ICAS Response to the Technical Consultation on Draft Regulations for the Apprenticeship Levy

By 3 February 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 on the reform of this latest Apprenticeship Levy consultation, which states that HMRC "seeks comments on the draft regulations made under the powers contained in the legislation (Part 6 FA 2106) to provide for the payment, collection and recovery of the apprenticeship levy, as well as other matters relating to its operation".

Question 1: Do the additional regulations (revised draft regulation 2 and new regulations 147K to 147N of the amendment regulations) achieve their objectives as set out in the last 5 bullet points of the list above?

3. The 5 bullet points are:

- make provision to enable HMRC to assess, to the best of their judgement, how much apprenticeship levy is payable where it appears to HMRC that the person has underpaid the amount they were liable to pay (this follows the approach for PAYE)
- allow HMRC to recover apprenticeship levy that has been repaid to a person, if it ought not to have been repaid, to follow the approach for income tax
- make provision to keep and preserve for not less than 3 years after the end of the tax year apprenticeship levy records, in line with PAYE
- extend the provisions for recovering PAYE debt from managed service companies, to include apprenticeship levy debt
- make provision for the liability to pay and duty to make a return of apprenticeship levy to extend to continental shelf workers certificate holders - who also have responsibility to operate PAYE and NICs

4. ICAS considers that the additional regulations created as a result of previous consultations do achieve their objectives insofar as the above five bullet points are concerned, subject to our comments below regarding unintended consequences.

Question 2: Do these draft regulations produce any unintended consequences?

These regulations may produce the following consequences in England.

5. Some UK charities have expressed concern that unutilised AL allowances cannot be transferred to other charities to utilise. HMRC should consider ensuring that charities are able to nominate other charities to utilise up to 100% of their funds for approved training if they are not intending to use it themselves, to support the vital work in the community that charities undertake and which does not then need to come out of their own funding budgets.

6. The swift introduction of this legislation means that some employers who provide in-house training may have to double up on spending as what they already have programmed will not be considered to be “approved training” and there does not appear to be any transitional provisions in this legislation to allow for a tail off of unapproved training or for employers to register as approved training providers where they have already earmarked and funded in-house training (some training may be over a number of years and thus be ongoing).

Interaction with the devolved regimes

7. It still seems odd that the same allowance of £15,000 is available to all employers regardless of number of employees. A fund manager company or private banking entity which has potentially very high mean salaries and fewer employees would receive the same allowance as a multi-academy trust or local authority with potentially many more less well-paid employees. On the other hand, a Joint Venture can potentially avail itself of two sets of allowances. This seems inequitable.

8. HMRC is relying on employers, who in turn rely on their employees, to provide accurate data about where they live to determine what part of the levy will be ring-fenced into a DASA and what part will be sent to the Scottish Government to pool. Given the problems experienced to date in determining who Scottish Taxpayers are, which is still not fully resolved despite HMRC’s statements to the contrary, ICAS is curious to know how reliable the allocation of funds from employers by HMRC will be.

9. There is also potential for collusion amongst some employers who wish to ensure that their Levy payments are kept in the digital account and not sent to devolved countries by choosing not to change employees’ changes of address, or for that matter, asking employees to give false addresses so that they are not treated as Scottish Taxpayers.