

OTS Employee Benefits & Expenses project

Brief comments on the HMRC consultative documents published 18 June 2014

HMRC published four condocs in June to take forward many of the OTS's recommendations in our recent EBE report. It seems appropriate that the OTS should make some form of response to the publications, though progress on the proposals will of course be mainly driven by general responses.

The first point to make is that it is very pleasing to have so many of our recommendations taken forward so promptly. The condocs largely reflect the points and ideas we put forward, so there is in general not a lot to add or comment on from an OTS point of view. We very definitely support the proposals, though we have some comments to make on certain aspects. Naturally we will continue to make the case for our PSA proposals to be taken up, but we know HMRC will return to that subject when they have dealt with the considerable programme of work engendered by these condocs. In the meantime we encourage all interested parties to study the documents and submit comments; we are making a point of drawing attention to the consultations in our current meetings on our Competitiveness project.

Voluntary payrolling

This condoc recognises the three key points made by the OTS:

1. Payrolling should be voluntary for employers
2. Employers should be able to choose which benefits to payroll
3. But any payrolled benefit should be payrolled for all affected employees.

We would add/comment on the HMRC points on these areas:

1. We did discuss how some rules for valuing BiKs could be changed to facilitate payrolling (e.g. loans): it would be useful to commit to this if payrolling is as successful as we all envisage (para 4.7-4.8 & Q1)
2. We were unconvinced on the need for any HMRC list of payrollable benefits (Paras 4.10-4.11 & Q2). If there is to be a list, it needs to be one to choose from rather than a set list: not all employers will be able to payroll all relevant benefits (we noted the example of an employer who provides a small number of cars and would rather P11D them but is happy to payroll private healthcare).
3. All affected employees – we recommended that employers should payroll all staff with relevant benefits but that there was a need to probe for areas of difficulty with such an approach. The particular group we had raised with us was 'expats' – both people coming to the UK for short periods and those working outside the UK. Hopefully Q3 will generate comments on issues that cause problems for such groups – if there are any.

On the further issues raised in the condoc, we were clear that employers would have to start payrolling from the beginning of a tax year. We would be surprised if an employer wanted to stop payrolling but agree with HMRC that this should be at the end of the year (Q4).

The answers to Q5 on NIC Class 1As will be interesting. Although paying monthly means the money would be handed over more quickly, we heard regularly from employers that the cost of so doing would be more than offset by simpler administration.

The discussion of statutory rules and exceptions (section 6 & Q7) raises important issues but we think the stance needs to be to solve issues so as to facilitate payrolling rather than provide exceptions. We identified car benefits (and the related van and fuel benefits) as important to 'capture' into payrolling. (If cars etc and medical benefits are payrolled, that means the great majority of benefits will be in the new system.) In our meetings, some employers expressed reservations about payrolling cars but on probing this was invariably around employees who changed cars during the year. The fear was that employers would be expected to adjust the payroll instantly – and be penalised if they did not do so. The solution we felt is that there is a period allowed to make changes – certainly a month (i.e. the payroll period after the one in which the change took place) but ideally longer – say 3 months.

The '50% limit' suggested in para 6.5 is on the surface reasonable but we do question it for a continuing benefit such as a car or private healthcare. The tax has to be paid sometime: why should there be a limit on payrollable amounts (which would add complexity)? A one-off benefit is a different matter and the question should be whether to payroll such an item at all.

On the question of one-off items, this is raised specifically in Q10. The OTS was told repeatedly that such items cause difficulties, as reporting them on P11Ds causes HMRC to code them into the employee's tax for years to come. What was needed was a box on the P11D to indicate that it was a one-off benefit. Covering notes to P11Ds rarely seemed to work.

Finally, in the Annex to the document, we would note that excess AMAP payments and taxable relocation expenses were not cited to us as payrolled items but were regularly highlighted as things that were suitable for PSAs.

Trivial benefits

One further issue by way of background, that in many ways emphasises the need for a standard figure, is the variety of figures that employers had negotiated with HMRC. Some had been unable to agree a figure; others had agreed figures with £120 being the highest we found. This inconsistency is a key reason for a standard figure but there may be a need to have regard to a short transition for employers who have agreed a higher figure.

The outline of the qualifying benefit in para 3.2 follows closely the OTS recommendation, with one key difference. We think it is very important that vouchers should be eligible for this exemption *where they are given instead of a tangible item for religious or similar reasons*. If a bottle of wine or a

turkey is accepted as trivial, a voucher to a teetotal or vegetarian member of staff must be permissible.

Much of this document is taken up with discussion of some way of imposing an annual limit. The OTS explored this and although we can understand why the government wants to pursue a limit, we think it is unnecessary and risks reimposing most of the saving in administration that the exemption will bring. Our point was that writing the definition of allowable trivial benefit properly – essentially irregular and not part of a series – should give HMRC sufficient protection. The possible anti-abuse rule pointed to at 3.32 should give any necessary protection.

Inevitably the key question will be the amount of the proposed exempt amount. We put £50 as a indicator based on what we had heard but hope that submissions will provide further evidence on the appropriate level. It needs to be realistic to provide the potential simplification – and be kept up to date.

Reimbursed expenses

We're particularly pleased this is being taken forward. As the paper acknowledges, dispensations are of limited value: the OTS also noted that dispensations do not obviate the need to track expenses (though some employers think they do) (chapter 2 & para 3.11).

We'd add a gloss to the first point in para 2.12 and Q10: this new system means that HMRC will indeed need to give clearer guidance. But the key is that such guidance will need to be 'dynamic' – i.e. it will have to change and develop as issues are raised with HMRC. HMRC need to commit to this – they will have the resources from not having to manage dispensations!

We agree fully with the point made at para 3.8: this is an 'all in' procedure. That is the route to simplification. If employers report problems or uncertainties, that is back to the need for HMRC to commit resources to solving them.

The timing of the introduction of this new system is something we left open as something for the consultation needs to explore. But our instinct is that the rules should be passed into legislation in FA2015, with probable introduction in 2016.

£8,500 limit

The condoc makes the case well for abolishing the £8,500 limit, as the OTS recommended. To echo some of the points:

- Payrolling is difficult if there is a group subject to different rules (para 2.15)
- We found almost all (not just 'some') employers ignore the limit at present
- We did considerable work on identifying the groups of employees potentially affected and we know HMRC are engaging on direct discussions (see section 6) already, prompted by our evidence

It is probably meant to be implicit in Q1 & Q2 but HMRC need to hear what benefits are given to affected staff – and actual examples, not theoretical. Partly this is so alternative solutions can be

considered. The particular group the OTS identified was volunteer workers where the answer, we think, is better guidance around expense payments to (e.g.) volunteer drivers. We would like to see HMRC commit to this in parallel with taking forward this proposal.

We also look forward to the condoc on travel expenses!

Treasury call for evidence on Remuneration practices

Also published on 18 June is an HMT Call for Evidence on current remuneration practices. This also stems from the OTS EBE report – in this case our recommendation that the rules around ‘what is a benefit’ need to be reformed to ensure that only ‘real’ benefits (i.e. when the employee perceives she is receiving a benefit) are taxed.

The C4E poses sensible open questions and replies should be helpful. The concern from the OTS is simply around whether sufficient replies from the right people come in. To generate our evidence, we went out to talk to a wide range of groups – employers of all sizes, representative bodies, agents, HMRC staff etc. We actively gathered evidence. We would hope that HMT plan to supplement whatever is sent to them with an active programme of seeking views. This is particularly important as presumably they want views from HR professionals – who would not normally respond to HMT/HMRC documents. We are pleased to see that HMT are planning a number of workshops on the subject over the summer. If you would like to be involved please contact:

remunerationpractices@hmtreasury.gsi.gov.uk

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