

**HMRC and HMRC consultation  
Employer provided living accommodation  
Response from the Low Incomes Tax Reform Group (LITRG)**

**1 Executive Summary**

- 1.1 We welcome the opportunity to respond to this consultation as we share concerns that the current suite of living accommodation rules are very complex and burdensome.
- 1.2 In general we think the rules could be made more advantageous to more low paid workers, however this response is written with a particular group of people in mind – care and support employers. Care and support employers are those that have taken on a personal assistant (carer) to help them live independently and thus become responsible for complying with administrative requirements associated with being an employer, including navigating the living accommodation rules.
- 1.3 We know that care and support employers sometimes provide accommodation to their employees, for example when they like to have someone close by, round the clock. Sometimes this is board and lodging – i.e. the employee is provided with meals and somewhere to sleep. From April 2016, this is non-taxable. However, sometimes this is an independent living space, perhaps a separate house in the vicinity or a self-contained granny annex in the garden. This constitutes ‘living accommodation’ and, based on our understanding of HM Revenue & Customs’ (HMRC) current approach, taxable.
- 1.4 ‘Living accommodation’ is one of the most complex benefits when it comes to calculating the tax and National Insurance contributions (NIC) position of employees. Despite this, and the fact we run a tax and NIC ‘help’ facility for care and support employers, we see few queries around living accommodation. This could perhaps be put down to the fact that care and

support employers are (incorrectly) understanding that any living accommodation (and extras) they provide is exempt from tax and NIC.

- 1.5 This is worrying, although not entirely surprising, based on the guidance in GOV.UK which in no way indicates that the 'job-related' exemptions are so tightly drawn and, indeed, incorrectly states that if living accommodation is exempt then so are any associated costs such as heating and lighting. Of course, employers can find the correct technical information they need on these important topics in HMRC's Manuals. But that material is not written for the non-expert reader and is therefore hard to follow.
- 1.6 One of the reasons behind this call for evidence is that the Government wishes to ascertain how well understood the rules are. We think the answer is 'not well' among this constituency of taxpayers. At the very least we hope that this situation will improve as an outcome of this consultation. It seems to us however, that another way forward is to take living accommodation and any associated costs provided for carers by their (care and support) employers out of charge entirely. There is a principled case for doing this (which dovetails with other policy aims) and we therefore take the opportunity to put this recommendation forward.

## **2 Who we are**

- 2.1 The Low Incomes Tax Reform Group (LITRG) is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998 LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes. Everything we do is aimed at improving the tax and benefits experience of low income workers, pensioners, migrants, students, disabled people and carers.
- 2.2 LITRG works extensively with HMRC and other government departments, commenting on proposals and putting forward our own ideas for improving the system. Too often the tax and related welfare laws and administrative systems are not designed with the low-income user in mind and this often makes life difficult for those we try to help.
- 2.3 The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.

## **3 Our approach**

- 3.1 In our response we have not addressed each of the individual questions as many cover topics outside of our field of knowledge. We feel we can make the best contribution by providing some broad comments, as a representative body of low paid workers and care and

support employers, which we feel are relevant to this call for evidence and which we hope will inform the government's picture of employer provided accommodation.

- 3.2 For the purpose of this exercise, the 'evidence' discussed has come to us in the course of our work, for example from researching our reports, such as 'Independent living, direct payments and the tax system'<sup>1</sup> and from queries submitted to us via our website, Disability Tax Guide,<sup>2</sup> which provides help and support for those taking on a personal assistant.

#### **4 General comments**

- 4.1 LITRG agrees that accommodation benefits are worthy of review.
- 4.2 In general, the value of an 'expensive property' has remained at £75,000 for some time, and the calculations involved are very complex for anyone but a trained tax adviser to work out. Not only are the calculations obscure, but the figure that appears on the P11d often cannot be rationalised back to the accommodation that has been provided. There is certainly a case for a change to the current rules on employer provided living accommodation based on simplification alone.
- 4.3 Just as simplification is a key principle of a well-designed tax system so is fairness and we do not think the current rules on living accommodation are fair – particularly in terms of the application of the exemptions to low paid workers.
- 4.4 Where the exemptions do ostensibly apply, they do not work well or consistently, resulting in issues like different outcomes for workers doing similar jobs – as the fruit picker and stable staff illustrations in the call for evidence show. However, perhaps more concerning is the lack of exemption coverage for low paid employees per se. We do not understand why, for example, employees in the hospitality sector, where some of the lowest paid jobs can be found, are not exempt – but some of their managers are.
- 4.5 To expand on this point: a quick look on any recruitment website or job posting board will demonstrate that many 'front-line' hotel, bar and restaurant staff roles are 'live-in'.<sup>3</sup> This is generally due to shift work, including early starts or very late finishes; or location – a remote location may mean a lack of public transport, a city location may mean workers simply cannot afford to live locally. Whatever the case, typically, it would be impossible for the employee to do the job without some form of subsidised accommodation from the employer. Yet unless the accommodation is board and lodging and is provided to an

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<sup>1</sup> <http://www.litrg.org.uk/latest-news/reports/080130-independent-living-direct-payments-and-tax-system>

<sup>2</sup> [www.disabilitytaxguide.org.uk](http://www.disabilitytaxguide.org.uk)

<sup>3</sup> Indeed, we understand that there are 20,000-30,000 employees provided with some form of accommodation in the hospitality sector.

employee who is in lower paid employment (less than £8,500), it will probably incur a benefit in kind tax charge of some kind.<sup>1</sup>

- 4.6 In a nutshell, there are many good arguments as to why this is wrong – not least that the accommodation provided is often of such a low standard (basic, noisy, shared, etc.) – that it can hardly be perceived as a ‘benefit’ to the worker.<sup>2</sup> The current suite of rules also causes problems for other low paid employees, such as care workers – not to mention some of their employers – and we go on to discuss this further in the next section.

## **5 Care and support employers**

- 5.1 The UK is experiencing an increasing demand for care services. Moreover, it is quite common for people who need care to live in their own home now, rather than residential care homes.
- 5.2 At the same time, we are seeing the rise of ‘direct payments’ and NHS personal health budgets.<sup>3</sup> Direct payments are cash payments made directly to the bank account of vulnerable people as an alternative to having local authorities and/or the NHS arrange services on their behalf. Their purpose is to give the recipients more choice and control over the services they receive. If the money is used to pay a personal assistant or carer to help with daily tasks and assist in their physical personal needs, etc. the user becomes a care and support employer and is therefore obliged to deal with Pay As You Earn (PAYE) and NIC as well as undertake the other obligations of an employer,<sup>4</sup> all of which can present many difficulties for them.
- 5.3 We know through researching our report<sup>5</sup> ‘Independent living, direct payments and the tax system’ that such employers sometimes use their direct payments to take on ‘live-in’ carers. However, as this recent contributor (see 5.4 below) to our website Disability Tax Guide (which aims to help people who are taking on a personal assistant) demonstrates, this is not always on a board and lodging basis – i.e. meals and somewhere to sleep. Sometimes it is an

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<sup>1</sup> The distinction between lower paid employees will disappear from April 2016 meaning potentially even more employees will be taxed on their accommodation.

<sup>2</sup> Some interesting accommodation experiences can be read about here (see ‘Chef Hermes’ blog): <https://www.thecaterer.com/articles/351770/the-attractions-of-staff-accommodation>

<sup>3</sup> Local authorities are now obliged to offer direct payments to all in need of care. Certain patients in England have a right to an NHS personal health budget, which can come in the form of a direct payment: <http://www.nhs.uk/choiceintheNHS/Yourchoices/personal-health-budgets/Pages/about-personal-health-budgets.aspx>

<sup>4</sup> For example, complying with employment law and National Minimum Wage law, auto-enrolment and checking that the person that employ has a right to work in the UK.

<sup>5</sup> One of the ways that LITRG try to make a difference for those on low incomes is by researching particular tax and related areas that may be giving cause for concern and writing reports recommending change: <http://www.litrg.org.uk/reports/index.html>

independent living space – a separate house or self-contained granny annex in the garden for example, meaning a bit more independence and privacy for the employer, but also peace of mind that the carer is still within easy reach should something unforeseen occur.

- 5.4 *'Hi, I wonder if you can help. We have employed a live in carer. The contract and occupancy agreement make it clear that it is essential for her work that she lives in. The accommodation provided is a separate (sic) 2 bedroomed house which is provided rent and bill free apart from oil for the central heating. (not just a room in the house)...*
- 5.5 This then is 'living accommodation'. However, the rules around the living accommodation benefit in kind are very complicated, particularly so for a care and support employer, and there are easy mistakes to make.
- 5.6 For a start, living accommodation is one of the few benefits in kind that are applicable to all employees no matter how much they earn, i.e. it is also reportable and taxable on 'P9D employees' – those earning at a rate of less than £8,500 pa. This threshold is probably irrelevant nowadays for many (and certainly will be from April 2016 when the rules will change) but may still present a consideration for the employers of low-paid, part time carers.
- 5.7 There are then the 'job-related' exemptions to consider. A lay-person may intuitively expect a 'live-in' carer type situation to be job-related, however it is our understanding that it is not current HMRC practice to accept carers as being covered by an exemption. For example, although it can be the case that accommodation is not taxable when 'provided for an employee if it is necessary for the proper performance of the employee's duties that the employee should reside in it', in reality HMRC apply some quite strict rules to the types of employments that are covered by such an exemption. HMRC say in their guidance that in order for the test to be applicable, it has to be shown that the person has to live in that house AND NO OTHER in order to be able to do their job. The difficulty, it seems, is that most carers would be able to live in, say, a different house but one within a certain vicinity, and still do their job, reacting quickly to accidents or emergencies and so on.
- 5.8 There is therefore every likelihood that the carer's living accommodation will be taxable as a benefit in kind. How the benefit charge arises will depend on a number of factors including whether the property is owned or rented, the value of the property, the Gross Rateable Value, any rent paid by the employee, the official rate of interest, etc. The rules are very complex. In actual fact, the resulting calculations are so detailed that we think an unrepresented employee is highly unlikely never to make a mistake.
- 5.9 The tax charge on accommodation does not end with the property itself. As we have seen from the earlier query, the care and support employer may well pay other associated costs, for example heating or lighting bills; or they may provide the use of furniture and appliances. Usually expenses are taxed at cost (the NIC position can often be troublesome depending on the payment arrangements); whereas the use of furniture and appliances is typically taxed annually at 20% of the cost of the items. It is useful to note at this stage that even if a 'job-related' exemption were due in respect of the living accommodation, there may still be a

charge on other services such as heat and light, furnishings, etc. although the limit is 10% of the employee's earnings after making deductions such as any pension contributions that qualify for tax relief. (This does not apply to council tax, water charges or sewerage charges which are exempt.)

- 5.10 Bearing all of this in mind, we can see that this area could be a significant headache for care and support employers who find themselves having to complete P11ds or calculate and pay Class 1A NIC for the first time. This might lead us to expect that Disability Tax Guide would be inundated with queries or representations from employers about the complexity or unfairness of the living accommodation rules. However this is not the case (even the query in the previous section was more to do with the accommodation offset for National Minimum Wage purposes). Neither are we seeing any queries to the LITRG general 'contact us'<sup>1</sup> facility from disgruntled care workers with increased tax liabilities, even though P11d benefits in kind are renowned for causing problems with P800 underpayments and our factsheet on P800s is one of the most visited parts of our website.
- 5.11 We think an explanation for this is that care and support employers are just completely unaware that accommodation needs to be considered from a tax perspective, meaning few are declaring the benefit. Alternatively, they may have a feeling they have to do something, but may be incorrectly assuming that any living accommodation (and extras) they provide is 'job-related' and exempt.
- 5.12 This is worrying, although not surprising, based on the standard of guidance in GOV.UK which simply says:<sup>2</sup>

*'Accommodation at the place of work is exempt if:*

- your employees can't do their work properly without it, e.g. agricultural workers living on farms*
- an employer is usually expected to provide accommodation for people doing that type of work (e.g. a manager living above a pub, or a vicar looking after a parish)'*

- 5.13 It can be seen that there is no discussion of the nuances around HMRC's interpretation of the words 'properly' or 'usually' – meaning many people will just give them their natural, ordinary meanings and consider their situations covered. Moreover, on the next page<sup>3</sup> it says 'You don't need to report furniture, heating, lighting, maintenance costs if the

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<sup>1</sup> <http://www.litr.org.uk/contact-us>

<sup>2</sup> <https://www.gov.uk/expenses-and-benefits-accommodation/whats-exempt>

<sup>3</sup> <https://www.gov.uk/expenses-and-benefits-accommodation/what-to-report-and-pay>

accommodation itself is exempt (e.g. because it's necessary or usually provided for the job)', which is simply incorrect.<sup>1</sup>

- 5.14 Of course, employers can find the technical information they need on these important topics in HMRC's Manuals.<sup>2</sup> But the material is over 90 pages long, is not written for the non-expert reader and is hard to follow. Similarly, we are not sure that the Employer Helpline is really all that helpful – when we phoned we were told that living accommodation was 'probably exempt' if it was necessary for the job<sup>3</sup> – nothing to suggest that there was any more to it and again, leaving quite a lot of room for misunderstanding.
- 5.15 As we can see here, there are many reasons why an employer might not declare any living accommodation benefit, even if they were able to fathom in the first place that they might have to. So to the extent the government would like to find out how well understood the rules are, we would suggest the answer is 'not well' – at least for this constituency of taxpayers.
- 5.16 This may also leave them unintentionally non-compliant and liable to HMRC enforcement activity. This we believe is unacceptable and we think that HMRC should commit **not to pursue** care and support employers for errors arising where a mistake has been made with regards to living accommodation. In future, we hope that any new rules are, at the very least, obvious and readily comprehensible AND come with clear and accurate guidance so as to prevent such potential oversights happening again.

## 6 The case for change

- 6.1 Having said that, we think that the time has come to exempt carers from living accommodation charges altogether.
- 6.2 By definition care and support employers are individuals who require assistance from others in order to live their daily life. They are essentially 'accidental' employers, in that they have

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<sup>1</sup> It is worth saying that with regards to GOV.UK in general, we are concerned about the large degree to which much of the material has been simplified and abridged – to the extent that some of it is incomplete or even misleading. Furthermore, even if the information can theoretically be found somewhere in its deep recesses, the search facility on GOV.UK often sees vast volumes of search results returned – cluttered with results of little relevance.

<sup>2</sup> <http://www.hmrc.gov.uk/manuals/eimanual/EIM11300.htm>

<sup>3</sup> Please note that the voice recognition system did not recognise the phrase 'query about living accommodation'. Also, if you call the employer helplines, you are asked if you are a 'business, agent or something else'. We think many care and support employers will be unaware that in this context 'business' means employer and is the correct option to press even if they employ someone domestically in their home, and do not consider themselves a 'business' – causing real confusion and potential for the call to be ended.

not chosen to set up a business and employ someone; circumstances have forced this situation on them. They are not running a business to make a profit, they are often using money from other parts of Government to pay for the care in the first place or they are using their own money to do so.

- 6.3 Moreover, direct payments are being widely promoted by the Government. We therefore think there is a duty on Government to make it as easy as possible for individuals to pay for the care they need and so be able to use the schemes put in place to promote independent living. We acknowledge that they have already taken a much appreciated step in the right direction by exempting the benefit that arises when a care and support employer provides their employee with board and lodging<sup>1</sup> from 6 April 2016. We would now urge them to go further and bring the position for living accommodation into line with board and lodging.
- 6.4 It seems to us that adopting the Office of Tax Simplification's (OTS) final report recommendations<sup>2</sup> that exempt accommodation should fall into one of the following categories, would achieve this –by virtue of the first bullet point:
- the reason the employer requires the employee to live in the accommodation is that it is necessary to enable the employee to protect buildings, people or assets; or
  - the reason the employer requires the employee to live in the accommodation is because the job requires a very early start in the morning or a very late finish at night; or
  - the reason the employer requires the employee to live in the accommodation is a result of regulatory requirements.
- 6.5 We also agree that a rule should be adopted that the benefit of the provision of ancillary services is tax exempt if the benefit of the accommodation is tax exempt –this is a common sense move which, in view of the often small amounts involved, would save considerable administrative effort all round.
- 6.6 Proceeding in this manner would lift some of the burden from care and support employers, bring simplicity and consistency to the system and, last but not least, assist the financial positions of their carers who may be required to do difficult, emotional and stressful work at any time of the day or night. They must feel, at times, that being required to live in employer provided accommodation is a burden rather than a benefit.
- 6.7 Moreover, ensuring that the most basic accommodation (which we understand to mean board and lodging) is taken out of the tax charge entirely –another of the OTS's recommendations – would (in conjunction with the other measures mentioned above)

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<sup>1</sup> A corresponding exemption from Class 1A NICs on the board and lodging will also be introduced.

<sup>2</sup> <https://www.gov.uk/government/publications/review-of-employee-benefits-and-expenses-final-report>



protect many of the other low paid employees we are concerned with. It cannot be right that they currently suffer a tax charge on accommodation that they probably have not chosen to live in, but *have to* live in to secure the job in the first place.

LITRG

3 February 2016