

Free Accommodation

JULIE BUTLER looks at tax-free accommodation for equine staff and employing family members.

THE TURMOIL FACING the racing industry, with reviews by the Office of Fair Trading, is well publicised. The fight for payment of more remuneration for stable staff is also well documented. A key help in this respect can be to make sure that the remuneration achieves maximum tax efficiency.

Racehorse trainers' employees

The tax treatment of staff employed by racehorse trainers is set out in the Inland Revenue's *Employment Income Manual* at paragraph EIM68502. The detail is found in section 19(1)(1), Taxes Act 1988 and Extra-statutory Concession A60 'Agricultural workers' board and lodgings'. Paragraph EIM68502 reads:

'Because of the traditional practice of providing board and lodging for stable lads, the Revenue accepts that no tax charge arises to those who are in an excluded employment (see paragraph EIM20007) if certain conditions are satisfied. The conditions are those that apply to farm workers, see paragraph EIM50012.

'Where living accommodation is provided, instead of board and lodging, see paragraph EIM11351 about possible exemption from charge.'

The stable staff of racehorse trainers who live on the premises and certain other key workers who live close to the stables can live in the accommodation provided without being regarded as in receipt of a taxable benefit.

Full details of the agreement covering the treatment of accommodation provided to stable staff in the horseracing industry can be obtained from Personal Tax (Technical), Solihull. Tax advisers can obtain the agreement from the National Trainers Federation website.

PricewaterhouseCoopers, the tax advisers to the National Trainers Federation, agreed with the Revenue the national treatment of living accommodation provided to stable staff. Living accommodation (as opposed to 'board and lodging') provided to stable staff will be tax exempt for all stable staff living within the curtilage of the training establishment. It will also be exempt if the employees can reach the yard within ten minutes, or if they have access to motorised transport and live within a five-mile radius of the yard provided the staff are grade A staff. The key is that grade A staff do not have to live within the curtilage and have the benefit of being able to reach the yard within ten minutes.

Stable staff cannot sublet, cannot be reimbursed, and do not have the right at any time to give up the

accommodation in return for higher wages. Trainers should be aware that very few employees can meet the strict exemption from tax conditions on board and lodgings, detailed further below, and the straight provision of accommodation is generally more efficient.

The agreement between the National Trainers Federation and the Stable Lads Association defined grade A staff as 'head lad, travelling head lad, assistant trainer and other senior staff', and grade A also depends on the length of service. The member of staff must be able to comply with the conditions mentioned above.

The employee will be taxable on the costs of the accommodation paid by the employer, e.g. telephone bills, use of furniture, appliances and repairs, internal decoration, heating, lighting and cleaning, but exempt staff have the liability capped by virtue of section 315, Income Tax (Earnings and Pensions) Act 2003, to which readers are referred for full details.

When there is a tax charge on living accommodation, the tax due will be:

- where the employer rents the accommodation, the employee will be taxed on the amount equal to rent paid;
- where the accommodation is owned by the employer, be it freehold or leasehold, the tax charge is based on the gross rateable value. This is complex when the cost of the property is over £75,000 (a figure which needs to be changed); see section 106, Income Tax (Earnings and Pensions) Act 2003.

Agricultural workers

The collapse of the farming industry has also heightened the need to maximise tax efficiency of farm workers.

The *Employment Income Manual* at paragraph EIM50012 (was *Schedule E Manual* at paragraph SE50012) sets out the tax treatment of agricultural workers and the relevant board and lodgings exemption for 'lower paid' workers. This is available on the basis that certain conditions are met.

The full text of Extra-statutory Concession A60 follows:

'Income tax will not be charged on the value of free board and lodging provided for agricultural workers by their employers despite their entitlement to take a higher cash wage in lieu provided by the Agricultural Wages Act, where all the following conditions are satisfied:

- (a) The worker is not a director or in an employment to which Chapter II of Part V to the Taxes Act 1988 applies.
- (b) The contract with the employer provides for a net cash wage with free board and lodgings.
- (c) Where the board and lodging is not provided in the farmhouse, the employer has a contract with a third party for its provision and payments under the contract are made direct to the third party.



'Where, instead of being entitled to a net cash wage and free board and lodgings, the worker is entitled to a gross cash wage, he is assessable on the gross amount even if the employer, with his agreement, deducts a sum to pay for his board and lodgings in the farmhouse or elsewhere.'

The manual explains further as follows:

'For the purposes of condition (c) above, a contract between the employee acting as agent for the employer and the third party providing the accommodation is acceptable. Provided such a contract exists, no objection should be raised if the landlady is the mother of the employee concerned. The payments under the contract should be made direct to the landlady by the farmer. An arrangement whereby the farmer gives the employee a sealed addressed envelope containing the payment for board and lodging to be handed to the landlady should be accepted as meeting this requirement.'

Rent-a-room

Extra-statutory Concession A60 makes direct reference to accommodation being provided by third parties. A practical point worth mentioning here is the 'rent-a-room relief' scheme which can be used as a tax planning tool for all parties involved.

In any equestrian activity, finding good staff is very difficult and, as most activities take place in a combination of isolated rural outposts or in the overcrowded equestrian centres of, say, Newmarket or Lambourne, finding accommodation can be difficult. Persuading locals with a desire for a tax-efficient income stream to allow staff to rent a room from them can be extremely beneficial for both the equine employer and the recipient of the money.

Rent-a-room relief was introduced as from 6 April 1992 to encourage those with spare rooms in their houses to let them out (see Schedule 10 to the Finance (No 2) Act 1992). Residences in which the rooms are let must be the individual's only or main residence.

'Residence' means a building (or part of a building) occupied or intended to be occupied as a separate residence, and includes a caravan or a houseboat. A residence qualifies if it is an individual's only or main residence at any time in the basis period. The test is based on the income tax rules for mortgage interest relief, and not the capital gains tax principal private residence exemption.

It appears that the relief can be claimed by both owner-occupiers and tenants. Relief is given in terms of the gross rent accruing for a particular period up to an amount of £4,250 from 6 April 1997, but it is possible that this figure

will be varied by Treasury order in future years. If the gross amount accruing (not allowing any deductions) exceeds £4,250, the recipient may elect to:

- pay tax on the amount by which the rent exceeds £4,250 without any relief or deductible expenses; or
- calculate the profit from the letting by deducting expenses incurred from the gross rent, and paying tax on the net profit in the ordinary way.

The second alternative is effectively an election not to claim the relief, which will be more advantageous if, for example, deductible expenses produce a net allowable loss. The first alternative, on the other hand, is likely to be advantageous where the gross rents marginally exceed the threshold of £4,250.

There are no stipulations concerning the length of the tenancy, so the exemption is arguably applicable to bed and breakfast accommodation offered to holidaymakers in a farmhouse, although there is some debate about this. Relevant sums for the purposes of the exemption include those receivable for goods or services, including meals, cleaning and laundry. However, relief is not available on cottages let to holiday-makers, which do not qualify as a 'main residence', unless such a cottage has been separately occupied by a member of the farming family.

Rent-a-room relief is not available if a residence is let for use as an office or for other trade or business purposes, rather than for providing furnished living accommodation. The Revenue's view is that for the relief to apply, the rent must be receivable for the use of 'furnished accommodation' meaning 'a place to live'. However, relief is not denied where a lodger living in the house is provided with the use of a room with a desk as a study, such as a student (see the Revenue's *Tax Bulletin 12*, August 1994).

If a farmhouse is in multiple occupations, and each occupier takes in paying guests, the exempt amount of £4,250 is divided amongst the occupiers. Participation in the rent-a-room scheme will not prejudice principal private residence exemption from capital gains tax.

The tax efficiency of stable staff living in 'rent-a-room' accommodation can have a double tax advantage. The accommodation can be tax free to the recipient and the payment tax free in the hands of the provider of the accommodation.

Family members

Many equine businesses employ family members, especially the children. Often children are paid a sum just below the National Insurance contribution limit. For the purposes of employment legislation, they must be at least 14 years old. Tasks carried out by family members should be evidenced to prove that their remuneration is not simply 'disguised pocket money' or income diversion. Duties normally include grooming, exercising horses, travelling to competitions in the role of groom, etc. ■

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