



# ICAEW REPRESENTATION 75/17

## TAX REPRESENTATION

### EMPLOYEE EXPENSES – CALL FOR EVIDENCE

ICAEW welcomes the opportunity to respond to the call for evidence [Taxation of employee expenses](#) published by HM Treasury on 20 March 2017. We are pleased that the deadline for responding was extended owing to the general election.

This response of 10 July 2017 has been prepared on behalf of ICAEW by the Tax Faculty. Internationally recognised as a source of expertise, the 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.

We should be happy to discuss any aspect of our comments and to take part in all further consultations on this area.

On 11 April 2017 we met HM Treasury and HMRC to discuss the issues and put forward some key comments.

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## MAJOR POINTS

1. By and large we believe that the rules for employee expenses work fairly well and should be left as they are, subject to some suggested minor changes set out below,
2. There has in recent years been significant extra work, cost and complexity introduced in the workplace by a number of measures. These include real time information (RTI) reporting requirements coupled with errors in processing employer data and payments, auto-enrolment (AE), national minimum wage (NMW)/national living wage, apprenticeship levy (AE), the replacement of dispensations with an exemption, and measures to discourage optional remuneration arrangements (OpRA) including salary sacrifice and other forms of flexible benefits arrangements.
3. UK employers and employees would welcome a period of calm with no big changes – particularly given the major changes that will result from Making Tax Digital and the uncertainty caused by the UK leaving the EU.
4. Where changes are made, policy should be consulted on to see whether it is operationally practicable and, then
  - the law put in place,
  - full IT specifications made available so software can be built and tested to prove robustness, and
  - comprehensive and accurate guidance published well before the implementation date so that employers and employees know what they need to do.Such a process has not been followed meaningfully for recent changes to the taxation of employment income leading to confusion and misleading guidance.
5. Areas where we suggest making, for the most part relatively minor, modifications to the rules include:
  - The 24 month temporary workplace rule: the rules for motoring, mileage and subsistence introduced in 1998 work well and are understood by the majority and so we recommend that they should not be changed, except that two year rule should be extended to three years owing to the greater length of projects compared to when these rules were introduced.
  - Training expenses: we consider that the rules need to be widened to reflect today's more knowledge-based workplace. Presently relief is available only when the employer pays for the training or reimburses costs incurred by employees. We believe that employees should be able to claim relief for self-funded training and similar costs, including where the training is putting the taxpayer into a position to undertake the job, for example training to become a hairdresser or a taxi driver.
  - Uniforms and clothing: we believe that the rules should be less restrictive so that the cost of purchasing and washing/cleaning/maintaining a uniform or appropriate clothing used predominately in the performance of the duties with private use being incidental (eg <5% over the year) should be deductible.
  - Friends and family overnight allowance: we recommend the reinstatement of the £25 allowance for staying with friends and family which helped employers save costs as it obviated the need to pay hotel bills.
  - Cycles used for carrying out work: we suggest that the cost of cycles should be able to be offset against income where a cycle is a necessary to enable the employment to be carried out, for example cycle couriers/delivery persons.

6. We think the greater problem is not the rules themselves but that taxpayers either do not know or understand them. We suggest that more needs to be done in schools, universities and the workplace to educate citizens about the tax system. This could be as part of a wider financial curriculum, including for example debt, pensions and investments and how to get best advice.
7. A more immediate difficulty for employees is that the user journey for those who want to claim deductible expenses using HMRC's online systems linked to the personal tax account (PTA) is extremely frustrating. We believe that this is a major driver behind the increased number of claims that employees make via agents. We recommend that HMRC's online claims process be improved.
8. Another reason for the increase in the exchequer cost of non-reimbursed expenses is employers trying to contain employment costs (including those arising from measures such as NMW, AE, AL, etc) by not reimbursing the full amounts that are tax deductible, leaving it to employees to claim the difference. Many such employees use agents to do this. For other reasons see the answer to Question C (para 41(a)-(k)).
9. This response contains two sets of answers to questions. The first set comprises questions discussed in our meeting on 11 April 2017 with HM Treasury and HMRC, and the second set comprises the questions in the call for evidence consultation document. Where the questions are the same we have cross referred to save repeating our answers.

## **RESPONSES TO QUESTIONS RAISED BY HMT IN MEETING ON 11 APRIL 2017**

### **A - Could the current rules and their administration be clearer or simpler?**

#### **Question A1: For employers, is the administration of expense claims reasonably straightforward? Has the 2016 exemption helped?**

10. The internal administration of expense claims is not difficult for employers who are organised and have clear policies. The problems arise in quantifying what is deductible or exempt and collating and reporting the information to HMRC at the right time. There are subtle differences in tax/NIC and VAT treatment of certain expenses, eg entertaining, that can make designing an electronic expenses system difficult.
11. Complexities also arise when businesses are growing and the volume of expense claims outgrows the current method of managing them – for example when small businesses grow to such a point that a manual 'office manager' model for processing expenses is no longer viable and a step change is needed to implement a more streamlined or automated system.
12. Where any expense is not exempt and is not easily reportable on form P11D, we recommend that they should be able to be reported to HMRC in a PAYE settlement agreement (PSA), which is simple for the employer. We would also note that PSAs are financially advantageous to the exchequer because the tax and NIC liabilities are grossed up, unlike when reported on forms P11D or via payroll. The availability of PSAs needs to be better publicised by HMRC as many employers do not know about PSAs when arguably every employer should have one, if only for staff entertaining.
13. The 2016 expenses exemption should in principle help, but unfortunately the guidance from HMRC was late and also incomplete (e.g. published far too late in *Employer Bulletin*, which many employers have not heard of or know how to subscribe to it) means that many employers do not realise there was a change in procedure. In addition, the transition from dispensations, which were agreed on an individual basis, to a one size fits all exemption, while in principle very welcome, has created uncertainty for employers where it is not clear that

particular items agreed to be allowable in dispensations are the same as those listed in HMRC's exemptions and dispensations [guidance](#) as being exempt under the new regime.

14. The agreeing of a dispensation enabled employers and HMRC to clarify what specific benefits and expenses were deductible and HMRC to gain insights into what businesses actually do. The new exemption regime seems to remove this opportunity and reduce clarity and certainty for both sides (although HMRC in response to our inquiry has just (30 June 2017) told us that the employer helpline should be able to help and those who may need a written answer can use the following address: National Insurance Contributions and Employers Office, HMRC, BX9 1BX).
15. Guidance should be available well before a measure comes into effect. When rules change, employers ideally should have sent to them (or at least have available) simple, clear and complete guidance before the change comes into effect. This needs to be well in advance of the start of the tax year given that employers are increasingly moving to payrolling, rather than several months into or near the end of the tax year in which changes takes effect or even later.
16. Ideally legislation should be enacted well before the start of the tax year so that both the legislation and HMRC's guidance are available to enable employers and software designers to implement changes to systems. This is becoming increasingly important as HMRC digitalises the tax system.

**Question A2: For employees, what could government do to make it more straightforward for individuals to claim for themselves? The use of agents is increasing – what is driving that?**

17. Many employees are not aware that they can claim certain expenses against their earnings. To quote a member:  
'The main claims that I deal with for clients are professional subscriptions and mileage where the employer pays less than the approved mileage rate. ... In chatting to friends I find that in 99.9% of cases they are unaware that they can claim the mileage and in about 75% of cases they are unaware that they can claim for professional subscriptions.'
18. Some employees who make personal contributions to personal pension schemes often forget to claim the tax relief on their tax returns, especially where they set up standing orders when they were basic rate taxpayers and are now higher rate taxpayers. They may have forgotten that they are even contributing since the money comes straight out of their bank every month without any action on the employee's part. The same applies to payments qualifying for gift aid.
19. There needs to be simple, clear and complete and timely guidance for employees telling them what they can claim for and how to claim.
20. The use of agents is increasing because many employees do not know what they can claim and how to go about claiming – the guidance on gov.uk feels too daunting for many. In some sectors employees use agents to make claims (e.g. unions and other trade bodies and some employers might facilitate access to high volume repayment agents (HVRA)) and although the agents seem expensive, e.g. up to 20-25% commission, employees use them because they will benefit from which feels like a windfall payment from the tax authority.
21. Employees also do not know about going back four years: for a low paid employee four years' laundry allowance for example is a lot of money.
22. HMRC's online claims process is frustrating and is driving employees to use agents. The online claims process needs to be improved – see answer to Question A3.

**Question A3: Do you have specific suggestions as to how the rules would be simplified and how to make it simpler to claim tax relief?**

23. For those in the know the rules are relatively simple. The problem is not that the rules necessarily need changing. The problem is one of education and a lack of knowledge of the rules, not only by employees but also some employers.
24. Whilst suggestions to create modules at school to cover tax awareness as part of the national curriculum may seem idealistic, we think that if government really wants the whole nation to be compliant and familiar with tax laws then there needs to be education of citizens starting at a very early age. This could perhaps be as part of a wider financial management course to reduce levels of personal debt, pensions advice and provide greater awareness of investing and where to get sound advice, building on the resources for schools that HMRC already provides and its videos on [youtube](#).
25. Employees might see adverts online and be alerted by consumer champions such as Moneysavingexpert on the TV. If they are aware that they can claim they might look online. However, if they find the form P87 on gov.uk at <https://www.gov.uk/government/publications/income-tax-tax-relief-for-expenses-of-employment-p87> and if it is their first time they are likely to be so daunted by the fact that the form cannot be viewed as a whole that they may not proceed further. Online electronic forms need to be able to be viewed as a whole, e.g. as a pdf, so users know what information they need to have before they start completing it.
26. From members' experiences of using HMRC's online process to claim expenses against employment income, we conclude that using HMRC's systems is so hard that it is driving employees towards paying agents to make claims, inter alia because:
- The user journey, including finding the form, is not straightforward.
  - The user does not have enough oversight to know what they are really doing or how it pieces together, or know whether they have completed the right or wrong form until the end. The PTA should list the forms it contains under 'services you may require' or similar. For example, the current information [Claim a tax refund](#) has no information about claiming a refund based on tax deductible expenses (or having left the UK).
  - Some of the narrative on the HMRC pages is misleading. There is a screen on the 2016/17 PTA that says 'Your income tax hasn't been calculated yet for 6 April 2016 to 5 April 2017. ... There's no need for you to contact HMRC about this.'. We question now HMRC can claim to be able to work out a refund when they do not have the information. And if HMRC does not have the information and the user does why is the user being instructed not to not to contact the department? The average citizen may well read that screen and believe that HMRC must know about his expenses because everything is now digital, and therefore miss out on claiming them.
27. HMRC's current online process makes it very difficult for many citizens to claim the relief to which they are entitled. The online process for claiming relief for employee expenses needs to be improved and the user journey less .

## **B - Are the tax rules fit for purpose in the modern economy?**

**Question B1: Does the scope of the current tax relief for employee expenses reflect the expenses employees incur today?**

and

**Question B3: Do the tax rules adequately reflect these changing practices? Are there specific areas where the tax rules are falling behind?**

- 28.** The general rules are, in broad terms, that to be tax deductible the employee must incur the expense, first, as holder of the employment and, secondly, ‘wholly, exclusively and necessarily in the performance of the duties of the employment’ (save for travel where the second limb is ‘necessarily’ only). This rule tempered by specific exemptions, e.g. professional fees and subscriptions, has succeeded in limiting employee deductions for many years.

*Temporary workplaces – the 24 months rule*

- 29.** The size of construction projects and therefore their duration is much greater than even ten years ago. This affects employers who reimburse travelling, accommodation and subsistence expenses to those at temporary workplaces because tax relief against employees’ earnings is available only if it is intended that the employee will be at a temporary workplace for no more than 24 months. Employers are increasingly finding that the 24 months rule has cost implications. This is because, to get relief under the 24 months rule, either employees have to be switched around so as not to lose the tax relief on their expenses, which introduces inefficiencies on site as a different employee will not have the local knowledge about the project and so has to relearn everything the predecessor knew, or the same employee kept on at that workplace will have to be paid more to make up for the loss of tax relief.
- 30.** Such contracts may be undertaken not only by the construction sector but also by other sectors undertaking such projects in house, for example manufacturing, leisure, and wholesale and retail distribution.
- 31.** We recommend that the 24-months rule needs to be lengthened to reflect the much greater size and complexity of present day infrastructure and construction projects – indeed many modern projects can take 3-5 years (HS2, Heathrow fifth runway, offshore wind farms, Olympic stadia, channel tunnels, etc). The exact figure needs to be subject to review but we would suggest at least 36 months. Other than that aspect, the 1998 employee travel rules, which were the result of lengthy discussions between the then Inland Revenue and representatives of professional bodies, have stood the test of time well and do not need to be changed.

*Uniforms and protective work clothing*

- 32.** We believe that the restrictions on uniform and protective and clothing purchased specifically to assist with a job are too arbitrary and discriminatory, e.g. as between two similar workers at two different employers, one who sews on a logo and one who does not. The rule should be that where protective clothing or uniform or similar is purchased for business purposes and used predominantly for business in the performance of the duties, with any private use being incidental (less than say 5% on average over the course of the year), then such item should be tax relievable, as should the cost of washing, maintaining, repairing, or laundering such item. Where reimbursement takes place via the employer then the onus should be on the employer to police that only legitimate claims are being made. Where a P87 claim is made then the same level of HMRC scrutiny as now, for other items, should prevail.

*Travelling*

- 33.** Regarding travelling expenses, employers increasingly cannot afford, or will not pay, the full 45p per mile or, especially prevalent for care workers, even reimburse all the miles, but are not necessarily aware that if they reduce the mileage rate they can advise employees to claim tax relief on the shortfall. Also many still think it is the law to offset the employee’s normal commuting cost when reimbursing the travel costs to a different workplace and consequently only reimburse the excess.
- 34.** We also suggest that the 5p passenger rate be able to be claimed as tax relief by the employee if the employer does not pay it. The employer could easily provide support for the employee’s assertion about car sharing on business if it were required.

### *Training*

35. We also believe that the tax system should better recognise the importance of training and that the exemption for training needs to be widened to encourage employees themselves to take the initiative to update and improve their knowledge. Presently, training is allowable only where, broadly speaking, the employer pays for it either directly or by reimbursing the employee or where the employee incurs it in the restricted circumstances detailed in HMRC's guidance at [EIM32535](#). Thus, currently the rules allow for the employee who self-funds a course to get tax relief on employer reimbursement, but not relief against their own employment income. This result is perverse and at odds with the government's policy aim to promote up-skilling, e.g. by supporting apprenticeships (and, potentially, introducing 'T' levels).
36. Taking this argument further, whilst the current rules allow for expenditure incurred 'in the performance of the duties' where employees have to incur expenditure in order to put themselves in a position to use what they have learnt or done to then enable them to generate income which is taxable, those costs should be relievable against that income.
37. To prevent expenditure on hobbies being claimed then we suggest that the rule should be that the costs can only be offset against income directly related to those costs which arises within the normal time period for tax claims after such training has been completed. We recommend this period rather than say 12 months because, in the current job market, it can take a while to find a position that utilises the training.
38. Thus for example, where someone does a hairdressing course and then works as a hairdresser, the costs of training should be tax relievable against that income. Someone who passes a test in order to be a taxi driver would obtain relief.
39. We also suggest that someone who buys a bicycle in order to deliver, for example, pizza or parcels should be able to obtain relief for that cycle against that income.

### **Question B2: In what ways has the changing nature of the workplace affected the way in which employers think about what expenses are allowable or not?**

40. As noted above, increased employee costs arising from national minimum/living wage, auto-enrolment, etc. has made employers look carefully at expenses.

### **C - Why has the cost to the Exchequer of, and volume of claims for, expenses that have not been reimbursed by employers increased so much in recent years?**

41. The cost to the exchequer of non-reimbursed expenses has increased in recent years for a number of reasons, including:
  - (a) Inflation, both generally for non-reimbursed expenses and where employers' reimbursement rates have not kept up with changes to government rates. Where employers do not pay the maximum rate allowed by government, employees are left to claim tax relief on the difference.
  - (b) A specific example is business travel by car: many employers pay lower mileage rates than the rates allowed by government, either as an across-the-board policy to save money, or, for example, to employees who choose to be paid in cash instead of taking a company car. In some sectors the relevant professional or trade body or the Charities Commission fixes or has strong views on the maximum mileage rate that employers in that sector can or should pay to employees.
  - (c) Greater awareness by employees of being able to claim certain expenses against tax e.g. fixed deductions, mileage, professional subscriptions, alerted by way of e.g. friends and

colleagues, within businesses, social media including online advertisements. Where employees use agencies (often because HMRC's online process for making claims is so difficult), the agents may alert employees about expenses they have incurred which the employees had not previously realised are deductible.

- (d) In some sectors claiming deductible expenses has become more industrialised with unions and trade bodies and agencies arranging access to high volume repayment agents. This is driven by technology to keep costs low but they are serving a need that previously was not recognised.
- (e) Changes in the agency rules have resulted in workers being reclassified as employees. To help offset resultant increases in NIC costs, the number of umbrella companies and personal service companies has increased and employers are reimbursing less to offset the higher costs of being an employer, e.g. holiday pay, national minimum/ living wage, auto-enrolment, apprenticeship levy, etc.
- (f) Some employers are still using aspects of the pre-1998 travelling and subsistence rules where they are less generous than the current rules, leaving employees to claim tax relief on the difference.
- (g) For directors of one-man companies, it can be more tax efficient to claim tax relief personally, e.g. for professional subscriptions, than have them reimbursed by the company.
- (h) Employees working from home (including for example where staff have been shed with the ones who remain being allocated bigger territories and reassigned to work from home) whose employers do not reimburse the £4pw/£18pm allowed relief.
- (i) In the medical profession, there have been in recent years substantial increases in obligatory liability insurances paid personally and not reimbursed by the NHS. Furthermore, as many doctors are now running their private practices through a company rather than as self-employed individuals, the professional fees and subscriptions will be reimbursed to them as employees of the company rather than as self-employed expenses. This can mean £10,000s of expenses per doctor appearing to be 'new'.
- (j) The claim process can be by telephone once the first claim has been made on form P87 so it is less hassle for people to make small claims than previously when letters needed to be written (and may well have been lost in HMRC offices or sent to the wrong place and therefore not actioned).
- (k) There is also the possibility that because HMRC carries forward expenses deductions into subsequent years' tax codes, relief may be being given that is not due.

**Question C1: Has the type and amount of expenses employees incur changed in the last 5-10 years and if so, how and why?**

- 42.** Information technology developments have driven changes in the type of expenses incurred by employees over the past 5-10 years. More and more employers expect employees to be constantly connected and to have their workplace to hand wherever they are, which means that, in many jobs, smartphones, tablets, etc. are a prerequisite rather than a luxury. Having said that, many employers supply employees with mobile phones and computer equipment for business in preference to reimbursing employees for using their own, as this ensures that the equipment that their employees use is compatible with company systems and to decrease the risk of security breaches and virus infections.
- 43.** Inflation will have increased the amount of expenses incurred by employees, although in the case of portable IT hardware, costs appear to have been contained by competitive forces.

**Question C2: Has the pattern of what employers are, and are not, prepared to reimburse changed in recent years? Are employers being more restrictive in their payment of expenses?**

44. Yes, employers appear to be (broadly) more cost conscious and clearly the changing economic climate over the past 10 years has had a significant impact. For example, at the height of the recession it was not unusual for even standard class air travel to require a written business case before being approved due to the very tight cost controls. While businesses have, for the most part, relaxed from those extremes, a clear cost management agenda remains. An example of changing patterns is professional subscription reimbursement – before the recession these were often paid by employers and now employers tend to pay only those subscriptions that are *required* in order to perform the duties of the employment.
45. Similarly, some employers are restricting reimbursement to scale rates the level of which are a nonsense in many cities but it is tedious for the employer to have to do a sampling exercise. For example, a breakfast scale rate of £5 does not go far in London when one has to pay £8.50 for orange juice and porridge.

**Question C3: Have agents changed their practices in supporting people to claim expenses?**

46. The agents that have been providing support to claim expenses have not changed their practices, but the size of the advisory market has increased in part as a result of employers not reimbursing everything for which an employee could obtain relief and the general lack of awareness by employees that they can claim tax relief against earnings but widespread awareness about agents getting money back for people e.g. for payment protection insurance and by extension tax overpaid on earnings.

**Question C4: How do you expect expenses practices to change in future?**

47. We imagine that the processing of employees' expenses' claims will become more electronic. There is already much more take up of e-expenses software that can track trends and, prevent abuse and automate coding to nominal ledgers and payroll. Perhaps when paying for something, the employee will key in a code to indicate that the expense is exempt against earnings and this data will be sent along with details of the payment direct to the employer and/or HMRC as appropriate. This will necessitate richer data banking applications to be developed, and for employees and employers and HMRC and the banks to have connected, secure – and robust – IT systems. At this time however we feel that this is some way ahead.
48. Please also see Question 16 below.

## **RESPONSES TO QUESTIONS IN CALL FOR EVIDENCE DOCUMENT**

### **Section 1: Current employer practices on employee expenses**

#### ***How expenses affect employers***

##### ***Question 1***

**What expenses do employers pay for or reimburse?**

49. This is a long list, the most common are travelling (e.g. train/taxi fares, mileage, parking, fuel), subsistence, board and lodging (overnight and if on a posting longer term), subscriptions to professional bodies, stationery used for work.
50. The underlying philosophy is typically a balance between the expenses that the employee could reasonably expect to incur in the performance of the role and the cost of reimbursement

(including grossed-up cost where relief or exemption is not in point). The point of balance will vary between employers, but the two competing principles are always there.

51. There is also the employer who agrees to fund an employee's expenses in order to recruit them, e.g. accommodation near the place of work, normal commuting. Often HR teams do this with no idea that this will be a tax issue, so greater training is needed through HR publications, HR representative bodies. The misleading statement in April 2016 Employer Bulletin that interview expenses and promotion board expenses are taxable is, when drawn to employers' attention, perceived to be petty.

**Does this vary between employees, for example, employees on different salaries or on different types of contract?**

52. Employers may have different criteria for different grades of employees which may depend on grade – those on higher grades might, but not always necessarily, get more as company expenses policies typically cover everyone from the Chairman to the receptionist. When considering employers' expenses policies, it is probably more useful to first consider how policy is set and understand the tension between the business need to reimburse and the imperative to control cost, rather than looking at specific expenses. The policy would normally encompass all employees – but the types of expenses they are likely to incur would differ.

**Are there different practices in different sectors?**

53. The practices in each sector are likely to depend on the needs of that sector; but the underlying principles of cost control and business need are common to all.

**Please set out your expense policy if applicable.**

54. By way of example, the policy of a certain quoted company in the City (referred to here as XX Company) runs to 40 pages but it contains a helpful policy statement:

'The XX Company Expense Management Policy exists to provide general expense and fraud control, and to ensure that XX Company is able to ensure tax compliance. XX Company employees at every level are responsible for general expense and fraud controls. Employees are responsible for ensuring that expenses adhere to XX Company's policies (e.g. anti-bribery, etc), are appropriate for the business, are approved by the proper authority and processed in a timely manner. Any misrepresentation of expenses will result in corrective action up to and including termination of employment. Individuals can not approve their own expenses.'

55. It can be seen from this example that XX Company's priority is cost control and not maximising the employees' tax relief, and this is not an unusual policy statement.

## **Question 2**

**How do employers set expense policies? For example, is the type and level of expenses that will be reimbursed set out in contracts, through informal arrangements or on a case by case basis?**

56. Most employers have policies set out in companywide guidance rather than incorporated in contracts. These vary from a simple statement such as 'the company will reimburse any reasonable business expenses incurred' to a prescriptive document of many pages setting out what the business considers 'reasonable' in various classes of expenditure, i.e. travel, accommodation, subscriptions, etc. However, such policies may vary on a case by case basis. Some grades may be allowed to travel first class whereas others for example are limited to second class. Expenses policies may be specified in employee contracts to prevent

misunderstandings, especially when the terms of the employment are changed, e.g. on a transfer to a different workplace.

**What are the main factors employers consider when deciding whether to reimburse an expense?**

**57.** Affordability and custom. Custom might be having to give way to affordability. Reports from members suggest that recent additional employer imposts over and above tax, NIC and statutory payments, such as auto-enrolment, national minimum/living wage and apprenticeship levy, are leading employers to claw back these costs by cutting down on the amount of expenses that they reimburse, especially where the employee can recover some of their outlay by claiming tax relief.

**If employees are incurring expenses that would be eligible for tax relief, why might the employer not reimburse the expense or not reimburse the expenses in full?**

**58.** Please see answer to immediately preceding question – employers need to contain costs and perceive that the ability of employees to claim tax relief softens this blow.

**What do employers who don't reimburse tell their employees about claiming tax relief?**

**59.** This varies between employers.

### **Question 3**

**Do employers pay for employee expenses with cash allowances rather than reimbursing specific expenses?**

**60.** Some do.

**If so, what factors do employers consider when offering a cash allowance including how much they decide to give?**

**61.** A cash allowance might be perceived as being simpler to administer.

**Do employees receiving a cash allowance claim for relief on expenses?**

**62.** We would assume some but not all do. But only if they know they can as above and can negotiate the claims process.

### **Employees' expectations of how their employer will treat their expenses**

#### **Question 4**

**What work expenses do employees normally incur? Please include any data you have on which expenses employees claim for reimbursement from their employer and how frequently employees do this.**

**63.** Please see answer to Question 1.

#### **Question 5**

**Do employees expect their employers to reimburse expenses?**

**64.** Some do and some do not. It depends on the sector and the type of employer and other circumstances.

**What factors does this depend on, for example, does the size of the organisation or sector influence employees' expectations?**

**65.** A number of factors will determine this including the size and employment sector, examples include whether reimbursement is customary within the sector in or in the business for which the employee works and particular employees' sense of entitlement. The profitability or otherwise of an organisation may also influence affordability and another factor is union representation whereby historically some organisations with powerful unions may have conceded more generous expenses policies than companies with little or no employee representation.

**Do employees influence their employer's expense policy and does whether an employer reimburses or not impact the retention and recruitment of employees?**

- 66.** We would imagine, but have no evidence, that employers' expenses policies would be more heavily influenced by employees where employers are open minded, or where there is worker representation at Board level.
- 67.** In some cases an expenses policy might be a recruitment or retention tool, for example to get an employee, or potential employee, to relocate. In an ever more global employment market there is an increased need for overseas travel to overseas group HQs and similarly for overseas heads to visit the UK, who expect UK rules to be the same as their country and to not be out of pocket at all whilst on travelling business (including a spouse coming too).
- 68.** A number of employers prefer to include business-related expenses in a PSA and provide a company credit card to employees. Despite the increased cost of grossed up tax/NIC, this avoids having to complete forms P11D and company credit cards mean that employees do not have to incur the cost of expenses that the employer considers to be business related. Employers who adopt this approach normally have a zero tolerance policy if employees use the company credit card for personal expenses.

**Question 6**

**What evidence are employees expected to provide to their employers of their expenses?**

**69.** Normally employers expect employees to back up their claims with receipts. This is to satisfy the employer that the employee actually incurred the expense for which he is seeking reimbursement. This will also enable the employer to evidence VAT recovery claims, where applicable. In addition, employers will often require additional details of certain expenses, e.g. meals, in order to determine whether the expense constitutes staff entertaining, business entertaining or subsistence. Many e-expenses systems cannot operate without this coding being input.

**Question 7**

**Do employers know of employees who incur expenses which are not reimbursed and which would qualify for tax relief from HMRC?**

**70.** Yes, for example, many employers do not pay their employees the full 45p/25p mileage allowances or pay employees who are contracted to work from home the £4pw/£18pm working from home allowance.

**If so, why are these expenses not reimbursed and do employers know if employees are claiming a tax relief from HMRC?**

**71.** Probably the main reason why employers do not reimburse expenses is to save costs. In the above example for an employer to pay say 4,000 homeworkers £4 a week would cost that business £832,000 a year. Employees are perceived to cost more than the self-employed or contractors, both in terms of tax costs (income tax, NIC, apprenticeship levy) and employment

law costs (national minimum/living wage, paid holidays, statutory payments, ability to fire, etc), although recent case law is extending certain employment law rights to contractors who are 'workers'.

72. The employer has no way of finding out whether a particular employee is claiming tax relief without asking the employee. In some cases the employer will soften the blow of not reimbursing particular expenses by telling employees that they can claim tax relief, and some employers in some sectors might refer employees to a tax agent to help the employee claim the tax relief. Some such agents claim the tax relief on the employee's behalf (some, if applicable, also deduct their fee out of the tax recovered before passing it on to the employee), thereby relieving the employee of the need to contact HMRC themselves. We view such agents as performing a genuine and necessary economic activity in the interests of their clients. These agents and those businesses will in turn pay their own taxes, be it VAT on their fees, NIC or income tax on salaries and corporation taxes on any residual profits those companies make.

### ***Changes in expense practices***

#### ***Question 8***

Has the type and amount of expenses employees incur changed in the last 5-10 years and, if so, how and why?

73. Please see answer to Question C1 above.

Does this vary by sector or the type of expense?

74. The nature of the sector and the job has influenced the nature and extent of change.

#### ***Question 9***

Has the type and amount of expenses employers reimburse changed in the last 5-10 years and, if so, how and why?

75. Please see answers to Question C2 above.

Does this vary by sector or the type of expense?

76. The nature of the sector and the job has influenced the nature and extent of change.

### **Section 2: Current tax rules on employee expenses**

#### ***Question 10***

Do you think the scope of the current tax relief for employee expenses reflects the expenses employees have today?

77. Please see answers to Questions B1 - B3 above.

Are there any types of expenses that are currently eligible for relief where that no longer seems appropriate, and why?

78. No. If anything with changes already made to hit salary sacrifice there will inevitably be fewer expenses that obtain relief via the employer – which in turn will push up the amount of tax relief that employees are forced to claim personally directly from HMRC. We think that many more employers will opt to pay taxed cash allowances towards things like clothing and broadband as it is just too difficult to navigate the rules

**Are there any expenses which don't fall within the current exemption which you think should and why?**

**79.** Please see answer to Questions B1 - B3 above – in particular as regards the 24 month temporary workplace rule which needs extending to 36 months to reflect today's bigger and therefore longer-lasting contracts.

**Question 11**

**Do HMRC's rules on expenses guide employers' expense policies? For example, do some employers only reimburse expenses which qualify for a tax relief?**

**80.** We believe that this is so in some cases. Otherwise the employer will be obliged to payroll such items which creates more work for them. Sometimes employers use former tax rules to govern expenses policies to save costs; for example some employers still retain aspects of the pre-1998 travelling rules in their policies where these are less generous than the present regime. Employers, however, reimburse business expenses which are not necessarily the same as expenses allowable for tax relief. A good example of this is away from home expenses where the employee is at a 'temporary workplace' and the duration of the project is likely to exceed or has exceeded 24 months. The artificial 24 month time limit does not stop the expenses being a business expense. Such expenses should be allowed to be included in PAYE settlement agreements.

**81.** We also believe that the former £25 friends and family allowance was an excellent policy that was unlikely to have resulted in exchequer loss but helped business costs hugely as it saved paying hotel bills.

**How employees claim the tax relief**

**Question 12**

**Do employees know the rules for expenses and how to claim for expenses which are not reimbursed?**

**82.** As noted in the answer to Question A3 we believe that there is widespread ignorance.

**83.** Using the PTA to claim expenses via HMRC's software is a frustrating experience – please see answer to Question A3 and Appendix 2.

**How do employees find this information?**

**84.** Employees might see adverts online and be alerted by consumer champions such as Moneysavingexpert on the TV. If they are aware that they can claim they might look on gov.uk. However, as explained in the answer to Question A3 in Appendix 2, if they find the form P87 on gov.uk at <https://www.gov.uk/government/publications/income-tax-tax-relief-for-expenses-of-employment-p87> they are likely to find completing the form difficult.

**Question 13**

**Do employees usually claim directly or indirectly from HMRC?**

**85.** We imagine that HMRC would be able to provide this data.

**Why do employees claim in different ways and does this vary by the type of expenses?**

**86.** It depends on the circumstances.

**Do employees use agents to claim on their behalf? If so, why do employees do this? How much are they claiming for and how much does it cost to use an agent? Please provide data if possible.**

**87.** Some employees use agents. In some cases, this is because even if they know that they can make a claim, they don't know how to, and don't feel confident enough to follow the steps set out on gov.uk. In other cases, depending on the sector and the nature of the job, the employer or employee representatives or the agency or colleagues might recommend an agent who can help the employee make a claim or do so on their behalf. For example, some large employers including the public sector pay less than the full rate for mileage so there are agencies that specialise in making claims on behalf of employees in those sectors in return for a commission.

**Do you think the use of agents has become more widespread? If yes, why do you think this is the case? Please provide data if possible.**

**88.** We think that it has – people are more aware that they can make a claim and more receptive to agencies offering to help them do so. We consider that if agents can help taxpayers to pay or claim back the right amount of tax then they are providing a valuable service.

**89.** As to what is driving employees to use agents, please see answer to Questions A2 & A3 and Appendix 2 – the average employee finds HMRC's online systems are too difficult to use.

**Do employers ever claim a tax relief for expenses which aren't reimbursed from HMRC on their employee's behalf? If so, why?**

**90.** We imagine that HMRC would be best placed to answer this question.

#### **Question 14**

**Are flat rate expense allowances still appropriate?**

**91.** Yes, very much so. Flat rate allowances simplify the process of reimbursement and the making of claims to HMRC, and should make it easier for HMRC to check them. It would make the process easier to automate for example.

**If flat rate expenses allowances were not available, would employers reimburse these expenses?**

**92.** We do not believe that the existence of flat rate expenses of itself encourages employers to reimburse expenses for incurred business purposes, but it does simplify the process and they can save costs for employers, for example, if they treat the amount of the allowance as an upper limit to restrict the amounts that employees claim.

#### **Question 15**

**Do you have any other suggestions for how the tax rules could be made clearer or their administration could be simplified for employers and employees?**

**93.** Making it easier for employees to claim relief via Form P87 is encouraged, including reverting to a manual form which they can download, complete in ink, and then post to HMRC to process. Allowing the taxpayer to see the whole form without having to complete it would be beneficial as it would then be possible for the taxpayer to make sure they have all the necessary information to hand.

**94.** Also, as mentioned earlier, there really does need to be a high degree of investment in education of taxpayers and having this built into the National curriculum will relieve pressure from HMRC and also ensure a common message is given.

**How could HMRC make it easier for employees to claim the tax relief directly and do employees know that making a claim directly from HMRC is a free service?**

**95.** See above (especially answers to Questions A2 & A3 and Appendix 2). It is not a question of whether the service is free or not. It is about how easy and quick it is to do. Using an agent is much quicker and easier than using HMRC's own on-line process.

### **Section 3: The future of employee expenses**

#### *Question 16*

**How do you expect expense practices to change in future?**

**96.** Please see answer to Question C4 above.

**Do respondents think there will be a wider range of employee expenses?  
Will the type of expenses employees pay, and claim for, change?**

**97.** The development of new technology and ways of working are likely to extend the range of employee expenses that employees incur, in the same way that, for example, IT has enabled more and more employees to work efficiently from home.

**What factors will influence employers' decisions whether to reimburse or not in future? Will employers be less inclined to reimburse certain expenses?  
What are the contributing factors to these changes?**

**98.** As noted above, costs and custom are probably the biggest factors. Employers are striving to contain employment costs, e.g. national minimum/ living wage, auto-enrolment, apprenticeship levy, especially at lower grades where such costs arise owing to otherwise self-employed workers and contractors being deemed employees

**99.** Everyone in the HR sector is waiting for the living accommodation condoc as this may well fundamentally change the way living accommodation and the associated expenses are provided.

#### *Question 17*

**Are there areas of the tax treatment for expenses that the government should explore further?**

**100.** No. There has already been significant extra work, cost and complexity introduced in the workplace by OpRA, auto-enrolment, RTI, NMW, apprenticeship levy. We suspect the UK economy and taxpayers would welcome a period of calm with no changes (apart from the relatively minor ones that we recommend above which are designed to ease compliance for employers and employees and checking by HMRC) – particularly as we enter the very uncertain and turbulent period building up to full exit from the EU.

## 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 <http://www.icaew.com/-/media/corporate/files/technical/tax/tax-news/taxguides/taxguide-0499.ashx>).