

Draft regulations: proposed amendments in respect of salary advances

Response by the Chartered Institute of Taxation

1 Introduction and 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 We set out below our comments on the proposed PAYE amendment regulations, which are intended to allow employers to delay reporting an advance payment of salary ('salary advance') made to an employee until payment of the remainder of that salary instalment, where certain conditions are met.
- 1.3 While we are aware that HMRC has had some discussions with stakeholders prior to publishing the draft regulations, we are concerned that HMRC has issued a consultation at Stage 3 (Drafting legislation to effect the proposed change) of HM Treasury's 'Tax Consultation Framework'¹, rather than consulting more widely beforehand. We think that it would have been better to follow the five stages to the development and implementation of tax policy and started with Stage 1 ('Setting out objectives and identifying options') public consultation.
- 1.4 We are concerned that in proposing legislation that will delay the reporting of a salary advance to HMRC under its Real Time Information (RTI) system until the payment of the remainder of that salary instalment is made, HMRC may be seen as condoning salary advance schemes involving third parties that charge employees a fee to enable them to access their earnings before their normal payday.

¹ [Tax Consultation Framework \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk)

2 About us

- 2.1 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.
- 2.2 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.
- 2.3 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.
- 2.4 Our members have the practising title of ‘Chartered Tax Adviser’ and the designatory letters ‘CTA’, to represent the leading tax qualification.

3 General comments

- 3.1 Salary advances are arrangements between an employer and an employee, allowing employees access to some of their earned salary before their normal payday. We understand that employers may make arrangements for salary advances through a third party, with the latter charging a fee for their services.
- 3.2 We also understand from HMRC’s Agent Update 102, published on 16 November 2022² that: *‘Under current legislation, these advance payments are treated as a payment on account of earnings. This means that employers must submit additional RTI reports to record these advance payments.’* This said, we note that HMRC has been prepared to permit employers who were not reporting salary advances but, instead, including them as part of their RTI report in respect of payments due on the contractual pay date to *‘continue to do so until [new] legislation is in place’*.
- 3.3 While we welcome relaxations to the often onerous ‘on or before’ RTI reporting requirements we think it would have been better to follow the five stages to the development and implementation of tax policy and started with a Stage 1 (‘Setting out objectives and identifying options’) public consultation to see whether amending the PAYE Regulations to permit the non-reporting of salary advances is the appropriate response to salary advance schemes.
- 3.4 In any event we would value clarification as to whether HMRC will seek penalties for failures to deliver to HMRC an RTI return ‘on or before making a relevant payment to an employee’³. In particular, whether all employers that have introduced salary advances can delay their RTI reporting until the contractual pay date (without fear of being penalised) or is it, as Agent Update 102 and Employer Bulletin February 2023⁴, both imply, only those that had introduced salary advances and were not complying with the RTI ‘on or before’ requirement at the time of the article being published.
- 3.5 We are also concerned that HMRC may be seen as giving official approval to salary advance schemes involving third parties that charge employees a fee to access their earnings by making amendments to the PAYE Regulations to legitimise these arrangements.

² [Issue 102 of Agent Update - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/agent-update-102)

³ Paragraph 67B(1) of the Income Tax (PAYE) Regulations 2003 (as amended) (SI 2003/2682)

⁴ [February 2023 issue of the Employer Bulletin - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/employer-bulletin-february-2023)

- 3.6 One of HMRC's 5 strategic objectives⁵ is to *'maintain taxpayers' consent through fair treatment and protect society from harm'*. It is unclear how HMRC accommodating the practice of third parties charging a fee to enable employees to access their earnings early, without prior public consultation, *'protect[s] society from harm'*? The CIOT blog⁶ by our colleagues from the Low Incomes Tax Reform Group (LITRG), published on 14 November 2022, notes some of the potentially damaging downsides of salary advances (as well as why they may be helpful).
- 3.7 We would also encourage HMRC to review whether the 'on or before' requirement remains the 'best' option for reporting employee's earnings and deductions more generally – in particular, whether relaxing this requirement might improve the accuracy of RTI submissions.

4 Response to consultation questions

4.1 Q1. Do the amendments meet the stated policy aims?

We understand that the policy aims are to:

- *'give employers a clear and consistent approach in reporting salary advances to HMRC*
- *ease the administrative burden for employers, who will not need to submit extra reports to HMRC'*

While we think that, generally, the proposed amendments will ease employer administrative burdens by delaying the reporting of a salary advance under HMRC's RTI system until the payment of the remainder of that salary we do have some concerns that the amendments may not be as clear as they could be as regards when RTI submissions should be made.

1. Regarding the proposed PAYE amendments⁷, we note that new Regulation 67BD does not include a definition of *'main relevant payment'*. We presume that the draftsman does not think this is necessary and that the phrase should take its normal meaning, ie payments which are made on a regular, predictable basis. In this respect what happens if, contractually, an employee's payday is changed from, say, weekly, to monthly and the employee can request salary advances as and when they wish each month? Does HMRC accept that the employee now has a *'main relevant payment'* once a month? What if the employee takes an advance of half (or more) of their salary every month, will HMRC accept that there is only one *'main relevant payment'* being when the remainder of their salary is paid on their contractual pay day?
2. New Regulation 67BD(2)(c) notes that a *'main relevant payment'* is envisaged to be made, albeit as reduced by the advance payment. What is the position if the advance payment equals (or conceivably, due to an error, exceeds) the normal salary payment so that no further payment is due? Can HMRC confirm that it will accept that Regulation 67BD(2)(c) is satisfied, despite their being no further payment on the contractual payday? Perhaps this is something that HMRC can make clear in guidance?
3. A similar point to 2. above arises in respect of the proposed Social Security amendments⁸ and the condition at the new Regulation 21AE(2)(c) to be inserted into Schedule 4 of the Social Security (Contributions) Regulations 2001, ie if no further payment of salary is made will HMRC accept that this condition is satisfied?

⁵ [HMRC Evaluation Framework - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/103122/HMRC-Evaluation-Framework-2019-2023.pdf)

⁶ [Salary advance serves up tricky conundrum for HMRC \(tax.org.uk\)](https://www.tax.org.uk/News/Articles/2022/11/14/salary-advance-serves-up-tricky-conundrum-for-hmrc)

⁷ [https://assets.publishing.service.gov.uk/media/64de04b3c8dee400127f1e1e/The Income Tax Pay As You Earn Amendment No. 2 Regulations 2023 - DRAFT.odt](https://assets.publishing.service.gov.uk/media/64de04b3c8dee400127f1e1e/The_Income_Tax_Pay_As_You_Earn_Amendment_No._2_Regulations_2023_-_DRAFT.odt)

⁸ [https://assets.publishing.service.gov.uk/media/64dde806c8dee4000d7f1e19/The Social Security Contributions Amendment No. 7 Regulations 2023 - DRAFT.odt](https://assets.publishing.service.gov.uk/media/64dde806c8dee4000d7f1e19/The_Social_Security_Contributions_Amendment_No._7_Regulations_2023_-_DRAFT.odt)

4.2 Q2. Will these changes cause any reporting difficulties for employers and their agents?

We think that so long as it is clear that employers are expected to file an RTI submission reporting the employee's full salary (that is, any salary advances plus any residual salary) on or before their normal contractual pay day then the changes should not cause any reporting difficulties.

This said, we think HMRC should specify how they would expect facilitation of salary advances to be reflected in the employer's full payment submission (FPS) (ie which numbers need to fall into which fields). HMRC's guide⁹ lists out the FPS fields and it seems to us that a salary advance should be included within box 58B ('Value of deductions from net pay in pay period') but it would be helpful to have HMRC's confirmation on this point, not least given the concessionary treatment which HMRC has already announced.

4.3 Q3. Employers who wish to make salary advances outside of a third party scheme will need to ensure that their software can report the salary advance at the next scheduled reporting date. Other than that, HMRC does not believe that these changes will require significant revision of current RTI reporting software. Do you agree? If not, what other changes do you anticipate will be necessary?

Subject to our comment above regarding being clear what HMRC expect to see reported in respect of salary advances, we would not expect these changes to require a significant revision to payroll software.

4.4 Q4. Will these changes cause any administrative difficulties for employers and their agents?

So long as it is clear what should be reported and when that report should be made, then we would not anticipate the changes causing administrative difficulties for employers, and their agents.

4.5 Will these changes produce any other consequences, for employers or their workers?

One potential unintended consequences of these changes could be to encourage salary advance schemes – we can see that some employers may come under pressure from their employees to make salary advances! It should be made clear that employers have no legal obligation to implement salary advance arrangements.

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

6 October 2023

⁹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1141032/RTI-Data-Item-Guide-23-24-v1-1.odt