

Employer provided living accommodation

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To: employmentincome.policy@hmrc.gsi.gov.uk

Accommodation Call for Evidence

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Scottish Land & Estates is a membership organisation representing landowners, land managers and rural businesses across Scotland. The majority of these are small to medium sized family businesses. Our members are interested in a great variety of land uses, including farming, forestry, sporting, rural tourism, housing and development and we welcome the opportunity to respond to this consultation. As employers, often in remote areas, our members are particularly concerned regarding changes to status of employer provided living accommodation.

Scottish Land & Estates has a Taxation Group within our organisation and has long been interested in the operability of taxation policy and guidance as it affects our membership. At a Scottish level we have been pleased to attend the Devolved Tax Collaborative meetings arranged by the Scottish Government and other relevant stakeholder groups and we engage with the UK Government on reserved taxation matters.

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

Scottish Land & Estates understands that employers provide rent free accommodation out of business necessity. This role also assists government in particular where there is a shortage of social housing in those areas and no other options. It is more difficult for employers to attract employees to positions without the offer of property. Without the provision of subsidised accommodation in an area with large numbers of commuters or second homes pushing up prices it may not be possible to employ individuals. Skills shortages in some rural areas are becoming a real issue and the ability to provide subsidised accommodation as part of a package for the employee is fundamental to attracting them in the first place.

Such arrangements also assist fragile rural economies, through increased population and spend in the local area by having an employee in place on the property. This is also beneficial for community cohesion.

The employees themselves are in a range of professions from forestry and agricultural workers, game keepers, property maintenance, housekeepers to fish farmers and it is an accepted part of working in these businesses that they will work anti-social hours to fit the demands of the employer's business. Seasonal pickers may need to be accommodated because they live elsewhere, but it is also driven by the needs of the business to collect perishable crops whilst working around weather conditions and short notice orders from the retailers, and having workers on site allows this.

It can be difficult and time-consuming for developers to obtain planning permission for new build properties in areas of great landscape value or conservation areas and generally restrictions on development are greater in rural settings.

Accommodation may be provided close to historic houses for insurance purposes, to ensure security or reduce premiums for instance as part of a disaster recovery plan where important items and objects can be removed at quick notice. The same also applies to live and game stock given criminal activity associated with poaching of deer and game.

Generally, employer housing meets a number of government policies, keeping rural communities together, providing employment and affordable housing, while at the same time allowing for animal husbandry and good estate and farm management, including management of hi-technology equipment used in food production. It is worth noting that agriculture is a heavily subsidised sector already and with a run of years of extremely poor commodity prices, most of our members are relying on past reserves or extended borrowings to ride this particularly poor period of trading. Employee and skill retention is a key issue for our members.

2. 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?

Scottish Land & Estates understands providing accommodation for retired employees has again been a longstanding practice, albeit less so now and new agreements will generally make it clear that that there is no retirement home. In some cases the employee's spouse or children may continue to be employed and socially it helps keep a community together and avoids disruption, especially in more remote areas. Such a provision respects that the employee has committed to the business for a long time and recognises they are an integral part of the community and employers have to honour agreements made.

Normally retired employees will often be offered lifetime accommodation for themselves and their spouse if they have worked for the estate for a long period of time. This may be in a different house than they have previously had if the original house is strategically linked to the job or if a house in a village etc. is more suitable. They may pay no rent, pay minimal, rent or pay market rent.

3. 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?

There will likely be limited options on availability. An employer will try to ensure that a gamekeeper with a spouse and three children is not accommodated in a two bedroom cottage. When a potential employee is interviewed they will likely be shown the available accommodation. Employee accommodation will invariably be in strategic position such as within a radius to near stock sheds, an historic house etc.

4. 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?

Our members would not provide accommodation off site as there is no business case to doing so.

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

We are unaware of joint purchase situations.

6. 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?

It is not easy to generalise as our members' businesses are diverse and every one is different.

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

We are not aware of property rented by an employer, although this may be the case in more urban settings. The employer may have signed an affordable housing contract such that they still own the property but are required to comply with the conditions imposed.

8. 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?

Some employers will tend to have had employees in the same property so will hold the information already. However, where there are estates bought by new owners you need to get the information from the District Valuer and experience would tend to suggest that can take some time. The system does work but rebasing to a more recent year may be appropriate.

9. 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?)

We do not hold any data on the proportion of employees. Most full time employees will not pay rent, but seasonal workers may pay rent. The Agricultural Wages Board determines maximum deductions which can be counted towards payment of agricultural wages. Our members would invariably charge proportionate rent where the employee wishes to live in a better property than the employer deems necessary for the business's needs. This is comparatively rare however.

10. 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?

We do not agree. Market value is hard to determine as it depends on location, condition of property, local demand and is constantly changing. Rebasing to a fixed year would be better. When a large employer makes large scale redundancies in the area, this can affect rents overnight. Account would also have to be taken of restrictions on use and the business use of the building.

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

It should be borne in mind that simplification is not an end in itself and the impact on different sectors needs to be considered to ensure no unintended consequences.

12. 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?

Yes, we believe that HMRC have taken certain categories of employee into the taxable category by claiming these are not customary any more.

13. 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?

Rural farm workers, forestry workers, gamekeepers, factors , maintenance workers, housekeepers, caretakers, fruit pickers are some examples of jobs where employer provided living accommodation is necessary to do the job properly for reasons of rural crime protection, livestock management, game management, historic house security and management. Therefore any circumstance where accommodation is needed on site to do the job in question properly and effectively, regardless of location, is relevant. It should be borne in mind that public transport may be limited or not an option in rural areas.

14. 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?

We feel that the premise of this question is not accurate. The issue is that the employee requires the accommodation to properly undertake their contracted work and the situation may also have a negative impact on their individual life. We feel that the balance that exists now is reasonable and should not be disturbed with the inevitable unintended consequences that so often come with new tax legislation. Our members are not finding life easy at the moment with poor commodity prices, higher housing compliance costs, poor national economic performance, skills shortages and late payment of farm subsidies.

15. 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.

We understand that there may be a situation around new care homes, but generally do not have any comment to make.

16. To what extent do employees/sectors 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?

We consider it difficult to judge the value of the exemption. What we do believe is that grossing up by the removal of the exemption is a cost that would fall on the employer ultimately and will easily affect jobs and investment in an already fragile sector.