Consultation on salary sacrifice for the provision of benefits in kind

Employment Tax

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The government is proposing to restrict the range of benefits-in-kind (BIK) that can be included in a salary sacrifice or flexible benefits arrangement by making the BIK chargeable to income tax and Class 1A employer NICs, even if normally exempt from tax and NICs. In our responses the CIOT, LITRG and ATT have all disagreed with the proposals as they stand as they will introduce considerable complications to this area and increase the probability of the employer getting it wrong. We suggest that the government steps back and consults on a more targeted approach to specific BIKs.

The government has proposed to change the tax treatment where certain benefits-in-kind (BIK) are provided through salary sacrifice so that the BIK will be chargeable to income tax and Class 1A employer NICs, even if normally exempt from tax and NICs, at the greater of the amount of salary sacrificed and the cash equivalent of the BIK (as set out in statute).

The consultation document confirms that salary sacrifice and flexible benefit arrangements involving employer pension contributions, employer-provided pension advice, employer-supported childcare and provision of workplace nurseries, and cycles and cyclist’s safety equipment provided under a cycle-to-work scheme will not be affected by the government’s proposals but all other BIKs received through such arrangements will be.

As a result, if the government’s proposals are implemented, employers will need to distinguish between (i) negotiated, or renegotiated, contractual rights involving the provision of BIKs, (ii) salary sacrifice/flexible benefit arrangements, and (iii) which of those arrangements include cash alternatives.

The CIOT believes that the government's proposals to increase the cost of BIKs provided under salary sacrifice and certain flexible benefit arrangements will cause significant practical difficulties for employers, result in unfairness for employees and potentially conflict with other health and environmental policy in so far as the taxation of BIKs has been designed to support such policy.

Consequently, the CIOT strongly urges the government not to proceed with its proposals but to reconsider its approach to salary sacrifice and flexible benefit arrangements, and target the cause of any perceived abuses (for example the imbalances in the benefits code) and amend the legislation accordingly. We have raised concerns that otherwise these proposals will be unworkable in practice.

The CIOT's response has been endorsed by the ATT, who added that while there are some publicised cases of abuse of the scheme, in the experience of its members, salary sacrifice schemes are being used in a legitimate manner and not to avoid tax. The ATT noted that salary sacrifice schemes are an essential part of remuneration strategies for businesses and allow employers to attract and retain the best employees, as each employee has different requirements and the ability for individual employees to negotiate their own package is now an essential part of recruitment.

The consultation document suggests that the government's concerns about salary sacrifice and flexible benefit arrangements are with the 'increasing cost to the Exchequer' (without saying what the cost to the Exchequer is) and the 'uneven playing field between employees and employers who use such arrangements and benefit from the tax advantages, and those that don't'. The CIOT believes that before any material changes are made to the benefits code it would seem appropriate to take a step back and consider whether the 'tax loss' is indeed significant enough to warrant such change. For example, in the case of the taxation of company cars, which is geared to CO2 emissions, the government's policy appears to have succeeded in helping to encourage manufacturers to reduce CO2 levels over the years (see the consultation on 'Company car tax for ultra-low emission cars' at paragraph 2.15, which is discussed above, which says: 'Overall, basing company car tax on the CO2 emissions of vehicles has worked well. The average CO2 emissions of company car fleets have fallen significantly from around 170 gCO2/km to 120 g/km over the last 10 years').

Although there may be some salary sacrifice and flexible benefits arrangements that are being used by some organisations to achieve savings against certain types of benefits in ways that the government had not anticipated, the CIOT goes on to say that if the government's underlying concern is the cost to the Exchequer then a better way of tackling such arrangements is not to introduce a blanket ban on salary sacrifice but to revisit whether the underlying benefits code, including exemptions that attract income tax and NIC advantages, are properly focused. And, if not, to withdraw or limit them, rather than distinguishing between whether they are received as a result of a negotiated employment contract or under a salary sacrifice/flexible benefits scheme.

In both the CIOT's and ATT's opinions, if the proposed change is implemented the end result could well be that the same BIK is provided to two employees working alongside each other but, because of how each negotiated their remuneration package, they are taxed differently. In other words, we will end up with precisely the uneven playing field that the government says it is concerned about.

LITRG also responded to the consultation and made many of the same points as the CIOT. LITRG highlighted that those using salary sacrifice are just as likely to be NHS nurses on modest salaries making small savings by sacrificing salary into a workplace parking scheme as higher paid senior staff sacrificing salary into several schemes to stay below the personal allowance threshold. Consequently, removing the tax and NICs advantages from all new BIKs supplied through salary sacrifice schemes on a blanket basis will damage arrangements used by lower income workers – affecting their motivation and finances at a time when they may already be struggling.

LITRG agree with the government, however, that salary sacrifice arrangements mean that the playing field is not level for all, and this is especially the case for those who are paid at or near the minimum wage who are not able to participate – even in 'approved' arrangements. LITRG believe that the 'risks' to such employees of using salary sacrifice are largely overstated and therefore call on the government to consider possible options for providing some relief to these employees – particularly with benefits like childcare vouchers which could be vital to them working or pension saving which many are now automatically enrolled into.

Finally, the CIOT adds that if it is decided to proceed with the proposed changes the proposed implementation date for the changes of 6 April 2017 will be far too soon

after the final proposals are published by the government and the first draft of legislation issued for businesses to make the necessary changes to their flexible benefits schemes. We therefore suggest that any change is deferred to at least 2018/19, so that businesses have plenty of time to plan and introduce the updated IT systems, HR processes, contracts, payroll software etc and to communicate the change to employees (and allow employees time to make decisions as to whether to continue to receive a particular BIK).

The CIOT response can be read in full on the CIOT website.

The LITRG response can be read in full on the LITRG website.

The ATT response can be read on the ATT website.