

**Review of Employee Benefits and Expenses – draft legislation
HM Revenue & Customs (HMRC) consultation document
Response from the Low Incomes Tax Reform Group (LITRG)**

1 Executive Summary

- 1.1 We welcome the opportunity to respond to the HMRC consultation document on draft legislation in respect of their review of employee benefits and expenses.
- 1.2 These draft regulations continue the work of HMRC to implement the proposals put forward in 2014 in four consultation documents, which themselves followed a review of employee benefits and expenses by the Office of Tax Simplification (OTS).¹
- 1.3 The draft Statutory Instruments broadly appear to implement the proposals and achieve the desired results. Our response notes a few concerns with the drafting, in particular where we think confusion might arise for employers and / or employees. We have noted a few typographical errors (typos) and also some areas where we think clear guidance will be essential, for example the type of supporting evidence that will be required when employers make reasonable assumptions in respect of payrolling (see paragraph 5.6 below).

¹ <https://www.gov.uk/government/publications/review-of-employee-benefits-and-expenses-final-report>

2 About Us

- 2.1 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 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 Introduction

- 3.1 LITRG has called for employee benefits and expenses to be considered holistically within responses to previous consultation documents that dealt with only one or two proposals at a time.² We were pleased to see that as a result of the review carried out by the OTS, the Government and HMRC decided take a more holistic approach.
- 3.2 We consequently responded to four consultation documents in 2014 on reforms to the taxation of employee benefits and expenses, broadly welcoming the proposals and the fact that these were approached in a more holistic manner.³ We also commented on the draft legislation in the draft Finance Bill 2015, to implement those proposals.⁴

² In 2008, LITRG responded to the HMRC consultation document “Including benefits in kind and expense payments in the payroll: a fresh approach” – http://www.litrg.org.uk/Resources/LITRG/1_513_Payrolling_BIKandExps_condoc_LITRG_response_17_March2008.pdf; in 2008, LITRG responded to the joint HM Treasury and HMRC consultation document “Tax relief for travel expenses: temporary workers and overarching employment contracts” – http://www.litrg.org.uk/Resources/LITRG/1_597_Taxrelieffortravelexpenses_LITRG_final.pdf; in 2010, LITRG responded to the Government consultation document “National Minimum Wage workers – travel and subsistence expenses schemes” – http://www.litrg.org.uk/Resources/LITRG/1_782_LITRG_NMW_6May2010final.pdf

³ The LITRG responses are available on our website: <http://www.litrg.org.uk/submissions/2014/Employee-Benefits-and-Expenses-four-condocs>

⁴ The LITRG responses are available on our website: <http://www.litrg.org.uk/submissions/2015/150202-LITRG-FB15-emp-ex-ben>

- 3.3 These four sets of regulations are intended to deliver the detail of some of the changes. In particular, they are concerned with the reforms which abolish the £8,500 threshold for benefits in kind, allow employers to use voluntary payrolling to report and deduct tax on benefits in kind, and introduce an exemption for qualifying business expenses.
- 4 The Income Tax (Pay As You Earn) (Amendment No. X) Regulations 2016 – removal of the requirement for employers to make end of year returns on forms P9D.**
- 4.1 These regulations remove references to form P9D from the Income Tax (Pay As You Earn) Regulations 2003.
- 4.2 There is a typo in the first line of the text of the draft Statutory Instrument: “**Commissioner’s**” should read “**Commissioners**”. The apostrophe is incorrect.
- 5 The Income Tax (Pay As You Earn) (Amendment No. X) Regulations 2016 – to allow authorised employers to payroll many benefits in kind and remove the requirement for such employers to make annual returns for each employee they provide a benefit to.**
- 5.1 These regulations introduce a scheme to authorise employers to use voluntary payrolling of certain benefits in kind. We note that some of the processes involved in voluntary payrolling are not particularly clear from the regulations. It is important that employers receive clear guidance on what to do in particular situations, for example in relation to authorisation, otherwise small employers, with limited resources, will find it difficult to adopt voluntary payrolling.
- 5.2 We welcome the provision at regulation 61B paragraph (3) that means that the rule that employers may not deduct more than 50% of an employee’s pay is unaffected by any other provision in the regulations.
- 5.3 We are concerned that the definition of an authorised employer at regulation 61C could be onerous, in particular for employers with less stable workforces. It appears that even an employer who is already authorised will have to make a new application should they take on a new employee during a tax year to whom payrolling of benefits in kind is applicable (see regulation 61C paragraph (2)). In addition, it is unclear whether an employer must apply and receive the appropriate notification from HMRC before providing any benefits to the new employee. We would expect that if this detail is not included in the regulations, it is incorporated in clear guidance for employers.
- 5.4 We welcome the provision at regulation 61C paragraph (5) for employers to whom regulation 67D applies not to have to use an approved method of electronic communication when making an application or notice to HMRC under these regulations. It is important to make provision for those employers that are not able to use electronic communications.
- 5.5 The steps set out at regulation 61D seem to achieve the desired result in a sensible manner.

- 5.6 In paragraph (2) of regulation 61G, it indicates that “the employer may make **reasonable assumptions**” about the cost and the payments. There will need to be clear guidance as to the type and amount of evidence that an employer will need to retain in order to justify their assumptions and to be able to prove to HMRC, where necessary, that those assumptions are reasonable.
- 5.7 At paragraph (1) of regulation 61H there is a typo. The second line reads “of a specified employee ceases but the employee **but** continues to receive the specified benefit.” The second “but” (highlighted in bold) should be removed.
- 5.8 We are concerned that step 1 at paragraph (2) of regulation 61H could cause confusion. Step 1 appears to use the term “the revised taxable amount of the benefit” to refer to the full **annual** amount of the benefit. Elsewhere in the regulations, this term is used to refer to the weekly or monthly amount of the benefit, for example at step 3, paragraph (1) of regulation 61D. We suggest it might be more consistent to refer to the “revised cash equivalent” at step 1, paragraph (2) of regulation 61H, as this term appears to be used for the annual value of the benefit.
- 5.9 At paragraph (2) of regulation 61H there is a typo. Step 2 reads “Multiply **by** the number of main relevant payments made to date **by** the taxable amount...” It is unnecessary to use “by” twice. The first of the instances should be removed.
- 5.10 Further clarification is required at paragraph (3) of regulation 61H. It indicates that the employer should “apply step 5 to that amount.” This needs to read “apply step 5 of **regulation 61D(1)** to that amount”, in order to ensure that the employer follows the correct steps.
- 5.11 At paragraph (2) of regulation 61J there is a typo. Step 2 reads “The result is the revised value ... **bought**”. This should read “The result is the revised value ... **brought**”.
- 5.12 At paragraph (2) of regulation 61J there is a typo. Step 4 reads “Divide the revised value ... from **step 2**”. We think this should read “Divide the revised value ... from **step 3**”.
- 5.13 Regulation 61K makes provision for occasions when there is insufficient income to enable the employer to deduct the full amount of tax due. Under this provision, we would also expect to see an indication of what the employer needs to do, or what will happen, if it is unclear whether there will be sufficient income in future to allow deduction of the tax due. We would expect the position to be similar to that as set out at regulation 61H, which makes provision for a benefit continuing where employment has ceased. This would result in the employer no longer being authorized in respect of the affected employee. We think particular complexity could arise for employers and employees if, as a result of authorisation ending mid-year, part of a benefit is payrolled and part is not payrolled, and presumably reportable on form P11D. This is another area in which it will be essential to provide clear guidance for employers, and employees.

6 The Income Tax (Approved Expenses) Regulations 2016 – setting out the approved rates that employers can use under the new exemption for qualifying business expenses, without the need to contact HMRC for approval.

- 6.1 These regulations define the approved method of calculating or reimbursing standard meal allowances for the purposes of the new exemption for paid or reimbursed expenses.
- 6.2 Regulation 11 paragraphs (2) and (3) specify amounts for standard meal allowances. We call on HMRC to ensure that these amounts are updated in due course, to ensure that they remain at appropriate levels.
- 6.3 We think that the drafting of regulation 11 could be improved. Paragraph (2) of regulation 11 refers to “qualifying travel”, previously defined in regulation 10 as following the rules for “business travel”.⁵ When specifying the level of each monetary meal allowance, the determination is based on “duration of qualifying travel”; we think that the duration should be of time spent away from the normal place of work on business, whether working or travelling. For many employees, it is not the duration of travel that is long, it is the time spent away from their normal place of employment, whether travelling, working or in meetings. By way of example, the actual duration of travel may only be two hours, but the employee might be working and travelling in total for 16 hours. On the strict reading of the provisions as drafted, their employer could only grant them a meal allowance of £5. Another employee, also away from their normal base for 16 hours, might spend 11 hours travelling and only 5 hours working. They would be entitled to a meal allowance of £10. Logic, however, would suggest that both should be eligible for a meal allowance of £25, provided they are still working or travelling at 8pm on that day.

7 The Income Tax (Pay As You Earn) (Amendment No. *) Regulations 2016 – removal of the requirement for employers to report expenses paid to employees (whether deductible or not) on form P11D at the end of the tax year.

- 7.1 These regulations remove the requirement for employers to report expenses payments made to employees to HMRC on form P11D.
- 7.2 There is a typo in the first line of the text of the draft Statutory Instrument: “**Commissioner’s**” should read “**Commissioners**”. The apostrophe is incorrect.

LITRG
1 September 2015

⁵ ss. 337-342, ss. 370-375 ITEPA 2003.