Low Incomes
Tax Reform
Group
A voice for the unrepresented

HMRC Tax-Free Childcare: Draft Guidance for comment
Response from the Low Incomes Tax Reform Group (LITRG)

1 General comments

1.1 We welcome this opportunity to comment on the Tax-Free Childcare (TFC) draft guidance. Whilst we are encouraged that HM Revenue & Customs (HMRC) have produced the guidance at an early stage and are consulting on it, we do have a number of concerns about it.

1.2 The supporting document ('Understanding the draft guidance') suggests that this guidance is for users of the scheme, childcare providers and employers. It is important that the audience is clearly established and the specific needs of the audience identified. Many users of the TFC scheme will need only simple information and may find something with this level of detail confusing and unnecessary. Other users will need far more detailed information specific to their circumstances.

1.3 As well as scheme users, other groups have communication requirements. Childcare providers, employers and advisers (including voluntary sector and professional advisers) will all have different needs. We do not think that having one guidance document for everyone is the right approach and thought should be given to these additional needs and how they can be adequately addressed.

1.4 It is not clear from the supporting document how this guidance will be displayed. For example, will it be a PDF document that can be downloaded? Or will it be a series of separate pages in the main content section of GOV.UK or will it supplement the TFC pages on GOV.UK? It is difficult to comment on whether key points can be picked out and the style without knowing how it will be presented to people.

1.5 The supporting document poses some questions on whether the information is helpful, whether there is the right amount of detail and whether key points can be picked out quickly and easily. Having more detailed guidance is undoubtedly helpful for some people who need more information. However we are concerned that parts of the guidance attempt to simplify rules in such a way that they become misleading. We are also concerned that key information is missing. We cover these specific points below.

1.6 We remain committed to working with HMRC to ensure the guidance meets the needs of scheme users and in particular that the needs of advisers are met.

2 About Us

2.1 The Low Incomes Tax Reform Group (LITRG) is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998 LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes. Everything we do is aimed at improving the tax and benefits experience of low income workers, pensioners, migrants, students, disabled people and carers.

2.2 LITRG works extensively with HM Revenue & Customs (HMRC) and other government departments, commenting on proposals and putting forward our own ideas for improving the system. Too often the tax and related welfare laws and administrative systems are not designed with the low-income user in mind and this often makes life difficult for those we try to help.

2.3 The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.

3 Specific points on draft guidance

3.1 *Introduction*

3.1.1 Page 6 and 7 provide an overview of the TFC scheme. However, we are concerned that by using simplified wording people may be misled and may not read on further to find out the actual detail if they believe their question has been answered. For example at the bottom of Page 6 it says 'You can open a childcare account to pay someone to look after your children. This is like a bank account, but the Government will top up any money that you put in it'. In fact, you can only pay specific people (registered and approved childcare providers) and the Government will not top up 'any' money that is put in but only up to a certain amount.

3.1.2 Similarly, on Page 7 it says that you can get TFC for each child 'under 12 years old' and 'under 17 years old if they're disabled'. Again, this is not accurate and if someone was looking for information about ages they may not feel the need to read on. In fact, the legislation is far more specific about ages covering a child only until the last Saturday in the week of 1st September following the child's 11th birthday (or 16th birthday if the child is disabled).

3.1.3 Page 7 continues with a bullet point list of requirements. It says that a person must 'not get financial help with childcare costs through another government scheme'. Again, people may read that and go no further. If someone is claiming tax credits but does not qualify for the childcare element as they do not work enough hours, they will read the text and presume they qualify when in fact the legislation states you cannot receive any tax credits (even without childcare support).

3.1.4 It is important that all of the text be accurate, even if it is an introduction, and not make a presumption that people will go on to read the detail. This is unlikely if they think they have already got the information they require. We have already pointed out to HMRC that similar text has appeared on GOV.UK in relation to the TFC scheme and this text is also misleading.

3.1.5 On page 9 of the document there is a list of other government support. Throughout the passage of the bill and during the consultation on draft secondary legislation we raised the issue of housing benefit as it is possible to have a childcare element included in housing benefit. This page does not mention housing benefit. It is important that this point is covered either to confirm that you cannot claim TFC as well or to confirm that it is fine to claim both.

3.1.6 On page 10, the guidance states that 'you can apply for child benefit first'. We are concerned that if there was a delay on the child benefit claim, TFC may be adversely affected. This point should be clarified in the guidance.

3.2 ***Who can get Tax-Free Childcare?***

3.2.1 On page 14 of the draft guidance, it states that paid work must be done 'in expectation' of payment. This is something that is repeated throughout the document in respect of paid work (for example page 17) but also for additional rate tax payers and the earnings threshold. However there is no guidance as to how to estimate income, what expectation is required and if it is a 'reasonable' expectation what will be considered reasonable and what will be the consequences if the expectation turns out to be wrong.

3.2.2 Page 16 contains some useful examples. We think it would be helpful generally to include more examples in the document. However we do not agree with Example 3. Clause 2 of the Bill requires that the 'main reason, or one of the main reasons, for incurring the costs of the childcare is to enable the person to work' ('the main reason test'). It is clear from this wording that it only has to be the main reason and not the only reason. The fact that the additional words 'one of the main reasons' has been included shows that there can be other reasons. In example 3, clearly the main reason for the week's childcare (four out of five days) is to enable her to work therefore we think she satisfies the test for the whole five days of childcare.

3.2.3 On the same example, the conclusion is that 'She should pay for Friday's childcare outside of the scheme'. This is a missed opportunity to mention additional payments and is confusing by suggesting that she would not be able to use her childcare account. The Government's response to the initial consultation made it clear that additional payments can be made into the childcare accounts and therefore this should be explained.

3.2.4 We are disappointed that the guidance does not offer information to help those who are self-employed. Page 19 states that expected profits are 'total receipts you expect to get from your trade, profession or vocation, less the amount of expenses (other than expenses to buy fixed assets like buildings and equipment) that you expect to incur for the same purposes'.

3.2.5 There are so many terms here that need further explanation. What counts as a receipt? For example – would a refund of tax be classed as a receipt of the business as it is for universal credit? What about an expense for equipment that is not a fixed asset? What do you define as a 'fixed asset'? All of these terms need further explanation and clear guidance. We mentioned this in our previous discussions and were assured that HMRC would provide detailed guidance on these points that are not covered in legislation. The self-employed will be unable to work out their expected income if they are not provided with information to allow them to do so.

3.2.6 Page 20 explains some of the interactions with tax credits. We have a number of concerns here:

- You suggest people use the childcare support questionnaire to check if they qualify for TFC and how much they might get. However, that will only give part of the story to allow them to do a proper comparison. They also need to understand the differences between the scheme rules as well as the financial aspects of the other schemes.
- There is no warning that as well as finalising the tax credits claim for the previous year that this may also be necessary for the current year.
- There is no warning that you may lose out on future tax credits by moving if your circumstances change so that your entitlement increases as you will no longer have a 'protective' tax credits claim.

3.3 ***Managing your account***

3.3.1 Page 31 explains the first £2,000 paid into an account in an entitlement period will attract a top-up and that 'any further payments made into your account above this amount will be held separately and not get topped-up until the next entitlement period starts, if you're eligible to get top-ups'.

3.3.2 Our understanding is that 'additional payments' above the £2,000 will be held separately. We were aware of a proposal to allow these payments to then drop into the childcare account to attract a top-up in the next period. We welcome clarification on this point as in some cases people may not want this to happen as that money may be for non-qualifying childcare.

3.3.3 At the end of Page 32, there is a section about paying money out. We think it needs to be made clear here that money can only be paid out on 'qualifying childcare' which includes the main reason test. It would be useful to include examples of people who have lost their job and show when they can legitimately continue to make payments out of the account.

3.4 ***Reviews, appeals and complaints***

3.4.1 Page 44 outlines the mandatory reconsideration and appeal process. As per the legislation if a person hasn't heard back from HMRC about the review request after a specific number of days, they can appeal the decision without having to wait any longer. This is a different process to that in place for tax credits, child benefit and DWP benefits where claimants must wait for the reconsideration decision from HMRC or DWP. Further information should be added here to make it clear the appeal is to the First-tier Tribunal and how to do that.

3.5 ***Interactions with other schemes***

3.5.1 In all of our submissions to date relating to the TFC scheme as well as our evidence to the Public Bill Committee we raised serious concerns about how the TFC scheme would interact with other schemes including tax credits and universal credit. HMRC themselves acknowledged that some people would need to make a choice between the schemes and that in some cases they would be financially better-off leaving their existing scheme and claiming TFC.

3.5.2 The decision to do this is extremely complex. As well as understanding the financial support of the existing scheme versus what is being offered by TFC, claimants will need to consider loss of any passported benefits and, importantly, the differing scheme rules. For example, you can claim employer-supported childcare for older children but that cannot be done under the TFC scheme.

3.5.3 We have been assured that HMRC are working with DWP and other bodies to ensure that people have adequate guidance to make these decisions including a better-off calculator. However, it is unlikely that a full calculator will be available in the early years of the TFC scheme.

3.5.4 Making the wrong decision may lead to families missing out on crucial support and these will be families at the lower end of the income scale. We are therefore extremely concerned that the draft guidance is mainly silent on these potential interactions and offers very little support on how to make a decision and what factors need to be considered when doing so. It is crucial that HMRC produce guidance that does this and that it is supported by online tools.

3.5.5 The guidance is also silent on where to obtain further help with these complex decisions. We have pointed out numerous times that people have ended up in difficult situations between tax credits and employer-supported childcare because no-one could give them information about both schemes. We were assured this would be addressed for TFC and that focus would not just be on the TFC scheme alone. It is disappointing that the guidance has not addressed any of these concerns.

LITRG
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