



XpertHR Podcast

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- Laura Merrylees: Hello and welcome to this week's podcast with me, Laura Merrylees. Today we are talking about the new apprenticeship levy that will be coming into force in April 2017. Joining me on the phone to discuss what this means for employers is Matthew Lewis, a Partner in the Labour and Employment Team at Squire Patton Boggs. Good morning, Matthew.
- Matthew Lewis: Good morning, Laura.
- Laura Merrylees: Now there's been a lot of media coverage of this new levy and what it might mean for UK businesses. Can you just briefly outline what the levy is and why it's being introduced? [0:00:38.2]
- Matthew Lewis: Of course. The apprenticeship levy represents a new way of funding apprenticeship training. It's a change that'll be imposed predominantly on the larger employers operating in the UK and it's being introduced as part of a broader programme of reforms to apprenticeships.
- The Government wants to give employers more influence over how apprenticeships are designed and paid for, and hopes that the levy will lead to greater levels of investment in training.
- This was a Conservative Party manifesto promise and Theresa May has reiterated her support. Its stated aim is to have three million apprenticeship starts in 2020 and the standard mechanism for paying for apprenticeships of a third by the employer and two-thirds by the Government will be abolished. So the levy marks a significant departure from the current system of funding apprenticeships.
- Laura Merrylees: So how much is the levy going to be in order to pay for these apprenticeships? [0:01:24.9]
- Matthew Lewis: Well the levy's been set at 0.5% of an employer's total annual pay bill and for these purposes a pay bill means a total amount of earnings that are subject to Class 1 Secondary National Insurance contributions. So it would cover such things as wages, bonuses, commissions and pension contributions that you pay NICs on.
- So employers will receive an annual allowance of £15,000 to offset against the levy payment, which is why in practice the levy should only be payable by those employers will payrolls of more than £3million a year, because 0.5% of £3million is £15,000.
- Laura Merrylees: And is there any opt-out at all for employers? [0:02:04.0]

Matthew Lewis: No. There's the nub. There is no opt-out. If your payroll is more than £3million there is no escaping the levy. It's even payable by the NHS. And it's estimated that the levy will apply to about 22,000 employers in the UK.

Laura Merrylees: And what about those employers that might be on the cusp of the £3million threshold? [0:02:21.4]

Matthew Lewis: Well in September the government published draft legislation setting out how employers should calculate, report and pay their levy liability. These draft regulations clarify that employers with a pay bill of £2.8million or less for the previous tax year, or who believe their pay bill will be less than £3million in the current tax year, will not have to pay the apprenticeship levy.

Laura Merrylees: So what sort of figure is the Government ultimately expecting the levy to raise? [0:02:45.0]

Matthew Lewis: Well the Government is expecting that by 2019/2020 the levy will raise £3billion across the UK to help pay for the increasing number of apprentices.

Laura Merrylees: Okay, so Matthew, looking at how this will work, can you just give me an example of how the levy is going to be calculated? [0:03:01.5]

Matthew Lewis: Sure. So if we take an employer with an annual pay bill of £5million, it would be required to pay £10,000 by way of the levy. This is because 0.5% of £5million is £25,000, but if you subtract the levy allowance of £15,000 from that figure, the employer's annual levy payment is reduced to £10,000.

Of course this doesn't sound very much, but for those with a payroll of £250million, the levy is over £1.2million and that's a lot of apprentices.

Some employers are looking to re-scope their training and recruitment, while others will simply write off the levy as just an employment tax.

I should also mention that employers who pay the levy will also receive a 10% top-up from the Government to their total monthly contributions in England. So for every £1 an employer pays in, it can draw down £1.10 to spend on apprenticeship training. At this point in time it's not clear if this top-up will be available to employers who operate in Wales, Scotland or Northern Ireland.

Laura Merrylees: Does it make any difference if you're part of a group of employers? [0:04:00.8]

Matthew Lewis: Yes, potentially. Where employers are connected, they will only be able to use one £15,000 levy allowance.

Laura Merrylees: Right, okay. So I know the definition of 'connected' isn't straightforward. Can you just try and explain in basic terms what it means? [0:04:15.3]

Matthew Lewis: Well the basic rule of determining if two companies are connected with each other for the purposes of the levy is if one of them has

control of the other, or if both are under the control of the same person or persons. For example, companies linked in a group – those companies would be connected for these purposes.

Laura Merrylees: Okay, so picking back up then as to how the levy allowance will apply to connected employers, can you just take us through that?
[0:04:38.6]

Matthew Lewis: It means that they'll need to decide what proportion of the levy allowance each employer in the group will be entitled to. This decision will have to be taken at the beginning of the tax year and will be fixed for that year.

Equally, single employers with multiple PAYE schemes will only have one allowance, so they will also have to decide where that allowance will sit.

Laura Merrylees: Okay, so how will employers actually pay the levy? [0:05:00.3]

Matthew Lewis: Employers will have to calculate reports and pay the levy to HMRC through their PAYE process, alongside tax and National Insurance contributions. The levy will be collected monthly and the annual allowance will also be available in equal monthly instalments. So where an employer has, for example, an annual levy allowance at £15,000, this would mean an allowance of £1,250 per month.

Laura Merrylees: And how will employers be able to access and use the levy funds?
[0:05:25.9]

Matthew Lewis: Employers in England will be able to access the funds that they have paid into the levy via a new online portal called the Digital Apprenticeship Service. The funds will enter the digital account on a monthly basis and a 10% top-up will be applied at the same time. Employers will be able to use the Digital Apprenticeship Service to find accredited training providers and assessment organisations, pay for training and assessment, as well as find external candidates who are seeking apprenticeship training.

The Government is intending to set up a new register of apprenticeship training providers, and any training provider who wishes to offer apprenticeships under the new scheme must apply to be on this register. Scotland, Wales and Northern Ireland will have their own arrangements but we don't know what the details of these are yet.

Laura Merrylees: Oh right, so in that case how will the levy work for employers that have got operations across the UK? [0:06:12.4]

Matthew Lewis: Okay, well as with most things that are new, it's not totally clear yet. Because training and skills is a devolved policy area, Scotland, Wales and Northern Ireland will remain responsible for setting their own skills policies. The Government is currently working with the devolved administration to try and work out how this is going to work in practice.

What we do know is that if an employer operates across the UK, the amount of levy available to them to spend through the Digital

Apprenticeship Service in England will reflect the proportion of the pay bill to employees living there. So for example, if 80% of your pay bill is in England, 80% of the levy will go into your digital account; the rest will be split where your other employees actually live.

Laura Merrylees: And what about the majority of employers who won't have to pay the levy? Will they still have to use the new Digital Apprenticeship Service? How are they going to fund any apprenticeship? [0:07:00.7]

Matthew Lewis: Okay, so if an employer doesn't pay the levy it won't need to use the Digital Apprenticeship Service to pay for apprenticeship training and assessment until at least 2018. So from April 2017, however, it'll be able to use the new service to choose the training it would like its apprentices to receive and find an approved training provider.

Non-levy-paying employers will still receive support from the Government if they want to train an apprentice. Under the new proposals they will be required to make a contribution towards the cost of funding their apprenticeships. They will be required to contribute 10% and the Government will pick up the rest of the tab, so the remaining 90%, and the Government call this 'co-investment'.

At the same time, if a levy-paying employer wants to invest more in apprenticeship training than it holds in its digital account, it will be required to co-invest 10% of the cost of the apprenticeship training and assessment, and the Government will fund the remaining 90% of that cost.

These funding proposals are still in draft and the final funding arrangements should be confirmed by the Government later this month.

Laura Merrylees: So will employers be able to negotiate freely with training providers on the cost of an apprenticeship? [0:08:05.4]

Matthew Lewis: Employers will be given flexibility to negotiate with training providers on price. Under the new funding system which is being introduced in May 2017 there'll be fifteen funding bands, with the upper limit of those bands ranging from £1,500 to £27,000. These bands will place a limit on the maximum amount of digital account funds an employer can spend on training for an individual apprenticeship, and the bands vary according to level and type of apprenticeship. So for example, more expensive, high-quality training is likely to be in a band with a higher limit.

All existing and new apprenticeship frameworks and standards will be placed within one of these fifteen new funding bands. So for example, Band 8 the cap is £6,000, Band 12 the cap is £18,000. The purpose of the bands is to set a realistic cost for the training and having a lower amount should prevent a race to the bottom. It will be up to employers to negotiate prices with providers within these funding limits.

Laura Merrylees: And how will the funding arrangements apply to existing apprenticeship? [0:09:04.7]

- Matthew Lewis: So levy contributions will only be used for new apprentices. All existing apprentices who are under a programme before May 2017 will be funded under the current funding system.
- Laura Merrylees: Okay. So for those that are funded under the new system, what should employers be thinking about when they're negotiating with training providers? [0:09:23.7]
- Matthew Lewis: Well employers will be responsible for choosing a training provider and negotiating the cost of the training, including any end-point assessment. If employers want to spend more than the funding limit, they can do this, but they will need to cover the extra amount themselves.
- It's worth remembering that every apprenticeship must have an end-point assessment and this must be carried out by an independent provider to the training provider. The cost of the end-point assessment is included in the funding band. If it's added on top, that means it will not be recoverable from the levy. This means that when employers are negotiating with the training provider, they must take into account the final assessment cost.
- The Government is also proposing that 20% of the total cost is held back from the digital account at the end of the apprenticeship. This reflects the fact that, as mentioned, under the new Apprenticeship Standards there's an end-point assessment and the cost of this is incurred at the end of the apprenticeship. So by holding back 20% of the total cost, this should help to ensure that employers do not overpay in the event that an apprentice doesn't finish his or her apprenticeship.
- Laura Merrylees: So there's quite a lot for employers to take on board here. Can you give me an example of how this will work in practice? [0:10:28.1]
- Matthew Lewis: Yes. So if, for example, an employer negotiates with a training provider to pay £5,000 for training and assessing a particular apprentice and the upper limit on the funding band for that type of apprenticeship is £6,000, the cost is within the funding band limit. That means that if the employer is a levy-payer, the sum of £5,000 will be deducted from its digital account on a monthly basis over the course of the apprenticeship. As a training provider, you'll have to budget on being paid on that basis. If the employer is a non-levy-payer, it will be required to pay 10% of the £5,000 (i.e. £500) and the Government will fund the rest.
- Laura Merrylees: Will employers be able to use any training providers? [0:11:05.5]
- Matthew Lewis: No. So funds from the Digital Apprenticeship Service can only be spent on approved training providers. As mentioned, the new system will list all those registered providers where funds can be spent. Employers will be able to become providers themselves if they meet the relevant criteria, but that will then be subject to the same rules and inspections and other training providers.
- Laura Merrylees: Okay, so will employers be able to use the levy funds to cover all the costs associated with an apprentice? [0:11:32.6]

Matthew Lewis: No. So for example, supervision costs and an apprentice's wages can't be funded by the levy. The levy can only be used for accredited apprenticeship training, assessment and certification, and not for any other training that the employer may require. Employers will not, for example, be able to put digital funds towards internal training that doesn't meet apprenticeship standards.

Laura Merrylees: Will employers receive any additional support for certain types of apprentice? So I'm thinking maybe young apprentices, for example. [0:11:59.7]

Matthew Lewis: Yes, there will be extra support for certain categories of apprentice, such as those aged 16-18. The Government recognises there are some additional costs associated with supporting young apprentices and they will make an additional payment of £1,000 to employers and make a further £1,000 payment to training providers to help with those additional costs. There will also be extra support for smaller employers, for those with fewer than 50 employees training 16-18-year olds, and it seems to me that this combined with the National Living Wage, which makes it cheaper for employers to hire under-25s, could mean that there's real competition for good, younger apprentices.

Laura Merrylees: Yes, indeed. What happens if an employer doesn't in fact use its funds in the digital account? [0:12:40.1]

Matthew Lewis: Well you either use it or lose it. So if an employer doesn't use its funds, including any top-up, these will expire eighteen months after the funds entered the account. So for example, funds entering your account in September 2017 will expire in March 2019 unless you've spent them. The digital account works on a first in, first out basis, so payments to training providers will automatically be drawn from the funds which entered your accounts first.

Laura Merrylees: I read, Matthew, that employers will be able to use the funds in their digital account to pay for the apprenticeship training of other employers' apprentices. Is that correct? [0:13:13.7]

Matthew Lewis: Yes Laura, that's the plan. The Government's taken on board comments from some employers that would like to be able to pay for the apprenticeship training of someone in their supply chain, for example, and the Government is seeking views on its proposals to allow employers to transfer up to 10% of their funds to another employer's digital account from 2018.

Laura Merrylees: Okay, and how will the apprenticeship levy affect levies in other sectors, so perhaps the construction sector or similar? [0:13:40.0]

Matthew Lewis: Yes, so there is a downside here. If you already contribute to one of these levies I'm afraid you'll still be required to pay the apprenticeship levy. So as I said before, there is no opt-out. The relevant industry training boards are apparently consulting with their members on potential changes to existing levy arrangements within those boards.

Laura Merrylees: What's the timetable for the levy? [0:13:57.8]

Matthew Lewis: Well there have been talks following the Brexit vote that there would be a delay but the Government has resisted calls for a delay, and so the levy will go ahead and be introduced from 6 April 2017, which is when people have to start paying in. They can't start to use the funds in their digital accounts until September 2017 but to date we've only seen the draft regulations and the final details have yet to be published.

Laura Merrylees: And what's your view, Matthew, on what employers think about the new levy? [0:14:25.5]

Matthew Lewis: It's fair to say there's been a mixed reaction from businesses to the new levy. I think most employers support in principle the Government's plan to increase the quality and the quantity of apprenticeships to address skill shortages in the UK, but many are concerned about the financial implications this new levy will have on their businesses, especially those businesses that don't have the need for the sort of structured training that will fall within the scope of an apprenticeship scheme. Those employers stand to pay in more to the scheme than they'll get out of it. Further, it's come on top of National Living Wage which has been introduced. Employers will soon be seeing an increase in pension auto-enrolment contributions. So the levy's another business cost for those in small margin sectors.

What's more, it seems that many employers still don't understand what the levy is. A recent study by the British Chamber of Commerce showed that two out of five firms either don't understand or did not know what the levy is. So the Government still have to come some way to ensuring that businesses understand how they can benefit from these reforms.

Laura Merrylees: So what should employers be doing now? [0:15:27.7]

Matthew Lewis: Well if they haven't done so already, employers should be thinking now about what steps they need to take to ensure they're in the best position to take advantage of the new arrangements. Ultimately, levy-paying employers will only benefit from this investment if they train apprentices. We recommend that any employers affected by the new levy to review their current and proposed training requirements to ascertain what could be provided and accredited under the new arrangements so they make full use of the apprenticeship training funding that will be available.

Laura Merrylees: And this isn't just about training up younger people, is it? [0:15:59.1]

Matthew Lewis: No, that's right. I think that the word 'apprenticeship' is a bit of a misnomer here. People should remember that although the focus of many apprenticeship is on younger people entering employment, the apprenticeship levy could be used to fund other schemes as well as entry-level qualifications, so people can use it for, for example, in retail team leader apprenticeship programmes which have been approved, people can use it for management training courses and apprenticeship schemes are used up to degree level, so we're not just talking about junior employees.

Laura Merrylees: Given that this will be introduced, what would be your suggestion in terms of employers getting the most out of it? [0:16:35.1]

Matthew Lewis: Well my view is that employers shouldn't just write it off as an employment tax, but should investigate how an apprenticeship programme may be able to work for them, how it might fit in with their existing recruitment strategy, for example. I read recently that some employers are looking to scale back their graduate recruitment plans and swap graduate traineeships for apprenticeships so that they can maximise their return on investment of any levy payments.

By way of an example, a major bank will have a levy of about £30million and to recoup part of this it has suggested that it will cut its graduate recruitment in half and instead hire school leavers on a degree level banking apprenticeship.

Employers should also be including the levy in their 2017 budget planning and they should also ensure that the necessary payroll processes are in place prior to April next year.

Laura Merrylees: And is there any Government guidance available for employers?
[0:17:24.2]

Matthew Lewis: Yes, the Government has produced some initial guidance for employers on how the levy will work and the new system for funding apprenticeships, but it has promised further guidance during the course of this month and also some more in December.

Laura Merrylees: Okay, well we'll keep an eye out for that and update the site once we know more about it. Well thank you very much indeed, Matthew. That's been a really useful run-through of the key points for employers to take on board. As I say, we'll keep the site updated and our Hot Topics page on the levy is a good first port of call.

So that brings us to the end of this week's podcast, which you've been listening to with me, Laura Merrylees. We're back again next Friday but until then, it's goodbye from us.