

TAXREP 3/07

BOARD AND LODGING ADJUSTMENT AGREEMENTS FOR HOTELS AND GUESTHOUSES

Comments dated 18 January 2007 from the Tax Faculty of the Institute of Chartered Accountants in England & Wales to HM Revenue & Customs in response to a consultation published on 26 October 2006.

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BOARD AND LODGING ADJUSTMENT AGREEMENTS FOR HOTELS AND GUESTHOUSES

INTRODUCTION

1. In recent years, a number of local agreements have been entered into between HMRC and representatives of owners of hotels and guesthouses in order to minimise the administrative costs of establishing an appropriate level of non-business expenditure. These agreements take the form of a flat rate which represents private use of board and lodgings.
2. In April 2006, it became apparent that significant discrepancies had developed in the levels at which these agreements were set, whilst in some parts of the country no such agreement was in place at all. Consequently, the agreements were withdrawn. Following pressure from the Tax Faculty and others, they were then temporarily reinstated, pending a more thorough review and proper consultation. On 26 October 2006, HMRC announced such a [consultation](#).
3. The objective of this consultation is to identify a fair and effective way for hoteliers to account for non-business board and lodging expenditure for tax purposes that will:
 - enable hoteliers to complete their annual tax returns accurately without unnecessary or disproportionate administrative costs;
 - enable HMRC to deal with the tax affairs of hotel owners in an efficient manner;
 - ensure that hoteliers are treated equitably and fairly in different parts of the country.
4. The consultation document is supported by a [Partial Operational Impact Assessment](#) (POIA) which was published on the same date.
5. The consultation proposes three options:
 - Option 1: Do nothing – end all local agreements.
 - Option 2: Introduce a new local system for non-business adjustment on a permanent basis.
 - Option 3: Replace local agreements with a single national regime.

KEY POINT SUMMARY

6. The scope of the scheme should be properly defined.
7. Option 2 is our members preferred outcome, using a system of locally agreed rates. A single set of nationally agreed rates would achieve a consistent result, but we do not think that this would provide the fair outcome sought by this consultation.
8. A template should be used to achieve consistency in the rates agreed by local offices.
9. All areas of the UK should be defined and included in the scheme.

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Board and Lodging Adjustment

10. The scheme should provide for periodic rate reviews.
11. The scheme should be properly publicised.

GENERAL POINTS

12. The scheme needs to define the trade to which it applies rather more precisely than just saying 'hotels and guest houses'. For example, it may also be relevant to pubs and restaurants with rooms and bed and breakfast houses.
13. If, as we recommend, the scheme adopted uses a system of locally agreed rates, or indeed a single system of nationally agreed rates, these will need to be reviewed periodically. Ideally all areas should review their rates at the same time rather than on a piecemeal basis.
14. Paragraph 27 of the POIA, states that in an enquiry HMRC will expect to see all necessary documents to support adjustments for non-business expenditure. We would like confirmation that where someone has followed the standard add-back method, as described in both options 1 and 2, and therefore does not have such detailed records, HMRC would not expect to see full details even if the strict statutory method is not used.
15. We would prefer the new system for these allowances to be introduced and publicised in as public and accessible format as possible. Whilst legislation, such as was used for foster care allowances, achieves this, an Extra Statutory Concession also has a reasonably high profile, which is not achieved by a mere section in an HMRC manual or an obscure leaflet. We note that the position of Extra Statutory Concessions is currently under review following the Court of Appeal decision in the Wilkinson case (Wilkinson, R v Inland Revenue [2003] EWCA Civ 814) which cast doubt on HMRC's authority to publish ESCs.
16. The rates will also need to be published somewhere that taxpayers can find them, such as the HMRC website. We do not think that it is sufficient for the public to be told to 'contact your local tax office'.

SPECIFIC POINTS

Option 1 Paragraphs 11 to 14

17. Doing nothing as suggested in option 1 and requiring specific and detailed calculations of actual costs would seem to impose the greatest administrative burden for all concerned. Subject to our comment in paragraph 17 below, we do not support this as a viable option in the majority of cases.
18. In paragraphs 11 to 13, there is reference to 'keeping detailed records'. What sort of detailed records does HMRC envisage should be kept? Typically the proprietor of a guesthouse will use some rooms in the house, for personal use. However, there will be a single bill for gas, electricity and other utilities. There will also be single bills for purchases of consumable such as food. We cannot imagine for one moment that the keeping detailed records should mean that the proprietor should have to weigh up every potato that is eaten privately and count every sausage. What about where the usage might change, either seasonally or even daily? For example, what if the proprietor uses two rooms out of ten in peak

times but when rooms happen to be vacant he allows his children to occupy separate rooms instead of sharing? It would seem unreasonable to expect the proprietor to keep a detailed diary about what happens every day.

19. However, although this option is the most burdensome in most cases, this will presumably remain as the strict statutory basis and therefore if taxpayers wished to use it they should be entitled to do so. It will be important for HMRC to explain to taxpayers what their options are in any published literature.

Option 2 Paragraphs 15 to 18

20. We prefer option 2 as the preferred solution, introducing a new local system for non-business adjustments on a permanent basis.
21. We support the view that this is the system with which most businesses are already familiar and which would therefore involve least compliance costs.
22. In establishing such a system, it is imperative that it is extended so that all areas of the country are covered and it is clear where geographical boundaries lie, for example by using post codes.
23. The reference to HMRC research costs in paragraph 17 seems to indicate that HMRC expect to spend some considerable time on this. We disagree and think that the costs should be negligible.
24. A template could be used to guide the negotiation of local rates, but beyond this, we do not see any need for further intervention by HMRC centrally. Local districts are best placed to resolve local issues as they have done in the past. Indeed that was the rationale behind the establishment of Working Together.
25. We believe that the current variations, for example, can be rationalised very readily without central intervention. Local tax districts and local accountants who have knowledge of the situation in the local area have negotiated agreements based on local conditions. As local conditions vary, local agreements in different parts of the country are clearly different. Accordingly geographical disparity is to be expected. Where areas have not reached local agreements the sensible thing would be for HMRC to suggest to them that they do so, rather than to interfere with other agreements that already exist.

Option 3 Paragraphs 19 to 22

26. A national regime, as suggested in option 3, would either unfairly penalise those established in low cost areas or unfairly benefit those established in high cost areas or do both.
27. A consistent approach, such as the template referred to above, which is used to agree local rates would result in a consistently fair result. A consistent approach on its own would not.
28. In paragraph 19 it is stated that the introduction of a national regime would “remove any geographical discrepancies”. Common sense says that the personal benefit from a hotel in Mayfair must be very different from the personal benefit from a guesthouse in Brighton. The cost structure in the different areas is wholly different. Accordingly, a national regime would be inappropriate and produce unacceptable discrepancies.

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APPENDIX 1

WHO WE ARE

1. The Institute of Chartered Accountants in England & Wales is a professional body representing some 128,000 members. The Institute operates under a Royal Charter with an obligation to act in the public interest. It is regulated by the Department of Trade and Industry through the Accountancy Foundation. Its primary objectives are to educate and train Chartered Accountants, to maintain high standards for professional conduct among members, to provide services to its members and students, and to advance the theory and practice of accountancy (which includes taxation).
2. The Tax Faculty is the centre for excellence and an authoritative voice for the Institute on taxation matters. It is responsible for tax representations on behalf of the Institute as a whole and it also provides services to more than 11,000 Faculty members who pay an additional subscription.
3. Further information is available on the ICAEW website, www.icaew.com.

APPENDIX 2

THE 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**