



Employer provided living accommodation

ICAEW welcomes the opportunity to respond to the call for evidence on [Employer provided living accommodation](#) published by HM Revenue & Customs and HM Treasury on 9 December 2015.

This response of 3 February 2016 has been prepared on behalf of ICAEW by the Tax Faculty. Internationally recognised as a source of expertise, the Faculty is a leading authority on taxation. It is responsible for making submissions to tax authorities on behalf of ICAEW and does this with support from over 130 volunteers, many of whom are well-known names in the tax world. Appendix 1 sets out the ICAEW Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark proposals for changes to the tax system.

We should be happy to discuss any aspect of our comments and to take part in all further consultations on this area.

On 14 January 2016 we attended a meeting with HM Treasury and HMRC jointly with other professional bodies in which we were able to put forward some key comments and discuss aspects of the call for evidence.

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MAJOR POINTS

1. We agree that the employer-provided living accommodation regime would benefit from a review. Indeed, the Office of Tax Simplification (OTS) gathered evidence on this topic in 2013 and 2014, culminating in its [Final report on employee benefits-in-kind and expenses](#) published in July 2014.
2. We consider that there is a continuing need for certain employees to be in tax and NIC exempt employer-provided living accommodation. However, there are aspects of the regime that could benefit from rationalisation and updating, for example:
 - what comprises living accommodation,
 - the way in which the value of the benefit-in-kind is calculated, which currently if the employer owns the accommodation can involve a two stage calculation incorporating obsolete reference bases, and
 - the sometimes arbitrary application of the conditions which dictate whether living accommodation provided to an employee by an employer is exempt or taxable.
3. These could be replaced by:
 - more rational definitions of living accommodation,
 - a one stage calculation of value, perhaps based on cost uprated periodically (say every five or ten years) adjusted by an index (say beneficial loan rate), or market rental values, or, simpler and cheaper, a more current reference basis such as (preferably revalued) council tax values adjusted by a factor,
 - clarifications to the exemptions and how they apply so they focus on what the job involves and business need, and
 - a clearance system with decisions published so employers and HMRC know where they stand.
4. If the outcome of the review is that the value of the taxable benefit increases or exemptions are removed, then, in the light of the fact that many current beneficiaries of exempt employer-provided living accommodation are low paid, we recommend that there should be a form of grandfathering or at least provisions to ease the transition.
5. We question why such a short timescale has been allowed to supply evidence. The provision of living accommodation to employees by employers is not tax or NIC avoidance and the regime despite its quirks has worked satisfactorily for many years. We are not aware of the government having committed itself to announcing conclusions by a certain date, eg Budget 2016, and understand that the objective is to undertake a considered review as part of the overall simplification of employee benefits-in-kind. We should therefore welcome clarification of why only eight weeks has been allowed to supply evidence when this spans the Christmas and New Year holiday period, the main self assessment tax return completion window and technical consultations on a raft of draft Finance Bill legislation. The unseemly haste imposed on consultees undermines the integrity of the review as it gives little time to provide evidence to help underpin HMRC's and HM Treasury's analysis other than that which is anecdotal, which may result in poor conclusions.

RESPONSES TO SPECIFIC QUESTIONS

Chapter 2. Employer provided accommodation

Why accommodation is provided

Q1. Why is accommodation provided to employees and how have changes in working practice affected this provision?

6. There are a lot of reasons but they are generally driven by business need and commercial practicalities including security reasons, and, to some extent, custom. Changes in working practices and society have led to changes and, where there have been changes, again the drivers are normally commercial.

Q2. Is accommodation provided to people who are no longer employees (because they have retired, have left the employment but by agreement can stay in the accommodation for a period of time etc) and why?

7. Yes, this does happen. For example, first, on landed estates houses are often provided to agricultural workers, and provision sometimes applies throughout retirement as well as such employees are often very low paid and the provision of housing is both customary and in lieu of pension provision. If this did not happen in many cases the alternative would be for the individuals to seek local authority housing and/or claim housing benefit. Secondly, cases where accommodation has been provided to an employee who leaves the job and a period of grace, for example, six months, is allowed to enable the former employee to find new accommodation.

Q3. Is the accommodation provided always a reflection of what is needed for the employee to undertake the role, or is it based on what is available or the status of the employee within the company?

Where relevant please provide data and/or examples.

8. What living accommodation is provided may not be for one distinct reason. In many cases accommodation is provided to enable the job to be done better or properly, in others it might be a question of status or custom or needed for the security of the employee, and in others it might be a question of what accommodation is available. For example, on a landed estate the question of what is available may dictate why a particular property is provided to an employee. In schools some accommodation may be provided based, in part, on status, for example, headmasters or housemasters, although the chief reason in such establishments is *in loco parentis*. In some cases seemingly inappropriate accommodation may be provided to employees needing accommodation on site because more senior personnel have chosen to live offsite leaving larger accommodation available. For example, accommodation in the grounds of a boarding school cannot be let on the open market, so needs to be used/lived in by someone who is part of the school.

Type of accommodation provided

Q4. Do the current categories of accommodation cover the circumstances of employers and employees today? Are there arrangements which don't fit these categories? How often are employees provided with 'other' accommodation?

9. 'Other accommodation' can result in employees on farms being taxable just because they are staying in the farmhouse with the farmer's family, or are crop or fruit-pickers who are put up in a bunkhouse for the duration of the work. As noted on page 6 of the condoc, the current categories do not necessarily result in an equitable position across all employees.

Q5. Are there other circumstances when employers provide accommodation to employees – for example, do they ever share the purchase of a property?

10. There are other circumstances when employers provide accommodation to employees, and clarity as to how the rules apply would be welcome, for example, accommodation provided overseas for expatriates and the now common practice of booking apartments in place of hotels as they are cheaper (particularly in London and since the rise of Airbnb).

11. Shared purchase happens in certain circumstances.

Q6. In your business/profession/sector, how many (or what proportion of) employees receive accommodation? Are there any roles which always have accommodation provided, or particular types of employment, or roles within a sector which always provide accommodation?

Where relevant, please provide data and/or examples.

12. We are a professional body for Chartered Accountants. We are not aware of anyone in our sector currently being provided with living accommodation although in less peaceful circumstances a case might well be able to be made to provide living accommodation for security purposes. Personnel who need to stay overnight in London from time to time normally stay in hotels.

Chapter 3. Valuation

Q7. When accommodation is provided to employees, is it usually owned or rented by the employer? Does this vary across different types of employment?

13. Living accommodation is both owned and rented by employers and the reasons are not necessarily linked to the type of employment.

Calculating the taxable value

Q8. How easy is it for employers or tax advisors to calculate the taxable value of accommodation provided to employees? How often are values sought from the District Valuer? How easy is that to do?

14. Where living accommodation is taxable, the ease of calculating the taxable value depends on the circumstances. The date of purchase of the property and original cost should not be too hard to ascertain, although the gross rateable value can be difficult to trace in practice, and, armed with these facts and knowledge of the rules, calculating the annual value is simple. However, where a property was built after the introduction of the community charge and/or has been owned by the employer for more than six years before it was provided to an employee, estimates of gross rateable value and/or market value when the property was first provided to the employee respectively need to be ascertained, which is likely to result in valuation fees and, if HMRC disagrees, referrals to the District Valuer. It is sometimes not easy to deduce taxable values, and expense is incurred in obtaining professional valuations for what could be fairly trivial taxable amounts.

Q9. What proportion of employees provided with accommodation pay rent for their accommodation? How much rent do they pay (proportionate to the value of the benefit)? How is the value paid as rent calculated (do employers reference the market value for example?)

15. We believe that employees paying rent on employer provided accommodation is not uncommon, although the rents may be not full market value.

16. We should welcome confirmation that there is no intention to repeal the exemption for council or housing association staff who live in council or housing association properties paying the general level of social rent, since repeal would be very unfair.

Q10. Do you agree that using market rental value would provide a simplification to the tax rules on provided living accommodation? How could such a system work and what would be the impacts on both employers and employees? Please provide reasons, including data/examples.

17. Although market rental would be fairer across all employees, as everyone provided with taxable living accommodation would be assessable to tax and NIC on the same basis, we are

not convinced that this would be a simplification as using market rental values would necessitate employers' having to ascertain valuations for every property each year. This would involve incurring valuation fees that would in most cases exceed any extra tax and Class 1A NIC payable.

18. The market rental value would have to be property specific, rather than based on an index or averages. For example, some landed estate properties provided to employees are in poor condition or old fashioned, such that any general market valuation measure for the location is likely to impose tax at too high a level.
19. In addition there would need to be grandfathering provisions to ease the transition.
20. We are also concerned at the potential extra cost burden for employers seeking market valuation advice.
21. Accordingly we suggest that if there was a requirement for market rental valuation to be used, that it only need be updated periodically, say every five to ten years, and that there is no need to seek advice from a professional valuer. HMRC could consider publishing an index for property prices in every locality, although the identification of the appropriate areas might prove problematic, as prices can move at different rates in different parts of a city or county. For example, it would clearly be inappropriate to tax everyone outside London based on an index that included high value and highly volatile property prices in the capital.

Q11. Are there other ways to simplify how the taxable value of living accommodation is calculated?

22. We suggest that, in order to simplify valuations and minimise professional costs, consideration be given to using a valuation based on a publically-available register such as council tax valuations (say the mid-point of each band), and applying a factor to convert to a BiK value on which tax and NIC can be levied. For properties in the top council tax band it would be necessary to ascertain market value for each property using council tax principles. However, council tax valuations have not been changed in England since 1 April 1991, which would give rise to anomalies similar to those arising from using gross rateable values if they are not revised.
23. Depending on the size of the factor adopted, again we recommend that there is grandfathering to ease the transition.
24. We would also suggest that the principles underlying the treatment of unusual situations be codified in some fair and logical way to minimise disputes about the value of any taxable benefit. For example, where taxable accommodation is shared by a number of people, or shared by a shifting population of people during the course of a year, it is often hard to allocate a value to each person involved. It becomes doubly difficult when some of the users can claim business use, or when the property is partially empty some of the time, as fairness between employees must be maintained.

Chapter 4. Exempt accommodation

Q12. Are there situations where employees, despite having very similar roles are treated differently for tax purposes because of the way that the rules currently work? Please provide examples.

25. As noted in the call for evidence document, there are instances of similar jobs being treated differently for accommodation purposes, for example on page 12 the differential between stable staff who work with racehorses as opposed to dressage horses.

26. We are concerned that directors are treated unfairly in many instances because they are often precluded from being able to use an exemption that would be available simply if they were not a director. Whilst we appreciate there is a risk of some tax avoidance this rule is unfair and needs to be reconsidered. We note that accommodation relief under travel and subsistence rules falls under a separate consultation exercise, but cannot see why separate rules such as those existing for oil rig workers is not included.
27. Members have also seen cases where HMRC has pursued income tax on the benefit of the use of a company property when it was not warranted in common sense terms. For example, a business with a London office and a flat near the office arranged for a number of its staff to attend a business dinner in the City and for them to use the flat in lieu of a hotel after the dinner. HMRC alleged that those who worked in the London office and lived in reasonable commuting distance were being provided with employer accommodation at or near their place of work that did not qualify for any reliefs. Staff from other offices were accepted as using the flat like a hotel. This is an argument that should not have arisen as there was no actual benefit to the London staff concerned, there was no avoidance motive – they were in London late for business reasons and it was unreasonable to expect them to go home in the early hours – so there should have been no taxable benefit to argue about.

Q13. What circumstances exist today where accommodation is needed in order to do a job? Why is the accommodation needed? For example, is it purely about the job itself (the duties), or, to comply with legal requirements, or because of the location of the job? Please provide examples.

28. Most of the jobs listed in HMRC's guidance, for example in HS202 for 2015 at <https://www.gov.uk/government/publications/living-accommodation-hs202-self-assessment-helpsheet/hs202-living-accommodation-2015>, remain valid in circumstances where it appears to us appropriate for accommodation to be provided tax free. We suggest that the job descriptions be reviewed and refined to make them clearer, and it would be helpful if HMRC were to operate a clearance system, with decisions publicised and/or the guidance regularly updated, so that employers know where they stand.
29. To take an example, most railway level crossings are now fully automatic, and many locks have been automated, so perhaps consideration might be given to altering these job descriptions to make it clear that the exemption applies to level crossings and locks where a permanent physical presence is needed. It is a fact that modern automated locks normally require a trained operator to operate the machinery which opens and closes the gates and sluices, and given that many hire-boat crews are inexperienced, to be on hand in case of accidents.
30. Circumstances where accommodation is needed include jobs in the following sectors, some of which are already in HMRC's guidance (our list is not necessarily exhaustive):
- landed estates and stately homes (eg in case of fire, security and other emergencies),
 - farming, stables, shepherding (eg to look after and be on hand to ensure animals' welfare (eg feeding, milking, calving/lambing/foaling, maintaining temperatures in chicken sheds), and to safeguard stock, property and expensive machinery against theft and other emergencies (eg fire or flood)),
 - nurseries (eg to look after the plants and be on hand for emergencies (eg maintain temperatures, safeguard plants against theft, fire or flood, clear snow from glass-house roofs)),
 - educational establishments (eg headmasters and those *in loco parentis* roles such as housemasters and matrons in private schools or, more rarely these days, rural village state primary schools),
 - caretakers responsible for round-the-clock security (for example in business premises, transport depots, schools, stately homes, blocks of flats),
 - the licenced trade,
 - the hotel and holiday trade ,

- ministers of religion,
- the care sector (wardens and nursing staff etc in, for example, care and nursing homes and almshouses who must be on call at short notice),
- in blocks of flats (where porter(s) might not only caretake the building and run its facilities but also assist elderly and vulnerable residents),
- offshore workers, mariners and aircrew who travel by public transport to their departure point and have to stay over because of the timing of tides, helicopters, flights, bad weather, or working time restrictions,
- military personnel required to live on or near an armed forces base, and
- hospital nurses and doctors on call.

31. Many employment sectors where accommodation is provided to employees are in rural areas where employees are low paid and, especially if they are starting their careers (eg as apprentices in an hotel), cannot afford to run a car, alternative accommodation available on the open market (including from local authorities) is scarce, and bus services have been axed making commuting impractical, which impacts the ability of employees to reach the workplace to carry out their duties.

Tax exempt or taxable?

Q14. Is it appropriate that certain accommodation is completely exempt from tax? How can we create a balance between the need for accommodation to be provided to enable a job to be performed and the advantage gained by that provision?

32. We believe that it is appropriate that accommodation is provided tax free to employees in certain circumstances. The present exemptions are on the right lines but their application has become arbitrary and tied to job descriptions rather than the nature of the job and the needs of the business. 'Customary' is based on court judgements from many years ago and arguably on an arithmetic misunderstanding. For example, the requirements regarding nurserymen (two thirds etc) are so convoluted that they now present a hurdle that is virtually impossible to jump even where dispassionate consideration of the circumstances would result in exemption being granted. 'Proper performance' can mean that a certain property has to be provided even if it is patently unsuitable. The list of occupations which HMRC accepts without question as qualifying for exempt accommodation is pitifully small. The OTS in its review undertook a detailed study and interviewed a lot of people, and we recommend that the OTS's research and analysis be made available to HMRC/HM Treasury as evidence to obviate reinventing the wheel.

33. We appreciate the argument that all such value should be taxed but the market place has already factored in the existing situation. One also has to be aware of significant value differentials in different places where land values are concerned. If wholesale changes were made there would be immense difficulties for some businesses and persons.

Representative occupiers

Q15. Are there any 'representative occupiers' who would not fit within the current statutory exemptions? If yes, please provide details of the employment and job role.

34. We have no examples to hand.

Impact

Q16. To what extent do employees/different types of employment rely on the current rules and exemptions? Where employees live in accommodation which is currently exempt, what is the value of the exemption to them?

- 35.** In the situations encountered by our members employers are relying on both the representative occupier and current rules.
- 36.** How is value to be assessed for the employee? Is it just the saving in rent, or should rental value from ownership of other property (where applicable) be taken into account? Should travel costs be considered and how does one value location in some roles? Value is not just cash, either to the employees or to others. There is often a community value to consider. In many cases if the exempt living accommodation relief did not exist then the government would have additional burdens to shoulder, for example, supplying social housing, providing carers for elderly and vulnerable people currently looked after by employees living on site, and paying housing benefit.
- 37.** It has been a longstanding principle of UK tax law (disregarding the P9D low pay sector) that most employees are taxed on the cost to their employer of providing any benefit. Where an employer owns a property rather than renting it, this has to be a formulaic number, which is what the current rules provide. It is not clear why a formula based on the actual cost to the employer of acquiring the property, perhaps revalued every five or ten years, and the official rate for beneficial loans could not be the basis for all accommodation benefits. The employee gains no benefit from any short-term increase in the value of a property, as he or she could sign a long-term lease at a fixed rent in the open market anyway. The employer will pay tax on any disposal gain. Periodic revaluation, not necessarily linked to the occupation by a particular employer but to the calendar, should ensure reasonable fairness, provided the applicable official rate is also set at a fair level.

APPENDIX 1

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. **Statutory:** tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. **Certain:** in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. **Simple:** the tax rules should aim to be simple, understandable and clear in their objectives.
4. **Easy to collect and to calculate:** a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. **Properly targeted:** when anti-a legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. **Constant:** Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. **Subject to proper consultation:** other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. **Regularly reviewed:** the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. **Fair and reasonable:** the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. **Competitive:** tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see via <http://www.icaew.com/en/about-icaew/what-we-do/technical-releases/tax>).