ICAEW
REPRESENTATION 103/23

TAX INCENTIVES FOR OCCUPATIONAL HEALTH

Issued 11 October 2023

ICAEW welcomes the opportunity to comment on the *Tax incentives for occupational health* consultation published by HM Treasury and HM Revenue & Customs on 20 July 2023, a copy of which is available from this link .

For questions on this response please contact our Tax Faculty at taxfac@icaew.com quoting REP 103/23.

The government in devising healthcare policy, both in terms of the NHS and incentives to employers to provide occupational health (OH) services, needs to take an holistic approach and take into consideration the trade-off between the cost of tax reliefs now with the reduction in spending on healthcare and health-related social security benefits in the future.

Does provision of OH services by employers get people back into work? By its nature such provision usually only affects individuals who are employees of larger employers.

The tax rules for incentivising occupational health (OH) provision are too complicated for most employers. Individuals who do not work for employers that have OH and tax expertise are unlikely to have access to workplace OH facilities.

ICAEW
Chartered Accountants' Hall Moorgate Place London EC2R 6EA UK
T +44 (0)1908 248 250 F +44 (0)20 7920 0547 icaew.com

The Institute of Chartered Accountants in England and Wales (ICAEW) incorporated by Royal Charter (RC000246)
Registered office: Chartered Accountants' Hall Moorgate Place London EC2R 6EA UK

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OVERARCHING POINTS

1. The government in devising healthcare policy (both in terms of the NHS and incentives) needs to take an holistic approach, focus on prevention rather than cures, and take into consideration the trade-off between the cost of tax reliefs now with the reduction in spending on healthcare and health-related social security benefits in the future.
2. Do occupational health (OH) services get people back into work? By their nature they usually only affect individuals who are employees of larger employers. Individuals who do not work for employers that have OH expertise within a human resources function are unlikely to have access to workplace OH facilities.
3. The absence of evidence in the consultation document (condoc) and consequent lack of steer on what the government is trying to achieve other than getting people back to work means the questions seem more appropriate for a call for evidence than a consultation.
4. The tax rules for incentivising OH provision are too complicated for most employers. For example:
   - understanding the eye test conditions has proven to be so complicated that HMRC has flip-flopped in guidance on whether reimbursing employees for the cost of eye tests is a taxable benefit-in-kind (BiK). The original guidance was in line with Hansard which confirmed that the intention of the legislation is that such reimbursements are not a BIK. The guidance was amended to deny relief where there was reimbursement. This issue is under discussion in HMRC's Employment & Payroll Group.
   - it is unclear whether the cost of apps that enable employees to select OH services is a taxable BiK.
5. Private medical insurance (PMI) and dental insurance have the potential to take pressure off the NHS. PMI and dental insurance are a frequent component of remuneration packages overseas, but the UK treatment of these insurances as a BIK makes UK businesses uncompetitive.
6. In the interests of simplification, the tax distinction between employees being provided with a tax-free benefit or being reimbursed by their employer should be removed. This would reflect the economic reality that the employer has borne the cost. This should be across a range of health-related and other expenses.

GENERAL COMMENTS

7. The primary driver behind the provision by employers of occupational health (OH) services is to ensure that their workers are productive. Tax is less of an incentive because the tax exemptions are complex and narrow and may necessitate employers making inquiries into sensitive issues to ascertain whether the exemptions apply (for example, is the stress that has led to an employee's absence for which the employer is providing counselling work-related or domestic/financial, and, if financial, is it debt related?).
8. Also if OH services are provided as part of a flex benefit package that involves salary sacrifice, the optional remuneration rules may negate the tax efficiency.
9. For smaller and medium sized employers, the time-costs of navigating the tax rules outweigh the perceived benefit of providing the OH services.
10. The tax system does not incentivize employers to make available OH services. Voucher schemes are one way for employers to provide OH services but most small and medium sized employers find these schemes too involved.
11. The government needs to take into consideration the trade-off between the cost of tax reliefs now with the potential reduction in spending on healthcare in the future. Assuming that the evidence suggests that tax incentives have a positive impact on reducing future expenditure and the government decides to use the tax system to encourage more employers to provide OH services, possible options could include:

- allowing the cost of private medical and dental insurance (on the basis that it would take pressure off the NHS);
- treating reimbursement by employers to employees (eg, for eye tests and flu and other vaccinations which prevent illnesses) in the same way as where the employer pays directly including via a voucher;
- widening the scope to include preventative treatments, the cost any type of vaccination approved by the NHS/NICE, and possibly extend to gym memberships, keep fit, yoga, etc; and
- allowing costs of travel to work for disabled and temporarily disabled people who are unable to use public transport, (eg, allow taxi costs for someone with a broken leg so they can return to the office earlier).

12. Financial advice on how to avoid getting into debt should be exempted from being a BiK in the same way as debt counselling. The rules and guidance on welfare counselling say that tax advice is not allowable. We understand the policy position on tax advice but think there should be an exemption where the advice comprises an explanation as to whether taking up the offer of counselling or any OH service is a taxable BiK.
13. As explained above, the history of the exemption for eye tests is good example of why employers find the tax laws too complex and administratively burdensome. The guidance originally stated that reimbursement of such tests was allowable. HMRC changed its guidance without any communication to employers to state that reimbursement of the cost of an eye test was not an allowable expense. When this was queried with HMRC, HMRC's response was that this was always the law. Fortunately, a non-HMRC member of the Employment & Payroll Group (EPG) found an extract from Hansard that demonstrated that it was always the intention of Parliament that reimbursement would be an allowable expense.
14. The law should be amended to remove the distinction between something being provided by an employer or reimbursed by the employer as this would reflect the economic reality that the employer has borne the cost. This should be across a range of health-related and other expenses and would be a welcome simplification.
15. If the government wishes to improve the health of the nation, OH services are only part of a wider policy response, not least because OH services will only be available to a sector of the employee population – typically employees of larger employers. If the government wants to encourage individuals to take responsibility for their health and join or rejoin the workforce, then it will need a much wider range of policy responses.
16. Any wider measures would necessitate government taking a long-term view, but this is essential to ensure that the UK has a labour market and a workforce fit for the future across all sectors.

ANSWERS TO SPECIFIC QUESTIONS

CH 2: THE CASE FOR ACTION

Evidence and efficacy of existing support

Question 1: Why do employers provide OH services to their employees? For example, it could be to increase workplace participation, increase workplace performance, or for the health and wellbeing of the employee.

17. The provision of OH services are in the most part driven by the need of the business to ensure that its employees are as productive as possible. Hence the need for eye tests and workstation assessments for deskbound staff and physiotherapy for those in more manual jobs.
18. The suggested reasons as to why employers provide OH services listed in the question are correct. Provision of OH services also enables the employer to demonstrate that they are fulfilling their duty of care towards employees and is helpful when trying to recruit.

Question 2: What OH treatments are most commonly provided to employees? Have you observed any changes to this since the COVID-19 pandemic?

19. OH can include a service provided to assist the company in understanding any medical conditions an employee may have or when seeking clarification on potential conditions or support that can be provided by the company. It can be an appointment- based service that does not refer the employee for any treatment but is rather a discussion on medical advice/ treatments supported by a GP or consultant/ specialist.
20. If specific treatment is recommended, this can sometimes be provided through a group income protection (GIP) provider. Employers pay high premiums for such a facility but such a service can help to avoid potential large claims from employees.

Question 3: What OH treatments are most effective for improving workplace participation, or effective at achieving other objectives (e.g. performance or health outcomes)?

21. We have insufficient evidence to enable us to answer this question.

Question 4: How much do employers typically spend on OH services? Does the existence of the £500 cap on recommended medical treatment influence the amount that employers are likely to spend on OH services?

22. We do not have any specific evidence but the costs are likely to be substantial.
23. It is for the additional OH services where employers' costs mount up, eg for employee assistance programmes (EAP) (which provide lifestyle support or counselling) and cognitive behavioural therapy (CBT).
24. The £500 cap is inadequate to cover most treatments but in practice probably does not affect what employers spend.

Question 5: To what extent does the tax treatment of OH services affect the decisions employers make on whether to provide OH services and what to provide as a part of them? For example, would an employer be more likely to offer a treatment that is exempt than one that is not, and to what extent is that decision influenced by the tax treatment?

25. An employer will undertake a cost benefit analysis of any new item of remuneration. This analysis will not only include any tax costs but also an estimate of the administrative burden of providing the item. This will be balanced against the commercial pressure to provide such benefits to attract and retain employees. For example, employees now expect flexible benefit plans and where possible a degree of remote working.
26. We believe that the decision to offer OH services is less about the tax cost but more about whether the employer can afford the cost of the services and the administration, which is why these services tend only to be provided by larger employers.

Question 6: Small and Medium Enterprises are significantly less likely to offer OH services. Why is this? Are there other characteristics of employers that tend them towards offering less or more OH services?

27. As explained above, there are more than the tax costs to consider.
28. OH services are available via some group income protection (GIP) insurance schemes. The service would then be restricted to those covered under the scheme. The cost of such insurance and administration is probably more than a small employer would consider financially viable.

CH 3: SCOPE

Proposal for costs in scope

Question 7: How would any of the proposed additional treatments listed above enable you to support increased OH provision and improve workforce participation? Do you have any other comments on these proposals? If so, please comment on each in turn.

29. The list of additional treatments includes "Treatments that aim to reduce workplace absence or enable employees to perform better, including preventative treatments". If an employer is prepared to pay for such treatments, and this is to be encouraged, it does not seem right to jeopardize the take up of a treatment due to the employee having to suffer an additional tax bill. Although on the one hand this could be seen as a loss to the exchequer, the reality is that the employee would probably not have the treatment so little tax will have been lost when one also considers the exchequer (and social) benefits of the employee returning to work earlier.
30. The condoc is based on the premise that OH services get people back to work. If this is the policy aim, and that a reduction in exchequer revenue should be exceeded by the extra tax and productivity of the individuals, it is right to encourage employers to offer such schemes by providing the employer with a tax break for the cost of the schemes.

Question 8: For each of the categories of treatments that are currently available, is the existing definition appropriate and does it support OH provision or does it create issues?

31. See earlier comments regarding eye tests and reimbursements.
32. Many OH services are now offered via apps which enable employees to choose the appropriate services. In such cases, it is unclear how the cost of providing the app should be treated for tax in the hands of the employee. Any future legislation should make it clear that the app is not a BiK.
33. Similarly future legislation should make it clear that no BiK arises on tax advice concerning whether the provision of welfare counselling and OH service is taxable as a BiK. See also comments above.
34. The exemption for welfare counselling under s210 ITEPA 2003 and associated regulations is explained in EIM21845 Particular benefits – exemption for welfare counselling. As well as excluding tax advice, the exemption does not include advice on financial problems other than debt problems. However, financial advice may be sought by an individual to prevent them going into debt. Consideration should be given to amending the law to exempt financial advice on how to avoid debt from being a BiK.

Question 9: Are there are other costs that should be in scope, and how would they help achieve our goal of improved OH provision and greater labour market participation?

35. We recommend that the following costs should be allowed:
    a) the cost of private medical and dental insurance (on the basis that it would take pressure off the NHS);
    b) treat reimbursement by employers to employees (eg, for eye tests and flu and other vaccinations that prevent illnesses) in the same way as where the employer pays directly including via a voucher;
    c) widen the scope to include preventative treatments, the cost any type of vaccination approved by the NHS/NICE, and possibly extend to gym memberships, keep fit, yoga, etc;
    d) allow costs of travel to work for disabled and temporarily disabled people who are unable to use public transport, (eg, allow taxi costs for someone with a broken leg so they can return to the office earlier); and

e) frequently the rules and guidance on welfare counselling say that tax advice is not allowable. We think there should be an exception that allows an explanation that taking up the offer of counselling or any OH service is not a taxable BiK.

36. Allowing these costs and those referred to in the answer to the previous question could encourage more employers to provide OH services for their employees which would result in a healthier workforce.

Question 10: Do you have any views on the drawbacks of expanding BiK reliefs?

37. The consultation document explains that likely drawbacks include: "…cost to the exchequer, deadweight loss…". Clearly providing a tax exemption that is used reduces exchequer revenue, but the true cost can only be measured when the benefits are taken into consideration.
38. For example, there is a reduction in tax revenue caused by the exemption for flu vaccines. The real cost needs to consider the reduction in spending in the NHS due to the reduced number of flu patients and the NHS not having to provide the vaccine services directly. Research should show whether or not there is a net benefit to the exchequer of providing the vaccine and how far an exemption might be extended, for example for all employer provided/ reimbursed vaccines for employees and their families.

Proposal for costs out of scope

Question 11: Do you see a case for any of the above costs being in scope of additional tax relief under the BiK exemption? If so, please discuss why, and how this would help achieve the government's objective of increasing employer provision of OH services and labour market participation.

39. See comments in our replies to Q9 and 10 above – in particular we think that there is an argument for exempting private medical and dental insurances. This could be extended to family members living in the same household.
40. We also believe that consideration should be given to widening the scope of the exemption to include preventative treatments. This could include the cost any type of vaccination approved by the NHS/NICE and possibly gym memberships, keep fit, yoga, etc.

CH 4: ALTERNATIVE TAX INCENTIVES

Alternative tax incentives

Question 12: Are there alternative tax incentives that you think would be more effective in incentivising employers to invest in OH services for employees? If so, please explain why.

41. Employers could have access to a grant scheme that could help pay for the services per person cost.
42. We also think that a super deduction could be an incentive, especially for employers who do not have the in-house resources to provide OH services let alone work out the tax implications.
43. Whilst a grant scheme or a super deduction could be confined to smaller employers, we would not recommend distinguishing employers by size as this would create not only complexity but also a cliff edge causing employers to try to keep below the threshold which would result in a brake on growth, both of which should be avoided when designing new policy.

Question 13: Are there particular tax incentives that would be better suited to helping small and/or medium sized businesses invest in OH services?

44. Please see answer to preceding question.

Question 14: To what extent would tax incentives be more effective in increasing employer investment in OH, compared to legal measures to provide OH, which could vary by the size of the business?

45. Most large employers have the bandwidth, funds and motivation to support their employees.
46. Other than managing costs, making it mandatory is the only way to ensure that all employees can access the support they need.
47. However, if any mandation were to be based on the size of the employer, as mentioned above it would make compliance more complicated and could act as a brake on business growth if they try to stay under the threshold.

CH 5: IMPACTS

Exchequer impacts

Question 15: Do you have any comments on the government's expectations regarding Exchequer impacts?

48. The cost quoted in the condoc of "tens of millions over the next five years" would be justifiable if the savings to the NHS and the social security budget (and the social gains of people being gainfully occupied) exceeded this figure.

Question 16: Would businesses seek to increase their overall investment into OH, if the exemptions from BiK rules were expanded in line with the suggestions in the chapter 3 on "Scope"? If so, to what extent?

49. Potentially. For large employers overall cost is a factor but many large employers already have OH programmes and initiatives in place. For medium and smaller sized employers or cost-conscious employers this could enhance OH benefit offerings going forward.
50. In addition, even if OH tax incentives were attractive:
    - OH services need to be accessible and staffed with suitably qualified talent (of which there is a real shortage) to avoid employee complaints and the proposed measures not being effective as a result, and
    - OH services need to be available at a price point that makes it scalable.

Economic impacts

Question 17: Do you have any comments on the government's assessment that tax incentives would positively impact the health of employees and lead to both fewer employees leaving the workforce and encouraging those currently employed to return to the workforce?

51. We think there should be more focus on how to prevent people from becoming ill rather than how to return ill people to work.

Question 18: Do you agree that tax incentives for providing access to occupation health services will promote a stronger culture in the UK of employers taking good care of employee health?

52. We agree it will help but tax incentives are not enough. A culture within the healthcare sector of prevention being better than cure, and sufficient funding, grants and OH professionals, are required.

Question 19: How significant could the economic benefits of greater OH provision in the UK be?

53. The benefits of retaining people in the workforce could potentially be huge noting the burden on social security benefits.

Question 20: Do you have suggestions on how the effectiveness of these changes could be monitored?

54. A broad measure would be whether there is a reduction in those out of work or claiming social security benefits.

Business impacts

Question 21: If you are an employer, what are the formal processes around spending on OH? For example, do you have an annual budget that you must work within, or is this flexible and dependent on the needs of the business and employees in that time period?

55. The business will have an annual budget which the various departments must adhere to. The funding reacts to the needs of the employees that require the support. There is pressure to have cheaper services or instead use other resources that are less costly.

Question 22: Do you have views on how best to minimise the administrative burdens for businesses, as a result of new OH tax incentives?

56. We recommend simplifying the tax legislation and the conditions of any exemptions, for example, recommended medical treatment up to £500 being tax free, where admin burdens would be reduced by removing the upper limit, and the need for businesses continuously to monitor expenditure and whether the conditions are met in order to benefit from the tax relief.
57. The associated costs of OH support and treatments should also be exempt, for example:
    - travel paid for by the employer so the employee can attend an in-person health assessment;
    - taxis to and from the office for employees with temporary injuries which means they cannot take public transport (eg broken arms, broken leg, etc.) as this will help support mental and physical health whilst the employee recovers; and.
    - relief for advice as to whether or not a particular OH service, eg financial advice on how to stop going into debt, is a BiK.

Question 23: Do you have views on how best to minimise the complexity associated with new OH tax incentives?

58. Simplicity is key.

Equalities impacts

Question 24: Do you have any views on the implications of the proposal in this consultation for you, or the group or business you represent, and on anyone with a relevant protected characteristic? If so, please explain who, which groups, including those with protected characteristics, or which businesses may be impacted and how.

59. A tailored approach to OH provision is required, such as tailoring by age and gender.

Territorial impacts

Question 25: Do you have any comments on the territorial impacts?

60. If different nations of the UK have different rules, this is likely to hinder any successful implementation due to the added complexity for employers of having to determine which set of conditions applies for individual employees.

Impact on HMRC and other public sector delivery organisations

Question 26: Do you have any comments on the impacts on HMRC and other public sector delivery organisations?

61. The biggest concern that our members have at present is with poor HMRC service standards. HMRC does not appear to have the resources it needs to administer the tax system effectively and efficiently. In designing any tax incentives, consideration needs to be given to how any burdens on HMRC can be kept to a minimum or reduced without transferring such burdens to taxpayers.
62. Properly targeted incentives should have a positive effect on the NHS and the social security budget.

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 https://goo.gl/x6UjJ5).