



EMPLOYMENT
LAWYERS
ASSOCIATION

P.O. BOX 353
UXBRIDGE UB10 0UN
TELEPHONE/FAX 01895 256972
E-MAIL ela@elaweb.org.uk
WEBSITE www.elaweb.org.uk

**HM Treasury Consultation on Employee Benefits and Expenses:
Exemption for Paid or Reimbursed Expenses**

Response from the Employment Lawyers Association

9 September 2014

ELA RESPONSE TO HM TREASURY'S CONSULTATION ON EMPLOYEE BENEFITS AND EXPENSES: EXEMPTION FOR PAID OR REIMBURSED EXPENSES

Introduction

The Employment Lawyers Association ("ELA") is an unaffiliated and non-political group of specialists in the field of employment law and includes those who represent and advise both employers and employees. It is therefore not our role to comment on the political merits or otherwise of proposed legislation, rather we make observations from a legal standpoint.

ELA's Legislative and Policy Committee is made up of both Barristers and Solicitors who meet regularly for a number of purposes including to consider and respond to proposed new legislation.

A working group was set up by the Legislative and Policy Committee of ELA under the chairmanship of Stephen Ratcliffe to consider and comment on HM Treasury's Consultation "Employee benefits and expenses: exemption for paid or reimbursed expenses". Our response is set out below. A full list of the members of the working group is listed at the end of this paper.

There are certain questions to which we have not responded, since the matters are outside the scope of our members' professional experience.

1. **If the Government were to provide "models" of acceptable record keeping and checking processes, would this be helpful for employers? Where the models are not appropriate for employers, would those employers feel disadvantaged, even if it is made clear that they are not exhaustive?**

ELA considers that such models would be helpful, and that it is appropriate to make clear that such guidance is non-exhaustive.

2. **Are you aware of any types of arrangement that seek to replace taxable pay with payments of non-taxable expenses which the Government should focus on, in particular when tackling this issue? Are you aware of any types of these arrangements where tackling them might disturb business practices that are not tax or NIC motivated?**

ELA's experience is that salary sacrifice arrangements are overwhelmingly legitimate benefits, such as those relating to childcare vouchers and pensions, which provide significant social benefits to employees. The Government should be cautious to avoid any action or anti-abuse rule which may be perceived as undermining employers' abilities to offer such legitimate benefits.

3. **In what circumstances would an employer currently apply for a custom scale rate? Other than the expenses covered by the benchmark scale rates, which expenses do employers commonly request a scale rate for?**

ELA is aware of such scale rates being applied to "per diem" and other expense payments made in the context of employers with highly mobile workforces, such as those working in aviation or road transport.

4. **Are there any examples of particular industries or types of employer who would be affected if custom scale rates could not be used with the proposed exemption? What would the impact be on those employers?**

The impact on such employers would be material, in that they would likely need to replace the existing expense payments with higher taxable payments to account for the loss suffered by employees as a result of the withdrawal of the custom scale.

5. **Would employers be disadvantaged if a process to apply for custom scale rates were not retained? If such a process were retained, would it be seen as additional complexity by those employers who do not need it?**

Yes, for the reasons outlined in 4 above. It is unlikely to be regarded as an additional complexity by employers who do not use it.

6. **Would employers welcome the ability to self-certify the sampling exercises undertaken to support a custom scale rate? If so, would a sampling process set out in guidance or regulations provide sufficient certainty for employers that wish to use a custom scale rate?**

ELA considers that employers would welcome this ability. However, it is unclear how a sampling process could be sufficiently broadly defined to have application to employers in all circumstances. Some mechanism of sign-off of the sampling process is likely to be required, to provide employers (particularly those from whom a large population of employees are affected) with sufficient certainty to operate self-certification.

7. **What are the reasons for one person companies and very small, close companies paying scale rates to directors in respect of expenses? Would such employers be disadvantaged if they were not permitted to pay scale rates to their directors under the proposed exemption? If so, in what way?**

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8. **Would employers welcome being able to continue to rely on their existing dispensation for a transitional period, or would this be a source of unnecessary complexity? If so, how long would the transitional period need to be to be useful?**

ELA considers that this would be particularly helpful, and that a transitional period of at least one full tax year is required. ELA notes that it is also important for the Government to work closely with payroll providers to ensure that systems are established in good time for employers to implement them before the go-live date.

9. **Independently of whether existing dispensations may continue to be used, would employers welcome being able to continue to use any custom scale rates they had agreed as part of their dispensation for a transitional period? If so, how long would the transitional period need to be to be useful?**

Again, ELA considers that this would be helpful, and that a period of at least one full tax year would be required.

10. **Are there any specific situations or circumstances in which employers would not feel confident paying expenses because of a lack of clarity in HMRC's guidance? Which changes could HMRC make to its guidance that would have the biggest impact on employers' confidence in paying these expenses?**

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11. **Would employers and other affected parties welcome the exemption not coming into force for a period of time after the legislation is in place? If so, how long would employers and other affected groups need to prepare for the new exemption coming into force?**

Again, ELA considers that at least one full tax year would be beneficial in allowing employers to prepare for the new exemption.

12. **How should dispensation applications that are made in the intervening period be handled?**

ELA considers that such applications should be deal with in the usual way, via the existing system.

ELA Working Group

Stephen Ratcliffe, Baker & McKenzie LLP – Chair

Bernadette Daley, Cummins Ltd. Law Department

Emma Dickinson

Kevin Gude, Wragge Lawrence Graham & Co

Gitali Melvin, Nuffield Health