



Response from ICAS

HM Treasury
Taxation of employee expenses
call for evidence

13 June 2017

About ICAS

1. The following submission has been prepared by the ICAS Tax Board. This Board, with its five technical Committees, is responsible for putting forward the views of the ICAS tax community, which consists of Chartered Accountants and ICAS Tax Professionals working across the UK and beyond, and it does this with the active input and support of over 60 board and committee members. The Institute of Chartered Accountants of Scotland ('ICAS') is the world's oldest professional body of accountants and we represent over 21,000 members working across the UK and internationally. Our members work in all fields, predominantly across the private and not for profit sectors. ICAS is also a public interest body.

General Comments

2. ICAS welcomes the opportunity to respond to 'Taxation of employee expenses call for evidence', issued on 20 March 2017, and subsequently updated on 5 May 2017. The call invites evidence in the following areas:
 - Current employer practices on employee expenses
 - Current tax rules on employee expenses, and
 - The future of employee expenses.
3. We acknowledge the main objectives of the call for evidence are to understand:
 - If the current rules or their administration can be 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.

Responses to Questions

Question 1:

What expenses do employers pay for or reimburse?

- Does this vary between employees, for example, employees on different salaries or on different types of contract?
 - Are there different practices in different sectors?
 - Please set out your expense policy if applicable.
4. Generally speaking, there is a dichotomy between what employers pay in the service, banking and professional sectors, and those in the third sector and manufacturing/blue collar sectors. Civil service and public sector workers are also separate in terms of their own policies.
 5. In the first group, employees tend to be paid higher salaries and are reimbursed for any expenses they incur, including full Mileage Allowance Payments (MAPs) rates for using their own car on business (i.e. 45p). They tend to be asked to complete a claim form and attach receipts to these forms so that the company can verify the authenticity of spend and claim back any VAT as appropriate.
 6. The larger the employer, the more streamlined the claiming system tends to be, and there is usually an expenses policy available to employees to tell them what they can and cannot claim. Smaller employers may not have a claiming system or a policy, but they have a general idea of what a business expense is and do get it right most of the time.
 7. The main thing that governs all businesses in terms of business related expenditure is cost, and in the last decade in particular, most employers have wanted to keep a close eye on cost and ensure they are obtaining value for money in every transaction. Other factors such as employee demotivation, employee disengagement and employee sabotage have also been factors in fraudulent expense claims over the years and especially in the last decade (recessions tend to see increased levels of employee fraud) and therefore a wise employer keeps an eye on this too.

8. In the third (charity) and manufacturing sectors, employees are often expected to incur expenses themselves and claim tax relief on them (uniforms, overalls and safety wear being typical examples) and mileage expenses are often restricted to claims of up to a 'public transport rate' of around 23p per mile rather than the full 45 p per mile, which means employees must make a tax relief claim. Some businesses such as estate agents, travel agents and care homes also restrict mileage and pay negligible additional expenses, as most of the time, the employees are not placed in a situation where other expenses are in point.
9. In the public sector and civil service, some departments pay full own car MAPS rates whereas others do not, leading to the need to claim tax relief.
10. Employees in any sector working on zero hours contracts are likely only to be paid the minimum possible in terms of expenses reimbursements, and the increase in zero hours contracts in the labour market may thus have given rise to more claims by low paid individuals for tax relief.

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?

- **What are the main factors employers consider when deciding whether to reimburse an expense?**
 - **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?**
 - **What do employers who don't reimburse tell their employees about claiming tax relief?**
11. It is unusual for expenses policies to be set out in employment contracts unless the reimbursement of expenses is such an uncomplicated issue (for example, only mileage expenses are reimbursed) that it is pointless to set out a separate policy document. Modern employment contracts normally only contain those items which are deemed necessary by statute (Employment Rights Act 1996 et seq.).
 12. Many businesses formulate their own expenses policies over time, or obtain a copy of an expenses policy from another business and tailor it to their own needs. Some smaller businesses do not have policies as such but everyone working there is likely to be aware what the business owners allow or do not allow.
 13. Business owners also obtain advice on expenses policy-making from the internet, from their tax advisers, from their solicitor or from other business contacts. The chambers of commerce and the Federation of Small Businesses as well as institutes and professional or trade bodies, trades unions etc. also often offer 'free' pro-forma templates, claims forms and advice as to what a business can pay in terms of business expenses which attract tax relief as part of membership of the body.
 14. Other agencies such as the Low Incomes Tax Reform Group and Citizens Advice Bureau, as well as the aforementioned trades union bodies, may also be assisting otherwise unrepresented employees with claims for tax relief.
 15. Many, but not all, business owners are professionally qualified or have a professionally qualified finance director or financial controller who will also be aware of these issues and is able to manage them.
 16. The main factor any employer considers when deciding whether to reimburse an expense is cost. A secondary, but no less important, consideration is that of employee expectation. In certain businesses, professional services being an example, employees would immediately become disengaged if they perceived their employer was not reimbursing them for all costs that they incurred on business.

17. It is generally not the case that employers wish to reimburse private expenditure of any kind, although we acknowledge that there are likely to be minor exceptions to this. Small costs such as parking fines incurred on a business journey by employees sometimes fall under the radar as these are often assumed to be business expenses, and indeed, BIM 42515 adds to this confusion by allowing employer deductions for the employer in some cases.
18. An employer might not reimburse an expense that is eligible for tax relief, or choose not to reimburse it in full, because of cost control issues or simply because the existing expenses policy dictates this. Cost is very often the main purpose of restricting claims. Some employers are aware that the expenses are eligible for tax relief and state in their policies that employees can claim tax relief by application, from HMRC.
19. Sector-wise, some employers are more generous than others. By way of example, the professional services sector such as accountants, lawyers and surveyors tend (but not always - there are some exceptions) to reimburse all business expenses in full and tend to have more wide-ranging expense policies. Education, manufacturing and third sector employers often restrict expenses and/ or promote the availability of the tax relief system to their workers.
20. Small employers in the 'trades' such as plumbing and heating may know about the existence of the tax relief process, and if they do, they may pass this information on to employees, but on a more informal basis like a team meeting or in an internal memo. Some of them may also pass on relevant details to employees of how to claim but more often than not, this is left up to the individual to research and pursue in his own right. Many tradesmen purchase their own tools, and carry them with them at all times. They may wish to claim tax relief for these.

Question 3:

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

- **If so, what factors do employers consider when offering a cash allowance including how much they decide to give?**
 - **Do employees receiving a cash allowance claim for relief on expenses?**
21. Public sector employers often pay cash allowances as a way of limiting expenditure. In such scenarios, an employee can then choose whether they claim tax relief on any surplus which they incur. However, many employees do not know they can claim tax relief and only become aware this when they are informed by a colleague, friend or their employer.
 22. Sometimes, agencies whose main business model is to make mass tax relief claims approach employers or employees directly to offer them a service. They also advertise on social media such as Facebook and twitter.
 23. Cash allowances in the private and third sectors are also fairly commonplace as a means of restricting cost and ensuring consistency across the board for all workers. Again, though, the incidence of tax relief claims in such situations is dependent upon the level of awareness of the worker of the eligibility for tax relief and their ability to understand the concept.
 24. Very few employees would actually be likely to log on to the HMRC website of their own accord and research such a subject as they would find it complicated and be unsure of the rules/ not confident enough to interact with HMRC directly.
 25. The most common allowances are mileage and subsistence allowances. Employers use the HMRC rates for this in the main as they are seen to be reasonable.
 26. Travelling expenses such as rail travel, air travel and hotels etc. are usually reimbursed in full or incurred on a corporate credit card and settled directly by the employer.

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.

27. The type of expenses employees usually incur is entirely dependent on their role. Some employees, for example in the retail sector or the communications/ call centre environment may be unlikely ever to incur any expenses at all for their entire working lives as they do not need to incur any travelling costs, whereas senior executives within those businesses, or persons engaged to undertake sales work are likely to incur significant costs as they attend face to face meetings regularly.
28. However, the most frequently claimed expenditure is mileage, rail, air and subsistence as well as hotel costs across all sectors and represents the biggest employment cost to employers outside of wages, salaries and NICs.

Question 5:

Do employees expect their employers to reimburse expenses?

- **What factors does this depend on, for example, does the size of the organisation or sector influence employees' expectations?**
 - **Do employees influence their employer's expense policy and does whether an employer reimburses or not impact the retention and recruitment of employees?**
29. Ideally speaking, employees should expect their employers to reimburse business related expenses. Another ideal is that on commencement of employment, or even prior to it, employees would be furnished with relevant knowledge applicable to their roles and in connection with their rights and responsibilities so that they can understand all aspects of the appointment or future appointment on signing the contract of employment. This ideal would create an expectation that they will be reimbursed for any business expenses incurred during the course of their work.
30. However, there are many employers who do not provide employees with this information on commencement and some do not provide it at all, especially the very small employers, as information tends to be less formally communicated to workers in these businesses.
31. Employees may as a result feel disappointed or even disengaged to learn that they are not entitled to receive certain expenses reimbursements. In certain scenarios employees may choose to work elsewhere if the opportunity presents itself, which may present the employer with retention issues if enough employees decide to leave and resignations represent an ongoing problem.
32. Recruitment and the employer brand are only affected if the employer chooses to publicise the fact that they do not reimburse expenses that employees would expect to see reimbursed prior to them being recruited, and this information is perceived negatively by the employee to the extent that it is a deal breaker for them. Reputationally, an employer could suffer if the rumour mill, for example, in a town where an employer is based, is circulating information regarding that employer's reluctance or refusal to pay certain expenses. However, it would be up to that employer to review any issues affecting its brand and make strategic decisions to address these.
33. It is not unheard of for employees to be able to influence an employer's expenses policy but this is usually only in scenarios where the employee voice is reasonably powerful, e.g. where there is a strong trades union presence or there are representatives at Board level from employee groups or HR whose opinions are listened to. Even so, any changes to an expenses policy would need to be reviewed with many considerations in mind such as equality, discrimination, taxation, cost, contract law, consistency with other policies across the business, etc.

Question 6:

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

- 34.** Most employees are expected to evidence their expenses claims with receipts (not least for VAT reclaim purposes) and often, especially where car mileage is involved, a signed statement to confirm that they have incurred the expenses on business and that they are correctly insured and permitted to drive the vehicle in question.
- 35.** Although there are exceptions in some of the smaller employers, due to the practicalities involved, most employees must complete an expense claim form detailing the expense they are claiming, the date it was incurred and the amount involved. Where an employee has a company credit card, the statements are expected to be checked and verified together with receipts. Many larger organisations also book travel requests centrally and these are pre- authorised electronically by a manager.
- 36.** Some HR or finance software also includes an expenses section which employees must use to claim expenses electronically and to be paid, the employee must first provide the receipts and obtain authorisation.
- 37.** Presumably this information is also available, for the purpose of this call for evidence, from the onsite checks made by HMRC's own employer compliance officers.

Question 7:

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

- **If so, why are these expenses not reimbursed and do employers know if employees are claiming a tax relief from HMRC?**
- 38.** Depending on the nature of the business, employers are aware of employees who incur expenses which are not reimbursed and which would qualify for tax relief from HMRC. Examples of these could be employers in sectors which require uniforms or overalls which require laundering, clothing which needs to be worn in hot climates, or safety wear. Alternatively, some employees may receive a reduced mileage rate below AMAPS (this often happens across many sectors).
- 39.** Some employers may not reimburse travelling and especially subsistence expenses when an employee is away from the normal place of work. This is quite widespread in the educational sector for example, where teaching staff often pay for items out of their own pockets because there is no provision for such items in the budget of the particular school, college or university, but the teacher sees it as necessary.
- 40.** It may be the case that these employers simply do not have a policy of reimbursing these expenses in a bid to save costs. An employer's policy might tell employees that a facility exists for them to apply for tax relief, but in many cases, there is no communication between the employee and employer in this regard. Often, tax relief is only claimed because the employee is approached by a third party agency who offers to claim tax relief on their behalf in return for a form of commission.

Question 8:

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

- **Does this vary by sector or the type of expense?**
- 41.** Our understanding is that the amount of expenses claimed by employees has not varied significantly over time, because even though the cost of travel has risen, employers are resorting to limiting travel, reducing the class of travel which can be taken (e.g. from first to standard class) and replacing many face to face meetings with technology-based ones such as Skype and Facetime. Naturally, the type of expense and level of reimbursement will vary by sector. Manufacturing and services industries still tend to reimburse lower amounts than professional services businesses, for example. Online training and webinars have also reduced travelling costs in many businesses, but not for everything,

as human interaction is still seen to be the best method of communication. However, further research would need to be undertaken in this area to be able to state definitively which costs have gone down and which types of expenditure have been affected.

Question 9:

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

- **Does this vary by sector or the type of expense?**

42. If the level of expenses being paid by employers has reduced over the last five to ten years, this is likely to be due to the ever increasing cost of employing workers, such as the Apprenticeship Levy, Auto-enrolment for pension, NICs and many other statutory obligations such as health and safety, etc. Again, this is likely to vary by sector but smaller businesses are also less likely to pay expenses as generously as large businesses. Factors such as the so-called 'gig economy' are also likely to contribute to a reduction in payments as many workers in this area are classified as self-employed and thus unlikely to be eligible to claim expenses from an 'employer' in the traditional sense, leaving them to make adjustments as necessary on their self-assessment tax returns.

Question 10:

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

- **Are there any types of expenses that are currently eligible for relief where that no longer seems appropriate, and why?**
- **Are there any expenses which don't fall within the current exemption which you think should and why?**

43. The scope of current tax relief for employee expenses still seems to be appropriate for most employment relationships. One group which has seen an increased incidence of expenses is employees who work from home, due to improvements in technology.

44. Employees who are in knowledge-based industries such as advisory and consulting, as well as some employees working for telephone call centres, for helplines etc. are able to be home-based now whereas before they would have had to travel in to a place of work daily. Further consideration should be given to the level of tax relief or allowances that can be claimed by home workers as they often have a dedicated room in their own home.

45. This usually means additional heating and lighting bills as well as purchase of equipment, stationery, furniture etc. As these items often have a dual purpose, they can be overlooked by both HMRC (whose guidance could go further) and the employer. Tax Aid produced a useful summary at <http://taxaid.org.uk/guides/information/issues-for-employees/employee-expenses/homeworking-rules-and-expenses>.

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?

46. The legislation relating to claiming expenses which are wholly, exclusively and necessarily incurred in the proper performance of an employee's duties per s.336 ITEPA 2003 usually encompass those expenses which an employee can claim back from an employer. However, where an employer does reimburse any expenses which fall outside of these rules, these expenses are declared on forms P11D or included in payroll or in a PAYE Settlement Agreement as required. Examples of these are: parking fines, un-receipted expenses, excessive personal incidental expenses, team rewards, clothing, and IT/smartphones etc.

Question 12:

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

- **How do employees find this information?**

47. If the employer has a robust expenses claiming policy and a knowledgeable expenses processing department, as well as knowledgeable line management staff, then they can become familiar with which expenses they can claim. However, if this is not the case, there is a likelihood that they will be misled, or misunderstand the rules, which are quite complicated for the uninitiated and who know very little about tax. Employees generally look to the employer to guide them in such matters.

Question 13

Do employees usually claim directly or indirectly from HMRC?

- **Why do employees claim in different ways and does this vary by the type of expenses?**
- **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.**
- **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.**
- **Do employers ever claim a tax relief for expenses which aren't reimbursed from HMRC on their employee's behalf? If so, why?**

48. There is a mixture of employees who claim directly and indirectly from HMRC. However, the less employees know about tax generally, the more likely they are to claim using an agency, and they are also more likely to believe whatever the agency tells them and to assume the agency is correct.

49. The use of agents has become more widespread as many agents know who to approach, depending on the type of work they undertake. They are more prolific than ever on social media, for example.

50. Employees do not claim tax relief directly from HMRC and instead use agencies because they do not understand it. Some agencies might also be telling employees they can claim tax relief on things which they may not be eligible for, just to get the commission on a large scale.

Question 14:

Are flat rate expense allowances still appropriate?

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

51. Flat rate expenses allowances are still appropriate, especially in sectors where employees work away for days at a time. Examples include lorry drivers in the road haulage industry, sales people, public sector workers and others who are working away from the permanent workplace regularly. Having a flat rate means that it is administratively easier for the employer to control expenditure and for the employee to understand the parameters of what they can spend and then claim.

52. If flat rate expenses were not available, employees would undoubtedly still be able to claim expenses (flat rate or not) from those employers who, as now, are willing to pay them. Some employers may still wish to pay flat rate expenses regardless of the ability to pay them tax free, if these were withdrawn. It would seem sensible to leave these in place.

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?

- **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?**
53. The concept that an expense should be incurred wholly, exclusively and necessarily in the performance of the duties in order to qualify for tax relief is clear and the qualifying criteria have stood the test of time. The same cannot be said for the travel and subsistence guidance which employers find burdensome, complicated and difficult to convey to employees.
54. The notion of simplification of travel and subsistence expenses is appealing because it is the most widely claimed and often most misunderstood in terms of the rules to be followed. Most employers wish to comply with the tax legislation and as such, it is necessary to ensure that the rules are kept as simple as possible to facilitate this.
55. We acknowledge that training expenses have caused particular problems which have thrown up particular tax cases and this was also flagged up in the OTS's report on employee benefits and expenses at:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/339496/OTS_review_of_employee_benefits_and_expenses_final_report.pdf
56. There is no need to have a booklet such as the booklet IR 490 which attempts to cover every scenario. The previous regime of explaining the difference between business and private travel centred around so-called 'triangular travel', which was notoriously confusing. The current regime concentrates on permanent workplaces, temporary workplaces, ordinary commuting and private travel. These concepts are easier to understand but the guide is too long and too cumbersome. Ideally, a web based guide could be set up to: a) define these four criteria and b) ask a series of basic questions such as "is the employee travelling from home to their permanent workplace?" together with an information box to define what a permanent workplace is.
57. HMRC should ideally consult with employers, agents and other representative bodies to construct this material to ensure it is user-friendly and a quick and easy reference point. The guidance could take, say, the 5 most frequently encountered scenarios into account but not try to cover every last scenario, as common sense must surely dictate that most employers can make an educated guess in other scenarios and get it right.
58. HMRC could make it easier for employees to claim the tax relief directly by informing them directly via personal tax accounts, twitter, and other media, and ensuring they are aware it is a free service by spelling this out clearly in its communications. Employees need to be reassured that HMRC has no hidden agenda here.

Question 16:

How do you expect expense practices to change in future?

- **Do respondents think there will be a wider range of employee expenses?**
 - **Will the type of expenses employees pay, and claim for, change?**
 - **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?**
59. The future of expenses claiming is likely to change significantly in that much of it will be automated rather than cash-based. HMRC and employers need to be aware of this eventuality and ensure that systems are robust and capable of being audited. Many employers use these facilities at present and have cashless expenses systems which counter fraud, reduce errors and feed directly though into the income statement of the business. This makes the claiming of expenses much less personal, as it often means the employee is not being reimbursed for the expense directly.
60. Employers will probably be more inclined to wish to reimburse expenses which purely meet the needs of the business and do not reward the employee.

- 61.** It is doubtful that the type of expenses will change significantly in the next 20 years because people will still need to travel, stay away on business and incur costs on behalf of their employers.

Question 17:

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

- 62.** Areas of the tax treatment of expenses that the government should explore further are:

1. Company cars and vans, fuel for these and rates payable to those using electric and hybrid vehicles. This is because electric and hybrid vehicles may not cost 45p per mile to run where these are owned by the employee, but no testing has yet been undertaken.
2. Home working expenses should be re-evaluated as more employees work from home and they are often incurring costs which they may not be able to claim, whilst their employers do not bear the cost of as they are not providing office accommodation.
3. Training expenses should be reviewed, in line with the Apprenticeship Levy mechanism which is aiming to encourage employers to recruit more apprentices and formulate a training budget which can improve skills (subject to implementation of suitable anti-abuse legislation and connections to salary sacrifice etc.)

- 63.** Finally, HMRC should take account of the fact that some employee expenses are taxed and NIC'd unnecessarily, thereby creating an advantage for the exchequer. Examples of this are where employers declare items on P11D which do not need to be there, especially at boxes M and N, and also when a benefit in kind is valued too high by the employer. Some employers are also overstating the value of payrolled benefits in kind unwittingly, or include them on the payroll by mistake.