

**HM Treasury (HMT) discussion paper
Travel and subsistence
Response from the Low Incomes Tax Reform Group (LITRG)**

1 Executive Summary

- 1.1 LITRG welcomes the opportunity to respond to this discussion paper that outlines a potential framework for new rules to tackle the issues relating to tax relief on travel and subsistence expenses.
- 1.2 Our response does not address the issues relating to tax relief on travel and subsistence for individuals working through an employment intermediary. This has been the subject of a previous HM Revenue & Customs (HMRC) consultation paper; reference should be made to our response to that consultation.
- 1.3 In our response we concentrate on those areas of the discussion paper which are of relevance to both the taxation of those on low incomes and their entitlement to state benefits.
- 1.4 We note with dismay that the paper concentrates on workers who receive both tax relief and National Insurance contributions (NIC) relief on their travel and other expenses because these are reimbursed by their employer while offering no solution to those workers who necessarily incur such expenses but who receive no reimbursement from their employer. The plight of such low-paid workers is that not only do they have to meet the cost of these expenses out of their regular wage but, in many instances, as their income is below the personal allowance, they are unable to claim the 20% tax relief on these necessarily incurred costs as their income is too low for them to actually pay tax.

- 1.5 We would strongly urge that the government consider possible options for providing some relief on these expenses as part of this review, this might for example be by way of a tax credit payment or an increased allowance for benefits.
- 1.6 We also believe that the government is still regretfully failing to understand the changing work patterns that many of the working population have had to adopt. This is reflected in this discussion paper which we believe is premised on the, very much outdated, concept of an employee having one job over many years and does not address the issues of flexibility in the workforce which the government is so keen to encourage. We are especially concerned to ensure that agency workers are adequately catered for under the new framework.
- 1.7 We would also like to see any new rules counter the current lack of generosity in the tax system for those at the bottom of the wage scale who do not have their expenses paid or reimbursed; along with the administrative difficulties associated with claiming any relief they are entitled to.
- 1.8 As this paper identifies it is crucial that any changes use words as they are understood in their everyday meaning so that both employees and employers are able to fully grasp and understand in order to implement them correctly.

2 About Us

- 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 Introduction

- 3.1 We note that the discussion paper is published in .html format only with little numbering. This makes it difficult to make concise reference to specific parts of the paper. We believe

that HMT should consider ensuring that future discussion and consultation papers address this issue by publishing such documents in both html and PDF format.

- 3.2 We note that the document often uses the phrase “tax relief” rather than “relief” or “tax and National Insurance contributions relief” but we assume that relief, as applied to employers’ reimbursed expenses will include both tax and National Insurance contributions.

4 The current position

- 4.1 The discussion paper sets out the two main rules that currently provide relief for travel and subsistence expenses:

- “travel in the performance of the duties of the employment”, that is relief for travel that is an intrinsic part of the employee’s job; and
- relief for necessary journeys to workplaces that an employee has to attend for work, apart from the cost of ordinary commuting.

- 4.2 HMT have identified six areas of concern, namely:

- The “regular attendance” test, that is the interaction of the frequency of the visits by an employee to a specific workplace and the pattern of attendance at that workplace.
- The definition of “permanent workplace” and “temporary workplace”.
- The “intention test”, whether the employee’s intention at the beginning of an assignment to a temporary workplace was the assignment would be for less than 24 months.
- Employees who, under the current rules, have more than one permanent workplace.
- Confusion surrounding how to determine whether a journey is “substantially the same” as ordinary commuting.
- The circumstances under which an employee who works from home will be entitled to relief for travel from his home to another workplace.

- 4.3 The discussion paper also identifies a need to clarify the rules and to provide a system that is based on facts that will be immediately apparent to anyone making decisions about the tax treatment and which will reduce the need for employers to rely on extensive guidance in order to apply the rules. It also considers whether the relief for day subsistence expenses, which follows the relief for travel, is still relevant in the modern world.

5 Question 1: Do you agree that these are the main issues that cause employers difficulty under the current rules? Which rules create the most difficulties?

- 5.1 We are unable to comment insofar as the employers' difficulties are concerned. We believe that employees are often confused over the definition of temporary and permanent workplaces.
- 5.2 There is also confusion over the concept of 'itinerant' and the type of workers that could be considered itinerant (other than travelling salesman and service engineers, the examples given over and over again in HMRC guidance). We know this due to the number of travel related queries from care workers (who could be considered itinerant) that come to us in the course of our work, via our website.
- 5.3 Some specific guidance, along with worked illustrations, outlining the applicability of the travel rules to different occupations with unusual travel patterns could be extremely helpful – particularly for those who may not have an adviser to assist them with interpreting and applying the rules to their particular situations.

6 Question 2: Are there any additional issues with the current rules that are not summarised above?

- 6.1 We think there are issues with the fixed term appointment rules and how they apply to agency workers as we outlined in our report – *Travel expenses for the low paid – time for a rethink?*¹
- 6.2 Life for such workers can be precarious and uncertain. In addition, the work they do is poorly paid – in a recent Labour Force Survey it was found that 47.9% of agency workers in London and 39.5% outside London were earning below the hourly living wage (£8.55 in London and £7.45 in the rest of the UK at the time of the survey). Shorter working hours also need to be factored in to their pay calculations, as does the fact that the workers often have to accept assignments very far away from wherever it is they call home. We have seen an example in an agency contract of expected travel time of up to an hour and a half each way, and more recently have read about a contractual 25 mile travel radius (as the crow flies, not road distance).
- 6.3 In a country with high public transport costs in the world, the unavoidable costs of low-paid temporary workers getting to their assignment locations to perform their duties can take up a disproportionate amount of their weekly take home wages. We also think it is vital that Government remember that temporary workers do not have the luxury of being able to plan around the fixed costs of ordinary commuting – for example an agency worker living on the outskirts of London and offered a day's work in an office in central London, would have to

¹ See <http://www.litr.org.uk/latest-news/reports/141117-travel-expenses-low-paid-%E2%80%93-time-rethink>

buy an adult zone 1-6 day travel card which is currently £17.00. The equivalent daily cost if they were able to buy an annual travel card would be £10.06 (assuming 233 workdays in a year).

- 6.4 As for the low-paid agency worker, who has to go to a variety of premises (often at short notice) and who cannot adjust home to achieve a reasonable commute, their income – their standard of living and inclination to work – is correspondingly and disproportionately depleted by these travel costs.
- 6.5 As a result, we have seen such workers getting caught up in problematic travel and subsistence schemes in an effort to secure the relief that is not permitted under the outdated temporary workplace rules. While the Government may be hoping that problems around travel and subsistence will dissolve from April 2016 due to the new rules on employment intermediaries, it is our understanding that other – potentially worse – schemes are set to take their place, so this is a problem that is not going to go away.
- 6.6 Providing this distinct group of workers with relief for their travel costs under the new framework by perhaps treating them the same as site based employees, would of course have an associated cost, however it would also remove the incentive for many of the ‘schemes’ from the labour market – saving considerable effort all round.

7 Question 3: How widespread is the issue of employees having more than one permanent workplace? Are there any particular industries or roles where it is commonplace?

- 7.1 Our constituents are low-paid workers. The areas such individuals are employed in include hospitality, the retail industry, the early years sector, the construction industry agriculture (farm workers) and social care. Such individuals are often on short term contracts and are forced to accept jobs at some distance from their homes (so costly in terms of both time and money) in order to ensure their continuing entitlement to state benefits. Under the current legislation these individuals have a series of “permanent” workplaces, notwithstanding the fact that there is often little permanence about each job.
- 7.2 The discussion paper does not address the issue of the employee who has more than one employment concurrently and therefore has a “permanent workplace” or “main base” for each employment.

8 Question 4: Overall, do you agree that there is a good case for reforming some aspects of the tax rules for travel and subsistence expenses?

- 8.1 Yes. However it is important that any reform does not remove relief when an individual has to pay for their tax relievable travel expenses out of their pay rather than being separately reimbursed by their employer. The opening sentence of the discussion paper states “Every year millions of employees travel as part of their job **and the expenses they incur on these journeys are either paid for or reimbursed by their employer**”. HMT should not lose sight of

the fact that many low-paid workers incur tax relievable expenses which are not reimbursed by their employer. As an example, the social care sector employs well over 1 million people¹ and it is our experience that many of these individuals do not receive reimbursement for travel expenses which they necessarily incur in the performance of their duties.

- 8.2 As a result low-paid taxpayers are disadvantaged because they can only claim tax relief but not NIC relief. Their reimbursement is effectively limited to 20% of the costs which they have incurred. Indeed, if the taxpayer's income is below the personal allowance, even this reimbursement is unavailable. Taxpayers may also be unaware that they are able to claim tax relief for these expenses and, even if they are aware, there is a lack of clarity as to how the relief should be claimed.
- 8.3 The OTS report *Review of employee benefits and expenses: second report*² suggests removing relief for unreimbursed travel expenses as "a third (radical) way" although it also identified that this would leave employees with no facility to claim a tax deduction if their employer did not reimburse such costs. We do not share the OTS's faith in the "the market" evening things up; our constituents do not have the power to negotiate the terms of their employment. Low-paid employees are offered employment contracts on a "take it or leave it" basis often in the knowledge that if they do not accept the terms offered they may be subject to benefits sanctions as they will have refused an offer of employment.
- 8.4 Whilst not to do with the rules themselves, there is a good case for reforming the timing and method of claiming relief for employees who do not have their expenses reimbursed.
- 8.5 Currently workers have to make a claim to HMRC on an annual basis to recover tax on their expenses by filing a form P87 or a tax return, meaning a cash flow disadvantage and (as unreimbursed expenses are taken into account) problems with accurate tax credit and Universal Credit claims.
- 8.6 In addition, as we have previously raised in connection with 'refund organisations', the complexity of the tax rules and HMRC administration (forms and processes) in connection with employment expenses mean that refunds may not be straightforward to claim and often workers pay for help, thus diminishing the value of their refund. Things have not got much better following the transition of information from HMRC's website to the 'simpler, clearer, faster' GOV.UK website. It is a *major* failing that the form required to claim a refund in respect of employment expenses (P87) cannot be found in the place where you would intuitively expect them to be – in the 'Claiming a tax refund' section of GOV.UK.

¹ <http://www.kingsfund.org.uk/time-to-think-differently/trends/professional-attitudes-and-workforce/overview-health-and-social-care-workforce>

² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/275795/PU1616_OT employee benefits final report.pdf

9 Principles

9.1 The discussion paper then identifies six principles that a new set of rules should try to uphold

- tax relief should continue to be available for business travel but not for ordinary commuting
- any tests should be objective and based on measurable facts as far as possible – they should not rely on the intentions of the employee
- new rules should not be based on the concept of “permanent” and “temporary” workplaces except and unless these terms carry their everyday meaning
- employees should not have their journeys to multiple locations or areas which are a significant distance apart all treated as being “ordinary commuting”
- relief should not be available for subsistence where this is essentially akin to a private expense
- any changes should not come at an additional cost to the exchequer.

10 Question 5: Do you agree that these are the right principles on which to base a new set of rules? Bearing in mind the requirement that any changes should not come at a cost to the exchequer, are there any additional principles that the government should consider?

10.1 We believe these principles are generally reasonable. The rules should be simple and workable and words should, ideally, follow their ordinary meaning. The rules should be equitable and HMRC should ensure that any benchmark scale rates are not limited so that only one section of taxpayers can benefit. We also believe some consideration should be given as to how taxpayers on low income can be recompensed for the costs of their commuting expenses especially where, for example, these are the expenses of commuting between workplaces for different employers or are the costs of visiting clients. It is also critical that consideration is given to the person’s overall position including how any changes may impact on the person’s benefit entitlement.

11 Framework

11.1 HMT then propose a framework with three rules which would allow tax relief for three types of journeys:

- journeys made necessarily in the performance of the duties of the employment
- journeys to allow the employee to attend a location where their attendance at that location is a necessary part of their job, and the location is not the employee’s “main base”
- journeys to the employee’s main base where all bases of the employee are “detached duty” locations.

12 Question 6: Do you agree that *the first rule* currently works well and should remain broadly unchanged

- 12.1 Yes, tax relief must continue to be available for travel expenses incurred which are a necessary and intrinsic part of an employee's duties.

13 Base and main base

- 13.1 Under the second rule a base would be defined as a location where the employee necessarily spends more than a specified percentage of their working time. If an employee had more than one base then one of the bases would need to be identified as their main base.

- 13.2 HMT suggest that a base might be a location where an employee spends more than 30% of his time.

14 Question 7: Do you agree that the concept of an employee's "main base" is a sensible basis for a new rule?

- 14.1 Yes. However, we question what is the essential difference between the example of
- the IT contractor who travels to his employer's office regularly on a Friday and under the proposals would receive relief for this travel; and
 - the lorry driver who travels to his employer's base every day (and presumably stays there for less than 30% of the working week) but who, according to the discussion paper, will not receive tax relief for this travel.
- 14.2 Whilst the lorry driver's travel to and from the depot would be disallowed under the first proposed rule, why should this necessarily restrict a claim for relief on the travel to and from the depot under the second?
- 14.3 We therefore are not in agreement with HMT's analysis of their proposals but would require further clarification of how the rules would be applied to comment further.

15 Question 8: Would a test based on the percentage of an employee's time spent at each location be workable for employers in practice? Would it be better than the more subjective tests in place at the moment?

- 15.1 In general terms an objective test is always to be preferred to a subjective one.

16 Question 9: Do you agree that employees should be able to nominate which of their “bases” is to be their “main base”? Is there an alternative that the government should consider (eg the location where the employee spends the highest proportion of their time)?

16.1 We believe that there are three options:

- The employee can nominate their main base; this would presumably have to be for a minimum period, for example a tax year
- The main base could be defined as the base at which the employee spent more time; again this might vary over time
- The main base could be the base closest to the employee’s home.

16.2 The third definition has the attraction of being easily understood, less open to manipulation (possibly) and uses one completely objective measure that might be expected to have some degree of permanence.

16.3 We wonder if there might be situations when an employer would take a commercial decision to reimburse an employee for travel expenses to the base that the employee has not nominated as their main base. Alternatively, the employee might change the nominated main base without advising the employer. In these circumstances the employer would have a reporting requirement, possibly without realising, and the individual would need to pay tax on the reimbursed expenses whilst claiming for unreimbursed expenses.

17 “Detached Duty” locations

17.1 Under this third rule relief would be available when, as part of an ongoing employment, an employee worked away from their normal location either because

- the task or job they were performing was of a limited duration; or
- the requirement to perform the job was of a limited duration

17.2 Relief would be available for a fixed period of time, even if the actual time spent at the detached duty location was longer and this was known at the beginning. The individual would not be able to have another “base” elsewhere.

17.3 Relief would not be available if the employee was expected to work at the location for all or early all of the time they were employed. However relief would be available to an employee *“...whose job involves working for short periods at a number of locations in succession, such as a construction worker.”*

18 Question 10: Do you agree that there is still a need for tax relief for travel to a work location that an employee attends on detached duty as part of an ongoing employment?

18.1 Yes.

19 Question 11: Do you agree that basing the rule on the concept of “detached duty” rather than a “temporary workplace” will make it easier for employers to understand what journeys the rule is intended to give relief for?

19.1 What the relief is called is irrelevant to an employer’s understanding of when the relief is due. The definition needs to be objective and based on simple language with words which take their everyday meaning.

20 Question 12: How long should an employee be able to attend a location before it ceases to be a detached duty location, and why?

20.1 The present rules and those which are proposed in this paper discriminate against temporary workers. They also fail to take account of the change in working patterns which has occurred, such as the increase in short, fixed-term contracts. The example of the construction worker demonstrates this discrimination; Worker A on a series of short term separate employments would not qualify for the relief but Worker B who has one employer who sends him to separate locations would. In our view this creates a “double whammy” for Worker A as it is most likely that he will be expected to meet his travel expenses out of his pay rather than being separately reimbursed; Worker B on the other might well be separately reimbursed by his employer.

20.2 On the basis that the government wishes the changes to be cost neutral we believe that they should consider reducing the period for which the relief would be available but extending it to cover individuals on short term contracts.

21 Other issues

21.1 The document then goes on to consider

- Work locations v workplace: whether a journey is substantially the same as ordinary commuting, and therefore not eligible for relief.
- Homeworking: where an employee is required to work from home should they only be allowed to nominate their home as their “main base” if they have no other “base”?
- Day subsistence: should relief for lunch and similar expenses be removed?

22 Question 13: Do you agree that it is simpler for the rules to consider workplaces that are objectively close together as a single location, rather than the current test of a change in workplace being “substantial”?

22.1 We note that the discussion paper uses any example of a higher paid worker rather than the low-income worker where we believe this situation would be more prevalent.

22.2 We can see confusion arising in the case, for example, of care workers whose travel to clients within a geographic area is allowable as an intrinsic part of their duties but travel by the care worker to/from the area (at the start and end of a shift) is ordinary commuting. Employers and employees would need to understand this essential difference between:

- a) travel to a “single location” at the beginning and end of the employee’s work period; and
- b) travel undertaken within the “single location” once the employee has arrived there.

23 Question 14: What measure of workplaces being “close together” would be easiest for employers to administer in practice? Are there any that would be particularly difficult for employers to operate?

23.1 On a commercial basis we would expect that in many circumstances employers self-regulate this issue by only reimbursing real additional costs, for example amounts over and above an employee’s normal commuting expenses. As an example supermarket workers who are moved between two or more shops within the same postcode would not, we believe, be reimbursed by their employer. Some definition would be needed however as employees will still wish to claim for expenses which are not reimbursed by their employer.

23.2 We believe it will be difficult to establish a basis for determining a single “work location” as the costs/time involved in travelling from an employee’s home to their work location will depend upon the means of transport. We would expect that outside London and other metropolitan areas it is probable that an employee who drives to their work location will spend less time and possibly incur less cost doing so than the employee who has to rely on public transport. The opposite may well be true within London and other metropolitan areas.

24 Question 15: Do you agree that the tax rules should not provide an incentive or a disincentive for working from home?

24.1 Generally, yes.

25 Question 16: Do you agree that employees shouldn't be able to nominate their home as their "main base" if they have another "base" elsewhere?

25.1 We believe that the majority of our constituents are in jobs that require the employee's attendance at a workplace other than their home so this subject is of limited importance to LITRG. However, if in order for a location to be a "base" an employee has to spend at least 30% of their time working there this would mean at least 1.5 days would have to be spent working at home for a full time employee every week. This is a significant amount of time. In addition, so far as reimbursed travel expenses are concerned, we would anticipate that an employee whose home was a base but who also worked at one other location more than 30% of the time may well not get the travel expenses to the second location reimbursed by their employer.

26 Question 17: Do you believe that removing relief for day subsistence is fair?

26.1 No. We believe the analysis in the discussion document is simplistic. We can envisage many circumstances in which an employee who normally took a packed lunch to their "base" would not be able to do so when working away from their "base".

27 Question 18: Are there any particular groups of employees that would be particularly disadvantaged by removing relief for day subsistence? Are such employees in particular industries and are they more likely to receive scale rate payments or be reimbursed for actual expenses?

27.1 Unable to comment.

28 Question 19: Are there any circumstances where employees would normally need to (rather than choose to) incur a significantly larger expense on their day subsistence than normal due to being on a business journey? Are such employees in particular industries and are they more likely to receive scale rate payments or be reimbursed for actual expenses?

28.1 Insofar as the quantum is concerned; yes. Either because the employee is unable to take their lunch with them or because they are in unfamiliar surroundings and/or a more expensive location. This could occur for example if an employee who normally takes a packed lunch is away for home overnight as he will then need to purchase lunch the following day.

29 Question 20: Would employers continue to pay day subsistence if relief were removed, and if so in what circumstances?

29.1 Unable to comment.

30 Question 21: Are there any other ways of balancing the cost of the most generous simplifications set out in the framework that the government should consider?

30.1 We believe that the most significant beneficiaries of the current 24 month “detached duty” rules are multi-national employers with significant numbers of internationally mobile employees. We believe that serious consideration should be given to limiting the maximum amount of relief allowed under these rules. This would be in the same way that qualifying relocation expenses are limited to £8,000.

30.2 Historically there have been poor levels of compliance in this area. As such, if HMRC become better at ensuring that the regime is properly applied, that will also save money which could help balance any ‘giveaways’.

LITRG

16 December 2015