Travel and subsistence: discussion paper
Response by the Chartered Institute of Taxation

1 Introduction and Executive Summary

1.1 The Chartered Institute of Taxation (CIOT) sets out below our response to the HM Treasury (HMT) discussion paper on tax relief for employee travel and subsistence (T&S) expenses.

1.2 We believe that the current rules work for the majority of employers and employees in most situations. We also think that the current rules are, mostly, correctly understood and applied by employers and employees.

1.3 We do however agree with the Office of Tax Simplification’s (OTS) findings that there are a number of areas where the current rules are complex to apply in practice. We also agree that the current rules have not kept up with evolving work patterns and employee mobility.

1.4 Consequently, we are pleased to see that the government is seeking to address the issues the OTS identified through the discussion paper.

1.5 We would however countenance against radical change in order to address issues for a minority of employers and employees if this means that the majority, for whom the current rules work reasonably well, will then have to implement and get used to a whole set of new rules. Such a move is likely to prove counterproductive.

1.6 Our recommendation is that the aim of this consultation process should be to retain those existing rules that are well understood while updating the rules to address identified issues, such as changing work patterns, in a manner that is simple to understand and operate.
1.7 We have set out our detailed comments on the discussion document below. In particular, we would advocate against removing relief for day subsistence; to do so would be unfair to employees and employers.

2 Our response to the discussion questions

2.1 Question 1: Do you agree that these are the main issues that cause employers difficulty under the current rules? Which rules create the most difficulties?

2.2 We agree that the main issues that cause employers difficulty have been identified in the discussion paper.

2.3 We think that the areas that cause most confusion are the definitions of ‘regular attendance’ and ‘temporary workplace’, the ‘intention’ test in the detached duties rules, the rules whereby an employee can have more than one permanent workplace and the homeworking rules.

2.4 We believe that a common problem with interpreting the current rules is that the tests to apply can be either subjective or unclear, with the result that different people can quite easily come to different results on the same facts when considering whether or not a particular test is met. This is amply illustrated in Section 2 of the discussion document, for example, when interpreting the meaning of ‘regular attendance’ or defining a ‘permanent workplace’ and a ‘temporary workplace’ etc.

2.5 Question 2: Are there any additional issues with the current rules that are not summarised above?

2.6 We believe that the main areas of difficulty have been identified in the discussion document. There are however some additional issues to consider:

- Whilst we appreciate that the special rules on international travel will be considered in detail in due course we think that it is important, when considering any changes to the basic rules, to factor in how the changes would impact on those who travel to or from the UK on business or who are assigned longer term to or from the UK; and

- The evidential burden in respect of retaining receipts (eg to support subsistence claims), albeit we note that the issue of record keeping and evidential requirement is also mentioned as an area that will be considered in due course. There are significant administrative burdens on employers and employees in evidencing subsistence expenses, even when benchmark scale rates are used, which we think should be reduced (eg through a de minimis exception).

2.7 Question 2: How widespread is the issue of employees having more than one permanent workplace? Are there any particular industries or roles where it is commonplace?

2.8 Many larger businesses will have a number of different bases across the country. While most employees will work at one location there will be some employees for whom their role means that they spend time at multiple locations. This practice is perhaps becoming more prevalent with, for example, employers spreading teams over more than one location, with the result that some of those employees are likely to find themselves regularly travelling to, from and between multiple locations.
(whether of course this results in there being more than one permanent workplace under the current rules depends on the circumstances).

2.9 Most employers would not, however, consider that an employee in the situation described above has more than one permanent workplace despite spending significant time at other locations. Hence, the area of difficulty that arises is that under the current rules HMRC may consider that the employee has multiple permanent workplaces when the employer and employee would think that the employee has a single permanent workplace plus one or more temporary workplaces which the employee visits as part of the duties of his/her employment.

2.10 **Question 4: Overall, do you agree that there is a good case for reforming some aspects of the tax rules for travel and subsistence expenses?**

2.11 We agree that working practices and patterns have changed since the current set of rules were updated in 1998. For example, technological developments allow many more employees to work from home on a permanent, semi-permanent or ad hoc basis, and transport improvements mean that many more employees are either able to or expected to travel further for work purposes. Overall, these changes have resulted in a much more mobile workforce in the UK.

2.12 One consequence of this increased mobility is that the T&S rules have not kept pace with the change in working practices and patterns. Accordingly, we agree that aspects of the current rules do need re-visiting.

2.13 However, we would caution against too radical a reform of the T&S rules. Our concern is that in trying to remove areas of complexity in the current rules we end up with new rules which introduce whole new areas of complexity and administrative burdens for employers to deal with. Hence, we recommend that the aim of any reforms should be to bring more certainty where currently there is uncertainty (eg by looking to remove subjective tests, more clearly defining the meaning of terms, etc.).

2.14 **Question 5: Do you agree that these are the right principles on which to base a new set of rules? Bearing in mind the requirement that any changes should not come at a cost of the exchequer, are there any additional principles that the government should consider?**

2.15 We agree that the principles listed below represent a foundation upon which an updated set of rules could be developed:

- tax relief should continue to be available for business travel, but not ordinary commuting;
- any tests should be objective and based on measurable facts as far as possible – they should not rely on the intentions of the employee;
- the rules need to be readily understandable by employees and employers and we think that introducing the concepts of ‘bases’ and ‘main base’ (as opposed to ‘permanent’ and ‘temporary’ workplaces) may be helpful in this respect;
- employees should not have their journeys to multiple locations, or areas which are a significant distance apart, all treated as being ‘ordinary commuting’;
- the treatment of subsistence and accommodation should generally follow on from the rules for travel.
2.16 We think the updated rules should seek to increase certainty through objective rather than subjective tests; that they should seek to reduce the administrative burdens on employers and not increase employers’ and employees’ tax and NIC costs.

2.17 **Question 6: Do you agree that this rule currently works well and should remain broadly unchanged?**

2.18 We agree that the current rule in respect of T&S relief for travelling in the performance of the duties of the employment is generally well understood and does not need to be changed.

2.19 Similarly, we do not believe that the tax relief currently available for travelling to/from a temporary workplace should be changed.

2.20 **Question 7: Do you agree that the concept of an employee’s ‘main base’ is a sensible basis for a new rule?**

2.21 We agree that introducing the concept of a ‘main base’, ie the workplace at which an employee spends more time than any other workplace on average, may simplify the administration of the T&S rules in so far as employers and employees would then understand that (a) they can only have one main base and (b) that disallowable travel costs are essentially confined to travel between home and main base.

2.22 We think that such a concept would mean that for most employers and employees, eg where the employee has a single workplace perhaps with occasional visits to other locations, there would be no change in their understanding of the T&S rules which would be good.

2.23 Some employees will regularly attend a number of workplaces with travel to each being a necessary part of their job. T&S tax relief in such circumstances should be maintained under the new approach. The commentary on Example (i) suggests this is intended, indeed it may be that more relief would be available under the new rules because there would be no restriction (as now) around ‘regular attendance’.

2.24 Equally, some employees will have what is presently regarded as a permanent workplace but spend most of their time at temporary workplaces. Example (ii) deals with this situation. Here the new rules would operate to transform the permanent workplace into a simple workplace, because attendance there falls below the threshold to constitute it as a ‘base’. This would mean that tax relief would be permitted for travel between home and that workplace. Whereas under the current rules this would be seen as ‘ordinary commuting’.

2.25 The ‘base’ and ‘main base’ concept, as currently proposed, would therefore come at a cost to the Exchequer. No doubt the Government would want to examine what this cost is and we agree that this is important.

2.26 There is also another facet of the cost issue which we would highlight. Consider an employee who lives at A and travels to his workplace at B each day. His employer then establishes another office at C and the employee then regularly spends 2 days a week at B and 3 days a week at C (the same days each week). Under current rules no tax relief would be available for travel between home and either B or C. But under the proposed rules if C is nominated as the main base then relief would be due for travel between home and B. But is this consistent with the underlying policy objective of revenue neutrality?
2.27 The point being that under the current rules there can be multiple permanent workplaces but under the proposed approach there cannot, and so clearly more tax relief will be available. Whilst employers and employees are unlikely to argue with this per se, the issue arises as to the quid pro quo. And on this point please see our comments in relation to the proposal to restrict relief for day subsistence. The issue being one, not least, of winners and losers.

2.28 Question 8: Would a test based on the percentage of an employee’s time spent at each location be workable for employers in practice? Would it be better than the more subjective tests in place at the moment?

2.29 A percentage test could work better than the current subjective tests. From an employer’s point of view a percentage test has the potential advantage of determining absolutely an employee’s ‘main base’.

2.30 However, our concern would be the basis of assessing which workplace is the main base, who carries out that assessment (employer or employee), when this is done and how.

2.31 For example, where an employee visits more than one workplace it would be necessary to decide whether the test is based on hours or days spent at each workplace, or on contracted hours/days at each. Do you take account of travel to/from and between the workplaces (eg if the employee ‘works’ whilst travelling). Then there are ‘special cases’ to consider such as non-executive directors who only attend a few board meetings but do a lot of preparatory and follow-up work at home.

2.32 Also an employer would seem to have to forecast which workplace will be the main base in order to decide which T&S expenses can be tax relieved, especially if the employer is organising and paying for the travel. But over what period would that forecast be made? It would be very difficult to undo T&S tax relief if the employer got the forecast wrong and T&S tax relief had been given on the ‘wrong’ T&S expenditure.

2.33 We think the test would only be workable in practice if the employer can objectively determine which workplace is the main base prior to T&S expenses being incurred. Otherwise either it becomes a subjective percentage test or the tax treatment of T&S expenses will have to be decided after the expense has been incurred, which is going to make life very difficult for both the employer and employee.

2.34 Question 9: Do you agree that employees should be able to nominate which of their ‘bases’ is to be their ‘main base’? Is there an alternative that the government should consider (eg the location where the employee spends the highest proportion of their time)?

2.35 We agree that the concept of nominating a base would be welcomed by employers and employees in the sense that it would appear to provide certainty as to which T&S expenses can be paid or reimbursed. But the question is how would this work in practice?

2.36 In particular, would the employer be involved in the nomination process? Some might say that excluding the employer from the process is asking for trouble! It would be an odd result if an employer considered an employee to be essentially working at one location but the employee nominated another workplace as their main base. In such circumstances, the T&S expenses that the employer might agree to pay or reimburse the employee would be substantially different from the expenses that would be tax relieved. Which may suggest that the employer should have a role in
the nomination process. In which case clearly there would need to be dialogue/agreement with the employee and this would need to be factored in to the administrative time involved in operating the nomination approach.

2.37 It is also necessary to consider whether, if the nomination is made solely by the employee, is the nomination submitted to the employer or HMRC (or both) and is either responsible for notifying the other which location has been nominated. In practice, nominations could be problematic to administer and police.

2.38 Furthermore, and assuming HMRC would have the ability to challenge a nomination, consideration should be given to the position where HMRC challenges an employee’s nomination and it is subsequently demonstrated that the employee’s nomination was invalid. To what extent would the employer be held liable for unpaid tax and NICs, for example for having paid or reimbursed tax relieved T&S expenses based on the employee’s original and incorrect nomination?

2.39 **Question 10: Do you agree that there is still a need for tax relief for travel to a work location that an employee attends on detached duty as part of an ongoing employment?**

2.40 Yes, we agree that employees should continue to be able to receive tax relief on T&S expenses incurred when an employee is required to perform duties of his/her employment for a limited duration at another location.

2.41 We believe that it would be unreasonable to deny tax relief in such circumstances.

2.42 We also agree that the current subjective test of whether the intention is for the employee to attend that temporary workplace for less than 24 months should be removed and replaced with a simpler objective test as to whether attendance is for a limited duration.

2.43 However, we do note that, as a result, the proposed objective test would provide tax relief for T&S expenses for the first 24 months in circumstances where the current set of rules would not. That said, in assessing the cost to the Exchequer we think that in reality the present position in many cases is that the 24 month rule is de facto operated as if the first 24 months of a longer posting is tax relieved by ensuring that the position is subject to review just before the 24 month point.

2.44 The new rules would also need to be framed to prevent abuse, for example where an employee is relocated as part of his/her employment but this is presented as a 2 or 3 year secondment to another office and a review at the end of that period.

2.45 **Question 11: Do you agree that basing the rule on the concept of ‘detached duty’ rather than a ‘temporary workplace’ will make it easier for employers to understand what journeys the rule is intended to give relief for?**

2.46 The definition of detached duty is framed around the concept of performing duties at a location for a limited duration. This is very similar to the existing temporary workplace approach and to this extent little changes. It will be a question of whether the term ‘detached duties’ can be better understood by employers and employees in terms of its meaning for tax purposes than the existing and everyday term ‘temporary workplace’. For example, we understand that ‘detached duty’ is commonly used by those operating international assignments so there is a risk that employers may mistakenly think this new rule only relates to travel by internationally mobile employees.
2.47 Question 12: How long should an employee be able to attend a location before it ceases to be a detached duty location, and why?

2.48 We believe that the existing 24 month rule is well understood and provides a reasonable period. Reducing the period would have significant cost implications for employers and increasing it would not be fiscally neutral to the Exchequer.

2.49 We do, however, recognise that some business sectors, eg construction, may require a longer period, eg because today’s infrastructure projects tend to be bigger and take longer than in the past. We would therefore recommend that discussions are held with those involved with these sort of projects.

2.50 We also think that HMRC needs to revisit its thinking on long term projects in Booklet 490. For example, the idea that, in relation to the 24 month rule, one should sum together postings to the same temporary workplace where there is a distinct break in attendance between them does not seem right.

2.51 Question 13: Do you agree that it is simpler for the rules to consider workplaces that are objectively close together as a single location, rather than the current test of a change in workplace being ‘substantial’?

2.52 In principle, we agree that it may be simpler for employers and employees to understand that places of work that are close together ought to be viewed as a single location. Conceptually, this is similar to the current ‘journeys being substantially the same as ordinary commuting’ rule.

2.53 Question 14: What measure of workplaces being ‘close together’ would be easiest for employers to administer in practice? Are there any that would be particularly difficult for employers to operate?

2.54 A geographical test would be simple to understand and apply but the definition of ‘close together’ in this respect would need careful consideration. For example, an employee travelling from Peterborough to London might see a large part of London as geographically close together in regard to distance, time and cost of travel but an employee living in West London would find substantial differences in distance, time and cost between travelling to workplaces in West, Central and East London.

2.55 Consequently, we think that time and cost must also be part of the ‘close together’ test and not just distance. As different considerations will apply to different parts of the UK it may be difficult to formulate one test that works for the whole of the UK.

2.56 In addition, mode of transport will be a relevant factor. If the journey to the ‘similar location’ necessitates a substantially different form of transport then that should be a significant indicator that the journey is not substantially the same as ordinary commuting.

2.57 Question 15: Do you agree that the tax rules should not provide an incentive or disincentive for working from home?

2.58 Yes, the tax rules around working from home should be revenue neutral. The decision on whether or not, or when, an employee works from home ought to be a matter between the employer and employee that is based on business need.

2.59 Clearly, the rules around having a ‘main base’ will need to consider when home is a work location and whether home can objectively be the main base, eg because by necessity the employee is based at home. At present there is confusion as to what
an ‘objective requirement to work at home’ really means. Consideration needs to be
given as to how the objective requirement is decided and policed.

2.60 **Question 16: Do you agree that employees shouldn't be able to nominate their home as their ‘main base’ if they have another ‘base’ elsewhere?**

2.61 This depends on what the definition of a base elsewhere is. For example, if in Example (i) the IT contractor can ‘hot desk’ when attending the employer’s main office but the employer does not have the physical working space for all its IT contractors to work from the main office, would that contractor still be able to factor in the percentage of time that they spend at home?

2.62 Logically, if there are objective business reason for the employee to work from home and the employee spends the majority of their time working from home (e.g. 60-80% of the time) then we do not see why home should not be able to be, or to be nominated as, the employee’s ‘main base’.

2.63 **Question 17: Do you agree that removing relief for day subsistence is fair?**

2.64 While we understand the intention that any reform to the current T&S rules should not adversely affect Exchequer revenues we do not believe that simply removing day subsistence is an appropriate *quid pro quo* to address the cost of the other changes that are proposed. In particular, if relief for day subsistence was withdrawn there would be clear winners (i.e those working at multiple bases) and clear losers (those working at one base) and this strikes us as unfair.

2.65 That said, it is true that the day subsistence rules are intended to provide relief for employees on the *extra cost* of subsistence incurred due to working away from their normal workplace. And so if an employee is incurring the *same cost* as he/she would have incurred there is a principled argument that the expense should not qualify for tax relief. An employer might also be expected not to reimburse in these circumstances but there are practical points to be borne in mind here which is we think the reason that i) employers do typically reimburse and ii) the approach on tax relief operates as it does.

2.66 In particular, employees can often incur much greater costs on subsistence when travelling or working away from their normal base. For example where food and drink is purchased at a motorway service area, or on a train, or in a hotel, or where the employee is working in a remote location or in central London (when they normally do not). In such situations the cost can be significantly greater than that incurred on a ‘normal’ high street. That said we return to this point in answer to Question 21 below.

2.67 Similar policy principles apply in regard to overnight subsistence and we note that this aspect is to be considered at a later stage in the review. Consideration also needs to be given to those employees that stay away from home on business for a number of days – how would day subsistence and overnight subsistence interact in such circumstances?

2.68 **Question 18: Are there particular groups of employees that would be disadvantaged by removing relief for day subsistence? Are such employees in particular industries and are they more likely to receive scale rate payments or be reimbursed for actual expenses?**

2.69 Employers do not generally seek to ‘pay’ employees for expenses the employee would have incurred anyway. As such, many employers prefer to use scale rate payments rather than reimbursing actual expenses (or will reimburse the lower of the
two) in order to limit the amount reimbursed to employees for subsistence. This is designed to encourage employees to mitigate the additional cost incurred on subsistence when travelling or working away from their normal location.

2.70 Removing the tax relief would not remove the obligation on the part of the employer to repay expenses necessarily incurred, over and above that normally incurred, in travelling in the course of the employment or performing the duties of the employment at another location. Thus, removing the tax relief would simply add additionally employer costs (and burdens) in grossing-up for PAYE and NIC purposes the legitimate expenses reimbursed.

2.71 Also, we are aware that many employers provide free or subsidised canteens at their main work locations. So removing the day subsistence relief would penalise those employees who necessarily incur subsistence expenses when they are required to travel and perform duties elsewhere.

2.72 Question 19: Are there any circumstances where employees would normally need to (rather than choose to) incur significantly larger expense on their day subsistence than normal due to being on a business journey? Are such employees in particular industries and are they more likely to receive scale rate payment or be reimbursed for actual expenses?

2.73 We would refer you to our answer to Questions 17 and 18.

2.74 As noted above, the cost of subsistence can very easily be greater when travelling on business or working away from the usual workplace than would normally be incurred, eg on a typical high street. This is why employers are prepared to meet the expense (either through a scale rate payment or by reimbursing actual costs). The employer is looking after the welfare of the employee (an employee is less likely to skip a meal to avoid the extra cost if the employer will reimburse the cost). To penalise responsible employers by removing the relief seems unfair to us.

2.75 Question 20: Would employers continue to pay day subsistence if relief were removed, and if so in what circumstances?

2.76 We would refer you to our answers to Questions 17, 18 and 19.

2.77 We believe that most employers would continue to pay day subsistence if relief was removed. Responsible employers do not want to see employees out of pocket or skipping meals when the employee’s duties require the employee to travel on business or attend a temporary workplace. Employers also do not want employees refusing to travel/work elsewhere because the employee will be out of pocket if he/she agrees to do so.

2.78 As noted above, we think that many employers will have to continue to pay day subsistence even if relief is withdrawn, eg for employment relations reasons. But the consequence of removing relief will be that employers will have to gross-up the expenses payments for PAYE and NICs.

2.79 Question 21: Are there any other ways of balancing the cost of the most generous simplifications set out in the framework that the government should consider?

2.80 We think that the ‘main base’ concept should be revisited to determine whether the intention is indeed to give tax relief in situations where one might reasonably consider that the employee is commuting to a main place of work.
2.81 In terms of subsistence payments case law originally identified ‘additional costs’ attributable to the travelling or attendance at another workplace. Perhaps, therefore, if the government wants to explore a change in approach around tax relief for day subsistence it might consider whether there is some means of measuring the additional cost incurred by employees and retaining tax relief where employers reimburse that additional cost.

3 The Chartered Institute of Taxation

3.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the United Kingdom concerned solely with taxation. The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. The CIOT’s work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

The CIOT draws on our members’ experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries. The CIOT’s comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.

The CIOT’s 17,500 members have the practising title of ‘Chartered Tax Adviser’ and the designatory letters ‘CTA’, to represent the leading tax qualification.