



VOLUNTARY PAYROLLING OF BENEFITS IN KIND

ICAEW welcomes the opportunity to comment on the draft Finance Bill 2015 legislation *Voluntary payrolling of benefits in kind* published by HMRC on 10 December 2014.

This response of 4 February 2015 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.

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INTRODUCTION

1. We welcome the opportunity to comment on the draft Finance Bill 2015 legislation [Voluntary payrolling of benefits in kind](#) published by HMRC on 10 December 2014.
2. We should be happy to discuss any aspect of our comments and to take part in all further consultations on this area.
3. On 28 January 2015 we attended a meeting with HMRC with other professional bodies in which we were able to put forward some comments and concerns and discuss aspects of the proposals.
4. In 2007 and 2008 we participated in numerous meetings with HMRC on payrolling benefits-in-kind and expenses (in this document collectively described as BiK), and responded on 12 March 2008 in [TAXREP 25/08](#) to HMRC's [consultation document](#) published on 13 December 2007. More recently, in 2013 we gave evidence in meetings to the Office of Tax Simplification to help them compile their [interim report on employee BiK and expenses](#) published on 8 August 2013 and their [second report \(formerly called final report\) on employee BiK and expenses](#) published on 14 January 2014. We responded in [TAXREP 44/14](#) to HMRC's [consultation document on voluntary payrolling](#) published on 18 June 2014.

COMMENTS

5. We welcome the fact that the government intends to make available to employers the ability on a statutory basis to payroll benefits-in-kind (BiK), and that, as noted in the TIIN, employers will be able to opt to payroll BiK and forms P11D will not be required in respect of such BiK.
6. Regarding the legislation itself, in new sub-section 1ZA(d), we should welcome confirmation that benefits treated for specified purposes as PAYE income will continue to be liable to Class 1A NIC, not Class 1.
7. The draft legislation in the main provides regulation making powers. However, we take this opportunity to suggest some matters that we believe need to be resolved if payrolling BiK is to be a practical proposition for employers and HMRC at the coalface.
 - (a) Employers who so wish should be able to payroll BiK for any employees that they choose and for any of the BiK that the law permits to be payrolled. What works for one employer or group of employees or type of BiK may not work for another.
 - (b) Employers will need to be obliged to tell employees on their payslips and on P60 what amounts represent BiK and what BiK they are. We suggest also that payslips and forms P60 should show the Class 1A NIC charge to reassure employees that their BiK have not been subjected to Class 1 NIC.
 - (c) This, and the parallel requirement to inform HMRC of BiK provided and the tax and NIC implications via the full payment submission will necessitate HMRC's making available software specifications to payroll software developers well in advance of the implementation date of 6 April 2016.
 - (d) There needs to be a way for employers to make corrections easily and without penalty. Employers will not welcome having to reopen past pay periods to make corrections. A means of 'trueing up' at the year end will need to be found that enables employers to account for 'unders' and 'overs' easily, we envisage within the first three months of the new tax year either via the payroll or on form P11D as they choose (the extent to which corrections will be needed will depend on the extent to which tax and NIC charging rules can be simplified to make them payrolling BiK-friendly).

- (e) If earlier year updates are going to be used to correct BiK, then the EYU process needs to be changed so that employers can provide the correct figures to HMRC rather than have to tell HMRC by how much to correct HMRC's figures which are unknown to employers.
- (f) Class 1A NIC should be payable either on the same date as now, 19/22 July after the end of the tax year, or 'as you go' alongside the PAYE income tax and Class 1 NIC for that month, ie on 19/22 of the following tax month, at the employer's choice. If employers are forced to pay as they go without an option to pay on the current Class 1A due date, we suspect that many will prioritise their cash flow over payrolling BiK.
- (g) HMRC will also need to improve its process for refunding overpaid PAYE and NIC.
- (h) HMRC should improve its code number allocation systems so that code numbers are not only accurately and quickly changed but also are notified promptly to both employers/ payroll agents/ bureaux and employees when an FPS records that an employer has started payrolling BiK hitherto included in code numbers or when employees move between employers who payroll different BiK.
- (i) If payrolling is to be extended then the charging rules will need changing to enable the quantum of the BiK to be determined in real time. We suggest that HMRC could seek ideas from other tax jurisdictions, eg Ireland where virtually all BiK are payrolled.
- (j) Processes need to be developed for employers of cross-border employees, expatriates coming into the UK who are not or cannot be included in a modified Appendix 6 scheme and expatriates leaving the UK, etc which recognise the more complex administrative burden of dealing with the PAYE and BiK of such employees and enables them to be brought into a payrolling regime without undue burden.
- (k) Finally we suggest that regard be had to our *Ten Tenets for a Better Tax System* (summarised in Appendix 1), especially no.4: *Ease of collection*, when designing payrolling of BiK processes.

PCB

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 via <http://www.icaew.com/en/about-icaew/what-we-do/technical-releases/tax>).