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## EMPLOYEE BENEFITS AND EXPENSES – ABOLITION OF £8,500 THRESHOLD

ICAEW welcomes the opportunity to comment on the consultation paper *Employee benefits and expenses – abolition of the £8,500 threshold for lower paid employment and form P9D* published by H M Revenue & Customs on 18 June 2014.

This response of 10 September 2014 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.

Contents	Paragraphs
Major points	
Introduction	1-3
General comments	4-10
Responses to consultation questions	11-16
Ten Tenets for a Better Tax System	Appendix 1

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## MAJOR POINTS

### Introduction

1. We welcome the opportunity to comment on the proposals in HMRC's consultation document of 18 June 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. 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 and their [second report \(formerly called final report\) on employee BiK and expenses](#) published on 14 January 2014. Since then, OTS published on 18 July a note on HMRC's condox on employee BiK published in June 2014 (including this one) and on 31 July another [final report](#).

### General comments

4. We welcome the decision to abolish the £8,500 threshold.
5. It will save employers who provide benefits-in-kind from having to distinguish between two types of employee when completing year end returns for benefits-in-kind (BiK) and simplify payrolling of benefits-in-kind.
6. To achieve real simplification and if payrolling of benefits is to be a practical option, there should be no protection or mitigation for certain groups. Nevertheless, we recommend including a regulation making power in the primary legislation to cater for the possibility.
7. As the original policy behind the £8,500 threshold, that only higher paid employees should be taxable on benefits-in-kind, presumably no longer applies given that the £8,500 threshold will be at least £2,000 below the personal allowance by the time that any change is implemented, anyone affected would have to have other income of at least £2,000 and could be said to be unfairly advantaged when compared with someone earning a little over the £10,500 personal allowance if they were not taxed on the benefits-in-kind.
8. Para 2.10 of the condoc says that there were 15,000 P9Ds at the last time of counting. That is a small number but it is still high. Only those earning above the level of the personal allowance are likely to be affected. We wonder if HMRC has that number.
9. We suggest that where employers want their low paid employees to not have to pay tax on a BiK, the BiK should be able to be included in a PAYE settlement agreement (PSA), even when it is not minor, irregular or impractical to value or operate PAYE on. One such BiK included in a PSA is a late night taxi, which will be especially useful for employers of bar and waiting staff and cleaners, especially in rural areas where there is no night-time public transport. The exchequer will benefit from the grossed up tax and Class 1B NIC.
10. As many smaller employers will not be familiar with PSAs, we recommend that HMRC takes steps to demystify this regime.

## RESPONSES TO CONSULTATION QUESTIONS

**Q1 If you believe you or your employees or organisations you represent will be affected by the removal of the £8,500 threshold please provide examples of the type of employees affected and the work areas in which they are engaged.**

11. Low paid staff such as bar and waiting staff and cleaners whose employers pay for late night taxis to enable them to get home are likely to be affected by the removal of this threshold.

**Q2 Why is the removal of the £8,500 threshold likely to affect these groups of employees or employers? Please provide details of what you believe to be the likely impacts for these groups?**

- 12.** The employer will have to complete form P11D and pay Class 1A NIC on the value of this benefit and HMRC will have to issue a code number and the staff affected will have pay tax. Where such staff are casual workers, they may not even have code numbers.

**Q3 Do you consider there is a principled case for some form of protection for particular groups of employees or employers likely to be affected by the removal of the £8,500 threshold? If so, which groups are they, and what form of protection should this take?**

- 13.** On the whole, real simplification will be achieved only if there is no protection or mitigation for certain groups of employees. Trying to cater for very small minorities will give rise to complications elsewhere, in particular for employers who payroll benefits-in-kind, unless employers can use other existing processes and procedures to 'capture' the BiK.

**Q4 If you believe that some protection should be offered, how do you think this could be done in such a way as to avoid or minimise any additional complexity for employers?**

- 14.** We suggest that where employers want their low paid employees to not have to pay tax on a BiK, the BiK should be able to be included in a PAYE settlement agreement (PSA), even when it does not fulfil the minor, irregular or impractical to value or operate PAYE on criteria.
- 15.** One such BiK is a late night taxi, which could perhaps be included on the basis of an averaged out figure. Including this BiK in a PSA will be especially useful for employers of bar and waiting staff and cleaners, particularly in rural areas where there is no night-time public transport, and whilst the BiK is not 'impractical' to operate PAYE on, the amount of the fare, say £20, is likely in most cases to make the time-costs and hassle of finding out how much the fare is on each occasion and recording it to enable the tax and NIC liabilities to be computed exceed the tax and NIC liabilities. The exchequer will benefit from the grossed up tax and Class 1B NIC.
- 16.** As many smaller employers will not be familiar with PSAs, and do not have PSA arrangements and would not welcome an additional reporting obligation, they would probably prefer to complete a P11D. We recommend that HMRC takes steps to simplify the PSA process and encourage employers who have not done so previously to use it.

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## 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 [icaew.com/en/technical/tax/tax-faculty/-/media/Files/Technical/Tax/Tax%20news/TaxGuides/TAXGUIDE-4-99-Towards-a-Better-tax-system.ashx](http://icaew.com/en/technical/tax/tax-faculty/-/media/Files/Technical/Tax/Tax%20news/TaxGuides/TAXGUIDE-4-99-Towards-a-Better-tax-system.ashx) )