



The Law Society

Consultation on the Abolition of 36 Tax Reliefs

Relief 6: Late night taxis

Comments of the Tax Law Committee of the Law Society of England and Wales

Introduction

1. The Law Society is the representative body for over 140,000 solicitors in England and Wales. It negotiates on behalf of the profession and lobbies regulators, the Government and others.
2. We are pleased to have the opportunity to respond to the Consultation on the Abolition of 36 Tax Reliefs published by HM Treasury and dated May 2011.
3. This response has been prepared on behalf of the Law Society by the members of the Tax Law Committee. The Committee is made up of senior and specialist tax lawyers from across the country.

Summary

4. This paper sets out the Society's comments on the proposal to abolish the relief for late night taxis provided to employees.
5. We do not believe that a convincing case has been made for the abolition of this relief. It is a useful relief for which the original rationale for its introduction remains valid. The abolition of the relief will impose additional tax and compliance burdens on employers and employees. It will not simplify the tax system.
6. Our detailed comments are set out below. In addition, we have had the opportunity of reading, in advance, the submission made by the Chartered Institute of Taxation on this matter. We agree with the points made in their submission.

The relief

7. The relief is currently set out in section 248 of the Income Tax (Earnings and Pensions) Act 2003 ("ITEPA 2003") and the Social Security Contributions Regulations 2001, Schedule 3, Part 5, paragraph 5(c) and Part 10, paragraph 8(d).
8. The relief provides that the provision of late night taxis (or the payment or reimbursement of the associated expense) by an employer in order for an employee to travel home after work is not treated as a taxable benefit in kind provided that certain

conditions are met. These conditions include:

- that the employee is required to work later than usual and until at least 9.00 p.m.;
- that it occurs irregularly; and
- that by the time the employee ceases work, either public transport has ceased, or it would not be reasonable to expect the employee to use public transport.

9. The number of tax exempt journeys in each year is limited to 60.

Comments

10. No convincing case has been made for the abolition of this relief.

- The Consultation Paper repeats the assertion made in the OTS Report that the abolition of this relief is justified as a result of changing work patterns since 1987. This statement is unsubstantiated. We are not aware of any evidence that “those who find themselves working late are increasingly doing so on a regular basis”.
- The remaining arguments put forward in favour of the abolition of this relief rely on principles of fairness. It is stated that the relief may be used predominantly by those who work in large cities, or in higher paid employment and that those who regularly work unsociable hours cannot benefit from the relief.
- We acknowledge that those who work in large cities are more likely to use public transport and therefore more likely to benefit from this relief. But that is no reason to withdraw the relief. It simply recognizes that such employees are less likely to have used private cars for journeys to work, which we would have thought is to be encouraged.
- No evidence is supplied to support the assertion that the relief is predominately claimed by higher paid employees. Lower paid workers are more likely to rely on public transport. As the Chartered Institute of Taxation point out in their submission, the withdrawal of the relief has a proportionately greater impact on lower paid employees.
- As for the argument that relief is not available to those who regularly work unsociable hours, this is not an appropriate comparison. Employees who regularly work unsociable hours are not in the same position. They know that they have to do so and plan their lives accordingly. In many cases, the tax cost for such employees will be borne by their employers through PSAs and the compliance cost is limited as the journeys that they make are regular and foreseeable. That is not the case for those employees to whom section 248 ITEPA 2003 applies.

11. The original rationale for this relief remains valid.

- The relief was originally introduced in 1987 by an Inland Revenue Press Release dated 25 September 1987. The relief was designed to ensure that employees would not be charged to income tax if his employer sends him home by private transport where the employee is occasionally required to work late and either public transport is ceased or it would not be reasonable to expect the employee to use it.

- The rationale for the relief remains unchanged. It is designed for people who normally rely on public transport, but who are occasionally prevented from doing so by unusual demands placed on them by their employers.
12. Abolition of the relief will not simplify the tax system.
- The OTS's remit is to simplify the tax code. The abolition for this relief would not do so.
 - At present, the extra statutory concession does simplify the tax system. It avoids the need for employers to track the costs incurred on taxi journeys which fall within the terms of the relief. It avoids the need for them to make returns or enter into PSAs in respect of them.
 - If the relief is abolished, the administrative burden on employers would be increased. This compliance burden should not be underestimated. Many employers would have to report a small number of taxi journeys for a large number of employees.
13. Abolition of relief will impose further tax costs on employers and employees.
- In the circumstances in which the relief applies, the payment of taxi fares by the employer can hardly be described as a benefit in the true sense. It is simply the case of an employer bearing the additional cost that the employee would otherwise have to bear because he or she has agreed to work late. In many cases where the relief applies, the employee will already have incurred in cost of regular travel through the purchase of a season ticket, which will not be reimbursed by the bus or train companies, and for which the employee obtains no tax relief.
 - The withdrawal of the relief will impose additional tax costs on employees or, more perhaps likely employers, if, as we would expect, employers in most cases absorb the additional cost. This is a stealth tax under the guise of simplification. It will not, we suggest, be insignificant as suggested by the Consultation Paper.
14. We note that the same approach is not taken to taxi journeys taken by MPs, who are entitled to claim reimbursement for taxi journeys to and from the House of Commons at taxpayers' expense and, who, under section 293A ITEPA 2003, are not liable to income tax on those amounts (without having to meet any of the conditions that apply to section 248).

Contact details:

If you have any questions concerning these representations or would like to discuss anything contained in them, please contact the Chair of the Tax Law Committee, Ashley Greenbank (tel: 020 7849 2512, e-mail: ashley.greenbank@macfarlanes.com).