

Association of Accounting Technicians response to HMRC's consultation "Alignment of dates for 'making good' on benefits-in-kind"

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1. Introduction

- 1.1. The Association of Accounting Technicians (AAT) is pleased to have the opportunity to respond to the HMRC consultation document "Alignment of dates for 'making good' on benefits-in-kind" (condoc), released on 9 August 2016.
- 1.2. AAT is submitting this response on behalf of our membership and for the wider public benefit of achieving sound and effective administration of taxes.
- 1.3. AAT has added comment in order to add value or highlight aspects that need to be considered further.
- 1.4. AAT has focussed on the operational elements of the proposals and has provided opinion on the practicalities of implementing the measures outlined.
- 1.5. Furthermore, the comments reflect the potential impact that the proposed changes would have on SMEs and micro-entities, many of which employ AAT members or would be represented by our operationally skilled members in practice.

2. Executive summary and conclusions

- 2.1. The key point of this consultation is to assess the impact of aligning the dates by which benefits-in-kind can be "made good" by employees to the employer so that they can partially or fully discharge a charge to income tax at their marginal rate of tax, irrespective of whether the employer is payrolling the benefits or not.
- 2.2. The dates by which HMRC is now proposing benefits-in-kind should be made good are:
 - a) the end of the tax year in which the benefit is provided, for: employer-provided living accommodation; non-cash vouchers; private medical insurance; an employer meeting the employee's pecuniary liability; an in-house benefit; the loan of assets; and
 - b) 1 June following the tax year in which the benefit is provided, for: car and van fuel benefit; beneficial loans; credit tokens.
- 2.3. For those benefits which are to be repaid in full or in part by the end of the tax year, there will be few practical difficulties arising for employers (4.9-4.11, condoc).
- 2.4. In the case of those benefits which are to be repaid by 1 June, AAT concludes that there are potential difficulties with the repayment of loans especially with regard to removal and relocation and thus s.191 ITEPA¹ should not be abolished in order to allow tax relief to be claimed by those affected. However, there is still an absence of interaction between this legislation and s.455² (loans to participators) which will lead to an ongoing burden for employers (4.16-4.17, condoc).
- 2.5. Finally, AAT considers that the comments relating to the manipulation of the rules are overstated and recommends that further consideration should be given to the

¹ Income Tax (Earnings and Pensions) Act 2003

² S.455 Corporation Tax Act 2010

practicalities of payrolling benefits, such as living accommodation and beneficial loans, prior to introducing these new measures (3.12, below and 3.9-3.12, condoc).

3. AAT response to the consultation paper

- 3.1. The following paragraphs detail AAT's response to the proposals outlined in the consultation paper. Only those questions where AAT has a comment to make have been listed.

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.

- 3.2. There are no major practical difficulties in ensuring that employees have "made good" the value of the benefits-in-kind which are listed by the end of the tax year.
- 3.3. It is likely that many employers already calculate the value of the benefit to be repaid to the end of March rather than to 5 April. If such an approach is permitted then any balancing amount would become collectable from an employee via the subsequent April payroll run.
- 3.4. Adopting this common sense approach will avoid employers having to carry out unnecessary work to apportion the costs between payroll years.

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.

- 3.5. It is unlikely that significant difficulties will arise in any of these areas because employers will have had time to calculate the amounts due after the end of the tax year.
- 3.6. The item which may be likely to present the most difficulty is that of beneficial loans, because as well as calculating the loan for benefit-in-kind purposes, an employer may also need to pay corporation tax (s.455 tax on 'loans to participators') where such a loan is outstanding for more than 9 months after the end of the financial year.
- 3.7. While this imposes a dual administrative burden on an employer, this has been the case for a number of years. The change is simply that the date has been extended by approximately two months to 1 June. Therefore, no additional administrative burden will be placed on the employer in this regard.
- 3.8. Difficulties may arise in relation to loans provided in connection with a removal/relocation, especially if the event in question takes place at or towards the end of a tax year. This is because it could be difficult for an employer to collate full details and for the employee to be in a position to repay such a loan by 1 June (see also AAT's 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?

- 3.9. AAT considers that section 191 ITEPA should be allowed to stand as regards cases two and three³. The removing of this section of the Act would place such employees at a disadvantage.

³ <http://www.legislation.gov.uk/ukpga/2003/1/section/191>

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?

- 3.10. There should not be any significant practical difficulty in having to 'make good' the benefit within the earnings period in order to avoid a Class 1 NICs liability. Employees are already required to do this, so the only thing which has changed is the P11D reporting position.
- 3.11. Employers will be likely to benefit from the clarification of these rules.
- 3.12. AAT considers that comments relating to manipulation of the rules (3.9-3.12, condoc) and the term "final and conclusive" is not particularly clear in its meaning. In practice it is more likely that an employee would simply wish to pay the tax arising in respect of a benefit-in-kind rather than incur the whole cost of that benefit.
- 3.13. There are only limited occasions when an employee may wish to make good the whole cost of a benefit, for example:
- a) a benefit charge has been applied by HMRC during an employer compliance review to a disputed benefit such as a company car fuel scale charge, or
 - b) where an employee does not as a matter of principle wish to pay tax on an item deemed to be a benefit.
- 3.14. The instances of manipulation of benefit-in-kind rules are likely to be very rare indeed.

4. About AAT

- 4.1. AAT is a professional accountancy body with approximately 50,000 full and fellow members and 80,000 student and affiliate members worldwide. Of the full and fellow members, there are over 4,200 licensed accountants who provide accountancy and taxation services to individuals, not-for-profit organisations and the full range of business types.
- 4.2. AAT is a registered charity whose objectives are to advance public education and promote the study of the practice, theory and techniques of accountancy and the prevention of crime and promotion of the sound administration of the law.

5. Further information

If you have any questions or would like to discuss any of the points in more detail then please contact Aleem Islan, AAT Technical Consultation Manager, at:

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