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## PAID AND REIMBURSED EMPLOYEE EXPENSES – DRAFT FINANCE BILL CLAUSES

ICAEW welcomes the opportunity to comment on the draft Finance Bill 2015 legislation  
[Administration of employee expenses](#) published by HMRC on 10 December 2014.

This response of 4 February 2015 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.

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## INTRODUCTION

1. We welcome the opportunity to comment on the draft Finance Bill 2015 legislation [Administration of employee expenses](#) published by HMRC on 10 December 2014.
2. We should be happy to discuss any aspect of our comments and to take part in all further consultations on this area.
3. On 15 January 2015 we attended a meeting with HMRC jointly with other professional bodies in which we were able to put forward some comments and concerns and discuss aspects of the proposals.
4. In 2013 we gave evidence in meetings to the Office of Tax Simplification to help them compile their [interim report on employee BiK and expenses](#) published on 8 August 2013, their [second report \(formerly called final report\) on employee BiK and expenses](#) published on 14 January 2014 and their final [final report](#) published on 31 July 2014. We responded in [TAXREP 43/14](#) to HMRC's [consultation document on an exemption for paid or reimbursed employee expenses](#) published on 18 June 2014.

## GENERAL COMMENTS

5. We welcome the proposal to replace dispensations, and the need for deductible expenses not covered by dispensations to be entered on forms P11D by the employer and then subjected to a claim by employees, with an employer-operated exemption for deductible expenses. Subject to the detail, this should simplify compliance and administration for employers, employees and HMRC.
6. As noted in our previous representation TAXREP 43/14, and as much of the detail has yet to be determined, we recommend:
  - Employers should be encouraged to claim expenses on the basis of benchmark scale rates set at reasonable amounts and not hedged around with conditions so onerous that simplification is not in practice achieved.
  - Expenses should be able to be paid free of tax and NIC up to the benchmark scale rates, and where employees comply with conditions laid down by employers, eg they are not at a permanent workplace, there should be no need to obtain and retain a receipt.
  - HMRC should publish benchmark scale rates, and keep them updated, perhaps linked to inflation.
  - We believe that custom scale rates will need to continue to be able to be negotiated because different industries have different circumstances, but having a wide range of appropriately set benchmark scale rates might help reduce the need for custom scale rates.
  - Micro businesses and one person companies should be included in the new regime.
  - Rules designed to discourage salary sacrifice expense arrangements should not inadvertently outlaw 'flex benefit' arrangements, under which employers motivate employees by allowing them to swap cash salary for benefits-in-kind. More rigorous enforcement by HMRC of national minimum wage rules would help to identify instances where taxable and NICable salary is being unlawfully converted into tax-free and NIC-free expenses, and cases where employees' entitlement to state pension and other contributory state benefits is being jeopardised.
  - Existing dispensations and local agreements should continue until the underlying circumstances or law changes – this will help ease the transition, especially (we would have thought) for HMRC.
  - HMRC should publish very clear and comprehensive guidance and keep it updated.
  - We suggest that consideration be given to streamlining and aligning NIC and tax rules for expenses, as this would make it simpler for employers to comply and HMRC to draft guidance that is easy to follow and to enforce.

- The new regime should not start until HMRC has amended and tested its new processes and drafted and consulted on guidance to ensure that the new regime is simplification in reality.
- To the extent that these changes necessitate changes to pay and benefits third party software, HMRC should ensure that software developers are provided with the necessary specifications well in advance of April 2016.

## COMMENTS ON THE DRAFT LEGISLATION

7. In new section 289A we should welcome clarification of the necessary 'systems for checking' in Condition A. Burger van vendors and vending machines do not provide receipts. We suggest that provided an employer is satisfied that his employees are where they are supposed to be, for example on a construction project at the other end of the country, and has authorised the employees to incur the expenditure, then that should be sufficient to satisfy the condition that employees 'are in fact incurring and paying amounts in respect of expenses of the same kind'.
8. A similar point applies in relation to new section 289B where scale rates are used. It should not be necessary for employees to provide receipts because by almost by definition the exact amount incurred by employees will differ from the scale rate. The courts have held that it is acceptable for a scale rate to be an approximation of the average amount spent, acknowledging that some employees will have spent less than the scale rate and some more, so some will be reimbursed more than they have spent and some less. This is a similar principle to the 45p mileage allowance.
9. These draft new sections ignore the OTS's recommendation in its [Review of Employee Benefits and Expenses: Second Report](#) of January 2014 at page 11 that:  
'...in relation to benchmark scale rates, the guidance around on-going checks [should be] amended to remove the requirement for employers to retain receipts and only require them to be able to demonstrate that the employee is attending a temporary workplace. However, the current checking regime should remain where the payment of benchmark scale rate payments are used as part of a salary sacrifice arrangement.'
10. In new sections 289A(5) and 289D(2) the definition of 'salary sacrifice' differs from that elsewhere which may result in the clause having little effect in practice.

PCB

## 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>).