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Employment Taxes and Pensions Tax Regime

Spring Budget 2023 representation by the Chartered Institute of Taxation

1 Executive Summary

1.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the UK for advisers dealing with all aspects of taxation. We are a charity and our primary purpose is to promote education in taxation with a key aim of achieving a more efficient and less complex tax system for all. We draw on the experience of our 19,000 members, and extensive volunteer network, in providing our response.

1.2 Our stated objectives for the tax system include:

- A legislative process that translates policy intentions into statute accurately and effectively, without unintended consequences.
- Greater simplicity and clarity, so people can understand how much tax they should be paying and why.
- Greater certainty, so businesses and individuals can plan ahead with confidence.
- A fair balance between the powers of tax collectors and the rights of taxpayers (both represented and unrepresented).
- Responsive and competent tax administration, with a minimum of bureaucracy.

1.3 We set out below our suggestions for the upcoming Budget in respect of employment taxes and the pensions tax regime. Our suggestions fall into three categories:

- Cost of living;
- Employment taxes simplification; and
- Pensions tax regime simplification.

1.4 We note that a number of our recommendations have also been made by the Office of Tax Simplification (OTS) in its final report reviewing hybrid and distance working[1] and hope that the government will take forward many of the suggestions in that report as part of the process of embedding simplification as part of forming tax policy.

1.5 Our recommendations are designed to make it easier for employers to concentrate on their businesses, boost productivity, open up employment opportunities to all, while reducing administrative burdens and costs for both employers and HMRC.

2 Recommendations

Cost of living

2.1 *Fixed allowances and deductions*

The government should review fixed allowances and flat rate deductions contained in the Income Tax (Earnings and Pensions) Act 2003, and related legislation and guidance, with a view to uprating these figures in line with inflation and current market rates. By way of example, a number of specific allowances and deductions are discussed below at paragraphs 2.2 to 2.8.

2.2 *Homeworker's additional household expenses*

The tax-free allowance an employer can make to an employee should be increased to reflect the increased utility costs households now incur. The rate should also be changed from a weekly rate to a daily rate to better reflect differing numbers of days working from home. For example, perhaps increasing from £6 per week to around £2-3 per day (capped to £10-15 per week).

2.3 *Authorised Mileage Allowance Payments (AMAPs)*

The AMAP regime should be reviewed to determine whether it remains fair and meets its policy objectives. In the meantime, the rates should be increased to reflect increased fuel and running costs for vehicles. For example, consideration could be given to introducing a new rate of, say, around 55-65p per mile for, say, the first 5,000 miles per annum of business travel where an employee has to use their own car for work.

2.4 *Flat rate expenses deductions*

The government should increase industry flat rate expenses deductions for tools and special clothing in line with inflation to ensure that they remain relevant and reflective of the current costs some employees are required to incur at their own expense. Consideration should also be given to consulting on how these rates should be amended in the future.

2.5 *Meals and subsistence*

HMRC should review and increase in line with inflation the benchmark flat rates for reimbursement of meals and subsistence incurred in the UK that employers can use without needing HMRC's prior approval.

2.6 *Trivial benefits exemption*

[1] OTS report on hybrid and distance working - GOV.UK (www.gov.uk)

The exemption should be reviewed and increased in line with inflation from its current threshold of £50.

2.7 *Annual parties and functions exemption*

The limit of £150 should be reviewed and increased in line with inflation.

2.8 *Removal benefits and expenses exemption*

The limit of £8,000 on the relocation benefits and expenses exemption should be reviewed and increased in line with inflation.

Employment taxes simplification

2.9 *Use of room at home for work – unreimbursed costs*

To simplify claims for expenses deductions a flat-rate deduction should be permitted when an employee works from home where the employer does not reimburse the additional household expenses the employee incurs (or only partly reimburses the extra costs). Additionally, the strict rules to qualify for a deduction for working from home should be relaxed to include any case where an employer and employee agree that the employee can work from home.

2.10 *Employer paid versus employer reimbursed benefits*

The distinction between employer provided/employer paid and employer reimbursed benefits should be removed from the tax code[2]. Whether a benefit-in-kind or expense is taxable or tax exempt should be determined by the nature of that benefit or expense and not whether the employer directly incurs the cost or reimburses an expense the employee has incurred. A number of specific examples of this difference are discussed below at paragraphs 2.11, 2.12, 2.14 and 2.15.

2.11 *Trivial benefits exemption*

The trivial benefits exemption should be amended so that employer reimbursements are accorded the same tax treatment as directly provided employer benefits.

2.12 *Equipment and employer reimbursements*

It is often administratively less burdensome for an employee that works from home to purchase the equipment they require to work from home. An exemption should be (re-)introduced to enable employers to reimburse employees for equipment costs the employees have directly incurred where that equipment is necessary for the employee to perform the duties of the employment.

2.13 *Equipment and tax treatment when employee leaves*

The tax treatment of equipment retained by employees working from home after leaving employment should be reviewed. In particular, so that either no benefit-in-kind arises where an employer does not recover equipment it cannot use from an employee when the employee leaves or, at least, the cost to the employer that would be incurred in recovering the equipment should be deducted when determining the market value under the transfer of used asset rules.

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[2] This suggestion is also made by the OTS at paragraph 1.55+ of its final report – see [OTS report on hybrid and distance working - GOV.UK (www.gov.uk)]

2.14 *Vaccination costs (eg flu vouchers)*

A specific exemption should be introduced to exempt from the benefits-in-kind regime the payment of, or reimbursement of, any costs an employer incurs in respect of approved vaccinations. For example, flu jabs.

2.15 *Eye tests and special corrective appliances*

The benefits-in-kind exemption for the provision by an employer to an employee of eye/eyesight tests, or special corrective appliances that such a test shows are necessary, should be amended to also exempt the reimbursement by an employer of the costs of the test or appliances that the employee has directly incurred.

2.16 *Qualifying childcare vouchers*

The scheme under which the provision of employer-supported childcare vouchers or employer-contracted childcare should be re-opened to new joiners.

2.17 *Travel rules*

The business travel rules where an employee works from home (either full or part-time) and occasionally travels to their employer's premises should be reviewed and clarified.

2.18 *Company electric vehicles - recharging reimbursement of home electricity cost*

We consider that HMRC's guidance in relation to cases where an employer reimburses an employee the costs incurred on home electricity used to recharge their electric company car is incorrect. In particular, that ITEPA 2003, section 239(2), which exempts expenses incurred in connection with a company car, applies in this respect. Just as section 239(4) applies to exempt *(inter alia)* employer provision of electricity per se used to recharge a company car, and which HMRC accept. We believe that HMRC's guidance should be updated accordingly.

2.19 *Company electric vehicles - reimbursement rates*

We think that HMRC's guidance should be clarified to explain more clearly the basis on which employees can use actual costs, rather than the Advisory Electric Rate (AER) (currently 8ppm), to determine the amount that an employer may reimburse in relation to business mileage travelled in an electric company car.

2.20 *Employment status codification and simplification*

The government should consult on clarifying when a worker is within scope of PAYE for employment status purposes. In particular, we suggest recommencing work on codifying what is meant by an employee for tax purposes (and to cover both direct engagement and IR35/Off-Payroll Working cases).

2.21 *Exemption of work-related training and apprenticeship levy funds*

While there is a general exemption from taxing as earnings any work-related training provided by an employer we think consideration could be given to either providing a tax incentive for recruiting and training special classes of employee – for example, the over 50s or those returning to work after an extended period of ill health – or permitting apprenticeship levy funds that the employer may otherwise be unable to use to be applied to work-related training for these special cases.

2.22 *Ex gratia payments on the death of an employee*

The legislation should be amended to treat ex-gratia payments by employers on the death of an employee by 'natural' causes in the same way as an equivalent payment on the 'accidental' death of an employee.

2.23 *Enterprise Management Incentives (EMI)*

The EMI eligibility criteria should be enhanced to help businesses recover and grow.

2.24 *EMI option grant – notification to HMRC*

The legislation should be amended from having to notify HMRC within 92 days after the option's grant to an annual notification.

2.25 *Employment-related securities – tax-advantaged plans registration and closure*

For all tax advantaged plans, it should be possible for registration and closure to be delegated to an agent. At present, registration and termination must be done by the company itself and cannot be done by an agent of the company.

2.26 *Self-service and PAYE*

Many payroll related work items take much too long and could be managed by the employer telling HMRC about them, rather than having to seek prior approval. We recommend permitting employers to 'self-service' that a particular arrangement applies to them and their employee. For example, section 690 directions and certain PAYE coding adjustments, NT codes, etc. This could be by either a process to notify use of an arrangement to HMRC or through an online automated application and approval process for an arrangement. Self-service should be subject to conditions on the employer to ensure the system is not abused.

2.27 *Construction Industry Scheme (CIS) – excepted (small) payments rules for deemed contractors*

We suggest permitting deemed contractors to self-service whether the CIS excepted (small) payments rules apply to them rather than having to first apply to HMRC for approval to apply these rules. (The small payment rules permit a deemed contractor to pay a subcontractor, who would usually be paid net of tax under the CIS rules, without making a CIS deduction/reporting the payment. This is provided that the total value of the contract is under £1,000.)

2.28 *Money coaching exemption*

A specific exemption should be introduced to enable employers to pay (up to a specified limit) for financial coaching and similar services to help employees manage their finances.

2.29 *PAYE Settlement Agreements (PSAs)*

HMRC should automate the PSA application process such that computer-based decision making is utilised to automatically approve PSA applications that meet certain standards.

2.30 *PAYE Settlement Agreements (PSAs) – 0% taxpayers*

The PSA rules should include a 0% income tax rate to take into consideration employees earning less than the personal allowance. (Currently, employers must account for basic rate tax under a PSA in respect of employees even where they would pay no tax had the relevant benefit-in-kind been taxed directly on them.)

Pensions tax regime simplification

2.31 *Rectification of anomalies in the pensions tax regime for taxing lump sums from pension schemes*

There are a number of issues arising from how pension lumps sums paid to UK tax residents are taxed in the UK that should be rectified, including:

- limitations to the scope of section 574A of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA 2003) ('Pension': relevant lump sums) that cause Part 7A and Chapter 3 of Part 6 of ITEPA 2003 to apply instead of the pensions tax rules in Part 9 of ITEPA 2003, and which then trigger undue tax charges because of (a) a flawed fraction applying for grandfathered Foreign Service Relief (FSR) in section 554Z4(9) in Part 7A of ITEPA 2003 and (b) the lack of FSR available to UK residents under Charter 2 of Part 6 of ITEPA 2003;
- a lack of offset for employee contributions paid out of UK taxed income where section 574A of ITEPA 2003 applies to tax the lump sum;
- transitional provisions set out in Schedule 36 to the Finance Act 2004 (FA 2004) not applying to lump sums taxed under section 574A of ITEPA 2003; and
- the exclusion of UK Excepted Group Life Policies (EGLPs) from relevant lump sum treatment in section 574A of ITEPA 2003.

2.32 *Improving pension scheme administration by fixing problems with scheme block transfers*

We believe that the block transfer restrictions are causing problems for pension scheme consolidation and that the government should clarify the legislation to ensure that, for example, schemes with both Defined Benefit (DB) and Defined Contribution (DC) entitlements can split the DB and DC rights where they want to consolidate the DC sections of their scheme into larger schemes such as master trusts.

2.33 *Improving pension scheme administration by fixing problems with Guaranteed Minimum Pension (GMP) sex equality equalisation conversions*

We understand that thousands of pension schemes are currently unable to pay pension scheme members the benefits they are due because their legal advisers are advising that the tax and pensions law is unclear where a pension scheme undertakes a 'GMP' conversion to equalise pension benefits.

2.34 *Pensions Annual Allowance (AA) and Lifetime Allowance (LTA) – increasing the limits*

The Annual Allowance (AA) and Lifetime Allowance (LTA) limits on tax relief for contributions to registered pensions schemes should be reviewed and consideration given to increasing them. This is in light of the adverse effect they are having in causing workers in high demand sectors either to stop working or to reduce their hours.

3 About us

3.1 The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. Our comments and recommendations on tax issues are made solely in order to achieve this aim; we are a non-party-political organisation.

3.2 The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

3.3 The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries.

3.4 Our members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

4 Recommendations – Explanatory Notes

Cost of living

4.1 *Fixed allowances and deductions*

The Income Tax (Earnings and Pensions) Act 2003 (ITEPA 2003) and related legislation and guidance includes a number of exemptions, allowances, rates and deductions that are fixed amounts. Many of these amounts have remained unchanged for some considerable time.

These fixed amounts should be reviewed with a view to uprating these figures in line with inflation and current market rates.

A number of specific examples of this issue are discussed below at paragraphs 4.2 to 4.8.

4.2 *Homeworker's additional household expenses (ITEPA 2003, section 316A)*

Where an employee regularly performs some or all of the duties of their employment at home an employer can make a tax-free payment to the employee in respect of the reasonable additional household expenses which the employee incurs in carrying out duties of the employment at home under homeworking arrangements.

The weekly limit was set at £6 from 6 April 2020. While an employer can reimburse more than this it requires evidence of the additional costs incurred which places significant administrative burdens on the employee and employer. Hence, a simple flat-rate allowance has been agreed. We believe that this rate no longer reflects the true additional cost of working from home and that it, therefore, should be reviewed with the intention of uprating it in line with current costs of living. For example, a rate of, say, £2-3 per day (capped to £10-15 per week) would seem to more accurately represent current energy costs etc[3]. We also suggest changing the flat rate to a daily rate to differentiate between employees working different numbers of days from home.

4.3 *Authorised Mileage Allowance Payments (AMAPs) (ITEPA 2002, sections 229-236)*

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[3] For example, based on the Energy Price Cap being £3,000 from April 2023 - Latest energy price cap announced by Ofgem | Ofgem – and ignoring any other household and utility expenses, the cost of energy use for a typical 8 hour working day would be, for a typical dual fuel household, around £2.74.

Where an employee is required by their employer to use their own vehicle for work a tax-free mileage allowance payment may be paid by the employer to the employee. Where the employer either makes no such payment or pays at a rate less than the authorised rate the employee may claim tax relief on the difference between the tax-free payment received from the employer (if any) and the authorised rate. Where an employer pays at a rate greater than the authorised rate the employer must tax the excess as earnings from the employment.

The current rates of 45p per day for the first 10,000 business miles and 25p per mile after that have remained unchanged since 2011-12. We understand that these rates no longer reflect the true cost of motoring – fuel costs and other costs such as maintenance, servicing, insurance, etc have significantly increased since 2011. Many employers have 'done the right thing' and increased their reimbursement rates to around 60-70p per mile to reflect the significant increases in outgoings their employees are incurring in using their own car for small amounts of business travel.

While higher business mileage employees are more likely to have a choice between a company car (usually more economical and efficient than privately-owned vehicles) or using their own car, most lower earning employees that occasionally use their own car for work or have to use their own car daily (such as community nurses and care workers) have no choice but to use their own car for business journeys.

While there are wider considerations than just reimbursing employees for the reasonable costs they incur – such as environmental issues, encouraging individuals to purchase more efficient/less polluting cars and getting them to drive less – we nevertheless think that the policy and rates for AMAPs should be reviewed. In particular, that the rates should both fairly reflect the current actual costs of running a vehicle whilst, at the same time, continue to meet the government's objectives as regards vehicle ownership and use. In the meantime, to fairly recompense lower paid/lower mileage employees for using their own car for work we suggest that consideration is given to introducing a new higher rate of, say, around 55-65p per mile for small amounts of business mileage – for example, the first 5,000 business miles per annum.

4.4 *Flat rate expenses deductions (ITEPA, section 367)*

Many employees are obliged to spend small amounts each year in maintaining or renewing tools and special clothing that are necessary to carry out the duties of their employment. To deal with individual deduction computations for each such employee would be cumbersome and time consuming for taxpayers and for HMRC. So flat rate deductions have been negotiated on a national basis with trade unions. These apply to employees in specified occupations. Flat rate deductions are only permitted where an expense is necessarily incurred by the employee. The flat rate deduction is unavailable (or reduced) where the employer reimburses (or partly reimburses) the expense.

Whilst the rates can be (and are) renegotiated by trade bodies, we are concerned that some of the agreed amounts[4] have remained unchanged for some time and are no longer reflective of the costs employees are obliged to incur. For employees not covered by a nationally agreed flat rate expense HMRC publish an acceptable flat rate deductible expense for the cost of upkeep and replacement of uniform and protective clothing[5] – this rate appears not to have changed since 2008-09.

[4] EIM32712 - Other expenses: flat rate expenses: table of agreed amounts - HMRC internal manual - GOV.UK (www.gov.uk)
[5] EIM32485 - Other expenses: clothing: the cost of upkeep and replacement of uniform and protective clothing: laundry costs - HMRC internal manual - GOV.UK (www.gov.uk)

To minimise the burden on all to renegotiate these rates we think that they should be automatically increased in line with inflation, with the option for relevant bodies to present evidence supporting a different rate. It may also be appropriate for the government to issue a call for evidence looking at whether the industry sectors and occupations remain relevant. This could include asking for evidence of the current costs employees incur with a view to establishing a baseline for agreed flat rate expenses, including the laundry costs flat rate, prior to then increasing rates in line with inflation.

4.5 *Meals and subsistence (ITEPA 2003, sections 289A-E)*

No liability to income tax arises in respect of an amount paid or reimbursed by an employer in respect of qualifying travel costs, including subsistence costs associated with the business travel. Some employers adopt a flat rate approach for the reimbursement of subsistence costs to avoid the administrative burdens arising from reviewing and checking receipts (which may not always be available or include sufficient detail).

While the Income Tax (Approved Expenses) Regulations 2015 (SI 2015/1948) provide base rates[6] that employers can use, these are often significantly less than the actual costs employees frequently incur. While benchmarking greater subsistence costs is feasible for larger employers, and public bodies, it is overly burdensome for smaller employers.

We suggest reviewing the current flat rates for reimbursement of meals and subsistence incurred in the UK that employers can use without needing HMRC's prior approval and uprating them in line with current costs for breakfast, lunch and evening meals.

4.6 *Trivial benefits exemption (ITEPA 2003, section 323A)*

The trivial benefits exemption exempts from tax as employment income minor benefits if the cost of providing the benefit does not exceed £50 per employee (with an overall annual cap of £300). (See paragraph 4.11 for more information on the trivial benefits exemption.)

We think that the £50 threshold should be reviewed and increased in line with inflation.

4.7 *Annual parties and functions exemption (ITEPA 2003, section 264)*

The exemption applies to an annual party (for example, a Christmas party), or similar annual function (for example, a summer barbecue), provided for employees and which is available to employees generally or is available to employees generally at one location, where the employer has more than one location. If the employer provides one annual function for employees no charge to tax arises if the cost of the event per head does not exceed £150 (this rate took effect from 6 April 2003). If the employer provides 2 or more annual parties or functions, no charge arises in respect of the party, or parties, for which cost(s) per head do not exceed £150 in aggregate[7].

We think that the £150 limit should be reviewed and increased in line with inflation.

4.8 *Removal benefits and expenses exemption (ITEPA 2003, sections 271-289)*

The exemption provides that qualifying removal expenses and benefits either provided by, or reimbursed by, an employer to an employee are exempt from income tax up to a maximum of £8,000 per move, provided

[6] EIM30240 - Exemption for amounts which would otherwise be deductible: payments at a benchmark rate - HMRC internal manual - GOV.UK (www.gov.uk)
[7] EIM21690 - Particular benefits: annual parties and other social functions - HMRC internal manual - GOV.UK (www.gov.uk)

they are incurred in a qualifying period[8]. The £8,000 limit has remained unchanged since the Income Tax (Earnings and Pensions) Act 2003 was first enacted as part of the Tax Law Rewrite initiative.

We think that the £8,000 limit should be reviewed and increased in line with inflation.

Employment taxes simplification

4.9 *Use of room at home for work – unreimbursed costs (ITEPA 2003, section 336)*

For an employee to be able to claim a deduction for the extra cost of Working from Home (WfH) the expense must be claimed under ITEPA 2003, section 336 (Deductions for expenses: the general rule), which requires the taxpayer to demonstrate that the extra household costs were incurred wholly, exclusively and necessarily in the performance of the duties of their employment. However, a claim for these costs under section 336 is normally refused unless the taxpayer can demonstrate that (a) there are no appropriate facilities available to them at their employer's premises and (b) that at no time before or after the employment contract was drawn up is the taxpayer able to choose between working at the employer's premises or elsewhere. This 'test' is notoriously difficult to meet. While this strict rule was relaxed for the pandemic (in that HMRC accepted that while WfH mandates are in place by the UK governments then the appropriate facilities are not available at the employer's premises), the strict application of section 336 will see many employees who choose homeworking arrangements being unable to claim a deduction for any unreimbursed additional costs of WfH.

With homeworking arrangements now becoming commonplace and being as much about employee choice (and, potentially, their employment rights), rather than simply whether the employer has appropriate facilities at their premises, we consider that either (a) Section 316A should be extended to provide an allowable deduction for non-reimbursed extra costs or (b) new legislation should be enacted to permit a flat-rate deduction for those reasonable extra costs of WfH where the employer and employee agree that the employee can work from home either on a part or full time basis.

4.10 *Employer paid versus employer reimbursed*

There are a number of benefit-in-kind exemptions that only apply where a benefit is *provided* by an employer to an employee. Whether an expense is met (i) directly by the employer, (ii) by the employee but on behalf of the employer, ie where the employee uses the 'litany' in advance of incurring the cost (so that the supplier is aware that the purchase is 'on behalf of' their employer), or (iii) by the employee, without the employee using the litany, but with agreement that the cost will be reimbursed by the employer, is a constant issue for employers and employees. This is because the different tax/NIC consequences impose undue administrative burdens on a business's normal working arrangements (see, for example, HMRC Booklet CWG2, Chapter 5.1[9] and the use of charge cards, and HMRC Manual NIM02191[10] and 'using the litany').

The exemptions contained in ITEPA 2003 should be reviewed and amended so that tax exemptions apply when employers reimburse employees the cost of a benefit, as well as when the employer arranges for its provision (or a voucher to obtain it). A number of specific examples of this difference are given below at paragraphs 4.11, 4.12, 4.14 and 4.15. This will considerably simplify life for businesses, employees and indeed HMRC.

[8] EIM03100 - Employment income: removal or transfer costs: contents - HMRC internal manual - GOV.UK (www.gov.uk)
[9] 2021 to 2022: Employer further guide to PAYE and National Insurance contributions - GOV.UK (www.gov.uk)
[10] NIM02191 - National Insurance Manual - HMRC internal manual - GOV.UK (www.gov.uk)

4.11 *Trivial benefits exemption (ITEPA 2003, section 323A)*

ITEPA 2003, section 323A provides a statutory exemption for trivial benefits. Under this exemption, if an employer provides a benefit to its employees, the benefit is exempt from tax as employment income if (a) the cost of providing the benefit does not exceed £50, (b) the benefit is not cash or a cash voucher, (c) the employee is not contractually entitled to the benefit, (d) the benefit is not provided in recognition of particular services performed by the employee as part of their employment duties, and (e) the benefit is not provided pursuant to a relevant salary sacrifice arrangement[11]. However, the section 323A exemption is not available where the employee directly incurs the cost of the benefit, and the employer then reimburses that cost (even where the employer provides the same benefit, or a voucher to obtain it, to other employees).

This difference in tax treatment particularly affects smaller businesses that find it harder to set up 'corporate accounts' or enter into 'voucher' agreements with suppliers. This difference should be removed from the legislation so that employer reimbursements have the same tax treatment as directly provided employer benefits.

4.12 *Equipment and employer reimbursements (ITEPA 2003, section 316)*

Where an employee directly incurs the cost of items such as office equipment any employer reimbursement of that expenses is taxable and subject to PAYE and NICs. Whereas, where an employer pays for the equipment and provides it to their employer to put the employee in a position to perform the duties of the employment the provision is an exempt benefit-in-kind.

A time-limited exemption was introduced during the pandemic in recognition of the problems this difference in tax treatment causes to ensure that no tax liability would arise on the reimbursement by an employer to an employee of the costs an employee incurs to enable them to work from home. Since it is often administratively less burdensome for an employee that works from home to purchase the equipment they require, we consider that an exemption should be (re-)introduced to enable employers to reimburse employees for equipment costs the employees have directly incurred where that equipment is necessary for the employee to perform the duties of the employment.

4.13 *Equipment and tax treatment when employee leaves (ITEPA 2003, section 316 and section 206)*

Where an employee benefits from the transfer of an asset that was previously provided to them as a benefit-in-kind, the taxable benefit is (generally)[12] the difference between (a) the sum (if any) paid for the asset by the employee and (b) the higher of (i) the market value of the asset at the time of transfer and (ii) the market value of the asset when first applied as a benefit, less amounts previously taxed on the employee (or on others) further to their use of the asset.

These rules on the transfer of a used/depreciated asset do not take into account whether the employer has any future use for the equipment, or the cost to an employer of recovering the asset, which is often greater than its value. For example, where an employer has provided equipment (such as a desk, chair, etc) to enable an employee to work from home (and, thus, the provision is exempt from tax as a benefit-in-kind by section316) it is often not worth the employer recovering that equipment when an employee leaves as the

[11] The trivial benefit exemption is also capped for directors of 'close' companies in that they cannot receive more than £300 in trivial benefits in a tax year – ITEPA 2003, section 323B.

[12] Separate rules apply to 'excluded assets', which section 206(6) defines as a car, computer equipment first provided before 6 April 2006, and cycles/cyclist's safety equipment.

desk etc. may not reusable. But a tax charge nevertheless arises on the former employee under section 206, apparently even if they don't want to retain the asset.

We suggest reviewing the tax treatment of equipment retained by employees working from home after leaving employment, so that either no benefit-in-kind arises where the employer does not seek to recover the equipment or the cost to the employer of recovering the equipment is greater than its value. As a minimum, we think that the costs of recovery that would be incurred should be deducted when determining the chargeable benefit under the transfer of assets provisions.

4.14 *Vaccination costs (eg flu vouchers)*

Where an employer arranges for a nurse to attend the employer's premises and offers a seasonal flu immunisation (flu jab) to all employees, this benefit is treated as trivial and within scope of the section 323A exemption. Similarly, where an employer incurs the cost of providing flu jab vouchers to all employees (that want a 'free' flu jab) allowing them to visit their local chemist to obtain a flu jab, this benefit is also treated as trivial and within scope of the section 323A exemption. But where an employer cannot afford the cost of having a nurse visit their premises to administer flu jabs, or is unable to obtain flu jab vouchers for their employees, but, being a good employer, wants to encourage their employees to have a flu jab and offers to reimburse each employee for the cost of obtaining a flu jab, the reimbursement is not within the scope of the section 323A exemption and is treated as taxable earnings under ITEPA 2003, section 62.

This anomaly particularly affects smaller businesses who are less likely to be able to arrange for a nurse to visit the workplace or obtain vouchers for immunisations. But a healthy workforce is more productive than one off sick due not being protected from viruses etc. To remove this discriminatory practice a broadened exemption should be introduced to exempt from the benefits-in-kind regime the provision of, or reimbursement of employee costs incurred on, approved vaccinations, such as the flu jab.

4.15 *Eye tests and special corrective appliances (ITEPA 2003, section 320A)*

Where an employee is required to use a visual display unit (VDU) as part of his or her normal duties, no chargeable benefit will arise on the provision of an eye/eyesight test and spectacles or contact lenses required solely for VDU use that an eyesight test shows are necessary. This is where the test is required under Health and Safety at Work regulations and tests are available generally to all employees (in the case of corrective appliances, eg glasses/contact lenses, this is only if shown to be necessary by the test). However, where the cost of an eyesight test, spectacles or contact lenses is reimbursed to the employee, a taxable benefit arises.

Employers, large and small, must clearly comply with their legal obligations. But unless an employer is able to set up a 'corporate account' or provide vouchers, neither of which may be an option for a smaller business, any reimbursement of the cost of an eye test needed for work would be taxable.

The legislation should be amended to exempt both provision and reimbursement by an employer to an employee of the costs of the test or appliances the employee has directly incurred. We see no policy reason to differentiate between these alternatives.

4.16 *Qualifying childcare vouchers (ITEPA 2003, section 270A)*

Where an employee joined an employer-supported childcare scheme the employer could provide up to £55 per week (for a basic rate taxpayer) in tax-free vouchers or contracted childcare. This scheme closed to new entrants and those who moved employers on 4 October 2018 and was replaced by the tax-free childcare scheme.

However, the tax-free childcare scheme is not designed to cover all circumstances[13]. Also, it is limited to top-up payments of 25% of payments made by eligible individuals up to a maximum of £8,000 in respect of eligible children. We understand that the increasing costs of childcare and limits on the tax-free childcare scheme are limiting parents' ability to return to work.

We therefore suggest that consideration is given to reintroducing the limited exemption for qualifying childcare vouchers so that new joiners may benefit from the scheme, as the voucher scheme extends the options open to parents as regards care costs and age limitations under the tax-free childcare scheme.

4.17 *Travel rules*

In general, there is no tax relief for the cost of travel between an employee's home and their permanent workplace, eg the employer's premises. This includes having to attend a permanent workplace outside of normal working hours, for example, being called in for weekend overtime. (For the avoidance of doubt we are referring here to the situation where both the employee's home and the employer's office premises are located in the UK).

With many employees and employers now accepting either full or part time (hybrid) working from home arrangements, we think that the tax rules around what is business travel and what is ordinary commuting need to be reviewed to keep pace with this change in working practices.

HMRC should consult and review the existing exemptions and deductions for employee's travel expenses contained in ITEPA 2003 to ensure that they are fit for purpose and, as appropriate, either update the relevant legislation or improve their guidance on allowable/non-allowable business travel.

4.18 *Company electric vehicles – recharging and reimbursement of home electricity cost*

Currently electricity is not considered a 'fuel' and due to the interaction of the legislation within ITEPA 2003, section 239(2)(4) and ITEPA 2003, section 149(4), we consider that employees with company cars that are either provided with, or (we contend) reimbursed for the cost of, electricity used for charging their company car cannot incur an associated benefit-in-kind charge. However, HMRC's guidance at EIM23900[14] states that for company cars recharged at home, where the cost of electricity is reimbursed by an employer, and there is private or mixed use (not just business) any reimbursement would be taxable as earnings.

HMRC have stated that where electricity is drawn from a domestic supply it does not satisfy the 'in connection with' test as regards the nature of the expense. However, we consider that the provision of electricity is clearly a necessity for a car powered solely by electrical means, and indeed the guidance makes reference to section 239(4) applying to exempt payment by an employer for the installation of an electric charging point at an employee's home. We believe that HMRC's view that reimbursement of the cost of electricity is not exempt under section 239(2) derives from when electric cars first appeared and it was often not possible to accurately identify precisely what electricity costs related to charging the car and what to simultaneously heating/lighting the home. However, with modern technology/metering this does not apply now.

In our view HMRC's guidance is not correct on this point and should be updated accordingly.

4.19 *Company electric vehicles – reimbursement rates*

[13] For example, the child must be 11 of under (They stop being eligible on 1 September after their 11th birthday) and you cannot get Tax-Free Childcare at the same time as claiming Working Tax Credit, Child Tax Credit, Universal Credit or childcare vouchers.
[14] EIM23900 - Car benefit: special cases: issues relating to electric cars - HMRC internal manual - GOV.UK (www.gov.uk)

We think that HMRC's guidance should be clarified to explain more clearly the basis on which employees can use actual costs, rather than the Advisory Electric Rate (AER) (currently 8ppm), to determine the amount that an employer may reimburse in relation to business mileage travelled in an electric company car.

In particular, distinguishing the cost of business miles from private miles can be administratively difficult to determine for employers and employees alike where an employee recharges in different circumstances in different places and at different times. Whilst we have the AER – currently at 8ppm (5ppm until 30 November 2022) – this rate is often insufficient, especially with the significant recent increase in energy prices. Furthermore, the cost can differ widely between employees charging their cars at home and those needing to use public chargers, super chargers etc. outside of the home. Hence employees/employers may want to use actual cost rather than the 8ppm rate and it is therefore key that they understand what is appropriate/acceptable in calculating that cost for tax purposes. We think HMRC's existing guidance should be expanded to cover this point with examples added to illustrate the position.

4.20 *Employment status codification and simplification*

We believe that there needs to be a simpler way for businesses and workers to determine when PAYE applies to earnings from employment without needing to refer to specialist advisers. Whilst the HMRC CEST tool is designed to assist in this respect it is unable to give a result in some 20% of cases[15], and indeed the number of IR35 employment tax status cases being heard by the courts is indicative of the difficulties that arise in practice.

Accordingly, we consider that the government should consult on codifying what is meant by an employee for tax purposes. This covering both direct engagement and IR35/Off-Payroll Working cases.

4.21 *Exemption of work-related training (ITEPA 2003, sections 250) and apprenticeship levy funds*

ITEPA 2003, section 250 provides a wide statutory exemption in connection with an employer's payment or reimbursement of expenditure on the provision of work-related training for employees.

However, we think that to help recruitment of employees that employers may be more reluctant to employ, for example, due to not working for some time or being out-of-date as regards current skills, the government could consider an enhanced tax incentive – for example, a 'super deduction' – when recruiting and training certain categories of employee. Alternatively, the government could permit apprenticeship levy paying businesses that are otherwise unable to fully use the funds available to them on apprenticeship training to use those funds for other defined categories of employee. For example, by the over 50s or those returning to work after an extended period of ill-health.

4.22 *Ex gratia payments on the death of an employee (ITEPA 2003, section 406)*

ITEPA 2003, section 406 (Exception for death or disability payments and benefits) provides that a payment or benefit in respect of the termination of an office or employment by the death of the holder, and otherwise chargeable within Chapter 3 of Part 6 of ITEPA 2003, is exempted from tax. But it is more usual for a payment on an employee's (or ex-employee's) death to be chargeable under ITEPA 2003, section 394 as a relevant benefit from an Employer-Financed Retirement Benefits Scheme (EFRBS). This does not mean that there need be a formal pension scheme in existence from which the payment is made. It is only necessary that there be an informal agreement or arrangement, such as a decision at an employer's meeting to make an ex-gratia

[15] Check Employment Status for Tax (CEST) usage data - GOV.UK (www.gov.uk)

payment, in order for the EFRBS rules to bite. This said, if a payment is made further to a qualifying death-in-service insurance policy (a ‘relevant life policy’ within the meaning of ITEPA 2003, section 393B(3)(c)), then the payment is usually tax-free.

Understandably these distinctions can cause problems in practice. We suggest that the government amends the legislation on ex-gratia payments from employers following the death of an employee so that payments arising from natural causes receive the same tax treatment as payments that arise following an accidental death.

4.23 *Enterprise Management Incentives (EMI)*

While we believe that the Enterprise Management Incentive (EMI) scheme is fulfilling its objectives of helping Small to Medium-Sized Enterprises (SMEs) to recruit and retain employees, we also believe that it could be enhanced to include more companies and, thus, assist those companies in growing. Accordingly, we recommend that the current EMI scheme eligibility criteria be reviewed and the EMI thresholds increased. For example, the thresholds relating to the number of qualifying employees and gross asset value could be increased to reflect inflation and current business needs.

In addition, fixing the qualifying point such that the number of employees or gross asset value is set for, say, a 12 or 18 month period, would help companies whose employee numbers or gross assets flex above and below the qualifying limits. Similarly, it will help those companies that grow rapidly during such a period to retain and recruit employees. It would also ease administration as there would be clarity for the company (and HMRC) as to whether or not it qualifies over a particular period.

4.24 *EMI option notification*

An EMI option notification is currently required within 92 days of grant but no such notification is needed for the other tax advantaged plans (such as Company Share Option Plans (CSOPs) and Save As You Earn (SAYE) plans), just the report on the end-of-year Employment-related securities return. We suggest amending the legislation so that EMI option notification is required only on an annual basis, like the other approved plans (and unapproved plans). This would save on businesses, agents and HMRC’s administrative costs.

4.25 *Employment-related securities (ERS) – tax-advantaged plans registration and closure*

Currently, only a company can register a tax-advantaged share plan. This often leads to mistakes (classically a company registering an unapproved share plan as a tax advantaged ‘Company Share Option Plan’ because the name looks right), which then leads to penalties, applications for reasonable excuse and wasted time and costs for everyone.

The power to delegate registration and closure to an adviser would save on administration for both the business and HMRC.

4.26 *Self-service and PAYE*

There are many instances where an employer has to apply to HMRC for prior approval to use a special PAYE arrangement. These can take a long time to agree, and in some cases the agreement has been received long after its use ceased. For example, in relation to section 690 directions for assignees to the UK working partly here and partly abroad to limit the PAYE being withheld, certain PAYE coding adjustments, NT codes etc.

Employers could either self-approve and notify when self-service applied or, better, there would be an online application process with intelligent technology asking various pre-determined questions for risk/control

purposes and, where appropriate, giving immediate approval. This approach would still allow HMRC to inquire further in particular cases where the risk profile suggests the need. Terms and conditions would apply and the employer would be liable if there was any abuse of the rules.

4.27 *Construction Industry Scheme (CIS) - excepted payments rules for deemed contractors*

Under SI 2005/2045, Regulation 18, certain entities may be authorised by HMRC not to apply the CIS to small contracts for construction operations. This requires prior approval from HMRC. Only 'deemed contractors' may apply to operate the small payments arrangement (SI 2005/2045, Regulation 18(2)(a)), ie typically larger businesses where '*in any rolling one year period, [their] expenditure on construction operations exceeds £3,000.000)*'. The contracts for which the arrangement is operated must not have a value exceeding £1,000 after adjustment for the cost of materials (SI 2005/2045, Regulation 18(3)). If the contract value net of materials exceeds £1,000 this condition is not satisfied.

To reduce HMRC's administrative costs, and burdens on businesses, we think that deemed contractors should be able to 'self-serve' entitlement to the exception (see also paragraph 4.26 above). The risk of non-compliance would appear to be small, especially as contractors must file monthly CIS returns to report payments made to subcontractors[16], and this change would lessen administrative burdens on businesses. These businesses would have to accept liability etc if they misapply the exception, and HMRC should have the power to revoke use of the exception where there is abuse.

4.28 *Money coaching advice exemption*

While there are exemptions from a liability to tax under the benefits-in-kind rules for the provision of pensions advice (ITEPA 2003, section 308C) (capped at £500 per annum per employee) and for counselling for debt problems (ITEPA 2003, section 210 and SI 2000/2080) there is no exemption for general money-related financial advice or coaching. In this respect the section 308C exemption does extend to general financial and tax issues relating to pension arrangements but it does not go beyond this[17]. The exemption under SI 2000/2080 includes welfare counselling of any kind except for advice on finance, other than advice on debt problems[18].

We think that a specific exemption (along similar lines to section 308C) should be introduced to permit an employer to provide general financial and money advice and coaching to their employees without a taxable benefit-in-kind arising. While any general advice is likely to also include advice on saving towards retirement, and on any debts the employee may have, they may not be the immediate/main issues facing an employee when managing their money and an exemption for general financial and money advice would provide much more flexibility to address employees' financial problems in the round.

4.29 *PAYE Settlement Agreements (PSAs)*

HMRC has recently made significant improvements to PSA reporting and payment, allowing employers to submit calculations online. They have also enhanced their guidance for PSAs[19]. These enhancements are welcomed.

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[16] What you must do as a Construction Industry Scheme (CIS) contractor: File your monthly returns - GOV.UK (www.gov.uk)
[17] EIM21803 - Particular benefits: pensions provision: pensions for pensions advice - conditions to be satisfied (from 6 April 2017) - HMRC internal manual - GOV.UK (www.gov.uk)
[18] EIM21845 - Particular benefits: exemption for welfare counselling - HMRC internal manual - GOV.UK (www.gov.uk)
[19] GFC1 (2022): Help with PAYE Settlement Agreements (PSA) - GOV.UK (www.gov.uk)

We suggest that the PSA application process is also automated such that an online application approach is introduced to include intelligent decision-making whereby the employer states which items it wants to include within a PSA and answers a few questions about those items, and computer-based decision making is utilised so that if straightforward there is immediate approval (see also paragraph 4.26 above). This would then allow HMRC's limited resources to focus on the PSA applications that are more complicated and require a more thorough discussion with the employer.

4.30 *PAYE Settlement Agreements (PSAs) – 0% taxpayers*

HMRC take the view that '0% taxpayers' should be included within computations of liability under PSAs at the basic rate of 20%[20]. We think this position is anomalous and inequitable. While employers could report benefits provided to 0% taxpayers on Forms P11D in order to achieve the correct tax liability, ie zero, this would create significant additional administrative burden for employers, confusion for low paid taxpayers who would receive the P11Ds, extra work for HMRC processing the returns and dealing with taxpayer queries, and in the majority of cases no additional tax would ultimately be payable. Accordingly, we suggest including a 0% income tax rate to take into consideration employees earning less than the personal allowance.

Pensions tax regime simplification

4.31 *Rectification of anomalies in the pensions tax regime for taxing lump sums from pension schemes*

There are a number of issues arising from how pension lumps sums paid to UK tax residents are taxed in the UK that we believe should be rectified.

(A) Limitations to the scope of ITEPA 2003, section 574A that cause Part 7A and Chapter 2 of Part 6 of ITEPA 2003 to apply instead and the knock-on detrimental impact on Foreign Service Relief (FSR) – we believe that the legislation on Foreign Service Relief (FSR) needs to be amended so that the individuals that would expect to have full grandfathered relief are able to claim the full relief to which we believe they should properly be entitled in their particular circumstances. We would be happy to provide more detail as to how this could be achieved.

(B) Lack of offset for employee contributions paid out of UK taxed income where ITEPA 2003, section 574A applies to tax the lump sum – the lack of offset could be addressed by amending ITEPA 2003, section 577A to allow an offset for employee contributions that have been made out of pay that has already been subject to UK tax, in the same way that the law in section 554Z5 and section 395 allows such an offset.

(C) Transitional provisions from Schedule 36 to Finance Act 2004 (FA 2004) not applying to lump sums taxed under ITEPA 2003, section 574A – this could be resolved by the offsets provided for in paragraphs 53-55 of Schedule 36 of FA 2004 being replicated in a new section 567B, which in turn could be included as a permitted deduction under section 567(5).

(D) The exclusion of UK Excepted Group Life Policies (EGLPs) from relevant lump sum treatment – this could be remedied by adding a sub-section (iv) to ITEPA 2003, section 574A(1)(a) covering death in service benefits from UK Excepted Group Life Policies (EGLPs). Or, alternatively, to make clear in guidance that the reference to UK Employer-Financed Retirement Benefit Schemes (EFRBSs) is intended to include such arrangements.

4.32 *Improving pension scheme administration by fixing problems with scheme block transfers*

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[20] PSA1160 - Overview of PAYE Settlement Agreements - HMRC internal manual - GOV.UK (www.gov.uk)

The rules[21] for block transfers require the transfer of all of a member's benefits so transfers of Defined Contribution (DC) rights without Defined Benefits (DB) rights or vice versa will lose protection because they are classified as partial transfers rather than block transfers and only ring-fenced protection on the individual transfer basis would apply. Block transfers need to be able to carry over protected minimum pension ages, and scheme-specific lump sums ('SSLS' or 'tax free cash'). Furthermore, under a block transfer of just DC rights, the SSLS formula applying to the original scheme is reduced by ¼ of the partial transfer, which can lead to a net loss of SSLS across the two schemes. Additionally, at present, a member of the transferring scheme cannot be a pre-existing member of the receiving scheme for more than 12 months. Hence, we believe the existing restrictive block transfer provisions are practical barriers to consolidation and at odds with the government's broader policy goals.

To address this we suggest that where a 'hybrid-type' scheme with both DB and DC entitlements wants to 'block transfer' rights to another scheme then:

- Treat a transfer of either (i) all a member's DB or (ii) all a member's DC benefits as a block transfer. This will, for example, allow DB and DC benefits to be transferred to separate schemes/insurers when a scheme consolidates or winds-up etc. If necessary, the legislation should be amended to provide for this.
- Allow protected minimum pension ages (ie schemes with protected pension ages of under 55) to pass over the protected minimum pension age to the new scheme, at least in regard to the transferred benefits.
- Remove the restriction that a block transfer member cannot have been in the receiving scheme for more than 12 months. As a minimum this ought to be the case for master trusts. At the moment a member in two entirely separate schemes cannot protect their benefits on the second transfer if, coincidentally, those two schemes happen to consolidate into the same master trust. For example, Shop 1 Scheme and Store 2 Plan both transfer their DC members to the Big Retail Master Trust; however, at present, if the first transfer is more than 12 months before the second then the protected cash and minimum pension age cannot be taken to the second scheme, *even if all scheme benefits transfer*.
- Remove the '-TV/4' calculation from the post-partial-transfer-out line of the tax-free cash formula (modification of paragraph 34 of Schedule 36 of FA 2004 by paragraphs 21 to 23 of the Taxation of Pension Schemes (Transitional Provisions) Order 2006 (SI 2006/572)). Broadly, this would mean that any reduction in the scheme-specific lump sum (SSLS) in the first scheme would be offset by the lump sum ('Pension Commencement Lump Sum' (PCLS)) in the receiving scheme. Under current rules we believe that there can be a double-counted loss.

4.33 *Improving pension scheme administration by fixing problems with Guaranteed Minimum Pension (GMP) sex equality equalisation conversions*

Guaranteed Minimum Pension (GMP) conversion is a way to remove or amend GMP features, using legislation enacted in 2007. In particular, pension schemes are required to equalise benefits paid to men and women where the scheme provided for different types of benefits to each. While the details of GMP equalisation are complex, and we have not repeated them here, they are well known. The legislation allows pension schemes to simplify and equalise benefits, which helps members understand their benefits better, speeds up processing times, keeps administrative costs down, and ultimately puts them on a more secure long-term

[21] PTM062240 - Member benefits: pensions: protected pension age: right to keep a protected pension age after transfers or winding-ups - HMRC internal manual - GOV.UK (www.gov.uk)

basis. This type of benefit rectification project is common in the private sector and consideration should be given to replicating the easements provided for in the 'McCloud remedy' (The Public Service Pension Schemes (Rectification of Unlawful Discrimination) (Tax) Draft Regulations 2023), where other pension schemes carry out similar projects. For example, the easements around pre-crystallisation increases in benefits resulting from 'new scheme benefits elections', could be applied in the private sector undertaking similar exercises.

We therefore recommend that the government review the GMP conversion legislation to ensure that it is workable, and amend it if required, and confirm that where a pension scheme equalises their members entitlements under the GMP conversion legislation that no taxable event arises under the pension tax regime (or amend the legislation to provide for this). We believe that action is urgently needed on this matter so that pension schemes can pay their members the benefits to which they are entitled.

4.34 *Pensions Annual Allowance (AA) and Lifetime Allowance (LTA) – increasing the limits*

The Annual Allowance (AA) is the maximum amount that can be saved in a tax year in a registered pension scheme on a tax privileged basis, ie without triggering an AA tax charge. It is currently £40,000 (unused AA can be carried forward for up to three years). A tapered reduction in the AA applies for those with 'adjusted income' of over £240,000 (where they have 'threshold income' of over £200,000) – for every £2 of adjusted income over £240,000 the AA is reduced by £1 down to a minimum of £4,000. The Lifetime Allowance (LTA) is the overall limit on the amount that a member can save in a registered pension scheme before a LTA tax charge applies. The standard LTA is currently £1,073,100.

It is reported that the AA and LTA limits are causing workers in certain high demand sectors either to reduce their hours of work or stop working earlier than they might otherwise do. This is detrimental to businesses productivity and, for public bodies like the NHS, affects services to the public.

Accordingly, we suggest that the AA and LTA limits are reviewed and consideration given to raising them in order to address this issue.

5 Acknowledgement of submission

5.1 We would be grateful if you could acknowledge safe receipt of this submission, and ensure that the Chartered Institute of Taxation is included in the List of Respondents when any outcome of the consultation is published.

The Chartered Institute of Taxation

1 February 2023