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TAX INCENTIVES FOR OCCUPATIONAL HEALTH

Response by Association of Taxation Technicians

1 Introduction

- 1.1 The Association of Taxation Technicians (ATT) is pleased to have the opportunity to respond to the joint HMT-HMRC consultation on *Tax incentives for occupational health* ('the Consultation') published on 20 July 2023¹.
- 1.2 The primary charitable objective of the ATT is to promote education and the study of tax administration and practice. We place a strong emphasis on the practicalities of the tax system. Our work in this area draws heavily on the experience of our members who assist thousands of businesses and individuals to comply with their taxation obligations. This response is written with that background.
- 1.3 In summary, we support the Consultation's proposal to extend the current benefit in kind exemptions to cover a wider range of occupational health costs. In particular, as set out at 3.2 below we welcome the proposed exemption for employer reimbursed flu vaccination costs. The current system – in which employer provided vaccines or vouchers are exempt but reimbursing an employee leads to a tax charge – is counter intuitive. Removing this discrepancy could drive greater uptake of vaccines, with benefits to employees, employers and the wider economy. As set out at 3.6, consideration should also be given to extending the current exemption for employer provided eye tests, glasses and contact lenses to include reimbursement.
- 1.4 We have responded to certain specific questions posed by the Consultation in Sections 2 to 5 below. We have not responded to all questions in the Consultation, instead focusing on those areas where we have received specific feedback from our members.
- 1.5 We would be pleased to discuss any aspect of this submission further. Relevant contact details are in Section 6.

2 Chapter 2: The case for action

Question 5: To what extent does the tax treatment of OH services affect the decisions employers make on whether to provide OH services and what to provide as a part of them? For example, would an employer be more likely to offer a treatment that is exempt than one that is not, and to what extent is that decision influenced by the tax treatment?

¹ <https://www.gov.uk/government/consultations/joint-hmt-hmrc-consultation-on-tax-incentives-for-occupational-health>

- 2.1 In our experience, whether or not a treatment is exempt does significantly affect employer decisions on provision. If a treatment is provided which is not exempt, employers will tend to include its cost within a PAYE Settlement Agreement (PSA), which increases the cost of provision to the employer. There are therefore real costs to employers of providing non-exempt treatments or benefits, which they need to weigh against the benefits to their workforce and business.

Question 6: Small and Medium Enterprises are significantly less likely to offer OH services. Why is this? Are there other characteristics of employers that tend them towards offering less or more OH services?

- 2.2 There are a range of reasons. However, one of the main reasons is likely to be cost. Accessibility can also be an issue, as some programmes are only available, or cost effective, if a minimum number of employees can be signed up.

3 Chapter 3: Scope

Question 7: How would any of the proposed additional treatments listed above enable you to support increased OH provision and improve workforce participation? Do you have any other comments on these proposals? If so, please comment on each in turn.

- 3.1 The Consultation proposes that employment tax relief could be provided for the following additional costs:
- Health screenings for employees, within a specific pre-defined limit.
 - Medical check-ups for employees, within a specific pre-defined limit.
 - Treatments that aim to reduce workplace absence or enable employees to perform better, including preventative treatments.
 - Flu vaccinations, where paid for by the employee and later reimbursed by the employer.
- 3.2 We would welcome extending tax relief to any of these costs. In particular, we welcome the inclusion of flu vaccine reimbursement, something which the ATT and other professional bodies have been asking HMRC to consider for some time.
- 3.3 HMRC's current view is that, where an employer reimburses an employee for an expense the employee has incurred on their own account, this cannot qualify as a trivial benefit under s323A ITEPA 2003. As a result, whilst flu vaccine vouchers (using a third-party scheme provider) given to employees can qualify as a trivial benefit, directly reimbursing an employee who has paid for their own vaccine results in a taxable benefit. This causes practical problems for employers who wish to provide flu vaccines, as vouchers are not always the right answer - some schemes require a minimum number of employees or are closed to new entrants, and not all employees can access the same provider because for example they work remotely or are not near the applicable chain of pharmacies.
- 3.4 This discrepancy in treatment between vouchers and reimbursement makes little sense from a policy perspective. Especially as the tax yield from taxing reimbursements is likely to be small versus the economic costs of employees taking time off with flu, and the costs to the NHS should an employee suffer from severe flu.

Question 8: For each of the categories of treatments that are currently available, is the existing definition appropriate and does it support OH provision or does it create issues?

3.5 Medical check-ups

Consideration should be given to extending the definition of check-ups to include 15 minute private GP/nurse appointments. We appreciate there are wider NHS provision arguments which could prevent legislating in this area, but the guidance could be updated.

3.6 Eye tests and glasses or contact lenses

As noted on page 13 of the Consultation, a specific benefit in kind exemption exists to cover eye tests, glasses and contacts lenses for employees using VDU equipment. However, HMRC's position is that this exemption only applies where the employer directly provides these. As set out in their Employment Income Manual², HMRC's view is that where the cost of an eyesight test, glasses or contact lenses is reimbursed to the employee, a taxable benefit arises even if all of the other conditions for exemption are met.

3.7 We do not consider this to be reasonable. The same arguments for allowing reimbursement of flu vaccinations to be exempt (see 3.3 above) apply here. In addition, by reimbursing the employee, the employer is meeting an obligation under the Health and Safety at Work regulations, and applying a tax charge seems unjust. We would therefore strongly recommend that this exemption be extended to cover reimbursement of qualifying eye tests, glasses and contact lenses purchased by employees.

Question 9: Are there are other costs that should be in scope, and how would they help achieve our goal of improved OH provision and greater labour market participation?

3.8 COVID tests are no longer routinely provided by the NHS, and vaccinations are only available to a small section of the population. As a result, employers may wish to provide employees with COVID tests and/or help with the cost of private vaccinations (where available) to reduce workplace outbreaks and absences. Consideration should be given to introducing a specific exemption for the costs of COVID testing and vaccination provided by employers directly, or reimbursed to employees.

3.9 Providing treatments such as staff massages or physiotherapy may be tax free if they relate to a condition that has arisen solely from the employee's job. However, posture related health issues are an occupational health matter, and consideration should be given to widening this to include preventative treatment.

Question 10: Do you have any views on the drawbacks of expanding BIK reliefs?

3.10 Expanding tax reliefs always comes with a risk of increased Exchequer costs and the potential for abuse. However, we think that these drawbacks can be managed if exemptions are tightly drawn and come with sensible compliance measures. For example, for tax free reimbursement, and employee could be asked to provide evidence that they have paid for a flu vaccine or eye test.

² [EIM21765 - Particular benefits: cost of periodic health screening and medical check-ups, and eye tests - HMRC internal manual - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/eim21765-particular-benefits-cost-of-periodic-health-screening-and-medical-check-ups-and-eye-tests-hmrc-internal-manual)

Question 11: Do you see a case for any of the above costs being in scope of additional tax relief under the BiK exemption? If so, please discuss why, and how this would help achieve the government’s objective of increasing employer provision of OH services and labour market participation.

3.11 The Consultation proposes that the following costs would be out of scope of additional tax relief:

- Private medical insurance for employees.
- Non-clinical treatments, such as wellness retreats, fitness classes, or gym memberships.
- Wages for OH staff employed by the business.
- Consulting costs, for example relating to the development of a business’ OH strategy.
- Costs relating to family members of employees.
- Costs relating to persons that are not employees.

We believe that the majority of these exclusions are reasonable, subject to our comments below.

3.12 Consideration should be given to allowing fitness classes provided onsite by employers to qualify for exemption. Fitness classes, especially those which aim to improve posture or joint and spinal health have a role to play in improving staff welfare and reducing long term absence, as well as improving mental well-being.

3.13 An exemption already exists in s262 ITEPA 2003 for ‘qualifying sports or recreational facilities’. However, members have reported that HMRC have challenged the use of this for onsite exercise or fitness classes in the past.

3.14 We note that HMRC’s Business Income Manual at BIM47060 (‘Purchase of occupational health support – summary’)³ links to a now archived help sheet on the Health and Safety Executive website⁴. Under ‘recreational and sporting facilities’ this help sheet stated that:

“Employee-only gymnasiums, sports fields, exercise classes and other recreational facilities available to employees generally are also exempt (but not the cost of subscriptions to gyms or facilities which are open to the public).”

It therefore appears that the Government previously accepted that exemption should extend to onsite provided exercise classes. It is unclear why this position has changed.

4 Chapter 4: Alternative tax incentives

Question 12: Are there alternative tax incentives that you think would be more effective in incentivising employers to invest in OH services for employees? If so, please explain why.

4.1 The Consultation proposes that one alternative tax incentive could be to provide employers with a super-deduction on certain OH costs. We can see the attraction of this option in terms of delivering tax benefits to employers and it could be welcomed by SMEs in particular. However, we are not in favour of this option as it is likely to be overly complex, and could be open to abuse.

³ <https://www.gov.uk/hmrc-internal-manuals/business-income-manual/bim47060>

⁴ <https://webarchive.nationalarchives.gov.uk/ukgwa/20060703130729/http://www.hse.gov.uk/pubns/taxrules.pdf>

Question 13: Are there particular tax incentives that would be better suited to helping small and/or medium sized businesses invest in OH services?

- 4.2 We believe that the benefit in kind exemptions discussed above are a sensible way to help SMEs invest in OH services, whilst avoiding unnecessary complications. Beyond that, it may be more efficient to provide support and funding for OH services directly than consider further tax incentives.

5 Impacts

Question 15: Do you have any comments on the government's expectations regarding Exchequer impacts?

- 5.1 The Consultation estimates that changes to the existing benefit in kind rules could cost tens of millions over the next five years. However, this needs to be set against the potential benefits of increasing welfare and well-being in the work force as well as the NHS savings of reducing long term health problems.
- 5.2 Allowing reimbursement of flu vaccinations to be tax free is unlikely to result in material costs to the Exchequer. The cost of vaccination is relatively low (£12 at certain supermarkets), and we suspect many employers are already incorrectly treating reimbursement as exempt as they are not aware of the current, counterintuitive policy. As discussed above at 3.4 the cost to the Exchequer of treating severe flu could also easily outweigh the tax yield foregone.

Question 22: Do you have views on how best to minimise the administrative burdens for businesses, as a result of new OH tax incentives?

- 5.3 We would not expect broadening the benefit in kind exemptions as proposed to bring significant additional administrative burdens for employers. As discussed above, for reimbursement of flu vaccine or eye care costs we would expect employees to provide some proof of purchase. However, employers will already have systems in place for this and employees will be familiar with the concept from making claims for other reimbursed costs (such as business travel).

Question 23: Do you have views on how best to minimise the complexity associated with new OH tax incentives?

- 5.4 The best way to minimise complexity is to have straight forward, clear exemptions with few exceptions to the rules. These should be accompanied by clear and user-friendly guidance for employers and employees. Expanding exemptions which employers are already familiar with is likely to be easier for employers to understand than introducing new measures such as a super-deduction.

6 Contact details

- 6.1 We would be pleased to join in any discussion relating to this consultation. Should you wish to discuss any aspect of this response, please contact our relevant Technical Officer, Emma Rawson on 07773 087111 or erawson@att.org.uk.

The Association of Taxation Technicians

7 Note

7.1 The Association is a charity and the leading professional body for those providing UK tax compliance services. Our primary charitable objective is to promote education and the study of tax administration and practice. One of our key aims is to provide an appropriate qualification for individuals who undertake tax compliance work. Drawing on our members' practical experience and knowledge, we contribute to consultations on the development of the UK tax system and seek to ensure that, for the general public, it is workable and as fair as possible.

Our members are qualified by examination and practical experience. They commit to the highest standards of professional conduct and ensure that their tax knowledge is constantly kept up to date. Members may be found in private practice, commerce and industry, government and academia.

The Association has more than 9,500 members and Fellows together with over 5,000 students. Members and Fellows use the practising title of 'Taxation Technician' or 'Taxation Technician (Fellow)' and the designatory letters 'ATT' and 'ATT (Fellow)' respectively.