

Association of Accounting Technicians response to HMRC's consultation "Simplifying the PAYE Settlement Agreement (PSA) process"

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1. Introduction

- 1.1. The Association of Accounting Technicians (AAT) is pleased to have the opportunity to respond to HMRC's consultation "Simplifying the PAYE Settlement Agreement (PSA) process", published 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 AAT's 4,200 licensed accountants. .

2. Executive summary

- 2.1. The consultation document asks for views on how the PSA system and process can be modernised and digitised to make things easier and more efficient for employers and aid HMRC to drive internal efficiencies (3.5, condoc).
- 2.2. AAT believes that this is a positive move but also considers that the PSA should be available to employers as a compliance mechanism and thus not be restrictive in nature by retaining the "irregular" and "impracticable" conditions. (2.3, condoc)
- 2.3. This, combined with the facility to process the return digitally and to pay it with other PAYE related items, will be likely to encourage compliance and encourage employers to pay the tax and NICs on items which they either cannot or do not wish to payroll or include on a P11D.
- 2.4. The facility to prepare a PSA and pay the associated liability with little manual intervention by HMRC will undoubtedly save time and reduce costs for employers and HMRC alike.
- 2.5. HMRC should not concern itself about possible manipulation of the PSA process by employers because PSAs are more expensive than providing the benefits themselves. As such it is unlikely to be a target area for manipulation by employers due to business and company legislation requirements and existing constraints on profit margins. (3.14, 3.18, 3.28, below)

3. AAT response to the consultation paper

3.1. The following paragraphs outline AAT's response to the proposals detailed in the consultation paper.

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

3.2. Removing the requirement to agree items will simplify the process for employers and as a result lead to a reduction in the administrative burden for employers and HMRC alike. As a result HMRC will be able to redeploy valuable staff resources that have previously been deployed in processing agreement applications.

3.3. Most employers should be able to undertake this simplified process for themselves and only those who choose to engage a third party to carry out the work will incur expenditure. As most employers return the same items on a PSA each year, the proposed changes will remove the need for engagement with HMRC as the employer could simply send in the figures and pay the bill.

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?

3.4. The only reason a formal PSA arrangement should be retained is to ensure employers understand the need to account for these benefits in kind (BIKs) in some way (i.e. either payroll them, enter them on to a P11D or execute a PSA). They are tax returns of one kind or another, and so it seems sensible for the procedure to remain formalised so that an audit trail can be maintained.

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

3.5. A digital return will prove to be a much easier and more convenient means of submission for employers who have access to suitable technology and who do not hold an exemption from making electronic PAYE returns.

3.6. Filing online will save time, be more environmentally friendly and through reduced human intervention be less labour intensive. The transmission of an almost-instantaneous receipt will afford a high degree of confidence that a document has been filed.

3.7. If PSAs are made available through the employer's online services or incorporated in payroll software (or both) it is likely that there will be less margin for error in terms of computing the liability and understanding which items can be included.

3.8. As previously observed, the introduction of a digital process will mean employers are likely to save time and cost as it is something they can do themselves rather than engaging an adviser (3.3, above), unless they choose otherwise.

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

3.9. It is accepted that the digital return is likely to reduce computational error rates.

3.10. It would be beneficial for employers if HMRC listed a number of standard qualifying benefits for which an employer could simply check a box to create a computation.

- 3.11. For non-standard items an employer could enter free form text accompanied by the figures required for calculation purposes. This would then be flagged up as a potential check point at HMRC to ensure that it is a qualifying benefit.

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

- 3.12. Aligning the date with the Class 1A NICs payment deadline would make perfect sense as it would reduce the scope for confusion. Employers would not forget to pay the liability by 19/22 October as it would be paid on the same day as the Class 1A NICs. Ideally the date at which the PSA is concluded would be 6 July to coincide with the date on which P11Ds must be submitted.
- 3.13. However, a better solution for employers would be to encourage employers to pay their PSA taxes when they are making an RTI submission for payroll. This would enable them to spread the cost over the year rather than face a lump sum payment in October of each year.

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

- 3.14. Warning employers over entering unacceptable items on PSAs and then issuing a penalty to employers who persist in accounting for items on a PSA is a sensible idea, provided that warnings are issued in good time (i.e. within say 8 weeks of HMRC's receipt of the return) and the penalty is proportionate to the perceived offence. After all, HMRC receives grossed up tax and Class 1B NICs as a result so there is no real loss to the exchequer.
- 3.15. The main objective should be to penalise employers whose sole aim is to engineer an enhanced entitlement to welfare benefits and the burden of proof would need to remain with HMRC in this regard. For all other employers, it should not be forgotten that the payment of a PSA is generally more expensive than alternative methods of taxing BIKs and it is highly unlikely an employer would wish to manipulate the PSA for an ulterior motive.
- 3.16. In addition to this, HMRC will need to consider how it intends to police this process fairly bearing in mind the emphasis on self-assessment and the reduction of checking procedures within HMRC.

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

- 3.17. AAT is optimistic that the new PSA process is likely to succeed in attracting more employers and encouraging more employers to voluntarily comply with the regulations. Currently, some employers are reluctant to declare items which have been discovered too late or which have been missed off a PSA because they fear it will spark an employer compliance review or at the very least a contract settlement resulting in interest and penalties.

viii. In light of the new trivial BiKs exemption, would the removal of 'minor' pose any problems for employers? Please provide reasons for your answer and examples of BiKs which this would cause difficulty for.

- 3.18. Accounting for a BiK through a PSA always incurs greater cost for an employer than just providing the benefit. The "minor" accreditation (4.6, condoc) is neither a sensible nor realistic description of why "minor" items are included in the PSA. It is widely accepted that the reason minor items are included is to restrict the type of benefits, not the amount, from PSA inclusion.

- 3.19. If something is “minor” it cannot be “major”, thereby excluding benefits such as company cars and ensuring the employees paid this tax via the P11D together with a Class 1A NICs charge by the employer. It is right to exempt items from PSA inclusion that fall into the category of “minor” bearing in mind the revised trivial benefits exemption criteria.

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

- 3.20. In general, items such as staff entertaining, gifts and items which cannot be easily divided amongst a group of employees can all be provided regularly and be impracticable too, depending on the nature and frequency of the policy of the business to make such gestures.

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

- 3.21. The criteria for considering whether something is “irregular” are too restrictive. If an employer wishes to pay the liability on, say, staff incentives or staff entertaining, then it does not matter how often this takes place provided that it achieves the desired business effect and the tax is paid.

- 3.22. In order to genuinely encourage compliance, the facility should be open for employers to declare and pay tax on items no matter how regularly they are offered to employees.

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

- 3.23. HMRC should encourage employers to pay or reward employees in any way they see fit, and provide a suitable mechanism for those employers to declare and pay the tax on them. If an employer wishes to bear the tax then the benefit should be eligible for declaration on a PSA so as to encourage compliance.

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

- 3.24. The definition of “irregular” should only apply to items which are in their nature not classified as pay or indeed classified as mainstream BIKs such as cars, living accommodation, private medical insurance or loans.

xiii. Do you agree that these rules provide clarity? Would their application pose any difficulties for employers?

- 3.25. There is still room for ambiguity within the current proposals as the three qualifying conditions promote debate and will continue to do so if left in place.

xiv. Are there any other types of ‘impracticability’ which the government should consider?

- 3.26. The three conditions impose restrictions on the type of benefits within scope of a PSA and are not fit for the modern workplace, where new and different methods of paying are being regularly adopted. To reflect this, a facility should exist for all employers to pay tax and NICs on any item which is paid to an employee. Failure to make this possible leaves an opportunity for tax avoidance and non-compliance.

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

- 3.27. The government should not consider an exemption or cap for office-holders because employers are generally not in the business of paying office-holders purely in PSA-qualifying BIKs with no remuneration to accompany the benefits. HMRC would be

receiving grossed up tax and Class 1B NICs on the payments so there would be no loss to the Exchequer.

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

- 3.28. As stated in our response to question vi. above, AAT considers that abuse of PSAs is unlikely by the majority of employers due to the costs involved and as such, no further safeguards are necessary.
- 3.29. Most employers balance commerciality with the provision of benefits to employees and there is often a need to consider why an employer is providing a benefit. Sometimes the benefits are provided as retention and motivational tools and therefore are not necessarily provided to avoid a personal tax or NICs liability on the part of the employee.

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.

- 3.30. AAT's responses to the above questions cover this and are therefore not repeated here.

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:

E-mail: consultation@aat.org.uk Telephone: 020 7397 3088

Association of Accounting Technicians
140 Aldersgate Street
London
EC1A 4HY