

Rt. Hon, Nigel Huddleston MP
Financial Secretary to the Treasury
HM Treasury
1 Horse Guards Road
London SW1A 2HQ

21 March 2024

Dear Minister,

Mandatory Payrolling of Benefits in Kind from April 2026

I am writing to you as the non-HMRC co-chair of the Employment & Payroll Group (EPG). The EPG is populated by senior level tax experts from professional bodies including ICAS, ICAEW, CIOT, CIPP and ACCA as well as representatives from major sector and industry bodies around the UK and software houses. We work in a positive, respectful and collaborative way with HMRC income policy teams to achieve workable outcomes for employers and payroll businesses as well as agents on all matters related to employment taxation.

On 16 January 2024, the UK government announced a number of measures under the banner of simplification, including the mandatory payrolling of all Benefits in Kind (BIKs) from 6 April 2026.

The EPG has already started to have what we anticipate will be regular meetings with the employment income policy (benefits and expenses) team at HMRC to collaborate and discuss all aspects of the changes to both the legislation and guidance which will need to be brought in to facilitate the submission of BIKs information using the Real Time Information payroll platform (RTI). We believe that the timeline does not allow time for the necessary software to be developed and systems connected to allow all but the most straight forward benefits to be payrolled.

We welcome this collaboration, although we are cognisant of the fact that 24 months (or around 450 working days) is not a long time to change a long-standing regime which ties together two aspects of employment taxation which are currently governed by separate legislative provisions within Part 3 of ITEPA 2003 – the PAYE regime and the Benefits Code, as well as National Insurance legislation including but not limited to the Social Security (Contributions & Benefits) Act 1992 as amended and the National Insurance Contributions Act 2022.

HMRC's announcement states mandating BIKs payrolling will simplify the tax affairs of three million people and remove the need for four million end of year returns to be submitted. Whilst the EPG generally welcomes the changes, we are alive to the fact that this will be a change which comes in on top of many other changes in recent times. I am writing to highlight a number of obstacles which the EPG has identified, which we anticipate may make this a difficult journey, and add considerable cost burden and complexity to payroll processing, as follows:

Increased administration

Employers will need to gather information more quickly to establish and calculate the anticipated BIKs value for tax purposes so it can be payrolled in each pay period for all relevant employees. This is a complete change from the current system of obtaining the actual costs and values after the end of the tax year and submitting P11Ds by 6 July and it will directly impact the net earnings of employees. Forecasting accuracy will be essential. The data may need to be collated from numerous independent sources, placing increased demands on payroll and benefits/reward staff, and increasing time and administration costs. These costs will be unlikely to be up-front, but rather, ongoing, as new information will come in constantly in relation to the BIKs.

All benefits in kind

Currently, the employment taxes legislative provisions within ITEPA 2003 do not facilitate the payrolling of living accommodation benefit and beneficial loans. All other BIKs can be payrolled voluntarily. Many employers do this already and declare the Class 1A NICs on the P11D(b) as well as submitting P11Ds for the living accommodation and beneficial loans separately, by 6 July following the tax year in which the BIKs were enjoyed.

However, we understand HMRC is proposing not to change the underlying legislation in relation to the two BIKs which cannot currently be payrolled. This will mean that the burden of performing calculations in each pay period would fall on the employer in relation to these two BIKs. Estimating and forecasting has limitations, and those limitations need a solution that balances HMRC's desire for accuracy and unacceptable levels of additional burden on employers.

I can advise that EPG members, as trusted stakeholders, have made strong representations in this regard to the HMRC policy team, pointing out that the legislation must be changed first to save layers of complexity in the

years following the mandate. We do not have much faith that the legislation will ever be upgraded once the mandate comes in if it isn't changed now.

We believe a cost-benefit analysis should be undertaken to determine whether wholesale payrolling of benefits is the most cost-effective solution at this time, considering the legislative barriers and the additional cost to employers. A mixture of mandatory payrolling of straightforward benefits combined with improved form P11Ds with automated processing may be a better solution. We have several suggestions relating to how these issues can be resolved and will be happy to discuss with you and your senior policy team at a time of your choosing.

Software

As all benefits in kind will need to be processed through payroll software in future, it is important to ensure that software providers can deliver what is necessary. Software developers first need to understand the changes being made before they can design and build the programmes and carry out pilots and testing of payroll software changes. Additional fields will be necessary to push the data through RTI, and it is hoped that it will not be necessary to re-create the whole P11D, but instead, find a different format for the process. Again – there is time and administration cost involved here.

Employee cash flow

One such consideration is how many BIKs can be processed through any one pay period which will result in deductions from pay. Note that under the Income Tax (PAYE Regulations) 2003 the amount of tax deducted from a payment of salary cannot exceed 50% (this is something known as the “overriding limit”).

Some individuals who have been in receipt of BIKs in the previous tax year (2025/26) will commence payment of the tax through their tax code on those BIKs. If BIKs are then payrolled from 6 April 2026, this will lead to an overlap situation whereby they are paying the tax on 2025/6 and 2026/7 simultaneously, until the overlap period ends at the end of the 2026/27 tax year.

In some cases, this may result in hardship, and employers will need to consider what steps they might be able to take to mitigate that possibility. It is essential that HMRC finds a suitable workaround on this matter, which is suitable for employees, employers and HMRC's tax revenue stream.

“Making good” principle, third party BIKs and the Official Rate of Interest: clarification needed

Some employees enter into arrangements to “make good” all or part of the value of a BIK to reduce their tax liability. It is not currently clear how this might work under the new regime. A similar question arises for BIKs provided to third parties which are usually reported under a Taxed Award Scheme. It is also not clear whether the Official Rate of Interest, which fluctuates throughout the tax year, can be set at the beginning of each tax year going forward to avoid the need for interest values to be re-calculated at each pay interval.

Student loan repayments

The income on which student loan repayments is assessed does not include benefits in kind (unless these attract Class 1 NIC). Employees making student loan repayments need to complete a self-assessment return. Yet, where benefits are payrolled, the Self-Assessment process is unable to distinguish between BIKs which are expressed as taxable income by means of the Benefits Code and any balancing PAYE income, and an anomaly arises. The result is that student loan repayments appear as if they are due on the whole amount, including payrolled benefits. In the absence of changes to HMRC systems, which would be the best route, a suitable workaround needs to be found to overcome this anomaly and EPG members will be happy to liaise with policy teams on this.

Employment legislation

Employers will need to ensure that contractual terms may need to be revised, together with salary sacrifice and flexible benefits/reward statements and websites. Suitable employment law advice may need to be sought in this regard to ensure employers are not falling foul of any traps for the unwary. In a unionised setting, employers will need to formulate a way forward with the relevant Union.

All of which will incur up-front additional costs in professional fees, time and administration.

Training and administrative focus

Payroll and HR staff will need to understand the changes being made so they can handle queries and make changes to employee handbooks and intranet information and explain payslips to employees. They will need to understand how to process the BIKs in respect of new starters and leavers. If someone has a company car with a

high BIK value, for example, how will the balancing charge be treated when they leave the employment? Will they be keeping the car, or handing it back? Will they be in receipt of a termination payment? All and any such scenarios need to be carefully thought through.

Engagement letters and fees

Engagement letters and service level agreements will need to be reviewed for those running outsourced payroll bureaux, so that services can be defined, responsibilities specified and work fully costed out. The loss of revenue from P11D work will hit some accountancy practices fairly hard and this may not be able to be fully recouped through charging additional amounts per payslip for those employees who receive BIKs. Employers often miss the detail when it comes to preparing payslips and fail to appreciate the work which goes on behind the scenes.

Further thoughts

There are numerous other considerations such as employee communications, employees working under "modified payroll" arrangements, double taxation agreements and NICs certificates of coverage mechanisms.

We understand that draft legislation will be published later this year for consultation as part of the tax legislation cycle. It will be interesting to see what is planned, and what effect the payrolling of BIKs has on the tax-geared penalties regime, and the inevitable employer compliance focus that will accompany it.

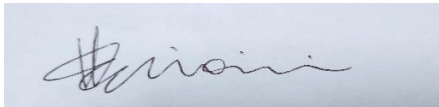
The EPG hope that the PAYE Regulations and guidance will also be amended with our input and review. It is vital that the above matters are clear and unequivocal, and employers must understand what they are permitted to deduct through payroll so as to ensure that no employee falls into hardship.

I and other members of EPG are keen to meet you and your senior policy colleagues to discuss the above issues at a time of your choosing.

I look forward to hearing from you.

Yours sincerely,

Signed on behalf of the EPG Forum non-HMRC members,



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