

**Dodd & Co**  
Chartered Accountants

# Hotels

## Staff Accommodation

**A**s some hoteliers have already found to their cost, the Inland Revenue are taking a keen interest in the provision of free (or subsidised) accommodation to staff.

The Inland Revenue are focusing on two main areas with a view to obtaining monetary settlements from the hotel sector:

1. The provision of free (or subsidised) accommodation for staff usually gives rise to a benefit in kind charge. If the employer has not previously reported this benefit to the Inland Revenue, then the Inland Revenue will seek tax, NIC, interest charges and possibly penalties from the hotel owners (i.e. not the staff themselves). If the Inland Revenue find a problem with the current year, then they normally review the last six tax years which means that the monetary settlement can be very significant where the employer has not reported the benefit in kind on the annual PAYE year-end returns (forms P11d and P9d).
2. Accommodation is one of the few benefits in kind that employers can take into account when calculating whether an employee is being paid the national minimum wage. However, some employers are unaware that this benefit is capped at a rate of broadly £3.50 per day (set to increase to £3.75 from 1 October 2004). Consequently, some employers are paying staff below the national minimum wage and the Inland Revenue are identifying these errors when carrying out their review of employers' records.

This article concentrates on the first of these two issues, as this is the one that usually gives rise to the largest liability for hoteliers.

### ***So what are the tax rules on staff accommodation?***

The rules are actually very complex, but the following is intended to provide a general overview of the typical problem areas that arise in relation to staff accommodation, when the Inland Revenue carry out an inspection of a hotelier's PAYE records.

### ***Choice of free accommodation or additional wages***

It is quite common for staff to be given the choice of either "living in" the hotel premises, or taking a higher wage (in lieu of the free accommodation). In this scenario, the Inland Revenue will try to use a tax case (Heaton -v- Bell), to argue that where the employee has chosen to take the free accommodation, the alternative offer of additional wages should be subject to tax and NIC (even though the employee has never been paid these additional wages!).

So can the Inland Revenue do this?

Well, it depends on the underlying circumstances and, in particular, the terms and conditions of the employee's contract of employment (whether this be written or oral).

For example, if the employee's contract of employment allows them this choice on an ongoing basis (i.e. the employee can move out of the hotel accommodation at a later date and be paid the higher wages instead), then in most situations the Inland Revenue will be within their rights to seek to impose tax and NIC liabilities.

In contrast, if the employee has genuinely sacrificed the offer of additional wages, and chosen free accommodation instead (and does not have the contractual right to simply switch to additional wages instead at a later date), then in most situations the Inland Revenue will not be able to impose tax and NIC liabilities. Please note that there is nothing to prevent the employer and employee agreeing at a later date to alter the terms and conditions of the contract of employment, such that the employee gives up the free accommodation and is paid a higher wage instead.



# Hotels - Staff Accommodation

The crucial point to note is that it is primarily the terms and conditions of the employee's contract of employment that will determine whether the hotel business has an exposure to tax and NIC liabilities. The Inland Revenue fully acknowledge that employees can legally avoid tax and NIC by "sacrificing salary for benefits in kind" and they have recently published helpful guidance on their website that sets out the procedures that employers should follow in order to avoid problems in this area. (The guidance can be found on [www.InlandRevenue.gov.uk](http://www.InlandRevenue.gov.uk) and inserting "salary sacrifice" in the search field).

As is often the case with tax, it is not "what you do" but "how you do it" that is important!

## ***Nature of the accommodation***

Assuming that the employee's contract of employment does not create any tax problems (as explained above), then in many situations there will be no tax or NIC exposure for the hotel business in relation to the provision of free accommodation to staff. This will normally be the case where the staff live in the main hotel building itself.

Problems can arise where the staff live in property that is not part of the main hotel building. Again, it will be the underlying circumstances of each case that will determine whether there is a tax and NIC exposure on the hotel business. For example, if the staff live in a house that is close to the hotel (and this is not within the hotel grounds), then in most situations there will be a benefit in kind charge and the Revenue will be able to impose tax and NIC liabilities.

## ***Heating and lighting costs***

A common misconception is that if the accommodation itself is exempt from a benefit in kind charge (e.g. because it is necessary for the employee to live in the accommodation for the proper performance of their duties), then there is no tax or NIC exposure. However, this is not necessarily the case as any running costs associated with the property (such as gas and electricity) do not qualify for this exemption.

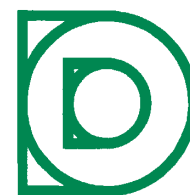
The amount of tax and NIC at stake will again depend upon the particular facts and circumstances. For example, if the staff accommodation is within the main hotel building itself, then the Inland Revenue will normally accept that there is no tax or NIC liability, as the additional heating and lighting costs associated with the staff accommodation are negligible when compared to the overall heating and lighting costs of the hotel.

## ***Directors of limited companies***

Many hotel businesses are now operating within limited company structures, which is a strategy that usually provides both commercial and tax advantages. However, one potential pitfall to watch out for is that directors are specifically excluded from the exemptions that are sometimes available to employees in relation to free accommodation. Having said this, with many limited company structures, the hotel properties themselves are often retained in personal ownership (i.e. they are kept outside of the company) which avoids this potential issue, providing the directors' accommodation is not being rented to the company.

*There is no doubt about it that the Inland Revenue are under increasing pressure from the Government to raise additional tax revenues and we are seeing this in the form of a more aggressive approach in their recent inspections of employers' PAYE records. Our advice is prevention is far better than cure and if you have not yet received a visit from one of the Inland Revenue's employer compliance teams, then we would recommend that you review your present arrangements in relation to staff accommodation to ensure that you do not have an exposure to significant tax and NIC liabilities.*

*If you have any tax queries on the subject of staff accommodation or tax matters in general, please call Dean Johnston on 01228 530913.*



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