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Christian Workers – Finance for Living Series

Working tax credits

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introduction

This review considers the new government regulations brought into effect from 6 April 2015. It is designed to:

- Set out Stewardship's stance on Full-Time Christian Workers (FTCWs) claiming Working Tax Credits;
- Examine each aspect of the new regulations:
- Providing some pointers to FTCWs towards actions they could take to rebut any challenge from HMRC.

Stewardship's stance

Stewardship recognises and fully endorses the long established Biblical model of FTCWs being supported by other Christians thereby freeing them to devote all their working time towards their ministry. Stewardship also believes that generally it is the responsibility of the FTCW to **seek and plan** to raise sufficient funds to cover the costs of their ministry and also to cover the general living expenses of the FTCW and their family, recognising that for a new ministry (like any business start-up), this may take some time to achieve.

Stewardship does **not** support a long-term position where FTCWs do not take this responsibility seriously and therefore we do not see the provision of the Welfare State (including Working Tax Credits (WTC)) as an alternative source of finance obviating the need to secure other forms of financial support to enable them to continue their ministry.

We completely understand that securing financial support is not always straight forward and that it takes considerable time and effort to establish a financial donor base and that during this time it may be right to seek WTC support, but we would always advocate that FTCWs should be working towards growing that financial supporter base to an appropriate size in order to become financially self-sufficient.

Working Tax Credit and the new regulations

The crux of the issue is whether a FTCW supported wholly or primarily by grants and other gifts can be considered as meeting the new criteria for self-employed workers to qualify for Working Tax Credit (WTC), or whether the work that they undertake can be considered to be more a 'hobby' and therefore not eligible.

For a person to satisfy the condition as a self-employed person for the purposes of claiming WTC they must "be engaged in carrying on a trade, profession or vocation on a commercial basis and with a view to the realisation of profits, either on one's own account or as a member of a business partnership and the trade, profession or vocation is organised and regular"[1].

[1] Statutory instrument 2015 No. 605 – The Working Tax Credit (Entitlement and Maximum Rate) (Amendment) Regulation 2015 – paragraph 3

Each part of the new definition has been looked at separately, with a Stewardship comment provided as to why FTCWs might be able to meet the criteria and with some practical pointers and actions for FTCWs to consider that demonstrate that these criteria are met.

In Section 5 we set out some circumstances which we consider would make it inappropriate for a FTCW to claim Working Tax Credits.

1 engaged in carrying on a trade, profession or vocation

Stewardship comment

Firstly, a business does not cease to be a business simply because it is grant funded. This is an important consideration in this context. The first element of the new regulation has not changed and is covered by the **Test 1**: **Self Employed?** section of the internal technical note, January 2014 (see Appendix). FTCWs supported by grants and other gifts received because of their vocation (and therefore taxable) have long been considered to meet this criterion.

Practical pointers

In the event of being asked on the nature the self-employment, FTCWs can respond:

- My ministry/business is grant funded to provide services to the community;
- I provide services which are funded by charitable donations that are made explicitly to fund the work being undertaken and, as such, these donations are liable to income tax as being income in respect of a trade, profession or vocation.

2 on a commercial basis

TCTM02415[2] does not provide a positive definition of what a commercial basis is, rather it uses examples of what might be considered as being 'uncommercial' speaking of work carried out in essence as a hobby. TCTM02415 concludes with:

"Examine the facts and look for the presence or absence of common features or characteristics of what a genuine trade[3] would do and whether the business is being conducted in an uncommercial way".

We concur with this view that there is no straight forward definition of what constitutes a commercial basis and furthermore that commercial does not equate to profit maximisation.

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[2] HMRC Tax Credits Technical Manual

[3] We assume that this is shorthand for "trade, profession or vocation"

Stewardship comment

'Commercial' in this context is undefined and as such is open to interpretation. In any trade or self-employment situation there are many different motivators that produce a variety of different incomes. At one extreme the prime or only motive of a self-employed person may be earning as much income as possible, moving through a spectrum in which income is not the sole motivator but becomes one of many outcomes that are sought. We consider that self-employment can fall anywhere on that spectrum and still be considered to be undertaken on a commercial basis.

So the FTCW should demonstrate that the work that they are involved in is commercial and can't be viewed as a 'hobby'. This is not always as straightforward as it might be in other trading scenarios because the beneficiary of the ministry is often unlikely to be 'paying' commercial rates for the services provided. It will often be the case that the self-employed FTCW is receiving gifts and grants that allow them to carry out the ministry either completely free of charge or at a heavily subsidised rate.

However, simply because the income is not provided by the beneficiary does not mean that the ministry is conducted in an uncommercial way. As long as income, however secured, exceeds direct ministry costs this provides some evidence of commerciality. See section 5 for situations in which establishing commerciality might be more difficult.

Practical pointers

In general, the main thing is to keep clear basic records, including:

- Keep a record of all income including:
    - Gifts and grants
    - Payments received for services provided[4]
- Keep a record of direct ministry costs. This will include costs of materials necessary to fulfil the ministry and other ministry related costs.
- Put together a simple set of accounts that show clearly the total income for your ministry (from all sources, whether charged of gifted) and ministry expenses, and the 'profit (or loss)' arising. These should be the same figures that would be used when completing a self-assessment tax return.

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[4] A rationale explaining why payment received may not necessarily be at "full market rates" should be kept (i.e. rates that would be more normal if there are comparable businesses or, if there are no businesses that charge for this type of service, why it does not provide enough income to meet national living wage levels).

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3 with a view to the realisation of profits

The self-employment does not need to be realising a profit now, but it does need to be carried on with a view to realising a profit. No time limits are set, but the expectation should be realistic.

Stewardship comment

Because there is no time frame defined, we are in the realms of what is reasonable. Building up any trade, profession or vocation takes time and it is likely that a FTCW will require time to build up and establish a financial supporter base necessary to be self-sufficient. As long as there is a realistic assessment that this will not be a permanent situation and that within a reasonable timeframe the FTCW will achieve that level of support this should not be a problem.

Practical pointers

FTCWs in this type of situation might want to consider:

- Compiling a simple projected cash flow plan setting out anticipated income and ministry costs over the next 3-5 years;
- Documenting any plans for increasing support and measuring this against a budget of cash flow projection;
- Documenting efforts and activities undertaken to get more financial support;
- Amending plans if it becomes clear that they are unrealistic and projections are not being met.
- Attending training courses on fundraising for Christian self-supported ministry including Stewardship's training courses.

Such evidence will help to demonstrate an intention to become 'profit-making' even in start-up situations where that might not be immediately obvious. It will also help to support the "need to operate on a commercial basis" criterion.

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4 organised and regular

Stewardship comment

The demonstration of an organised and structured ministry also helps to show that the ministry extends beyond that of a hobby providing evidence of a continuous and ongoing 'work' commitment.

Practical pointers

- Maintain a file of activities undertaken with sufficient detail to differentiate between different types of ministry. Include dates, venues and a broad description of the ministry undertaken but be careful not to include personal details and outcomes that might be contrary to Data Protection Regulations.
- Maintain a diary of future ministry and events planned so as to demonstrate a level of future planning and organisation and not a wholly ad hoc approach, responding as and when opportunities arise.
- Ensure, wherever possible, that the ministry is organised on a regular basis, although this does not need to be rigid and inflexible (see examples below).
- Ensure that any advertising literature clearly sets out the ministry work.

Some examples of what might be considered organised and structured ministry:

- Youth worker – Youth clubs, Alpha course, mentoring, training etc.;
- Evangelist – itinerant schedule, outreach programs, training and equipping others etc.;
- Counsellor – client appointments, courses or conferences, group sessions etc.

5 some funding structures where claiming Working Tax Credits may be problematic

There are, however, certain ministry funding situations which, although not unusual, would make it difficult to meet the necessary criteria for claiming WTC. These are situations in which a FTCW has the potential to develop additional support but has not demonstrated a commitment to do so and has no actual plan in place to see their support increase. This is particularly true when the situation extends beyond the start-up phase and is expected to be the norm.

For example:

- Where the ministry is either largely funded out of savings or where income does not, or only just covers direct ministry expenses thereby requiring the use of other forms of income (e.g. property rental) or savings to be used to cover living expenses.
- Where there is an expectation that emergency grant and gift funding because of the family's dire financial circumstances will be the primary source of funding but there is little effort exerted in fund raising.

There may be an added issue if the FTCW's organisation has a policy of not actively seeking support. Whilst we recognise that this is an accepted approach for some Christian Workers, if this does not result in sufficient income to cover the household's requirements there is not likely to be sufficient evidence of active fundraising to meet the government tests.

In situations such as these, it is hard to argue either a commercial aspect or the realistic expectation of profits and therefore Stewardship does not consider it appropriate to claim Working Tax Credits.

The Finance for Living series of papers forms part of Stewardship's resources for Christian Workers. With contributions from a panel of advisors each of whom has significant experience within the area of mission, the series draws on their expertise to offer biblical teaching and practical guidance on issues affecting those living on personal financial support. The papers are available to download from the Stewardship website see http://www.stewardship.org.uk/resources/finance-for-living

This paper has been written by Alan Hough and edited by Stewardship. Alan has a background in corporate finance, compliance and risk alongside church leadership and trusteeship.

If you have any questions or comments arising from the material presented here, you can contact us at education@stewardship.org.uk or by telephone on 0208 502 8585.

Appendix 1: full-time Christian Workers – claims to Working Tax Credits

Internal Technical Note, January 2014

Important: *This note was prepared prior to the Statutory Amendments made in SI 2015/605 and should therefore be read in that context.*

Background

It seems that HMRC are resisting claims from FTCW's for working tax credits although the exact grounds for disputing their claims is, at present, unclear. This note therefore reviews the legislative requirements and comments on each in turn.

The primary legislative provisions covering the points at issue are The Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002.

Test 1: Self Employed?

Reg 2(1) defines self employment as being "engaged in the carrying on of a trade or vocation".

Stewardship comment

Section 5 of The Income Tax (Trading and Other Income) Act 2005 taxes income to Income Tax on "the profits of a trade, profession or vocation." Therefore if the FTCW is within the charge to income tax on the Christian activities as a self employed worker (as most in receipt of gift income are, where they are not otherwise 'employed') then, in our view, they must also, by definition, be self employed for the purposes of Working Tax Credits. The two codes stand and fall together as the wording in each statutory provision is virtually identical and the context of those provisions (two taxing / tax relieving statutes) are also virtually synonymous.

Indeed, HMRC Internal Guidance at TCTM 02440 states (in the context of training allowances under the Jobseeker's Allowance Regs) that as the allowances "are charged to income tax as the profits of a trade, profession or vocations, then the person can satisfy the remunerative work condition". There is nothing to indicate that the training allowance is a special case: Therefore, the Guidance quite clearly links self employed work, generating income that is within the charge to income tax, to work that qualifies under the remunerative work condition.

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Test 2: Qualifying remunerative work (Reg 4)?

The relevant part of Reg 4 is the 'Fourth Condition'. That is that "The work is done for payment or in expectation of payment".

Reg 4(2) states that "A person who would otherwise satisfy the conditions in Paragraph 4(1) *[ie the 'Fourth Condition']* shall not be regarded as engaged in qualifying remunerative work to the extent that he is –

(a) Engaged by a charitable or voluntary organisation, or is a volunteer, if the only payment received by him or due to be paid to him is a payment by way of expenses …"

Stewardship comment

It is unlikely that a FTCW will be 'engaged' by any charity or voluntary organisation where they are self-employed. They may act in an otherwise unpaid capacity for one or more charities (from whom they may only receive expenses) and in this sense, may be considered to be a 'volunteer'. However, the financial support that they receive (whether by way of grants from charities or, through gifts from other individuals) is likely to be received in respect of the work that they undertake (on which, see further, below). The fact that a particular charity does not pay them does not mean, in our view, that the worker is any the less self-employed.

Test 3(a) Number of hours worked?

This is defined by Reg 4(1A)(a) which directs the reader to Sub paragraphs (3) and (4). Sub Para (3) (c) states that "The number of hours for which a person undertakes qualifying remunerative work is:

(a) …

(b) …

(c) In the case of a person who is self-employed the number of hours he normally performs for payment or in expectation of payment."

Stewardship comment:

There could be some difficulty in interpretation here in that work done that is not directly for payment or in direct expectation of payment could, in theory, be excluded. But it is not thought that this is the intention of this paragraph. To take a secular example, an individual is in business on their own account supplying widgets to the general public. Are the following activities, undertaken as part of that business, not 'hours worked' for working tax credit purposes: writing up the books of account; invoicing; purchasing raw materials; marketing the business? None of these lead to direct payment or expectation of payment. But to suggest that they are not part of the normal hours of undertaking remunerative work would be rather absurd.

Sub Reg (4) explains that any period of customary or paid holiday, or unpaid time spent taking meals or refreshment are to be disregarded. This is further evidence that work that contributes towards the end purpose of the trade or vocation, even though not yielding direct payment or expectation of payment, should be included in 'hours worked'.

Test 3(b) "for payment or in expectation of payment"

The test in Reg 4(1A)((3)(c) above poses a further relevant question:

"The number of hours for which a person undertakes qualifying remunerative work is …

In the case of a person who is self-employed the number of hours he normally performs for payment or in expectation of payment."

Is work undertaken by a FTCW living by faith, receiving gifts from supporters "**for payment, or in expectation of payment**"?

Stewardship comment

In our view, it is. The reasoning behind this is that:

- the donors of the gifts would not generally make those gifts but for the worker carrying out the work that they do.
- the worker would (given the other financial criteria for qualification for working tax credits) need to be paid for the work that they undertake otherwise, they could not afford to undertake it.
- many supporters of FTCWs give monthly by standing order. Many church and charity grants are also on this basis. Therefore there is certainly 'payment' and 'expectation of payment'. Indeed, HMRC Internal Guidance at TCTM 02411 states that "work done in expectation of payment means more than a mere hope that payment will be made at a future date. There should be probability rather than just a possibility that a payment will be made. If a person reasonably expects payments for work done then the condition is satisfied. However, if the person knew before starting the work that payment was unlikely to be made, the remunerative condition is not satisfied". Clearly, in the normal FTCW situation, the condition is indeed satisfied.
- in the case of gifts from most churches and charities, these are grants made, conditional on the worker undertaking work of which the charity approves.

The sufficiency of payment and the direct linkage between the gifts given and the work undertaken is of no relevance. Nor is any sense of accountability between worker and donor (although in many cases, and as a matter of best practice, workers can and often do offer supporters a measure of accountability through prayer and newsletters and the like).