



EXEMPTION FOR EXPENSES RELATED TO TRAVEL (CL10 F3B17-19)

Issued 27 November 2018

Text of briefing submitted on 19 November 2018 to MPs by ICAEW Tax Faculty on Clause 10: *Exemption for expenses related to travel* in **Finance (No.3) Bill 2017-19** published on 6 November 2018

This briefing submitted on 19 November 2018 for the Committee of the Whole House Finance Bill debates was prepared by the ICAEW Tax Faculty. For further details on who we are please see Appendix 1.

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FINANCE (NO.3) BILL 2017-19: CLAUSE 10: EXEMPTION FOR EXPENSES RELATING TO TRAVEL

TEXT OF BRIEFING SUBMITTED TO MPS ON 16 NOVEMBER 2018

WHO WE ARE

1. Please see Appendix 1.

EXECUTIVE SUMMARY

2. The new relaxed checking requirements for qualifying employee subsistence are welcome but should cover bespoke and industry subsistence rates as well as benchmark scale rates and overseas rates.
3. Where comments are invited on proposed legislation which will make substantial changes to existing legislation, as in this case, it would make it easier to see what is being changed and encourage more people to contribute comments to help get the new legislation right if government published the existing legislation incorporating the proposed amendments in track changes.

THE MEASURE

4. This clause:
 - removes the requirement for employers to check receipts or other forms of documentary evidence of the amounts spent by employees when using the HMRC benchmark scale rates (BSR) to pay or reimburse their employees' qualifying subsistence expenses, and
 - places the concessionary accommodation and subsistence overseas scale rates (OSR) onto a statutory basis and, similarly, there will be no requirement for employers to check evidence of amounts spent.
5. Employers will need only to ensure that employees are undertaking qualifying business travel for both BSR and OSR.
6. This measure has effect for 2019/20 onwards.

CHECKING REQUIREMENTS

Our concerns

7. We welcome this relaxation as it affects employers who pay employees for subsistence at BSR and OSR.
8. We feel however that it should apply also to employers who use bespoke or industry rates.
9. We consider that the legislation should not be prescriptive as to how employers using bespoke or industry rates check expenses. Bespoke and industry scale rates are not a cheap option for employers – employers do not agree a higher rate with HMRC to throw money at employees. Employers need to be able to decide for themselves whether the administrative cost saving from not checking receipts outweighs the additional amounts that the business may routinely be paying through scale rates.

Our recommendation

10. We consider that the provision that there is no requirement for employers to check receipts or other forms of documentary evidence of the amounts spent by employees should apply

equally where employers pay or reimburse their employees' qualifying subsistence expenses using bespoke or industry scale rates, so they need only to ensure that employees are undertaking qualifying business travel.

11. This would make the provision more in line with Tenet 10: *Competitive* of our *Ten Tenets for a Better Tax System*, summarized in Appendix 2.

Suggested new legislation

12. We suggest that regulations to be made under new sub-section (2A)(a) should cover not only benchmark rates (as now) and overseas scale rates (as proposed in the Explanatory Notes) but also bespoke and industry scale rates.

HELP US TO HELP YOU

Our concerns

13. We welcome the government making available draft legislation for technical comment in advance of publication of the Finance Bill.
14. However, the proposed legislation substantially amends existing legislation, and the consultation papers did not include amended drafts with tracked changes of the existing legislation in s289A ITEPA 2003 which is to be changed.
15. Working out how the existing legislation will read if the proposed legislation is enacted is time consuming, and not supplying amended drafts with tracked changes of the current legislation when seeking comments discourages many from responding to the consultation.

Our recommendation

16. Where proposed legislation will make substantial changes to existing legislation (as in this case), the published documentation needs to include the existing legislation amended in track changes to show how it will read if the proposed legislation is enacted.
17. This would be good practice even when comments are not invited, and, we believe, would be welcomed by MPs when considering Bills.

FURTHER INFORMATION

As part of our Royal Charter, we have a duty to inform policy in the public interest.

APPENDIX 1

ICAEW TAX FACULTY – WHO WE ARE

ICAEW Tax Faculty is internationally recognised as a source of expertise and 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. ICAEW Tax Faculty's Ten Tenets for a Better Tax System are summarised in Appendix 2.

ICAEW is a world-leading professional body established under a Royal Charter to serve the public interest. In pursuit of its vision of a world of strong economies, ICAEW works with governments, regulators and businesses and it leads, connects, supports and regulates more than 150,000 chartered accountant members in over 160 countries. ICAEW members work in all types of private and public organisations, including public practice firms, and are trained to provide clarity and rigour and apply the highest professional, technical and ethical standards.

APPENDIX 2

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-avoidance 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 <https://goo.gl/x6UjJ5>).