



HM Revenue  
& Customs

# Travel and Subsistence

## **Summary of Responses**

24 March 2016

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# Foreword

I am pleased to be able to set out the government's response to the travel and subsistence (T&S) discussion paper, published in September 2015.

I am grateful to everyone who has taken time to reply to this discussion paper and attend meetings with HM Treasury and HM Revenue and Customs. This has been crucial in allowing HM Treasury and HMRC to complete the review of the tax rules for T&S.

I would particularly like to thank the Office of Tax Simplification for their work in this area, which proved invaluable in helping to formulate the proposed framework set out in the discussion paper.

We received responses from a range of employers and representative bodies and heard a clear message that, although complex in parts, the current T&S rules are generally well understood and work effectively for the majority of employees. Responses supported the principles underlying the taxation of T&S as set out in the proposed framework, but pointed to the difficulty in translating those principles into a workable set of rules.

Many acknowledged that revised guidance in the new 'Employee Travel – a tax and NICs guide for employers' (booklet 490) published in 2015 has improved application of the rules and that changes to legislation from April 2016 will provide further simplicity in the reduction of employer and employee reporting requirements.

Above all, responses to the discussion paper highlighted the need for certainty and stability. For this reason, we have decided to retain the current T&S rules. However, we do want to make sure the rules work for modern practices and, where we have heard about genuine difficulties in practice, we will continue to seek to improve employers' reporting requirements for T&S.

**David Gauke**

# 1. Introduction

## Background to the discussion paper

- 1.1 The rules governing the tax and National Insurance contributions (NICs) treatment of travel and subsistence (T&S) were last updated in 1998. Since then, developments in technology have generated changes to both the working environment and working patterns, enabling people to work flexibly across different locations, including at home and while travelling.
- 1.2 The Office of Tax Simplification (OTS) considered the tax rules for T&S as part of its review of employee benefits and expenses and made recommendations in its second report published in January 2014.
- 1.3 At Budget 2014, the government announced that it would conduct a review of T&S. During its first phase, stakeholders from a cross section of different sectors came forward to help identify areas where they considered the rules could be simplified.
- 1.4 In September 2015, the government published a discussion paper to test assumptions with interested parties: [Travel and subsistence: discussion paper - GOV.UK](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/471212/Travel_and_subsidence_discussion_paper_-_GOV.UK.pdf)
- 1.5 The discussion paper:
  - set out the background to the review, including an overview of the current T&S rules
  - set out a principled case for change, including an outline of the issues identified at paragraph 2.5.
  - detailed a potential framework for new rules, but did not include any firm proposals.
- 1.6 Responses to the paper were sought by 16 December 2015.
- 1.7 The government received 65 written contributions from a wide range of industry sectors, including construction, manufacturing and third sector employers; these are listed at Annex A. The majority of responses received were from tax professionals, large private and public sector employers and employer representative bodies. Comments were also received from a small number of individuals.
- 1.8 As part of their response to the discussion paper, some contributors had gone to the trouble of surveying their client bases and were happy to share details of the information gathered. HM Treasury and HMRC also met with 15 stakeholders for more in-depth discussion.
- 1.9 This document summarises the responses received.

## 2. Responses

### General comments

- 2.1 In the main, respondents to the discussion paper agreed that while the current rules work well for most, there is a need to review and reform some aspects of the T&S rules to reflect modern working practices.
- 2.2 Some stated that current rules are complex, but sufficient, and cautioned that any changes would require employers to become familiar with yet another set of rules.
- 2.3 There were also concerns that the introduction of a new set of rules would risk substituting one set of complexities for another.

### Detailed responses to discussion paper proposals

#### Issues with the current rules

- 2.4 The OTS found that the current system is reasonably well understood by employers and works well for the majority of employees; however, there are occasions when, for a minority of employees, some rules are difficult to understand and operate.
- 2.5 The main issues highlighted were:
  - a lack of understanding over the level of attendance that constitutes 'regular attendance' and how that test fits with the other rules;
  - confusion around the definitions of permanent and temporary workplaces, particularly as these terms do not take their everyday meaning, making the distinction between them seem contrived and resulting in outcomes that look unfair to some workers (eg those employees who have a series of workplaces which most people would regard as being "temporary" under any ordinary use of the word);
  - the fact that the '24 month rule' relies on the employee's intention rather than the amount of time actually spent at the location, making it difficult for an employer to judge when that employee's intention changed;
  - the fact that the current rules can mean that an employee ends up with more than one permanent workplace, even where their workplaces are a significant distance apart;
  - confusion around whether or not a journey is 'substantively the same' as ordinary commuting or private travel; and
  - confusion around homeworking, and whether or when a home to workplace travel is a workplace to workplace journey rather than ordinary commuting.

#### **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?**

- 2.6 On the whole, respondents considered that, although complex in parts, the current T&S rules are generally well understood and work effectively for the

majority of employees. A number agreed that current tests can be subjective or unclear and that problems arise because certain definitions do not always carry their everyday meaning.

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

- 2.7 Many of the respondents stated that the main issues that cause employers difficulty had been identified in the discussion paper.
- 2.8 Others recommended simplification of a number of rules they had found to bring considerable complexities, but were not mentioned in the discussion paper. Those more commonly mentioned included: international travel and worldwide subsistence rates; the potential interaction with the removal of dispensation agreements that may mean additional reporting and the employer burden in the requirement to retain receipts.
- 2.9 A number of respondents suggested that where rules are confusing for the employer, they are equally confusing for the employee and that explaining the rules to affected staff can be difficult.

**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?**

- 2.10 Although still affecting a small proportion of employees, many respondents considered that there is a growing need for an increasingly flexible workforce, which means a trend towards employees having more than one permanent workplace.
- 2.11 Respondents recognised that it is more commonplace for those employees in the IT, oil, construction and engineering industries, but stated that this issue appears to be becoming more prevalent, particularly in larger companies and as a result of company mergers, where managers find themselves responsible for team across several sites. It was also noted that the model of having a second university campus is expanding and this will affect more universities in the future.
- 2.12 Some also considered that there are particular issues where there are widely diverse geographical locations.

**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?**

- 2.13 There was a degree of divergence in responses to this question. Many respondents agreed there is a need to modernise the rules and make them easier for employers to access, understand and apply. Some believed that there was a good case for reforming certain rules only, whilst others considered that there is no strong justification for doing so.

- 2.14 Some respondents cautioned that, whilst simplification would be welcome, the proposed changes might merely replace one set of complexities for another and create additional compliance burdens for employers.
- 2.15 One typical response said: “Employers by and large understand the existing rules. The proposals would simply substitute a new set of rules, with new conditions to interpret, for the existing rules that employers, employees and HMRC have had 17 years to become familiar with and which still work well.”
- 2.16 A number of respondents commented on the work so far achieved to simplify the tax system for employers and welcomed the general expenses exemption and benchmark scale rates due to come into effect from 6 April 2016. Respondents also praised improvements to HMRC guidance, specifically Booklet 490, which was updated in August 2015. Many felt that the solution might be to make further improvements to the guidance rather than overhauling the T&S system.

## Principles

- 2.17 The discussion paper set out a number of principles that any changes to the rules should try to uphold and asked stakeholders whether they agreed with the following principles:
- that 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 concepts 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; and
  - any changes should not come at an additional cost to the exchequer.
- 2.18 The government also invited views on other principles the government should consider, within the parameter that changes should not come at a cost to the exchequer.

**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 of the exchequer, are there any additional principles that the government should consider?**

- 2.19 Most respondents broadly supported the principles and believed that:

- tax relief should continue to be available for business travel, but not ordinary commuting;
- tests should be objective, based on measurable facts, and not to rely on the intentions of the employee;
- rules should be readily understandable and terminology should carry the everyday meaning; and
- employees should not have journeys to multiple locations or areas a significant distance apart all treated as ordinary commuting.

2.20 There were differences in opinion that relief should not be available for subsistence where this is essentially akin to a private expense. Some respondents agreed with this principle and others disagreed, maintaining that rules for subsistence and accommodation should follow the same rules as travel and that it would be unfair that employees should be 'out of pocket' for what is they essentially considered a business expense.

2.21 A number of respondents felt that reform should not come at the cost of tax relief for subsistence.

2.22 Whilst there was consensus that changes should not come overall at a cost to the Exchequer, some respondents questioned how the government would be able to achieve these changes. Some also questioned the basis of the government's calculation for revenue neutrality.

### **Proposed framework**

2.23 The stated objective of the proposed framework outlined in the paper was to broadly allow tax relief for three types of journey, with the intention for an employer to consider them in order:

- 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; and
- journeys to the employee's main base where all bases of the employee are detached duty locations.

### **Travelling in the performance of the duties**

2.24 Within the existing rules, employees can receive tax relief when travelling in the performance of the duties of the employment.

### **Question 6: Do you agree that this rule currently works well and should remain broadly unchanged?**

2.25 The majority of respondents believed that these rules are generally well understood and there is no need for change.



## **Travel to locations other than the employee's main base**

2.26 To clarify the current permanent and temporary workplace rules, the discussion paper explained the proposal for an employee to nominate their 'main base'; the location where they necessarily spend more than a specified percentage of their working time. The OTS recommended a 30% test. Employees would not be entitled to tax and NICs relief for journeys from their home to their main base, but would be entitled when travelling to other bases from home or between bases on the same day.

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

2.27 Generally, respondents agreed with the concept of employees having only one main base and that tax relief should not be allowable on the cost of travelling between an employee's home and their main base. They said that there should be no change to the T&S rules where employees travel for 'occasional visits'.

2.28 Although many liked the concept, when considering the detail, they queried how this rule would be applied; whether prospectively or retrospectively. They asked whether, if prospectively, there would be a need for a checking system to ensure the main base is the same base as originally nominated. There were concerns that this may then create additional burdens for employers. They also queried whether, if a checking system was required, what the frequency of checking and reassessment might be.

### **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?**

2.29 Respondents seemed generally content with a 30% test, but considered that this could be difficult to determine in practice because 30% does not easily divide into a 5 day week and also because some employees' working patterns are unpredictable over the year. They acknowledged that detailed record keeping may be required to verify the main base using a 30% test.

2.30 Respondents also considered other percentage figures and some recommended that 50% would be equitable, particularly if an employee genuinely had two main bases. Others recommended 40%, advocating that this figure is in line with the current guidance used to determine a permanent workplace.

2.31 There were concerns that this change could be more generous than the existing rules. For example, an employee could receive tax relief for journeys that are considered ordinary commuting under the current rules, because the time spent at the main base falls below the threshold. Some cautioned there could be an incentive to move between bases in order to take advantage of this.

- 2.32 Respondents also said that introduction of this rule could create additional costs for employers, where there is expectation to reimburse more journeys than they do under current rules.
- 2.33 Most respondents agreed that employers are keen to comply and use simple, objective rather than subjective, rules; although some considered that such a change could drive unwanted behaviour and result in more challenges from HMRC. One argument for retaining the subjectivity in the current rules is that it allows flexibility for interpretation and for common sense to be applied where working patterns are so variable as to make record keeping difficult.

**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 (e.g. the location where the employee spends the highest proportion of their time)?**

- 2.34 The majority of respondents felt that the employer, rather than the employee, should be responsible for nominating the main base, with some suggesting that the nominations should follow the contractual position. A number believed that the nomination should be agreed between the employer and employee.
- 2.35 There were concerns that an employee nominating their main base could be open to abuse and that an employee with a number of bases would be free to select a main base that provided the most generous tax treatment.
- 2.36 Respondents asked whether HMRC could challenge the employer if the main base selected by the employee had a distinct tax advantage and whether there is potential for employers to transfer a resulting liability to the employee.

**Travel on detached duty**

- 2.37 The discussion paper set out proposals to simplify the current 'temporary workplace' rules by introducing the concept of 'detached duty'. An employee would be treated as being on 'detached duty' if working away from their normal work location and would be entitled to tax and NICs relief on their travel from home to that location. There would still be a need to define detached duty by reference to the limited duration of either the task or the requirement to attend that location.
- 2.38 Currently, the '24 month rule' is used to determine a 'temporary workplace' and is further defined by the 'intention' test where, if within an ongoing employment an employee is expected to attend a workplace for a period of less than 24 months, then the workplace will be a temporary workplace from the outset. However, if at a later date circumstances change and the employee is required to attend the workplace for a period that extends beyond 24 months, it will cease being temporary from the date that the intention changed. On the other hand, if the original expectation is that the employee will attend the temporary workplace for more than 24 months, it can never be treated as a temporary workplace even if in practice the duration ends up being less than 24 months.

- 2.39 The discussion paper recommended that the ‘intention’ test should be removed and asked how long an employee should be able to attend a location before it ceases to be a detached duty location and therefore no longer qualify for tax or NICs relief.

**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?**

- 2.40 Respondents agreed that it is reasonable to allow tax relief when an employer has asked an employee to work at a location away from their normal workplace, and some thought that this new concept would be an improvement on the current temporary workplace rule.

**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?**

- 2.41 Most respondents agreed that the term ‘detached duty’ is better understood, although some commented that the phrase is more commonly used in the civil service than the private sector.
- 2.42 Some respondents suggested that it is a question of terminology and does not bring about an improvement in understanding: any changes must be supported by clear guidance.

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

- 2.43 Most respondents believed the 24 month rule is widely recognised, well understood and provides a reasonable period. Some added that the construction industry may require longer.
- 2.44 Respondents strongly agreed that removal of the ‘intention’ test would simplify the current rule and confirmed that the period of 24 months is well understood, though naturally some would like it to be extended.

**Work locations vs workplaces**

- 2.45 There is no tax or NICs relief for ordinary commuting and current rules do not allow relief for a journey that is ‘substantially the same as ordinary commuting’. This means that two workplaces that are close together, or have similar journey times or costs, should be treated as being the same place: It is acknowledged that employers struggle with the lack of objectivity around ‘substantially the same’.
- 2.46 The discussion paper proposed to address this issue by being clear about treating workplaces that are close together as a single ‘work location’, with the rules applying to work locations rather than an individual workplace. Respondents generally agreed to this proposal.

- 2.47 For this new rule to provide simplicity, 'work location' would need to be defined with reference to a tangible measure. The discussion paper asked what would be the easiest test for employers to operate.

**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'?**

- 2.48 Most respondents agreed that an objective measure would be an improvement, although many were cautious about how easy it would be to decide on the measure.
- 2.49 Some sought clarification that the rule would only apply to ordinary commuting and not to journeys between workplaces or clients during the working day.
- 2.50 One argued that the proposed approach is not much different from booklet 490, which states: "The application of this rule will depend on the particular circumstances of any case but we will not normally seek to argue that a journey to or from a temporary workplace is substantially ordinary commuting where the extra distance involved is 10 miles or more each way".

**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?**

- 2.51 Distance was the measure most commonly mentioned (using a widely available internet route planner like Google maps), with a suggestion of one of either one, two, five or ten miles in proximity. Some respondents suggested the potential to use postcodes.
- 2.52 However, many felt that, in addition, there is also need to include time or cost differences to account for different time or cost elements if using a different mode of transport.
- 2.53 Many respondents suggested that an additional cost rule, in which employees are reimbursed only for their excess costs, would be fairest, but acknowledged that a thorough and fair test would add complexity.
- 2.54 Many suggested that different rules would need to apply to London and other big cities versus everywhere else due to a greater difference in travel times and costs over the same distance, particularly in the capital.

**Homeworking**

- 2.55 Currently, tax relief on journeys is only allowable for those who are 'objectively required' to work from home; a rule that is intended to prevent employees from being incentivised to work at home by choice in order to qualify for tax relief on their normal commuting costs.

2.56 To preserve this, the discussion paper proposed that employees should not be able to nominate their home as their main base if they have another base elsewhere. Where an employee has no base because they work at a variety of different locations or on detached duty, then relief would be allowed under the other rules within the proposed framework.

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

2.57 On the whole, respondents agreed that the tax system should not incentivise people to work from home. However, some suggested that government, more generally, should encourage homeworking as it has wider societal benefits such as reduced congestion, better work/ life balance and increased personal safety.

**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?**

2.58 Many respondents agreed with this principle, but there was concern that the distinction between working from home by choice or by 'objective requirement' is unclear.

2.59 Most respondents felt that it should be for the employer, not the employee, to decide if home is the main base.

2.60 Others believed that if an employee works from home for a significant proportion of their time, even if not by requirement, they should be able to claim home as their main base. They offered differing options to implement an objective measure that avoids the need for a rule around 'objective requirement'.

2.61 Another suggestion was that employees whose main base is their home should have a nominal normal commuting cost (based on a national average and periodically reviewed) deducted from the amount they can claim free of tax for their business journeys on a particular day.

2.62 A couple of respondents thought that if the employee satisfies the criteria for receipt of a tax exempt homeworking allowance then they should automatically qualify for relief for travelling costs when they leave their home on business and that to do otherwise produces complexity.

**Day subsistence**

2.63 As set out in the discussion paper, the government believes that any reform to current rules should not come at an overall cost to the exchequer and that small, principled changes to restrict other aspect of tax and NICs relief are required to balance more generous simplifications. The government was keen to understand the potential impacts on the restriction of tax relief on day subsistence, as there is an argument against the taxpayer continuing to subsidise employees for what is effectively a private expense.

**Question 17: Do you agree that removing relief for day subsistence is fair?**

- 2.64 Many respondents agreed that removing relief for lunch is fair when this is akin to a private expense. However, it was widely felt that where an employee must incur extra cost without choice it would be unfair to make them pay tax on it. Some mentioned that they have a duty of care and employees should be encouraged to take regular drinks of tea, coffee or water.
- 2.65 There were suggestions that an employer should only pay the additional cost incurred for lunch or reimburse employees at a flat rate which can be reimbursed; for example, £5 per day.
- 2.66 A number of respondents were concerned that the government might be considering removing subsistence for breakfasts or evening meals or lunch on the following day of an overnight stay.

**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?**

- 2.67 Many respondents cited employees who have staff canteens, employees working in IT, construction, teaching, professional services, police, armed forces, lorry drivers, low paid workers.

**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?**

- 2.68 Respondents detailed a number of different scenarios where food is more expensive; including when travelling on trains, planes or at motorway service stations; at an exhibition or conference venue; where the journey is to an area of the country that is more expensive, for example, London; or where etiquette does not permit bringing food from home.
- 2.69 Respondents also considered that for health and safety reasons, it might not be possible or practical for an employee to bring a lunch from home and keep it in their bag for many hours. There also may not be facilities to prepare homemade food when travelling.

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

- 2.70 There was a difference in opinion to this question, although a larger number of respondents said that they would continue to pay than those who said they would stop. Respondents provided a number of reasons, including that: responsible employers should not want to see employees out of pocket or

missing meals when the employee's duties require the employee to travel on business or attend a temporary workplace; employers also do not want employees refusing to travel or work elsewhere because the employee will be disadvantaged if they agree to do so.

- 2.71 Others said that employers may be obliged to pay due to agreements with unions. Some thought that employers may have to gross-up an allowance and advocated that any settlement in tax should be allowed through a PAYE settlement agreement.
- 2.72 Some respondents thought it likely that many employers would cease paying day subsistence if tax relief were removed, due to the operational difficulties and potential financial costs of needing to pay tax on such expenses. It was suggested that in the longer term they might have to compensate employees through higher salaries.

**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?**

- 2.73 A number of respondents were critical that the paper assumes that removal of relief for day subsistence would offset the costs of the main base changes when the government has not evidenced any costs. Some suggestions for balancing the costs were linked directly to the proposed framework for T&S, while others were ideas relating to the wider treatment of taxation and NICs. Suggestions included:
- the detached duty rules could allow for the additional cost of travel on top of the ordinary commuting cost – this may allow for day subsistence to be retained in some form whilst remaining cost neutral for the Treasury;
  - a change of mileage allowance rates to a single rate;
  - a radius allowance where first x miles are ordinary commuting;
  - relief for 'detached duty' locations, could be restricted to less than 24 months;
  - removal of overnight incidental expenses rates; and
  - introduction of limits on tax relief, although it was acknowledged that this would not be a simplification.

### Government response

- 2.74 We are grateful to all those who have taken the time to contribute to this review.
- 2.75 We received a clear message that the current T&S rules work well for the majority of employers and employees most of the time. However, we recognise that there are occasions when, for a minority of employees, some rules are difficult to understand and operate.
- 2.76 The discussion paper set out a principled case for change, together with a potential framework, but did not include any firm proposals. Responses reaffirmed support for the underlying principles, but also recognised the difficulty in maintaining those principles when developing the new rules.

- 2.77 The discussion paper acknowledged that any set of rules on relief for T&S will inevitably contain some complexity as there are no easy answers, short of allowing tax relief for all journeys (or none). Nevertheless, we hoped to be able to find some relatively simple changes to make the rules easier to apply.
- 2.78 Many employers reinforced the message that they value stability and certainty in the tax system and that any changes need to be genuine simplifications if they are to be worthwhile. They said that rules should be clear and easy to administer and explained concerns that changes to the current system may create new compliance burdens for employers.
- 2.79 Prior to the review on T&S, the OTS highlighted a need to update guidance in booklet 490 and HMRC has since taken this recommendation forward. A number of respondents have requested that we allow this guidance to bed-in before making more radical changes.
- 2.80 The remainder of this section outlines our response on the individual topics within the discussion paper.

## **Principles**

- 2.81 We continue to uphold the fundamental principles on which the rules on T&S are based. Responses to the discussion paper supported this, but it has become clear that these principles do not easily translate into the new rules set out in the proposed framework. We continue to believe that any reform to the current rules should not adversely impact the Exchequer, and that small, principled changes to restrict other aspects of tax relief for travel and subsistence expenses would be required to balance more generous simplifications.

## **Proposed framework**

### **Travelling in the performance of the duties**

- 2.82 We acknowledge that the majority of respondents believed that these rules are generally well understood and there is no need to change current rules for travelling in the performance of the duties of the employment.

### **Travel to locations other than the employee's main base**

- 2.83 Whilst there was general consensus that introduction of the main base rule might offer simplification, there was little agreement on how this could be applied in practice and concerns that implementation may have the potential to increase employer burden.
- 2.84 The discussion paper had acknowledged that this new rule might offer more generous terms than the existing rule and, because simplification should not come at overall cost to the Exchequer, it would need to be balanced by introducing restrictions elsewhere. However, upon further review, it is not clear



that the cost of introducing the main base rule would be justified by the level of simplicity that could be delivered, or by the potential it would have to erode the principle that tax relief should not be available for ordinary commuting.

### **Travel on detached duty**

- 2.85 There was a notable difference in opinion on the concept of detached duty: for some, this proposal was seen as an improvement, whilst for others, only a change in terminology. We acknowledge that the removal of the intention test would provide a simplification, but are concerned that it could be open to abuse without certain safeguards. Introduction of safeguards would seem to add to the complexity of the proposed rule, so it is not clear that real simplification could be achieved for the possible cost involved.

### **Work locations vs workplaces**

- 2.86 We agree that the current rule where a journey is 'substantially the same as ordinary commuting' is subjective and appreciate the need for a rule that is more objective. However, it is evident that any test would require employers to consider a number of different factors. It is therefore not clear that the definition of a work 'location', as opposed to a workplace that is 'substantially the same as ordinary commuting', would provide simplification or reduce employer burden. We are cautious about replacing existing complexity with new complexity.

### **Homeworking**

- 2.87 We continue to support the view that the tax rules should provide neither an incentive nor a disincentive for working from home; a view that most respondents also accepted.

### **Day subsistence**

- 2.88 The discussion paper set out that one way to balance the more generous proposals would be the removal of tax relief for day subsistence. However, a number of respondents were critical that the discussion paper assumed that removal of day subsistence would make savings without providing evidence that some of the other changes would be more generous.
- 2.89 We stand by the principle that relief should not be available for subsistence where this is essentially akin to a private expense.

## 3. Conclusion

- 3.1 Recommendations in the OTS's second report on the review of employee benefits and expenses led to the development of the proposed framework that was presented in the discussion paper. The OTS affirmed that their overall objectives for that stage of work had been:
- to look for ways of modernising the systems and ensuring they are in tune with the employment patterns of today; we [the OTS] have also tried to think about emerging employment trends;
  - to reduce administrative burdens all round: to streamline (or preferably eliminate) procedures that can be delivered more efficiently; and
  - to increase certainty for employers in the rules and regulations that govern the Employee Benefits and Expenses system.
- 3.2 Specifically on T&S, the OTS acknowledged that improvements should be made without having to go through the disruption and uncertainty of discarding the current rules and starting again.
- 3.3 We have looked to build on the OTS's work in order to find a framework that would deliver simplification. We are pleased that responses to the discussion paper supported the principles underpinning the taxation of T&S, but it has become clear that these principles do not easily translate into the new rules that were set out in the proposed framework.
- 3.4 Having considered the responses very carefully, it is clear that the large majority of employers believe that the current system works well for most employees. Responses to the discussion paper highlighted the need for certainty and stability. We have borne in mind the concerns that changes introduced under the proposed framework could replace one set of complexities for another and that this may create additional compliance burdens for employers. We therefore believe that the proposed framework does not provide enough simplicity to justify the upheaval for employers or the potential cost to the Exchequer.
- 3.5 Alongside this work, we have delivered on a number of other simplifications recommended in the OTS report that will come into effect from April 2016, including:
- voluntary payrolling of benefits in kind (BiKs), which reduces employer burdens on reporting requirements and allows employers to payroll benefits and expenses in real time;
  - an exemption for paid or reimbursed qualifying expenses that removes the need for dispensations and some employee claims for repayment;
  - abolition of the £8,500 threshold, whereby employers can now treat their employees' income tax and NICs in the same way, without the need to monitor whether an employee's earnings are above or below the £8,500 threshold; and
  - an exemption for trivial BiKs, which allows employers to treat certain low value BiKs as exempt from tax and NICs and reduces reporting requirements to HMRC.

- 3.6 A number of respondents made positive comments on the work so far achieved to simplify taxation for employers and employees.
- 3.7 HMRC has also published the new version of booklet 490. Many respondents praised improvements to this guidance which brought greater clarity. They felt that we should allow this guidance to bed-in before considering more radical changes to the system. We will monitor how employers adapt to the new guidance, and continue to update and improve it based on customer feedback to HMRC.
- 3.8 These changes in legislation and improvements to guidance should provide further simplicity in the application of tax and NICs rules and employer and employee reporting requirements.
- 3.9 For these reasons, instead of taking forward the proposed framework for consultation, our next steps will be to look at other areas of T&S that are worthy of review where we can achieve real progress. We will continue to work to improve the rules and to look for simplifications to improve reporting requirements for T&S. By focusing on smaller, more achievable changes, we hope to deliver tangible improvements for employers.

# Annexe A: List of stakeholders consulted

Association of Investment Companies  
Association of Accounting Technicians  
Association of Taxation Technicians  
BDO  
British Universities Finance Directors Group  
CBI  
Chartered Institute of Taxation  
Chartered Institute of Payroll Professionals  
Crowe Clark Whitehill  
Deloitte LLP  
Defence Industry Security Association  
Doosan Power Systems SA  
Efficient Employment Tax Solutions Limited  
Employment Taxes Industry Forum  
Ernst & Young  
Freelancer and Contractor Services Association  
G4S  
Glasgow University  
Grant Thornton  
HRC Law LLP  
HS2 Ltd  
I4 Services Ltd  
Institute of Chartered Accountants in England and Wales  
Institute of Chartered Accountants of Scotland  
Innovation LLP  
Key  
Kier Group PLC  
Kingston Smith LLP  
KPMG  
Laing O'Rourke plc  
Legal and General  
London Society of Chartered Accountants' Taxation Committee  
Low Incomes Tax Reform Group of The Chartered Institute of Taxation  
LV  
Lymm Tax Services  
M Short & Co LLP  
Mazars LLP  
MOD  
Murphy and Sons Limited  
National Grid  
National Police Chief's Council Finance and Coordination Committee  
Nationwide Building Society

Northern Ireland Tax Committee of Chartered Accountants Ireland  
Open University  
Pearson PLC  
Prospect  
Prudential  
PricewaterhouseCoopers  
QinetiQ  
Recruitment & Employment Confederation  
Rift Group  
Rolls-Royce  
Ross Martin Tax Consultancy Limited  
Saint-Gobain Ltd  
Staffline Group  
Tax Advisory Partnership  
Timotay Group  
Transomnia  
Union of Construction, Allied Trades and Technicians  
Unite the Union  
University of Glasgow  
UNW  
Virgin Money  
West Yorkshire Police  
Weybourne Partners LLP