



PENSIONS TAX RELIEF ADMINISTRATION

Issued 9 October 2020

ICAEW welcomes the opportunity to respond to the **Pensions tax relief administration** call for evidence published by HM Treasury on 21 July 2020.

We question whether now is the appropriate time to make potentially complex changes to the tax relief for pension contributions regime to benefit a specific group.

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GENERAL COMMENTS

1. We question whether now is the right time to introduce changes to tax relief on pension contributions which could increase burdens and introduce complications for all to benefit a specific group. Whilst the 2006 A-Day and numerous subsequent changes increased complexity, the current rules are widely understood and work for the majority.
2. The proposal in the call for evidence that we think is most worthy of consideration is Approach 1, which appears to be based on Budget representations submitted in September 2018 by the Low Incomes Tax Reform Group and updated in September 2019 by the Net Pay Action Group.
3. We recommend that any approaches that are taken forward are benchmarked prior to implementation against our *Ten Tenets for a Better Tax System* (summarized in Appendix 1).

REPLIES TO CONSULTATION QUESTIONS

CHAPTER 5: STAKEHOLDER SUGGESTIONS TO CHANGE PENSIONS TAX RELIEF ADMINISTRATION

Pensions schemes' choice of tax relief

Q1. What are the factors that influence a pension scheme in its choice between using net pay or RAS for their members?

4. No comment.

Q2. How do pensions providers currently engage with employers around the differences between net pay and RAS for their employees? Is the method of tax relief a scheme operates a relevant factor in the employer's decision (either directly, e.g. when considering employees' financial positions, or indirectly, e.g. through an impact on provider fees)?

5. No comment.

Addressing differences in outcomes

Suggested approach 1 –paying a bonus using RTI data

Q3. Are there ways that this approach [paying a bonus using RTI data] could be delivered that would not engage the issues identified above, namely the challenges in ensuring consistency across all taxpayers for all aspects of the tax system in a timely fashion, and additional burdens for scheme members and scheme administrators?

6. We assume that this approach is based on that submitted on 27 September 2018 as a Budget representation *Net pay arrangements for lower paid workers* by the Low Incomes Tax Reform Group and *updated* in September 2019 by the Net Pay Action Group.
7. Whilst this approach would require IT changes and additional employer and member, and perhaps pension scheme, administrative input, we consider that the objections cited in the call for evidence paras 5.14 and 5.15 overstate the downsides. We think it would help to incentivise pension saving, and, out of the four approaches, this approach or a variation of it would be the most worthy of further consideration.
8. Para 5.14 says that this approach “would introduce additional complexity for members, pensions schemes and HMRC. There would also be a sizeable time lag between the pension contribution being made and receiving the bonus”.
9. We see no additional complexity for members – they would receive something that they are not getting now even if they have to wait for it and perhaps make a claim to receive it. Pension schemes would suffer no additional complexity because they have to do nothing (and even if a variant is adopted as considered below they would still need to do little). HMRC should be able to use RTI data quickly to make this approach work.

10. Para 5.15 cites a number of “significant and costly administrative changes for savers, employers, pension schemes and HMRC”.
11. The first concern in the list at para 5.15 states “Net pay scheme administrators would have to report their membership to HMRC so that potential bonus recipients can be identified. While RAS scheme administrators already do this now, this would be a new process for net pay schemes with associated systems and process changes. Consequential amendments to employment contracts may also be required to facilitate sharing of this information.”.
12. We question whether pension schemes need to do anything in this regard. As noted in the call for evidence document, it is employers who are responsible for identifying (in PAYE RTI full payment submissions (FPS)) employees who are in a NPA scheme. With adequate advance notice, payroll software could be amended to ensure that, when an employee is enrolled in a pension scheme, reports are submitted showing which employees are in RAS schemes as well as in NPA schemes.
13. Employment contracts are usually silent on the specific topic of sharing information on RAS schemes. Instead, the employee agrees to the sharing of their information with anybody that is required to know it to enable the terms of that contract to be fulfilled. Any statutory requirement imposed by government will automatically be covered.
14. The second concern says: “At the end of the tax year, HMRC would undertake the reconciliation process. To achieve full alignment between those in RAS schemes and those in net pay schemes, members of net pay schemes would have to have their personal allowance reduced to reflect the higher personal allowance that they have after making the same contributions as the RAS pension scheme contributor. Low earners in net pay schemes would, therefore, receive an end of year reconciliation notice which adjusts their personal allowance (with consequential tax charges) to reflect the bonus”.
15. We assume that this paragraph is trying to explain how HMRC would calculate the bonus in end-of-year reconciliations. Self assessment calculations and forms P800 are existing forms reconciling income and tax due and under/overpaid. These are (or should be) created using automated processes so HMRC’s IT systems could be reprogrammed so that they show the bonus due as well as tax (and NIC) due/repayable.
16. The third concern says: “After the reconciliation process ends, an individual could then be notified that they can submit a claim to HMRC for their bonus. A claim is necessary as HMRC would need to pay the bonus. HMRC would not have payment details for these individuals so a secure BAC [*sic*] payment could not be made automatically”.
17. Presently, in the normal case, HMRC repays tax overpaid to taxpayers automatically, either by way of a payable order or direct to the taxpayer’s bank account if known by HMRC. Provided HMRC has the relevant information, we see no reason why the bonus should not also be repaid automatically.
18. However, to give parity between non-taxpayers and basic rate only taxpayers and between members of NPA and RAS pension schemes, the government might like instead to consider paying the bonuses direct into members’ pension schemes. This would obviate the need for members to claim their bonus and HMRC to process the claims (albeit we assume that HMRC would create an automatic and easy to use online process suitable for the vast majority of members), reduce the likelihood of the money being misappropriated *en route* to rightful recipients, enhance members’ pension savings, and not impact on members’ means-tested social security awards (eg universal credit) (until pension benefits fall to be paid).
19. The final concern is that “A new payment system would be required to pay the bonus. Adjusting the tax code would not work as it would result in further personal allowances, which would remain unused. As the bonus would be payable to those who are not paying tax, it would not be a repayment of tax, nor a repayable tax credit either. Therefore, current systems could not be used to pay the bonuses”.
20. Subject to our suggested alternative above that bonuses be paid into members’ pension schemes, a process on the lines of the successful CJRS grant system could be created so that employers claim the bonus and pay it tax-free to those in NPA schemes, or pass it on to their pension provider as an employer contribution which has no tax or NIC implications for

any party. A system would need to factor in job changes, so current employers at the time of refund would be obliged to pass the money to a relevant pension scheme.

Suggested approach 2 –standalone charge

Q4. We would welcome views on whether equalising outcomes by removing the top-up for non-taxpayers would represent a fair solution to this issue? If possible, it would be useful to understand the impacts on schemes and providers from any such change.

21. We do not favour this approach because not only does it introduce complexity but it also involves removing tax relief from all low earners whilst continuing to offer intermediate, higher, additional and top rate tax relief to higher earners. Removing the top up from low earners who are currently entitled would highlight the inequality of the present arrangements.

Suggested approach 3 –employers operate multiple schemes

Q5. We would welcome views on whether this approach [employers operating multiple schemes] would:

- **reliably mitigate the potential difference in outcome for low earners on a consistent basis**
 - **be a deliverable, affordable and proportionate solution for small employers with a high proportion of low-earning employees**
 - **be appropriate for low earners who are members of defined benefit pension schemes**
22. We consider that this approach is wholly disproportionate as we anticipate that it would create wholesale disruption for pension providers, employers and HMRC.

Suggested approach 4 –mandate use of RAS for defined contribution pension schemes

Q6. What would be the impacts on schemes and providers of requiring all DC schemes to use RAS? Would this represent a proportionate decision, given potential benefits to some employees and employers?

23. At the very least, this approach would require scheme rules to be rewritten.
24. The need for employers to switch members between schemes depending on individual members' anticipated tax positions for the year would be impractical and create considerable administrative burdens, the cost of which would far exceed the benefit of what the government is seeking to address.
25. On the face of it, as members would be in an RAS scheme, they themselves would need to claim higher and additional etc rate tax relief. Self-assessment taxpayers would do this via their SA tax return. However, those not in SA would presumably need to contact HMRC or use their personal tax account to change their code number. This is likely to be too difficult for many who are accustomed to their employers doing what is necessary. Payroll software would need to be reprogrammed to give members of RAS pension schemes tax relief, but at intermediate, higher, additional and top rates only (appropriate lead time for software development, testing, implementation and training would be needed).

Q7. Would requiring all new providers of DC pensions to operate RAS represent a fair solution to this issue? The government would welcome views on the longer-term implications of such a requirement, for example whether this would result in existing schemes re-evaluating their arrangements.

26. This would ensure that, going forward, members who are non-taxpayers and members of pension schemes run by new providers would automatically receive a tax top-up at basic rate, but, as noted in the call for evidence document, non-taxpaying members of schemes run by existing providers would not benefit. Thus, without more, this approach would provide only a partial solution, and does not deal with the past.

Q8. Views on whether there would be any benefit in extending RAS to all DB schemes as well as DC schemes would be welcomed. Alternatively, the government is interested to collect evidence on challenges that prohibit such an approach.

27. Given that the vast majority of the c.1.5 million people who are lower paid and do not receive tax relief on their contributions are in public sector DB schemes, if this approach is selected there can be no question of extending RAS only to DC schemes – DB schemes must be included too.
28. Presumably the cash flow issue referred to in para 5.44 arises from the time it takes HMRC to pay the basic rate tax top up to the pension scheme; this would affect all schemes equally.
29. A major short-term challenge would be that this approach would necessitate rule changes for virtually all public and private sector DB pension schemes which would be costly and time consuming. We understand that changes to most public sector pension scheme rules would also require legislation.

Submission of further ideas

Q9. What changes could be made to the current methods of pensions tax relief that would ensure consistency in outcomes for taxpayers across all aspects of the tax system? If possible, please provide evidence as to how these could be delivered in a proportionate manner by all relevant stakeholders.

30. RAS ensures that all members (whether or not they are taxpayers) receive in their pension schemes a top up equal to basic rate tax on their contributions. Presently tax relief is given through payroll only for NPA pension schemes. We suggest that consideration is given to reprogramming payroll software to give tax relief at higher and additional etc rates of tax in real time for members of RAS schemes. This would not cover other income sources but employees' code numbers could be adjusted to allow for this and members with more complex tax affairs will generally be in self assessment.

Q10. Alternatively, is there a balance to be struck in ensuring consistency in outcomes as far as possible, but prioritising simplicity for individuals? Is there evidence that would support this approach as more likely to build trust and engagement with the pensions system?

31. Please see answer to previous question.

Improving the administration of RAS

Q11. The government would welcome any evidence on whether the RAS system of pensions tax relief administration creates significant additional burdens as compared to net pay, as well as setting out what those burdens are, suggestions for any changes that could be made to ease such issues. In particular, the government would welcome thoughts on the following themes:

- whether the current system of declarations causes difficulty in claiming tax relief
- any suggestions for practical ways that the earnings limit could be confirmed that would benefit the individual pension scheme member, and
- potential operational changes needed to support a requirement for interim claims to provide relevant details of individual members

32. No comment.

Q12. The government would welcome views on whether there are operational changes that could be made to improve the operation of the RAS system and improve member outcomes. Is there evidence that current processes can help to support some employers or pension schemes; or does the paper-based nature of the RAS system create any obstacles in the process for claiming tax relief?

33. No comment.

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 <https://goo.gl/x6UjJ5>).