



Tax Bulletin

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THE NEW TAX RULES ON EMPLOYEE TRAVEL AND SUBSISTENCE

Introduction

The tax treatment of employee travel and subsistence changes on 6 April 1998. Following lengthy public consultation, legislation was included in the Finance Act 1997 to reform rules that date back some 140 years. On 24 September 1997 the Government announced that the new rules will be simplified, but the start date stays the same - the rules on employee travel and subsistence still change on 6 April 1998.

This article explains the new rules in broad terms. It takes into account the changes which will be brought forward in the 1998 Finance Bill to simplify the Finance Act 1997 legislation. At the time of writing that legislation is still being prepared, so readers need to keep in mind that the changes needed to simplify the Finance Act 1997 provisions are not yet law.

National Insurance Contributions (NICs)

This article does not explain the changes in the NIC treatment of employee travel and subsistence which will also take effect next April and which will, broadly, mirror the changes in the tax rules. Details of the NIC treatment of employee travel and

(continued on page 478)

Editorial

This is my second issue as Editor of Tax Bulletin. I would like to take the opportunity to encourage readers to write to me at the address on page 496 saying what they think of Tax Bulletin and how it could be improved. One development we hope to introduce next year is electronic publication of Tax Bulletin on the Inland Revenue web-site (<http://www.open.gov.uk/inrev/irhome.htm>).

Tax Bulletin contains our view of the law and indicates how we will apply that law in a particular area. If readers disagree with our view, there is nothing

to preclude them following the usual channels of appeal via the Commissioners or courts.

This issue includes information about subscriptions for 1998. I am pleased to announce that our subscription rate will remain at £20 for the third year running. Can I encourage readers to renew their subscriptions promptly as issues after February 1998 will only be sent to those on the subscription list.



Jeremy Sherwood

subsistence are given in the December issue of the Contribution Agency's "NI News" which can be obtained by telephoning 0191 225 7341. Generally, a NIC liability will arise only where an employer makes a payment which does more than reimburse an employee for the cost of a business journey.

Structure of Schedule E

In considering the new tax rules on employee travel and subsistence it helps to remember the broad structure of the tax charge under Schedule E. In general terms, all income from employments is taxable including round sum expense payments and vouchers, such as travel tickets, provided by an employer. For employees earning over £8,500 a year, all benefits and expenses payments received from their employer are taxable including benefits such as hotel accommodation and reimbursed travel expenses. The new rules on employee travel and subsistence cover the relief employees are entitled to for expenses they meet out of their own pockets and relief to set against taxable travel benefits and expenses payments from their employer.

Current rules

Before considering the new rules, a reminder of the current rules on employee travel and subsistence which continue to apply until 5 April 1998. The current rules are in Section 198(1) Income and Corporation Taxes Act (ICTA)1988 and give relief where an employee

is necessarily obliged to incur and defray out of the emoluments of that ...employment the expenses of travelling in the performance of the duties of the ...employment or of keeping and maintaining a horse to enable him to perform those duties...

In 1997 few employees keep a horse to enable them to perform their duties. So in practice application of the current rules focuses on the first part of

Section 198 and whether travel is "in the performance of the duties".

For some employees travel is an integral part of their job. A typical example is a service engineer who visits a number of clients in the course of a day. Such employees make all their journeys "in the performance of their duties" and are therefore entitled to relief for all their business travel.

Other employees have a normal place of work and travel between there and a temporary place of work, such as a client's premises. These journeys are also made "in the performance of the duties" and employees are entitled to relief for them.

Where an employee with a normal place of work travels to a temporary place of work direct from home - a journey sometimes referred to as "triangular travel" - he or she is entitled to relief for the lesser of:

- the cost of the journey from home and
- what it would have cost to travel to the temporary place of work from the normal place of work.

Example 1

Anna lives in Gloucester and has a normal place of work in Bristol. One day she visits a client in Exeter travelling direct from her home. Anna's journey from Gloucester to Exeter costs £50, the journey from Bristol to Exeter would have cost £30. Under the current rules, applying the 'lesser-of' test, Anna is entitled to relief for £30.

Under the current rules employees are not entitled to relief for journeys from their home to a normal place of work. Employees who have no normal place of work and who work on a series of sites for periods of a few weeks or months - often referred to as "site based" employees - are not entitled to

relief for their journeys from home to the different sites.

Why change the current rules?

The current rules have been in place for over 140 years and do not reflect modern working patterns. Employers find the rules on triangular travel difficult to apply in practice and the absence of relief for site based employees is unfair.

The Inland Revenue consulted widely on proposals to change the current rules and the legislation introduced in Finance Act 1997 was generally well received by employers and their representatives.

Why simplify the new rules?

After the legislation had been introduced the Inland Revenue continued to work with employers and their representatives to draw up guidance on the new rules. In the course of that process it became clear that while they were fairer and more logical than the current rules, the changes introduced by the Finance Act 1997 could not be implemented without significant cost to employers. The Government therefore decided to simplify the new rules.

What sort of journeys qualify for relief?

The new rules give relief for two types of business journey:

- journeys which employees have to make in the performance of their duties and
- journeys which employees make to or from a place they have to attend in the performance of their duties - but not ordinary commuting journeys.

Relief is available under the new rules only where the employee *has to* make the journey or attend a particular workplace. This means the journey or

attendance must be a requirement of the employee's duties, not a matter of personal choice.

The relief for journeys which employees have to make in the performance of their duties broadly covers the same journeys as the current rules. It gives relief for journeys between two workplaces and business journeys by employees for whom travel is an integral part of their duties.

The relief for journeys to or from a place employees have to attend in the performance of their duties is new. It goes beyond the current rules and for the first time gives relief for many business journeys to or from an employee's home. But employees are not entitled to relief for journeys which are ordinary commuting. The rest of this article concentrates on explaining which journeys are "ordinary commuting".

What is ordinary commuting?

Ordinary commuting is an important concept. No relief is available for a journey which is ordinary commuting except in the unusual circumstances described below where an employee's home is also a workplace for tax purposes.

Ordinary commuting is any journey between an employee's home, (or any other place he or she attends for reasons other than work), and a permanent workplace. For most employees the position is straightforward. Ordinary commuting is the journey they make most days between their home and their permanent workplace.

What is a permanent workplace?

A permanent workplace is a place an employee regularly attends in the performance of the duties of the employment but not to perform a task of limited duration or for some other temporary purpose. Broadly speaking a permanent workplace is what is

sometimes referred to as a normal place of work - the place an employee normally attends over a long period to carry out the tasks of his or her employment.

No permanent workplace

Most employees have a permanent workplace, and most employees have only one permanent workplace. But there are some employees who have nowhere that they attend regularly other than to perform tasks of limited duration or for a temporary purpose. Many site based employees are in this position. They do not have a permanent workplace. This means that they do not have an ordinary commuting journey, so from 6 April 1998 they are entitled to relief for all journeys from home to the temporary workplaces they have to attend to perform the duties of their employment.

More than one permanent workplace

Other employees have more than one place they attend regularly other than to perform tasks of limited duration or for a temporary purpose and therefore have more than one permanent workplace. But it is unusual for an employee to have more than one permanent workplace in respect of the same employment. In general where an employee has one permanent workplace it is likely that a second place will also be a permanent workplace if the employee spends 40% or more of his or her time there.

Example 2

Bruce normally works in a branch office in Manchester but has to attend the company's HQ in London for a management meeting once a month. Bruce attends the London HQ regularly but it is not his permanent workplace because he attends only for a temporary purpose - each visit is self contained. His journey from his home to London is not therefore ordinary commuting and he is entitled to relief for the cost of his business travel.

Travel between separate employers within a group

Employees who have more than one job are not usually entitled to relief for journeys between a permanent workplace of one of the jobs and a permanent workplace of another. So a factory worker who also has an evening job in a bar is not entitled to relief for travel between the factory and the bar. However, someone who is an employee of two or more companies within a group is entitled to relief for journeys he or she has to make between permanent workplaces of those employments. For this purpose companies are members of the same group if one is at least a 51% subsidiary of another or both are at least 51% subsidiaries of a third company.

Detached duty and other short term sites

Under the new rules a place is not a permanent workplace if the employee expects to be working there for 24 months or less. This means the journey from the employee's home to the site is not ordinary commuting and the employee is entitled to relief for the cost of the journey.

This does not mean that relief is available for the first 24 months of every posting. What matters is how

long the employee expects to be at the particular site. If the employee always expects to be there for more than 24 months then the site is a permanent workplace from the first day and the journey from the employee's home to the site is therefore ordinary commuting for which there is no relief.

Where at first an employee expects to be at a site for 24 months or less but the position changes and it becomes clear that he or she will be there for longer the site becomes a permanent workplace on the day the employee becomes aware of the change. From that date the journey from the employee's home to the site is an ordinary commuting journey for which there is no relief. But the employee is still entitled to relief for the journeys from home to the site before that date.

Example 3

Catharine is sent by her employer to perform duties at a temporary workplace for 18 months. After 10 months the posting is extended to 28 months. Relief is available for the full cost of travel to and from the workplace during the first 10 months (while her attendance is expected to be for less than 24 months) but not after that (once her attendance is expected to exceed 24 months).

Example 4

Darren has worked for his employer for 7 years and is sent to perform duties at a workplace for 28 months. After 10 months the posting is shortened to 18 months. No relief is available for the cost of travel to and from the workplace during the first 10 months (while his attendance is expected to exceed 24 months) but relief is available for the full cost of travel during the final 8 months (once his attendance is no longer expected to exceed 24 months).

This "24 month test" replaces the current rule which gives relief for travel to temporary sites where an employee expects to be there for 12 months or less and to return to his or her normal place of work at the end of that period. From 6 April 1998 not only has the 12 months been extended to 24 months but an employee does not have to show that he or she expects to return to a normal place of work at the end of the period. So where an employee expects to be at a site for 24 months or less the site is not a permanent workplace even if the employee does not have a normal place of work to which he or she expects to return.

Example 5

Elsbeth is sent from Birmingham to a site in Leeds for 18 months and expects then to go to a series of other sites around the country. The Leeds site is not her permanent workplace even though she does not expect to return to Birmingham at the end of her work on the site. The journey from her home to Leeds is not therefore ordinary commuting and she is entitled to relief for the cost of her travel.

It is possible that a workplace which is not regarded as temporary under the current 12 month test will be regarded as temporary under the 24 month test.

Example 6

On 6 May 1997 Frank who had worked for his current employer for 15 years, was sent to perform duties at a temporary workplace for a period of 18 months. No relief is available for the cost of travel to and from the workplace for the first 11 months - because the 12 month test applies until 5 April 1998 and attendance is expected to be for more than 12 months.

However, relief is available for the full cost of travel during the 7

months from 6 April 1998 - because from that date the 24 month test applies and attendance is expected to be for less than 24 months.

Short term employments

The 24 month test does not mean that someone with an employment (as opposed to a temporary posting) which is expected to last 24 months or less, has no permanent workplace and is therefore entitled to relief for all his or her journeys from home to work. No relief is available for travel from home to a place which is the only place the employee expects to attend in the course of an employment, even if that employment is expected to last 24 months or less.

Changes to a workplace

Where an employee moves from an office in Cardiff to another in Edinburgh it is clear that he or she has a new workplace. Where an employee moves to the office next door it is clear that he or she does not have a new workplace. In other cases it is less obvious whether an employee has changed workplace or not. Any modification of an employee's workplace which has a significant effect on the journey the employee has to make to work and, in particular, the cost of that journey, gives rise to a new workplace.

Example 7

Gillian works for an employer who has several offices close to each other in London. Her employer rotates staff around the offices every 18 months. Gillian works at one office and is then moved to another. She travels to work using the underground and, although she now gets off ten stops further on than previously, her journey is largely unaltered and the price of her ticket does not change. Gillian's workplace has not changed for tax purposes.

Example 8

Gordon is employed on a major bridge construction project. To begin with he works on the North shore but he is then transferred to work on the South shore.

Crossing the river is inconvenient (which is why a new bridge is needed), it takes Gordon longer to travel to the South shore and costs much more than it did to travel to the North shore. The North and South shores could be described as a single construction site and, as the crow flies, they are not far apart. However, Gordon's move from the North to the South shore has had a significant effect on his journey to work (and, in particular, the cost of that journey) so his workplace has changed for tax purposes.

Depots and bases

Where employees work from depots or similar bases at which they are allocated tasks, that place is their permanent workplace even if they only call in each morning, for example to pick up a list of jobs for the day. The journey from the employee's home to the depot or base is therefore ordinary commuting for which no relief is available.

This does not mean that every place from which an employee works or at which he or she is allocated tasks is necessarily a permanent workplace. A depot or similar workplace is a permanent workplace if:

- the employee attends it regularly; and
- the main reason the employee goes there is because it is the place from which he or she works or at which he or she is routinely allocated tasks; and

- it is the main or only place from which the employee works or at which he or she is routinely allocated tasks.

Example 9

Helen is employed as a management consultant. She has no permanent workplace. She spends most of her time working at the premises of various clients. At other times she 'hot-desks' at her employer's offices in various locations or works on the train while travelling between clients. Helen can be allocated tasks while she is at any of these places. But this is not the reason she goes there. She goes to visit clients and carry out other tasks of limited duration. Even though she is sometimes allocated tasks at each of these places none of them is her permanent workplace.

Example 10

Ian is employed as a plumber. Each morning he visits a depot where he is given his job list for the day. His employer usually contacts him during the day to make changes to that job list. He is, therefore, allocated tasks in many different places. However, Ian's depot is still the place he attends regularly where he is routinely allocated tasks and it is, therefore, his permanent workplace. So, travel between his home and the depot is ordinary commuting for which no relief is available.

Areas

Where an employee does not have a permanent workplace but visits different places within a particular geographical area and has a job which is defined by reference to that area, the whole area is treated as his or her permanent workplace. Where the employee lives outside the area the

journey from home to the edge of the area is ordinary commuting for which no relief is available. However, the employee is entitled to relief for all the business journeys he or she makes within the area. In practice it is unusual for an employee to have an area as a permanent workplace because most employees who have duties defined by reference to a geographical area have a permanent workplace, either within that area or somewhere else. In these circumstances the area is not treated as a permanent workplace.

Example 11

Joan is a relief manager for a chain of regional tourist offices. She shares responsibility for providing cover for all the offices in the North West region and every week she works at one or other of them. None of the individual offices is her permanent workplace but her duties are defined by reference to the North West region so that area is her permanent workplace. Joan lives in Leeds which is outside the North West region. She is not entitled to relief for the cost of her journey from Leeds to the edge of the North West region but she is entitled to relief for the cost of her business journeys within the region.

Employees who work at home

Most employers provide all the facilities necessary for work to be carried out at their business premises. So where employees work at home they usually do so because it is convenient rather than because the nature of the job actually requires them to carry out the duties of their employment there. However, where it is an objective requirement of an employee's duties to carry out substantive duties at the home address then his or her home is a workplace for tax purposes.

Where home is a workplace an employee is entitled to relief for journeys he or she has to make between there and a permanent workplace in respect of the same employment because this travel is “in the performance of the duties of the employment”. An employee whose home is a workplace is entitled to relief for journeys between there and a temporary workplace in the same way as an employee who does not work at home.

An employee is not entitled to relief for journeys between his or her home and, say, a holiday cottage or any other place attended for reasons other than work, even where home is a workplace. Such travel is private travel.

Example 12

Len is employed to train animals to help disabled people. The animals have to be familiar with a normal domestic environment so most of the training has to take place in Len’s home. It is an objective requirement of his employment that his duties are performed at home. Len is entitled to relief for travel between his home and other places he attends for the performance of other duties of the same employment.

Example 13

Lucy works in an office which is her permanent workplace. Lucy’s duties are such that she often has to work late into the evenings. The office shuts at 6pm so she takes work home. It is still a matter of personal choice where the work is done (there is no objective requirement that it is completed at Lucy’s home rather than elsewhere) so any travel to or from her home cannot be said to be in the performance of her duties and no relief is available.

Avoidance

Journeys which are, for practical purposes, substantially the same as ordinary commuting journeys are treated as ordinary commuting journeys and do not therefore attract relief.

Example 14

Martin travels from his home to a client’s office close to his permanent workplace. The journey is for practical purposes the same as his ordinary commuting journey and is therefore treated as ordinary commuting. Martin is not entitled to relief for the cost of his journey.

It is important to remember that the new rules give relief only where the employee’s travel or attendance at a particular workplace is an objective requirement of his or her duties. There is no relief for journeys which are not required by the employee’s duties. In most cases the requirements of an employee’s duties are the same as what the employer requires the employee to do, but this is not always the case. The strict test for relief is that the travel is a necessary requirement of the duties.

Example 15

Melanie is a computer programmer. She normally works at her employer’s head office. However, so that she can look after her sister who is unwell, Melanie’s employer authorises her to work at her sister’s home for a few weeks. Melanie cannot get tax relief for travel to or from her sister’s home. Although she carries out the duties of her employment there, her attendance is not an objective requirement of those duties.

An employer cannot turn an ordinary commuting journey (for which no relief is available) into a business journey (for which relief is available) by requiring an employee to stop off on the way to carry out business tasks such as making telephone calls.

Example 16

Simon works for a firm of estate agents which has branches across the West Midlands. He lives in Wolverhampton and works at the branch in Coventry. Simon has a number of business phone calls to make which can be made at any time during the day. His employer tells him to stop off at the Birmingham branch on the way to his permanent workplace in Coventry in order to make some of the phone calls. Simon is not entitled to relief for the cost of his journey from Wolverhampton to Birmingham because his attendance at the branch is not an objective requirement of the duties of his employment. Simon is not entitled to relief for the cost of his journey from Birmingham to Coventry because that journey is not an objective requirement of the duties of his employment.

The Inland Revenue will look closely at any case where an employee appears to have been sent by his or her employer to a temporary workplace just to get relief for travel expenses. Where that has happened the Inland Revenue will consider the scope for taking action against employers to recover PAYE or, if appropriate, recovering tax from the employee. Interest and penalties will also be sought where it is appropriate to do so. Employers and employees should be aware that it is a serious offence to make a false statement or claim to the Inland Revenue.

How much relief are employees entitled to?

So far this article has considered the type of journeys that qualify for relief under the new rules but has not considered the amount of relief due.

Where an employee makes a journey that qualifies for relief he or she is entitled to relief for the full cost of that journey. So where employees have to go from home to a temporary workplace they are entitled to the full cost of the journey - they do not need to compare the cost of the journey with what it would have cost to travel from their permanent workplace, nor do they have to take account of what they saved by not making their ordinary commuting journey that day.

The full cost of a business journey includes the cost of the travel and the cost of any attributable subsistence, for example an evening meal and hotel room where the employee has to stay away overnight.

Other costs incurred while travelling on business

The full cost of business travel also includes other costs which form an integral part of the cost of a journey. For example, toll fees and the cost of hiring a car. In the case of car parking, when working out the cost of a business journey employees should not include the cost of car parking at or near the workplace where this is paid for or provided by the employer but they should include other car parking expenses they incur.

Some expenses employees incur while making a business journey are private expenses and are not attributable to the business travel. For example, the cost of private telephone calls, newspapers and laundry. Employees should not include these expenses when working out the cost of a business journey. However, there is a separate tax rule which gives relief where the employer meets these personal expenses and pays or reimburses no more than:

- £5 for every night spent away on business in the UK
- £10 for every night spent away on business outside the UK.

Where the employer pays more than these amounts, unless there is an established policy which requires employees to repay any excess over these amounts (and repayment is made within a reasonable time), the employee is taxed on the full amount paid by the employer and is not entitled to any relief to set against that amount. The £5 and £10 per night limits should be applied to the whole period an employee spends away on business, not to each night separately.

What is the cost of travel?

The cost of travel by train, plane or bus is usually the cost of the ticket. The cost of travel by car is more difficult to work out. Employees who use their own cars for business travel have a choice. They can work out the actual cost on a journey by journey basis or they can use the appropriate Inland Revenue Authorised Mileage Rate (previously called the Fixed Profit Car Scheme, or FPCS rate). Leaflet IR 125 "Using your own car for work" explains how to work out the cost of a business journey by car using either method.

Level of expense

Where an employee makes a qualifying business journey he or she is usually entitled to relief for the full cost of that journey. The Inland Revenue will not normally deny relief simply because the employee could have used an alternative cheaper route or form of transport. So an employee who drives round the M25 on business is entitled to relief for the full cost of the journey even though he or she could have spent less by driving through London. And an employee who makes a business journey by train and buys a First Class ticket is entitled to relief for the cost of

that ticket even though he or she could have travelled Standard Class.

Where an employee's travel arrangements are unusually lavish the Inland Revenue will consider whether, on the facts of the case, the expenditure is really attributable to business travel, or is, for example, some sort of reward. So no relief would be available for a journey in a vintage car provided as a reward to the firm's manager of the year.

Other travel rules

The new rules on employee travel and subsistence do not change the special rules on the tax treatment of foreign travel and journeys made by employees based abroad who come to work in the UK (Sections 193-195 ICTA 1988). In the same way the new rules do not affect the special relief available for certain travel related expenses involving:

- training - Sections 200B-D ICTA 1988, Extra Statutory Concession (ESC) A64
- removal expenses - Section 191A ICTA 1988
- directors who are not paid or who work on behalf of a professional practice - ESC A4
- disruption to public transport caused by strikes - ESC A58
- late night travel home - ESC A66
- disabled people who cannot use public transport - ESC A59
- spouses accompanying employees on business trips - ESC A4
- car parking - Section 197A and Section 155(1A) ICTA 1988
- offshore oil and gas workers - ESC A65
- working rule agreements.

Company cars

Where an employee is provided with a company car the amount of the tax charge depends on the number of miles the employee drives in the car on business travel during the tax year. The definition of business travel changes on 6 April 1998 to take account of the new rules on employee travel and subsistence. From 6 April 1998 "business travel" means any travel for which employees would be entitled to relief under the new rules if they incurred the cost themselves.

There is no change to the tax rules on fuel provided for company cars. A tax charge still arises unless the cost of the fuel provided does not exceed the cost of fuel for business journeys made in the car or the employee is required to, and does, repay the cost of any fuel for private journeys made in the car.

How do the new rules affect employers?

The new rules determine the tax relief available for employee travel and subsistence expenses. They do not determine the level of travelling expenses an employer has to or should pay to employees.

Current dispensations

A dispensation is an agreement that the expenses or benefits an employer pays or provides to employees are matched by tax relief. Where a dispensation is in place the employer does not have to report the particular expenses and benefits to the Inland Revenue and the employees do not have to claim the matching relief.

Employers who have a dispensation covering travel and subsistence expenses or benefits do not need to take any action unless they have decided to change the payments they make to their employees from 6 April 1998. For employers who have not decided to change the payments they make to their employees existing dispensations will remain valid.

Employers who have a dispensation and who have decided to change the travel and subsistence payments they make to their employees from 6 April 1998 must apply to their PAYE Tax Office for a new dispensation. Employers who need to apply for a new dispensation can use the form mentioned in the last part of this article.

New dispensations

The new rules on employee travel and subsistence will mean that some employers can obtain a dispensation for the first time. For example, employers who pay travel expenses to employees who have no permanent workplace and employers who pay the full cost of journeys from home to temporary workplaces. These employers can apply to their PAYE Tax Office for a dispensation using the form mentioned in the last part of this article.

Fixed Profit Car Scheme (FPCS)

This scheme is used by some employers to report the profit on the mileage allowances they pay to employees who use their own cars for work. Some employers use tables produced by the Inland Revenue. These tables work by giving figures for a range of miles and car sizes. They include a number of estimates and do not take account of the precise circumstances of each individual employee but they save the employer having to return the full amount of mileage allowances paid and the employee having to claim the tax relief for the business miles driven.

Employers can continue to use FPCS tables after 6 April 1998 to report profit on business travel for which they have paid mileage allowances. Some employers pay mileage allowances for distances which are less than the full business journey, for example they pay nothing for the first 3 miles each way, or they take account of the miles the employee saves by not driving to their

permanent workplace that day. These employers should return profits from the FPCS tables by reference to the number of business miles they pay allowances for, not the higher number of business miles driven. They should not attempt to take account of any tax relief the employee may be entitled to for the extra business miles for which no mileage allowances are paid. Where employees are entitled to further tax relief they can claim it from their Tax Office.

Some employers use special computer software programs to work out exactly how much tax relief each individual employee is entitled to for business travel by car using the Inland Revenue Authorised Mileage Rates and to compare this with the mileage allowances they pay. They then report to the Inland Revenue the profit on mileage allowances or, where appropriate, the excess expenditure on which the employee is entitled to tax relief. From 6 April 1998 these employers should continue to return profits and losses on the basis of the full tax relief employees are entitled to. This means that employers who use computer software programs and who do not pay mileage allowances for the full distance driven on business will have to take account of the extra tax relief the employee is entitled to for the business miles for which no allowance is paid.

How do employees claim tax relief?

Employees who are entitled to relief for the cost of their business journeys should claim it in their tax return if they get one. Employees who do not get a tax return can claim their relief by letter or on form P87 which they may be sent or they can ask for from their Tax Office.

Where an employer has a dispensation and pays travelling expenses to their employees which are less than the full cost of business travel the employees are entitled to relief for the expenses

they have to meet out of their own pockets which are not reimbursed by their employer. Employees should be careful not to claim relief for the part of the expenses covered by the sums they receive under a dispensation because they have effectively had relief for these amounts already.

Guidance on the new rules

Comprehensive guidance on the new rules will be provided in Booklet 490 "Employee Travel: A Tax and NICs Guide for Employers". There is also a short guide, IR161 "Tax relief for employees' business travel" which explains the new rules to employees. Booklet 490, IR161 and forms for employers who need to apply for a dispensation will be made available as soon as possible. The date on which they become available will be announced in a Press Release.

Booklet 490 will answer most of the questions employers are likely to ask about the new rules. Employers who need to know about the new rules before Booklet 490 is available or who have further questions can telephone the Employers' Helpline on 0345 143 143. Calls are charged at the local rate. The helpline is open Monday - Friday, 8.30am - 5.00pm. Please note that this is a helpline for **employers**, this number should not be given out to employees.

Tax Agents will be sent a copy of Booklet 490 when it is available. If they have any questions about the new rules that are not answered by Booklet 490 they should contact their local Tax Office or the Employers' Helpline.

There will be a second article on the new tax rules on employee travel and subsistence in the February 1998 edition of Tax Bulletin. This will cover employer compliance issues and give further examples of how the rules on personal incidental expenses and the transition from the 12 month test to the 24 month test work in practice.

RELATIONSHIP BETWEEN ACCOUNTANCY AND TAXABLE PROFITS

The relationship between accountancy and taxable profits is never a static one and of late it has attracted considerable interest. For example, the Tax Faculty of the Institute of Chartered Accountants in England and Wales recently made available to its members a note summarising a wide-ranging discussion on the subject with Revenue specialists.

The extent to which the business tax system uses accounting concepts of profit in the computation of what is to be taxed has always varied across the code. At one extreme, the computational rules for calculating chargeable gains are set out in the statute and no reliance is placed on accountancy concepts at all. On the other hand, the courts have long held that the starting point in calculating the profit taxable under Case I or II of Schedule D (trades, profession and vocations) is the profit shown in the accounts.

There is no direct reference to the use of the accounting profit in this way in current law but in the first Exposure Draft, issued as part of the Tax Law Rewrite project in July, we have suggested a clause for inclusion in the rewritten legislation which would make the use of the accounting profit as the starting point for the Schedule D tax computation explicit. (Clause 3.2.2)

A number of specific statutory provisions have long required adjustments to be made in moving from the accounting profit to the profit taxable under Schedule D. For example, commercial depreciation is disallowed (as a capital matter) and the statutory code for capital allowances applied instead. But the courts have also been prepared to over-ride for tax the commercially acceptable

accounting treatment of an item, not by reference to a specific provision, but because the treatment violates some principle developed by the courts as part of the process of calculating "the full amount of the profits", as required by the Taxes Act.

Two important cases decided in 1993 and 1994, *Threlfall v Jones* and *Johnston v Britannia Airways*, (66 TC 67 and 67 TC 99) were concerned, not with *whether* an item of income or expenditure is - ever - taxable or deductible, but *when*. In both, the courts were unwilling to identify and apply any such principle to over-ride generally accepted accounting treatment concerned with the timing of an item of income or expenditure. These cases illustrate the courts' reluctance nowadays to hold that general accepted accounting treatment should be over-ridden for tax in this way.

One factor at work here is the, relatively recent, codification and continuing refinement of accounting practice by means of accounting standards. As a result the expert evidence given before the Commissioners on the correct accounting treatment of an item can nowadays be seen not just as the expression of a single practitioner's opinion but, in effect, as the collective view of the profession. Accountancy evidence therefore carries greater weight than it once did.

It is worth noting that the development of the law in this field does not depend on the courts ignoring their own precedents where they deem them to be inconvenient. What is, or is not, commercially acceptable accounting treatment is a question of fact not law. Furthermore, the courts have recognised that accounting practice evolves over time. In principle, therefore, it is possible for a modern court to come to a different decision from one taken in the past on the sole grounds that the accounting treatment

has changed. That is the case because the cases are distinguishable on their accountancy facts, even though the other facts in the two cases may be identical. The courts therefore have a mechanism to ensure that the law does not become yoked to superseded accountancy practice and to decisions, often taken a long time ago, where judges themselves were forced to take a view of commercial practice in the absence of any accountancy evidence at all.

A current practical illustration of how this approach may work is this. Last month the Accounting Standards Board published in final form its Financial Reporting Standard for Smaller Entities (FRSSE). For smaller companies this simplifies some of the accounting rules for the measurement of profit currently in force. On the assumption that the rules in the FRSSE become generally accepted practice for these concerns, we doubt whether the courts would ever accept the argument that the correct application of the FRSSE in the accounts of a small company should for tax give way to the measurement rules for larger entities on the grounds that the latter is more precise.

It has been suggested that the judgements mentioned above mean that commercially acceptable accounting practice can no longer ever be overridden by a judge-made tax principle. But some recent decisions of the Special Commissioners support our view that the law has not moved that far (For example *Meat Traders Ltd v Cushing* (1997) SpC 131; *A Firm v Honour* (1997) SpC 138). But future litigation will doubtless throw further light on these issues.

Another relatively recent feature in the development of business tax law has been the willingness of Parliament to legislate to ensure that the accountancy treatment of certain types of transactions is closely followed for tax. Examples are the 1993 legislation on foreign exchange gains and losses, that

in 1994 on financial instruments and last year's rule on companies' loan relationships (Section 125 onwards FA 1993; Section 147 onwards FA 1994; Section 80 onwards FA 1996). All these provisions are based on accounting principles but cannot always follow them precisely. So some departures from accounting practice will still occur. Examples include legislating specifically for bad debt provisions rather than following the accountancy concept of prudence and requiring either accruals or marking to market when accounting practice allows the lower of cost or market value.

The general alignment of tax with accounting discussed in the previous paragraph has not only been a matter of recognising items for tax at the same time as they are recognised in a company's accounts. It has also involved treating all the relevant credits and debits in the accounts, including those which would be capital on first principles, as items of an income nature. Furthermore, the new rules have applied as much to investment companies as trading companies.

Alignment of tax with the accounting treatment in the field of loan relationships has made it possible to repeal a considerable body of statutory provisions which set out free-standing tax rules for particular types of transactions. This has led some commentators to ask whether a more thoroughgoing alignment of tax with accounting might be desirable. This of course is ultimately a matter for Parliament but the drawbacks, as well as the advantages, would have to be carefully considered.

For example, for tax purposes it is the profit shown in a set of business accounts which is the predominant issue. But those accounts are as much concerned with a fair presentation of balance sheet assets and liabilities as of the profit. And in preparing any set of commercial accounts difficult judgements are required, for example

over the likely useful life of assets. If these judgements were all simply followed for tax there would be significantly greater inconsistency in tax treatment between one business and the next than there is at present.

In the most recent Finance Acts there has been recourse on occasion not only to companies' own accounts but also to the figures in consolidated group accounts for specific, limited purposes. For example, the question whether a lease is a "finance lease" has to be answered in applying particular provisions not only by the accounting treatment at individual company level but also by reference to that in consolidated accounts (See Schedule 12 FA 1997 and Section 47 F(No2)A 1997). It is clear that using consolidated accounts more generally for tax would raise some very difficult and complex issues. But, as a solution to particular problems, typically in the anti-avoidance field, this example illustrates how it may occasionally be expedient for tax law to make use of some of the figures reflected in the consolidated accounts.

SELF ASSESSMENT - THE TAX OBLIGATIONS OF TRUSTEES AND BENEFICIARIES OF BARE TRUSTS

In the Tax Bulletin Issue 27 (February 1997 page 395) we explained the Revenue's approach to the taxation of bare trusts, i.e. trusts where the beneficial owner of the trust property is absolutely entitled to both the capital and income from that property. We said that the trustees of bare trusts would not be required to complete Self Assessment tax returns, or to make payments on account. That remains the Department's position, and we think that the approach set out in the article will simplify the tax affairs of most bare trustees and beneficiaries under Self Assessment.

Following discussions with representative bodies, we now accept that the trustees of bare trusts are entitled to make a Self Assessment return of income, but not of capital gains, and to account for tax on it at the appropriate rate. In those cases where the trustees of bare trusts wish to make a return, the appropriate rate of tax will be at basic rate (or lower rate, if the income is savings income). It is emphasised that capital gains and capital losses must **not** be included on any Self Assessment return made by a bare trustee. These remain the sole responsibility of the beneficiaries.

If the trustees and all the beneficiaries of a bare trust wish to follow this course of action they should notify the trust district dealing with the trust's tax affairs as soon as possible. We will expect them to follow this course consistently year on year.

Where the trustees of bare trusts do not notify the trust district that they wish to make a return of income and to pay tax, those trustees and their beneficiaries will be dealt with in accordance with the article in Issue 27 of Tax Bulletin. We expect the great majority of bare trustees to fall into this category, as it is only in relatively unusual circumstances that it will be more convenient for the trustees to self assess. Whether or not the trustees decide to self assess and account for tax, the beneficiaries of these trusts remain within Self Assessment and are obliged to notify the Inland Revenue of their income and gains.

ERROR IN TAX CALCULATION: GAINS ON LIFE INSURANCE

Self-Assessment - Gains on Life Insurance Policies, Life Annuities or Capital Redemption Policies

It has been brought to our attention that the 'Top Slicing Relief (TSR) working sheets' - the main ones are on page 12

of the 'Tax Calculation Guide (Lump Sums etc.)' and page 14 of the 'Tax Calculation Guide (including Capital Gains and Lump Sums etc.)' - give the wrong amount of relief in one very exceptional set of circumstances.

We are grateful to a firm of accountants in Chorley for drawing this to our notice.

Taxpayers will not be affected unless their gains average over £25,500 (the higher rate threshold) for each of the 'number of years' that they have entered in the return and their allowances (given by way of deduction) and deductions cannot be wholly set off against other income. The first condition indicates a very large investment in life insurance of probably £¹/₄ million plus or an exceptionally large part withdrawal from any smaller amount invested.

The average gain is the figure in box TSR4 of the working sheet. Allowances and deductions exceed other income if TSR1 minus TSR2 is negative.

The error is the box at the top of the page which indicates that where TSR1 minus TSR2 is negative, a zero should be entered in TSR3. The calculation works correctly if the negative amount is entered.

Very few taxpayers have gains averaging in excess of £25,500 a year, and of those that do very few have allowances and deductions which cannot be set off against other income. But if TSR4 is greater than £25,500 and TSR1 minus TSR2 is negative, the direction to enter a zero should be ignored and the negative amount should be entered in box TSR3. The rest of the calculation should be completed as normal. The direction in box TSR7 to enter a zero not a negative amount still applies.

A correction is in hand for next year and a full description of the calculation will be included in the guidance notes.

A number of interested parties have suggested that this would help.

Revenue staff involved in capturing returns have been alerted to the problem. Where it is identified during processing, they will amend the figures to ensure that the right amount of top slicing relief is given. Agents are asked to draw their local Inspector's attention to any return in which these exceptional circumstances exist.

TAX LAW REWRITE: RESPONSE TO FIRST EXPOSURE DRAFT

Background

In July 1997, the Inland Revenue Tax Law Rewrite Project published its first Exposure Draft "Trading Income of Individuals: Part 1". This document contained the first tranche of rewritten legislation for consultation with interested parties. It is the first of two Exposure Drafts on the income tax treatment of the trading income of individuals. Comments were invited by 30 September 1997.

Level of Response

Over 3,000 copies of the first Exposure Draft were issued and there have been around 550 "hits" on the Rewrite project's web site page. More than 60 written responses have been received. These were mainly from professional and other representative bodies and from accountancy firms. There were also responses from members of the Office of Parliamentary Counsel. Discussion with the Rewrite project's Steering and Consultative Committees has provided further advice. A number of articles commenting on the Exposure Draft have been published in professional journals.

The Rewrite Project team greatly appreciates the time and expertise which have gone into producing these comments. It is looking forward to

making use of them in developing the rewritten legislation further.

Content of Responses

The general tone of the responses was very positive. The Tax Law Rewrite Project appears now to be welcomed even by some bodies who were initially critical. The style of the rewritten clauses and the language used were seen as a great improvement on the current legislation, though there were also many detailed suggestions for further enhancement. It was pleasing that the Exposure Draft itself, as a vehicle for consultation, was widely praised.

Two subjects attracted particular attention. One was the proposal to make explicit the use of accountancy principles as the starting point in computing trading profits for tax purposes. The other was the attempt to legislate, where appropriate, extra-statutory concessions and similar non-statutory material. There are many difficulties surrounding these two issues but, with the help of the responses, the Rewrite project team is now reviewing them in greater depth.

Next Steps

The Rewrite project team is now working on producing a revised version of the clauses in this tranche. It intends to publish the revised clauses as an annex to the second Exposure Draft on Trading Income. Before then it will produce a paper summarising the comments made and the action proposed in response to them. A copy of this paper will be sent to each respondent and to members of the project's Steering and Consultative Committees. The document will also be available on the Internet at: <http://www.open.gov.uk/inrev/rewrite.htm>

interpretations

**LOAN RELATIONSHIPS:
DEFINITION OF CONNECTED
SECTION 87 FINANCE ACT 1996
PARTIES WHO ARE NOT
CONNECTED**

This article clarifies our interpretation of the connected persons rules in Section 87 Finance Act (FA)1996. It sets out details of some circumstances in which the two parties to a loan relationship will not be connected.

Where the **only** link between the two parties is the loan relationship the two parties will not be connected persons. This is true even where the size of the loan is such that it would give the loan creditor the greatest share of the assets in a winding up. Section 87 (8) FA96 applies so that the person is not regarded as a participator.

Where the loan creditor has:

- any shareholding in the debtor company, or
- has any rights, or
- has any rights attributed to it,

which would make it a participator in the debtor company then the loan relationship will be taken into account in determining whether it is connected with the debtor company.

Section 87(8) FA96 applies when determining whether a particular loan creditor is connected with the debtor company. It does not apply to rule out all loan creditors when applying the tests in Section 416 Income and Corporation Taxes Act (ICTA) 1988. For example, Company X has issued share capital of 100 and loans of 100 each from Bank A, Company B, Company C and Individual D. Company B has also entered into a

swap agreement with Company X. When looking at whether Company B is connected with Company X the rights of the other loan creditors are not excluded in computing the amounts that Company B would be entitled to on a winding up.

[Finance Act 1996 Section 87(8) and Section 416 ICTA 1988]

MEMBERS' SPORTS CLUBS

Background

In the past the taxation of members' clubs has usually been a straightforward matter. However, the increasing commercialisation of sport, evidenced for example by substantial business sponsorship and media coverage of events, can generate a range of tax issues where the answers depend not on any specific statutory enactment but on the application of general principles developed by the courts. In particular, an issue which frequently arises in these circumstances is to what extent a club's increasingly commercial activities can give rise to taxable trading profits or allowable trading losses. In this article we attempt to outline the way this question needs to be answered.

The types of clubs we consider

We are concerned here with members' clubs constituted, for example, as unincorporated associations or as companies limited by guarantee. Whatever their constitution these clubs are all chargeable under the Corporation Tax regime.

On the other hand, this article is not concerned with clubs which take the form of companies incorporated with limited liability and ordinary share capital under the Companies Act. Their trading profits do not normally come within the mutuality exemption described later in this article.

Members' clubs come in all shapes and sizes.

At one extreme there are small members' clubs used only by the members who come together for the non-commercial purpose of providing themselves with the facilities to play and watch a sport or for other recreational purposes. Any surplus such clubs generate from their transactions with members is unlikely to amount to a trading profit (and nor is any deficit tax deductible). It is sometimes said that the surplus in these circumstances is exempt on grounds of mutuality. However there is a simpler prior point here. Such activities do not normally amount to a trade because they lack the necessary commercial inspiration.

At the other extreme there are far more commercial concerns whose principal function is to offer the general public entertainment in watching the clubs' sporting activities as well as access to bar and catering facilities and so on. The whole of such a club's activities are likely to amount to a taxable trade.

Increasingly many members' clubs find themselves between these two extremes. For example, their primary purpose may remain non-commercial but they may also have ancillary forms of trading income. These might be bar and catering sales to non-members or income from non-members for the use of club facilities such as golf clubs' 'green fee' income from visitors using the facilities.

In some cases a club's pricing policy may distinguish between members and non-members. For example, a golf club may charge one green fee to visitors (trading income) and a different (lower) green fee to members' guests (non-trading income). However, often the club will provide its services and facilities to members and non-members alike on the same terms. For example, members and non-members may be charged identical admission prices to watch a football or cricket match.

The significant issues

The two issues which arise in this context are to what extent, if at all, a club carries on a trade and, if so, to what extent that trade is undertaken on a mutual basis. In practice we think it is helpful to consider the two points separately even if as a matter of strict law the two issues cannot be disentangled quite so cleanly.

Trading

The first issue which clubs and their advisers need to consider here is whether any of a club's activities are undertaken in a sufficiently commercial way to constitute a trade. The well-known 'badges of trade' are relevant here but one particularly useful question to consider is whether the activities in question are broadly similar to those of an admittedly commercial undertaking, even though they are, perhaps, conducted on a smaller scale.

If no trading activities can be identified, then the further issues considered in this article do not arise.

If trading activity is identified it is then necessary to address two points.

The first point is the boundary between trading activities and non-trading activities. For example, it may be that transactions between the club and subordinate classes of members lack the element of commerciality necessary for them to be regarded as trading. This might be the case if associate members are subject to a lower fee or admission charge than that charged to the general public for the same facility.

Second, it is necessary to consider whether any part of a trading profit is not taxable (or a loss not allowable) on the grounds that it is referable to activities undertaken on a mutual basis. This concept is discussed further below.

Mutuality

The mutuality doctrine is one which has been developed by the courts over a long period. Its origin has been ascribed to the principle that one cannot make a taxable profit out of oneself.

For mutuality to apply there must be a class of contributors to a common fund who are also entitled, as a class, to share in the surpluses of that fund. By this we mean that arrangements must be in place whereby surpluses always come back to the class of contributors/participants. Individuals may continually be joining and leaving such a class without prejudicing this requirement but there must be a reasonable relationship between the contributions a participant makes and what he or she is entitled to receive both during the course of the business and on a winding up. Direct ownership of the common fund by such a class is not required. For example, the fund may be owned by a separate legal person, typically a company limited by guarantee and having no share capital, so long as the class indirectly owns the fund through its control of the company.

The effect of the doctrine of mutuality is that any trading surplus which a club derives from transactions with such a class of contributor/participant is exempt from tax and, similarly, any loss or deficit cannot be relieved.

In considering whether all or some of the members of clubs with trading activities constitute such a class two particular points need to be borne in mind.

First, in the case of clubs constituted as unincorporated associations, general law may give members the right to a share in the common fund or surpluses on a winding up, even if the club's rules are silent on the matter. On the other hand, where the club takes the form of a company, the company is a separate legal person and the members'

entitlement to return of surplus is not protected by general law. Therefore the entitlement must be explicit in the contract between the club and its members.

Secondly, while it may be clear that full members are within the circle of mutuality, it will be necessary to consider separately the position of subordinate classes of member, such as 'junior' or 'associate' members. The question is whether these people have the necessary rights to share in club surpluses so that any profits the club derives from *commercial* transactions with them (as noted earlier, some transactions with them may lack commercial inspiration and not be by way of trade) are also exempt.

Calculating taxable profit

Having determined that there is a trade and whether or not mutuality is in point so far as a class of contributors/participants in club surpluses are concerned it is finally necessary to calculate what part of the profit from a club's activities is taxable.

Only non-mutual trading profits are chargeable to tax under Case I of Schedule D. Hence, where a club carries on a trade which is wholly non-mutual it will be necessary to exclude any surplus attributable to non-trading transactions with members. In addition, where a club carries on a trade which is in part mutual and in part not, it will also need to exclude the surplus from mutual trading transactions. In the latter case the arithmetic can be done without seeking to distinguish any non-trading surplus from a mutual trading surplus because both are exempt from tax, albeit for different reasons.

Apportionment of income and expenses

To identify the taxable profit an allocation or apportionment of income and expenses is necessary. There are no hard and fast rules about how this should be done but the objective is to

identify what is non-mutual trading income and to allow as a deduction the expenditure incurred in generating that income, calculated as accurately as possible. Some general guidance is given below.

Income

Some income will be wholly non-mutual trading income. Examples might include television fees and sponsorship income.

Other income such as club membership subscriptions may not be trading income and may also derive wholly from members within the mutual circle. It should be matched with members' club expenses and excluded from tax computations.

Match receipts, car parking receipts and general bar takings will normally be trading income and may need to be split between that which is mutual, being derived from club members, and that which is non-mutual, deriving from non-members.

The tax treatment of income from some items, for example programme sales and outdoor catering, may depend on the arrangements put in place. If the club is itself responsible for the programme production and sale and outdoor catering at the event then the income should be apportioned as described in the previous paragraph. However, these and other functions are sometimes franchised to independent operators and in that case the whole of the franchise fee would be treated as trading income.

Expenses

Expenses may need to be split correspondingly to allocate an appropriate proportion against the taxable and non-taxable sources of income. The principle applies to all expenditure though there is also a specific statutory rule regarding interest. Paragraph 13, Schedule 9, Finance Act 1996 provides that no

relief is available in respect of interest paid to the extent that the interest is attributable, on a just and reasonable basis, to that part of the company's business which is not within the charge to Corporation Tax.

If the same prices are charged to members and non-members, the expenses may be apportioned by reference to the income from the two sources where that is known or can be measured with reasonable accuracy. If different prices are charged then the apportionment would need to be weighted appropriately depending on the particular circumstances. For example, in the case of a members' golf club, the weighting might be based on the total number of rounds played and the proportion of those which generate chargeable trading income.

Any items of expenditure that relate solely to a specific category of income should be matched with that income.

COMPENSATION RECEIVED BY BUSINESS

It is an increasingly common practice, especially among the utility companies, to pay compensation to customers for interruptions and other deficiencies in the service to be provided. How the compensation is calculated varies. It may for example take the form of a standard amount or be paid at a daily or other periodical rate. We have been asked how such compensation should be treated for tax purposes in the hands of a recipient who carries on a trade, profession or vocation (a 'business').

There are two principal questions which need to be addressed:

- does the compensation arise from the business activities?
- is the compensation of an income nature or is it capital?

The guidance below reflects the principles developed by the courts from the basic Schedule D taxing provisions where they have had to consider the treatment of compensation and related receipts.

Where the compensation relates to specific services used wholly by the recipient for business purposes, we consider that the compensation will almost invariably arise from the business so that the answer to the first question is yes. This remains the case even if the recipient has no prospect of any legal right to compensation, and even if a private customer of the utility would be entitled to similar compensation or where compensation paid exceeds the actual loss of business profits, for example because the compensation is paid at standard rates.

Where the services in question are partly used for business and partly for private purposes, the proportion of the compensation referable on the particular facts to the private element is not a business receipt nor taxable as income under another head of charge.

Where the compensation (or part of it) arises from the business it is then necessary to consider whether the compensation is of an income or capital nature. All the compensation will be of an income nature and therefore a taxable receipt of the business, unless the compensation is paid to make good damage to, or for the physical destruction of, a capital asset of the business.

Compensation for damage reduces otherwise deductible expenditure on the repair of the asset. Compensation for the physical destruction of a capital asset is a capital matter. The complete destruction of an item of machinery or plant is a disposal event for capital allowance and capital gains tax purposes.

miscellaneous

REMOVAL OF THE REQUIREMENT TO SEND VOUCHERS WITH CLAIMS TO REPAYMENT OF TAX BY OR ON BEHALF OF INDIVIDUALS WHO ARE RESIDENT IN THE UK

In Tax Bulletin Issue 21 (February 1996 page 291) we summarised the requirement to send vouchers - certificates of tax credit and UK tax deducted - with claims to repayment by or on behalf of individuals. Since then Self Assessment has been introduced and, with the exception of sub-contractors vouchers, the requirement to send vouchers has been removed for claims that are made on tax returns. The requirement has continued to apply to claims that are made outside tax returns.

We have decided to remove the requirement to send vouchers with claims to repayment by or on behalf of UK-resident individuals that are made outside tax returns. This will bring the approach for these claims into line with the approach for returns. The position for claims by or on behalf of individuals resident outside the UK remains unchanged.

The removal of the requirement to send vouchers will apply to all open claims working with the Inland Revenue and to all claims submitted in the future.

In the future, where we receive claims to repayment without vouchers we will normally calculate the repayment due on the basis of the information shown on the claim form. However, we will correct any simple mistakes in the claim and tell the claimant about the corrections we have made.

Where we are unable to calculate the repayment due on the basis of the information shown on the claim form,

we will ask the claimant for the additional information required to complete the claim.

Claimants who have difficulty completing their claim can get help from their tax office or local Tax Enquiry Centre. To find the address and phone number of the nearest Tax Enquiry Centre - look in the phone book under 'Inland Revenue'.

All claims will be checked and we will make enquiries into a number of them after making the repayment. Exceptionally, we may have to make enquiries into some claims before making the repayment. As part of an enquiry we will usually ask to see the vouchers or other records evidencing the tax credit or tax deducted as shown on the claim form. Claimants should keep these records in case they are required for the purposes of an enquiry.

We shall be amending the claim forms and guidance to reflect the new approach. However, claim forms for the tax year 1997-98, which ask for vouchers to be sent with the claim, have already been printed and issued. Claimants may disregard the request to send vouchers when completing the claim form.

NEW RATES OF STAMP DUTY & CERTIFICATES OF VALUE

Budget Changes

New rules now apply to Certificates of Value as a result of the July Budget changes to the Stamp Duty rates. This will mean that transfers of land and property for a consideration of £500,000 or less will require a certificate of value.

Omitting to include the appropriate certificate in clients' documents sent for stamping could cost them money. It would also delay the application for stamping.

How much more duty will clients pay if they don't send a certificate of value?

Unless a document contains the appropriate certificate of value, it will be liable to duty at the rate of £2 per £100 or part of £100.

What certificate of value do I need to include in my document?

There are now 3 separate levels for certificates of value: £60,000, £250,000 and £500,000. The certificate you need will depend on the consideration paid, as follows:

To qualify for the nil rate of duty ...

If the consideration is £60,000 or less, and the document is not part of a larger transaction or series of transactions, a certificate of value for £60,000 should be included. No duty will then be payable.

To qualify for the rate of £1 per £100...

For a consideration between £60,001 and £250,000, a certificate of value for £250,000 should be included. Duty will then be payable at the rate of £1 per £100.

To qualify for the rate of £1.50 per £100 ...

For a consideration between £250,001 and £500,000, a certificate of value for £500,000 should be included. Duty will then be payable at the rate of £1.50 per £100.

No certificate of value is appropriate where the purchase price or consideration exceeds £500,000 and duty is payable at the rate of £2 per £100.

The suggested form of wording for a certificate of value is ... *"It is hereby certified that the transaction hereby effected does not form part of a larger*

transaction or series of transactions in respect of which the amount or value or aggregate amount or value of the consideration exceeds £60,000 [£250,000] [£500,000]."

Do the new rates of duty apply to leases with a premium?

Yes. Duty on any premium paid for a lease is charged at the same rate as a conveyance on sale.

There is no change to the rates of duty charges on rents.

Can certificates of value be included in all leases?

No. A certificate of value for £60,000 may not be included in leases where the **annual rent exceeds £600**, even if the premium is £60,000 or less. Instead, a certificate of value for £250,000 may be included, and duty will then be payable at the rate of £1 per £100.

When the premium is over £60,000 a certificate of value for £250,000 or £500,000 should be included as appropriate and duty will be charged at the rate of £1 per £100 or £1.50 per £100.

Are any other documents affected by the changes?

Yes. The new rates of duty apply to all transfers of property (except shares). This will include business sale agreements and assignments of leasehold property.

PENSION SCHEMES OFFICE

SYNOPSIS OF UPDATES

The Pension Schemes Office (PSO) has recently issued four further Updates to all practitioners on the PSO Mailing List. Updates No 32 - 34 were issued on 26 September 1997 and Update No 35 on 22 October 1997.

PSO Update No 32 covers two matters. First, it describes briefly the background to PSO inspection visits and sets out the main areas of concern found so far. These include loanbacks by insured schemes, self-managed funds, self-administered scheme investments; and problems resulting from take-overs and mergers inside the Pensions Industry. Secondly, it describes in some detail the penalty procedures which apply if certain information, particulars and documents are not supplied within the specified timescales set out in Parts II & III of the Retirement Benefits Schemes (Information Powers) Regulations 1995 (SI 1995 No 3103).

PSO Update No 33 is concerned with the question of rebated and shared insurance commission arising as a result of the movement of funds from one investment vehicle to another. It gives examples of the types of transaction which could compromise the tax approval of both occupational pension schemes and personal pension schemes.

PSO Update No 34 is concerned with two topics. First, as a way of increasing their flexibility it is now possible for Free-standing Additional Contribution Schemes (FSAVCS) to accept certain transfer payments from approved Personal Pension Schemes (PPS). The position on the making of transfers from FSAVCS however remains unchanged. The Update goes on to describe the form of the benefits to be provided, the form that the transfer should take and the timing of the transfer. Secondly, the Update covers a number of miscellaneous PPS matters:

- The extension to members in occupations with a low agreed customary retirement age of the facility whereby members of PPS would be permitted to take the whole of the fund in cash at pension date where the fund was £2,500 or less or was insufficient to provide an annuity of at least £260 per year.

- An amendment to paragraph 4(c) of **Update No 15** which sets out the criteria for determining whether repayment of the fund may be made to the member.
- The inclusion in the investment portfolios of PPS of shares in Open Ended Investment Companies.
- The requirement to provide evidence of earnings in support of an application has been revised so it is now acceptable for the evidence to be supplied by the individual's employer.
- Advises of the availability of revised tables for calculating the maximum (and therefore the minimum) limits for income withdrawal from PPS.

PSO Update No 35 extends to 30 November the deadline for completion and return of the questionnaires issued to pensions practitioners in early September. The questionnaires requested assistance in checking the accuracy of PSO records pending the issue to scheme trustees in April 1998 of self assessment tax returns for each self-administered exempt approved scheme.

TAX TREATY NETWORK:

UPDATE 

Kuwait

Negotiations were held in Kuwait from 5 to 9 October 1997 on the terms of a comprehensive double taxation agreement. Good progress was made and it was agreed that a further round of talks would take place in London during the first half of 1998.

Singapore, Malaysia, The Falkland Islands and Lesotho

The Double Taxation Agreements for Singapore, Malaysia, The Falkland Islands and Lesotho which were laid before parliament on 25 June 1997,

were debated and passed by Parliament at a Merits Committee on 29 October 1997. Copies of the draft Orders and House of Commons Official Report of the debate in Committee are available from the Stationery Office. The Official Report can also be found on the Internet at <http://www.parliament.the-stationery-office.co.uk>

All four Orders provide modern replacements for existing treaties, reflecting changes in the taxation systems of those countries and the UK. They also reflect changes in our bilateral economic relations. All four take as their starting point the latest version of the OECD Model Tax Convention. Further announcements will be made as and when each one enters into force.

Singapore

The DTA with Singapore replaces the 1967 Agreement which was updated by Protocol in 1978. The main features of the new treaty are:

- the withdrawal of "matching credit", which is relief the UK gives for benefits under Singapore tax incentive legislation, with effect from 31 December 2001;
- the reduction of withholding tax rates to 10% for interest and royalty payments, with effect from 31 December 1999; and
- the withdrawal of tax credits from portfolio investors; maximum withholding tax rates of 5% for direct and 15% for portfolio investors have been provided for dividends.

Malaysia

The DTA with Malaysia replaces the 1973 Agreement which was updated by Protocol in 1987. The main features of the new treaty are:

- the withdrawal of "matching credit" with effect from 31 December 2005;
- the reduction of withholding tax rates to 10% for interest payments, 8% for royalty payments and 8% for the payment of technical fees; and
- the withdrawal of tax credits from portfolio investors; maximum withholding tax rates of 5% for direct and 10% for portfolio investors have been provided for dividends.

The Falkland Islands

The Arrangement with the Falkland Islands replaces the existing Arrangement which was concluded in 1984 and amended in 1992. The main features of the new treaty are:

- the reduction of the withholding tax rate on interest from 10% to nil;
- the withdrawal of tax credits from portfolio investors, maximum withholding tax rates of 5% for direct and 10% for portfolio investors have been provided for dividends;
- the introduction of modern anti-abuse provisions; and
- the addition of an offshore activities article that will permit the Falkland Islands to tax United Kingdom companies involved in the search for oil on the Falkland Islands Continental Shelf.

Lesotho

The Double Taxation Convention with Lesotho replaces the 1949 Convention as amended in 1968. It broadly follows the OECD Model and provides a maximum limit of withholding tax on dividends, interest, royalties and technical fees of 10%.

Representations

Representations about new double taxation agreements or suggestions

about changes to existing double taxation agreements are always welcome and should be addressed to:

Eilish Vaughan
Inland Revenue
International Division
Room 314
Strand Bridge House
138-142 The Strand
London
WC2R 1HH

Telephone: 0171 438 6333

Questions about a particular double taxation agreement and its effects on a taxpayer's affairs should be addressed to the local Inland Revenue office responsible for that taxpayer.

Estates, inheritances and gifts are regulated by separate treaties. Representations for new or revised agreements for estates, inheritances and gifts should be addressed to:

David McDonald
Inland Revenue
Capital and Valuation Division
Room 309
22 Kingsway
London
WC2R 1LB

Telephone: 0171 438 7741

A HUNDRED YEARS OF INLAND REVENUE EXTRA-STATUTORY CONCESSIONS (ESCS)

This year, 1997, sees the centenary of the first reported ESC.

In 1897, the Committee of Public Accounts in its Second Report fixed upon a remission of death duty on the estate of Alexander III, Emperor of Russia, which had been made by the Board on an oral request by the Treasury, following representations through diplomatic channels. This was apparently a very exceptional case. But the representatives of the Board and

Treasury were very closely examined by the Committee and numerous other remissions of duty (mainly on the grounds of diplomatic privilege) were admitted.

The Assistant Secretary to the Treasury admitted that in cases in which the Treasury dispensed with payment of duty of any kind where a material sum was involved, it would be proper that the matter should be made known to Parliament or to the Comptroller and Auditor General (C&AG).

A Treasury minute issued on 31 December 1897 stated that "My Lords are of the opinion that remissions belonging to the first category (remissions founded on a fixed principle of general application affecting classes) should, wherever possible, be made the subject of specific legislative enactment; and they will undertake to place any such case on a statutory footing at the earliest opportunity".

In July 1898, a Customs and Inland Revenue Bill was introduced, the memorandum accompanying which states that one of its main objects was to obtain statutory sanction for the relief of taxation in certain cases where the Commissioners of Inland Revenue in the exercise of their discretion already allow it. The income tax clauses included relief in respect of unoccupied land, in respect of rent remitted on the ground of agricultural depression and in respect of lost rents. Some opposition appeared and these clauses were withdrawn.

The Second Report of the Committee of Public Accounts, 1913 said "Your committee are of opinion that statutory sanction should be obtained wherever possible and with that object they would suggest the desirability of a periodical return by the Board of Inland Revenue to the Treasury of the principal groups of such cases which should also be accessible to the C&AG."

Accordingly, on 20 January 1915, the Board furnished the first list of principal classes of remissions of duty of general application and proposed to furnish the Treasury from time to time with particulars of any fresh classes of remissions. They said "We do not anticipate that fresh classes will arise in any considerable number".

In 1935 the Board reported to the Treasury and the C&AG a current total of 57 concessions.

The Secretary to the Treasury replied that "The report of the Committee at present considering the Codification of the income tax law may provide a convenient occasion for examining the advisability of seeking legislative sanction for certain of these remissions.....".

In 1942 the Institute of Chartered Accountants raised the issue of public awareness of concessions with the Board. As a result, in 1944, all war-time concessions were published in a White Paper.

In the 93rd Report of the Board, for the year ended 31 March 1950, the Board published, for the first time, as an appendix to the report, a list of ESCs as at 31 December 1949 and said that additions to, and deletions from, the list would be noted annually in future Reports. The list published contained 57 concessions.

Annual lists of changes have been sent to the C&AG regularly since then and were published in the Board's Reports up to that for 1967, when this practice was superseded by publication of pamphlet IR1.

The making of ESCs is a responsibility of the Board, but, in practice, since 1979, Ministerial authority has been sought for all new concessions.

On 16 May 1985, the Financial Secretary to the Treasury announced that a review of Inland Revenue ESCs had been completed and that

previously unpublished concessions would be published.

An annual exercise now takes place to check that each concession is still valid and still required, and to include any new concessions. The Chairman then makes a report to the C&AG, highlighting new or amended concessions and reflecting the position at 31 August that year.

A revised version of booklet IR1 or a supplement is then published.

The C&AG in turn reports to Parliament through the Public Accounts Committee (PAC). In their report published on 16 January 1991 the PAC said that, since 1897, Committees of Public Accounts had reviewed the operation of ESCs and had accepted the need for concessions. They added “..the growth in the number of concessions reflected the widening span of tax law, the growing complexity of business and the impossibility of foreseeing all the consequences of legislation when drafting. The number of concessions reflected the attempt to ensure equity and consistent treatment.”

As at 31 August 1997, the number of ESCs stood at 196. The oldest concession still in use is J1 - Inter vivos gifts to charities - which having begun in 1906, is almost a centenarian itself.

So, after 100 years, what has changed? Certainly, the number of concessions is almost as great now as at any time. There are still calls for ESCs to be legislated, as there were in 1897. A package of 11 ESCs was legislated in the 1996 Finance Act, but there is usually little space in Finance Bills for often non-contentious concessions to be included. One reason is that a few lines of text as a concession can often translate into a substantial amount of legislation. Nevertheless, we are always looking for opportunities to incorporate ESCs into statute. Although the 1935 Committee on codification did not, in the event, achieve anything in this respect, the present Tax Law Rewrite Project is examining all ESCs with a view to incorporating them into the relevant primary legislation unless there is some good reason not to do so, for example where legislating the fairly imprecise terms of an ESC might result in loss of flexibility or long, complicated legislation. But, perhaps the most important advance is that all concessions are now in the public domain.

We should be reluctant to create new ESCs and always be looking for ways to reduce their numbers. The enduring irony is that, while there is a general consensus that ESCs are a poor alternative to legislation, there is never a shortage of people calling for the creation of new, or for the extension of existing, concessions.

CORPORATION TAX; CASE V RELIEF FOR UNDERLYING TAX: SECTION 799 ICTA 1988

Tax Bulletin Issue 2 (February 1992, page 14) provided contact details for the Customer Service Information Leaflets provided by the Double Taxation (Rates) Section of FICO. The leaflets give general guidance as well as detailed information needed for many countries' underlying tax rate calculations. The contact details have changed to the following;

Ms Pat Winnett
DT (Rates) Section
Financial Intermediaries and
Claims Office
Fitz Roy House
P O Box 46
Nottingham
NG2 1 BN

Telephone: 0115 974 2033

Inland Revenue Statements of Practice and Extra-Statutory Concessions issued between 1 October 1997 and 30 November 1997

Extra-Statutory Concessions and Statements of Practice:

There have been no Extra-Statutory Concessions and Statements of Practice issued in this period.

Readers may wish to note that Supplements to booklets IR1 and IR131 (ESCs and SPs respectively) are now available.

You can get copies of SPs and ESCs from Christine Jordan at the Inland Revenue Information Centre, Ground Floor, South West Wing, Bush House, Strand, London WC2B 4RD. Telephone 0171 438 7772

CONTENT

The content of Tax Bulletin gives the views of our technical specialists on particular issues. The information published is reported because it may be of interest to tax practitioners. Publication will be six times a year, and include a cumulative index on an annual basis.

- You can expect that interpretations of the law contained in the Bulletin will normally be applied in relevant cases, but this is subject to a number of qualifications.
- Particular cases may turn on their own facts, or context, and because every possible situation cannot be covered, there may be circumstances in which the interpretation given here will not apply.
- There may also be circumstances in which the Board would find it necessary to argue for a different interpretation in appeal proceedings.
- The Bulletin does not replace formal Statements of Practice.
- The Board's view of the law may change in the future. Readers will be notified of any changes in future editions.

Nothing in this Bulletin affects a taxpayer's right of appeal on any point.

Letters on any article appearing in Tax Bulletin should be sent to the Editor, Jeremy Sherwood, Room 402, 22 Kingsway, London WC2B 6NR. We are sorry though that neither he nor our contributors will normally be able to enter into correspondence about Tax Bulletin or its contents.

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