



HM Revenue
& Customs



HM Treasury

Employer provided living accommodation

Call for evidence

Publication date: 9 December 2015

Closing date for comments: 3 February 2016

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1. Introduction

There can be many different reasons behind people's choices of where to live: to be close to work, or where they want to work, near to family or other commitments and cost can often be the most significant factor of all.

However, for some people those choices could be more limited as their accommodation is provided by their employer. This could be as a reward for their services, an incentive to undertake certain employment or to live in a certain area, or it may be because they can't do their job without it. Some employees pay rent for this accommodation, others contribute nothing, and some receive a (comparatively) lower salary to account for the accommodation they receive. Government data indicates that approximately 220,000 employees are currently residing in employer provided accommodation, this encompasses everyone, from those in the service industry to those in the banking and finance sector, professional sportspeople and publicans.

Employer provided living accommodation is a benefit in kind and is liable to tax and employer Class 1A National Insurance contributions. The current rules setting out how and when employer provided accommodation should be taxed have been in place for a long time, and some parts are over 40 years old. The government would therefore like to understand how well understood the rules are, and to what extent they are still relevant and appropriate today.

Purpose of the call for evidence

In 2010 the government set up the Office of Tax Simplification (OTS) to give independent advice to the government on simplifying the tax system. The OTS published two reports in January¹ and July² 2014 covering their review of employee benefits and expenses. The review included employer provided living accommodation. This highlighted that, while the world of work has moved on, the tax rules for employer provided accommodation have not. Their main findings were that:

- there is a lack of clarity about what constitutes living accommodation, and when and how the exemptions apply;
- the exemptions are outdated: newer professions are not represented while it is hard to see why exemptions for some occupations still exist;
- as well as being outdated the exemptions appear arbitrary and can result in different tax treatment for employees in very similar jobs which creates complexity and unfairness; and
- calculating the value of the benefit is inherently difficult – requiring different systems depending on whether the accommodation was owned or rented by the employer and, if the accommodation is owned, there are a number of other variables which affect the taxable value of the accommodation.

¹ Review of employee benefits and expenses: second report

² Review of employee benefits and expenses: final report

However, the OTS acknowledged that there was no easy solution and that simplification would best be achieved by reviewing the policy and all exemptions through public consultation.

The government believes that the tax system should be fair, easy to understand (for both employers and employees) and simple to administer, but recognises that the complexity within the current rules means that this may not be the case for employer provided accommodation. This call for evidence is therefore being published in response to the findings of the OTS and is intended to help the government understand:

- the complexities employers currently face;
- who receives accommodation benefit and on what terms;
- what, if any, simplification could be delivered; and
- who may be impacted if steps were taken to make the system simpler and the treatment of employees in similar circumstances fairer.

The government will use the information gathered from this call for evidence when considering whether there is a case for making changes to deliver simplification in this area.

Evidence sought

Below are 16 questions covering the evidence the government would like to gather. With the overarching context of the increasing availability of technology, transportation and more flexible ways of working the questions are based on three themes:

- Why is accommodation provided to employees?
- What type of accommodation is provided to them?
- Do any jobs (still) require accommodation to be provided?

Views are invited from anyone with an interest in this topic such as employers who provide, have provided or are thinking about providing accommodation to their staff; employees who live in employer provided accommodation; tax professionals and advisors across all sectors and business sizes; or academics/researchers.

When responding, you can provide evidence on the broad themes that the government is interested in, or address each (or any) of the individual questions where you feel that you can make a contribution. Please comment in respect of your field of knowledge, rather than feeling compelled to answer generally or across all sectors. If appropriate, it would be helpful if you provided information about your organisation including type of organisation, size, makeup etc. and, if you are a representative body, who you represent.

Please also provide comments about any areas not covered by this call for evidence that you feel are relevant and should inform the government's picture of employer provided accommodation.

2. Employer provided accommodation

Why is accommodation provided to employees?

Since the current rules on living accommodation were introduced, the working world has changed significantly. The population has become more mobile as transport has improved, the development of modern technology has meant that there are increased options for mobile working, and employees have more freedom and flexibility to choose when and where they work. The government wants to understand what impact this change has had on the provision of accommodation by employers and the reasons why it is provided.

1. **Why is accommodation provided to employees and how have changes in working practice affected this provision?**
2. **Is accommodation provided to people who are no longer employees (because they have retired, have left the employment but by agreement can stay in the accommodation for a period of time etc) and why?**
3. **Is the 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 within the company?**

Where relevant please provide data and/or examples.

As mentioned above, the current rules for the taxation of employer provided accommodation are complex and there are three main aspects that can lead to difficulties for employers in applying the rules correctly: the type of accommodation; the valuation of the accommodation and the existing exemptions.

What type of accommodation do employers provide?

Within current tax law there are different 'types' of accommodation which an employer can provide to their employees: 'living' accommodation and accommodation provided under the travel and subsistence rules. The tax treatment of these different types of accommodation varies:

Living accommodation: this is defined³ by HMRC as accommodation which allows the employee to live independently without recourse to others for their basic needs. In general this means, as well as having somewhere to sleep, it has to have somewhere to prepare, cook and store food and bathing facilities. Accommodation can be 'living' accommodation even if it is shared. The provision of living accommodation to an employee by their employer is a benefit in kind that is usually subject to tax and Class 1A National Insurance contributions (NICs). Rules setting out the tax treatment of living accommodation are contained in the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) at sections 97-113. These specify when living accommodation is taxable and when it is exempt and how the (taxable) value of the benefit should be calculated.

³ <http://www.hmrc.gov.uk/manuals/eimanual/EIM11321.htm>

Accommodation provided as part of the travel and subsistence rules: many employees, in the course of carrying out the duties of their employment, will need to spend nights away from home. Generally the provision of such accommodation will not give rise to any liability to income tax or NICs where it falls within the existing travel and subsistence rules and is attributable to the employee's necessary attendance. The government is consulting separately on the operation of the travel and subsistence rules, so this call for evidence is not concerned directly with travel and subsistence accommodation.

Other accommodation: this is accommodation which does not fall within the previous categories and is usually board and lodging or accommodation where the employee cannot live independently. It is usually liable to tax and NICs and rarely qualifies for tax relief.

These different types of accommodation and their varying tax treatment cause significant complexity when applying the tax rules. This can lead to different outcomes depending on the specific circumstances of the employee.

What kind of accommodation?

A fruit farmer employs 10 people to work on his farm – one is the manager, and 9 are fruit pickers. All are provided with accommodation by the farmer.

The fruit pickers are provided with a bunk house which they share, and the farm manager is provided with a small cottage.

The cottage would fall within the definition of 'living' accommodation, so would be taxed (or exempt) in line with the legislation on living accommodation.

The fruit pickers' situation is different.

If the bunk house had a bathroom and kitchen area where the fruit pickers prepare their own food then that too would be living accommodation, and so would be taxed (or exempt) in line with the living accommodation rules.

However, if the farmer's wife cooks for the fruit pickers and they all eat together, then their accommodation is board and lodging, and is therefore outside of the rules and always taxable.

- 4. Do the current categories of accommodation cover the circumstances of employers and employees today? Are there arrangements which don't fit these categories? How often are employees provided with 'other' accommodation?**
- 5. Are there other circumstances when employers provide accommodation to employees – for example, do they ever share the purchase of a property?**

- 6. In your business/profession/sector, how many (or what proportion of) employees receive accommodation? Are there any roles which always have accommodation provided, or particular types of employment, or roles within a sector which always provide accommodation?**

Where relevant, please provide data and/or examples.

3. Valuation

The way that accommodation is valued as a benefit is complex and varies depending on the type of accommodation provided (accommodation provided under the travel and subsistence rules, living or 'other' accommodation) and whether it is owned or leased by the employer.

The effect of these different variables means that calculating the taxable value, particularly of living accommodation where the property is owned by the employer, is complicated and time consuming. It can also lead to employees in very similar situations paying different amounts of tax.

In all cases, the taxable value can be reduced if the employee pays 'rent' to the employer or if they share the accommodation with another employee.

'Other' accommodation

If accommodation provided to an employee is not living or travel and subsistence accommodation, it is usually liable to tax. Its taxable value is the cost to the employer less any rent paid by the employee.

Travel and subsistence accommodation

If accommodation is provided under the travel and subsistence rules, it is often exempt. Where this is not the case, its taxable value is the cost to the employer less any rent paid by the employee.

Living accommodation

If accommodation is living accommodation, calculating the taxable value depends on a range of different factors:

If the accommodation is rented by the employer, the taxable value is the cost of the lease.

If the accommodation is owned by the employer the taxable value depends on:

- the property's 1973⁴ gross rateable value (GRV)
- how long the property has been owned for
- when the employee moved in
- the value of the property – and whether any renovations have been made
- whether the value is (when the employee moved in) greater than £75,000 and if so, what the Official Rate of Interest is.

The GRV is a value which was published in accordance with the General Rates Act 1967 in respect of every home in the UK. They have not been updated since 1973, which means that GRVs do not exist for many properties – particularly those built since the last rate review. This makes using them to calculate the taxable value of

⁴ In Scotland the gross rateable values used are from 1986 (but reduced proportionally to bring them in line with the 1973 England figures) and in Northern Ireland the values used are from 1976.

employer owned living accommodation increasingly difficult. Where the value doesn't exist the employer must ask a District Valuer to provide a proxy GRV to be used when calculating the taxable value. The result of using GRVs is that the taxable value attributed to a property which is owned by the employer is generally lower than the taxable value of accommodation which the employer rents.

In 1986 an additional charge was introduced in respect of 'expensive' properties – those costing over £75,000. As this value has never been updated, most properties now fall within this category meaning that additional information is required to calculate the taxable value.

Calculating the taxable value

There are four employees who are provided with accommodation by their employer.

These employees all do the same job and receive the same salary. The properties provided are similar three bedroom semi-detached houses in the same area.

The District Valuer has said that all the properties have the same GRV of £568.

The relevant tax year is 2015/16 when the official rate of interest is 3%.

Employee 1: has lived in the house since the employer purchased it in 2011, when it cost £190,000. The taxable value of the accommodation is $£568 + (3\% \times (£190,000 - £75,000))$ equals **£4,018**.

Employee 2: has lived in the house since the employer purchased it at the beginning of 1980, when it cost £25,862. The taxable value of the accommodation is **£568**.

Employee 3: has lived in the house since 2012, the employer purchased the house at the beginning of 1980, when it cost £25,862. The market value of the property when the employee moved in at the beginning of 2012 is £185,581. The taxable value of the accommodation is $£568 + (3\% \times (£185,581 - £75,000))$ equals **£3,885**.

Employee 4: has lived in the house since just before the start of the 2015-16 tax year. The employer rents this house at £750 per calendar month. The taxable value of this accommodation is **£9,000**.

- 7. When accommodation is provided to employees, is it usually owned or rented by the employer? Does this vary across different types of employment?**

- 8. How easy is it for employers or tax advisors to calculate the taxable value of accommodation provided to employees? How often are values sought from the District Valuer? How easy is that to do?**
- 9. What proportion of employees provided with accommodation pay rent for their accommodation? How much rent do they pay (proportionate to the value of the benefit)? How is the value paid as rent calculated (do employers reference the market value for example?)**

The OTS recommended that to simplify the way that living accommodation is valued, it should all be taxed at the market rental value. They considered other ways of improving the current process such as assigning a value based on the size of the property (how many square meters it is) or based on insurance values, however they felt that market rental value would provide the fairest, simplest system.

- 10. Do you agree that using market rental value would provide a simplification to the tax rules on provided living accommodation? How could such a system work and what would be the impacts on both employers and employees? Please provide reasons, including data/examples.**
- 11. Are there other ways to simplify how the taxable value of living accommodation is calculated?**

4. Exempt accommodation

There are certain circumstances when accommodation can be provided to an employee tax free.

For travel and subsistence accommodation, this may include the cost of the accommodation where an overnight stay is necessarily incurred in the performance of the duties. This will be the case even where the employee stays away for some time. ITEPA sets out a number of situations where living accommodation might be tax exempt. These are:

- where the accommodation is provided by the local authority, but not because of the employment relationship (for example if a council employee lives in a council house);
- accommodation is provided for the proper performance of the duties – there are two tests under this exemption;
- the accommodation is provided as a result of a security threat;
- accommodation in Chevening House (a property used by the government).

The main exemptions that apply are the two which fall under the ‘proper performance’ exemption which relate to accommodation which is either:

- necessary for the proper performance of the job (the ‘necessary’ test); or
- customarily provided within that profession (the ‘customary’ test) for the better performance of the duties (the ‘better performance test’).

In order to meet the ‘necessary’ test, case law sets out that an employer/employee must be able to demonstrate that the employee has to live in *that* accommodation and no other in order to do their job.

In general, in order to meet the ‘customary’ test, the employer/employee needs to demonstrate that more than 2/3 of employers (nationally) provide accommodation for people in that role and that they have been doing so *for some time* (this means a number of years).

One of the issues that the OTS highlighted was that the application of the current exemptions, particularly for ‘proper performance’, have become arbitrary and that new professions cannot demonstrate that they fit within the rules.

In every case, when considering whether accommodation provided by an employer is taxable, it is the nature of the duties that should be considered and not the job title.

However, since the tests are perceived to be very strict, HMRC have published guidance that sets out which professions have previously been found to meet these criteria, for example ministers of religion, agricultural workers, certain staff working within boarding schools. This has been seen to have created a closed set of occupations which qualify for the exemptions leading to the perception that new professions cannot qualify. Employees whose job titles fit those in the list are considered exempt without any assessment of the role and duties to ensure that it falls

within the criteria for the exemption and continues to do so. This led to the OTS reporting that employers feel that the tax status of a role is dependent more on the job title than the duties undertaken.

This leads to some inconsistent, and some might say unfair, outcomes:

Tax exempt or taxable?

HMRC publishes guidance which sets out which employments have previously been found to meet one or other of the tests for tax exempt accommodation. For example stable staff of racehorse trainers were able to demonstrate to HMRC that they met the “customary” test.

However, because the guidance (as established through case law) specifically references *racehorses* (as the research was specifically on racehorses) other stable staff (for example, for dressage horses) – even if they do exactly the same tasks as the stable staff working with racehorses – are not automatically accepted as being within the exemption. They may have to pay tax on the accommodation they are provided with, unless they can prove that the accommodation is necessary for their day to day job or if they can demonstrate that they meet the ‘customary’ test.

12. Are there situations where employees, despite having very similar roles are treated differently for tax purposes because of the way that the rules currently work? Please provide examples.

The OTS recognised that some accommodation is needed in order to carry out the duties of the employment. For example, before automation, both lock-gates and level crossings had to be operated manually. In order to ensure that this was done safely, people were employed as ‘gatekeepers’, and accommodated next to the lock or level crossing in order that they were on hand to operate the crossing. They needed to be there in order to do their job.

Lock-gate and level crossings are now (almost) fully automated, so do not require a keeper to live on site to operate the gate/crossing. We would like to understand whether similar changes have occurred within other professions included in the HMRC lists, so that we can understand how well the lists meet the needs of the current workforce.

13. What circumstances exist today where accommodation is needed in order to do a job? Why is the accommodation needed? For example, is it purely about the job itself (the duties), or, to comply with legal requirements, or because of the location of the job? Please provide examples.

Paying for accommodation, whether rent or mortgage is, for most people, their main outgoing. Being provided with accommodation by your employer, even if you pay ‘rent’ or are taxed on it is likely to be advantageous as it removes the need to find and contract for the accommodation, will usually be very convenient for getting to work and in many cases will cost less than obtaining accommodation privately. Many

people will see this as a significant benefit, even where an employee has little choice other than to live in the provided accommodation.

14. Is it appropriate that certain accommodation is completely exempt from tax? How can we create a balance between the need for accommodation to be provided to enable a job to be performed and the advantage gained by that provision?

Representative occupiers

The current practice for living accommodation also incorporates a category of employee who is a 'representative occupier'. When the current legislation took effect in 1977, it was agreed that anyone who had been living in exempt accommodation before the new rules were introduced would continue to benefit from the same tax treatment as it was likely that they would fit within the new exemptions. This practice generally passes down to new incumbents to the post/accommodation without additional consideration of whether the role still requires the accommodation to be provided, this includes amongst others, staff working for some boarding schools, ministers of religion, dons and lecturers of some universities.

15. Are there any 'representative occupiers' who would not fit within the current statutory exemptions? If yes, please provide details of the employment and job role.

Impact

Where employer provided accommodation is exempt, the provision of this benefit does not need to be reported to HMRC. This means that our understanding of who receives accommodation is limited. The government would like to develop a better understanding of how the current rules are used and by how many people, in order that they can properly consider the OTS's recommendations.

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?

4. Summary of Questions

Where relevant please provide data and/or examples.

1. Why is accommodation provided to employees and how have changes in working practice affected this provision?
2. Is accommodation provided to people who are no longer employees (because they have retired, have left the employment but by agreement can stay in the accommodation for a period of time etc) and why?
3. Is the 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 within the company?
4. Do the current categories of accommodation cover the circumstances of employers and employees today? Are there arrangements which don't fit these categories? How often are employees provided with 'other' accommodation?
5. Are there other circumstances when employers provide accommodation to employees – for example, do they ever share the purchase of a property?
6. In your business/profession/sector, how many (or what proportion of) employees receive accommodation? Are there any roles which always have accommodation provided, or particular types of employment, or roles within a sector which always provide accommodation?
7. When accommodation is provided to employees, is it usually owned or rented by the employer? Does this vary across different types of employment?
8. How easy is it for employers or tax advisors to calculate the taxable value of accommodation provided to employees? How often are values sought from the District Valuer? How easy is that to do?
9. What proportion of employees provided with accommodation pay rent for their accommodation? How much rent do they pay (proportionate to the value of the benefit)? How is the value paid as rent calculated (do employers reference the market value for example?)
10. Do you agree that using market rental value would provide a simplification to the tax rules on provided living accommodation? How could such a system work and what would be the impacts on both employers and employees?
11. Are there other ways to simplify how the taxable value of living accommodation is calculated?

12. Are there situations where employees, despite having very similar roles are treated differently for tax purposes because of the way that the rules currently work?
13. What circumstances exist today where accommodation is needed in order to do a job? Why is the accommodation needed? For example, is it purely about the job itself (the duties), or, to comply with legal requirements, or because of the location of the job?
14. Is it appropriate that certain accommodation is completely exempt from tax? How can we create a balance between the need for accommodation to be provided to enable a job to be performed and the advantage gained by that provision?
15. Are there any 'representative occupiers' who would not fit within the current statutory exemptions? If yes, please provide details of the employment and job role.
16. To what extent do employees/sectors 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?

5. Next Steps

How to respond

The deadline for this call for evidence is 3 February 2016.

Representations by email are preferred, and should be sent to employmentincome.policy@hmrc.gsi.gov.uk.

Alternatively hard copies can be sent to:

Accommodation Call for Evidence
1E/08
100 Parliament Street
London
SW1A 2BQ

Paper copies of this document or copies in Welsh and alternative formats (large print, audio and Braille) may be obtained free of charge from the above address. Substantive replies to individual representations will not be possible.

When responding please say if you are a business, consultancy, individual or representative body. Please provide demographics of your organisation; in the case of representative bodies, please provide information of the number and nature of people you represent.

HMT and HMRC will hold some round table conversations with stakeholders in January to discuss the questions within this call for evidence. If you would like to take part in this conversation, please send an email outlining your interest in this area to employmentincome.policy@hmrc.gsi.gov.uk and we will send you further information.

This call for evidence will inform future policy development. The government will set out its intentions once it has considered the responses received.

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 call for evidence is being run in accordance with the Government's Consultation Principles.

The government's consultation principles state that 'timeframes for consultation should be proportionate and realistic'. This Call for Evidence will run for ten weeks, which should be sufficient time for stakeholders to consider and respond, given the likely audience. The government considers that this is an appropriate amount of time to review the report and the questions raised, and contribute to this evidence-gathering exercise. If you have any comments or complaints about the consultation process please contact:

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.