

Employer provided living accommodation HM Revenue & Customs Call for evidence

Webinar 21 January 2016

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What are we going to cover?

- Background
- Purpose of the call for evidence
- Why the need for change?
- Current tax and National Insurance rules
- Matters raised by HM Revenue & Customs (“HMRC”) within the call for evidence
- Taking part in the call for evidence
- Observations

Background

- The Office of Tax Simplification published two detailed reports in 2014 following their review of benefits and expenses
- Identified the fact that the legislation relating to employer provided living accommodation has not kept pace with the working environment
- The call for evidence was published by HMRC on 9 December 2015
- Closing date for comments is 3 February 2016

Purpose of the call for evidence

- The current rules are overly complicated
- Lack of clarity as to what is living accommodation
- Inconsistency as to how exemptions are applied
- Calculating the benefit in kind charge is challenging
- Different basis of calculation depending upon whether the accommodation is owned or rented by the employer
- Much of the legislation is outdated

Why the need for change?

- Modernise the legislation
- Create a simplified basis for calculating the benefit in kind charge
- Exemptions need to reflect the duties of the employee should they be based upon historic agreements?
- Importantly, the need to provide certainty for both employers and employees alike

Current rules (Basis of charge)

- A number of different layers to the benefit in kind calculation
 - First £75,000 based upon the Gross Rateable Value (1973)
 - Excess is calculated as though it is a notional loan based upon the ORI at the beginning of each tax year
 - Re-statement of the property value after six-years
- Where the property is rented the benefits is calculated based upon the rent paid by the employer
- Possible to reduce the benefit in kind charge where any/all of the cost is made good by the employee

Illustration

Details	Values/Costs	Benefit in kind	Rental comparison
3 Bedroomed House	£250,000		
Basic charge	(£75,000)	£300	
Balance	£175,000		
Additional tax charge	£175,000 x 3%	£5,250	
Rental paid (12 x £750)			£9,000
Total benefit in kind		£5,550	£9,000
Tax due 40%		£2,220	£3,600
National Insurance due (13.8%)		£306	£1,242



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Current rules (Basis of exemption)

- Four situations where a charge to tax will not apply:
 - Necessary for the proper performance of the employee's duties
 - Customary and better performance of the duties
 - Special security exemption
 - Representative occupier exemption (non-statutory exemption based upon occupier status at 5 April 1977)
- Exemptions only apply to living accommodation
- The exemptions do not apply to "board and lodgings"

Matters raised by the call for evidence

- HMRC have identified three core issues, or themes:
 - Why is accommodation provided to employees?
 - What type of accommodation is provided?
 - Do any jobs (still) require accommodation to be provided?
- The call for evidence is being based around a framework of 16 core questions

Call for evidence – core questions

1. Why is accommodation provided to employee and how have changes in working practice affected this provision?
2. Is accommodation provided to people who are no longer employees and why?
3. Is accommodation provided always a reflection of what is needed for the employee to undertake the role, or is it based on what is available or the status of the employee?

Call for evidence – core questions

4. Do current categories of accommodation cover the circumstances of employers and employees today?
5. Are there other circumstances when employers provide accommodation to employees?
6. In your sector, how many employees receive accommodation? Are there certain roles which always have accommodation provided?
7. When accommodation is provided is it usually owned or rented by the employer?

Call for evidence – core questions

8. How easy is it for employers to calculate the taxable value of the accommodation provided?
9. What proportion of employees pay rent for their accommodation?
10. Do you agree that using market rental value would provide a simplification to the tax rules on provided living accommodation?
11. Are there other ways to simplify how the taxable value of living accommodation is calculated?

Call for evidence – core questions

12. Are there situations where employees are treated differently for tax purposes because of the way that the rules currently work?
13. What circumstances exist today where accommodation is provided in order to do a job?
14. Is it appropriate that certain accommodation is completely exempt from tax?
15. Are there any “representative occupiers” who would not fit one of the current statutory exemptions?

Call for evidence – core questions

16. To what extent do employees/different types of employment rely on the current rules and exemptions? Where employees live in accommodation which is currently exempt, what is the value of the exemption to them?

Observations

- The legislations does need to be “overhauled”
- Exemptions should be based around areas such as:
 - Safeguarding of minors and vulnerable adults
 - Security of both property and individuals
 - Be relevant to the role of the employee
- Tax charge must not be disproportionate to the reason why the accommodation is being provided
- There must be a reasonable lead in time for when any new legislation is going to be introduced.

Action plans

- We anticipate any changes to be effective from 6 April 2018
- Re-visit the tax status of the accommodation you currently make available to employees
- Do you have a full summary of your accommodation portfolio?
- Start thinking about:
 - Impact on salary reviews
 - Will you start to charge a rent?
 - Will employers “pick-up” the additional tax and NI liabilities?

Taking part in the call for evidence

- Haysmacintyre, we are currently drafting our representation to HMRC in response to the call for evidence
- Our views will be based upon details provided by clients on an anonymous, but factually correct basis
- The closing date for submissions is now 3 February 2016
- We will be interested to hear your views by 27 January

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Questions



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