Taxation of employee expenses: ATT, CIOT and LITRG respond to call for evidence

Employment Tax

01 August 2017

The call for evidence was initiated by the (last) government to consider (i) whether the tax rules for expenses of employment need to change to reflect changes in employment engagement practices, (ii) whether the rules and their administration can be made simpler and clearer, and (iii) why there has been a 25% increase since 2009-10 in claims to HMRC from employees for tax relief on non-reimbursed expenses. In their submissions to the call for evidence, the ATT, CIOT and LITRG suggest that the existing system is not broken, per se, but could certainly be improved.

The call for evidence on the taxation of employee expenses published in March 2017 by HM Treasury (HMT) has three main objectives, to see:

- If the current rules or their administration can be made clearer and simpler;
- Whether the tax rules for expenses are fit for purpose in the modern economy; and
- Why the cost to the Exchequer of the tax relief for expenses which are not reimbursed has increased.

The government has indicated that it has no plans to remove the relief on employee expenses, but the cost is clearly significant and it is not surprising that HMT would like to understand why there has been an increase in claims.

In their submission, which was informed by a joint CIOT/ATT survey that received 600 responses, the CIOT acknowledges that there have been major changes in the labour market in recent years, principally with the growth of the gig economy, but also with increasing numbers of workers engaged through agencies or

intermediaries, including the use of umbrella companies, managed service companies and personal service companies. The CIOT suggest that this move away from ‘traditional’ employment may be one of the reasons why there has been a 25% increase in claims.

The CIOT add that while they have not noticed major changes in mainstream employer approaches to expenses, worldwide economic conditions are likely to have given rise to a tightening of belts so far as employer’s willingness to meet employees’ employment expenses are concerned and this may be a contributing factor in the increase in claims to HMRC.

The CIOT suggest that, with modern working practices evolving and the line between employment and self-employment becoming ever more blurred, the next stage of consultation should include a review of the differences between employed and self-employed entitlements for tax deductions on business expenses, with a view to more closely aligning the income tax and NIC rules for each.

CIOT add that other aspects of the system for tax relief on employee expenses that should be reviewed as part of the next stage of consultation include:

- Greater alignment of the rules under which employment expenses an employer pays or reimburses tax-free with the rules on which non-reimbursed employment expenses an employee can obtain tax relief on. For example, the rules on work-related training, where there is a need for some easing where employees incur the costs of training and these are not met by their employer. LITRG make this suggestion too and note a particularly harsh example in relation to disabled employees and their transport costs at s246 ITEPA 2003;
- A review of the tax reliefs available in respect of working from home to reflect the use of modern technology and billing processes (for example, inclusive packages that do not allow for ‘business use’ to be itemised); and
- A review of what flat-rate tax-free allowances and benchmark scale rate payments are presently available to ensure that the expense remains relevant, and the amount reflective of current costs.

In their submission, the ATT also note the cost to HMT for tax relief on unreimbursed expenses and comment that this is not the complete cost of relief for employee expenses. Where the employer has reimbursed some or all of the cost, they generally receive relief. Expenses legitimately incurred in the performance of an

employee’s duties should receive tax relief and ATT would be concerned if the current review was taken as an opportunity to restrict this.

The ATT draws attention to the consequence for employees of employers not reimbursing legitimate employee costs, noting that in the case of lower paid employees (such as care workers) that failure to reimburse employment expenses could effectively take them below the minimum wage. This point is picked up in more detail by LITRG who suggested the matter be further consulted on.

ATT also comment that while HMRC sets approved mileage rates, other public sector bodies (PSBs) may set their own differing rates. ATT members noted that this is common in the NHS, where the mileage rates paid can depart significantly from approved rates. Taxable benefits must be calculated and reported where rates are more generous, while staff paid at less than approved rates need to seek relief from HMRC themselves. This results in additional administration for the PSB and HMRC.

ATT’s response identifies three specific scenarios where attention is required – overnight expenses in the haulage industry, capital expenditure by employees (with related loan interest costs) and the treatment of employer-reimbursed expenditure on railcards.

In their submission, LITRG highlight that the employees they are concerned with seldom have their expenses paid or reimbursed. Any tax relief on their unreimbursed expenses is therefore very valuable but is probably only worth 20% of the costs incurred. Indeed, if the employee’s income is below the personal allowance, even this reimbursement is unavailable. This is a problem often described by care workers who write into LITRG, who can travel many thousands of miles each year in their own cars but whose costs are neither relieved by their employers nor the tax system. As such LITRG urge the government to consider possible options for providing some much needed relief on care workers mileage expenses.

LITRG add that there are other difficult aspects of the current unreimbursed expenses system as far as low paid employees are concerned and recommend that (inter-alia):

- HMRC supply clear, user friendly, targeted information on allowable expenses, particularly Flat Rate expenses and travel expenses and ensure that it is disseminated through more than one channel;

- HMRC, HMT and the Department for Work and Pension work together to ensure that claimants are aware of their right to deduct expenses for tax credits purposes. Clarity is also need on whether unreimbursed employment expenses can be deducted from income for Universal Credit purposes and how that fits with the use of Real Time Information data in the UC system;
- HMRC improve the P87 process by removing unnecessary barriers to its completion, hosting the online P87 as a standalone form outside of the Personal Tax Account and improving the print and post version (the above points were also made by the CIOT).

LITRG, also recommend that serious consideration is given to the Office of Tax Simplification (OTS) proposals around a relief at source mechanism for unreimbursed employee expenses (CIOT make this suggestion too).

The full CIOT response can be found on the CIOT website.

The full ATT response can be found on the ATT website.

The full LITRG response can be found on the LITRG website.