



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:
Real Time Collection of Tax on Benefits in Kind and Expenses through
Voluntary Payrolling**

Response from the Employment Lawyers Association

9 September 2014

HM TREASURY CONSULTATION ON EMPLOYEE BENEFITS AND EXPENSES: REAL TIME COLLECTION OF TAX ON BENEFITS IN KIND AND EXPENSES THROUGH VOLUNTARY PAYROLLING

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: real time collection of tax on benefits in kind and expenses through voluntary payrollling". 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. **Do respondents agree that a voluntary payrollling framework presents the best overall opportunity for simplification?**

ELA considers that such a framework provides a good opportunity for simplification.

2. **Should employers have to payroll all BiKs endorsed by HMRC, or choose freely from a set "approved" list produced by HMRC to suit their business?**

ELA considers that, on balance, it is preferable for employers to be able to choose whether to payroll BiKs on the approved list.

3. **Should payrollling apply to all employees within a PAYE scheme subject to a limited number of exceptions and special cases, what should these exceptions be?**

Yes, subject to exceptions relating to:

- confidential benefits which are not made available to the entire workforce;
- staff with cross-border tax liabilities, where the complexities resulting from those liabilities may render payrollling impractical.

4. **What might cause an employer to need to cease payrollling? Would employers prefer payrollling arrangements to be irrevocable once entered into, or for HMRC to develop terms of withdrawal which accommodate the necessary protection?**

It is not possible to identify exhaustively all of the circumstances in which an employer may wish to cease payrollling. Accordingly, ELA considers that the simplest approach would be to simply allow employers to cease payrollling at the end of the relevant tax year, regardless of the reason for that cessation.

5. **Would respondents welcome the option to account for Class 1A NICs in real time where the BiKs were being payrolled?**

Yes, on an optional basis.

6. **For employers experienced in payrolling, what are the most common reasons for errors in the amount of tax deducted, and what actions are commonly taken to address this, in particular after the payroll has closed?**

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- 6A. **Do you agree that where tax is under-deducted the government should follow the existing rules for PAYE, retaining recourse to the employer using existing principles?**

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- 6B. **What other exceptions exist where new PAYE rules may be required, for example, where HMRC issue a tax code to be operated on a week 1 / month 1 basis?**

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7. **The Government is interested to hear from employers experienced in payrolling on dealing with the issues covered at paragraphs 6.1 - 6.5. What are employers' experiences of this, and do the options described provide workable alternatives?**

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8. **Company cars and fuel**

- (a) **How do employers deal with any payments or contributions for private use made retrospectively, and particularly those made from 6 April to 6 July?**

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- (b) **Do employers continue to submit form P46(Car) to report changes?**

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9. **PMI (or gym membership fees) paid on behalf of the employee**

- (a) **Where the policy renewal period falls part way through the tax year, unless the premium for the year is agreed in advance what value is payrolled? Do employers project a value based on a previous year premium, or estimate the premium and begin payrolling on that basis and adjust once premium for that year is agreed?**

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- (b) **Do employers payroll the total annual premium in the month paid?**

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10. **One off large BiKs in the form of the transfer of an asset (a property or valuable antique).**

These items with a large tax charge will require a significant deduction of tax in a single pay period.

(a) Do any employers payroll these items? If so, how are they dealt with? Do employers spread the value of these across the remainder of the year or do they payroll the total in one pay period, or

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(b) Do employers report items on a P11D with a note that it is a one off?

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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