

Blue Pages

Practical Information for Churches

Issue 88 November 2007

Church Manses

[1] Manse expenses

Full-time ministers of religion who live in a manse provided by the church, and from which they fulfil their duties, are eligible for the following deductions from their taxable income:

- As statutory payments, water charges are wholly tax-deductible if paid for on behalf of a minister living in a manse, irrespective of the income level of the minister
- A 25% deduction for payments in respect of maintenance, repairs, insurance, or the management of the premises
- Where the minister has an income from the church of £8,500 or less, electricity and gas bills; cleaning and gardening expenses are wholly deductible.

Where the manse is owned by the church, council tax is the liability of the church in England and Wales, and so no tax liability falls on the minister.

Where the minister lives in his own house which has been leased back to the church under a leaseback scheme, the above tax exemptions apply, except those for council tax and water charges. In England and Wales council tax is only the liability of the church if the church owns the property. Under a leaseback scheme the church doesn't own the property, and therefore the minister is liable. As council tax and water charges are statutory charges, the minister is not exempt from tax on these payments if he is receiving rent for the property involved – almost always the case under a leaseback scheme.

If a minister pays rent for the house he uses as his manse, he is entitled to a deduction of up to 25% of the rental cost from his taxable income. The amount deductible is usually 25%, but could be assessed lower if the proportion of the house's use for manse purposes is lower.

Where a minister lives in his own house, and it is not

leased back to the church, then he will be liable to tax on the amount of any property-related or household expenses paid for by the church.

[2] Occupancy agreements

We have recently had a number of inquiries regarding the possible implications of adult members of a pastor's family (other than the pastor and his wife) living in a church manse. This has alerted us to a possible problem which churches and pastors or their families could face at the time of a pastor's retirement, serious incapacity or unexpected death.

Where pastors live in a manse owned by the church, this is most often provided rent-free as an integral part of the pastor's calling. A service agreement may exist setting out the pastor's right to live in the manse and the responsibilities of the church and the pastor to meet the various costs, but our experience to date suggests that only a minority of churches have an agreement which covers the full range of issues which can arise, and the recent cases have shown that this omission can lead to significant problems.

Some of the difficulties relate to the occupancy of the manse, in addition to the pastor and his wife, by other adult members of the immediate or wider family. Issues can arise over what, if any, security of tenure has been attained by these other adults during the course of their occupancy. In most cases there has been no intention to give any rights of tenure, the arrangement simply having been allowed by the church because it was helpful to the family circumstances.

Having looked into the implications of the potential difficulties, FIEC Limited has prepared a guidance note pointing out the matters needing to be considered, and suggesting a course of action to be followed, including what needs to be said in a service agreement.

Churches wanting to know more, or to obtain a copy of the guidance note, are welcome to contact FIEC Ltd. There will be a modest charge to help cover the

costs the Company has incurred. If after studying the guidance note churches feel that there are issues which they need to address specifically, then the further help of FIEC or FIEC Limited or appropriate legal advice may be useful or essential. Please contact FIEC Limited at 01858 411569 in the first instance.

Compulsory church registration with the Charity Commission

The Charities Act 2006, which became law in November 2006, established a principle that all churches would be required to be registered with the Charity Commission. It was always understood that this legal obligation would be implemented in phases, and the Home Office has now announced that churches with a total annual income from all sources of £100,000 or more will be obliged to register by 1 October 2008. Some churches with an income normally below that figure may find that in the financial year ending prior to October 2008 it reached £100,000 because of a building project. In those circumstances it will still be necessary to register. There are no exceptions for an untypical year.

It has been made clear that churches in the next income band are not likely to have to register until 2011 or 2012, but no indication has yet been given of the minimum income threshold involved.

The Charity Commission has issued a new application form which charities applying for registration must use from 1 December 2007 onwards. This is included already in the Commission's registration pack available at: <http://www.charity-commission.gov.uk/registration/regpack.asp>

This newly-announced timetable does not mean that churches with an income below £100,000 can take it easy and wait for 2011 or 2012. Our experience to date indicates that the vast majority of FIEC churches have a trust deed which only covers the church's property. They do not have a trust which covers the church as a congregation or organisation and the offerings which arise within the church. This means that action needs to be taken to create the trust or trusts appropriate to the church's circumstances. Without this, the church is technically not really a charity and not entitled to the benefits of being a charity, including the recovery of tax on Gift Aid receipts. Although not intended, these are nonetheless breaches of the law and churches need to take action to ensure compliance.

The first step in the process is to find out whether or not the church's trust deed is of the type which only covers the church's property. This can be ascertained by taking the church's documents to a good charity trust lawyer (whose fees are relatively

high) or by sending the trust deed to FIEC Limited and asking them to express a view, which they will by way of a letter. They will make a small charge of between £15 and £45 depending on the age of the trust and the ease (or difficulty) of reading it. If any doubts or complications arise as a result of studying the document(s), these will be raised with the Charity Commission.

If it is clear that the church's trust deed is a property trust, the trust administrators of FIEC Limited will be able to advise the church on what needs to be done to rectify the church's documents and trust position.

Employment status of pastors

Pastors in independent local churches generally fall within the nationally-recognised employment status of "minister of religion." This is a sub-section of an official category known as "office-holder" and it is intended to cover a category of employment which is neither employed nor self-employed in the way in which those two terms are generally understood.

In the case of a minister in a local church, he is not like an employee, since he is not answerable to an "employer" on a daily basis and determines his own workload within the general broad responsibilities agreed with the church at the time of his appointment. He is not self-employed, since he does not work for multiple employers for each of which he performs a particular skill. Instead, he is engaged full-time in one church. Unlike a self-employed person, he comes fully under the PAYE system.

Most independent churches and pastors believe that "office-holder" is the appropriate category to define the relationship between the pastor and the church. Most groups of church officers do not believe that the duties of an employer in the mainstream employment sector are appropriate to the nature and circumstances of a local church. Pastors, for their part, believe that their calling is from God and that in order to fulfil it adequately they need the freedom to allocate their own time and to determine their own daily or weekly priorities. The overwhelming majority of FIEC pastors take this view, even though they are aware that it leaves them without any legal protection in respect of working time, minimum wage, or redundancy pay.

The government fully recognises and accepts this special status of most ministers of religion, which is why it has sought to initiate a voluntary system to increase the protection available to ministers across the range of faith constituencies in the UK. If it hadn't wanted to preserve the existing status of ministers of religion, it could simply have passed new legislation to bring ministers of religion within the scope of mainstream employment law.

However it has now become clear that in certain circumstances, a court can decide that a relationship between a church and its minister amounts to “employment.” This is what the Court of Appeal has recently ruled in the case of the New Testament Church of God and one of its pastors, Sylvester Stewart. The findings of the court were that the parties had intended to create an employment relationship. However, the court declined to make any general judgement, deciding instead that the question of whether an employment contract existed could only be determined on the circumstances of each case.

This surprising decision has overturned a presumption which has been widely-held within Christian denominations for the past 23 years.

In July 2002, even the then Department for Trade and Industry, in a discussion document on employment status, stated: “Generally the courts have established that the relationship between the church authorities and ministers of religion is not a contractual one at all (essentially on the basis that the ministers of religion owe their allegiance to God rather than to a terrestrial authority).” In support of this, the DTI cited the case of the President of the Methodist Conference v Parfitt [1984].

In the recent ruling, the Court of Appeal has specifically declared that it is not bound by the Parfitt case.

As a result of the Stewart case, churches and pastors who believe that the pastor is genuinely an “office-holder” will need to have available more evidence that this is in fact the case. One way of achieving this is for a fuller explanation of the nature and intentions of the appointment to be included in the original letters of appointment or in subsequent correspondence and other documentation.

Blue Pages will seek to address this issue in time for the February edition, and to advise on a form of words which could be used.

FIEC Ltd Model Constitution

Both the Charity Commission and HMRC have officially approved FIEC Limited’s Model Constitution, which creates the appropriate trust deed applicable to the church as a congregation, and its offerings. It also covers any property owned by the church which is not already covered by another trust deed. The Model provides churches with a quick and relatively cheap route to putting the necessary legal documents in place for charity registration. This Model Constitution should not be confused with a document which many churches already have, known as a Constitution, which only covers the rules for the internal governance of the church.

For the Model Constitution there is a fee payable (£100 to £300 depending on the size of the church’s membership) to help meet the cost of its production. The Company is concerned that at least one church which has adopted the Model Constitution has made copies available to other churches (even including a copy of it on their web site). This is most unfortunate as churches should respect the confidentiality of the Model and not use it unless they have contributed the relevant fee, which has been carefully calculated to cover costs. Copies obtained from FIEC Limited will be the correct version and will have all the essential notes that go with it.

The Commission has confirmed that churches which adopt the Model and can confirm that it has been adopted with the approval of FIEC Limited will have their application for registration “fast tracked.” Provided the text has not been changed by the church, this will effectively mean that the Commission’s approval will be guaranteed.

Gift Aid eligibility

HMRC has clarified the circumstances in which ‘connected persons’ (generally close relatives) of a missionary can give gift-aided financial support to a family member who is a missionary.

Where funds are sought by a church for the support of particular missionaries, the “connected persons” of those named missionaries will not be able to give under gift aid.

However, connected persons would be eligible to give under gift aid in the following two circumstances:

- (a) If the church decides to commit, say, £10,000 of its existing general resources to the support of specified missionaries, and then appeals for funds to restore the amount committed, HMRC interprets the restored income as gifts to general funds, and therefore connected persons are eligible to give by means of gift aid;
- (b) If the church sets up a missionary fund and appeals for gifts towards this, without naming particular missionaries, and only decides after the money has come in which missionaries should be supported by the fund, and to what extent, connected persons would be eligible to give by gift aid.

In our experience, most churches tend to support particular missionaries on the basis of regular long-term commitment, and in those circumstances “connected persons” would not be eligible to give by means of gift aid to any separate fund from which that regular promised support is derived. If giving to the general funds of a church, a “connected person” could give under gift aid, but

not in any way which stated or implied that the gift was a designated one for the support of their missionary family member. Any gift to general funds would have to be completely without strings.

“Connected persons” are always able to give to any fund, and to designate their gifts, as long as gift aid is not involved.

Any donor who is not a “connected person” is permitted to give to all church funds by means of gift aid, and to designate their gifts.

The definition of “connected person” is contained in Section 839 of the Income and Corporation Taxes Act 1988 and in subsequent amending legislation. Close relatives include husband, wife, partners, parents, children, sisters, brothers, aunts and uncles and their wives, husbands or partners. Whether relatives or not, business partners, employers and employees are also classed as “connected persons.”

Details of current Gift Aid legislation is in Sections 413 to 425 of the Income Tax Act 2007. To view the full text of the legislation, type the names of these Acts into an internet search engine, and the government's *opsi* website, which contains the complete wording of the legislation, will be the top web site shown.

Gift Aid – encouraging greater use

The government has recently undertaken a consultation involving a wide range of charities on how the take-up and use of Gift Aid can be encouraged and increased. Gift Aid is currently worth £828m a year to the charity sector but still only applies to about one-third of charity donations. The government will shortly be reporting on the responses to the consultation, at which point it may be clearer what action will be taken to facilitate the use of Gift Aid. This is an urgent issue for many charities, since the planned reduction in the income tax rate from 22p to 20p in April 2008 will immediately reduce Gift Aid income to charities by £76m a year.

Joint house purchases by churches and pastors

Increasingly, circumstances are arising in which a church and its pastor are prompted to consider the possibility of sharing together in the cost of buying a house for the pastor.

Sometimes the reason for this is that the new Pastor wishes to have a share in the ownership of his house. At other times, particularly in areas of the country where house prices are high, it is because neither the pastor nor the church can on their own afford the whole cost of a suitable house.

There are several possible variations with regard to who is to be the owner and who is lending whom the money to buy the house. We tend to call all such arrangements “shared equity,” even though some of

them do not strictly fall within the precise definition of this term.

Churches are advised that they need to obtain the approval of the Charity Commission before agreeing any detailed proposals to meet part of the cost, whether this involves using the proceeds of the sale of a previous manse, or “selling” part of the ownership of their existing manse to the pastor. Such arrangements can be quite complicated, and especially so if the pastor is also going to raise a mortgage from a bank or building society.

A further complication is that if the agreement is not worded in a particular way then HMRC and the Department for Work and Pensions can require the pastor to pay tax, and the church and the pastor to pay National Insurance, on the arrangement.

Churches would be well advised to seek the assistance of a skilled charity trust lawyer before agreeing anything with the pastor. If the church's trustee is FIEC Ltd then contact them in the first instance. FIEC's lawyers have considerable experience in agreements covering shared equity arrangements and churches can contact them directly if preferred. Contact Mrs Edwina Turner at Anthony Collins Solicitors, 34 Edmund Street, Birmingham B3 2ES. Telephone: 0121 212 7450. Email: edwina.turner@anthonicollins.com

National minimum wage

From 1 October 2007 the National Minimum Wage is £5.52 per hour for adults (aged 22 and over); £4.60 for 18-21 year olds, and £3.40 for those aged 16-17.

Public benefit timetable

The Charity Commission will be publishing guidance on the subject of public benefit in January 2008, after which all charities which exist for the advancement of religion, including individual churches, will have the opportunity to participate in a three-month consultation to consider how the public benefit test is to be applied to charities in that sector. Any church or other charity can ask to be notified of the arrangements for this consultation by sending their contact details, marked *Public Benefit Consultations*, to Charity Commission Direct, P O Box 1227, Liverpool L69 3UG.

Safeguarding Vulnerable Groups Act 2006

An Independent Safeguarding Authority has now been established under the provisions of this Act, and its work will be phased in from Autumn 2008, starting with the monitoring of a vast range of people who are in close contact with children. The ISA will have the power to bar people from any paid

or voluntary work involving children or vulnerable groups, and will use the CRB to make checks. The precise extent of the constituency who will be required to be subject to ISA clearance is not yet known, but it is very wide. It will definitely include non-frontline employees (e.g. cleaners in children's homes), and everyone involved in transporting anyone in a vulnerable group; but it is not yet clear whether it will include people who help in the kitchen at a church lunch club for the elderly. More precise details of how the barring scheme will be operated, and which workers in what contexts will be subject to monitoring under the terms of the Act will be released during 2008 and we will keep churches informed of those which apply to them.

Sexual Orientation Regulations 2007

Following the passing into law throughout the UK of the Equality Act (Sexual Orientation) Regulations 2006, attention has been given by various evangelical groups, including the Lawyers' Christian Fellowship, to the need of churches to demonstrate that their view of homosexual practice is based on biblical doctrine, rather than merely social attitude or preference. The FIEC Care and Recognition Team is still considering all the implications of the SORs, including the doctrinal issue, and will report to churches when this is complete.

In the meantime FIEC Limited, to cover the doctrinal issue, has incorporated a new clause into its model church rules, as follows:

"Marriage and homosexuality - the Members of the Church agreed in adopting these Rules that in the understanding and application of the statement in the Basis of Faith on the Bible the teaching of the Bible is that all extra-marital sexual practices are sinful and wrong. This includes homosexual practices (Romans 1: 24-32; 1 Corinthians 6: 9-11). The Bible also teaches that we must not be actively or passively complicit in sin (1 Corinthians 6:18-20; Ephesians 5:8-16; 1 Timothy 5:22) and that faith without works is dead (James 2:17). It is therefore part of our doctrine that in relation to any activities of this church we must in no way condone, promote, assist or encourage homosexual practices."

A number of favourable rulings were made by the High Court of Belfast in September following a judicial review of the Northern Ireland SORs which had come into force on 1 January 2007.

The court quashed the harassment provisions, thus ruling out any possibility, in normal circumstances, that preaching that homosexuality is a sin could lead to legal repercussions. The judge also clarified that if a church contracted to undertake work on behalf of a local authority or other public agency, at public expense, the SORs would only apply in respect of the

contracted activity, and not across the whole of that church's functions.

Waste collection from churches

A letter dated 15 August 2007, personally signed by Hilary Benn, Secretary of State for Environment, Food and Rural Affairs, has confirmed that "waste collections made from places of religious worship should be provided free of charge by the appropriate local authority."

The letter goes on to promise: "DEFRA will be taking action shortly to re-issue guidance to local authorities to clarify their duties and responsibilities in this area."

Our understanding is that this guidance has not yet been re-issued, but in the meantime we will gladly send by email, on request, a copy of Mr Benn's letter, if this will help any church to persuade its local authority that it should not be charging churches for waste collection.

The FIEC has been pointing out for several years to local authorities and government departments that the Environmental Protection Act 1990 and the Controlled Waste Regulations 1992 require that waste collections from churches should be provided, and should be free of charge. It finally appears as though this message has got through.

Requests for information or advice

The FIEC office handles a steady stream of requests for information and advice on a wide range of subjects, and occasionally it can lose track of inquiries it is not able to answer immediately. If anyone is still waiting to hear back with an answer to a request, and nothing appears to be happening, please kindly contact the FIEC office again to remind us.

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