



ICAEW REPRESENTATION 51/16

TAX REPRESENTATION

APPRENTICESHIP LEVY

ICAEW welcomes the opportunity to comment on the draft legislation and policy paper [Apprenticeship Levy](#) published by HMRC on 4 January 2016.

This response of 2 March 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.

On 16 February we attended a meeting with HMRC jointly with other professional bodies in which we were able to discuss how the new tax will work and put forward some key comments and concerns.

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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.

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KEY POINT SUMMARY

1. We recommend that:

- Connected employers in the same group should be allowed to share the levy allowance (LA) between them (clause 4 as it stands is inequitable and should be amended).
- Single employers with multiple PAYE references (and connected employers in the same group – see point above) should be able to allocate LA between them in year to remove the need for repayment claims.
- The full LA allowance should be able to be set against apprenticeship levy (AL) from the start of the year rather than spread over the whole year on a monthly basis as this will make AL simpler to operate, obviate the need for complex rules setting out how to allocate LA to different pay periods and will make it easier for companies that exist for only part of the year. It should not leave the apprenticeship fund unable to fund apprenticeships because most new apprenticeships do not start until after the end of the school year in July.
- 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 online self serve (AOSS) is working properly before AL starts on 6 April 2017.
- If 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.
- 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.
- The EYU needs to be modified so that employers/payroll bureaux input the correct figures not delta values which require knowledge of HMRC's figures – we were told in 2014 that this was in hand.
- The impression given is that NIC deeming rules are to be used. We question whether the draft legislation achieves this.
- Clarification is needed as to the impact of the AL rules on, inter alia, large agencies, the Church of England, the engagers of office cleaners, UK continental shelf workers and mariners, and divers and diving supervisors.
- For modified payrolls, the basis of payment of AL should follow the modified NIC rules.
- The AL rules need to be finalised in sufficient time for HMRC to produce IT specifications early enough for its own and private sector payroll software to be designed, built, tested and installed and operators to be trained.

COMMENTS

2. We set out below some points that we recommend are taken into account in the design of the apprenticeship levy (AL) to make it workable in practice and which we suggest should be covered in the legislation and in guidance.

Levy allowance and connected employers

3. Clause 4 provides that if there are two connected employers each with aggregate NICable earnings above £3 million, only one of them will be entitled to claim, up to its own levy allowance (LA), and that a transfer of the unused LA to another group company will not be allowed.
4. We consider that this is inequitable, and that clause 4 should be amended to allow connected employers to share unused LA between them.

5. From an operational perspective, we understand that HMRC will have a mechanism to allow a PAYE credit against a different employer PAYE reference for the same employer and we see no reason why the same rule cannot apply to a group company.
6. We also understand the intention is that if a single employer (not a member of group) has multiple PAYE references only one reference can be used to claim the allowance. Consequently there may need to be a repayment claim to claim any balance of the allowance. We believe it would be simpler if the employer was allowed to allocate the allowance across the payrolls up to a maximum of £15,000 in aggregate to remove the need for repayment claims.

Applying the LA

7. Operation would be simplest for all concerned if the LA operated in the same way as the employment allowance (EA), which employers and systems programmers understand.
8. This would mean that the employer signifies liability to AL in the EPS, the full £15k levy allowance is allowed upfront against AL, and the derived amount from the FPS is simply paid over once the LA has been exceeded. This would avoid detailed and complex regulations setting out how to allocate the AL by pay period. Otherwise the AL may be unworkable, like the first draft of the payrolling benefits-in-kind regulations.
9. The draft legislation is silent on the question of how the LA is to be given in periods shorter than a full tax year. In the context of such large employers, the LA of £15,000 is fairly trivial, so we would like to see a simple approach, with the full £15,000 LA given even in short periods, eg, where a new business is started or an existing business ceases.
10. Whilst deducting LA from the first levy payment(s) and simply charging the balance at 0.5% would on the face of it delay cash flow into the AL fund, as the increase in apprenticeships that the AL is designed to fund will not begin to happen until July/August/September when school-leavers start their apprenticeships, there should be sufficient money in the fund well before it is needed, even if many large employers pay little or no AL on 22 May.
11. Some large employers have never claimed EA as their liabilities on HMRC's systems are so out of line with what the employers believe is the correct figure that they feel that it is not worth muddying the waters still more just for £2,000.
12. Employers will need a reminder that AL is mandatory and applies to those not eligible for EA and regardless of whether apprentices are employed currently or in the future.
13. EA is not credited until 22nd of the month in HMRC's records because HMRC's PAYE accounting system (ETMP) is so inflexible. If HMRC is going to derive the figure (or insist the EPS is populated) then ETMP needs to reflect the levy as soon as a file is received from the employer so that an accurate figure of liabilities is available that both employers and all of HMRC staff can view online.
14. We consider that instability of ETMP is highly likely to put the accurate collection of AL at serious risk, creating extra compliance problems for HMRC. As it is a new 'tax' employers will want to see it accurately recorded.
15. In view of the number of large employers who outsource payroll, we should also welcome confirmation that agents will have access to Agent Online Self Serve by April 2017 so they can see the entries on HMRC's employer PAYE account and view the AL entries.

Accounting for AL

16. If the route for accounting for AL is the employer payment summary (EPS), then, rather than it being a return that justifies paying over less than the total of all the full payment submissions (FPS), it could be a return of AL less statutory payments (SMP, SAP, ShPP)/ employment allowance (EA)/ construction industry scheme (CIS) deductions, etc.
17. We are concerned that, whilst this could be made to work where all payrolls are in-house or with one provider, in groups with multiple payroll locations and/or multiple bureaux, who might be unaware of the existence of other payrolls and providers, the responsibility for deciding whether AL applies and how much LA could be claimed would have to be at group finance level, and unrelated to any one payroll's operation, although UK HQ would have to nominate the entity that would claim the LA.
18. We therefore recommend that HMRC's Basic PAYE Tools (BPT) be amended to allow large employers to use it solely for AL if they so choose. We believe such a change will also be necessary as not all current payroll software produces an EPS.
19. We should also welcome clarification of how multiple employer PAYE references will be linked to employers' Digital Apprenticeship Service references.

Annual reconciliation

20. For companies and groups with multiple payrolls there will need to be an annual reconciliation to true-up the liability. We should welcome clarification of how this will be done.
21. If the earlier year update (EYU) will be used to deal with adjustments to AL liability after the end of the year, we recommend that HMRC's BPT be modified to allow employers to use it solely for this purpose if they wish. No AL-size businesses uses BPT for mainstream payroll, but they may use it for earlier year updates (EYU) when their own payroll software does not offer that functionality or where employers do not want to corrupt their own figures when submitting an EYU to correct HMRC's figures.
22. We should also welcome clarification of whether the EYU is being redesigned so that employers can submit the correct figures rather than delta values, following our having been told in late 2014 that this change was in hand.

Use of NIC rules

23. Although clause 22 defines NIC expressions used in the draft legislation (eg 'employed earners' in clause 3(1)) by cross referring to the Social Security (Contributions and Benefits) Act 1992, the draft AL legislation seems to assume that NIC rules will apply generally. However, AL is a new tax, not a social security contribution, and it appears to us that the AL draft legislation does not encompass the NIC deeming rules.
24. We should welcome clarification of whether the AL provisions are intended to encompass large agencies. We should also welcome clarification of whether other sectors are intended to be within AL. For example, if the NIC categorisation rules were adopted, the Church of England would become liable to AL because it is the deemed NIC secondary contributor for all vicars. We should welcome confirmation that this sector is not to be included. We should also welcome clarification of the rules for:
 - the engagers of office cleaners,
 - UK Continental Shelf workers and mariners, most of whom are not on a UK payroll,
 - divers and diving supervisors.
25. Where an employer has 'modified payrolls' under PAYE81950 et seq we recommend that HMRC publish guidance confirming payment of the levy, and that payment of the levy follows the basis of payment of NIC under the modified arrangements.

Software lead time

26. We would emphasise the need to leave sufficient time for detailed software specifications to be prepared by HMRC, and for HMRC's own software providers and private sector payroll software houses to implement any policy changes in software, test it, supply it to clients and for users to be trained.
27. This means that the final version of the operation of AL needs to be agreed in the next couple of months, so that all systems will be in place in time. We recommend that all regulations and guidance are published this summer once the IT specification is settled so that HMRC does not end up in the position we have with payrolling of benefits-in-kind where the specification, regulations and guidance were issued so late that no employer will be able to comply fully for the first year.

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>).