

**Draft legislation: Simplification of PAYE Settlement Agreements
Response from the Low Incomes Tax Reform Group (LITRG)**

1 Executive Summary

- 1.1 We welcome this opportunity to comment on the draft legislation seeking to simplify the PAYE settlement agreement (PSA) process. We do so as tax specialists with particular interest and expertise in the tax and related welfare problems of the lowest paid employees and small employers, for example care and support employers.¹
- 1.2 In our response² to the earlier consultation³ on simplifying the PSA process we expressed our support for the overall aim of the new system to save time and money for employers and HMRC alike, however we had a number of concerns about the potential impact of the proposed changes on our constituency.
- 1.3 In particular we raised concerns about aligning the PSA payment date with the class 1A NIC payment date and the removal of the minor criterion. We welcome HMRC's response to that consultation, confirming these elements of the proposals will not be taken forward.

¹ i.e. those that have taken on a personal assistant (carer) to help them live independently and thus become responsible for complying with administrative requirements associated with being an employer

²<http://www.litrg.org.uk/sites/default/files/files/161014-LITRG-response-PAYE-settlement-agreements-FINAL.pdf>

³https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/544639/Simplifying_PAYE_Settlement_Agreement_PSA_process.pdf

- 1.4 We are generally supportive of HM Revenue & Customs' (HMRC) digital agenda and can see the benefits of digitising the PSA process. Although the policy paper confirms that the Government has decided that the proposed digitisation of PSAs will not go ahead at the moment, the draft regulations contain provisions to allow this at a future stage.
- 1.5 However, we are concerned that the draft legislation seems to allow HMRC to cancel a PSA without cause and by electronic means (if and when an electronic process is introduced), even if the employer is digitally excluded or otherwise lacks capability to transact digitally. We suggest that HMRC should only be able to use electronic communication to cancel an agreement where the employer has set up the PSA electronically and in any case, only where the employer has persistently or wilfully failed to do something, as is currently the case.
- 1.6 We welcome the simplification introduced by allowing for an enduring PSA which removes the need for employers to renew their PSA annually. As employers will no longer be considering their PSA annually, adequate guidance needs to be given to ensure that they understand the variation process and in particular what to do if the items initially covered in the enduring PSA change.

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 General comments

- 3.1 We welcome the opportunity to review the draft legislation which amends Part 6 of the PAYE Regulations 2003. We suggest that where there are numbers of provisions amending other provisions, as is the case here, it would be useful if a keeling schedule were produced alongside the draft legislation. This will help stakeholders to provide meaningful comments

as to whether amendments to existing legislation will achieve their intended policy effect while guarding against any unintended consequences.

- 3.2 We note that the changes to regulation 117 seem to remove HMRC's powers to inspect an employer's PSA records. We assume that HMRC consider these powers are already conferred by regulation 97 or another provision in the taxes acts, however for complete certainty, we suggest that this is a point that is clarified.

4 Main comments

4.1 Digitisation

- 4.1.1 As noted in paragraph 1.4 we are generally supportive of HMRC's digital agenda and we recognise that a shift to digital channels can save some employers time and money and therefore digitising the PSA process is desirable for many.
- 4.1.2 However, some employers will be without digital access and/or capabilities and that is one of the main reasons that, in general, we do not agree with the mandation of online systems. In the original consultation, the intention was to digitise the PSA process via a digital PSA return which would replace the current paper process. It was also stated that certain categories of employers would be exempt from the requirement to file a digital return based on those who are currently exempted from completing digital Real Time Information (RTI) returns.
- 4.1.3 The policy paper¹ on the draft legislation confirms that the proposed digitisation of PSAs will not go ahead at the moment but that the regulations will be amended to allow for digitisation of the PSA process at a future stage.
- 4.1.4 The amendments made by the draft legislation appear to introduce electronic communications as an alternative to the written processes currently in place for employers. We welcome this as a choice rather than as a mandatory requirement and it means that those who are digitally excluded or who have difficulty transacting online will continue to have the option to use the paper process in order to set-up, vary or cancel a PSA.
- 4.1.5 However, we are concerned that the draft legislation does not fully protect those who are unable to transact online as it seems to allow HMRC to cancel a PSA electronically in all cases.

¹https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/679670/Policy_paper_on_draft_legislation_The_Income_Tax_Pay_As_You_Earn_Amendment_Regulations_2017.pdf

- 4.1.6 The PAYE regulations 2003 (regulation 114, as amended) will read: (1) Either HMRC or the employer may cancel a PSA. (2) Cancellation must be effected by a notice in writing to the other party... “in writing” includes electronic communications.
- 4.1.7 This seems different to the drafting approach taken when introducing the possibility of electronic communications for the set up/variation of a PSA in regulations 111 and 113, which (by virtue of the wording ‘...signed and dated by the *employer and HMRC*’) implies that HMRC will follow the employer’s lead in terms of whether to respond electronically or not.
- 4.1.8 In addition, we note the changes made to regulation 114(1) – will remove the list of circumstances in which a PSA can currently be cancelled by HMRC.¹
- 4.1.9 It is crucial that HMRC should not be able to cancel a PSA electronically where an employer has set it up using the paper process. It is also crucial that HMRC should not be able to cancel a PSA without reason or cause. We trust that this is not the intention here but would welcome HMRC’s clarification.
- 4.2 ***Enduring agreement***
- 4.2.1 We are supportive of this simplification which allows a new enduring agreement to remain in place for subsequent tax years unless varied or withdrawn by the employer and it appears that the regulations as drafted achieves the objective. As employers will no longer be renewing their PSA annually, adequate guidance must be provided to employers to ensure that they understand the variation process.
- 4.2.2 In particular an employer will need to understand what to do if the expenses and benefits initially covered in the enduring PSA change (assuming the enduring agreement will require an employer to describe the expenses and benefits it is to cover).
- 4.2.3 We would like to point out one minor drafting error. Regulation 9 of the draft regulations amends regulation 113 of the PAYE regulations. Specifically Regulation 9(c) inserts wording into existing regulation 113(3) to allow a variation to be made up until 6 July following the end of the first year to which the variation relates. Inserting the words ‘first year to which

¹ The current regulations allow HMRC to cancel an agreement in the following circumstances:

“The Inland Revenue may cancel a PSA if the employer has seriously or persistently failed—

(a) to account to the Board of Inland Revenue for sums for which the employer is accountable under the PSA, or otherwise to comply with the terms of the PSA,

(b) to produce records in accordance with regulation 117 (inspection of PSA records),

(c) to deduct, or account for, tax in accordance with Parts 3 and 4 (deduction and repayment of tax; payments, returns and information), or

(d) to deliver returns in accordance with Parts 3 and 4.”

the variation relates’ seems to leave the following ‘tax year to which it relates’ redundant. We suggest that the redundant words are removed and the insertion should include the words tax year so it would add ‘first tax year to which the variation relates’.

LITRG
21 February 2018