Travel and subsistence survey
Executive summary

As a response to an Office of Tax Simplification report, HM Treasury (HMT) and HMRC are reviewing the legislation and guidance which applies to the taxation of employees’ travel and subsistence (T&S) expenses. HMT and HMRC have held some initial discussions with stakeholders, including EY, to better understand what changes may be needed. We expect that more focused discussions will take place in the months ahead, following which a formal consultation is likely to be published. So far, HMT and HMRC have no definite views on what needs to be changed. This approach is very welcome but undoubtedly a wide range of views about how to improve an area that is so complex and one where working patterns continue to change will be very challenging, particularly if any changes, in the words of HMT need to be ‘tax neutral’.

Despite this, there are areas of T&S legislation that organisations find difficult to understand and monitor so we will continue to engage with HMT and HMRC in order to share those views.

At the end of 2014, we conducted a survey of employers to examine how they implement T&S policy within their organisations and to gauge their opinion on the current legislation. There were over 100 responses to the survey, and this report sets out our findings together with a comment on the results.

The survey responses indicate that there is a strong view that the current rules are not fit for purpose. In particular, there are concerns with the definitions and interpretations of permanent and temporary workplace, particularly by non-tax specialists. There are also concerns that the legislation has not kept pace with changing work patterns, including an increase in employees working from home.
Key findings

89% of respondents believe the current T&S rules are in need of a fundamental review.

53% of respondents would not support a change of legislation that only allows tax relief on expenses where the amounts are paid by an employer, with a further 22% not knowing if this should be the case. A majority feel this would be unfair on employees.

70% of respondents stated that the current T&S rules are too complex for employees to understand.

41% of respondents think 24 months is about the right length of time for a worker to spend at a temporary workplace before it is defined as permanent, whilst 35% believe it is too short.

42% of respondents believed a percentage of employee attendances was not the best way to determine whether a permanent workplace exists.

75% of respondents believe expenses paid with regard to homeworkers is an area that requires specific legislative coverage.
A clear majority of respondents believe that the current T&S rules are in need of review. 89% of the respondents said the current rules needed to be changed, with half of respondents stating that the current rules are both outdated and too complex for them to operate. We believe that there are some specific aspects of the rules which regularly cause difficulties to employers, including the temporary workplace rules, the definition of a permanent workplace and homeworkers. In relation to these, the focus should be on amending the rules so that they are easier to follow, and providing simpler guidance to enable employers and employees to understand how they should operate.

“Rules are complex and outdated.”
Is your organisation’s employee travel and subsistence policy aligned to tax/NIC rules?

As part of the initial discussions HMT and HMRC have explored whether organisations’ expenses policies are driven entirely by tax/NIC legislation or whether there is a commercial basis on which policy is determined. An example given was the withdrawal of an agreed ‘staying with friends’ allowance a few years ago where many businesses subsequently removed it from policy claiming that it would increase costs rather than simply taxing it.

The survey shows that almost 20% of businesses do not align the policy to the tax rules, creating additional checks to determine the tax position. From a commercial perspective, businesses may continue paying individuals when a place becomes a permanent workplace in order to get a project completed.

“The policy is aligned but in the real world there are always grey areas.”
One of the questions raised by HMT in initial discussions was whether consideration should be given to only allowing tax relief on expenses that are actually met by the employer. 53% of respondents stated that they did not support this. Many respondents said this would be unfair on employees who do not have their expenses reimbursed by their employer which is often the case in the charitable or not-for-profit sector. Under such rules, employees in these circumstances would be obliged to pay the full cost of their expenses with no mechanism for tax relief.

There are a number of specific examples where we could see such a restriction having an adverse effect on employees, a common one being the claiming of tax relief on approved mileage rates where an employer provides an allowance that covers only the fuel element.

"If I incur costs wholly exclusively and necessarily in the performance of my duties, I should be able to get tax relief one way or the other."

Would you support a change of legislation that only allowed tax relief on expenses where the amounts were paid by an employer?

- Yes: 25%
- No: 53%
- Don’t know: 22%
70% of respondents describe the current rules around temporary and permanent workplaces as complex. Whilst this percentage is high, it is not surprising in view of the number of requests we receive from organisations about the tax treatment of specific working patterns. Critically, since it is predominantly commercial management teams that make decisions regarding the deployment of staff, it follows that a lack of understanding as to the circumstances which can create a tax charge can lead to inaccurate budgeting and pricing.

We understand the frustrations faced by employers regarding this matter. We also appreciate that cases involving temporary work can vary greatly and it is unrealistic to have a ‘one size fits all’ policy in such circumstances. However, we would expect clearer and simplified guidance to be provided by HMRC after a formal consultation.
Which of the following rules are the main areas of difficulty that you encounter with the current temporary workplace provisions?

The responses to this question flag two main aspects of the temporary workplace provisions. Firstly, the legal definitions as to what constitutes temporary and permanent workplaces, such as the 24 month rule. Secondly, how those definitions are applied in the context of multiple permanent workplaces. A third of respondents also raised concerns with regard to the operation of the current temporary workplace provisions in relation to workplaces in close proximity to each other.

It is no surprise that these provisions continue to cause problems for employers. A lack of clarity hinders the implementation of effective policies within organisations. In particular, the risk of failing to recognise when a person will exceed the 24 month limit can often lead to non-compliance by employers.
The current legislation provides that attendance at a workplace for a period of up to 24 months may be temporary and expenses relating to that attendance are allowable. Is the current 24 month period:

- Too long? 9%
- Too short? 15%
- About right? 41%
- Don't know 35%

This question gave rise to more comments than any other. Many of our respondents raised the issue of projects overrunning which may breach the existing 24 month rule although, in any practical sense, the workplace would still be a ‘temporary workplace’. Responses generally reflected the nature of the industry or sector that respondents operated in. Many in the infrastructure and oil & gas sectors often operated projects that had a lifespan of more than 24 months and therefore generated additional tax costs.

Although such sectors are particularly affected, almost all employers who operate from more than one site have ongoing issues with the permanent and temporary workplace rules. Often it is only in hindsight that errors in their application are spotted. Generally, HMRC can be resistant to including costs within a PSA, and in any event grossing up is very expensive for employers. Given the nature of real-time PAYE reporting under RTI, HMRC should look to introduce rules which can more easily be applied by employers based on current real-time data. One option which could be explored is the use of data-entry to a web-based HMRC interactive guide which could then be relied upon by the employer.

Length of time is not the only factor that determines whether a place is a temporary or permanent workplace. We see businesses being challenged where they cannot demonstrate that the individuals will work at a succession of sites and they fall foul of the rules whereby a place where all, or nearly all, of the duties are performed will be a permanent workplace. Although a number of respondents suggested periods of significantly longer than 24 months should be temporary, consideration also needs to be given as to how any extension sits within the all, or nearly all, rules.
“The nation needs to rebuild its infrastructure and some projects take three to five years to conclude. Families cannot always move or relocate and the employee commutes during the week. A period of between three and five years would be much more appropriate.”

“Oil & Gas projects tend to have a lifespan of three to four years therefore a 24 month period is too short for those specific projects and therefore generate additional tax costs.”

“It would be helpful if it could be aligned to project rather than just a defined length of time as typically an individual may be seconded to a project and that project slips beyond the original timeframe.”

“Legislation should recognise the practicality of large scale construction and infrastructure projects that last well in excess of 24 months. An absolute period of up to, say 36 months would be more appropriate – both in recognising realistic timescales and also to remove the current ‘intention’ rule.”

“Twenty four months seems reasonable but the issue here is the requirement to keep track of employee’s individual circumstances on a ‘daily’ basis. This can be a burden especially if there is a change which is not reported to local HR (for example the position being made permanent and this not being mentioned for some time as the employee’s manager assumes that there is no material change to the situation).”

“For international employees I would like to see this aligned with the Overseas Workplace Relief rules.”
Two of our questions focused on the trends towards employees undertaking more international travel and whether the existing travel rules were utilised as such. Whilst 40% of respondents thought international travel for employees would increase, in contrast, 20% only make use of the domestic rules. Businesses often have difficulty with determining the right treatment for cross border travel as they not only need to consider the domestic tax position but also special rules that are affected by an individual’s residence position, his country of domicile and the number of years he has been in the UK. In some cases, whilst travel expenses may be allowable, the subsistence element – such as hotels – could be taxable.

The law currently has two parallel sets of rules, one specifically for international travel that only allows relief from taxation in prescribed circumstances. Are both sets of rules needed?

- 42% Yes, as an organisation we clearly understand, make use of and benefit from, both sets of rules
- 20% No, we make use of and benefit from the domestic rules only
- 38% Don't know
42% of respondents believe that a percentage is not a good way to establish whether a permanent workplace exists. Many respondents feel this is too simplistic an approach to make a judgement on this issue. A particular problem would be where patterns could change over a period of time so monitoring travel would create more complexities to determine the tax treatment.

However, as with any legislation, a balance has to be struck between accuracy and simplicity. The OTS suggestion that only one permanent workplace should exist at any given time seems a sensible simplification, and serious consideration should be given to the use of a percentage basis as the main deciding factor in where that workplace is.

“If taxable expenses do arise due to business requirements, the company should be allowed to settle these via the PSA without obstruction from HMRC.”

75% of respondents would welcome new legislation covering expenses paid to homeworkers, whilst only 5% believe the existing rules are adequate. This reflects the fact that current legislation simply does not provide employers with sufficient certainty that reimbursed expenses fit within current available guidance. There is a clear need for legislation which helps employers and employees in this area.
What do you think are the main problems with the current travel and subsistence rules?

![Bar chart]

These questions confirmed our earlier findings that change must happen and we have received comments stating ‘all of the above are problematic in practice’.

In particular, we have received comments stating that ‘the current rules are too complex for non-tax specialists such as human resources to understand and apply in practice and it is difficult to track a large workforce’. More than 58% of our respondents review their employee T&S policy regularly, and some suggested ‘the main problem is that the rules have not kept pace with modern working practice’. This further strengthens our belief that a review of the T&S rules is required and they must be updated in a way that removes the current complexity.

Whilst HMT and HMRC have not explicitly committed to changing the existing rules, their comments to date indicate that they are aware of the need for change. We are of the opinion that a simplification of the T&S expenses legislation is a necessity in a modern working world and the table above demonstrates our clients’ desire for change as well as general discontent with the status quo.

“The rules no longer reflect current working practices and must be updated in a way that removes the current complexity.”
Conclusions

We believe that, for the vast majority of employees, the current regime can be followed. However, there are an increasing number of employees with work patterns that are more complex, where a disproportionate amount of time is spent on understanding the tax treatment.

In the main, the responses suggested that the current regime is too complex and any changes should be kept simple. The 24 month rule is often misunderstood and does not address current working practices. In addition, it is unhelpful for many employers where employees undertake lengthy projects at a temporary workplace. A point consistently made is that many tax specialists have difficulty in complying with the requirements, with non-tax colleagues often failing to understand the implications.

Of particular difficulty are home based employees who occasionally travel to an office, site based employees who move between sites but may not move sufficient distance to change workplace and international travellers where the tax regime is different to that for domestic travellers.

Overall, we welcome the fact that this area is being considered and that discussions with stakeholders are taking place. The previous legislation was in place for 150 years. This legislation has only been in place for 17 years but during that time we have seen significant changes to working patterns and the tax rules have simply not kept pace.

Further information

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