# Employer-provided living accommodation

Employment Tax | Personal tax

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CIOT and LITRG respond to the call for evidence

The CIOT responded to the government's call for evidence on the taxation of employer-provided living accommodation, which was published in December and arose from the Office of Tax Simplification (OTS) highlighting:

- difficulties in defining 'living accommodation';
- difficulties in applying the current tests for exemptions;
- the 'grandfathering' of occupations exempt before 1977; and
- that the calculation of the tax charge is complicated.

Accepting that there are no easy solutions, the CIOT, generally, agreed with the OTS's recommendations that the most basic accommodation is taken out of the tax charge entirely and that the existing exemptions are reformulated to distinguish more accurately between what is a 'perk' and what is needed to get the job done.

## Employer-provided accommodation

We noted that accommodation is generally provided by employers to employees because the nature of the employment duties requires it. An example would be a role that involves caring or providing services to someone or something (outside normal working hours or as a result of regulatory requirements), or security.

While custom and practice may have evolved, we believe that there is a need for certain exemptions where the accommodation is necessary to perform the duties of the employment. We also agreed with the OTS that these exemptions should encompass both the provision of 'independent living' accommodation and 'board and lodging' accommodation.

## Valuation

In our view the current approach to valuing the cost of living accommodation is complicated, uncertain, unclear, outdated and burdensome and the system is long due an overhaul. We thought that the simplest and easiest option for reform would be to take the open market rental value as the benefit cost for tax purposes of all non-exempt employer-provided accommodation.

## Exempt accommodation

We said that the two main current tests for exemption – ‘necessary for proper performance’ and ‘customary and for the better performance’ – have proved difficult to meet. In particular, the bar for the former, whilst simple, has been set too high with its reliance on ‘that property and no other’. We also thought that it was difficult for employers to prove that it is ‘customary’ for accommodation to be provided for a particular role, with the result that few new roles have been added to HMRC’s agreed list of roles, even when the role is similar to one already on the list.

However, we recommended that an exemption for certain accommodation should be retained. We suggested reformulating the exemptions to focus on the objective requirements of performing the duties of the employment to the standards expected, taking account of the location of the employment and any regulatory requirements. In essence, the test should be whether there is an expectation, obligation, or desire on the part of the employer for the employee to live at a particular place or within a designated vicinity in order to perform the role. When such circumstances arise, we recommended a full exemption from tax on the benefit cost of the accommodation.

## Live-in carers

LITRG also responded to a government call for evidence on the tax treatment of employer-provided living accommodation, focusing on care and support employers. These are people that have taken on a carer to help them live independently and thus become ‘accidental employers’.

Living accommodation is one of the most complex benefits when calculating employees’ tax and National Insurance contributions (NIC) position. Despite this, and

the fact we run a help facility for care and support employers, LITRG receives few queries relating to living accommodation. In our submission we tell the government this and suggest the reason might be that care and support employers believe incorrectly that any living accommodation and extras they provide are exempt from tax and NIC. Although this is worrying, it is not entirely surprising, based on the guidance on GOV.UK which in no way indicates that the 'job-related' exemptions are tightly drawn and incorrectly states that, if living accommodation is exempt, associated costs such as heating will be too.

One of the reasons behind this call for evidence is that the government wishes to ascertain how well understood the rules are. We surmise that the answer is not well – among care and support employers at least. Another aim of the call for evidence is to find out whether there is a case for changing the current rules. LITRG therefore recommended that living accommodation and any extras provided for carers be taken out of charge entirely. There is a principled case for doing this and it would bring the position for living accommodation into line with board and lodging, which from 6 April 2016 is non-taxable for care and support employers.

The CIOT submission can be viewed here. The LITRG submission can be found here.

A response from the government is expected in the Budget.