

Tax Representation



TAXREP 1/08

EMPLOYER-PROVIDED MEDICAL CHECK-UPS

Memorandum submitted on 4 January 2008 by the Tax Faculty of the Institute of Chartered Accountants in England and Wales in response to an invitation published on 15 October 2007 by HMRC

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EMPLOYER-PROVIDED MEDICAL CHECK-UPS

INTRODUCTION

1. We welcome the opportunity to comment in response to the announcement published on 15 October 2007 by HMRC at <http://www.hmrc.gov.uk/employers/employers-checkups.htm> following the laying of Statutory Instruments numbers 2090 and 2091 of 2007, which invitation was confirmed by HMRC at the joint bodies' meeting on 25 October.
2. Details about the Institute of Chartered Accountants in England and Wales and the Tax Faculty are set out in Annex A. Our Ten Tenets for a Better Tax System which we use as a benchmark are summarised in Annex B.

KEY POINT SUMMARY

3. Expenses incurred by employers in providing periodic medical check-ups for employees should not be treated as conferring a benefit-in-kind chargeable to tax or NIC on those employees.
4. This should be the case even where the employer restricts such check-ups to certain classes of employees, for example, those aged at least forty, or who are essential to the running of the businesses, or above a certain grade, or in certain locations, or carrying out jobs for which health checks seem sensible or are required under non-tax legislation.
5. A healthy workforce is essential for a vibrant economy, and preventative measures such as medical check-ups which detect illness or potential illness are more medically and cost effective in the long run than treating illnesses once established.
6. A simple rule allowing tax- and NIC-free employer-provided health check-ups for any employee will be more in accordance with the Chancellor's – and our – objective of having a simpler, and therefore better, tax system.

COMMENTS

7. We consider that a healthy workforce is essential to maintain a vibrant economy, and indeed, as we understand it, it is government policy to promote a healthy workforce. A healthy workforce is best achieved by way of preventative medicine such as periodic medical check-ups, and we believe that employers should be encouraged to provide such check-ups. A healthy workforce saves National Health Service expenditure. Where the cost of medical check-ups is borne by employers, the saving of NHS resources is that much greater.
8. The government's policy of promoting a healthy workforce will be hindered if barriers and disincentives, such as making it conditional on all the workforce being eligible, and complex conditions are imposed on employers who are prepared to provide medical check-ups to their employees. Given the cost of health check-ups, commonly in the region of £300 per employee, if conditions such as having to provide check-ups to all employees were imposed, it is more likely that many employers

would not provide check-ups for any employee, rather than incur the additional costs of providing check-ups for all.

9. We are therefore of the view that if employers wish to provide medical check -ups to their employees, then they should be able to give this benefit on a tax- and NIC-free basis to whichever employees they choose. This would be a straightforward rule, which would be in accordance with the Chancellor's desire to simplify the tax system, as well as the third of our Ten Tenets for a Better Tax System (Annex B).
10. However, if instead it is thought necessary to impose conditions and barriers to make it more difficult for employers to provide medical health checks to employees tax- and NIC-free, then we consider that regard should be had to the following situations.
11. Where employers restrict health check-ups to only older people, then this should be tax- and NIC-free. For example, medical evidence proves that people aged forty or above are more likely than those aged in their twenties to get life-threatening diseases such as prostate or breast cancer, and therefore age discrimination legislation should not be in point here.
12. We also consider that employer-provided medical check-ups should be tax- and NIC-free when provided only to key people, eg senior managers and directors who are essential to the functioning of the business, or those at a particular location.
13. Where an employer provides medical check-ups for those for whom the obligation to undergo regular check-ups is imposed as a condition of carrying on a particular occupation, eg HGV drivers or oil-rig workers, or needed to comply with Health & Safety legislation, then the fact that medical check-ups are restricted to such employees should not result in a benefit chargeable to tax or NIC. Indeed, the same should apply where employers provide medical check-ups to employees who do jobs which by their nature are likely to impose a higher medical risk whether by reason of physical hardship, eg noise, or mental stress, even though there is no legislative or similar requirement.
14. Similarly, where an employer pays for a check-up for an employee to ascertain that the employee is fit to work after an illness or accident, the provision should not be a taxable/NICable benefit, even where the employee has already had an employer-provided medical check-up in that same tax year.
15. We suggest that if the medical screening condition currently in the Regulations is retained, then this should be able to be carried out by the personnel/HR department on the basis of their knowledge of the likely impact of employees' jobs on employees' health.

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ICAEW AND THE TAX FACULTY: WHO WE ARE

1. The Institute of Chartered Accountants in England and Wales (ICAEW) is the largest accountancy body in Europe, with more than 128,000 members. Three thousand new members qualify each year. The prestigious qualifications offered by the Institute are recognised around the world and allow members to call themselves Chartered Accountants and to use the designatory letters ACA or FCA.
2. The Institute operates under a Royal Charter, working in the public interest. It is regulated by the Department for Business, Enterprise and Regulatory Reform through the Financial Reporting Council. Its primary objectives are to educate and train Chartered Accountants, to maintain high standards for professional conduct among members, to provide services to its members and students, and to advance the theory and practice of accountancy, including taxation.
3. The Tax Faculty is the focus for tax within the Institute. It is responsible for tax representations on behalf of the Institute as a whole and it also provides various tax services including the monthly newsletter *TAXline* to more than 10,000 members of the ICAEW who pay an additional subscription.
4. To find out more about the Tax Faculty and ICAEW including how to become a member, please call us on 020 7920 8646 or email us at taxfac@icaew.com or write to us at Chartered Accountants' Hall, PO Box 433, Moorgate Place, London EC2P 2BJ.

THE 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.co.uk/index.cfm?route=128518>.