Response from ICAS to the
HM Treasury

Travel and subsistence framework:
discussion paper

15 December 2015
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About ICAS

The Institute of Chartered Accountants of Scotland (ICAS) is the oldest professional body of accountants. We represent over 20,000 members who advise and lead businesses. Around half our members are based in Scotland, the other half work in the rest of the UK and in almost 100 countries around the world. Nearly two thirds of our members work in business, whilst a third work in accountancy practices. ICAS members play leading roles in around 80% of FTSE 100 companies. ICAS is also a public interest body.

General comments

ICAS welcomes the opportunity to comment on the ‘Travel and subsistence: discussion paper’ issued by HM Treasury on 23 September 2015.

The proposals outlined in the discussion document are broadly welcome and offer an increase in certainty for businesses, employees and their advisers. As regards detail, there are some concerns which are covered in the points below. The realities of business economics and modern working patterns should be reflected in the tax rules.

In some cases, wider availability of PAYE settlement agreements might enable business and their employees to come to an economically acceptable solution, which avoids a tax charge directly on the employee.

Specific questions

Question 1: Do you agree that these are the main issues that cause employers difficulty under the current rules? Which rules create the most difficulties?

The issues outlined in sections 1 & 2 of the discussion document do highlight areas of significant concern.

Changing patterns of working make the concepts of ‘permanent’ and ‘temporary’ workplaces, and ‘regular attendance’ outmoded. The conditionality around the 24 months rules creates uncertainty. These rules currently create difficulties, though it is not clear which creates the most difficulty.

Question 2: Are there any additional issues with the current rules that are not summarised above?

Additional issues include the situation of non-executive directors, and other ‘office holders’: there can be ambiguity where the location of meeting varies, and travel is often from home. Such individuals may travel to the ‘employers’ offices ‘regularly’ but this would not appear to be regular commuting.

It is possible that PAYE settlement agreements might be extended to cover some such cases, rather than changing the travel and subsistence rules further.

Issues around ‘in the performance of the duties’ sometimes seem overly restrictive. There are cases where costs seem directly related to an employment, yet the cost is not seen as being sufficiently closely connected - such as attendance at training courses which are not ‘in performance of’ the duties.

Question 3: How widespread is the issue of employees having more than one permanent workplace? Are there any particular industries or roles where it is commonplace?

The situation can arise in particular industries –such as construction, IT, teaching, and professional services; though this list is not exhaustive.
Question 4: Overall, do you agree that there is a good case for reforming some aspects of the tax rules for travel and subsistence expenses?

Yes, the current rules create ambiguity in some circumstances, such as that of ‘temporary’ workplace, and the concept of ‘substantively the same’ as ordinary commuting.

Question 5: Do you agree that these are the right principles on which to base a new set of rules? Bearing in mind the requirement that any changes should not come at a cost of the exchequer, are there any additional principles that the government should consider?

The principles (added in bold italic) seem appropriate, with a little clarification:

1. *That tax relief should continue to be available for business travel, but not for ordinary commuting.* This begs the question of what is ‘ordinary commuting’.

2. *Any tests should be objective and based on measurable facts as far as possible – they should not rely on the intentions of the employee.* This is an improvement on the current rules. It might be added that neither should they be based on the intention of the employer.

3. *New rules should not be based on the concepts of ‘permanent’ and ‘temporary’ workplaces except and unless these terms carry their everyday meaning.* It would seem better to leave out any reference to these terms at all, otherwise there is likely to be significant confusion. It is noted that the terms have not carried their everyday meaning in tax legislation.

4. *Employees should not have their journeys to multiple locations or areas which are a significant distance apart all treated as being ‘ordinary commuting’.* This is a good principle, recognising changing work patterns.

5. *Relief should not be available for subsistence where this is essentially akin to a private expense.* This could be a difficult concept to define. An objective test would be preferable.

6. *Any changes should not come at an additional cost to the exchequer.* There are two problems here:
   - It is unlikely to be possible to quantify exactly what the impact on the Treasury will be in most cases of fine tuning the rules.
   - Cost to the exchequer could be used as a reason to restrict simplification on the basis of a theoretical loss.

Additional principle:

The rules should give certainty to employees, employers and HMRC, thus reducing as far as possible disputes and disagreements.

The rules should, where possible, be self-policing.

Question 6: Do you agree that this rule currently works well and should remain broadly unchanged?

The phrase ‘journeys made necessarily in the performance of the duties of the employment’ is one which is generally well understood by employers, employees and their advisers.

It generally follows the intuitive assumptions of workers and only causes difficulties around the edges of where the ‘duties of the employment’ start. The recommendation that it should be retained is sensible.
Question 7: Do you agree that the concept of an employee’s “main base” is a sensible basis for a new rule?

The concept of ‘main base’, particularly when backed up by an objective percentage rule based on time worked at each location, is clear, intuitive, and an improvement.

Question 8: Would a test based on the percentage of an employee’s time spent at each location be workable for employers in practice? Would it be better than the more subjective tests in place at the moment?

An objective percentage would be best. Most employees have relatively little control over the location of their main work base. This would be a more effective test, and more clearly reflect economic reality than the current permanent and temporary workplace concepts.

Question 9: Do you agree that employees should be able to nominate which of their ‘bases’ is to be their ‘main base’? Is there an alternative that the government should consider (eg the location where the employee spends the highest proportion of their time)?

There are potentially problems with ‘blindly’ following an objective rule. For example, audit staff may travel for significant periods of time to client premises to work. But such staff are likely to consider that their ‘main base’ is still their own employer’s office.

Permitting such staff to nominate one ‘main base’ seems appropriate. In particular it would cover the scenario where an employee travels to a number of client premises on relatively short assignments, and their own home location is distant from both the client and employer’s premises.

Question 10: Do you agree that there is still a need for tax relief for travel to a work location that an employee attends on detached duty as part of an ongoing employment?

Yes, there is a business need to pay employees, without a tax cost, for travel while on employee duties which are not at their normal location. Businesses would face considerable difficulty and reduced flexibility if their employees were to bear tax costs for agreeing to work at different locations. It would be a significant barrier to flexible working.

Question 11: Do you agree that basing the rule on the concept of “detached duty” rather than a “temporary workplace” will make it easier for employers to understand what journeys the rule is intended to give relief for?

The concepts behind ‘detached duty location’ seem clearer than those behind ‘temporary workplace’. The term ‘temporary workplace’ is best replaced as it has a natural meaning which is not carried through into the field of tax.

‘Detached duty’ is not an everyday phrase, but is preferable to the term ‘temporary workplace’.

Question 12: How long should an employee be able to attend a location before it ceases to be a detached duty location, and why?

Twenty four months seems a reasonable period as:

- This period is already familiar to employers and employees.
- A longer period eg 36 months, does not seem warranted. If an employee is required to work away from their usual base, for such a significant amount of time, then this looks like a change in working arrangements, and the location would appear to be their new base. (Exceptionally longer term, but fixed duration contracts – such as some construction projects – might merit a longer period, but if relief is given for the first 24 months in all cases, this would provide some compensation).
- Choosing a period of less than 24 months might not provide the flexibility required by businesses to cope with changing conditions.
Question 13: Do you agree that it is simpler for the rules to consider workplaces that are objectively close together as a single location, rather than the current test of a change in workplace being ‘substantial’?

Yes, it is better for the rules to consider ‘work location,’ rather than individual workplaces, so long as the definition of ‘work location’ is objective and easy to apply.

Question 14: What measure of workplaces being ‘close together’ would be easiest for employers to administer in practice? Are there any that would be particularly difficult for employers to operate?

From a practical point of view, a clear objective rule, for example based on geographical distance, would be welcome. But any simple arbitrary rule is likely to have rough edges.

One based on distance from the employee’s main work base would be simplest. Basing the decision on time or costs is likely to be difficult to evaluate, as employees could incur different costs using different means of transport, eg own car or public transport. In addition, there is the possibility of season tickets on ‘usual’ routes.

The rule needs to be one which can be applied quickly, and with a minimum of research. The variety of on-line maps make it fairly simple to find out the distance from any given workplace to the employee’s main work base.

It seems reasonable to permit business travel to a different part of the same town/ city as the main work base, as it may require travel which is beyond the normal season ticket route for usual home to work travel. Any such rule will be arbitrary, but something in the region of 10 miles might be acceptable.

Question 15: Do you agree that the tax rules should not provide an incentive or a disincentive for working from home?

It is reasonable that the rules neither provide an incentive, nor a disincentive, to working from home; but also that they recognise the reality of modern working patterns, and permit deductions for travel from a home-office base to other work locations.

The position is not entirely one directional. There is an environmental argument that permitting home-working reduces the consumption of resources by reducing non-essential travel.

Question 16: Do you agree that employees shouldn’t be able to nominate their home as their ‘main base’ if they have another ‘base’ elsewhere?

The examples given here bring ambiguity by suggesting that where ‘there was working space available for the employee at their employer’s home office but the employee worked at home instead by choice’ time spent at home working would be excluded from the calculation.

If all time spent at a home-office is excluded on this principle, it effectively makes the rule subjective, as it depends on the meaning of the phrase ‘by choice’.

The OTS (in the Review of employee benefits and expenses: second report, chapter 6) outlines two situations:

- The employee is based at home; that is their main work location; and
- The employee is based in the office; they are allowed to work some of their time at home.

To make the rules objective, it would be preferable to introduce another percentage test to establish if home is a main base, rather than have the option of employees nominating home as a main base.
There would then be two main scenarios:

1) The employee has no work-base on the 30% rule. All locations are therefore ‘detached duty location’ and travel is business travel. This is the itinerant worker model.

2) The employee works for at least 60% of their time from a home-office base and has no other work base on the 30% rule. This would cover workers whose main work-base is at home.

Option 2 is proposed as it creates certainty. It also avoids the simplistic analysis that says that either the home-work location is ‘required’ by the duties of the employment or it is ‘by employee choice’. Such an analysis is incomplete. It does not allow for the economic reality of employee/employer relations.

Home-working may be required as a cost effective ‘adaptation’ of the work environment as required by disability discrimination legislation; it may reflect economic reality – for both employee and employer, the alternative being no contract at all, rather than ‘daily commuting’; it may be an aspect of remote working.

With ‘remote working’, which is not infrequent in a Scottish context, the majority of employee duties are carried out at the remote location, which may be the employee’s home. This base can be many hundreds of miles away from the employer’s base. The economic reality of remote working is that daily commuting, or moving home to be near an employer’s main location, would frequently be economically untenable.

Such an objective rule is not open to wide abuse, as it is not feasible for all employees to do the majority of their work from home; neither would most employers permit this. Home working by choice as a ‘perk’ is usually limited, say to a day a week; in such cases, the 30% rule would ensure that the employer’s office was a work base and ‘ordinary commuting’ did not attract tax relief.

In summary, an objective test avoids the potential quagmire of ‘by choice’ rules, and reflects the business reality of the modern workplace.

**Question 17: Do you agree that removing relief for day subsistence is fair?**

Complete removal of all relief for day subsistence does not seem fair. The examples quoted are of employees who usually purchase lunch and others who would usually bring food prepared at home.

This does not cover the circumstances of covering the additional cost for employees on long-distance trips, where time and travel constraints mean that the cost of purchasing food is higher, and it is impracticable to bring food from home.

**Question 18: Are there any particular groups of employees that would be particularly disadvantaged by removing relief for day subsistence? Are such employees in particular industries and are they more likely to receive scale rate payments or be reimbursed for actual expenses?**

A non-exhaustive list of groups of employee who could be adversely affected by denial of day subsistence would include workers in construction; IT, teaching, and professional services.

**Question 19: Are there any circumstances where employees would normally need to (rather than choose to) incur a significantly larger expense on their day subsistence than normal due to being on a business journey? Are such employees in particular industries and are they more likely to receive scale rate payments or be reimbursed for actual expenses?**

See under question 17 and 18 above for groups and circumstances.

Long-distance travel is not uncommon. For example, a work day-trip to London from any part of Scotland is likely to take over 12 hours. It seems unreasonable that lunch and other day-subsistence expenses should be denied in such cases.
Relief could perhaps be restricted to circumstances where the employee is away from home for at least 10 out of 24 hours.

Reimbursement for actual costs incurred in such circumstances seems reasonable. Costs are likely to be incurred during the journey, rather than being items which could be included in a hotel bill along with overnight accommodation.

**Question 20: Would employers continue to pay day subsistence if relief were removed, and if so in what circumstances?**

Employers would be likely to continue paying day subsistence where employees make long journeys on business. There would be a disincentive for employees to undertake travel as part of the duties of the employment if they had to bear the additional costs of subsistence while away from home.

**Question 21: Are there any other ways of balancing the cost of the most generous simplifications set out in the framework that the government should consider?**

As regards relief for day subsistence, this could perhaps be restricted to longer trips only as mentioned at question 19.

The relief for ‘detached duty’ locations, could perhaps be restricted to less than 24 months.