Treasury Chambers, Parliament Street, SW1P 3AG
01-233 3000

PRIME MINISTER

TAX ALLOWANCES FOR MINISTERS AND MPs

You will remember that following the discussion we had shortly after assuming office, I asked Peter Rees to examine with the Inland Revenue the position, for tax purposes, of London accommodation expenses incurred by Ministers with provincial constituencies. I reported to you the arguments and conclusion of that enquiry in my minute of 11 August 1980. The conclusion was that, without a specific change in the law, which I judged to be unacceptable if confined to Ministers, and undesirable if of wider application, the Revenue would have to continue to disallow the expenses of such Members, when they became Ministers. You then asked to see the full text of the legal opinions and, after studying these, commented, in your Private Secretary's letter of 26 August, that the proposition that on appointment to a Ministerial post a Member's duties at Westminster become essentially Ministerial in character, was nonsense, and asked that the Law Officers' advice be sought. The proposition you criticised was not in fact the basis of Revenue practice, but your hope was that further examination of the facts and law might enable the Inland Revenue to allow Members with provincial constituencies to continue to claim tax relief on the expenses of accommodation in London, upon becoming Ministers.

2. Michael Havers has now sent me the attached opinion, which comes, as you will see, from all four Law Officers. As you will see, the Law Officers have, reluctantly, and after full consideration of the legislation and the authorities on it, been forced to the conclusion that, subject to one change - which, if implemented, might improve the position of some Ministers, the Revenue's existing practice is the only one possible under the law as it stands. The change is that

/Ministers,

Ministers, sitting for provincial constituencies, with homes outside but within commuting distance of London, who also have accommodation close to Westminster which is used solely for Parliamentary duties, should now be allowed relief where hitherto they have denied it. For this purpose the test would be whether in fact a Minister did generally travel daily between his home and Whitehall to perform his Ministerial duties when Parliamentary business did not require his presence in town. If such a Minister occasionally used his 'Parliamentary' accommodation when he was in London on other, e.g. Ministerial, business such dual-purpose use would be disregarded. It must be said that this limited relief hardly makes the rules seem less nonsensical. But it is a relief - and the Inland Revenue, who have been keeping in touch with the Law Officers' thinking are prepared, I understand, to act on this interpretation.

3. I have discussed the implications of the opinion with the other members of the Treasury team. Whilst welcoming the practical benefits for perhaps a small number of Ministers which might result from the Revenue acting on this interpretation, we recognise that the overall position, under the present law, will continue to be unsatisfactory. Apart from the practical problem of deciding whether a particular Minister's home is within the commuter belt or not, there is the point that some colleagues will be treated in a more favourable way than others and this may not be easy to defend. Nevertheless the only way in which the position could be improved generally would be through a specific change in the law. As I said before, a change confined to Ministers would not be politically acceptable, whilst a general relief to cover expenses incurred wherever more than one office or employment is held by the same person, would open up debate on what has always been an extremely difficult and contentious field of law, as well as being costly in both administrative and revenue terms and would, in any event, bring only limited assistance to Ministers.

/I have

4. I have therefore had reluctantly to conclude that, save for the change in the treatment of Ministers with homes within commuting distance of London, which, as I say, the Inland Revenue are prepared to accept, we must live with the existing practice.

(G.H.)

30 June 1981

JOINT OPINION OF THE LAW OFFICERS OF ENGLAND AND WALES AND THE LAW OFFICERS OF SCOTLAND

MINISTERS IN THE HOUSE OF COMMONS

SCHEDULE "E" DEDUCTIONS

We have been asked whether the Revenue practice of refusing a deduction for tax purposes for the additional cost of living in London to Members for provincial constituencies when they become Ministers of the Crown is well founded in law. Before we discuss this practice we draw attention to the fact that it has been made public on a number of occasions and any change in that practice would also become public knowledge.

2. The basis on which ordinary Members are allowed a deduction for tax purposes in respect of expenditure on accommodation is as follows. Being a Member of Parliament involves the performance of duties at Westminster and in the constituency. If the constituency is outside London, it is impossible for the Member to perform all his duties from his home. In the case of ordinary employment, no tax allowance for accommodation is allowed because the taxpayer could live within walking distance of his employment - the fact that he does not is personal to him. The Member of Parliament with, in effect, two places of work cannot choose his home so as to be able to perform all his duties without

staying away from home, unless his constituency is in London; and accommodation within the ILEA area is accepted, and properly accepted, by the Revenue as "necessary" because a Member has to be available to vote at all hours of the night. If he lives in his constituency, he must have accommodation in London to attend the House; if he lives in London, he must have accommodation in the constituency to perform his duties there. Where the Member lives neither in London nor in his constituency, the Revenue accept that he will need accommodation in both those places, but the expense of one set of accommodation must be disallowed as it is the consequence of his personal choice not to live near either place of work. In such a case the Revenue allow the taxpayer to choose which expenses to claim and it is likely that he will claim the London expenses as being the greater.

3. We are satisfied that the Revenue are right in so treating the expenses of accommodation of ordinary Members. The relevant test is contained in section 189(1) of The Income and Corporation Taxes Act 1970 which provides that "if the holder of an office or employment is necessarily obliged ... to expend money wholly, exclusively and necessarily in the performance of" the duties of the office or employment, the expenses so necessarily incurred and defrayed may be deducted from the emoluments in calculating the tax

payable. We do not find it necessary to refer to the many cases on those words other than to make the general comment that they demonstrate that the courts have so far applied the test rigorously in a way which could never be described as generous to the taxpayer, in view of the requirement to satisfy the "wholly, exclusively and necessarily" formula.

4. Why is the tax position altered when a Member is appointed a Minister? At one stage it was thought that the Revenue's argument was that the appointment transformed the Parliamentary duties performed by the Member so that they became one further element of his Ministerial duties. Such an analysis of the case has no foundation in fact and we are satisfied that a Minister/Member continues to have Parliamentary duties as a Member. It is these Parliamentary duties which require him to have available accommodation within easy reach of Westminster because of the irregular hours and because it has become a regular part of the pattern of his duties that he is frequently required to vote into the late hours of the night or the early hours of the morning and, from time to time, all through the night. The Revenue's argument, as we now understand it, on the expenses of accommodation of the Member who becomes a Minister is that where the claim is in respect of accommodation in London that accommodation is now needed for two purposes. The Minister at the end of a day's work needs somewhere to stay

overnight and the Member after his duties in the House also needs somewhere to sleep. It follows, say the Revenue, that the expenditure is now incurred for two purposes and so cannot be said to be wholly and exclusively for one of those purposes and accordingly is no longer deductible. It is the validity of this argument which we have to consider.

5. We take first the case of a Member who has a home outside London but within commuting distance of Whitehall. Such a Member will need accommodation in London to perform his Parliamentary duties. A Minister in the House of Lords would be able to perform his Ministerial duties from a home within the commuter belt and the senior officials working for the Minister will include those who commute from similar distances. It follows that in the case we are considering the Member when he is appointed a Minister does not need accommodation in London in order to perform his Ministerial duties. He continues to need such accommodation to perform his Parliamentary duties. In our opinion expenditure on such accommodation is incurred wholly, exclusively and necessarily in the performance of his Parliamentary duties and the fact that he chooses to make use of the accommodation on days when he has performed Ministerial duties but has not needed to attend the House does not affect the tax position, for such use is purely incidental to the main purpose.

6. We consider next the case of a Member whose home is outside commuting distance from London. Such a Member will need accommodation in London whether he lives in his constituency or elsewhere. On his appointment as a Minister can he claim that his use of his London accommodation at the end of a Ministerial day is no more than incidental to his main purpose in providing the accommodation? Or, to put the question in different terms, is it possible to argue that the Member for a constituency outside London still requires to have two homes in order to perform his duties as a Member and that requirement cannot be affected by his subsequent appointment as a Minister? It is this problem that has caused us the greatest difficulty. One of us is quite clear that the answer is that the Minister/Member now needs the London accommodation for two purposes and so is not entitled to claim that expenditure on it is incurred wholly, exclusively and necessarily for the purpose of his Parliamentary duties. The rest of us believe that this argument is sufficiently strong to enable us to reach the view that it would be unwise for the Revenue to change the tax practice in this class of case.

7. Accordingly we advise that the Revenue practice should continue save in so far as it denies the allowance to a Minister/Member who could commute from his home to his

Ministry but has accommodation in central London which has been provided for his Parliamentary duties.

M.K.

MJC

9 June 1981.

file

289

Parliament

10 DOWNING STREET

From the Private Secretary

3 July 1981

The Prime Minister has seen the Chancellor's minute of 30 June about tax allowances for Ministers and MPs. She is grateful for the thorough examination of these issues which the Chancellor has had undertaken.

Although she is disappointed with the outcome, she accepts the Chancellor's advice that current legislation allows only one small re-interpretation of the law, and that it is not possible to contemplate changes in legislation at present either for Members of Parliament alone or on a wider basis.

She is therefore content that the Chancellor should proceed as proposed in paragraph 4 of his minute.

M. A. PATTISON

Peter Jenkins, Esq.,
H. M. Treasury.

1

10 DOWNING STREET

PRIME MINISTER

Here is the Chancellor's response to your enquiries about tax allowances for Ministers and MPs.

You will find this disappointing. The one small change will be extremely selective in its effect. But you will see that the Law Officers are firmly of the view that no further reinterpretation is possible within existing law, whilst the Chancellor is equally firm that the law cannot be changed simply to benefit Ministers, and that wider legal changes could not be contemplated at present.

I understand, incidentally, that the Chancellor has also had some informal enquiries made of other counsel, and that their responses were no more favourable. Indeed, some found it difficult to justify the existing tax treatment of MPs' allowances.

Are you prepared to accept the Chancellor's advice, and to leave matters as they stand subject to the one reinterpretation?

Yes no NAP

2 July 1981