



ICAEW REPRESENTATION 148/16

TAX REPRESENTATION

ALIGNMENT OF DATES FOR 'MAKING GOOD' ON BENEFITS-IN-KIND

ICAEW welcomes the opportunity to comment on the consultation document [Alignment of dates for 'making good' on benefits-in-kind](#) published by HMRC on 9 August 2016.

This response of 6 October 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 September 2016 we attended a meeting with HM Treasury in which we were able to put forward some key comments and concerns and discuss aspects of the consultation document.

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MAJOR POINTS

Key point summary

1. We consider that:
 - The current divergences in dates by which employees must make good to employers the value of employer-provided benefits-in-kind (BiK) if employers are to account for the making good in employer returns exist because HMRC has in the past wisely recognised that employers need more time to quantify and collect amounts to be made good for some BiK than others.
 - If the deadlines by which employers have to take into account amounts made good are to be rationalised, then a single date would be easiest for employers, employees, agents and HMRC to remember.
 - 6 July would be the best date as this accommodates the BiK that take the longest to quantify amounts to be made good, namely car and van fuel used for private journeys, as for these it is necessary to allow time for card statements to be received, checked and reconciled to mileage and driver logs by employers and employees, and work to payroll processing deadlines which may be early in the month. Similarly when BiK data has to be collected from overseas.
 - 6 July also fits in with the due date for submitting form P11D and paying Class 1A NIC.
 - Much making good is collected as a deduction from net pay, so a making good deadline for the purposes of employer reporting aligned with the tax month will best accommodate weekly and 4-4-5 weeks pay periods, unlike the 1st of the month.
2. We are concerned about the total amount of change to payroll and benefits being proposed in a very tight timescale. We think that HMRC needs to delay implementation dates to give time for HMRC to draft official guidance and provide IT specifications to enable the necessary IT to be written, built, installed and tested and operators to be trained and for employers to revise their procedures and notify staff.

General comments

3. The divergence in dates by which employees should make good to their employers for having been provided with benefits-in-kind (BiK) if employers are to take account of the making good when filing returns to HMRC has been exacerbated by the introduction of statutory rules for payrolling BiK. However, the divergences are helpful to employers and exist because HMRC has in the past recognised the practical difficulties for employers of quantifying certain BiK and calculating and collecting amounts to make good and has accommodated them to make it easier for employers to comply, as recommended in the fourth of our *Ten Tenets for a Better Tax System*: 'Easy to collect and to calculate' summarised in Appendix 1.
4. If the dates by when BiK have to be made good for employer reporting purposes are to be changed then we recommend that there should be a single date by which employees have to had made good for employer reporting purposes if the employer is to be obliged to reflect the making good in returns submitted to HMRC. We recommend that this date should be 6 July following the end of the tax year, rather than, as proposed in HMRC's condoc, a mixture of the end of the tax year and 1 June following the end of the tax year.
5. A single date relating to employer reporting obligations would be simple for employers, employees, advisers and HMRC to remember.
6. A single date needs ideally to be set by reference to the BiK which takes the longest time for employers to quantify and collect the making good monies, namely car and van fuel for private use, as there are a number of tasks that have to be undertaken in connection with this BiK. 6 July allows time for fuel accounts to be rendered by charge card companies and employers and employees to check them, for employees to complete their fuel logs for the year, for employers to collate all appropriate private and business fuel data by vehicle and driver, agree with relevant employees how much is to be made good and process collection of amounts

made good, in most cases these days by way of deduction from net pay. The time taken to complete these tasks and payroll processing deadlines means that the sum made good is most likely to be collected through June payroll.

7. The deadline for making good also needs to take into account the challenge of getting documentation on BiK from overseas subsidiaries in respect of inpats and secondees and agreeing the figures
8. Although a making good deadline of the end of the tax year or the beginning of June would mean that employers will not be put in a position of having to change a P11D at the last minute as a result of an employee unexpectedly making good, the move towards payrolling BiK and collecting amounts made good via payroll points to making 6 July rather than the beginning of June as the statutory deadline for employer reporting purposes. This is because 6 July better accommodates payrolling processes which may require payroll data to be finalised ready for processing some considerable time before payday, possibly as early as the 5th of the month for a monthly payroll, particularly where the payroll is outsourced. If the making good deadline is too early then this could make the rules so difficult to comply with that some people may ignore them.
9. 6 July also fits in with the P11D/P11D(b) filing date and the 19/22 July Class 1A NIC payment due date.
10. Furthermore the 6th of the month (unlike the 1st of the month) would align the making good deadline with payroll tax months and would accommodate making good deducted from payrolls run on a weekly basis and, more commonly under RTI, a 4-4-5-weeks basis.
11. We anticipate that, if the salary sacrifice proposals are implemented, there will be a lot more making good as BIKs provided by salary sacrifice will crystallise BiK charges where no BiK exists currently because they are exempt, for example, workplace parking. Those changes will necessitate employee and employer familiarisation, so very clear guidance is needed as soon as possible to enable employers to prepare and notify employees well before April 2017. .
12. The need for a date by which BiK should be made good to provide finality for employer reporting should not be conflated with the separate later date by which an employee can make good a BiK and amend their self assessment. We should welcome confirmation that it is not proposed to make life more difficult for everyone by also amending the latter date just to catch a 'small number' of employees, despite the implications in paras 3.9-3.12. If HMRC proposes also to bring forward the latter date, we suggest that taxpayers who have not made good by the time employers have to report to HMRC should be allowed at least until the self assessment deadline (ie 31 January following the end of the tax year) to make good BiK and tell HMRC.

RESPONSES TO SPECIFIC QUESTIONS

Q1. For company cars, company vans and the other benefits-in-kind set out above, are there any practical difficulties in making good by the end of the tax year? Please provide reasons for your answer and set out which benefit-in-kind the difficulties refer to.

13. The most practical difficulty in making good before the tax year is that it would necessitate calculating the amount of the BiK and amount to be made good and collecting the making good monies before the end of the tax year. Many employers collect making good monies by way of a deduction from net pay. If the deadline for payroll processing closes on, say, the 5th of the month, then the amount of the BiK that is to be made good might have to be ascertained and the amount to be made good calculated and provided to payroll before the end of pay Month 11. This leaves a whole month for something unexpected to occur.

14. See the example below where even acting quickly and efficiently may result in the making good taking place nearly two months after the end of the tax year, irrespective of the nature or type of benefit.
15. Example: an employer has a payroll cut-off date of 5 March for its March payroll. This is perfectly normal and usual if say the payroll is to be run on the 12th of the month as the employer needs at least five working days to check, review, reconcile, authorise and account for the payroll entries.
16. An employee joins on say 7 March and is given a benefit with a BIK with a monthly value of say £222. The employee decides to make good to avoid the BIK pushing him over £100,000 per year adjusted total income at which point he would pay and effective tax rate of 60% on income brought into tax by the loss of the personal allowance or over total annual income of £50,000 whereby he would be subject to high income child benefit charge
17. If the employee writes the company a cheque that cheque might not be processed until after 5 April. But virtually nobody in business accepts cheques these days. In practice the £222 will most likely be collected via payroll as a deduction from net pay. However, in the example above, as the BiK was first provided after the March payroll cut-off date, the making good cannot be deducted from net salary until after 5 April, ie after the year end.
18. Insofar as concerns credit tokens, see in addition our answer to Q4.

Q2. Are there any practical difficulties with making good for car and van fuel benefit, credit tokens and beneficial loans by 1 June following the end of the tax year?

Please provide reasons for your answer and set out which benefit-in-kind the difficulties refer to.

19. For car and van fuel the date of 1 June as proposed in para 4.12 is simply not practicable. In particular, to repay all private fuel by 1 June actually translates to getting the reimbursement into the May payroll which may have a cut-off as early as 5 May.
20. A 1 June making good deadline would mean that by 5 May, ie 20 working days after the tax year-end:
 - all employees need to have completed all their mileage logs for the previous year;
 - somebody has checked those records for accuracy;
 - employees have been challenged where that is doubt;
 - all challenged employees have replied to the challenges, either justifying a business journey or amending their records accordingly;
 - meantime all the fuel card spends, or fuel claimed on expenses or fuel provided via bunkered fuel, garage account, fuel vouchers, company-owned petrol pump, etc have been collated, checked for any errors or omissions and cross-checked to employee mileage records in order to work out what proportion of the total spend is private which has then to be made good; and
 - other issues have been resolved, for example, non-fuel costs such as oil have been stripped out from the fuel supplier statement or invoices, or where staff have used the fuel card for say a company van or pool car as well as their own car, or swapped fuel cards or, indeed, cars, or fuel cards have been cloned.
21. All the above work takes time and is virtually impossible to have done by early May in time for the May payroll cut off.
22. A very high number of employees make good private fuel each year and to make sure that they all pay back the right amount to extinguish their whole fuel BiK requires a tremendous amount of administrative work by employers.

23. We acknowledge that many companies provide on-line mileage capture tools to staff and a lot of work goes into chasing drivers to keep their logs up to date. With holidays, sickness and other work commitments it can take up to three months to gather all the mileage data from staff and that is frequently after an intense telephone campaign, email chasers, managerial chasers and chasers from internal audit and other in-house departments such as Fleet or HR.
24. Mileage data is outside the normal control of companies and relies on many individual employees keeping detailed mileage records and reporting them.
25. Whilst some fuel card companies do have reliable user analyses, that is not the case for all fuel card suppliers, especially where a fuel card is car-specific rather than driver-specific and there are car changes. Analysing which employee a spend relates to can take a considerable amount of time.
26. Furthermore, where fuel card spend is not available then AFR rates have to be used and if staff have used multiple cars then many different AFR rates may be applicable to different journeys.
27. There is no way practically that all UK taxpayers are going to have all the data to quantify for every employee the correct making good by 1 July let alone 1 June.
28. That appears to be why EIM25660 was written – to allow taxpayers a reasonable timescale. We strongly recommend that 6 July be retained for making good private fuel costs.
29. Insofar as concerns credit tokens, similar considerations apply as cited in our answer to Q4.

Q3. For employer-provided loans, should interest paid after the benefit-in-kind has become final and conclusive be taken into account?

30. We see no reason to repeal section 191 ITEPA 2003.

Q4. For non-cash vouchers and credit tokens, would there be difficulties in having to make good within the earnings period in order to remove the NICs liability?

Non-cash vouchers include retail vouchers and credit tokens include debit, credit and store cards. Credit tokens and cheque vouchers are taxable when used. Amounts spent will, as noted above with regards to fuel cards, not be known by the employer until the relevant statements are received by the employer and they need to be checked, reconciled and approved by relevant staff. Owing to the time lapse between the BiK arising, the information reaching payroll and payday, it is in practical terms impossible for employees to make good within the earnings period. .

31. HMRC has long recognised the practical difficulties in accounting for Class 1 NIC in the correct pay period – see the [marginal items easement in CWG2](#) on page 8.

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>).