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Our ref: ICAEW Rep 05/12

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Dear Jane

AUTOMATIC ENROLMENT EARNINGS THRESHOLDS: REVIEW & REVISION 2012/13

ICAEW is pleased to respond to your request for comments on the above consultation.

Please contact me should you wish to discuss any of the points raised in the attached response.

Yours sincerely

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ICAEW REP 05/12

ICAEW REPRESENTATION

AUTOMATIC ENROLMENT EARNINGS THRESHOLDS

Memorandum of comment submitted on 26 January 2012 by ICAEW in response to Department for Work and Pensions consultation published on 15 December 2011

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INTRODUCTION

1. ICAEW welcomes the opportunity to comment on the consultation paper *Automatic enrolment earnings thresholds review and revision 2012/13* published by the Department for Work and Pensions on 15 December 2011 at http://www.dwp.gov.uk/consultations/2011/auto-enrolment-revaluation.shtml.

WHO WE ARE

2. ICAEW is a world-leading professional accountancy body. We operate under a Royal Charter which obliges us to work in the public interest. ICAEW's regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the UK Financial Reporting Council. We provide leadership and practical support to over 136,000 member chartered accountants in more than 160 countries, working with governments, regulators and industry in order to ensure that the highest standards are maintained.

3. ICAEW members operate across a wide range of areas in business, practice and the public sector. They provide financial expertise and guidance based on the highest professional, technical and ethical standards. They are trained to provide clarity and apply rigour, and so help create long-term sustainable economic value.

4. The Tax Faculty is the voice of tax within ICAEW and is a leading authority on taxation. Internationally recognised as a source of expertise, the faculty is responsible for submissions to tax authorities on behalf of ICAEW as a whole. It also provides a range of tax services, including TAXline, a monthly journal sent to more than 8,000 members, a weekly newswire and a referral scheme.

5. This response reflects consultation with the ICAEW Pensions Subcommittee of the ICAEW Business Law Committee which includes representatives from public practice and the business community. The Committee is responsible for ICAEW policy on business law issues and related submissions to legislators, regulators and other external bodies.

KEY POINT SUMMARY

Our recommendations

6. We consider that:

- The automatic enrolment regime needs to be simple; simplicity is not a factor included in the rationale in the consultation document (CD) for arriving at the automatic enrolment thresholds but should be.

- Simplicity and ease of understanding for employers and employees, and Government policy to reduce burdens on business and compliance costs suggest that auto-enrolment thresholds should align with thresholds that employers and workers are most familiar with, namely PAYE and NIC thresholds.

- The trigger for automatic enrolment therefore needs to be the income tax single person's allowance (per CD), and the band of earnings on which contributions are payable should be from the NIC Primary Threshold up to the NIC Upper Earnings Limit (rather than from NIC Lower Earnings Level up to an indexed-linked Pensions Act 2008 figure as per CD).

- Adopting our suggestion would mean that once the trigger is met, for most workers auto-enrolment contributions will be payable on the same base earnings as standard rate Class 1 NICs – what could be simpler?

MAJOR POINTS

Our conclusions

7. One of the most important aspects that is not covered in the consultation document is the burden on employers of operating and the ability of those who are liable to be automatically enrolled to understand the new regime. For employers this includes not only calculating the contributions as part of the payroll, which some still do manually, but being able to understand and, when asked by their employees, able to explain in simple terms how much the new regime will cost them financially, and for workers the ease with which they will be able to appreciate the implications.

8. HM Government via HM Treasury and HM Revenue & Customs is currently consulting with bodies such as us as to how to make PAYE and NIC more alike to make it easier for employers and employees to understand. One aspect of this is the alignment of thresholds. We consider that creating another, different, band of earnings on which employers will have to base compulsory pension contributions would be a retrograde step because it would make auto-enrolment more difficult to understand. Government has stated that it wants to reduce employer burdens, therefore it seems to us that it would conflict with Government policy if automatic enrolment thresholds were not the same as other thresholds familiar to employers. We therefore recommend that automatic enrolment thresholds should align with PAYE and NIC thresholds. We recognise that technically the earnings on which NICs and auto-enrolment are based are different, but for most workers the two sets of definitions will give rise to the same answer.

9. In summary, we agree with the CD proposal that the trigger threshold for automatic enrolment should be the PAYE income tax threshold, ie the single person's allowance, but unlike in the CD consider that auto-enrolment contributions should then be due on earnings above the NIC Primary Threshold up to the NIC Upper Earnings Limit. This would mean that a worker will be auto-enrolled only if he earns enough to pay tax, and in most cases will pay auto-enrolment pension contributions on the same base earnings as for Class 1 NIC at the standard rate.

10. These recommendations are what we put forward in our evidence sent on 13 August 2010 to the independent Making Automatic Enrolment Work (MAEW) review (in ICAEW REP 76/10); our recommendations for the automatic enrolment trigger and the qualifying earnings band lower limit align with the recommendations of the MAEW review.

RESPONSES TO SPECIFIC QUESTIONS

Automatic enrolment earnings trigger

Q1: Are there any other relevant factors that should be taken into account for the revision of the automatic enrolment trigger for 2012/13?

11. We consider that the burden on employers of operating the new regime and the ability to understand it for those who are participating in it should also be included as relevant factors. See also paras 7-10 above.

Revision of the qualifying earnings band lower and upper limits

Q2: Are there any other relevant factors that should be taken into account for the revision of the qualifying earnings band lower limit for 2012/13?

12. We consider that the burden on employers of operating the new regime and the ability to understand it for those who are participating in it should also be included as relevant factors. See also paras 7-10 above.

13. For the qualifying earnings band lower limit, whilst we acknowledge that the proposed threshold, namely the NIC Lower Earnings Limit, is one with which employers are familiar, we consider that it is too low to use as a threshold for collecting auto-enrolment pension contributions. This is the conclusion that was arrived at for Class 1 NIC where the rate of contributions at the Lower Earnings Limit is zero percent. Setting the threshold at the threshold at which primary NIC starts to be payable, ie the NIC Primary Threshold, would not only lessen the impact of the regime on the very low paid but also facilitate intuitive comprehension.

14. It would also reduce employer costs at the bottom end, which we note from the CD has influenced the level at which the proposed upper earnings limit should be set (see Q3).

Q3: Are there any other relevant factors that should be taken into account for the revision of the qualifying earnings band upper limit for 2012/13?

15. We consider that the burden on employers of operating the new regime and the ability to understand it for those who are participating in it should also be included as relevant factors. See also paras 7-10 above.

16. For the qualifying earnings band upper limit, the consultation document is arguing that a lower figure should be used, on the grounds of employer cost.

17. The lower figure proposed is to be the Pensions Act 2008 figure indexed by the rise in average earnings. The Pensions Act figure is a former NIC Upper Earnings Limit. The outcome of uprating the former NIC UEL by an index is an arbitrary figure which bears no relation to any other threshold, and which will not aid comprehension.

18. As to the grounds of employer cost, we are surprised that employee cost is not mentioned as well. Leaving this aside, given both the need for simplicity and the underlying policy behind auto-enrolment and that employer and employee contribution costs will be less than originally envisaged following the announcements on 28 November 2011 at http://www.dwp.gov.uk/newsroom/press-releases/2011/nov-2011/dwp135-11.shtml and 25 January 2012 at http://www.dwp.gov.uk/newsroom/press-releases/2012/jan-2012/dwp010-12.shtml, we question whether employer cost alone is a sufficient reason for introducing such an unnecessary complication. .

Emerging proposals for 2012/13 revision

Q4: Do you agree with these recommendations for the automatic enrolment thresholds for 2012/13?

19. Yes and no: yes for the automatic enrolment earnings trigger but no for the lower and upper limits of the qualifying earnings band.

20. We welcome the proposal that the trigger threshold for automatic enrolment should be the PAYE income tax threshold, ie the single person's allowance. Having a trigger that is higher than the starting point for the liable earnings makes sense, as it avoids people paying pennies in contributions once they are auto-enrolled.

21. We do not agree that contributions should be due on earnings above the NIC Lower Earnings Limit. We consider instead that contributions should be payable on earnings from the NIC Primary Threshold. See our answer to Q2.

22. We do not agree that contributions should be due on earnings up to the Pensions Act 2008 figure indexed by the rise in average earnings. We consider instead that contributions should be due on earnings up to the NIC Upper Earnings Limit. See our answer to Q3.

23. Our recommendations would mean that a worker is auto-enrolled only if he earns enough to pay tax, and whilst we recognise that technically the earnings on which NICs and auto-enrolment are based are different, most workers would pay auto-enrolment pension contributions on the same base earnings as for Class 1 NIC at the standard rate – simple for employers and employees to understand.

Q5: Do you agree in particular that for next year the upper limit of the qualifying earnings band is capped below the NICs UEL?

24. No. We consider instead that the upper limit of the qualifying earnings should be the NIC Upper Earnings Limit. As noted above (see paras 7-10 and Q4) this would be a more intuitive threshold and make it easier for those affected to work out how much auto-enrolment will cost.

Pay reference periods

Q6 Do the pay periods set out in this document capture all pay periods employers use? Are there any omitted from the list which we will have to cater for when the figures are prescribed for next year?

25. No and yes. The list omits so needs to include annual pay periods and provide for non-standard length pay periods not included in the list.

26. Annual pay periods need to be covered. Many directors (and other officers and employees) of one or two person companies pay themselves annually, once they know how much the company can afford (during the rest of the year many such directors take drawings against loan account). Under the NIC rules directors automatically have an annual earnings period, even if they are paid at regular pay periods of less than a year, and even if in practice the annual earnings period NIC calculation and adjustment that the NIC rules say should be done is not.

27. It will be necessary to cater for pay periods of a non-standard duration, for example where a worker is paid on completion of a contract the length of which is different from any of the time periods included on the list. We suggest that the best way to do this would be to provide that the annual rate recommended above is divided by the number of days in the pay period and rounded to the nearest whole number with rounding of halves up or down being prescribed for the avoidance of doubt. This would result in less distortion than having a *per diem* value to be multiplied by the number of days in the pay period.

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