

## Report of the Taxation Sub-Committee

### 1. Update on 2015 rating revaluation

Buildings were revalued at 1 April 2015 for the purposes of charging Non-Domestic Rates from 1 April 2017.

Gerald Eve (GE) has been engaged in establishing a valuation methodology for the university sector generally, with an associated appendix for Oxbridge colleges.

GE is in the final stages of agreeing the valuation methodologies. They are expected to be agreed towards the end of August 2019 under a group pre-challenge review (GPCR) process which is offered by the Valuation Office Agency (VOA) to groups of property occupiers, owners or ratepayers of business and other non-domestic properties.

The GPCR process has been followed with the assistance of St John's College and Murray Edwards College in relation to certain of their buildings. We are grateful to those colleges for their assistance.

Reductions in valuations in excess of 10% are expected which may be fairly generally applicable to colleges under the check and challenge scheme. This would require Government Gateway accounts, claiming of assessments and engaging Gerald Eve for the challenge process, for which they take, as agreed with the Bursars' Committee, 9% of savings. Details on what to do to achieve reclaims for periods from 1.4.2017 and to secure lower bills for future periods will be circulated later in the year when the valuations have been achieved.

In the meantime, colleges may begin to receive information requests from the VOA in relation to the next general revaluation date of 1 April 2021. In the event you require assistance, please contact Richard Ayres of Gerald Eve.

### 2. Tax and supervision payments – HMRC investigations

#### Introduction – HMRC's goal

The Taxation Sub-Committee is aware that several Colleges are having reviews conducted by HMRC of their PAYE obligations as regards payment for supervisions. HMRC clearly have an interest in proving that PAYE applies to supervision payments generally. It would raise revenue, particularly National Insurance contributions, on supervisions which are not already paid as the emoluments of:

- an 'office', for example in the case of a UTO who holds the 'office' of fellow or college lecturer in a college which gives rise to the supervision income; or
- an employment as a CTO which is clearly an employee; or
- a Tier 4 visa-holding graduate whom we manufacture into an employee by dint of an employment agreement to avoid visa restrictions on undertaking work outside of an employment of up to 20 hours a week.

As a reminder, PAYE including NI should be applied to the earnings from an *employment* or from an *office*.

### Reminder of the basis of taxation – an ‘employment’

The key thing is that whether there is an ‘employment’ is construed by reference to the application of the general law to the facts and circumstances of a supervisor and in particular their working relationship with the college. It is not within HMRC’s power to make a determination of what is an employment, though naturally they will assert a view with a particular end in mind. Colleges should therefore determine whether they believe that their supervisors are employees. Naturally the existence of an employment brings a very wide set of obligations on employers (holiday pay, continuity of employment after 2 years, etc, etc, etc) in addition to the obligation to apply PAYE and NI to the payment. If they are not employees, then they should be paid gross like any other supplier who submits an invoice.

### The unusual case of the earnings of an ‘office’

Nor are there many specific tax rules which *deem* receipts to be earnings for PAYE purposes *except* the point already mentioned about the earnings from holding an ‘office’. However, HMRC often forget that ‘offices’ attract PAYE – even if the activity does not bear the hallmarks of an employment – and therefore they can get confused when they see a UTO suffer PAYE on a supervision payment but not, for example, a UK graduate student. They assume that the UTO’s payment is payrolled because he is an employee, so why not the graduate’s? The answer is that the UTO is (probably) *not* an employee; he *is* an officer.

### The starting point if you have an HMRC investigation on your hands

It is vital to bear in mind that for supervisors who do not hold an office, are not CTOs (who are usually clearly employees) and are not Tier 4 graduates (manufactured into being employees so they do not lose their visas) the key as to whether you apply PAYE and NI is whether they are ‘employees’.

For many years, they have not been considered employees and I am not aware that supervising arrangements have changed within Cambridge to trigger employment (nor that employment case law has developed newly to ‘reveal’ them as employees).

If you are dealing with HMRC on this matter, then you may find helpful the attached paper which I prepared for HMRC describing the system at Murray Edwards College and which I have permission from that college’s current bursar to give to bursars if they are dealing with the HMRC. It describes a situation which has not changed for a very long time and which I believe is fairly typical of what goes on around colleges, though naturally a caveat applies to that statement. I am happy to offer comment on colleges’ interactions with HMRC but I am not in a position to give advice.

RG Gardiner, Senior Bursar, Gonville & Caius College

Chair of Taxation Sub-Committee

## **Taxation of supervisions in Cambridge**

### **Legal framework of the University**

Cambridge University consists of 32 separate legal entities:

- The Chancellor, Master and Scholars of the University of Cambridge, a common law corporation existing time-out-of-mind. This comprises various institutions: schools, departments and faculties and runs businesses, for example the Cambridge University Press and Cambridge Assessment. It provides lecture and teaching to students and conducts research. It employs thousands of staff in academic, research and administrative capacities. One category of employee is university teaching officer (UTOs), academics whose responsibilities include a (limited) element of teaching of students. Another category of employees are post-doctoral researchers who are sometimes engaged in teaching in colleges. Students are members of the University as well as their college.
- 31 colleges, each established under a royal charter. They provide accommodation and teaching to students. They have fellows who comprise their governing bodies, the ultimate authority in any college. Some fellows are also employees of their colleges. The fellows normally but not always have a teaching role. Some are full-time college teachers, often called college teaching officers (hereinafter CTOs). Others agree to a teaching commitment of a number of hours a week (a teaching “stint”) during the 20 teaching weeks of the university academic year and normally they would not exceed 6 hours teaching a week. Colleges often have a category of members called bye-fellows (or sometimes “by fellow”, “senior member” or “praeceptor”) who have a looser association with the college but that association is centred around the requirement to be able to call upon a group of teachers. Bye-fellows can often be drawn from the post-doctoral research employees of the University. Colleges also have non-teaching fellows who are employed, for example bursars. Students are members of a college (and only one) as well as the University.
- There is no ownership of one college by any other college or by the University (or vice versa) and no common control. They are strictly, separate, autonomous legal entities.

### **Supervisors**

A hall-mark of the Oxbridge education system is small group teaching where an academic will teach a group of one to five, but normally two or three students for an hour at a time. These are called supervisions (“tutorials” in Oxford). A student might typically have one to four supervisions a week, depending on the subject and course content, for the 20 teaching week of the Cambridge academic year.

There are nearly 30 different courses (called “Triposes”) for undergraduates in Cambridge. Each Tripos has different papers which are examined. Papers may be optional or compulsory. Students may elect which options that they may do within each subject. A Tripos is arranged into different “parts”, normally part I and part II and normally parts will be sub-divided e.g. Part IA, part IB, Part IIA, Part IIB). Each part or sub-division is examined, normally in the summer. The parts add up to a three or, for some Triposes, four year undergraduate course of study.

The students of a college in each of the Triposes have their studies directed by a fellow in their college, called a director of studies. A director of studies will normally direct studies in one Tripos and sometimes only one part of a Tripos. A director of studies oversees academic progress and in particular organises the supervisions required by each student (though sometimes University Departments will have a hand in this). As will be apparent, with the different triposes, parts and options within parts, there is an enormous variety of specialist teaching which is required to satisfy the supervision requirements of students. This means that the director of studies needs to be able to call upon a very wide range of supervisors to satisfy the requirements of any particular student. Moreover the requirement constantly varies with student numbers in subjects, choices and content of Triposes.

No college has, within its own teaching resources, anything like the range of supervisors of specialist areas required to satisfy the teaching requirements of its own students. Accordingly it will call upon resources within the wider university. They might typically be any or all of:

- Its own fellows who are CTOs and who are principally employed by the college. (These fellows may also have a university position which occupies a small amount of their time.)
- CTOs who are fellows of other colleges.
- Its own fellows who are UTOs who are principally employed by the University but as fellows of the college they spend a much smaller portion of their time teaching in colleges.
- UTOs of other colleges, or UTOs who have no college fellowship.
- Bye-fellows (or other senior members) of the college.
- Bye-fellows of other colleges.
- Graduate students of the college.
- Graduate students of other colleges.

The pool of supervisors within Cambridge at any one time will number many, many hundreds and possibly thousands in order to teach nearly 12,000 undergraduates. Supervisors will typically supervise students at more than one college.

Directors of studies normally obtain supervisors from their network of academic connections and through recommendations by word of mouth or by recommendation of a University Department.

### **Payment for supervisions**

The payment by colleges for supervisions follows a rate card established by the Bursars' Committee of the Cambridge colleges which is used as a reference for the amount to be paid for an hour of supervision depending on the size of the group which is taught.

A record of supervisions given is recorded in a pan-college software system called CamCORS. It records *inter alia* the supervisor, student, records of supervisions given, qualitative assessment, and it also allows for approval of the supervisor's work to trigger payment.

## **Taxation of supervision payments**

This section describes the practice in Murray Edwards College (MEC). As context, MEC is likely to use several hundred supervisors in any one term for its 360 undergraduates.

Payments for supervisions of MEC students by MEC UTOs is made by the college to the UTO via the payroll because they are considered emoluments from the holding of the office of fellow.

Payments for supervisions of MEC students by non-MEC UTOs is made gross directly to the UTO. They are sub-contract providers of services.

Basic supervision prices for supervision of MEC students by MEC CTOs is not paid to them. They are employed by the college to supervise and therefore their normal salary (normally referred to as a stipend) reflects their contract of service to supervise.

Payment for supervisions of MEC students by non-MEC CTOs is made gross directly to the college which employs that CTO because the CTOs are employed by their colleges to supervise and their stipends reflects that responsibility to teach.

Payment for supervisions of MEC students by MEC bye-fellows is paid gross made directly to the bye-fellow. They are sub-contract providers of services. Note that a bye-fellow does not hold an office in the college. They are merely a particular category of member, as opposed to a fellow who holds an office in the college.

Payment for supervisions of MEC students by non-MEC bye-fellows is made gross directly to the bye-fellow. They are sub-contract providers of services.

Payment for supervisions of MEC students by MEC or non-MEC graduates is made gross directly to the graduate. They are sub-contract providers of services. There is an exception to this rule in that certain graduates of the college are on tier 4 student visas. Under their visa restrictions they may only work for a limited period of time each week and then only under a contract of employment. Therefore a written employment contract is entered into with them to manufacture an employment arrangement and supervision payments to these graduates, only, is made via the payroll, rather than gross.

RG Gardiner

1<sup>st</sup> June 2018