Travel and subsistence

Employment Tax

01 February 2016

CIOT, ATT and LITRG respond to the HMRC discussion paper

Following on from the stage one review of travel and subsistence that HM Treasury opened in summer 2014, a discussion paper setting out various proposals for changes was issued on 23 September 2015.

The paper outlined the case for reforming some aspects of the rules for tax relief on travel and subsistence expenses and made proposals in six particular areas. The ATT, CIOT and LITRG all responded to the discussion paper and these responses are summarised below, looking in turn at each of the six areas highlighted for reform.

LITRG noted that the paper focused on workers who receive relief on both tax and National Insurance contributions (NIC); it does not consider the position of those who necessarily incur travel and subsistence expenses, but who receive no reimbursement from their employer. Some workers find that, because their income is below the personal allowance, they cannot claim either relief. LITRG recommends that these workers be given some recompense through the welfare system – tax credits or universal credit – to align them more closely with colleagues who are paid enough to allow them to benefit from tax relief.

1. Travelling in the performance of duties

The Treasury identified key principles that any new rules should uphold. The first is that tax relief should continue to be available for business travel made while performing duties, but not ordinary commuting. The ATT, CIOT and LITRG agreed that this rule works well and should remain broadly unchanged.

2. Travel to locations other than the employee's 'main base'

The Treasury identified that one area that causes most confusion is how to apply the rules when an employee is travelling to more than one permanent workplace. The proposal to resolve this confusion is to have every workplace where an employee spends at least 30% of their working time treated as a base. The proposal is to then allow the employee to elect which base is to be treated as the main one. Travel from home to that main base would not attract tax relief, but travel to other bases would.

The ATT, CIOT and LITRG agreed that the concept of an employee having a main base is sensible. The ATT agreed that a percentage test based on how long an employee spends at a location would be a good objective measure to use, with the Office of Tax Simplification's suggestion of 30% being reasonable. The CIOT raised concerns about the basis of assessing whether a workplace is a base: who carries out that assessment (employer or employee), when is this done (prospectively or retrospectively), and how?

The ATT and CIOT were also pleased by the proposals of an election process but stressed that there may be tensions between the base an employee would want to elect and the one the employer would want them to elect, which needs to be considered. In addition, an employee would need to be able to vary the election if their circumstances and working patterns change.

3. Travel on detached duty

Another area of confusion is the rules applying to employees based at temporary locations and the 24-month rule. The Treasury's response to this is the proposals on travelling on detached duty. The term 'detached duty location' has not been fully defined yet, but broadly would apply to employees required to work at another location for a limited time.

The ATT found these proposals to be the most confusing of the whole paper. It commented that the current temporary workplace rules cover two distinct situations: first, where an employee is seconded to another location to work for a limited period before returning to their original one (perhaps to cover for maternity leave); second, where the employee constantly moves from location to location – the truly itinerant

worker. However, these new proposals seem to deal only with the second of these situations since the main caveat of the detached duty rules is that the employee cannot have a normal base anywhere else. In the case of an employee covering maternity leave at another branch, there will usually always be the intention of returning to the original branch. So, does this mean that the employee has retained their normal base?

LITRG agreed there was a need for tax relief for travel when on ‘detached duty’, but noted that the proposals discriminate against temporary workers and fail to take account of the change in working patterns, such as the increase in short, fixed-term contracts.

The CIOT also agreed that employees should continue to receive tax relief on travel and subsistence expenses incurred when they are required to perform employment duties for a limited time at another location.

4. Work locations v workplaces

Intended to relieve confusion over the term ‘journeys that are substantively the same as ordinary commuting or private travel’, the Treasury proposes to introduce rules stating that work locations that are ‘close to’ each other will be considered as travelling to the same base. So, if an employee visits a number of locations in central London equating to more than 30% of their working time, London will be considered a work base, even if the visits have all been to separate places (for example to clients).

The ATT is concerned about how this will affect employees whose job it is to visit multiple clients who may have locations that are considered ‘close by’ their employer’s office. In this case, there could be the danger that travelling to each client is considered travelling to the one base and may prohibit a claim for tax relief. This does not seem to fit in with the principle that journeys made in the performance of the duties of employment should continue to attract tax relief.

LITRG raised concerns in relation to low-income workers. For example, confusion might arise in the case of care workers, whose travel to multiple clients within a geographic area is allowable as an intrinsic part of their duties.

5. Homeworking

The Treasury proposes that it may not be allowable for a homeworker to elect his home as a main base, even where he or she does not have the ability to work in the employer's premises for all of their working time. It suggests allowing the homeworker to take into account the time they spend working from home in determining whether they have a base elsewhere. However, if a homeworker spent, say 60% of their time at home, but spent 30% of their time elsewhere, for example, head office would become a base and, without the ability to also treat the home as a base, the main base would be head office by default.

The ATT has serious concerns about this proposal and has urged the Treasury and the government not to jeopardise homeworking arrangements that exist for important and positive reasons. Homeworking arrangements have added much flexibility to the labour market which benefits businesses and employers alike. It should be recognised that home-workers can be important and valuable assets to businesses and should, therefore, be allowed to operate the election rules for the main base in the same way as other employees by allowing their home to be treated as a base if the appropriate amount of time is spent working there.

CIOT also commented that, where there are objective business reasons for an employee to work from home and they spend most of the time performing their duties (say 60–80%) at home, the home should be able to be their 'main base'.

6. Day subsistence

Finally, the Treasury is proposing that the cost of obtaining lunch while on business travel should no longer attract tax relief. It believes it is a measure that dates from when most office-based employees could buy a subsidised meal from a works canteen. Since most employees must now generally bear the cost of getting lunch while at work, the Treasury argues that tax relief should be removed.

The ATT agreed with this proposal in general, although it argued that costs of obtaining subsistence while on business travel outside normal working hours, such as breakfast or evening meal, should retain tax relief. The ATT also asked for confirmation of any impact on the rules coming in from 6 April 2016 on the approved rates that employers can pay employees for meal allowances under the new

exemption for qualifying business expenses if tax relief on day subsistence is removed.

The CIOT and LITRG disagreed with this proposal, viewing the analysis in the discussion document as simplistic. The CIOT noted that the day subsistence rules are intended to provide relief for employees on the extra cost of subsistence incurred due to working away from their normal workplace. LITRG added the example of employees that would normally supply a packed lunch from home might find themselves having to purchase a meal, particularly if they have had to stay away from home overnight.

The full ATT response can be read on the ATT website.

The full LITRG response can be read on the LITRG website.

The full CIOT response can be read on the CIOT website.