



# ICAEW REPRESENTATION 182/16

## TAX REPRESENTATION

### APPRENTICESHIP LEVY: DRAFT SECONDARY LEGISLATION FOR CALCULATION, PAYMENT AND RECOVERY

ICAEW welcomes the opportunity to comment on the technical consultation: [Draft legislation: regulations for the calculation, payment and recovery of the Apprenticeship Levy](#) published by HMRC on 19 September 2016.

This response of 14 November 2016 has been prepared on behalf of ICAEW by the Tax Faculty. Internationally recognised as a source of expertise, the Faculty is a leading authority on taxation. It is responsible for making submissions to tax authorities on behalf of ICAEW and does this with support from over 130 volunteers, many of whom are well-known names in the tax world. Appendix 1 sets out the ICAEW Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark proposals for changes to the tax system.

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

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## THE DRAFT REGULATIONS

1. We believe that the requirement in new reg 147D(1)(a) to submit a return where a person's pay bill in the tax year preceding the year in which the apprenticeship levy (AL) liability falls to be reported was over £2.8 million should be omitted from the regulations as it is otiose and burdensome.
2. Reg 147D deals with the duty to report amounts of AL that are payable. Separately, s99 Finance Act 2016 sets out when there will be a charge to the AL (being where the pay bill multiplied by 0.5% exceeds the allowance for the year). Regs 147H and 147I set out the calculation of the AL on the first and subsequent months of a tax year respectively. These can apply only where there is a charge under s99. An employer that is not chargeable to the AL by virtue of not meeting the conditions under s99 would, if reg 147D(1)(a) were retained, have a duty to report the amount of AL – being nil – if the pay bill in the previous tax year exceeded £2.8 million. The duty to report AL payable should be in line with chargeability to the AL.

## RELATED MATTERS

3. With a view to helping AL to work smoothly for employers and HMRC and comply with the second and fourth of our *Ten Tenets for a Better Tax System*: Certain and Easy to collect and to calculate (summarised in Appendix 1), we recommend that the following matters need to be resolved before AL goes live; these include certain points that we made in our representations [ICAEW REP 51/15](#) on the AL clauses in Finance Bill 2016, viz:
  - (a) HMRC's employer PAYE accounts need to reflect AL payments quickly and accurately to give employers/payroll bureaux confidence that this new tax is being correctly accounted for. As many large employers outsource payroll, it will be important that agent services are working properly before AL starts on 6 April 2017.
  - (b) We should welcome confirmation that HMRC business tax accounts will reflect the levy.
  - (c) As the levy allowance (LA) is allocated at the rate of one twelfth per month against the year-to-date pay bill, seasonal employers which anticipated that their annual pay bills will exceed £3m and which do not have a sufficient PAYE liability in the months leading up to the end of the tax year will have to wait until after the year end to receive a credit on AL paid that cannot be recovered from any PAYE liabilities. For connected small entities who have no levy allowance this could cause significant cash flow issues. We should welcome confirmation that HMRC will agree and refund overpayments quickly after the payroll year end.
  - (d) AL is accounted for via the employer payment summary (EPS). Large employers with multiple payrolls schemes in multiple locations are likely to allocate LA centrally. HMRC's Basic PAYE Tools (BPT) will need to be able to be used by such entities to file EPS independently of payroll software.
  - (e) In groups and companies with multiple payrolls, it is likely that a truing-up of AL will be needed after the year end. If this is going to be achieved via an earlier year update (EYU) then, again, as this is likely to be done centrally independently of payroll software, HMRC's BPT will need to be able to accommodate this.
  - (f) The EYU needs to be modified so that employers/payroll bureaux input the correct figures rather than delta values which require knowledge of HMRC's figures. HMRC told us in 2014 that this was in hand. We should welcome clarification of a likely implementation date.
  - (g) Many employers are unclear that AL applies to them as they assume that it is only for businesses that wish to employ apprentices. We recommend that there is a government publicity campaign in advance of AL coming into effect.
  - (h) The timing of the finalisation of the AL rules needs to leave sufficient lead time for HMRC to produce IT specifications, its own and private sector people to design, build, test and install robust software which works properly, and operators to be trained in how to use it, as recommended in Lord Carter of Coles' March 2006 [Review of HMRC Online Services](#).

## APPENDIX 1

### ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. **Statutory:** tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. **Certain:** in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. **Simple:** the tax rules should aim to be simple, understandable and clear in their objectives.
4. **Easy to collect and to calculate:** a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. **Properly targeted:** when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. **Constant:** Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. **Subject to proper consultation:** other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. **Regularly reviewed:** the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. **Fair and reasonable:** the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. **Competitive:** tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see <http://www.icaew.com/-/media/corporate/files/technical/tax/tax-news/taxguides/taxguide-0499.ashx>).