

Technical consultation on draft regulations for the apprenticeship levy.

Publication date: 14 December 2016

Closing date for comments: 3 February 2017

Subject of this consultation: Technical consultation on draft regulations for the apprenticeship levy. Draft regulations 147B to 147J of the Income Tax (Pay As You Earn) Regulations 2003 which make provision for calculation, reporting, payment and recovery of the apprenticeship levy, were subject to consultation in the autumn. Some amendments have been made in response to comments received. Additional provisions have been added to cover matters relating to the operation of the levy, on which we would welcome comment.

Scope of this consultation: The primary legislation setting out the apprenticeship levy forms Part 6 of [Finance Act 2016](#). This consultation seeks comments on the draft regulations made under the powers contained in the legislation to provide for the payment, collection and recovery of the apprenticeship levy, as well as other matters relating to its operation.

Who should read this: This technical consultation will be of interest to employers who are likely to have a liability to pay the apprenticeship levy, employer advisers, and payroll agencies.

Duration: 7 weeks, commencing on **14 December 2016** and ending **3 February 2017**

Lead official: Joanne Collings

How to respond or enquire about this consultation: Any comments should be sent to lowri.barber@hmrc.gsi.gov.uk

Additional ways to be involved: As this is a largely technical issue, this will primarily be a written exercise. If you would like to have this document in Welsh or alternate formats including large print, audio and braille, please let us know and we will provide a copy.

After the consultation: Responses to this technical consultation will be reviewed and the draft regulations will be revised as appropriate before they are laid before Parliament. Guidance on how employers will report and pay their levy liability is available at <https://www.gov.uk/guidance/pay-apprenticeship-levy>.

Getting to this stage: The apprenticeship levy was announced at Summer Budget 2015, and at Autumn Statement 2015 it was announced that it would come into effect in April 2017.

Previous engagement: A consultation was held during 2015 to hear from employers how the levy should work in practice. The apprenticeship levy draft Finance Bill 2016 legislation and explanatory notes were published for comment in February 2016. In addition a technical consultation was held from 19 September – 14 November 2016 on the draft regulations for the payment, collection and reporting of the apprenticeship levy.

Contents

[1 Introduction and background](#)

[2 Technical consultation on draft regulations](#)

[3 The Consultation Process: How to Respond](#)

[Annex A Draft Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2017](#)

[Annex B Relevant Legislation - Finance Act 2016, Part 6 – Apprenticeship Levy](#)

On request this document can be produced in Welsh and alternate formats including large print, audio and Braille formats

1. Introduction and background

The apprenticeship levy was announced at Summer Budget 2015, and at Autumn Statement 2015 it was announced that it would come into effect in April 2017. The primary legislation setting out the apprenticeship levy is contained in Part 6 of [Finance Act 2016](#).

The apprenticeship levy will be a levy on employers operating in the UK to fund new apprenticeships. The levy will be charged at a rate of 0.5% of an employer's pay bill. Employers will receive an annual allowance of £15,000 to offset against their levy payment and this means that employers not subject to the rules around connection will only pay the levy if their pay bill exceeds £3 million in a given year.

The rules on connected employers which have been included in the apprenticeship levy are drawn from those used in the Employment Allowance, with some modifications. The modifications to the connected rules introduced for the apprenticeship levy set out that, though a connected group is able to receive the same amount of allowance as a single employer, that allowance can be split between the connected employers in a way that those employers think is best, as long as the split does not mean that more than £15,000 is applied.

Less than 2% of employers will have to pay the apprenticeship levy. In England, control of apprenticeship funding will be put in the hands of employers through the digital apprenticeship service. The Department for Education has published guidance: <https://www.gov.uk/government/publications/apprenticeship-levy-how-it-will-work/apprenticeship-levy-how-it-will-work>

Purpose of draft regulations

This package of draft apprenticeship levy regulations have been drawn up under the powers that are contained in the Finance Act 2016. These draft regulations have been updated to incorporate drafting comments received during the technical consultation held in autumn 2016. The initial draft regulations specifically related to the calculation, payment and reporting of the apprenticeship levy, including the operation of the £15,000 annual levy allowance. The draft regulations have been extended to include other matters relating to the operation of the apprenticeship levy, including:

- assessment of unpaid apprenticeship levy
- recovery of apprenticeship levy by HMRC
- retention of records by the employer
- recovery of debts from managed service companies to apply the provisions which apply to PAYE debt also to apprenticeship levy debt
- 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

They also make it clear (new draft regulation 147D(1) & 147D(2)) that only where an employer has a levy liability, or expects to have a levy liability during the tax year, they will need to engage with reporting the apprenticeship levy to HMRC. These are the areas in which the operation of the levy has received the most stakeholder interest.

These draft regulations will be relevant to employers who will have a liability to pay the apprenticeship levy, and anyone who runs payroll services for employers with a liability to pay. Employers not subject to the connected rules, with a pay bill of over £3 million will have to report and pay the apprenticeship levy.

Employers with a pay bill of less than £3 million for the previous tax year or who believe their pay bill will be less than £3 million in the current year (unless they find otherwise), subject to the rules on connection, will not have to engage with the apprenticeship levy. The increase in the reporting threshold from £2.8 million to £3 million for the preceding years pay bill, is a change made following feedback from the technical consultation on the initial draft regulations which was held in September 2016.

In addition there is a change to 147D, which responds to feedback, to make the pay bill reporting threshold clearer where there is a group of companies/charities. New regulation 147D(2)(b)(ii) has the effect of saying where in a group one of the members has a levy allowance allocated to them for example £7,500, they will incur a levy liability once their pay bill exceeds £1.5 million ($\text{£7,500 levy allowance} / 0.005 = \text{£1.5 million pay bill}$).

These draft regulations specify how the levy will be reported, through the Pay as You Earn (PAYE) process, along with income tax and National Insurance contributions (NICs).

The regulations confirm that the annual levy allowance will operate on a monthly cumulative basis, so the levy allowance will increase evenly throughout the year.

Example

Where an employer has an annual levy allowance of £15,000 and applies this to a single PAYE scheme, this would mean an allowance of £1,250 a month. Any unused allowance will be carried over from one month to the next. If the levy liability in month 1 is £1,000 the employer will not pay the levy and the allowance in month 2 will be £1,500 (the levy allowance for month 2 being £1,250 + any unused allowance from month 1 (£250) = £1,500 total levy allowance for month 2).

If there is unused allowance in a month, it will be carried as a credit into the subsequent months, as shown above. At the end of the tax year, if the levy has been overpaid, the employer can use the overpayment to offset against their other Pay As You Earn (PAYE) liabilities.

The draft regulations also provide that where an employer has multiple PAYE schemes and does not use the full £15,000 allowance, they will be able to offset the unused amount against another one of their schemes once the tax year has ended.

2. Technical consultation on the draft regulations

The purpose of the draft regulations is to set out how employers or payroll operators will calculate, report, and pay their levy liability. We have already set out that employers will use the existing PAYE system to report their levy liability, and so it is proposed that these draft regulations will be inserted into the current Income Tax (Pay As You Earn) Regulations 2003.

The draft regulations are set out in Annex A.

In particular, they:

- set out that an employer is required to assess their annual pay bill amount for the previous and current tax year to decide if they are liable to report the levy
- make provision for the due date of the apprenticeship levy to be by the 19th (or 22nd if you report electronically) of the following month;
- place a requirement on employers to notify HMRC of the levy which is to be paid and make provision for the information which should be included in this return - The employer will use the Employers Payment Summary (EPS) to report their apprenticeship levy liability due to date and also the amount of annual levy allowance the employer may allocate to multiple PAYE references
- set out how to calculate the monthly levy allowance on a cumulative basis, in order to calculate levy liability
- set out how to calculate levy liability both in the first month of the tax year and in subsequent months
- allow both single and employers who are part of a group (company unit or Charity unit, which has apportioned the £15,000 annual levy allowance across the unit) to apportion the annual levy allowance between multiple PAYE schemes
- make provision for recovery of overpaid levy by the employer.
- 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

HM Revenue and Customs (HMRC) have UK-wide responsibility for apprenticeship levy collection, and the apprenticeship levy regulations will be made by HMRC Commissioners and the Treasury. The regulations will apply in England, Wales, Scotland, and Northern Ireland.

Questions for consultation

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?

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

3. The Consultation Process: How to respond

This consultation is being conducted in line with the Tax Consultation Framework.

There are 5 stages to tax policy development:

Stage 1 Setting out objectives and identifying options.

Stage 2 Determining the best option and developing a framework for implementation including detailed policy design.

Stage 3 Drafting legislation to effect the proposed change.

Stage 4 Implementing and monitoring the change.

Stage 5 Reviewing and evaluating the change.

This consultation is taking place during stage 3 of the process. The purpose of the consultation is to seek views on draft regulations in order to confirm, as far as possible, that it will achieve the intended policy effect with no unintended consequences.

How to respond

Responses should be sent by **3 February 2017**. Any comments should be sent to lowri.barber@hmrc.gsi.gov.uk

All responses will be acknowledged, but it will not be possible to give substantive replies to individual representations.

When responding please say if you are a business, individual or representative body. In the case of representative bodies please provide information on the number and nature of people you represent.

Next Steps

Responses to this technical consultation will be reviewed and the draft regulations will be revised as appropriate before they are laid before Parliament. Guidance on how employers will report and pay their levy liability is available at <https://www.gov.uk/guidance/pay-apprenticeship-levy>

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public

authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Revenue and Customs (HMRC).

HMRC will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Consultation Principles

This consultation is being run in accordance with the Government's Consultation Principles.

The Consultation Principles are available on the Cabinet Office website:
<http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance>

If you have any comments or complaints about the consultation process please contact: John Pay, Consultation Coordinator, Budget Team, HM Revenue & Customs, 100 Parliament Street, London, SW1A 2BQ.

Email: hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk

Please do not send responses to the consultation to this address.

Annex A: Draft Income Tax (Pay As You Earn) (Amendment) Regulations 2017

<https://www.gov.uk/government/consultations/technical-consultation-draft-regulations-for-the-apprenticeship-levy>

Annex B: Relevant Legislation

Finance Bill 2016, Part 6 – Apprenticeship Levy, Finance Bill 2016

http://www.legislation.gov.uk/ukpga/2016/24/pdfs/ukpga_20160024_en.pdf