



HM Revenue  
& Customs

# Government response to the consultation on the alignment of dates for 'making good' on benefits- in-kind

**Summary of Responses**  
December 2016

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# 1. Introduction

## Background to the consultation

1.1 Where an employee receives remuneration from their employment which does not take the form of money, this is known as a benefit-in-kind. Benefits-in-kind are subject to tax and the majority are also liable for employer's Class 1A National Insurance contributions (NICs).

1.2 The cash equivalent of the benefit-in-kind is subject to tax and liable to NICs. This is usually calculated as the cost to the employer of providing the benefit-in-kind, although in some cases it is calculated in a different way.

1.3 'Making good' is where an employee gives something (usually a cash payment) to the person providing the benefit-in-kind in return for it. Making good has the effect of reducing the cash equivalent of the benefit-in-kind, often to zero. This reduces the amount of the employee's taxable earnings where the payment is made within certain time limits. Where an employee makes a payment for a benefit-in-kind under salary sacrifice arrangements, however, this does not qualify as a making good payment.

1.4 At Budget 2016, the government announced a package of measures to simplify further the tax administration of employee benefits and expenses. The package included a commitment to consult on proposals to align the dates by which an employee has to make good on a benefit-in-kind in order to reduce or remove the tax charge.

1.5 The government held a consultation from 9 August to 4 October 2016 and held a meeting with stakeholders in September. This document summarises the responses received on the proposals.

1.6 The government wishes to thank all those who took the time to send in written responses and attend the meeting. These contributions have been invaluable in informing the policy. A list of stakeholders who submitted written responses and attended the consultation meeting is at Annexe A.

## Aim of the consultation proposals

1.7 There are different dates set out in legislation for making good on different benefits-in-kind in order to reduce or remove the tax charge. For some benefits-in-kind there is more than one date for making good in legislation, whilst for others there is no statutory date.

1.8 Where the employer voluntarily accounts for the benefit-in-kind in real time through PAYE (known as 'payrolled' benefits-in-kind) the legislative framework specifies the date by which making good must take place. This is the end of the tax year for all benefits-in-kind other than fuel benefit for which making good must take place by 1 June following the end of the tax year.

1.9 Employers, large accountancy firms and representative bodies have told HMRC that the current rules on non-payrolled benefits-in-kind cause confusion. They are unsure which date applies and have asked for the government to provide clarity in this area.

1.10 In the consultation, the government proposed to make the system simpler by aligning the making good dates for payrolled and non-payrolled benefits-in-kind. The objective was to provide clarity and make it easier for employers and employees to understand their obligations.

## 2. Responses

### Overview of the consultation

2.1 To achieve the objective of clarification, the government proposed that making good should take place by the end of the tax year, except for those benefits-in-kind where there are practical difficulties in doing so. In these cases, the government proposed that making good could take place up to 1 June following the end of the tax year.

2.2 The government invited views from stakeholders on whether the introduction of these proposed dates was reasonable and on what practical difficulties might arise.

### Analysis of the responses

2.3 There were 32 written responses, from a range of employers and representative bodies, and 3 stakeholders attended the consultation meeting.

2.4 The government asked four specific questions in the consultation and the responses are summarised below.

**Q1. For company cars, company vans and the other benefits-in-kind set out above, are there any practical difficulties in making good by the end of the tax year? Please provide reasons for your answer and set out which benefit-in-kind the difficulties refer to.**

**Q2. Are there any practical difficulties with making good for car and van fuel benefit, credit tokens and beneficial loans by 1 June following the end of the tax year? Please provide reasons for your answer and set out which benefit-in-kind the difficulties refer to.**

2.5 Several respondents commented that the proposed dates were reasonable in the vast majority of cases. Some claimed, however, there would be difficulties in certain circumstances. For example, if a new benefit-in-kind was provided very close to the end of the tax year or the value of a benefit-in-kind fluctuated over the course of the year, it could be difficult to make the necessary calculations and payments by the proposed dates. Furthermore, respondents claimed that it can be difficult to assess the value of in-house benefits before the end of the year since the costing will rely on internal management accounting data that might not be available until after the end of the year. (An in-house benefit-in-kind is where the employer provides the employee with the good or service that the employer sells in the course of their business, either free or at a price lower than normally sold).

2.6 Other respondents raised concerns about the practical difficulties of having to make good by the end of the tax year generally. It was also clear from the responses that many employers already work to the date of 6 July (the deadline for returning the P11D form to HMRC<sup>1</sup>) for making good even if the legislation does not stipulate a

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<sup>1</sup> The P11D is the form used by employers to report their employees' benefits-in-kind to HMRC.

date. Respondents suggested this system was currently working well and provided enough time for making good and dealing with the administration required.

They said that bringing forward the date from 6 July would create a shorter timeframe to undertake the same amount of work as at present. This would result in inconvenience for employers, an increased risk of errors, and increased costs due to having to change systems. They also identified that bringing the date forward would be particularly difficult for making good on car fuel, where some employers are reliant on third party fuel card providers to issue invoices, meaning it can take up to three months to complete the administration and reconcile payments from employees.

2.7 For these reasons, there were strong calls for the date, particularly for fuel benefit, to be set at 6 July.

### **Government response**

The government recognises the difficulty in making good for some benefits-in-kind by the end of the tax year. However, rather than introduce a number of dates for different benefits-in-kind the government has concluded there should be a uniform date for making good and that date will be 6 July following the end of the tax year. This is a clear and consistent date and employers are confident that the necessary payments and calculations can be finalised by this date. It is already a recognisable date as it is the date by which employers have to send their P11D forms to HMRC and, for this reason, the date by which many employers already make good in practice.

The position with beneficial loans is considered separately and included in the response to Question 3.

### **Q3. For employer-provided loans, should interest paid after the benefit-in-kind has become final and conclusive be taken into account?**

2.8 Respondents provided varying views. A small handful of respondents believed that the provision to take interest into account after the final and conclusive date was unnecessary, particularly if the final and conclusive date was to be after the end of the tax year. One respondent commented that the provision undermined the aims of simplicity and certainty within a modern tax system. Another respondent queried the basic principle of being able to take interest into account after the benefit was considered to be final and conclusive.

2.9 The majority of respondents, however, wanted the provision for interest to be paid after the benefit-in-kind had become final and conclusive to be retained. The provision allows the employee to make a claim for the assessment on the benefit for that year to be recalculated to take the belated interest payment into account. The call for the provision to be retained was on the basis that there are often commercial reasons why interest is paid some time after the end of the tax year and that there is a

need for flexibility. For example, the rate at which interest repayments are set out in a loan agreement does not always coincide with the tax year.

### Government response

After careful consideration, the government has decided to retain the existing provision for interest paid after the benefit-in-kind has become final and conclusive to be taken into account. Respondents have highlighted valid examples of where there is still a need for flexibility to allow for payments to be made at a later date. The government does not intend to disturb the current provision that allows the interest to be paid within a reasonable period of time rather than by a specified date.

#### **Q4. For non-cash vouchers and credit tokens, would there be difficulties in having to make good within the earnings period in order to remove the NICs liability?**

2.10 One respondent commented that there should not be any significant practical difficulty in having to make good within the earnings period in order to avoid a Class 1 liability as employees are already required to do this.

2.11 Another respondent believed that this would not create difficulties, as the cost of the non-cash vouchers and credit tokens would need to be known to allow any reporting. The respondent said that if the value is known it is not unreasonable to expect the making good to happen in the same period.

2.12 The vast majority of respondents, however, said that there are practical difficulties in having to make good within the earnings period in order to avoid the NICs liability. Several respondents referred to the difficulties they highlighted in response to Question 1 and Question 2. Some respondents thought that introducing a date for making good after the end of the tax year would reduce the problem to some extent, as this would allow more time for employees to make good.

2.13 Some respondents queried why non-cash vouchers and the use of company credit cards for private costs are liable for Class 1 NICs. They encouraged the government to change the NICs treatment of these benefits so that they are subject to Class 1A instead, whilst aligning the deadline for P11D and NIC purposes to 6 July. The respondents' view was that this would ensure simplicity, consistency, clarity and reduced administration for employers, employees and HMRC.

## Government response

The government is aware of the concerns expressed by employers about the practical difficulties of accounting for NICs within the earnings period. This is referred to in *Employer Further Guide to PAYE and NICs*.<sup>2</sup>

The government is not, however, persuaded of the case for moving the NICs liability for non-cash vouchers and credit tokens from Class 1 to Class 1A. The Government believes it is right that cash, cash vouchers, credit tokens and non-cash vouchers are treated similarly for NICs to minimise any fiscal incentive for employers to provide non-cash earnings that could also adversely impact the contributory benefit and statutory payment rights of low paid workers.

There is currently no express provision in NICs legislation for making good and the government has no plans to change this.

A Class 1 NICs liability is applied to the payment of a non-cash voucher or use of a credit token only where there is no intention to seek reimbursement from the employee. HMRC's National Insurance Manual<sup>3</sup> sets out the conditions which must apply if there is to be no Class 1 NICs liability arising from company credit cards.

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<sup>2</sup> see paragraph 9 on page 20 of *Employer Further Guide to PAYE and NICs*:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/546053/CWG2\\_0816\\_\\_v1.0.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/546053/CWG2_0816__v1.0.pdf)

<sup>3</sup> see HMRC's National Insurance Manual note NIM02090: <https://www.gov.uk/hmrc-internal-manuals/national-insurance-manual/nim02090>



## 3. Next steps

### Implementation

3.1 The Government announced at Autumn Statement 2016 that the date for making good on benefits-in-kind would be 6 July following the end of the tax year. Legislation will be included in Finance Bill 2017. Comments are invited on draft legislation published on 5 December 2016. Guidance will be published in due course to assist employers in implementing and administering the changes.

3.2 Comments on the draft legislation should be sent to HMRC by e-mail to [employmentincome.policy@hmrc.gsi.gov.uk](mailto:employmentincome.policy@hmrc.gsi.gov.uk)

Alternatively, comments may be made by post to:

The Employment Income Policy team  
HM Revenue and Customs  
Room 1E/05  
100 Parliament Street  
London  
SW1A 2BQ

# Annexe A: List of stakeholders consulted

We are grateful to all those who took time to send written responses to the consultation, each of which has been carefully considered. Those who submitted written responses are as follows.

Armstrong Watson

Association of Accounting Technicians

Association of School and College Leaders

Association of Taxation Technicians

Bowmer and Kirkland Ltd (Holdings)

Chartered Institute of Payroll Professionals

Chartered Institute of Taxation

Deloitte LLP

Ernst & Young LLP

Federation of Small Businesses

Grant Thornton UK LLP

Hewlett-Packard Limited

Hitachi Capital (UK) PLC

Innovation LLP

Institute of Chartered Accountants in England and Wales

Interserve PLC

Kingston Smith LLP

KPMG LLP

Lookers PLC

Mazars LLP

McNicholas Construction Services Ltd

Muller UK and Ireland Group LLP

Olswang LLP

Payroll Alliance

PricewaterhouseCoopers LLP

Rentokil Initial 1927 PLC

Saint-Gobain Limited

Schenker Ltd

South Staffordshire PLC

The Miles Consultancy Limited

Try Lunn & Co

and one individual.

## Stakeholders who attended consultation meeting

We are also grateful to those who took time to attend a consultation meeting in September to give their views on the policy and raise their concerns. The following attended the meeting.

Institute of Chartered Accountants in England and Wales

Chartered Institute of Taxation

Mazars LLP