Institute of Financial Accountants

Corporate

Reform of taxation on benefits in kind

Response to Consultations

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Institute of Financial Accountants
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Introduction

1. The Institute of Financial Accountants (IFA) and the Federation of Tax Advisers (FTA) welcome the opportunity to comment on the consultation documents in respect of reforming the taxation of benefits in kind published by HM Revenue & Customs (HMRC) on 18 June 2014.

2. We should be happy to discuss any aspect of our comments and to take part in all further consultations on this area.

3. Information about the IFA and the FTA is given below.

Who we are

4. The IFA is an internationally recognised professional accountancy membership body whose members work for small and medium-sized enterprises (SMEs) or who run or work in small and medium-sized accounting practices (SMPs) that advise SMEs.

5. At the IFA, we put small and medium enterprises (SMEs) first, recognizing their role as vital wealth-creators, as employers to more than half of the UK's private sector workforce and as the power behind vibrant urban and rural communities. We hold the interests of small and medium practices (SMPs) in the accounting profession in equal regard.

6. The FTA is the Tax Faculty of the IFA and is the modern membership body for agents who provide tax compliance and planning expertise to SMEs and entrepreneurs. It is the tax representative for IFA and FTA members.

7. We are proud of our unique relationship with our members, who predominantly come from a SME/SMP background. As a professional accountancy body, we aim to provide the very best support and guidance to our members who operate within this arena, frequently tailoring policies and recommendations to meet the unique challenges and trading relationships associated with smaller business.

8. Founded in 1916, the IFA supports over 10,000 members and students in more than 80 countries with a programme of professional qualifications and education. As well as resources, events, training and seminars. IFA members uphold high standards of conduct, confidentiality and ethics and undertake annual continuing professional development (CPD) activities.

9. The IFA is a full member of the International Federation of Accountants (IFAC), the global body for the accountancy profession. As such, the IFA takes it place alongside the UK and Ireland's six chartered accountancy bodies, as well as 135 national and regional accountancy organisations representing 125 countries and jurisdictions.

10. The IFA is formally recognised as an awarding organisation by Ofqual, the public body responsible for monitoring standards, exams and qualifications (other than degrees) in England, underlining the quality of the IFA's work and the integrity of its qualifications; and is authorised by HM Treasury for Anti Money Laundering supervision.

General Comments

11. Thank you for the opportunity to respond the four consultations in respect of the reform of the taxation of benefits in kind published on 18 June 2014.

12. Our overriding comment in relation to the consultation is that we welcome the simplifications of the rules proposed in the consultation documents, but would strongly argue that employers should be given flexibility to adopt the simplification measures that have been proposed or to continue with their existing arrangements.

Specific comments on the consultations

13. In addition to our general comments, our comments on specific questions set out in the consultation documents are set out below.

Abolition of the £8,500 threshold for lower paid employment and form P9D

Q1: If you believe you or your employees, or organisations you represent will be affected by the removal of the £8,500 threshold please provide examples of the type of employees affected and the work areas in which they are engaged

14. Our members act for clients operating in a number of sectors who will be affected by these changes. In particular, the proposed abolition will impact on employees who are juggling a number of low paid, part-time jobs, to whom non-cash benefits, such as lifts home, may be provided. Cleaners, care-home workers and catering staff are likely to be among the groups most heavily impacted by these changes.

Q2: Why is the removal of the £8,500 threshold likely to affect these groups of employees or employers? Please provide details of what you believe to be the likely impacts for these groups?

15. Many of these employees are provided with transport to and from their workplaces and would not qualify for the exemption for late night taxis. The abolition of the £8,500 threshold will increase the costs of working for these employers.

Q3: Do you consider there is a principled case for some form of protection for particular groups of employees or employers likely to be affected by the removal of the £8,500 threshold? If so, which groups are they, and what form of protection should this take?

16. Yes. Our recommendation would be that a limited exemption should remain for benefits in the form of transport provided to employees earning less than £8,500 with each employer in the sectors set out above, with a mechanism set out in the legislation to extend the relief to other sectors.

Q4 If you believe that some protection should be offered, how do you think this could be done in such a way as to avoid or minimise any additional complexity for employers?

17. If the protection is targeted at specific benefits provided to low paid workers in specific industries, then most employers would not need to consider the rules.

Exemption for paid or reimbursed expenses

Q1: If the Government were to provide 'models' of acceptable record keeping and checking processes would this be helpful for employers? Where the models are not appropriate for employers, would those employers feel disadvantaged, even if it is made clear that they are not exhaustive?

18. As set out in the consultation document, there is a risk that employers will regard any deviation from the model system with nervousness; the non-prescriptive nature of the model record keeping arrangements would need to be communicated clearly to employers. The possibility that a perception could arise that deviation from the model arrangements is an indicator of enhanced risk could have implications for companies in the course of a transaction process: potential purchasers and their advisers could seek leverage in transaction negotiations if a company's record keeping does not match the model system.

19. With these concerns in mind, clear, accessible guidance on record keeping and checking would be of use to many employers, especially if the guidance can be tailored by size of business as well as sector.

Q2: Are you aware of any types of arrangement that seek to replace taxable pay with payments of non-taxable expenses which the Government should focus on in particular when tackling this issue? Are you aware of any types of these arrangements where tackling them might disturb business practices that are not tax or NICs motivated?

20. The recent decision in *Reed Employment Plc and others v Revenue and Customs Commissioners* [2014] UKUT 0160 (TCC) has examined the rules on substituting salary payments for travel and subsistence expenses. In our view *Reed* demonstrates that the existing law is sufficiently strong so as to prevent abuse of the system. Instead of further regulation or legislation in this area, our view is that efforts should be put into setting out clear guidance and enforcing the existing rules.

Q3: In what circumstances would an employer currently apply for a custom scale rate? Other than the expenses covered by the benchmark scale rates, which expenses do employers commonly request a scale rate for?

21. [Question beyond the scope of the IFA's submission].

Q4: Are there any examples of particular industries or types of employer who would be affected if custom scale rates could not be used with the proposed exemption? What would the impact be on those employers?

22. [Question beyond the scope of the IFA's submission].

Q5: Would employers be disadvantaged if a process to apply for custom scale rates were not retained? If such a process were retained, would it be seen as additional complexity by those employers who do not need it?

23. It is desirable for any system to have flexibility to allow adaptation to the needs of industry and to reflect changing business and working practices. Provided that there are clear basic rules applicable to all employers, the existence of arrangements to agree custom rates should not create a perception of complexity.

Q6: Would employers welcome the ability to self-certify the sampling exercise undertaken to support a custom scale rate? If so, would a sampling process set out in guidance or regulations provide sufficient certainty for employers that wish to use a custom scale rate?

24. Employers would welcome any changes to the process that would streamline the system and reduce implementation and on-going cost. There is a risk that any change to self-certification will have the result that employers will find themselves called on to make judgements about the self-certification process in a complex area of law and with inadequate guidance; clear, unambiguous guidance for employers must be put in place with consultation from potential users, before any move to self-certification is undertaken.

Q7: What are the reasons for one person companies and very small, close companies paying scale rates to directors in respect of expenses? Would such employers be disadvantaged if they were not permitted to pay scale rates to their directors under the proposed exemption? If so in what way?

25. Smaller companies are often in competition with larger enterprises for contracts and, like their competitors, much of their business will be secured by building relationships through meetings and other activities which often result in out of pocket expenses suffered by directors. The use of scale rates simplifies the process for such smaller enterprises to reimburse expenses; the withdrawal of scale rates for one-person companies and close companies would result in an increase in their administrative costs and, ultimately, the costs of doing business.

Q8: Would employers welcome being able to continue to rely on their existing dispensation for a transitional period, or would this be a source of unnecessary complexity? Is so, how long would the transitional period need to be to be useful?

26. Employers who have already agreed dispensations would prefer to have the option to retain their existing arrangements, as they will have expended significant management time and other resources to aligning their

systems with the terms of their dispensation and in communicating the rules to their employees. Provided that there is scope to opt out of the rules, our view is that the continuation of the dispensation regime for employers who already have agreements in place is unlikely to add to the complexity of the system. Our recommendation is that the transitional period should be tailored to each employer and should run to the fifth anniversary of the date on which the dispensation was most recently agreed with HMRC.

Q9: Independently of whether existing dispensations may continue to be used, would employers welcome being able to continue to use any custom scale rates they had agreed as part of their dispensation for a transitional period? Is so, how long would the transitional period need to be to be useful?

27. For the reasons given at 26 above, our recommendation is that there should be a transitional period and it should be tailored to each employer and should run to the fifth anniversary of the date on which the scale rates were most recently agreed with HMRC.

Q10: Are there any specific situations or circumstances in which employers would not feel confident paying expenses because of a lack of clarity in HMRC's guidance? Which changes could HMRC make to its guidance that would have the biggest impact on employers' confidence in paying these expenses?

28. [Question beyond the scope of the IFA's submission].

Q11: Would employers and other affected parties welcome the exemption not coming into force for a period of time after the legislation is in place? If so, how long would employers and other affected groups need to prepare for the new exemption coming into force?

29. Employers would welcome the opportunity to align their systems with the new rules and to ensure that any changes are fully communicated to employees. For these reasons, a six month lead-time from the later of the start of the tax year or the publication of draft regulations should be introduced.

Q12: How should dispensation applications that are made in the intervening period be handled?

30. If dispensations agreed before the introduction of the new rules are allowed to continue under the transitional rules suggested at paragraphs 26 & 27, then applications should continue to be processed normally until the new rules finally come into force.

Trivial Benefits exemption

Q1: Do you agree that the principles set out at paragraph 3.2 should apply to the definition of a trivial benefit? Are there other principles that you think should apply?

31. Yes, the criteria in paragraph 3.2 should apply.

Q2: What do you think would be an appropriate monetary limit for the definition of a trivial BiK?

32. Our recommendation would be £30.

Q3: As set out at paragraph 3.9, do you agree that a higher cost trivial BiK limit with a lower annual exemption limit would more effectively deliver the Government's intention to simplify the administration of employee BiKs?

33. No, the annual limit element will mean that employers still have to track the benefits provided to employees throughout the year; this would add to the complexity of the compliance process and introduce an element of doubt as to the real-time tax implications of the provision of a benefit.

Q4: Do you think that having an annual cost exemption for each employment for each tax year as set out in Option 1 would mean less administration and fewer reporting requirements for an employer?

34. If there is to be an annual exemption, our view is that an exemption for each employment would make compliance with the rules more straightforward.

Q5: Under Option 1, what level do you think an annual cost exemption for each employment should be set at to cover genuinely 'trivial' benefits?

35. £90.

Q6: Under Option 2, how many trivial BiKs exemptions do you think should be allowed per employee in a tax year?

36. Three.

Q7: What do you see as the advantages/disadvantages of Option 1 in comparison to Option 2?

37. Neither Option 1 nor Option 2 greatly reduces employers' record keeping obligations. While Option 2 has the attraction of being superficially straightforward to administer, many employers' systems will be set up to track financial value, rather than count instances of the provision of an asset. Option 2 has the advantage of certainty – an employer will know whether a benefit is taxable without needing to analyse the cumulative value of trivial benefits provided to employees.

Q8: Do you think that an annual cost exemption (Option 1) or an exemption based on the number of trivial BiKs provided (Option 2) would best deliver the Government's intention to simplify the administration of employee benefits?

38. For the reasons given at paragraph 37, and for increased flexibility our view is that Option 1 would be preferable.

Q9: Are there any other aspects that you think the Government should take into consideration in finalising its policy on the introduction of a trivial BiKs exemption?

39. [Question beyond the scope of the IFA's submission].

Real time collection of tax on benefits in kind and expenses through Voluntary Payrolling

Q1: Do respondents agree that a voluntary payrolling framework presents the best overall opportunity for simplification?

40. Yes, provided that it is a voluntary framework.

Q2: Should employers have to payroll all BiKs endorsed by HMRC, or choose freely from a set 'approved' list produced by HMRC to suit their business?

41. Our view is that it would be better to offer employers a free choice as to which benefits are payrolled. Provided that employers understand that the choice is on an "all or nothing" basis – all benefits of the selected type must be payrolled – our view is that there should not be significant complexity in allowing employers a choice.

Q3: Should payrolling apply to all employees within a PAYE scheme subject to a limited number of exceptions and special cases, what should these exceptions be?

42. Provided that boundaries between payrolls are recognised, allowing employees with complex affairs to be carved out, we agree that payrolling should apply to all employees.

Q4: What might cause an employer to need to cease payrolling? Would employers prefer payrolling arrangements to be irrevocable once entered into, or for HMRC to develop terms of withdrawal which accommodate the necessary protection?

43. Changes in the composition of a workforce or to company policies on the provision of benefits may lead to payrolling ceasing to be cost effective for a company. In our view, it would be better to make provision for companies to make an orderly exit from payrolling.

Q5: Would respondents welcome the option to account for Class 1A NICs in real time where the BiKs were being payrolled?

44. Provided that companies are offered a choice as to whether to account for Class 1A in real time, then our view is that the option would be welcomed by some businesses for whom the cash-flow cost would be outweighed by the potential simplification of their processes offered by real-time accounting.

Q6: For employers experienced in payrolling, what are the most common reasons for errors in the amount of tax deducted, and what actions are commonly taken to address this, in particular after the payroll has closed?

45. [Question beyond the scope of the IFA's submission].

Q6A: Do you agree that where tax is under-deducted the government should follow the existing rules for PAYE, retaining recourse to the employer using existing principles?

Q6B: What other exceptions exist where new PAYE rules may be required, for example, where HMRC issue a tax code to be operated on a week 1 / month 1 basis?

Q7: The Government is interested to hear from employers experienced in payrolling on dealing with the issues covered at paragraphs 6.1 – 6.5. What are employers' experiences of this, and do the options described provide workable alternatives?

46. [Question beyond the scope of the IFA's submission].

Q8: Company Cars and Fuel

a) How do employers deal with any payments or contributions for private use made retrospectively, and particularly those made from 6 April to 6 July?

b) Do employers continue to submit form P46(Car) to report changes?

47. [Question beyond the scope of the IFA's submission].

Q9: PMI (or gym membership fees) paid on behalf of the employee

a) Where the policy renewal period falls part way through the tax year, unless the premium for the year is agreed in advance, what value is payrolled? Do employers project a value based on a previous year premium, or estimate the premium and begin payrolling on that basis and adjust once premium for that year is agreed?

b) Do employers payroll the total annual premium in the month paid?

48. [Question beyond the scope of the IFA's submission].

Q10: One off large BiKs in the form of the transfer of an asset (a property or valuable antique). These items with a large tax charge will require a significant deduction of tax in a single pay period.

a) Do any employers payroll these items? If so, are how are they dealt with? Do employers spread the value of these across the remainder of the year or do they payroll the total in one pay period, or

b) Do employers report items on a P11D with a note that it is a one off?

49. [Question beyond the scope of the IFA's submission].

Should you wish to discuss our responses further, please contact AdamL@ifa.org.uk in the first instance.