

Association of Accounting Technician's response to the BEIS National Minimum Wage consultation on salaried workers & salary sacrifice scheme

The Association of Accounting Technicians (AAT) is pleased to have the opportunity to respond to this important consultation.

Salaried Hours

The Government should amend Regulation 21 (5) to allow other payment cycles because the two currently permissible payment cycles (weekly and monthly) do not currently give employers the flexibility they need, as the consultation document makes clear. In the retail and hospitality sectors some staff are often paid fortnightly or four weekly and this will doubtless extend to other sectors too. Taking this into account, AAT believes allowing fortnightly and monthly payments would make sense. Further flexibility in the form of other payment cycles outside of these four options does not appear necessary given there is little evidence of need. AAT does not foresee that permitting additional flexibility will cause any employee detriment.

Regarding the concept of the 'calculation year' where the employer may average the pay of a worker over the course of this year, the high-profile case of this concerning the John Lewis Group in 2017 serves as a useful example. Here it was found that the John Lewis Group's use of pay averaging (operated for more than a decade with the consent of staff), spread pay evenly over the course of a year but meant they were unwittingly in breach of minimum wage regulations. They acted to address the problem and repaid staff when the breach was brought to their attention. The calculation of salaried hours work might be easier (for employers, and workers) if regulations set a single uniform 'calculation year' for all workers of an employer but direct liaison with large employers such as John Lewis would probably be best in determining whether this would be a helpful way forward.

Regarding the timing of such a change, BEIS may be interested to know that this topic was discussed at the December meeting of *AAT's Payroll Panel*, which consists of representatives from a range of external organisations including charities, professional bodies, AAT licensed accountants, payroll software providers and regulators.

There was unanimity that April is the best time for annual National Minimum Wage (NMW), pension and other increases to coincide with the end/start of the tax year and that changes to the "calculation year" would fall into the same category. Whilst it was acknowledged that spreading the burden of changes would have some merit, the advantages to having a single month of such activity outweighed this.

Having a peak of activity means that additional staff can be hired for a certain period every year; larger companies benefit from a single time of the year for changes as they have the scale to make them easily, smaller companies may find this more challenging but benefit in other areas for example being able to package all changes in a single change meaning they can deal with any employee queries on such matters in one go. It also provides certainty for employees, they know that except for a company pay increase at another time of the year, their net pay is likely to be fixed for the next 12 months with all changes having been made in April every year.

It was also felt that this single period enabled employers large and small to concentrate on other areas such as benefits at other times of the year, knowing these issues have been dealt with for another 12 months. April would therefore be the preferred option.

Salary Sacrifice Schemes

Based on feedback from the AAT Payroll Panel, there do appear to be instances of some employers withdrawing salary sacrifice schemes, or similar arrangements whereby pay deductions are offered in return for goods or services, to avoid non-compliance with NMW rules. As the consultation document notes, this can also mean that workers on low pay can sometimes not be offered the same arrangements as those earning well above NMW.

Workers opt-in to salary sacrifice schemes for their own benefit, they are knowingly exchanging part of their salary for additional benefits, whether that's pension contributions, a company car, childcare vouchers or something else. Additionally, although and because the employees overall pay will be lower, they will benefit from paying less tax and national insurance too. Furthermore, those on low incomes are likely to be able to claim additional tax credits.

Most employers are very good at explaining the implications of salary sacrifice schemes and given the employee's consent is required they are in no way exploitative. It therefore seems inherently unfair that employers should be punished for the informed decisions of their employees and/or for providing tangible additional benefits to their workforce.

Compliance

As the consultation notes, *"...the purpose of the rules is to protect workers from potential exploitation and not to unnecessarily penalise or burden employers"*.

Although that may be the purpose, it is questionable as to whether this is the reality.

In 2017, Debenhams accidentally underpaid staff by an average of £10 owing to a payroll error, immediately acted to address the problems and repaid staff. However, they were included in the list of minimum wage offenders together with companies that had purposefully avoided paying their staff correctly and had gone to great lengths to do so. That would appear to have been unnecessarily punitive. Likewise, the very recent case of Iceland facing a £21m fine for allowing its staff to save in a voluntary savings scheme for which they had instant access at any time would appear to be punitive rather than protective.

Given the above examples, it is not surprising that almost three quarters (74%) of AAT members who responded to the *AAT Minimum Wage Survey 2017* believe companies that encounter genuine technical payroll administration errors, and correct the problem as soon as they become aware, should not be subject to naming and shaming by BEIS in the same way as those companies who wilfully avoid paying staff the minimum wage.

It is also worthy note of that it is not just payroll errors that cause technical breaches but pay smoothing, savings clubs, deductions for clothing and so on. It is also because of ambiguous rules and guidance. For instance, last year the ongoing issue relating to sleep-in shifts took a further turn with the Court of Appeal overturning previous rulings of Employment Tribunals, to unanimously declare that sleep-in shifts did not attract NMW as sleep-in workers are "available for work" but not "actually working". As BEIS officials will know, this follows HMRC attempts to penalise hundreds of employers in the care sector and is a good example of how poor the guidance in this area must be.

According to the *AAT Minimum Wage Survey 2017*, less than one in five AAT members (19%) believe the current enforcement system should be maintained.

The limited resources of HMRC would perhaps be better directed at the thousands of employers who are purposefully avoiding paying their staff the NMW rather than on technical breaches which cause very little or no employee detriment.

About AAT

AAT is a professional accountancy body with approximately 50,000 full and fellow members and over 90,000 student and affiliate members worldwide. Of the full and fellow members, there are more than 4,250 licensed accountants who provide accountancy and taxation services to over 400,000 British businesses.

AAT is a registered charity whose objectives are to advance public education and promote the study of the practice, theory and techniques of accountancy and the prevention of crime and promotion of the sound administration of the law.

Further information

If you have any queries, require any further information or would like to discuss any of the above points in more detail, please contact Phil Hall, AAT Head of Public Affairs & Public Policy:

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