PAYE and NIC correctly





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Introduction

With ever increasing salary and wage bills particularly for players it has never been more important for football clubs to get their Pay As You Earn (PAYE) and National Insurance Contribution (NIC) collection procedures right. The burden of these procedures is heavy.

- Clubs act as unpaid tax collectors. When errors are found the **cost will usually fall upon the club** not the employees.
- There have been a number of changes in the PAYE/NIC rules and a general tightening up by the tax authorities in enforcing these rules in all sectors.
- The Inland Revenue has taken a particular interest in the application of PAYE/NIC at football clubs over the last 20 years; clear indicators of that interest are the Special Compliance Office (SCO) enquiries into the top clubs in the 1990s and more recently their interest in the use of employee benefit trusts, image rights, testimonials and agents fees. Clubs often find the operation of PAYE prone to error because the staff responsible often lack appropriate skills and experience in this complex area; furthermore, dealing with what happens on the pitch is much more exciting than back-room administration, and tax affairs can fall into arrears.

Errors in applying PAYE and NIC and in the reporting of expenses and benefits can be costly.

The tax authorities are able to go back a number of years when they find errors and seek not only to charge the tax and NIC which should have been deducted but also substantial interest and penalties because the club got it wrong. Often the enquiry and settlement comes at a time when the club has cash flow problems. It can be a harrowing experience, and large tax bills are not unusual. This can put the very existence of the club at risk.

Inland Revenue interest in football

Inland Revenue interest in the application of PAYE/NIC by football clubs goes back over many years. Indeed, as long ago as 1982, following a specific request from the Inland Revenue, the Football Association sent a guide to all its member clubs on the operation of PAYE/NIC. The Revenue interest is a result of football having a high public profile and the substantial amount of money involved. The well-publicised breaches in football rules and regulations also have encouraged the Revenue to have a

closer look. More recently press coverage of high profile court cases have highlighted some of the ways in which clubs remunerate players and will undoubtedly increase Inland Revenue attention in this area.

Discussions have in the past taken place between the Revenue and the Football Authorities and on occasions the English Football League, the Football Association and the Professional Footballers' Association have sat on the same side of the table with the Revenue on the other side justifying the tax treatment of certain payments to players.

At one time the Revenue indicated their wish to ensure that there should be common points of contact for clubs who wished to discuss PAYE/NIC problems. Two such contact points were established - the Inland Revenue SCO in Solihull (which dealt with the clubs then within Divisions 1 to 4 and the SCO in Leeds (for other Leagues). The Solihull office continues to be active over a wide range of tax matters and has, for instance, looked at the tax treatment of payments to referees, agents fees, employee benefit trusts, image rights. The Leeds SCO has ceased any activity in relation to the semi-professional game. There is however no doubt that the Revenue **will** continue to look at particular issues in both professional and semi-professional football and investigate specific clubs.

Professional Football – SCO Interest

The SCO in Solihull has specialist staff, who are familiar with the football industry, who will go to great lengths to identify abuses, e.g. interviewing players and other employees. In addition they can, and do, get information from foreign tax authorities about players coming to, and going from, the UK. In the mid 1990's they required Premiership clubs to prepare reports dealing with their PAYE procedures; these reports were used to negotiate settlements. This initiative continues to be of interest today since it identifies areas of Revenue concern about the way in which PAYE, NIC and benefits expense reporting procedures were operated.

The background to this investigation of the top clubs was that in the early 1990's SCO had been investigating one or two clubs and found what in their view amounted to significant irregularities. After these investigations a central agreement was reached through the FA Premier League, Football Association and Football League, that clubs would produce a report in an agreed format to satisfy SCO's concerns. Reports were produced and settlements reached at individual club level some years ago (see Appendix 4 for the topics covered).

SCO have continued their interest in football, and more recently, SCO enquiries have concentrated on dealing with certain specific areas, including:

- the payment of agents fees;
- testimonials;
- image rights contracts;
- payments into employee benefit trusts

Investigations of these by SCO have usually been accompanied by the more routine PAYE/P11D enquiries by Inland Revenue PAYE compliance. All Premiership clubs and the top Football League clubs have been or will be reviewed. The major area concentrated on by the Inland Revenue has however been agents fees.

The football club's responsibilities

Under the PAYE and NIC rules, a football club is treated the same as any other employer. Because of the nature of the industry and many of its own regulations, there are certain areas which can give rise to tax problems. Essentially, the club's responsibilities in relation to employees (who may include a number of people the club would not automatically regard as employees, such as gatemen, stewards, bar staff, etc.) are to:

- collect and account for PAYE and NIC on all payments to 'employees';
- complete certain forms and returns in relation to the collection of PAYE and NIC and expenses paid and benefits provided to those employees; and
- ensure that all employees are paid in accordance with the national minimum wage regulations.

The club therefore needs to:

- keep adequate records;
- deduct the correct amounts of PAYE and NIC and pay them over on time; and
- send in forms and returns which are completed accurately and on time.

This is often a minefield for staff, who do not always have the time or expertise to deal with this increasingly 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. Failure to do this will mean an inevitable tax charge and penalties after an investigation by the tax authorities.

Time limits are set for the payment of tax and the submission of forms and returns, and since 1995 all employers have faced automatic penalties for failure to complete them on a timely basis. There is now a much stricter enforcement of the time limits and less scope for reducing the penalties for getting things wrong, although good professional advice will help in this regard.

Details of the time limits for the current tax year (2004/2005) for submitting PAYE/NIC returns and returns of expenses and benefits, together with the penalties for non-compliance, can be found at Appendix 1. Needless to say, if any of your club's payments or forms for the year ended 5 April 2004 have not been sent in, this should be done straight away. As well as penalties for not sending the forms on time, interest will be charged, currently at the rate of 7.5%, on any unpaid PAYE and NIC.

Clubs should also note that from April 2004 they are required to pay and file end of year forms electronically if they are regarded as a large employer. A large employer is someone who employs more than 250 employees, however, this number is reducing to 50 from April 2005 with the plan that almost every employer will file electronically by 2010. Those employers commencing to file electronically earlier than officially required to do so may qualify to receive incentive payments. 250 employees may seem high for a professional football club but may be reached if it employs a significant number of staff on match days (security, gate staff, catering facilities etc). The Inland Revenue will notify those that it considers to be a large employer.

If a club is required to pay electronically and fails to do so or pays late they may become liable to a default surcharge. This could be up to 10% of the total PAYE/NIC paid over by the club in a tax year. Professional advice should be obtained if a club receives a default surcharge notice.

Problems Areas – PAYE and NIC

In a short document such as this, it is not possible to cover every potential problem area. What we have attempted to do is highlight main problem areas for clubs. These are based on our experiences representing professional football clubs on SCO enquiries.

(a) Foreign Players

Increasingly clubs are employing more and more players from foreign countries who are usually not domiciled in the UK, and with this come further tax and NIC complications as well as other issues such as work

permits. Work permits must be obtained for any players coming in from non-European Economic Area countries. To take on foreign players without the required permit, means that the player is working illegally and the club can be fined up to £5,000 per player. It can also result in a criminal prosecution for the directors.

Foreign players also tend to request that payments made to them are made free of tax. It is then the club's responsibility to ensure that the payment made to the player is correctly grossed up for PAYE and NIC purposes in order to calculate the true gross pay and, more importantly, the PAYE/NIC to be deducted.

Foreign transfers have attracted and continue to attract Inland Revenue interest. In the past The Inland Revenue has been particularly concerned when a player has been signed by a Premiership Club without a realistic signing on fee. The Inland Revenue accepts that clubs cannot police what happens in overseas tax jurisdictions and cannot be accountable for PAYE if they unwittingly fund a payment to a player. Where however a club knowingly makes a payment in the absence of a realistic signing on fee the Revenue will pursue the matter even where the payment is made to the transferor or an agent. The Inland Revenue has and can get a substantial amount of information from foreign Revenue authorities to enable them to pursue and resolve their enquiries.

Clubs need to be particularly careful where payments are made for the benefit of the foreign player without deduction of tax since the Inland Revenue is likely to pursue the club not the player for PAYE.

(b) 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 when a player transfers to the club. 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 that was 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.

(c) Directors fees

Many directors of clubs arrange for payment of their services to be paid to them gross through a self-employed consultancy business or alternatively their own personal service company. The Revenue will always challenge these arrangements as they believe that all fees to directors should be treated as employment income and be subject to PAYE/NIC. There are some special conditions which, if satisfied, will ensure that payments can be made gross, but the actual scope for these conditions is narrow and it is suggested that professional advice be sought.

(d) Complimentary Tickets

It is customary for most clubs to provide complimentary tickets to a wide variety of people, which could include players, other employees and also relatives of employees. The Revenue is aware of the substantial quantities of tickets given away and will generally seek to tax the benefits of providing tickets to employees and their family members. It may be possible to agree with the Revenue that only the marginal cost to the employer should be taxed as a benefit. This approach will not necessarily apply to tickets for matches at away grounds where the club has to pay for the tickets. In such cases the Revenue will argue that the cost for benefit in kind purposes will be the cost to the club.

In all cases it is suggested that any taxable benefits for the provision of complimentaries (including season tickets and paid-for tickets) are agreed by the club with its PAYE inspector.

(e) Travel and Subsistence

Another area of interest to the Revenue is the reimbursement of travel and its associated costs, such as accommodation and food. Employees can be paid tax free on the full cost of qualifying business travel, but costs paid for travel to a permanent workplace should be taxed. The rules are very complex and the permanent place of work should be established for all categories of employees to make sure of the tax and NIC status of travel expenses and that, if appropriate, these are declared on the necessary reporting forms detailed in Appendix 1.

(f) Retiring due to ill health

Unfortunately there are times when it becomes necessary to make payments to employees required to retire for one reason or another. The Revenue has in the past been interested in payments made to players on the grounds of ill health and still focuses on these payments.

It is inevitable that football clubs will pay substantial sums to players in this unfortunate situation. In certain circumstances some payments can be made tax-free but there are many that cannot. Payments can be made free of PAYE/NIC or benefits provided the payment is made on account of injury or disability of the employee or even death. However, the Revenue has its own view of what an "injury" or "disability" is, and it may not be the same as the club's view.

Payments which a club considers to be in respect of an injury or disability may turn out to be otherwise and could end up as fully taxable and treated as payments made under an unapproved retirement benefit scheme.

(g) 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 have been deducted by the club and the Inland Revenue will seek to recover the tax and NIC from the club.

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. The Inland Revenue have provided guidance on how to determine an employee's status in their brochure IR56 ("Employed or Self-employed").

Problems can 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 2**. Back tax for a club could easily exceed £200,000.

The categories of workers generally designated as 'casuals' by the club are also within the PAYE net and are not exempt; these would include bar staff, certain consultants

and others helping out at the club. If the Revenue find payments made to staff that have not been properly accounted for under the PAYE system, they may very well 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.

(h) 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, from the Revenue's point of view. The Revenue regards round sum allowances as pay on 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 expenses payments must be justifiable; and if clubs are currently paying round sums without the necessary documentation in support, they should review their policies as a matter of urgency. Travel and subsistence are most at risk - clubs should review their policies, or at the very least consult their professional advisers.

(i) '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 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.

Such an approach has been agreed with the Revenue in relation to non-contract players in semi-professional football. 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 computed on a reasonable basis. Clearance from the local PAYE Inspector is recommended in advance, and detailed records need to be kept to substantiate the position. For further information see the Football Association brochure "PAYE and Semi-Professional Football".

(j) Termination payments

The rules relating to such payments have been increasingly tightened over the years. It remains a myth for some employers that if someone leaves employment a payment of up to £30,000 can be made tax and NIC free on all occasions. This is only the case if it can be proved that the individual was not contractually entitled to the payment. In fact it goes further than that. In a recent tax case, it was determined that if the employee's contract states that the employer "reserves the right to make a payment in lieu of notice" (PILON), this too is a contractual entitlement, and any PILON paid will be subjected to tax and NIC. The Revenue will also seek to challenge payments that are specified in staff handbooks or that are expected by employees and can be said to be customary.

Clubs may arrange for signing on fees to be paid, not by the new club as such, but by the old club by the means of a termination payment for premature ending of the contract. The old club would be compensated by an increase in the transfer fee. In these circumstances the Revenue will look to the old club for PAYE/NIC if the payment is regarded as a disguised signing on fee.

Whilst not legally binding, historically guidelines have been issued covering termination payments, which clubs ignore at their own risk. A club participating in such arrangements could face an unexpected demand for PAYE and NIC. The Revenue is particularly interested in clubs where players are being transferred from, or to, a foreign club.

We have knowledge of cases where players have been promised advantageous 'tax-free' payments in these situations. They have regretted it, often years later, when the tax demand has arrived and the money has been spent. There is scope for some legitimate tax planning here, but it must be carried out properly and planned in advance. **We urge you to consult your professional adviser if you have made, or are contemplating making, tax-free termination payments.**

(k) Loans which will not be repaid

A loan to a player may cause PAYE/NIC problems where it is clear at the outset that the club will not expect repayment but will forgive the loan at some future date.

Where a genuine loan has been made to an employee and the club decide to write off the loan other than as a result of the death of the employee then the amount of the loan written off is a benefit in kind and should be included on form P11d. This applies even if the employee has left the club. For NIC purposes the loan write off will attract a charge to class 1 NIC (both employee and employer)

(l) Pensions

In the past the Inland Revenue has challenged arrangements where a player sacrifices part of his earnings e.g. part of his signing on fees with a corresponding payment made by the club into the Football League players pension scheme (FLPRIS) or another pension scheme for the player. In the early 1990's, FLPRIS issued an Administration Guide detailing the procedures to be followed in order to avoid any problems. Clubs must not ignore this guide. If you have not followed the procedures set down, you should review the tax effectiveness of salary sacrifices urgently.

(m) Tax Credits

Football clubs need to 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 will be policed by the Revenue and if clubs fail to comply penalties may be levied.

Further burdens to you as a club means ensuring that all 'stop' and 'start' notices are active and on time, all additional forms are completed if an employee leaves, and further additional Revenue enquiries, not to mention additional information, are reported on end of year forms.

(n) Student Loan Repayments

In addition to the employers' responsibilities for tax credits there is also the responsibility of complying with student loan legislation. Any student you employ who is repaying a student loan is required to have repayments deducted from net salary. Again there are 'stop' and 'start' notices issued by the Revenue, together with tables for the employer to calculate the correct deductions. Clubs are responsible for showing details of deductions made on each employee's payslip and reporting all details on the end of year documents P35 and P14.

(o) Class 1A NIC

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 of class 1A NIC been made on 19 July.

(p) Third party benefits

Clubs also need to consider benefits received by their employees from third parties and whether the club was party to the arrangements for payment of these. If so, the benefits must be on the employee's P11D and you may incur a class 1A NIC charge. You may need further advice on this issue from your professional advisers.

(q) Sponsorship deals

The circumstances around which sponsorship deals are arranged can be complex and unfortunately do not often consider the possibilities of liability for PAYE/NIC. It usually depends upon how a player's contract has been drawn up as to whether the income is treated as employment income. If a club has a sponsorship deal and agrees to name the players it will use to carry out the contract, the money paid to the players will usually be income derived from the employment and therefore liable to PAYE/NIC. Potentially there are very large exposures here when you consider the large sums paid by sponsors.

(r) Testimonials

Another area scrutinised by the Revenue is testimonials arranged for players. These can be organised in such a way that no PAYE/NIC is due. However, care should be taken when renegotiating contracts to ensure that testimonials are not provided for in the employment contract – nor are promised in any ancillary documentation. The Inland Revenue will argue that where a testimonial has been promised to a player it becomes contractually binding and is being provided as part of his income. The Revenue may also argue that where a club guarantees minimum testimonial proceeds then any payment by the club should be dealt with under PAYE. The Revenue can be expected to ask for documentation and may argue that:

- a) the ancillary functions involved in the testimonial process amount to trading;
- b) where the club provides the ground and turnstile operators and collect the cash, they should apply PAYE.

You may find that a player accepts that his testimonial income is taxable but argues that the club should have applied PAYE so that the liability is the club's responsibility!

(s) Image rights

The contract between a club and a player may include a clause obliging the player to contribute in the promotion of various products/services of the club, and in return the player receives a payment for image rights. The Revenue may assert that the image rights income has arisen by virtue of the player's employment with the club. From the opposite angle, income received by a player exploiting his own image, not for the benefit of the club but for the player's own personal gain, could be viewed as income emanating from his role as an employee of the club not for being a footballer in his own right, and therefore could be treated as income from his employment.

This is a very difficult area, and if payments are to be made for such rights it is vital that the relevant contracts are legally watertight. Even if they are, the Revenue can be expected to review the contracts and are likely to argue that payments under an image rights contract are payments for playing or being an employee. The Revenue will look at the economics of the player's total package and compare it with others who have no image contracts. The club is likely to suffer the burden of any tax cost, not the player, since the Revenue will assert that a payment to the player or the company owning the rights was taxable as remuneration of the player subject to PAYE/NIC. However, the Special Commissioners have held that payments made for image rights, independent of the player's employment contract, are not taxable as earnings. It is therefore possible, with careful planning, to argue successfully that such payments should not be taxable.

Since the Special Commissioners case SCO is still interested in ensuring that any image rights contract is separate from the employment contracts and clubs should be cautious of entering in to such arrangements. Clubs may consider incorporating an indemnity clause in the image rights contract to protect itself in the event of a successful challenge by the Inland Revenue that PAYE/NIC applies to the image rights payments.

(t) Club Tours

Whilst, on the face of it, it is surprising that a club tour could give rise to income tax problems, SCO has in the past asked for details of such tours overseas to satisfy itself that the tour is justifiable and not primarily a holiday for the players. The latter might be the case for an end of season tour. Clubs should be prepared to demonstrate that tours have legitimate business objectives e.g. to earn revenue and are not intended simply to confer benefit on the players and their partners/families.

In the case of overseas tours clubs should ensure that they are aware of any tax obligations that may arise in the overseas country as a result of them touring.

(u) Medical Expenses

The Inland Revenue is likely to argue that health insurance premiums are taxable, e.g. BUPA, even though the cost significantly exceeds that payable in other occupations. Where no health insurance is provided, it may be possible to argue that payment or reimbursement of a player's medical expenses in respect of an actual injury sustained while playing or training are not taxable. Similarly the premium under a group scheme for medical cover only for injuries whilst playing or training should not constitute a taxable benefit.

The FA Premier League has secured favourable tax treatment for premiums to cover work-related injuries sustained by players when training or playing under its Healthcare Scheme. The Inland Revenue have agreed that such premiums are tax free when paid by the club into the Scheme.

(v) Employee Benefit Trusts (EBTs)

EBTs can be used as a legitimate tax planning technique for rewarding employees. Under these arrangements, the employer makes contributions to a discretionary trust, the trustees of which can award amounts at their discretion to deserving employees. Often the trust is established outside the UK so that the funds inserted are free of UK tax. Under more aggressive types of EBT, funds can be appointed in sub-trusts for the benefit of specific employees, e.g. a player, perhaps to be used for his family's benefit. Clubs should take extreme care with any such arrangements since if they are not executed properly the Inland Revenue may look to the club, not the player, for PAYE and NIC on the player's award.

In an attempt to stop perceived abuses of employers using EBT's the Inland Revenue have changed the timing of corporate tax relief on employer contributions. Relief is now due when an employee is subject to tax and NIC on the distribution from the EBT. This means that cash retained in the EBT or perhaps loaned out to a player will defer the tax relief for the club.

(w) Casual Staff

Where employees are engaged on a casual/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.

(x) 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.

Problem areas – Expenses and benefits

Clubs must report payments of expenses and benefits provided to directors and employees earning over £8,500 per annum. This is a low limit which was put in place in 1979 and has not been index linked over subsequent years. Those employees earning less than this figure may also be subject to returns when the cost of their benefits and expenses is taken into account. In practice, most employees are likely to fall within the more detailed reporting requirement. Expenses must be put on the returns even if they are business expenses on which the employee will not pay tax. It is possible, in order to prevent unnecessary reporting of business related travel and expenses, to obtain a dispensation from the Inspector of Taxes. There are conditions to be satisfied before the Inland Revenue will grant a dispensation, and these are explained in the Inland Revenue booklet IR69. Your professional adviser can assist you with obtaining this.

It may come as a surprise to many clubs that expenses and benefit forms need to be completed for directors who are paid nothing but receive benefits. In the current tax environment, it is probably worth checking with your advisers that there is nothing to be reported for directors in this situation, such as company cars or fuel provided for private use.

There are strict rules in terms of what should be reported, and if the forms are not completed correctly then a penalty can be levied for each incorrect form.

When the club has failed to complete the forms correctly the Revenue will often seek to collect any outstanding tax from the club rather than individually from its employees. Clubs may wish to settle this tax on the grounds of keeping its employees 'happy' although there is no legal

obligation to do so. Clearly there are advantages for the Revenue who will only have to collect one cheque from the club rather than from individual employees.

Reporting expenses and benefits often causes problems, particularly in relation to the following in which the tax authorities have been known to take an interest:

- complimentary tickets to directors, players and other club employees;
- travelling expenses;
- staff entertaining and working lunches;
- subsistence allowances including meal vouchers etc;
- relocation and removal costs;
- excessive car mileage rates being reimbursed, particularly where the annual mileage exceeds 4,000 miles;
- medical care facilities, e.g. BUPA and dental treatment;
- the provision of living accommodation, e.g. to a player, caretaker or groundsman;
- petty cash payments;
- reimbursement of private telephone bills;
- unsupported expenses claims;
- players accident insurance;
- round sum allowances for travel and subsistence;
- car sponsorship schemes;
- loans, at less than the official rate of interest (including season ticket loans), on sums over £5,000 at any point during the tax year;
- sports equipment and clothing provided to employees;
- club conferences and overseas trips which partners or family members or friends attend;
- third party benefits; and
- agents fees.

We have attached, as Appendix 3, a checklist of expenses and benefits on which care needs to be taken in

complying with tax procedures. This is provided as a quick 'diagnostic check' to identify whether you might have any problems. If you do, we suggest you consult a professional adviser to decide what further action to take.

PAYE Settlement Agreements (PSA) – expenses and benefits

The Inland Revenue has issued a press release stating that the practice of disallowing staff entertaining costs in the club's Corporation Tax computations but allowing them for Income Tax purposes is no longer to be used. In view of the fact that the Revenue considers that all staff entertaining is taxable on the employee receiving the benefit, it may be worth considering arranging a PSA, which is an agreement between the club and the Revenue to settle any tax due on behalf of your employees. However it is worth noting that as well as the benefit being grossed up to take account of the club settling the individual's own liability, NIC is also due on the tax paid by the club.

If the benefit provided to staff is small it may be worthwhile contacting the Inland Revenue to ascertain if the benefit can be treated as a trivial benefit. If the Inland Revenue agree to this the benefit can be provided tax free and not included on either a P11d or PSA. Typical examples of trivial benefits are gifts of flowers at birthdays, gift of turkey, bottle of wine or chocolates at Christmas.

Coping with a Revenue investigation

Prevention is better than cure. Our recommended approach is for the club to review its procedures now since this is the best protection against an investigation by the tax authorities. However, if this has not been done and the Inland Revenue make contact, take professional advice before meeting the Revenue or providing any documents.

There are three major reasons why the Inland Revenue launches investigations.

- The first is that most large companies are timetabled to be inspected regularly.
- The second is that an entire industry may be targeted because of tax issues which were found at one or two companies, such as 'tax free golden hellos'. The

Revenue may wish to check that other companies have not adopted the same practices.

- The third is that the Revenue may select your club as a target because of information in its possession which leads it to believe that there is under-assessed tax. This is the most dangerous scenario. Bear in mind that the Inland Revenue has a significant amount of information about the industry, particularly clubs and transfers.

It may be worthwhile considering delaying your response to the Revenue and carrying out a review yourself. Particularly if there are problems, the settlement with the Revenue is likely to be easier if more of the detailed work and information is provided by the club itself. Carrying out your own review provides you with an opportunity to evaluate the extent of possible problems. Professional advice will enable the club to identify the areas of difficulty, investigate the problems and determine a strategy for dealing with the Revenue visit. It should also enable the club to control the way in which the investigation develops. Clearly, the level of concern will depend upon the type of visit that you are going to be faced with; you should be able to get an idea of what the Revenue has in mind when it makes its initial approach.

Whatever approach is adopted, the Revenue will wish to see your books and records. Care will need to be taken with the provision of these records and you may wish your own advisers to review the records you intend to provide. It will certainly be useful for them to attend any meeting with the Revenue at which the Revenue's findings are discussed. Where oral evidence is requested from members of staff, internal confirmation should be sought on any areas of uncertainty before any formal response is given. Clear and full notes of discussions with the Revenue team should be prepared. You can be sure that the Revenue will be recording what you tell it. The first stage of the enquiry will be concerned with assembling facts; having done that the Revenue will then seek to negotiate a settlement if any irregularities have been found. It is essential that at that meeting you are accompanied by professional advisers since you will be dealing with skilled negotiators and you need the same expertise on your side. The chances are that you will not have dealt with a PAYE investigation for a number of years, if at all.

Full disclosure and co-operation with the Revenue will help in the settlement discussions when it comes to the question of penalties. In particular, if you have been able to carry out your own review and present the Revenue with details and quantification of the problem areas, then it is much more likely to be sympathetic. When it comes to the assessment of penalties, as a general rule the Revenue will start with 100% of the PAYE/NIC outstanding

as a penalty but will reduce this in accordance with the following factors:

- (a) Disclosure by the club - up to a 20% reduction in penalty.
- (b) For co-operation up to 40% reduction.
- (c) Depending upon the gravity of the offence, a further reduction of up to 40%.

In practice, if the investigation is properly handled, it is possible to reduce the penalty to between 10% and 30% of the tax under-assessed.

Often you may be able to provide helpful evidence to reduce the Revenue's calculations of the tax and NIC due. Normally the Revenue will conduct a sample review of the club's records (although if the matter is more serious it will invest a lot more time and effort in this review). Then, based on this sample, 'errors' will be extrapolated back over the previous six years. Very often, by looking carefully at the supporting details, a lower settlement can be arrived at. Experience and expertise in this area is essential if a lower settlement is going to be achieved and, of course, if the sample information is provided in the first place by the club, (which will often be acceptable to the Revenue), so much the better.

It is also worth remembering that the Revenue is adopting the concept of joint working. The Inland Revenue and Contributions Agency merged in April 1999. The enlarged Revenue is now merging with Customs & Excise. This will result in a much closer relationship and more information sharing between tax and VAT inspectors resulting in more joint initiatives such as currently those relating to agents fees.

Income Tax and Corporation Tax inspectors are also liaising on a more frequent basis. Do not be surprised if information obtained in respect of PAYE/NIC is passed on to the Corporation Tax inspector and vice versa. Individual self-assessment has a large part in this and Corporation Tax self-assessment is the same.

The above comments largely relate to routine PAYE audit enquiries by the Inland Revenue PAYE audit team. If you are approached by SCO, take extra care and talk to your professional advisers.

Action Plan for Clubs

1. Review your PAYE and NIC procedures now, get them in good order; obtain advice from professional advisers experienced in this area to give your club a 'health check'. Pay particular attention to player remuneration and gross cash payments to match day staff, round sum allowances, agents fees and expenses and benefits. As regards business expenses, if everything is in order, seek a dispensation where appropriate.
2. If a Revenue visit is notified and you have not carried out your own review, 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. Obtain 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 without carrying out your own review and negotiate. Our experience shows that it is often possible to achieve a substantial reduction in calculating under-assessed taxes and in any penalties.
6. Having agreed the settlement, see if you can defer payment, say over a period of six to twelve months, without incurring interest charges. On substantial sums the interest free period is obviously valuable.
7. Following settlement, put matters right from then on; the settlement itself may provide a useful basis for dealing with problem areas in the future.

Conclusion

The tax authorities have skilled and experienced staff trained specifically for investigating PAYE and NIC records. In recent years they have continued to show a particular interest in the football industry through the Inland Revenue Special Compliance Offices. Clubs should carry out a detailed review of their own procedures now, involving professional advisers who are expert in this area. In the event that the Revenue launches an investigation, clubs should match their expertise by enlisting the help of their own advisers. Most football clubs are vulnerable to a PAYE/NIC inspection or investigation and attention in this area is essential now.

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

Share option schemes

Details of share option schemes (both approved and unapproved) must be reported by 6 July following the end of the income tax year.

The penalty for late returns is £300 plus £60 per day for continuing delays per reportable offence. An incorrect return may attract a maximum penalty of £3,000 per scheme.

Appendix 2: Potential Cost of a PAYE/NIC Settlement

Illustration for payments to match day staff

Assume:

- 200 match day staff treated as casuals.
- Average payment made to each, £30.
- 25 home matches per season.

Potential PAYE and NIC liability:

Payments made each year – 200 x £30 x 25	£150,000
Income tax at, say 22%	£33,000
Potential settlement for the last six years	£183,000

Note

The Revenue will seek penalties and additionally interest would be charged.

National Insurance contributions would also be payable if earnings from your club and associated employers exceeded the lower earnings level (£91 per week for 2004-2005)

Appendix 3: PAYE/NIC and P11D Reporting - Diagnostic Checklist

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 for benefits provided, the Inland Revenue can, and frequently does, look to employing clubs for any tax, which has been lost due to their failure to report benefits, to be settled on a voluntary basis rather than seek P11D penalties as described in Appendix 1. Failure to comply with 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. Additionally, in cases of a failure to operate PAYE/NIC, penalties may be levied and this can result in substantial sums being owed to the Inland Revenue. The message is: be prepared for a detailed Inland Revenue review.

Very often a dispensation will be granted by the Inland Revenue on reporting expenses, and in certain limited circumstances, from collecting tax, provided it is cleared with the Inland Revenue in advance.

Attached is a checklist of major items where difficulties can arise which should be used as the basis for discussion with the club's professional advisers.

Category of "Employee"

(1) Unpaid Directors

Are P11Ds prepared for such directors or has a dispensation been granted by the Inland Revenue?

Are any of the following provided, and if so, do they appear on P11Ds?

- (a) Travel and subsistence expenses.
- (b) Round sum allowances.
- (c) Complimentary tickets.
- (d) Payments out of petty cash.
- (e) Seats in the directors' box.
- (f) Specific expenses which are not supported by vouchers.
- (g) Entertaining facilities and expenses.
- (h) Cars.
- (i) Overseas trips/tours, including those where partners, families or friends are present.

- (j) Expenses, benefits for partners, families and friends.
- (k) Clothing, including ties, blazers, etc.
- (l) Petrol.
- (m) Parties/social functions.
- (n) Sports facilities.
- (o) Payment of home telephone bills.
- (p) Meals.
- (q) Gifts, e.g. memento on promotion, Cup Finals, particular matches, etc.
- (r) Accommodation.
- (s) Use of assets.
- (t) Awards from third parties-sponsors.

(2) Paid directors and full time employees earning over £8,500 per annum

Are any of the following provided and not reported to the Inland Revenue?

- (a) Expenses payments.
 - (b) Round sum allowances.
 - (c) Complimentary tickets.
 - (d) Payments out of petty cash.
 - (e) Entertaining.
 - (f) Cars.
 - (g) Overseas trips and trips where partners, families and friends are present.
 - (h) Expenses and benefits for partners, families and friends.
 - (i) Clothing, other than that which is necessary for their job, e.g. ties, leisure wear, etc.
 - (j) Private petrol.
 - (k) Subscriptions to BUPA etc. and medical expenses.
 - (l) Low or interest free loans and loans which are forgiven.
 - (m) Accommodation.
 - (n) Payment of home telephone bills.
 - (o) Travel costs from home to the club or training ground.
 - (p) Parties and social functions.
 - (q) Sports facilities other than those which are necessary for the job.
 - (r) Subsistence allowances and meals.
 - (s) Gifts, prizes and awards including those from third parties.
 - (t) Payments and/or benefits provided by third parties, e.g. club sponsors.
 - (u) The use of assets.
 - (v) Relocation and removal costs.
 - (w) Car sponsorship schemes.
 - (x) Agents fees, image rights, payments from employee benefit trusts, testimonials.
- 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.

(3) 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 and cleared with the Inland Revenue.
- (b) Is tax being deducted and NIC accounted for from payments to match day staff e.g. gatemen, stewards, etc? Alternatively, has the Inland Revenue been notified of the payments and has a tax free clearance been issued in writing? Are details of payments recorded as required by the PAYE Guide for Employers – payments to casuals?
- (c) Are lottery agents, representatives and commercial personnel employed or self-employed? Has the tax treatment been agreed by the Inland Revenue and proper documentation been prepared?
- (d) Is tax being deducted from payments to other casuals, e.g. bar staff?

(4) 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) Image Rights.
- (i) Any other cash payments e.g. payments to players' agents.

(5) Other payments

- (a) Are any other payments made - such as to schoolboys or their parents in order to encourage them to sign for your club?
- (b) Have you reviewed salary sacrifice documentation for its effectiveness e.g. in connection with payments to FLPRIS?

Appendix 4: Special Compliance Office Players Report – issues covered

- Pensions – salary sacrifices
- Loans from club
- Loans from third parties
- Payments to agents
- Payments via service companies
- Ex-gratia payments
- Testimonials
- Sponsorship Income for players
- Post season tours, family accompaniment
- Cash wages
- Cash bonuses
- Petty cash expenses
- Other expenses, e.g. travelling, relocation
- Company credit cards
- Cash payments from third parties
- Offshore payments
- Side letters
- Gifts
- Gilts, gold bullion
- Schoolboy payments
- 'Bottom drawer' contracts
- House purchased above market value by the club
- House sold to player below market value by the club
- Accommodation provided by the club
- Pre-season tours
- Specified Player Transfers



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The importance of professional football clubs operating PAYE and NIC correctly