



# TAXATION OF EMPLOYEE EXPENSES CALL FOR EVIDENCE

## Response by the Association of Taxation Technicians

### 1 Introduction

- 1.1 The Association of Taxation Technicians (ATT) is pleased to have the opportunity to respond to the call for evidence *Taxation of Employee Expenses Call for Evidence* (the call for evidence) that was originally published by HMT on 20 March and updated on 5 May 2017<sup>1</sup>.
- 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 section 2 of this response, we explain how we approached the call for evidence on the specific questions posed by HMT.
- 1.4 In section 3 of this response we comment on the observation in section 1.1 of the call for evidence that:
- ‘The tax relief on expenses which employers do not reimburse and employees then claim from HMRC costs the Exchequer £800 million per year, and there has been a 25% increase in claims between 2009-10 and 2014-15.’
- 1.5 In section 4 of this response, we identify additional issues which we think it would be appropriate to consider as part of the wider review by HMT/ HMRC of the taxation treatment of employee expenses.

### 2 Our Approach in Responding to the Call for Evidence

- 2.1 ATT and the Chartered Institute of Taxation (CIOT) jointly invited members to respond to a survey comprising the questions posed by the call for evidence. Some 600 responses were received. Approximately half of the responses came from ATT members or individuals who are members of both CIOT and ATT.

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<sup>1</sup> The HMT call for evidence can be found at: <https://www.gov.uk/government/consultations/taxation-of-employee-expenses-call-for-evidence/taxation-of-employee-expenses-call-for-evidence>

- 2.2 A summary of the results of our joint survey is attached as an Appendix to this response. For the full survey results, including responses from individual members, please refer to the response from the CIOT.

### 3 Observations on Cost to Exchequer

- 3.1 As noted in section 1.4 above, the call for evidence states that the cost of tax relief for unreimbursed expenses has increased to an annual level of £800m. In our view, referencing this as the *cost* figure could be misleading as it only reflects part of the equation.
- 3.2 If the employer fully reimburses the employee's cost, then it is a deductible expense in the employer's accounts, reducing their tax bill. This cost is not easily identifiable in the information supplied to HMRC. If, on the other hand, the employer does not reimburse the employee's cost, the employee can claim tax relief at their marginal rate of Income Tax from HMRC. (No refund of Class 1 National Insurance is available). Tax relief is given in some form either way. Our point is that the £800m figure does not reflect the complete picture and any attempt to discourage any further increase in the level of employee expense claims to HMRC might not increase revenue to HMT in the manner anticipated.
- 3.3 It would also be helpful to set the £800m in a wider context. The call for evidence states that claims have increased by 25% since 2009-10, but it would be useful to know for example how this compares to increases in payroll tax receipts in the same period.
- 3.4 Setting aside the actual cost figure, our members have identified the following reasons for an increase in claims for unreimbursed expenses:
- 3.4.1 Both public and private sector employers have experienced economic constraints over recent years. Employers may therefore be choosing to manage costs by restricting employee reimbursements - with the result that employees then seek tax relief from HMRC on their unreimbursed expenses.
- 3.4.2 Employees are now more aware that they can make claims for unreimbursed expenses. Professional bodies and unions often provide guidance and encourage their members to claim relief for subscriptions and flat rate expense allowances. There is also more information online, with some agents specialising in employee expense claims.
- 3.4.3 As more employed people have been brought into self-assessment because of, for example, the High Income Child Benefit Tax Charge, they may be prompted to consider their entitlement to relief on unreimbursed expenses or perhaps find the process of claiming via self-assessment simpler than making a standalone claim.
- 3.4.4 As company cars have become less tax-efficient and employees increasingly use private vehicles instead, this will have increased mileage claims for use of employees' cars.

3.5 The ATT welcomes the assurance in section 1.1 of the call for evidence that:

‘The Government has no plans to remove the relief on employee expenses.’

We would be very concerned if the Government’s review was seen as an opportunity to introduce any restriction on employees’ entitlements to tax relief on expenditure which currently qualifies for deduction. We think that any such attempt would be characterised in the media as a *stealth tax*.

It is imperative that employees are entitled to obtain full tax relief for costs which they have been obliged to incur in performing their duties. Where such expenses are not reimbursed (or not fully reimbursed) by the employer, the facility for the employee to claim tax relief from HMRC on the unreimbursed element is essential. The employee has incurred an expense. Unless there is a concern that tax relief is being given (whether to the employer or the employee) in respect of expenditure which does not meet the relevant statutory conditions, the *cost* to the Exchequer, however measured, is a direct and intended consequence of those statutory provisions.

We think that the focus by HMT/HMRC should be on ensuring that all employees (and particularly those on lower pay) have easy access to clear and appropriate official guidance in respect of tax-deductible expenses in general and as simple and straightforward a claim process as possible in respect of unreimbursed expenses.

#### 4 Additional Issues to Consider as Part of a Wider Review

##### *Impact on National Minimum/Living Wage (minimum wage)*

4.1 As a broader matter of policy, HMT may wish to consider if it is always reasonable for employers to choose not to reimburse legitimate business costs. There is an argument that for the lower paid, the employee is likely to be meeting the whole of tax-deductible expenses out of their earnings (either because the individual does not pay tax as their earnings are under the personal allowance or because no claim for relief is made). In that situation, such costs could effectively take an employee’s pay below the minimum wage. This could be relevant for domiciliary care workers for example. Employers already have to take care that the minimum wage is met when accommodation is provided and/or deductions for that accommodation are made.

##### *Public Sector Bodies*

4.2 While HMRC sets approved Mileage Allowance Payment (MAP) limits for business mileage which can be reimbursed tax-free, other public sector bodies (PSBs) may set their own rates. Employees reimbursed at more than the approved MAP are in receipt of a benefit which must be reported on a P11D or taxed via their payroll, while those reimbursed at less than the MAP should seek tax relief from HMRC.

- 4.3 NHS staff on the *Agenda for Change* pay scale<sup>2</sup> are one example. An NHS employee doing 3,000 business miles is paid 56p/mile – generating a benefit in kind of £330 which needs to be reported and taxed. Conversely an NHS employee doing 10,000 business miles is paid over the MAP rate for the first 3,500 miles then under it for the next 6,500. The result is they are reimbursed £1,240 less than the MAP rate overall and would need to seek tax relief from HMRC. In both cases, additional administration for the NHS and HMRC is generated because the NHS has departed from the HMRC approved rates.

#### *Other Matters*

- 4.4 Individual members also drew attention to three specific areas where there are unsatisfactory features in the expenses system:

#### *Haulage industry – overnight expenses*

- 4.4.1 In April 2017, HMRC added additional burdens to a long standing simplification for overnight subsistence allowances available in the haulage industry. Prior to that date, employers could pay fixed rates to drivers staying overnight in a sleeper cab without tax implications subject only to proof that an overnight stay had occurred. The payment was to cover food, phone and laundry costs. HMRC is now requiring that employers enter a bespoke agreement if they wish to continue making tax-free payments and carry out sample checks to show evidence of costs actually incurred. This undermines the benefit of a practical simplification which had been in place for over 20 years.

#### *Relief for purchases of equipment and related interest*

- 4.4.2 It is common in skilled trades for employees to purchase and provide their own equipment for use in their employment. Two points arise in this connection:
- 4.4.2.1. If an employee is obliged to purchase such equipment, they are entitled to claim capital allowances. Section 9 of HMRC's main online guidance<sup>3</sup> refers to entitlement to the annual investment allowance but the link then provided is to a page on GOV.UK which is written primarily in relation to capital expenditure by a business rather than by an employee. It would be helpful if employee-specific guidance was provided. In passing, we note that, consistent with the treatment of such expenditure by an unincorporated business that has elected for the cash basis, consideration might be given to a parallel treatment in respect of such eligible expenditure by an employee.
- 4.4.2.2. If an employee needs to take out a loan for the purchase of such equipment the interest on that loan is a deductible expense. However that is not immediately apparent from in HMRC's main online guidance on tax reliefs for employees<sup>4</sup>, the P87 claim form or the *Employment pages* of the self-assessment return. Guidance on interest relief is given

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<sup>2</sup> <http://www.nhsemployers.org/your-workforce/pay-and-reward/agenda-for-change/nhs-terms-and-conditions-of-service-handbook/mileage-allowances>

<sup>3</sup> <https://www.gov.uk/tax-relief-for-employees/how-to-claim>

<sup>4</sup> <https://www.gov.uk/tax-relief-for-employees>

elsewhere in leaflet HS340<sup>5</sup>, which applies to interest claims generally and accordingly and indicates that relief has to be claimed separately on the *Additional Information* pages of the self-assessment return. It would be helpful for employees who incur such employment related expenditure if guidance for relief on equipment purchases could include reference to relief for interest, and if it was made clear that interest relief claims could be made on the P87 for those not otherwise required to submit a self-assessment tax return.

#### *Railcards and travel cards reimbursed by an employer*

- 4.4.3 The treatment of railcards and travel cards could be simplified or better explained in guidance where the benefit to the employee is incidental to the achievement of a saving for the employer in reimbursed travel costs. At present according to HMRC guidance<sup>6</sup> in relation to travel cards, it is necessary to demonstrate that costs saved on business travel exceed the cost of the travel card so a benefit in kind does not arise on any personal use.
- 4.4.4 HMRC guidance appears to be silent on railcards (as distinct from travel cards). Given that nationally available railcards (such as the Senior Railcard) have an annual cost of £30, there appears to be a strong case for providing an exemption from tax provided that any benefit actually enjoyed by the employee is incidental to the achievement of a cost saving to the employer of more than the cost of the railcard. One of our members (who is a part-time fee-paid tribunal member) has provided evidence that the Ministry of Justice (MoJ) recommends members of the judiciary to purchase railcards (where they meet the qualifying conditions) in order to reduce the cost to the Exchequer of travel on MoJ business, reimburses the costs of such cards, advises the members that the resulting benefit is taxable but then makes no attempt to either apply PAYE or issue forms P11D for the benefits involved. Members are then left to self-declare the railcard benefit received and consider whether (and if so how) they should calculate their claim for a deductible expense of some fraction of £30. In practice, we would not expect many such claims to be made. We think that it would be worthwhile investigating whether there are similar scenarios of potential incidental benefit where some simplification could be introduced in order to reduce administration costs (to HMRC and employers) with little or no cost to the Exchequer.

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<sup>5</sup> <https://www.gov.uk/government/publications/interest-and-alternative-finance-payments-eligible-for-relief-on-qualifying-loans-and-alternative-finance-arrangements-hs340-self-assessment-helpsheet/hs340-interest-and-alternative-finance-payments-eligible-for-relief-on-qualifying-loans-and-alternative-finance-arrangements-2015>

<sup>6</sup> <https://www.gov.uk/hmrc-internal-manuals/employment-income-manual/eim16066>

## 5 Contact details

- 5.1 We would be pleased to join in any discussion related to this call for evidence. Should you wish to discuss any aspect of this response, please contact our relevant Technical Officer, Helen Thornley, on 07773 087125 or at [hthornley@att.org.uk](mailto:hthornley@att.org.uk).

Yours sincerely

Michael Steed

Co-Chair of ATT Technical Steering Group

## 6 Note

- 6.1 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 over 8,000 members and Fellows together with over 5,700 students. Members and Fellows use the practising title of 'Taxation Technician' or 'Taxation Technician (Fellow)' and the designatory letters 'ATT' and 'ATT (Fellow)' respectively.