



Association of Accounting Technicians response to the HMRC “Consultation on salary sacrifice for the provision of 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 on salary sacrifice for the provision of benefits in kind” (conduc), published on 10 August 2016.
- 1.2. AAT is submitting this response on behalf of our membership and from the perspective of wider public benefit.
- 1.3. AAT has added comment in order to add value or highlight aspects that it considers require further consideration.
- 1.4. AAT has focussed on the operational elements of the proposals and has provided opinion on the practicalities in implementing the measures outlined.
- 1.5. Furthermore, AAT’s comments within the body of this response document 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 AAT’s 4,200 licensed accountants.

2. Executive summary and conclusions

- 2.1. AAT members work with every type of employer, from the largest corporate bodies to single director, owner managed businesses. They are also influentially active in the public sector and with charity employers. As a consequence they are expected to have considerable expertise in all aspects of payroll provision, extending to implementing tax-efficient management of employee remuneration packages.
- 2.2. AAT does not support the approach being taken by the government and HMRC and AAT’s members are fully aware that the use of salary sacrifice processes to provide benefits in kind (BiKs) is not universally appreciated or understood by employers. Whilst this will produce some anomalies in tax treatments, AAT is unconvinced that the extent of this necessitates the proposals made in this consultation.
- 2.3. AAT shares HMRC’s concern about the aggressive promotion of salary sacrifice by some advisers, as shown in the introduction at paragraph 1.5 (conduc). AAT encourages members to use HMRC’s guidance¹ in the appropriate use of the scheme for those employers whose employment relations can be improved by implementing benefits in kind packages under salary sacrifice.
- 2.4. AAT is disappointed to find that virtually all salary sacrifice arrangements will lose their attractiveness for what, in the absence of any figures (1.7, conduc), appears to be a limited reduction in the purported income tax and national insurance contributions losses to the Treasury. It is made clear in a number of places² in the document that the use of salary sacrifice for the purposes of pension funding and provision of pensions advice, employer supported childcare arrangements and cycle to work schemes will be unaffected by the proposals and whilst this is welcome it should be noted that cycle to work schemes have limited appeal for both employees and employers, and employer

¹ <https://www.gov.uk/guidance/salary-sacrifice-and-the-effects-on-payee>

² In the “Scope of this consultation”, page 2, conduc

supported childcare is currently being phased out in favour of the tax-free childcare allowance.

- 2.5. This leaves pension funding and provision of pension advice as being the main benefits in kind which will continue to enjoy additional tax and national insurance savings from using salary sacrifice long term.
- 2.6. The inclusion of pensions advice would appear to conflict with the comments made in paragraph 1.10 of the introduction concerning the governments belief that BiKs, which are effectively being paid for by the employee through reduction in salary, should not enjoy additional savings in tax and national insurance.
- 2.7. AAT believes that the exclusion of health screening and a workplace gym facility from the list of benefits in kind which will continue to enjoy additional savings from the use of salary sacrifice is short sighted. These two, with greater use and with greater flexibility in terms of provision by employers would, in our view, have a much bigger effect on employees' health, and, consequently, a reduction in the reliance on the National Health Service than the cycle to work schemes ever could.
- 2.8. Generally, the main proposal of removing some of the income tax and national insurance benefits of salary sacrifice is in keeping with general tax policy.
- 2.9. As observed in the paragraph 1.3 (con doc) there are often distortions in the tax yield to the treasury as a consequence and of the remuneration levels between different employees. There is a real danger that unless employees fully understand the true effects of salary sacrifice they may not be aware that their rights to state benefits³ may be affected or that they are effectively paying for their own benefits (Introduction, paragraph 1.6).
- 2.10. It is pleasing to note that the government is going to leave certain benefits in kind untouched by the proposed changes. Allowing employers and employees to enter into an agreement which increases the amount of pension savings which can be achieved is to be welcomed, even if it does maintain a distortion of the pensions tax relief being given and which is also under review.
- 2.11. In summary, it would appear odd that cycle to work schemes, with their complex rules, are to be retained (2.4, above), despite the low take up and yet health benefits such as health screening and a workplace gym facility are being excluded (2.7, above).

3. AAT response to the HMRC "Consultation on Salary sacrifice for the provision of benefits in kind"

Observations not covered by questions 1 to 10

- 3.1. It is noted in the introduction (1.6, con doc) that employees are often unaware of the impact of salary sacrifice on statutory payments and some benefits. It would seem sensible that, in future, employees should not be permitted to enter into a salary sacrifice arrangement unless they are fully informed of the potential detrimental effects on their entitlement to certain state benefits.
- 3.2. It is acknowledged that the recent growth in the use of salary sacrifice has increased costs to the Exchequer due to the loss of tax and NICs. However, it could reasonably be argued that this growth is not because of employers attempts to limit the increased cost of employment taxes (e.g. employer's national insurance contributions). Instead, much of the growth has been down to employers attempting to improve the remuneration packages of their workforce whilst limiting the cost of implementation.

³ <https://www.gov.uk/guidance/salary-sacrifice-and-the-effects-on-payee>

- 3.3. At 1.9 (conduc) HMRC confirms the intention to allow salary sacrifice for pension savings, employer-supported childcare and the cycle to work schemes to remain unaffected by the proposals to restrict the tax advantages of salary sacrifice. It follows that if these three benefits in kind represent the majority of the salary sacrifice arrangements in place and attracts the most tax savings then these proposals, if implemented, may not result in a significant change to the cost to the Exchequer.
- 3.4. AAT is concerned that the example given in 2.2 (conduc) does not include reference to employees trading salary for additional annual paid leave or sick leave, and simply concentrates on the non-cash benefits of company car and private health provision. It is important to recognise the far ranging scope of flexible benefits packages in order to ensure that if perceived abuses are to be prevented in the future then this does not restrict access to other benefits, such as those mentioned above.
- 3.5. AAT hopes that where the conduc refers to "... exchange cash remuneration for one or more BiKs" (2.4, conduc) this will not include benefits which are not referred to in the benefits code.
- 3.6. It is disappointing to note that health related benefits in kind, other than cycle to work schemes, such as health screening and a workplace gym facility, are not to be included in the list of benefits which are unaffected by this consultation (3.4, conduc).
- 3.7. Given the lack of availability of credit to under 18's, the cycle to work scheme has limited appeal and use for employers and employees and often fails HMRC scrutiny. However, AAT believes that regular health screening and ready access to a workplace gym facility has much more general appeal, is not bound by such complex rules and can provide a much greater contribution to employee health than simply cycling alone.
- 3.8. It is considered that the provision of a workplace gym facilities has a wider appeal and as a result a place in workplace health. The corresponding cost to the Treasury is likely to be significantly less than the savings on health costs, even in the short term.
- 3.9. It is a concern that, in seeking to increase the tax take, savings to employer-supported childcare, which will no longer be available to new participants when the "tax free childcare allowance" is fully implemented, and cycle to work schemes which AAT suggests have very limited scope and appeal see paragraphs 3.7 and 3.8 (above).
- 3.10. The intention to block employees and employers national insurance contributions savings arising from using salary sacrifice to support charitable giving from payroll is noted with some concern (3,8, conduc). It will concern members and others in the charity sector who may view this as an important measure to boost payroll giving donations.

Question 1: Alongside annual leave, are there any other salary sacrifice arrangements that the government should be made aware of that do not strictly involve the receipt of a benefit?

- 3.11. AAT notes that the approach to "flexible benefits" varies enormously between employers with some offering a limited number of benefits within a remuneration package to extensive ranges of exchangeable facilities within a reward package.
- 3.12. Whilst it is clear that most of these remuneration packages involve the "trading" of salary for identifiable benefits in kind many involve the sort of "non-benefit in kind" benefits which should be unaffected by these proposals.
- 3.13. Alongside annual leave, employees in some reward schemes have access to additional sickness and other absences as part of the package, particularly where the basic allowance for sick leave is severely restricted, which is the case in most private sector businesses.

- 3.14. Many employers offer career and training opportunities through flexible benefits and access to greater work-life- balance adjustments to employees.
- 3.15. The government should continue to allow such adjustments within a total reward or flexible benefits package without being affected by the proposals in this condoc.

Question 2: What are the likely impacts on employers and employees of limiting the scope of BiKs that can obtain tax advantages when offered through salary sacrifice arrangements?

- 3.16. The main impact of the proposed change will be that a number of benefits and salary sacrifice arrangements will simply cease to exist as employers seek to limit the cost being imposed upon them.
- 3.17. Many salary sacrifice arrangements will have evolved from an existing package of benefits for employees and where the employer, in consultation with employees, will have subsequently altered the structure of the package to one of salary sacrifice. In such cases it is unlikely that the employer will withdraw all of the benefits in kind and simply accept the cost of doing so as an additional tax on employment.
- 3.18. Other schemes which have been set up under salary sacrifice from the start, possibly only set up because of the advantages of salary sacrifice, are likely to cease at the first opportunity. This is because when the very reason for the creation of the scheme is removed it also removes the incentive to have the scheme at all.
- 3.19. As far as employees are concerned it is very likely that many will have signed up to a salary sacrifice package because of the access to a benefit in kind whilst limiting the effects of income tax on that benefit. Remove the limiting effect of salary sacrifice and, unless the benefit in kind has become an integral part of that person's life, it will also remove the incentive to have the benefit at all.
- 3.20. The proposals are likely to have a dramatic effect on both the availability of benefits in kind from the employer, and from the point of view of the employee the appeal of having benefits in kind instead of cash.

Question 3: Are these impacts different, or are there different considerations, for large/small businesses or particular business sectors?

- 3.21. The approach to and application of salary sacrifice arrangements for benefits in kind is completely different, particularly for certain sectors and especially between large and small/micro businesses.
- 3.22. Small and micro businesses will be particularly badly hit by the proposed changes. The cost of the changes in rules will be disproportionately felt, as they do not benefit from the economies of scale available to larger businesses.
- 3.23. The financial services sector and some large retail businesses have long standing approaches to flexible benefits and often have similar long standing purchasing arrangements in respect of the benefits offered. These businesses are likely to find changing their existing arrangements difficult.

Question 4: Are the impacts different for particular BiKs?

- 3.24. While the effect on the majority of benefits will be identical, there is an anomaly to consider in respect of the same BiK being treated differently depending on whether it has been provided as part of a salary sacrifice arrangement or not.

- 3.25. In the example given in 3.14 (conduc), the figures show that the normally exempt BiK of parking at or near the place of work would not be entered on the P11D, as expected, if the BiK is provided in addition to the remuneration agreed. However, if the same BiK is provided as part of a salary sacrifice arrangement it would have to be reported on the P11D. This presumably means extensive amendments to the P11D process and reporting rules for something which has never been subject to reporting in the past.
- 3.26. The biggest problem will occur for those employers who use RTI to report BiKs under the payrolling authority introduced in April 2016. These employers will either have to withdraw from their payrolling arrangement until their software is able to provide a suitable facility, or simply withdraw the BiK completely.

Question 5: Do you think the government needs to take any steps to mitigate any negative consequences of this change for employees and employers, such as those who may be locked into salary sacrifice arrangements? If responding, it would be helpful to understand specific examples and factors the government should take into consideration.

- 3.27. This is one of the key areas for consideration as many employers and employees are locked into long term arrangements in response to the government and HMRC requirement that the necessary terms and conditions changes, which underpin a salary sacrifice arrangement, must be for a reasonable period of time. Whilst this period is not specified in law the general guidance given by HMRC is that the employment contract changes should be for at least a year in order to demonstrate that a proper salary sacrifice arrangement has occurred.
- 3.28. In addition to this, some employers may have long term agreements for the supply of mobile phones or local car parking arrangements or other tangible benefit in kind which is supplied under a sacrifice arrangement.
- 3.29. In order to counteract the above it is recommend that HMRC allow existing salary sacrifice income tax and national insurance savings to continue to apply for the entire period of a long term, locked-in agreement.

Question 6: Do you consider that the approach proposed for legislation would work as intended?

- 3.30. The proposed legislation from the perspective of AAT as a professional accountancy body is that the approach proposed for legislation would appear to work as intended.

Question 7: Are there any consequences the government has not considered in proposing to legislate in this way?

- 3.31. AAT has nothing to add to the comments in 3.30 above.

Question 8: Would this timeline present employers with difficulty, for example updating payroll software?

- 3.32. The software industry will experience significant problems meeting the proposed implementation of 6 April 2017 as significant software changes can take as much as 18 months to write, test and implement successfully.
- 3.33. Employers who continue to manage BiKs and salary sacrifice manually will have to work out the effects and enter any new details into their payroll systems.
- 3.34. In addition to the above the current P11D will need to be redesigned in order to allow for the reporting of benefits which previously would have been left off the report.

- 3.35. Employers who have already made the transition to payrolling BiKs will find the change much harder to implement as they need to work everything out in time for April 2017 even though the legislative authority to do so will not be in place until the 2017 Finance Bill is published. As a consequence it is entirely possible that a significant number of employers will withdraw from the payrolling process in the first year in order to operate a manual system then possibly return to payrolling from April 2018.
- 3.36. To avoid the above situation it is recommended that implementation be deferred until 6 April 2018. A one year delay will enable employers to make the required changes, such as cancelling long term contracts and introducing necessary changes to employee terms and conditions as well as ensuring software suppliers have sufficient time to code in the changes.

Question 9: Are there any other changes that employers would need to make?

- 3.37. As previously observed (3.36, above), employers will have considerable work to do examining terms and conditions of service, costing the changes in terms of the employers national insurance and possibly employers pension contributions, as well as making whatever adjustments are needed to ensure the changes are implemented and probably taking steps to limit the additional costs to their businesses.

Question 10: Are there any other compliance considerations which HMRC should be aware of?

- 3.38. HMRC should consider how they will approach situations where the salary sacrifice arrangement exists but is hidden behind a remuneration arrangement which is silent about salary reductions.
- 3.39. Most salary sacrifice arrangements are backed by changes to terms and conditions and a visible change in pay levels. There is a clear correlation between the reduction in remuneration and the value of the BiK or BiKs that will be enjoyed.
- 3.40. However, where there is no previous pay history, or where an increase has been awarded but is not implemented in order for a BiK can be awarded instead, it will be difficult, in fact nearly impossible to detect that the BiK should be subject to tax and Class 1A national insurance.
- 3.41. The effect of this will be to make it look as if the BiK is being awarded on top of the salary entitlement and hence retain the savings, when in fact it is being awarded under salary sacrifice.
- 3.42. In effect the salary sacrifice arrangement could go underground and remain undetected. In AAT's opinion there is little compliance work HMRC can do in such cases and we suspect that many employees and employers will seek to do this in order to retain the salary sacrifice benefits.

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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