

Club House
October 2, 2008

I have just taken over as the voluntary treasurer of my local golf club. The club's premises include a three-bedroom cottage near to the main clubhouse that the club has owned for about 30 years.

Until two years ago, the club's full-time steward lived in the cottage on his own. There is a note in the tax file kept by the previous treasurer that there were no benefit-in-kind issues because the Revenue accepted that 'it is customary in this type of employment for living accommodation to be provided to the employee'.

However, in 2006, both the steward and the club's full-time secretary left their employment with the club at the same time. The new steward lived locally so he did not want to live in the cottage — and his salary was increased by £3,000 per year compared to his predecessor to reflect the fact that his appointment did not include accommodation. However, the new club secretary was very keen to live in the cottage, and it was agreed that his initial salary offer of £35,000 per annum would be reduced to £30,000 to reflect this situation.

My query concerns the tax treatment of the accommodation. Can it still be justified that the 'customary in this type of employment' argument is justified, even though the secretary works standard office hours whereas the steward finished work at midnight on most evenings? Could an argument be put forward that the secretary's occupation in the cottage is necessary for security reasons; i.e. to give presence at the club to deter potential burglars? And should the secretary's contract of employment be amended to make living in the cottage a requirement of his employment rather than a mutually convenient arrangement?

Finally, if a benefit in kind situation is the only option, should this be based on the salary sacrificed by the secretary (£5,000), the increase in salary for the new steward (£3,000) or the open market rental value (£800 per month)?

Readers' views are welcomed.

Query 17,280 — Birdie.

Reply by Stephen Parnham

The former steward's circumstances fall within ITEPA 2003, s 99(1) where the accommodation was necessary for the proper performance of his duties. The steward was required to and actually did work extremely long hours and any doubts about his status should be dispelled by referring to the *Employment Income Manual* at EIM11342, which confirms that HMRC accept that stewards and green keepers working on the premises will fall within this provision. It would be a struggle to convince HMRC that the practice relating to the former steward was within their stringent view of 'customary' and so rely

on the exception in ITEPA 2003, s 99(2). Paragraph EIM11347 is instructive in this respect.

Turning to the position of the full-time secretary, it should be remembered that where an employer provides accommodation to an employee, there is prima facie a taxable benefit-in-kind assessable on the employee under ITEPA 2003, s 102. There is an increased charge under s 106 where the cost of providing the accommodation exceeds £75,000. The benefit-in-kind charge is based on the annual value of the property or the rent paid by the employer less any rent paid by the employee. The amount of salary sacrifice is irrelevant for these purposes. The circumstances and role of the secretary are such that it is not necessary for him to occupy the property for the proper performance of his duties and there is no customary practice in this area, as Birdie suspects. The exceptions to the charge represented by s 99(1) and s 91(2) are therefore not applicable.

Birdie raises the possibility of relying on the legislation in ITEPA 2003, s 100. This is only relevant where there is a special threat to the relevant employee's security or well-being, special security arrangements are in force and the employee resides in the accommodation as part of those arrangements. This is a non-starter for the secretary. Not only does the purported threat need to be to the employee rather than to the employer's premises, but there must also be a genuine threat for which appropriate police protection is necessary. The exclusion therefore tends to be relevant where there is an identifiable terrorist threat. It could conceivably extend to encompass situations where sports or media personalities or football managers have received threats to their person for instance. To be absolutely certain in these cases, one should consult the police to ensure that the requirements of s 100(b) are met. In practice neither the former steward nor the latest occupant of the accommodation will qualify for this exception.