Response from ICAS to the HMRC Consultation

Review of employee benefits and expenses – draft legislation

1 September 2015
About ICAS

1. The Institute of Chartered Accountants of Scotland (“ICAS”) is the oldest professional body of accountants. We represent around 20,000 members who advise and lead businesses. Around half our members are based in Scotland, the other half work in the rest of the UK and in almost 100 countries around the world. Nearly two thirds of our members work in business, whilst a third work in accountancy practices. ICAS members play leading roles in around 80% of FTSE 100 companies. ICAS is also a public interest body.

General Comments

Introduction

2. ICAS welcomes the opportunity to comment on the review of employee benefits and expenses: draft legislation issued on 8 July 2015.

3. The benefit in kind system generates very significant tax and NIC revenue for the Exchequer but as highlighted by the OTS this involves a huge administrative effort by employers and HMRC. The OTS identified opportunities to streamline the current system to improve fairness and efficiency and reduce some of the administrative burden.

4. ICAS supports the proposals put forward by the OTS to update and amend the benefits and expenses system. If implemented correctly, payrolling benefits is a move towards a real time, in year, reporting of benefits. It is a natural complement to the Real Time Information system for PAYE introduced from April 2013.

5. It is disappointing that the current regulations do not reflect all the proposals made by the OTS in January 2014, and do not cover the payrolling of all benefits and defer change to the rules on trivial benefits.

Interaction of the regulations with other taxes and reporting requirements

6. ICAS notes that the current proposals only cover the PAYE position on payrolling certain benefits and do not address the Class 1A NIC position. This will mean that employers will still be required to prepare and submit forms P11D (b) to notify the Class 1A NIC liability to HMRC. There are likely to be costs for employers in reconciling the figures submitted in payrolling benefits with the forms P11D (b). Only a simultaneous introduction of payrolling for both PAYE and Class 1A NIC will result in real simplification and reduction in the administrative burden.

7. Under the current benefit reporting system, the employer is required by the 2003 PAYE Regulations to make an annual return to each employee for whom benefits are provided. The draft regulations remove this requirement. ICAS is concerned that without these details employees will not be able to file their self-assessment tax returns or check their online tax accounts. This could be further confused if there are some benefits outside payrolling which do require to be reported to the employee on form P11D.

8. The draft regulations allow an employer to opt into the payrolling system and apply payrolling to each category of benefit. It is critical to the success of the payrolling of benefits that the opt-in process by the employer is linked to the notice of coding systems used by HMRC so that a benefit is taxed only once, either through payroll or an adjustment to a tax code for an individual. Double taxation of employees may undermine trust in the PAYE system.

Specific Comments

The Income Tax (Pay As You Earn) (Amendment no *) Regulations 2016

(The regulations remove the requirement for employers to make end of year returns on forms P9D)

9. ICAS has no comments on these draft regulations.
The Income Tax (Pay As You Earn) (Amendment no *) Regulations 2016

(The regulations 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)

10. The processes for payrolling benefits outlined in the draft regulations largely fulfil the recommendations of the OTS. As noted above, ICAS has concerns about the interaction with the Class 1A NIC reporting requirements. There are also a number of other points to make on the draft rules:

- The regulations do not apply to certain benefits (beneficial loans, accommodation and credit vouchers and tokens). ICAS members would like to see the scope of the regulations extended to cover these areas in due course so that employers are able to payroll all benefits and not run two separate systems.

- The current system of benefit reporting gives employers until 6 July following the end of the tax year to finalise their submissions for that period. Payrolling benefits will work on a real time basis and does not provide a “grace” period for employers to amend returns. The employer can make adjustments under regulation 61J but these are in-year adjustments so that, in effect, the employer is required to get the position correct and collect the tax in a much shorter period. ICAS recommends that a period of grace to allow amendments to be made is introduced, particularly in the early years of the payrolling of benefits. This would reflect the changes in the timescales for employer compliance and the complications of some benefits being in the payrolling scheme and some outside.

- Regulation 61C (4) allows the employer to modify an option to payroll benefits in certain circumstances, such as a situation where an employee does not have adequate pay to fund the tax charge on their benefits. An example of this situation would be employees on extended leave who continue to receive benefits. The employer is then required to return the details separately to HMRC but there is no requirement to notify the employee of the position. This may leave the employee in a difficult position and unaware that the employer has not payrolled the benefit. ICAS recommends that the guidance to employers indicates that it is best practice for employers to notify employees where this is the case.

- Payrolling benefits will bring them within the PAYE penalty system for RTI returns. HMRC should have a soft landing period for penalties following the introduction of the new rules to give employers time to align process and systems to the new system.

The Income Tax (Approved Expenses) Regulations 2016

(The regulations set out the approved rates that employers can use under the new exemption for qualifying business expenses, without the need to contact HMRC for approval)

11. ICAS has no comments on these draft regulations.

The Income Tax (Pay As You Earn) (Amendment no *) Regulations 2016

(The regulations remove the requirement for employers to report expenses paid to employees (whether deductible or not) on form P11D at the end of the year)

12. ICAS has concerns on this change to the reporting requirements of employers and its impact on individual taxpayers as outlined above. In an age of self-assessment and making individual taxpayers responsible for their own tax affairs, this would appear to be a counter-productive change which will give individuals less visibility of their tax position.

13. ICAS understands from discussions with HMRC that there is unlikely to be a mandatory requirement for employers to make this information available on payslips as this would require changes to the Employment Rights Act. ICAS believes that the requirement to provide this information should be retained in the regulations although the format can no
longer be form P11D. Without this information employees will not be able to file tax returns or check information used to calculate their tax liability. This would appear to the incompatible with section 2 of the taxpayer’s charter.