



HM Revenue  
& Customs

# Simplifying the PAYE Settlement Agreement (PSA) process

**Summary of Responses**  
December 2016

# Contents

1	Introduction	1
2	Details of the consultation	2
3	Responses	3
4	Next steps	4
5	List of stakeholders consulted	5

## 1. Introduction

### Background

1.1. Pay As You Earn (PAYE) Settlement Agreements (PSAs) were introduced in the 1990s, as an administrative easement for employers and HMRC. They allow employers to settle, in a single payment, the income tax liability on certain, typically minor, benefits in kind (BiKs) and expenses payments. Employers with a PSA are liable for the income tax and NICs payable under them, their employees are relieved of liability on the benefits and expenses included in the agreement. A PSA will also allow employers to reduce record keeping and paper work for themselves and their employees and use a practical and flexible way of dealing with many of the minor and 'one-off' benefits found in today's employment packages.

1.2. PSAs are statutory arrangements between employers and HMRC which set out the items on which the employer will pay grossed up tax and NICs.

1.3. PSAs are agreed for one tax year at a time. The agreement ensures that the employer is not penalised for operating outside 'normal' rules and provides an administrative saving to the employer as they report the tax and NICs due on these items in a single return after the end of the tax year.

1.4. Payroll systems and processes have evolved since PSAs were introduced, but the need for PSAs remains. However, while the number of PSAs requested has

increased significantly since they were introduced, the process for agreeing PSAs has not kept up with the demand or changes in working practices.

## The Office of Tax Simplification

1.5. When the Office of Tax Simplification (OTS) published their second review of employee benefits and expenses in January 2014, they highlighted a number of issues with the PSA process. They recommended that the PSA process be streamlined and felt that the requirement to agree what items can be included in a PSA each year was time consuming and served little purpose.

1.6. The OTS also recommended that the government widen the scope of PSAs so that employers can pay their employees' tax liability on any items they choose. However they acknowledged there are implications for both the Exchequer and DWP particularly around 'means tested' allowances and benefits, which would need to be considered further.

## 2. Details of the consultation

2.1 A consultation document on proposals to simplify the process for arranging, and clarifying the use of, PAYE Settlement Agreements was published on 8 August 2016. The consultation ran until 18 October

2.2 The government recognised that the existing process is unnecessarily burdensome.

2.3 The consultation sought views on proposals to:

- remove the need for employers to agree with HMRC which items can be accounted for in a PSA: employers would assess whether items are eligible for inclusion in a PSA return by reference to the legislative rules and guidance
- remove the requirement for upfront annual agreement between employers and HMRC
- explore whether, and to what extent it would be cost effective, to digitalise the PSA return
- removing 'minor' items from the PSA criteria

2.4 The consultation gave HMRC's stakeholders the opportunity to:

- discuss changes that will make it easier for employers to account for items in a PSA

- address difficulties relating to the NICs payable on non-cash vouchers, by removing the requirement to agree PSAs in advance

## 3. Responses

### Summary

- 3.1 Overall, respondents welcomed the proposals and the opportunity to comment on them.
- 3.2 Respondents welcomed the proposal to remove the requirement to agree PSA items in advance, every year and the majority would like the paper return, used currently, replaced by a digital return.
- 3.3 Many respondents would like better guidance that could assist employers in establishing what benefits are appropriate for inclusion within a PSA.
- 3.4 Many respondents expressed disappointment that the government did not propose to consider extending the scope of what can be included in a PSA, as part of this consultation.
- 3.5 One option that the government is considering is the alignment of the PSA calculation and payment dates with the P11D/P11D (b) deadlines. The majority of those expressing a view on this option were not in favour of it. In their view, it would impose an unreasonable burden on employers.
- 3.6 Many respondents said that removing the 'minor' criterion could potentially exclude some items that do not readily fit within the remaining PSA criteria.

### Stakeholder participation

- 3.7 HMRC received 62 written responses, from individuals (3), accountancy firms (15), representative bodies (9), public bodies (5), the industrial and retail sectors (14), and others (16). Some individuals and accountants may also represent other organisations but were classified as individuals as they were acting in a personal capacity. A list of respondents, other than individuals, can be found at Annex A.
- 3.8 In addition, during the course of the consultation, HMRC met with interested parties to discuss the proposals. Feedback from this meeting was considered as part of the consultation process.

3.9 HMRC wishes to thank those who responded to the consultation document. We recognise the time and effort that went into their comments and contributions, which are now informing our policy considerations.

## **The Questions:**

### **3.9 Proposed new process**

**i. Do you agree that removing the requirement to agree the items in a PSA will provide simplification for employers?**

**ii. Are there reasons why the formal agreement element of a PSA should be retained? If so, what changes should the government consider to an agreement based system so that it is easier to administer?**

**iii. Do you agree that a having a digital PSA return would be simpler for employers to administer rather than the current PSA1 paper return?**

**iv. A digital return would reduce error rates. Are there other changes the government should consider to reduce these further?**

**v. Would aligning the PSA payment date with the Class 1A NICs payment deadline cause any employers particular hardship?**

There is universal agreement amongst those who responded that the removal of the requirement to agree PSA items in advance would ease the administration of the PSA process. The process is seen by some as unnecessarily bureaucratic, inflexible (as requirements might change over a tax year) and not in keeping with modern processes, self-assessment and HMRC Government's digital ambition.

Many respondents suggested that HMRC build and improve upon the PSA guidance currently available, so that items that could be included in a PSA are readily identified, and provide a facility for employers to seek advice on the content of PSAs.

Most respondents did not see a need for the formal agreement element of the process. Some respondents felt it may be worth retaining formal agreements when first used, or to provide assurance for employers who are uncertain as to what items are suitable for a PSA.

Respondents agreed that the introduction of a digital return would improve the process of completing and submitting PSAs.

Some expressed concern about the proposal to include the number of employees who received each benefit in kind or expense as part of the data

captured by the digital PSA (paragraph 3.6 of the Consultation Document). As one respondent explained “...*the settlement does not specifically identify the number of employees in receipt of staff entertaining. To enable us to identify this information , we would need to implement a significant process and system change which would be costly and time consuming, without delivering any additional tax or NIC revenue to HMRC.*”

A majority of those expressing a view felt the proposal to align the PSA payment date with the class 1A NIC payment deadline would be burdensome, particularly for larger businesses. One respondent explained the potential effect on their business. “*This would be administratively burdensome for many companies as the digitalisation of PSA will not of itself result in any time efficiency savings when preparing the calculations supporting the returns, and it is currently a struggle to complete the P11D reporting within that timeframe, with exacerbating the compliance burden by aligning the due date for completion of the PSA with the P11D reporting requirement. As a result the requirement for employers to submit both returns on the same day would put undue pressure on the employers.*”

#### **Government response**

**HMRC welcomes the positive reception to the proposal to digitise the PSA process. It recognises that for implementation to be successful, the new process should not impose unrealistic burdens on business. HMRC has listened to respondents’ concerns. It has decided not to require employers to include the number of employees receiving benefits in kind or expenses in their submissions. HMRC is not seeking to align the PSA payment date with the class 1A NIC payment at this time, in recognition of the potential impact on employers.**

### **3.10 Handling differences of opinion**

The government is proposing changes to the PSA process which will allow employers to:

- meet the tax and NICs payable on certain benefits in kind and/or expenses payments given to their employees
- reduce record keeping and paper work for themselves and their employees

•use a practical and flexible way of dealing with many of the minor and 'one-off' benefits found in today's employment packages

**vi. Do you agree that this approach would be proportionate?**

**vii. Do you have any other comments about the proposed new PSA process?**

Most respondents agreed that the government's approach was proportionate, a few commented that this would be dependent on the quality of published guidance.

Many respondents were disappointed the government has decided not to take up the OTS recommendation to widen the scope of PSAs so that employers can pay their employees' tax liability on any items they choose.

Some respondents said that consideration should be given to the potential impact of other changes to the taxation of employees currently under consultation. In light of recent and prospective changes to payroll and benefit reporting processes, some respondents would like further opportunity to consult on the PSA process once HMRC's policy is formulated.

### **Government response**

**The government is not proposing to extend the scope of what could be included in a PSA. However, in light of the many useful and constructive comments received on this issue, HMRC will keep this matter under review.**

### **3.11 Minor Criterion**

The government proposed to remove 'minor' from the PSA criteria and invited views from employers.

**viii. In light of the new trivial BiKs exemption, would the removal of 'minor' pose any problems for employers?**

**ix. Are there items which you include in your current PSA which are 'minor' and which are not either 'irregular' or 'impracticable' as well?**

Many respondents said that the removal of "minor" from the PSA criteria may exclude items currently included in PSAs, if they cannot be defined as "irregular" or impracticable. These items potentially include wine, healthcare for overseas

assignments, broadband, small gifts totalling £50 or more, and personal tax fees (where employers undertake or arrange UK tax affairs on behalf of international workers).

*One respondent said “We believe it should be possible for employers to use PSAs in cases where “presentational awkwardness” may arise. It does not seem appropriate for individual employees to be taxed via PAYE or on their P11D for an occasion like a ‘thank you’ meal or a team-building event, particularly where some of those employees may be quite low paid compared with fellow employees attending the same event. In such circumstances it would seem far more appropriate for the employer to be able to settle the tax liability direct with HMRC, and given that there is no loss to the revenue, we see no need for opportunities to pay additional tax to be restricted.”*

### **Government response**

**The government has listened to concerns that removing the minor criterion would be too restrictive. In light of these responses, the minor criterion will remain.**

### **3.12 Irregular Criterion**

The government proposed to keep the ‘irregular’ criterion for a PSA but incorporate the principles set out below in guidance to make it easier for employers to determine whether the provision of an item is ‘irregular’ or not:

- items should be considered in the context of a tax year;
- should not be something which occurs in any pattern: every day, week, month, other month, or quarter; and
- should not be items which employees have a contractual right to (for example bonuses, regardless of how infrequently or at what intervals they are paid or how they are made up)

**x. Do you agree that these principles should guide what can/cannot be included in a PSA as an ‘irregular’ item?**

**xi. Are there any other principles which you think should be considered?**

**xii. Do you have any other comments about how ‘irregular’ is interpreted?**



Generally, respondents thought that the criteria proposed for irregular items were sensible. However some felt that HMRC's definition of a "pattern" needed clarification. One representative body recommended that HMRC maintain the facility, at least in the short term, for employers to obtain confirmation of what items could fit within a PSA, if it is not clear from guidance.

Some were concerned that contractual items be included within PSAs so as not to exclude such one-off items as relocation expenses and some benefits provided on a regular basis for a limited time.

Some respondents wanted clarity as to whether some benefits provide annually (Christmas and birthdays) would be considered "regular" and therefore excluded from PSA.

### **Government response**

**The Government proposes to incorporate the above principles for determining whether an item is 'irregular' into guidance and will engage with employers, representative bodies and other stakeholders, in order to ensure that the guidance is clear.**

### **3.13 Impracticable criterion**

The government proposed to strengthen current guidance, making it clear that items are not to be considered to meet the 'impracticable' test solely because of issues relating to an employer's software or because there is presentational awkwardness to taxing or reporting it.

**xiii. Do you agree that these rules (on impracticable) provide clarity? Would their application pose any difficulties for employers?**

**xiv. Are there any other types of 'impracticability' which the government should consider?**

Most respondents who expressed a view believed that the proposed rules would provide clarity. One respondent suggested that "impracticability" should be defined on grounds of cost-effectiveness, not just the difficulty in taxing the benefit in kind or expense through PAYE or reporting through P11D.

## **Government response**

**HMRC will engage with employers, representative bodies and other stakeholders to ensure that its guidance and processes meet the government aims of providing a simpler reporting system, whilst removing administrative burdens.**

### **3.14 Office holders**

**xv. Should the government consider an exemption/cap in respect of office holders? Please provide reasons for your answer.**

**xvi. What other safeguards could/should be considered to guard against possible abuse of PSAs?**

Respondents generally felt that an exemption or cap in respect of office holders was not necessary. Governance rules for quoted companies would require PSAs to be included in director's remuneration reports.

Respondents do not believe PSAs are subject to widespread abuse, so the case for placing restrictions on office holders was not proven. No safeguards were proposed or recommended.

## **Government response**

**HMRC has taken on board the concerns expressed by respondents and, in light of the many responses on this issue, it is no longer considering an exemption or cap for office holders.**

### **3.15 The scope of PSAs**

**xvii. Are there any compelling reasons/scenarios which do not fit into the rules as set out above that employers feel the PSA process should be amended to include? Please provide reasons/examples**

Some employers suggested that HMRC exercise some flexibility where it is arguably more reasonable for the employer to settle the tax liability, rather than grossing up through payroll, which impacts on taxable pay.

Respondents mentioned a number of scenarios which did not sit well with published guidance, including:

- payments to relieve temporary double taxation due to withholding requirements
- accommodation and subsistence where it is believed that it qualified for temporary workplace relief but circumstances change and there has been a delay on amending the payroll
- tax return preparation costs in the international concept
- benefits provided after leaving
- short term healthcare for temporary assignments abroad

There was disappointment that the proposals did not include widening the scope of PSAs as many respondents felt that PSAs should be expanded to include any benefit in kind or expense.

*One respondent said “As a general point, we agree with the OTS that any BiK and expense should be able to be included in a PSA. If this is not done, we believe that an opportunity to make the tax system more efficient and to smooth the introduction of digital accounts will have been missed.”*

It was suggested that employers were unlikely to use PSAs to manipulate child benefits or other state benefits or credits intentionally. Consequently, they felt that the scope of the PSA could be widened to include benefits for lower paid employees. It was also suggested that reporting through PSAs was more expensive for employers than via the P11D process, because of the grossing up of PSA tax and the calculation of NIC arising from the calculation. Employees are not disadvantaged as neither class 1A nor class 1B NIC augments the contributor’s NIC records.

## **Government response**

**The consultation is not proposing to extend the scope of items included in a PSA. The government acknowledges the many comments received on this issue, which may be considered in any future review in this area. However, the government remains concerned that further streamlining**

**could have implications for both the Exchequer and DWP, particularly around 'means tested' allowances and benefits.**

## 4. Next steps

4.1 Respondents welcome the development of a simpler, digital process.

To achieve this, HMRC recognises that it will need to develop its guidance, making clear what items are suitable for inclusion in a PSA and it will engage with stakeholders to develop efficient solutions.

4.2 In addition, HMRC recognises that the potential benefits of aligning the PSA payment date with the class1A NIC payment deadline need to be considered in light of comments received. Many respondents said that this would impose an administrative burden, if implemented, with larger businesses particularly affected. HMRC does not, therefore, seek to align dates at this time.

4.3 The government is not proposing to extend the scope of what items should be included in a PSA as part of this consultation. However, the many useful and constructive comments received on this issue may be used in further reviews.

4.4 HMRC will look to digitise the PSA process, removing the requirement for an annual agreement, in advance, commencing 6 April 2018.

## Annexe A: List of stakeholders consulted

AAT  
American Express  
Armstrong Watson  
ATT  
AVIVA  
Balfour Beatty  
Barclays Bank PLC  
BAT  
Blick Rothenburg LLP  
CBI  
CCH Corporation Tax Services Ltd  
CIOT  
CIPP  
Clydesdale Bank PLC  
Debenhams  
Deloitte  
Deutsche Post DHL  
Diageo  
Ernst Young  
Exxon Mobil  
Grant Thornton  
Haysmacintyre  
Heathrow Airport  
Hewitt Packard Enterprise  
ICAEW  
IG  
Intu Properties  
JLT Management Services Ltd  
Kingston Smith  
KPMG  
Legal & General  
Lloyds Banking Group  
LITRG  
London Society of Chartered Accountants  
LVMH Fragrance Brands UK Ltd  
LVMH Watch & Jewellery  
Mazars  
Ministry of Defence  
Moet Hennessey UK Ltd

National Grid  
National Trust  
Nationwide  
NATS  
Office of Tax Simplification  
Perfums Christian Dior UK Ltd  
Payroll Alliance  
PEM  
PKF Littlejohn LLP  
Prudential  
PWC  
QinetiQ  
RELX  
Rolls Royce  
Royal Dutch Shell  
RSA group  
Saint-Gobain Ltd  
Santander  
SEPA  
Stern&Company Ltd  
Tax Centre of Excellence  
Toyota Financial Services

