

**Notes of the Benefits & Expenses Sub-group meeting held on Wednesday 18  
June 2014 at HMRC, 1 Horse Guards Road**

**Attendees**

**Officials**

Jackie McGeehan (HMRC) (Chair)  
Su McLean-Tooke (HMRC)  
Travis Woodward (HMRC)  
Mike Adams (HMRC)  
David Cowell (HMRC)  
Yinka Oyesiku (HMRC)  
Alastair Dougans (HMRC)

**Members**

Colin Ben-Nathan (CIoT)  
Shawn Healy (CBI)  
Jas Jhooty (BASDA)  
Trevor Blackmur (ATT)  
Simon Ross (CBI)  
Samantha Mann (CIPP)  
David Heaton (ICAEW)  
Ros Hendren (CiPP)

**Apologies**

Mark Groom (CIoT)  
Peter Bickley (ICAEW)  
Jackie Petherbridge (FSB)

**Agenda item 1: Welcome and introductions**

1. JM welcomed members to the meeting.

**Agenda item 2: Minutes and Action Points from last meeting**

2. **AP1** – HMRC guidance on whom it chooses to pursue for underpaid tax due on employment income.

Update: this has been referred to the Employer Consultation Forum. AP CLOSED.

3. **AP2** – Costs of a case re: Total People.

Update: Total People is Agenda Item 3. AP CLOSED.

4. **AP3** – RTI queries.

(i) ‘Pecking order’ of boxes to be ticked on the FPS form when the submission is late and there is more than one reason for the lateness.

Update: In the vast majority of cases where the payment is reported after the payment date, there will be only one reason and it should be relatively obvious which one applies. However, where the lateness is covered by more than one reason, the employer should indicate the main reason.

(ii) The RTI interface with Department of Work & Pensions (DWP) working; and possible tensions for a claimant of Universal Credit if the employer has not operated ‘On or before’ reporting correctly.

Update: The interface between the RTI systems and Universal Credit systems is working well. As calculations of monthly Universal Credit payments are based on information provided by employers, it is

important for employers to make accurate and timely submissions of PAYE information in real time.

Employers in the North West are welcoming the introduction of Universal Credit, particularly in sectors which have big fluctuations in the hours of work they offer. They like the flexibility it offers to employees who can increase their hours without worrying about losing their benefits, as the payments are calculated monthly depending on how many hours employees work. They also see the benefits of enabling people to take up offers of a day's or a week's work – which will often lead to a longer contract.

(iii) Progress with 'Pathfinder'.

Update: Universal Credit is currently available to single people in areas of Greater Manchester and Cheshire, Hammersmith in West London, Rugby and Inverness in Scotland. It will roll out to Harrogate, Bath and Shotton by the spring of 2014. Claims for Universal Credit from couples will be progressively taken from summer 2014 and, in the autumn, from families.

AP CLOSED

5. **AP4** – Query on whether there will be a consultation on the Regulations for the exemption extended to medical benefit.

Update: HMRC is scoping a consultation on the regulations and will provide further information. AP CLOSED

6. **AP5** – Request for link to next draft of employee ownership legislation.

Update: A link has been provided. AP CLOSED

7. **AP6** – Salary sacrifice guidance. Members sought clarification on which people would fall into a risk category; who could lose entitlement to benefits; and the position in relation to Statutory Maternity Pay. Members claim the guidance is not neutral, as intended by HMRC.

**Action Point 1: SM-T** will review the guidance.

8. **AP7** – Future of the Sub-group. JM advised that the future of HMRC's stakeholder engagement fora is being reviewed and that the Customer Insight Team will write to stakeholders in the summer with proposed changes. Members said that they would like a more interactive format for meetings, with the opportunity for greater input and more of a two-way flow of information than at present. JM encouraged members to make these points to the Customer Insight Team when it writes to them.

**Action Point 2: JM** will keep the Sub-group updated about changes.

9. **AP8(RTI)** – Real Time Information (RTI) penalties and treatment of disclosures. Members expressed concern about whether HMRC's RTI system was going to be capable of issuing automatic penalty notices correctly by October. Members were already aware of examples of penalty notices being issued incorrectly. HMRC should give clear guidance on how they determine disclosure as this would help manage expectations.

**Action Point 3: JM** will pass on these concerns to colleagues in the RTI team.

10. **AP8(LBS)** – Concerns were expressed about Large Business Services' Business Risk Review and the Know Your Customer initiative.

Update: JM informed the Group that Neil Rollason in the Large Business Services team was now leading on this and will be engaging with stakeholders. AP CLOSED

11. **AP9** – TFC team presentation slides.

Update: Slides have been circulated. AP CLOSED

12. **AP10** – Link to OTS report.

Update: Link to OTS report has been provided. AP CLOSED

13. **AP11** – Forward to IR35 mailbox address set up by HMRC.

Update: completed. AP CLOSED

14. Members noted that they were pleased with the clear progress in addressing action points.

### **Agenda item 3: NICs and further developments re: 'Total People'**

15. DC explained that following the outcome of "Total People", the cases for review had been placed into three categories:

- 'refund due',
- 'no information'
- 'more information required'

16. Of these, a number have decided not to progress their claims; others are yet to send further information.

17. There had been no cases where a refund had been flatly refused before any further information had been considered. Furthermore, HMRC staff are authorised to issue a refund if it is clear that a refund should be made.

18. The exercise has allowed HMRC to identify a number of potential candidates for litigation.

19. HMRC is looking for the optimum case to clarify the position for both sides. HMRC is looking to progress this over the summer.

20. There are circa 250 cases and the quantum of NICs which potentially could be refunded could not be identified as this was contingent on receiving information from businesses. HMRC confirmed that it will not be meeting the costs of litigating a case where a business wishes to challenge HMRC on this matter.

21. Members said that HMRC was asking for too much information in their letters and it felt as if HMRC were aiming to make businesses give up pursuing their cases as a result.

22. Members thought that the guidance was limited and that there was scope for some expansion, particularly on the general principles. A FAQ section could be useful.

**Action Point 4:** DC will arrange for an update to guidance, incorporating FAQs.

**Agenda item 4: OTS review – 4 consultations on employee benefits and expenses**

23. The Office of Tax Simplification is intending to publish its report on termination payments and employer-provided accommodation benefits on 24 July.

24. Members queried whether OTS's note for the Group outlining its report, which had the classification 'Official – Sensitive', could be circulated to colleagues with a direct interest.

**Action point 5: SMT** to determine from OTS and update the Group. (Post-meeting note: HMRC has confirmed to members that the note can be circulated on a restricted basis to colleagues with a direct interest).

25. Members queried whether the Employment Tribunal Service had been consulted about the report. Members were concerned about the ruling in a recent case in which it appeared there was an incorrect distinction between the terms 'employee' and 'worker', which members believed had led to an incorrect tax assessment.

**Action point 6: David Heaton** to provide details of the case to SM-T.

**Action Point 7: SM-T** to review.

26. Members raised a query about the absence of a carve-out for special termination payment rules in Finance Bill 2011 in relation to Part 7A ITEPA.

**Action point 8: Colin Ben-Nathan** to provide specific details to JM.

**Action Point 9: JM** to consider.

27. TW announced that four consultation documents and a call for evidence were to be published on 18 June (post-meeting note: the documents are published at <https://www.gov.uk/government/publications/employee-benefits-in-kind-and-expenses-an-update/employee-benefits-in-kind-and-expenses-an-update>).

28. The first consultation is on the abolition of the £8,500 threshold. The consultation explores who would be likely to be affected by the abolition of the threshold and how to mitigate the effects where abolition created unfair outcomes.

29. The second consultation is on introducing a statutory exemption for trivial benefits-in-kind. The consultation explores how the current informal arrangements can be replaced; how the problems with the current system can be eradicated; how a principle-based rule could be used in conjunction with monetary or frequency limits; and what would be an appropriate monetary/ frequency limit.

30. The third consultation is on replacing the current system of dispensations for reporting non-taxable expenses with an exemption for expenses paid or reimbursed by employers. The consultation explores the potential design features of such an exemption and its administration.

31. The fourth consultation is on introducing a system of voluntary payrolling for benefits-in-kind. The consultation explores which benefits and employees can be covered and how such a system can be designed.

32. HMRC has invited interested parties to attend meetings both on individual consultations and on the consultations as a whole. The closing date for the consultations is 9<sup>th</sup> September.

33. In a related general discussion about interaction with HMRC, members made the following points.

(i) Members encouraged HMRC to have greater recognition of employers' changing priorities and policies. Otherwise, there is a risk of HMRC's guidance being inflexible and unhelpful.

(ii) Problems with accessing advice from the Employer Helpline were reported. There was anecdotal evidence of long delays in calls being answered and then lengthy calls as queries were being resolved. The suggestion was made for a separate helpline for agents that could provide more informed and technical guidance.

**Action Point 10: JM** will pass this on to the relevant colleagues.

(iii) Members expressed dissatisfaction with the HMRC position on the OTS recommendation to broaden the circumstances in which PSAs can be used. Members encouraged HMRC to recognise that large companies were keen to comply with the tax rules by making payments by PSAs but felt hindered by the HMRC approach. JM understood the concerns but highlighted that a person's taxable income could impact on such things as the High Income Child Benefit Charge and that as far as possible tax should be charged on the individual.

#### **Agenda item 11: Company cars and payments for private use**

34. SM-T explained that the purpose behind clause 25 of the Finance Bill is to legislate for the existing policy intention of collecting payments for private use of company cars within the tax year. The Marshall v HMRC Commissioners First Tier Tax Tribunal decision had cast some doubt over the situation and HMRC wanted to clarify the position in legislation.

35. HMRC recognises, however, that in some exceptional circumstances, it can make sense in practical terms to continue to accept payments up to the 6 July following the end of the tax year. HMRC is keen not to disturb the existing provision of company cars.

36. Members requested an explanation of the apparent dichotomy between payments having to be made before the end of the tax year under the terms of the legislation and HMRC allowing payments to be made up until 6 July in practice. Following the Peter Marshall judgement, HMRC had begun to note commentary suggesting that employers could defer notifying HMRC of the benefit until after the year end or indeed indefinitely on the basis that the value could not be quantified until the level of the private use payment was known. There was a real possibility that individuals would be faced with large underpayments of tax, and that is why the easement is designed to reflect exceptional circumstances such as an employer realising that they had used the wrong value in error for the computation of the benefit, and has not been legislated.

**Action Point 11: SM-T** to ensure that the term 'exceptional circumstances' is defined in HMRC's guidance, when published (likely to be in the autumn).

37. In response to a query from members about progress in appealing against the Apollo Fuels First Tier Tribunal decision, HMRC said the matter remained under consideration.

38. No items were discussed under Any Other Business. The date for the next meeting has been left open pending the outcome of HMRC's review of stakeholder fora.