



HM Revenue  
& Customs

# Employee Benefits and Expenses – exemption for paid or reimbursed expenses

**Summary of Consultation Responses**  
December 2014

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# Foreword

I am delighted to be able to set out the responses to the benefits and expenses consultations, and very pleased that the package of measures has been so well received. As a package, I think that these measures represent significant simplifications to the tax system and that this will result in cost savings and reduced administration for businesses when complying with their responsibilities as an employer. As a consequence, individuals will have a better understanding of their tax affairs and an improved experience of the tax system.

The introduction of payrolling of employer-provided benefits in kind and expenses also represents the next step in allowing customers to interact with the Government digitally and in real time.

Thank you to everyone who has taken the time to reply to these consultations or attend meetings with HMRC. This has been crucial in helping HMRC modify their proposals to ensure that the greatest simplification for businesses is achieved. I would also like to thank the Office of Tax Simplification for their excellent work in this area, which proved invaluable in helping to formulate the initial propositions.

I look forward to continuing work on this package of reforms to make sure that we successfully deliver changes that help to reduce administrative burdens in this area.

A handwritten signature in black ink, appearing to read 'David Gauke'.

**David Gauke MP**  
**Financial Secretary to the Treasury**

# 1. Introduction

## Background to the consultation

- 1.1 At Budget 2014 the Chancellor announced measures aimed at simplifying the administration of employee Benefits in Kind (BiKs) and expenses. This followed the Office of Tax Simplification's (OTS) review of employee BiKs and expenses.<sup>1</sup>
- 1.2 The announcement included a package of four changes which the Government consulted on between 18 June and 9 September 2014. A separate consultation document was published for each and all four consultations ran together for 12 weeks.
- 1.3 The package of four measures consisted of the following:
  - Abolishing the threshold for the taxation of BiKs for employees who earn at a rate of less than £8,500 a year ('lower paid' employments), with action to mitigate the effects on vulnerable groups disadvantaged by reform;
  - Introducing a statutory exemption for trivial BiKs;
  - Introducing a system of collecting income tax in real time through 'payrolling' of BiKs; and
  - Replacing the expenses dispensation regime with an exemption for paid and reimbursed expenses.
- 1.4 This document summarises the responses received in respect of **replacing the expenses dispensation regime with an exemption for paid and reimbursed expenses**. This also includes the treatment of deductible BiKs and wherever the term 'expenses' is used in this document, it should also be taken to include the relevant BiKs.
- 1.5 HMRC received written submissions from 64 organisations and employers, a list of whom is included in Annexe A. This does not include the names of individuals who contributed. As part of the consultation HMRC also arranged or took part in 6 meetings to discuss the proposals set out in the consultation document. The organisations who attended those meetings are listed in Annexe B.
- 1.6 The Government is extremely grateful to all those who provided written comments in response to the proposals set out in the consultation document or who dedicated time to attend meetings with officials of both HMRC and HMT on the subject.

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<sup>1</sup> <https://www.gov.uk/government/publications/review-of-employee-benefits-and-expenses-final-report>

## **The proposals**

- 1.7 The proposal consulted on was to introduce an exemption for qualifying expenses payments and benefits in kind provided to employees. This would apply where employees would have been eligible for tax relief if they had incurred and met the cost of the expenses or benefits themselves.
- 1.8 The proposed exemption would replace the rules that require employers to either apply to HMRC for an agreement to provide qualifying expenses and benefits free of tax and National Insurance contributions (NICs), or to report such expenses and benefits to HMRC on a form P11D.

## 2. Responses

### Analysis of responses

- 2.1 Of the 64 written summaries received, the majority came from bodies and firms representing tax professionals, closely followed by those involved in the employment sector, varying from those providing payroll systems to those involved in the hire of temporary labour. There were also a significant number of contributions from both private and public sector employers and employer representative bodies. Comments were also received from bodies specialising in employment law and a trade union. Finally, the OTS provided further constructive comments.
- 2.2 HMRC discussed the proposals on paid and reimbursed expenses at 6 meetings with external stakeholders and would like to thank in particular those who hosted or offered to host meetings as well as all those individuals who attended and contributed their views.
- 2.3 As part of their response to the consultation, some contributors had gone to the trouble of surveying their client base and were happy to share with us a useful read-out of the information gathered.
- 2.4 Overall, contributors felt that the idea of exempting all allowable expenses that are reimbursed by employers and removing the requirement for P11D reporting or the current dispensations process was very attractive. However, concerns were expressed about the quality of guidance and support that would be needed to assist employers, and some contributors expressed doubts about whether HMRC would be able to provide an adequate level of help.

### Detailed responses to the consultation questions

**Q1. 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 they are not exhaustive?**

- 2.5 The prevailing view of most respondents was that it would be very helpful for models to be provided, especially for smaller businesses which might not have the more advanced record keeping systems that larger employers often do. On the whole, respondents felt that most employers would simply ignore examples that didn't apply to their circumstances, so would not find models that were irrelevant to them unhelpful.
- 2.6 Respondents felt that to be successful the models should meet two provisos –
  - *‘[that] associated guidance can be easily understood and applied’;*
  - *‘[it should be]clear that models are only examples of potential procedures to be adopted and that providing all necessary requirements are otherwise met, any alternative system not covered by the models can be applied with equal acceptability’.*

- 2.7 Developing the models in consultation with external stakeholders was also thought to be a preferable approach among the respondents. Most considered that the models could be covered in guidance rather than being put on a statutory basis – this would enshrine their inherent flexibility and help pre-empt new avoidance strategies that might emerge.
- 2.8 Some contributors thought that it would be helpful for HMRC to engage with employers through a dedicated Helpline when the new system is up and running.

2.9 **Government response:** The Government has noted the responses and there will be further work on a range of models for further consultation with interested stakeholders.

**Q2. 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 NICs motivated?**

- 2.10 Many of those who responded to this question were aware of schemes which attempt to minimise the amount of taxable pay and replace them with non-taxable expenses in a way that was either quite contrived or which tested the boundaries of the legislation. Most thought that this was abusive and should be tackled.
- 2.11 However, there were concerns about the tone of the consultation paper in respect of payments through salary sacrifice arrangements. Many respondents thought that not all schemes which used salary sacrifice arrangements were unfair. They believed there were legitimate reasons for applying these models, including the removal of administrative burdens and ensuring that employees got the tax relief they were entitled to. For example, one response said –

*'Where T&S schemes are run well they can deliver a real benefit to the workers involved. In many cases temporary workers incur costs on travel to temporary workplaces and tax and NICs relief provided through the scheme brings additional income to the worker ... likely that many workers who could claim tax relief on P87 or self assessment would not and would not be entitled to the NICs relief they get now. For many workers, this may mean the difference between willing to take on employment through a temporary agency or declining work if that work involves an element of travel for which they would not be readily able to obtain tax and NICs relief.'*

- 2.12 Some respondents also felt that there may be issues with the interaction of expenses payments with Universal Credit entitlement which would need to be considered carefully if the use of salary sacrifice arrangements were to be withdrawn.

- 2.13 **Government response:** The Government has considered the arguments in relation to the use of salary sacrifice arrangements carefully.
- 2.14 Although the Government recognises that part of the result of such arrangements is to deliver the tax relief that is due to employees, it also reduces the NICs liabilities of both the employer and the employee on expenses which the employee has met the cost of themselves. This is not in line with the spirit of the relevant NICs regulations, which is to ensure that no NICs liability arises where an employer meets the cost of an employee's business expenses.
- 2.15 The Government is also concerned that in some cases these arrangements are used to divert part of the value of the relief that would otherwise be due to the employee to the employer instead.
- 2.16 The Government has therefore decided not to allow this practice to continue under the new legislation, and so the exemption will not apply in cases where the benefit is offered in conjunction with salary sacrifice arrangements.
- 2.17 However, the Government acknowledges the concerns that employees find it difficult to claim the tax relief that they are entitled to on qualifying expenses that they have to pay themselves. As a result HMRC are already considering ways to improve this process and will continue to explore how this can be made simpler for employees in the future.

**Q3. In what circumstances would an employer currently apply for a custom scale rate? Other than expenses covered by the benchmark scale rates, which expenses do employees commonly request a scale rate for?**

- 2.18 Respondents gave a number of examples of the use of custom scale rates, although in general they thought that not many employers applied for them. Contributors suggested that in many cases they were used because the existing benchmark scale rates were considered not to reflect actual costs in the location that employees were working in.
- 2.19 Other examples given were for –
- international travel due to foreign exchange fluctuations;
  - mileage rates for staff receiving car allowances;
  - meals – where HMRC's rates are considered inadequate;
  - accommodation used when attending a temporary workplace.
- 2.20 Respondents felt that custom scale rates were often most useful where there were a significant number of employees claiming expenses. In those cases they felt that the administration, time and cost involved in checking claims through the normal process could be considerable. Some contributors expressed concerns about the potential removal of custom scale rates –



*'... scale rates are critical to efficient and effective management and administration of employee expenses reimbursement and both standard scale rates as laid down by HMRC and ability to apply for a custom rate should remain.'*

**Q4. 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 be the impact on those employers?**

- 2.21 Of those respondents replying to this question, most thought that withdrawing the option to agree a custom scale rate would result in a significant impact for employers with a large itinerant workforce, for example in the sectors involving sales, aviation, construction, engineering, oil & gas, and communications. In addition, they felt employers with significant numbers of inpat secondees with relatively short assignments would also be adversely impacted by the withdrawal of custom scale rates.
- 2.22 Others thought that removal of custom scale rates would give a level playing field for all employers. However they felt that this would require a review of existing benchmark rates which at the very least commentators felt had not kept pace with inflation. Another suggestion was that scale rates should effectively be a limit below which expenses can be paid without supporting receipts if the employer is satisfied that the employee has complied with certain conditions.

**Q5. 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?**

- 2.23 Although views were mixed on this question most who responded thought that employers who currently use custom scale rates would be disadvantaged by no longer being able to agree these with HMRC. The main reason given was that employers would need to feel confident that their custom scale rates would be acceptable to HMRC.
- 2.24 Others expressed the view that the existing HMRC guidance around the availability of deductions was sometimes unclear and that the ability to apply for a custom scale rate allowed provision for areas of uncertainty arising from specialised industry custom and practice.
- 2.25 In particular, responses from employers who currently use custom scale rates were strongly in favour of retaining an application process to agree them in future.
- 2.26 Not all contributors agreed with this however. There was a view that maintaining an application process for custom scale rates adds complexity and could lead to market distortion if HMRC is not consistent in the rates it agrees. Some thought that instead, the Government should look to review and increase existing benchmark scale rates and perhaps extend the coverage of them to other areas which had come to the fore through changes in business practice and had not been considered historically.

**Q6. Would employers welcome the ability to self-certify the sampling exercise 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?**

- 2.27 Replies in response to this were varied. Some said they would welcome the ability to self-certify custom scale rates provided there is guidance to support the process, and could well feel empowered by it. They felt that there were already many areas of business and tax where employers had to self-certify. Others thought that employers would only welcome this if there is clear guidance and HMRC take a '*reasonable, commercial view*' of the sampling exercise. Most respondents agreed that guidance would be preferable to legislation in this area.
- 2.28 However, many thought employers would prefer to have HMRC approval and others considered the process could be open to abuse or easily misunderstood.

- 2.29 **Government response to Questions 3-6:** The Government recognises that custom or bespoke scale rates can be a valuable aid to employers, cutting down the level of administration and ensuring that employees can be given clear advice on the amounts they can claim. As a result, the Government has decided that this feature will be retained in broad terms.
- 2.30 To meet concerns that the majority of employers will want to have some engagement with HMRC during this process, the legislation will provide that employers can use custom scale rates as long as they have been agreed by HMRC. Employers will need to apply to HMRC, and the statutory requirement will be that the application will need to be in a certain format and include certain information that HMRC specifies.
- 2.31 In practice, employers will have to submit evidence to support the amount of the custom scale rate that they have applied for. This will likely, but not exclusively, be in the form of a sampling exercise.
- 2.32 If the application is accepted, HMRC will set out the terms of the agreement in a notice which will include the following information:
- the date from which the agreement has effect;
  - the date on which the agreement expires;
  - the amount of the scale rate or rates agreed;
  - the expense(s) which the scale rate or rates apply to; and
  - the circumstances under which it may be paid.

**Q7. 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?**

- 2.33 Again, responses were varied and ran from suggesting that the motivations of such companies would be to evade tax to suggestions that such arrangements provide clarity as well as transparency and administrative ease. Most thought that withdrawing scale rates from such businesses would add more complexity for the very companies that find tax most challenging and who should be the beneficiaries of tax simplification –

*‘it would seem to be unfair to discriminate between micro businesses and larger businesses.’*

- 2.34 **Government response:** The Government noted comments made in this area and has decided that the use of scale rates for small businesses should be allowed to continue.

**Q8. 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?**

- 2.35 There was no real consensus on this. Many thought there should be no transitional period at all and that including one would create complexity in the new rules. Instead, they felt that there should be a delay in implementing legislation in this area so that employers could have time to put systems and processes on the right footing for the new rules.
- 2.36 Other respondents thought that there should be some sort of transitional period. Some suggested that dispensations should be allowed to run on indefinitely, and others thought that they should only continue for a limited period. Some expressed the view that where unions and trade bodies were involved in negotiations, it could take some time to renegotiate expense allowances because of the complicated and time consuming process required. Some respondents felt that a phased approach should be adopted, and that there were precedents with other government initiatives implemented by HMRC, such as RTI and pensions auto-enrolment which have been introduced gradually.
- 2.37 Where time scales for a transitional period were suggested these ran from 3 months to 5 years.
- 2.38 It was pointed out in a number of responses that if everything that is presently allowed as a deduction is simply to be included in the new exemption for paid or reimbursed expenses, there would be no change and therefore a possibility that no transitional period is required.

2.39 **Government response:** One of the key aims of the legislation introducing an exemption for deductible expenses is to do away with the need for employers to apply for dispensations at all. The new exemption will remove the charge to tax on:

- payments for deductible expenses made to employees;
- payments for deductible expenses made on behalf of employees; and
- other deductible benefits or facilities of any kind.

As a result, the Government feels that there is not sufficient justification for employers to continue to use existing dispensations beyond the date that the new exemption comes into force provided employers are given a suitable length of time to prepare for the change.

**Q9. Independently of whether existing dispensations may continue to be used, would employers welcome being able 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?**

2.40 Most responses referred to the answer previously given for Q8, but where this question was specifically answered, some thought that provided the implementation of the new system allowed time to address changes, employers should not need to continue to use custom scale rates. Some respondents thought it might be useful if HMRC could have the power to grant an extension if appropriate, for a limited period of time to allow the employer and/or HMRC to agree the tax position of such payments going forward.

2.41 Respondents also considered that the emphasis was on stopping abusive use – certain employers advertised that they had dispensations that were quite generous and which could offer a commercial advantage as a result. Having a transitional arrangement would only allow these companies to keep their current competitive advantage at the expense of all those adversely affected by them.

2.42 **Government response:** Where a custom scale rate is agreed by HMRC, a notice will be issued to set out the terms of its use. This will include a date for the expiry of the agreement which will be no longer than five calendar years after the date the notice is issued. The Government is currently considering the treatment of custom scale rates which have been agreed in advance of the new exemption but which have been in use for less than five years at the time it comes into force.

**Q10. 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?**

- 2.43 Most answering this question recognised that this area could be very complex. Employers were generally confident in how such payments should be treated. However, there were occasions when they had noted it was difficult to find relevant guidance on HMRC's website, or, if they could locate the guidance found it was often open to differing interpretations.
- 2.44 It was considered that HMRC guidance needed to be geared towards employers rather than towards HMRC employees – the guidance manuals were currently written for HMRC's internal use but were made available to the public. Respondents felt that it would be better if the guidance were written with more emphasis on how employers could apply it. One of the issues respondents remarked on was that the guidance needed to be better indexed and the search facility made more sophisticated so that employers could rule out irrelevant results. Contributors felt that Booklet 490 in particular, which was written primarily for the benefit of employers, needed to be rewritten and should be reviewed regularly. For example, given the electronic format of guidance, they felt that it should be updated within 3 months of any tax cases which affected its content.
- 2.45 Respondents thought the expenses rules that were most complex and desperately needed better guidance were the temporary workplace rules, homeworking expenses, entertaining, and staff rewards. Contributors were in agreement that any guidance must be clear and comprehensive, and that the basic principles underpinning reimbursement of expenses should be clearly set out. They recommended that HMRC should consult stakeholders on draft guidance.
- 2.46 Respondents also considered that the HMRC Employer Helpline would have an increasingly important part to play in helping employers understand the rules and that would mean HMRC would need to ensure that in future, the Helpline is adequately resourced to meet the demand.

2.47 **Government response:** The Government has noted the comments made. HMRC has already made a commitment to review the guidance in Booklet 490 and intends to test the updated guidance with external stakeholders before publication.

**Q11. 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?**

- 2.48 There was no consensus in the responses to this question. Some thought the new rules should be implemented immediately to cut red tape, whilst others believed it would be important to allow sufficient time for employers to become familiar with the new rules, associated guidance and the range of models proposed. These respondents felt that it would be good to have an opportunity to review and comment on draft guidance, and felt further consultation prior to implementation would be welcomed.
- 2.49 Most thought that there should be a delay in implementation until at least April 2016, but were content for legislation to go through Finance Bill 2015. Again, there was a suggestion of staggered implementation across different sized employers so as to ensure that change was introduced gradually, with those who needed most time to change their existing processes being given longer to do so.

2.50 **Government response:** The Government is very grateful for the suggestions on implementation. However, as this is being introduced as an exemption the Government had decided that it would be best to deliver the benefit of this to all employees and employers as soon as is practicable. The Government has therefore concluded that to assist employers and give them certainty in making the necessary changes to their processes and systems the legislation will be introduced in 2015, but will not take effect until 6 April 2016.

**Q12. How should dispensation applications that are made in the intervening period be handled?**

- 2.51 The majority of responses thought that dispensations should be able to be handled in the normal way during the intervening period. However, most also said that employers should be warned that there would be an expiry date applicable to any accepted dispensation, after which the new rules would apply.
- 2.52 There was significant agreement on this on the basis that a dispensation would no longer be required to justify not reporting what would then be exempt expenses and reimbursements on P11Ds.

2.53 **Government response:** New dispensations will be handled in the normal way during the intervening period, but will be given an expiry date of 5 April 2016.

## 3. Next steps

### Implementation

- 3.1 The Government has announced at Autumn Statement 2014 that the new exemption for deductible expenses and reimbursements will apply from 6 April 2016. Draft legislation is also published today. We would welcome any comments you have on the draft legislation. The consultation will run for eight weeks.
- 3.2 If you have any comments on the draft legislation, please send them to HMRC by e-mail if possible to [employmentincome.policy@hmrc.gsi.gov.uk](mailto:employmentincome.policy@hmrc.gsi.gov.uk)
- 3.3 Alternatively, comments may be sent by post to the following address:  
  
Travis Woodward  
Employment Income Policy Team  
Her Majesty's Revenue and Customs  
Room 1E/08  
100 Parliament Street  
London  
SW1A 2BQ
- 3.6 HMRC intend to consult on the recording keeping and checking models and other draft guidance in summer 2015.

## Annexe A: List of stakeholders who submitted written responses

We are grateful for all the written responses each of which has been taken into consideration in shaping the detail of this policy. Those who submitted written responses to this consultation and the type of body they represent is shown below. Contributions from individuals are not listed.

A J Kingston-James HR Ltd
Adecco Group UK and Ireland
Advance Contracting Solutions Ltd
Aspen Insurance
Aspire Business Partnerships Ltd
Association of Accounting Technicians
Association of Chartered Certified Accountants
Association of Labour Providers
Association of School & College leaders
Association of Taxation Technicians
Barber Harrison & Platt
BDO
BECTU (Broadcasting Entertainment Cinematograph & Theatre Union)
British Telecommunications plc
Cepha Controls Ltd
Chantry Vellacott
Chartered Institute of Payroll Professionals
Chartered institute of Taxation (CIOT)
Confederation of British Industry (CBI)
Cordant Group plc
David Kirk & Co
Deloitte LLP
Diageo plc
Efficient Employment Tax Solutions Ltd
Elman Wall Ltd
Employment Lawyers Association
Ernst & Young LLP
Francis Clark LLP
Freelancer and Contractor Services Association
Grant Thornton LLP
HRC Law LLP
Hull City Council
Institute of Chartered Accountants in England & Wales (ICAEW)
Institute of Financial Accountants (IFA)
IREEN (Electronic Exchange with Government Network)
Joint Tax Committee of Construction
KPMG LLP
Leicester City Council
Legal & General Group plc



Low Income Tax Reform Group (LITRG)
M & A Partners LLP
Marks & Spencer plc
Mazars LLP
Moore Stephens LLP
Office of Tax Simplification
Open University
Optimal Compliance
Payroll Alliance
PricewaterhouseCoopers LLP
Professional Passport Ltd
Recruitment and Employment Confederation
Rolls Royce plc
Scottish Qualifications Agency
Siemens plc
Society of London Theatres
Staffline Group plc
Target Furniture Ltd
Tax Aid
Try Lunn & Co
UK Theatre Association
University of Cambridge
University of Glasgow
Whitefield Tax Ltd
Windsor Wireless Ltd

## Annexe B: List of stakeholders who took part in consultation meetings

HMRC are very grateful to those who took time to come and attend consultation meetings held in London during July and August 2014 to give their views on this policy. Those who took part in these meetings were:

Adecco Group UK and Ireland
Aspen Insurance
Aspire Business Partnerships Ltd
Association of Taxation Technicians
BAE Systems plc
Balfour Beatty plc
BDO
British Computer Society (BCS) Payroll Group
British Telecommunications plc
Business Application Software Developers Association (BASDA)
Capita
Chartered Institute of Payroll Professionals
Chartered institute of Taxation (CIOT)
Confederation of British Industry (CBI)
Deloitte LLP
Diageo plc
Easyjet
Freelancer and Contractor Services Association
Gabem Management Ltd
Genworth
Hewlett Packard
Institute of Chartered Accountants of Scotland (ICAS)
ISIS Support Services Ltd
Joint Tax Committee of Construction
JP Morgan
KPMG LLP
Low Income Tax Reform Group (LITRG)
Mazars LLP
MidlandHR
Nest Corporation
Office of Tax Simplification
Paystream Accounting
Petrofac Services Ltd
Prudential plc
Sainsbury's plc
Schroders plc
Siemens plc
Society of Motor Manufacturers & Traders (SMMT)
Toyota GB plc
University of Birmingham

University of Glasgow
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Vodafone Group plc
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Zurich UK plc
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