



## ICAEW REPRESENTATION

### TAXREP 25/10

### NATIONAL MINIMUM WAGE WORKERS: TRAVEL AND SUBSISTENCE EXPENSES SCHEMES

*Comments submitted on 14 May 2010 by the Tax Faculty of the Institute of Chartered Accountants in England & Wales to HM Treasury in response to the consultation document issued on 10 February 2010*

Contents	Paragraph
Introduction	1-3
Who we are	4-6
Key point summary	7-10
Answers to consultation questions	11-21
The Tax Faculty's Ten Tenets for a Better Tax System	Appendix

# NATIONAL MINIMUM WAGE WORKERS: TRAVEL AND SUBSISTENCE EXPENSES SCHEMES

## INTRODUCTION

1. In this document we present the comments of the Tax Faculty of the Institute of Chartered Accountants in England and Wales (ICAEW) on the above-named consultation document (the condoc) issued by HM Government on 10 February 2010 at [http://www.hm-treasury.gov.uk/consult\\_minimumwage\\_expenses.htm](http://www.hm-treasury.gov.uk/consult_minimumwage_expenses.htm).
2. We are pleased to have the opportunity to respond to this consultation. We should be happy to discuss any aspect of our comments and to take part in all further consultations on this area.
3. Information about the Tax Faculty and the ICAEW is given below. We have also set out, in the Appendix, the Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark proposals to change the tax system.

## WHO WE ARE

4. The Institute operates under a Royal Charter, working in the public interest. Its regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the Financial Reporting Council. As a world leading professional accountancy body, the Institute provides leadership and practical support to over 132,000 members in more than 160 countries, working with governments, regulators and industry in order to ensure the highest standards are maintained. The Institute is a founding member of the Global Accounting Alliance with over 775,000 members worldwide.
5. Our members provide financial knowledge and guidance based on the highest technical and ethical standards. They are trained to challenge people and organisations to think and act differently, to provide clarity and rigour, and so help create and sustain prosperity. The Institute ensures these skills are constantly developed, recognised and valued.
6. The Tax Faculty is the focus for tax within the Institute. It is responsible for technical tax submissions on behalf of the Institute as a whole and it also provides various tax services including the monthly newsletter *TAXline* to more than 11,000 members of the Institute who pay an additional subscription, and a free weekly newswire.

## KEY POINT SUMMARY

7. The proposal in the condoc to amend the national minimum wage ('NMW') rules to prevent expenses that qualify for tax relief under the temporary workplace rules from counting as NMW seems a neat and elegant way of ensuring that employers charge tax and NIC on emoluments that are effectively pay.
8. However, the proposal if enacted will have a negative financial impact on almost all the workers that the Government is seeking to protect, once the consequences such as decreased working and child tax credits and income-based benefits are taken into account. The proposed policy seems to be based on the false assumption that those NMW-level workers who are currently paid an amount that is partly wage and partly home-to-work travel expenses will still be paid tax-free travel expenses in addition to the NMW, instead of as part of it. In the low-wage employment business sector, the economics are such that the workers will continue to be paid at the same rate after the proposed change, but none of the pay will be designated as travel expenses, so the loss of the tax and NIC relief will reduce their net pay. Although such workers will, in theory, still be able to claim tax relief under the temporary workplace rules, for some this may seem so daunting as to be

effectively impossible. The NMW workers the Government claims to be protecting are typically very unlikely to engage with HMRC by submitting form P87 claims for refunds, both because they will not understand their entitlements and because they will be unfamiliar with the bureaucratic process and the record-keeping requirements.

9. It will also impact adversely financially on those businesses who have been operating the schemes highlighted in the condoc, which it must be said do not contravene the law. The extra NIC cost, which cannot be recovered where the employee makes a tax relief claim, will inevitably mean that employment businesses such as umbrella companies will have their ability to offer a flexible workforce undermined and will reduce the amount of work they offer to the NMW sector.
10. A (doubtless unintended) consequence of the proposed change could enable low-pay workers to claim that their employer must pay them any tax-deductible home-to-work travel costs in addition to their wages. We recommend that the amendment (a) exclude any tax-deductible expenses actually paid by the employer from qualifying as part of the NMW, and (b) ensure that the law creates no entitlement to be paid travel expenses in addition to being paid the national minimum wage, whether or not such travel expenses incurred by workers are tax-deductible.

## **ANSWERS TO CONSULTATION QUESTIONS**

*Question 1: The Government believes that amending the NMW Regulations to exclude expenses which relate to travel to a temporary workplace from counting towards NMW pay is the best approach in dealing with this problem. Are there alternative approaches which would achieve the same outcome and which you believe that the Government should consider? If so, then please give details of these.*

11. The proposal in the condoc to amend the NMW rules to prevent expenses that qualify for tax relief under the temporary workplace rules counting as national minimum wage seems a neat solution.
12. An alternative approach that has been suggested to us would be to make it a condition of the dispensation needed by an employer to pay travelling and subsistence expenses tax-free that it can only be applied to workers whose pay for NIC purposes is not less than the lower earnings limit. This of course would need policing by HMRC but if the requirement were clearly stated in the dispensation application form then the first stage in effective enforcement, namely that those targeted are aware of what they need to do, would be met. This solution is predicated on the basis that an employer does want to take advantage of the administrative savings that dispensations provide – and, in the absence of a change to the NMW rules, employers who do not want to be bound by such terms could choose to continue to pay the travelling expenses and enter them on forms P11D.

*Question 2: Will amending the Regulations in this way adversely impact on NMW workers in a way that we have not anticipated? If so, please provide details.*

13. Once the cut in take-home pay, and reductions in working tax and child tax credits and other means-tested benefits are taken into account, the change proposed in the condoc will have an immediate negative impact on almost all the workers that the government is seeking to protect. Against this, however, the employees concerned will still be able to claim income tax relief on the expenses incurred under the temporary workplace rules, and so will have the opportunity to make up some of this loss. This will involve them in having to submit claims to and liaise with HMRC, which many may find difficult even if they know they can do so.
14. Many employment businesses supplying temporary NMW workers will not be able to absorb the cost of having to pay more NIC and will have to resile from long-term supply contracts with client businesses and tender for work at a higher rate. This may result in less work, businesses folding and increased unemployment. This may also have expensive implications in terms of unfair dismissal, redundancy costs and notice pay.

15. Concerns have been raised by our members and their clients that a (doubtless unintended) consequence of the proposed change would enable low-pay workers to claim that their employer must pay them any tax-deductible home-to-work travel costs in addition to their wages. This would arise from the fact that, even if the employer did not claim that any pay was a qualifying travelling expense, there would be nothing to prevent the employee from doing so even if it was not specifically reimbursed by the employer (such as a mileage claim at 40p a mile).
16. This would clearly be both a huge imposition on employers and grossly unfair, as workers who lived further away from their temporary workplace could claim higher payments than those who lived nearby. We recommend that the amendment be carefully worded so as to (a) exclude any tax-deductible expenses actually paid by the employer from qualifying as part of the NMW, and (b) ensure that the law creates no entitlement to be paid travel expenses in addition to being paid the national minimum wage, whether or not such travel expenses incurred by workers are tax-deductible.

*Question 3: What are your views on the potential implementation date of 1 October 2010, if the proposed changes to the Regulations are adopted?*

17. Although this proposal is in essence a tax and NIC anti-avoidance measure, given the impact on businesses and on workers, we are concerned that a 1 October 2010 deadline could result in legislative changes being rushed through without all the practical implications being sufficiently considered.
18. Businesses that employ site-based workers likely to be affected to will need time to evaluate the financial implications of the change, determine their strategic approach and implement the changes. They will also need time to renegotiate supply contracts: their contractual commitments may mean that they are locked into arrangements with very tight margins and introducing a change like this at less than a full year's notice may cause their business to become uneconomic and fail.

*Question 4: What would be the impact of changes to Regulations on administrative processes and costs to business?*

19. Resultant increases in costs either have to be absorbed by the employment businesses or the end user. This may result in fewer temporary employees working and job losses as costs are cut to compensate for the extra NIC costs.
20. There will be costs for HMRC who will have to process claims, potentially from many tens of thousands of workers, for repayment of tax in respect of deductible travel expenses. This may well give rise to bulk claims (eg, from high-volume repayment agents who can process such work cheaply) which will need checking.

*Question 5: Do you have any comments on the accompanying Impact Assessment?"*

21. We are not commenting on the impact assessment.

PCB  
14 May 2010

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## 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 (see <http://www.icaew.com/index.cfm?route=128518>).

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