



# ICAEW REPRESENTATION 104/16

## TAX REPRESENTATION

### **FINANCE BILL 2016: CLAUSES 87-110: APPRENTICESHIP LEVY**

**Briefing for the Public Bill Committee debates on Finance Bill 2016  
submitted on 6 July 2016 by ICAEW Tax Faculty**

Internationally recognised as a source of expertise, ICAEW Tax Faculty is a leading authority on taxation. It is responsible for making submissions to tax authorities on behalf of ICAEW and does this with support from over 130 volunteers, many of whom are well-known names in the tax world. Appendix 1 sets out the ICAEW Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark proposals for changes to the tax system.

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## PUBLIC BILL COMMITTEE BRIEFING

### Apprenticeship Levy (Clauses 87-110)

#### Background

Clauses 87-110 set out the rules for a new tax on employers to be known as Apprenticeship Levy (AL), to be charged at a rate of 0.5% of an employer's total pay bill. Each employer will receive a Levy Allowance (LA) of £15,000 to offset against their AL payment. AL will be effective from 6 April 2017.

#### Summary of concerns

##### Clause 88

- **LA should be set against AL payments on a first-in first-out basis rather than one twelfth per month to avoid employers having to apply for refunds.**

##### Clauses 90 and 91

- **Connected employers (companies and charities) should be able to share the LA between constituent entities and, having made a determination of how the LA is to be shared out, be able to change the allocation of LA to constituent entities during the year so LA is not wasted, for example if paybills are different than anticipated or where constituent entities of the company unit or charities unit join or leave during the year.**
- **Single entity employers with more than one PAYE scheme need to be able to share the LA between their different PAYE schemes and be able to change the allocation of LA between schemes during the year so LA is not wasted.**

##### Clause 109

- **A start date of 6 April 2017 is too soon to ensure robust software is in place – the start date should be put back to 6 April 2018.**

We expand on our concerns below and have set out our recommendations as to how best to resolve.

#### Clause 88: Allocation of Levy Allowance (LA) during the year

- **Our concern:** Although the Finance Bill clauses are silent on how LA is allocated to each pay period, HMRC has said that one twelfth of the LA can be claimed in each month of the tax year on a cumulative basis.
- **Our view:** AL would be simple if the full £15,000 LA was allowed up front against AL payments, with AL payable once the LA is exhausted. This would avoid detailed and complex rules setting out how to allocate AL by pay period. It would also help seasonal employers, who under the rules proposed by HMRC of allocating one twelfth of LA to each month, will have to pay AL, recover it against any future PAYE liabilities and, where there is still an overpayment at the year end, claim a refund after the year end. HMRC's track record on refunding overpayments to employers is extremely poor.

Whilst we accept that this would delay cash flow into the AL fund, the increase in apprenticeships that the AL is designed to fund will not begin to happen until July/August/September when school and college leavers start their apprenticeships, so there should be sufficient funds in the fund well before they are needed even if many large employers pay little or no AL on 22 May.

- **Our recommendation:** we should welcome confirmation from the Minister that LA for the whole year can be set against AL payments from the start of the tax year rather than having to use one twelfth of LA each month.

## **Clauses 90 & 91: Levy Allowance (LA) and connected employers**

- **Measure:** Clause 90 sets out that where two or more companies are connected with one another, only one company will be entitled to the annual LA to be offset against the AL. Clause 91 sets out a corresponding rule for connected charities.

Amendment 25 modifies clause 90 to provide that connected companies (a “company unit”) can determine what amount of LA each of them is to be entitled to for the year, but this determination cannot be changed save by HMRC, and then only where the total amount of LA claimed by the company unit is greater than £15,000. Amendment 27 makes a corresponding modification to clause 91 covering connected charities (a “charities unit”).

- **Our concerns:** even after the Amendments, there are two inequities.
  - The first is that the amount of LA available to connected employers, whether a company unit or a charities unit, will potentially be less than the full amount of the LA, ie £15,000, even after the Amendments, because a company unit or a charities unit will be unable to change its determination of how much LA should be allocated to each constituent company or charity, for example if it transpires that the paybill of a particular company or charity is too small to use all the LA that it thought would be needed and the LA would have been able to be utilised by another company or charity in the unit, or a company or charity joins or leaves the company unit or charities unit respectively during the year.
  - The second inequity is that, whereas the employer will be unable to change its mind about how much LA is allocated to each constituent entity within a company unit or charities unit, HMRC will be able to re-determine how much LA each constituent company or charity is entitled to, if the amount of LA claimed by the company unit or charities unit is found to be greater than £15,000.
- **Our view:** We welcome the government’s amendments to Clauses 90 and 91 which will remove the prohibition on connected employers and connected charities sharing the LA between them, but we think that a company unit or a charities unit should be able to change its determination during the year to ensure that the optimal use is made of LA available to offset against LA payments rather than it being wasted.
- **Our recommendation:** Clauses 90 and 91 should be amended as set out in amendments 25 and 27, but in amendments 25 and 27 the restriction on employers changing their minds in new subsection (3B) should be removed, and new subsection (3L) should direct that HMRC shall make regulations allowing company units and charities units to alter in-year a determination made under replaced subsection (2).
- **Our suggested amendment to amendments 25 and 27:** In subsection (3B) leave out “cannot” and insert “can”, and in subsection (3L) leave out “may” and insert “shall” and leave out “in circumstances specified in the regulations”.

## Clauses 90 & 91: LA and single entity employers with more than one PAYE scheme

- **Our concern:** HMRC has said in a briefing that the split of levy allowance (LA) between PAYE schemes for single entity employers must be agreed at the beginning of the tax year and fixed for that year.
- **Our view:** Single entity employers with multiple PAYE schemes should be able to change their allocation of LA to the different schemes during the year to ensure that optimal use is made of LA available to offset against AL payments rather than it being wasted.
- **Our recommendation:** we should welcome confirmation from the Minister that employers can change the allocation of LA between PAYE schemes during the year.

## Clause 109: Apprenticeship Levy (AL) start date

- **Measure:** Clause 109 sets out, within the definition of “tax year”, the date that AL starts as being 6 April 2017.
- **Our concerns:** Given that the design of AL has not yet been agreed and no IT specification has yet been provided by HMRC to software developers apart from a briefing note produced at the end of June, a start date of 6 April 2017 is too soon for private sector software developers to design, build, test and supply robust software to clients and for operators to be trained or for HMRC to update its software and its Basic PAYE Tools (BPT is needed so employers can when necessary submit earlier year updates (EYU) after the year end to make changes to HMRC’s figures without corrupting their own payroll data). Four years into PAYE in real time (RTI), employers are having to contend with HMRC processing errors as there are still bugs in the system.
- **Our view:** As confirmed in Lord Carter of Coles’ report *Review of HMRC Online Services* published in March 2006, software developers require 18 months lead time and software needs to be properly tested before going live, and if necessary, go-live dates put back.
- **Our recommendation:** the start date for AL should be delayed until 6 April 2018.
- **Our suggested amendment:** In clause 109(2), line 40, leave out “2017” and insert “2018”.

## FURTHER INFORMATION

As part of our Royal Charter, we have a duty to inform policy in the public interest.

ICAEW offers impartial expert briefing on the Budget, the Finance Bill and ad hoc policy issues for MPs, Peers and parliamentary staff.

To request further information or a briefing from one of our Tax Faculty experts, please contact:

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## APPENDIX 1

### ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. **Statutory:** tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. **Certain:** in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. **Simple:** the tax rules should aim to be simple, understandable and clear in their objectives.
4. **Easy to collect and to calculate:** a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. **Properly targeted:** when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. **Constant:** Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. **Subject to proper consultation:** other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. **Regularly reviewed:** the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. **Fair and reasonable:** the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. **Competitive:** tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see via <http://www.icaew.com/en/about-icaew/what-we-do/technical-releases/tax>).