26 January 2018

Clare Adamson MSP
Convener, Social Security Committee
The Scottish Parliament
Edinburgh
EH99 1SP

By email: SocialSecurityCommittee@parliament.scot

Dear Ms Adamson

Social Security (Scotland) Bill – Section 47 Carer's Allowance Supplement

We are writing to you in your capacity as the convener of the Social Security Committee concerning Section 47 of the Social Security (Scotland) Bill, which deals with the provision of Carer's Allowance Supplement (CAS).

Following the conclusion of the Bill's Stage 1 proceedings in Parliament on Tuesday 19 December 2017, we remain concerned about a lack of clarity on the taxation status of CAS and its interaction with the wider UK tax and benefits regime. We set out these concerns in written evidence to the Social Security Committee in August 2017.

It may be helpful if we provide some of the background below.

We welcome the commitment made by the Scottish Government in its November 2017 policy position paper on the Social Security (Scotland) Bill. This commitment states:

> 'As part of our Fiscal Framework agreement with the UK Government, the Supplement will not be clawed back by reductions in benefits elsewhere.'

However, the policy position paper is silent on the tax treatment of the supplementary payments. The August 2016 Fiscal Framework agreement between the UK and Scottish Governments states that any new benefits or discretionary payments must provide additional income and not result in an automatic offsetting reduction elsewhere in the UK benefits system:

> 'Any new benefits or discretionary payments introduced by the Scottish Government will not be deemed to be income for tax purposes, unless topping up a benefit which is deemed to be taxable such as Carer's Allowance.'

CHARTERED INSTITUTE OF TAXATION
1st FLOOR, ARTILLERY HOUSE,
11-19 ARTILLERY ROW
LONDON SW1P 1RT

REGISTERED AS A CHARITY NO 1037771

Tel: +44 (0)20 7340 0550
Fax: +44 (0)20 7340 0559
E-mail: litrg@ciot.org.uk
Web: www.litrg.org.uk

UK REPRESENTATIVE BODY ON THE
CONFEDERATION FISCALE EUROPEENNE

As Carer's Allowance is a taxable benefit, it is our view that any increase would be liable for tax (unless legislation was introduced that changed this position). In addition, tax credits generally follow the tax position and so Carer's Allowance is taken into account as income for tax credit purposes. This means that most tax credit claimants would lose 41p of tax credits for each £1 of increase in Carer's Allowance. Similarly, under universal credit (UC) Carer's Allowance is treated as unearned income and UC is reduced on a £ for £ basis.

What is not clear is whether the supplementary payments set out in the Bill are 'topping up a benefit which is deemed to be taxable', or whether they are entirely separate payments. If the payments are treated as topping up Carer's Allowance, we are concerned that this could result in some recipients being liable for additional tax, which means they may not see the full benefit of the full supplement. We have attached some examples of how this might work in practice with this letter.

If the payments are not treated as topping up Carer's Allowance and are entirely separate, it is still not clear whether the intention is for them to be taxable or not. If they are to be taxable but, in line with the fiscal framework agreement, not to be taken into account as income for tax credits and other benefits, clear communications will be needed particularly for tax credits as this will be a departure from the usual tax credit principles. Given that most materials for tax credits for the 2018/19 tax year will already be finalised, we are concerned how this information will be communicated.

Whatever tax position is decided, written notification of the supplementary payments will need to be absolutely clear about the tax position and any interactions with other benefits.

In light of the lack of clarity so far, we would be interested to hear from you on the steps that the Social Security Committee may be able to take to address this issue as the Bill progresses through Parliament.

We have also raised this issue directly with the Minister for Social Security and with the Social Security spokespeople in the Scottish Parliament.

We would be happy to meet with you to discuss in further detail the issues raised in this letter. If this is agreeable to you, then I would be grateful if your office could contact Chris Young, Scotland External Relations Officer in the first instance, either by email; cyoung@ciot.org.uk or phone; 07900 241 584.

Yours sincerely

Robin Williamson
Technical Director, Low Incomes Tax Reform Group (LITRG)
Direct dial: 01732 779124
Mobile: 07876 030481

Low Incomes Tax Reform Group

The Low Incomes Tax Reform Group (LITRG) is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998 LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes. Everything we do is aimed at improving the tax and benefits experience of low income workers, pensioners, migrants, students, disabled people and carers.

LITRG works extensively with HM Revenue & Customs (HMRC) and other government departments, commenting on proposals and putting forward our own ideas for improving the system. Too often the tax and related welfare laws and administrative systems are not designed with the low-income user in mind and this often makes life difficult for those we try to help.

The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.

Briefing on Carers Allowance Supplement (CAS)

Illustration of tax position

Background to carer's allowance

In order to qualify for carer's allowance the following conditions need to be satisfied:

- You must care for someone for at least 35 hours a week;
- That person who is cared for must receive certain benefits (for example, Armed Forces Independence Payment, Attendance Allowance, and so on);[1]
- you normally live in England, Scotland or Wales, or you live abroad as a member of the armed forces;
- you are not in full-time education;
- you are not studying for 21 hours a week or more;
- you earn no more than £116 a week after tax and some expenses – these will be assessed when you apply; and
- you are not subject to immigration control.[2]

The above list is not comprehensive but provides a general overview.

The current National Living Wage is £7.50 per hour. Assume an individual works 16 hours per week, being paid at the National Living Wage. The 16 hour threshold is important as it is often the benchmark for enabling eligibility to Working Tax credit.

Working for 16 hours at the National Living Wage gives an income of £120 per week. At first sight this seems to preclude carer's allowance being paid. However, certain expenses may be deducted from that income for the purposes of determining entitlement to carer's allowance. These expenses include tax and National Insurance contributions and half of any pension contributions paid, for example, as well as any other employment expenses, necessarily incurred, that are not reimbursed by an employer (for example, travelling costs between clients).

Scotland intends to introduce a Carer's Allowance Supplement. The tax status of the payment is not clear. The examples that follow illustrate the issue.

[1] See GOV.UK for a list of relevant benefits at https://www.gov.uk/carers-allowance/eligibility

[2] https://www.citizensadvice.org.uk/benefits/coming-from-abroad-and-claiming-benefits-the-habitual-residence-test/non-eea-nationals-and-the-habitual-residence-test/are-you-subject-to-immigration-control/

Taxation position

Example 1. A carer who works for the whole year at NMW level. No CAS

	£	£	
Earnings	120		
Expenses (say)	- 4		
Net employment income	116		
Carer's allowance	62.70		
Total income (per week)	**178.70**		
Total income (per year)	178.70 x 52	**9,292.40**	
Tax due		nil	(below personal allowance)

Example 1A. A carer who works for the whole year at NMW level. CAS payable

	£	£	
earnings	120		
Expenses (say)	- 4		
Net employment income	116		For purposes of carers allowance
Carer's allowance	62.70		
Total income (per week)	**178.70**		
Total income (per year)	178.70 x 52	9,292.40	
Add CAS (currently £10.40 per week)	10.40 x 52	540.80	
Total income including CAS		**9,833.20**	
Tax due		nil	(below personal allowance, regardless of whether or not CAS is taxable)
Additional income as a result of CAS	9833 - 9292	541	

Example 2. A carer who works for the first half of a tax year in their 'normal' job and then works for the balance of the year at NMW level, once they assume caring responsibilities. No CAS payable.

	£	£	
Earnings (first six months) per week	300		
Earnings (last six months) 16 hours at NMW per week	120		
Expenses (say)	- 4		
Net employment income	116		For purposes of carers allowance
Carer's allowance per week	62.70		
Total income (per week) first six months	300		
Total income per week last six months	178.70		
Total income (per year)	(300x26)+(178.70x26)	12,446.20	
Personal allowance		- 11,500	
Taxable income		946	
Tax due		189.20	(at 20%)
After tax income	12446.20 – 189.20	12,257	

Example 2A. A carer who works for the first half of a tax year in their 'normal' job and then works for the balance of the year at NMW level, once they assume caring responsibilities. CAS payable for last six months of year.

	£	£	
Earnings (first six months) per week	300		
Earnings (last six months) 16 hours at NMW per week	120		
Expenses (say)	- 4		
Net employment income	116		For purposes of carers allowance
Carer's allowance per week	62.70		
Total income (per week) first six months	300		
Total income per week last six months before CAS	178.70		
Add CAS (currently £10.40 per week) (10.40 x 26)	270.40		(assume taxable)
Total income (per year)	(300x26)+(178.70x26)+270.40	12,716.60	
Personal allowance		- 11,500	
Taxable income		1,216	
Tax due		243.20	(at 20%)
After tax income	12716.60 – 243.20	12,473.40	
Additional income as a result of CAS	12473.40 - 12257	216.40	(represents CAS after tax at 20%)