

### **Option 1: Introduction of Annual Allowance**

If such an allowance was introduced Members would no longer be regarded as holding a voluntary office.

The allowance will be regarded as employment income (with possible exceptions, see table below) and will be taxable and liable to employees' and employer's Class 1 NIC whether the allowance was claimed or paid.

Any tax or NIC payable is subject to the availability of the personal tax allowance, NIC thresholds, and the age of the Member (for example, if a Member is above state pension age, no employee's NIC will be payable on the allowance).

Furthermore, any benefits in kind made available might also then be taxable. Please see further information about the potential tax and NIC treatment of the benefits in kind we understand are currently being made available in the table below.

The City Corporation will be required to operate PAYE on the allowance and to satisfy its other employment tax obligations in respect of other taxable benefits in kind (for example, reporting chargeable benefits on annual forms P11D(b) and P11D).

Item	Details	Potential Tax and NIC Treatment
1. Allowances	Basic Allowance/ Attendance Allowance/Social Responsibility Allowance/Conference Attendance Allowance	Taxable and liable to NIC as earnings from the office. Must be dealt with under PAYE.
	Travel and Subsistence Allowance	<p>Taxable and liable to NIC as earnings from the office if it relates to travel between the Member's home and permanent workplace (see N1 below). Must be dealt with under PAYE.</p> <p>If a day subsistence allowance is paid for a period of attendance at the place where the meetings of the authority or committee take place, this is taxable and liable to NIC as earnings from the office. Must be dealt with under PAYE.</p> <p>For other business travel the allowance may not be taxable and liable to NIC as earnings, where it is matched by an equivalent deduction for actual allowable expenditure substantiated by receipts. These rules follow those of employees.</p>

	Clothing allowance	<p>The tax and NIC treatment will depend on the nature of the clothing the allowance is used or reimbursed for, and how the allowance is structured.</p> <p>Tax and NIC will be due on payment of the allowance unless receipts for allowable items are provided when it is claimed, and which cover the amount of the allowance.</p> <p>If the Allowance is used by the Member only to acquire/rent clothing which qualifies as a uniform for tax and NIC purposes (see N2 below) it may not be taxable and liable to NIC as earnings. Receipts confirming the cost of the clothing, and information to support that all the clothing acquired qualifies as a uniform, would need to be provided and retained. There must be no element of profit in the allowance for the Member. To be non-taxable this allowance should be structured as a maximum amount which can be spent on a qualifying clothing, substantiated with receipts.</p> <p>If it is not structured in this way, and/or the clothing does not qualify as a uniform, the allowance will be taxable and liable to NIC as earnings. It must then be dealt with under PAYE, although HMRC may agree for it to be a dealt with under a PAYE Settlement Agreement ("PSA"). A PSA is an agreement with HMRC where the City Corporation would pay the tax and NIC due to HMRC annually on a grossed-up basis following the submission of an annual PSA calculation.</p>
Free and subsidised lunches made available by the City Corporation.	Free or subsidised lunches at the place where the meetings of the authority or committee take place.	<p>We understand that the City Corporation has dispensation from HMRC to provide free or subsidised meals tax and NIC. For RSM to comment on this, we would need to see a copy of the dispensation granted by HMRC and understand when this was granted. The tax and NIC position outlined below is provided without us seeing that dispensation.</p> <p>Free and subsidised meals at the Members permanent place of work are taxable and liable to NIC as earnings from the office. The only exceptions are where:</p> <ul style="list-style-type: none"> <li>• The exemption at Section 317 ITEPA 2003 applies (see Option 2 N3 below for further information). We would not expect this exemption to apply unless the availability to all condition is met, which is commented on in N3 below); or</li> <li>• Where the meal is part and parcel of the Member travelling on qualifying business travel. This will not apply if the Member is attending their permanent workplace; or</li> </ul>

		<ul style="list-style-type: none"> <li>The Member's meal is part of business entertaining for which there is a matching deduction under Section 336 ITEPA 2003. See the section on Formal dinners and banquets below.</li> </ul> <p>Note that where subsidised meals are provided, if the amount paid by the Member is equal to or more than the cost to the City Corporation of providing the meal, no benefit in kind will arise.</p> <p>Where one of the above exceptions does not apply and a benefit arises this must be reported on forms P11D unless a PSA is utilised. The benefit value is the VAT inclusive cost to the City Corporation of providing that Member and (if relevant) their guest the meal, less any amount paid by the Member for that meal. Given that it may be difficult to establish a fair and reasonable amount to include on each Member's P11D, we would typically expect this benefit to be dealt with under a PSA.</p>
Formal dinners		<p>If the event qualifies as business entertainment, then the cost will not be taxable and liable to NIC as earnings. An event is likely to be a business entertainment event where the Member was required to attend it in order to entertain third party guests for a clear business-related purpose (for example to build relationships, discuss opportunities, network etc).</p> <p>Where a Member's spouse or parent attends, HMRC will only regard the cost as business entertainment where their presence is essential (for example in order to act as a host) at the event.</p> <p>The burden would be on the City Corporation to demonstrate that the costs represent business entertainment. For example you must retain evidence of the cost incurred, note the purpose of the entertainment, and record all the attendees and the organisations they represent.</p> <p>Where the cost does not represent business entertainment and a benefit arises, this must be reported on forms P11D unless a PSA is utilised. The benefit value is the VAT inclusive cost to the City Corporation of providing that Member and (if relevant) their guest with the entertainment, less any amount paid by Member for it. We would typically expect this benefit to be dealt with under a PSA.</p>
Accommodation	Accommodation is available free of charge to elected	The provision of living accommodation is, for tax and NIC purposes, a complex issue which may or may not give rise to a benefit in kind liable to tax and NIC. The tax and NIC treatment

	<p>Members and certain employees when dealing with early morning or late-night City Corporation business.</p> <p>Otherwise, accommodation is available on a first come first served basis for personal use at a subsidised cost.</p>	<p>will be affected by several factors and whether a tax exemption is available. A distinction must also be made between board and lodging and living accommodation.</p> <p>Each case will need to be considered based on its own merits and circumstances. RSM recommends that the City Corporation undertakes a thorough and updated review of all accommodation made available to all Members, employees, other officeholders, and volunteers to identify the tax and NIC treatment position in respect of each case.</p>
Free light refreshments	For example tea & coffee	We would expect the provision of free light refreshments to be exempt from tax and NIC, either under the exemption for free or subsidised food made available by employers to all employees (see N3 below), or as a trivial benefit in kind (see N4 below).
Incidental Expenses	Reimbursement of Incidental Expenses	There is no tax liability where an authority reimburses the cost of incidental expenses on production of a receipt or a detailed breakdown, such as postage or telephone calls (but not telephone rentals) and these are incurred wholly, exclusively and necessarily in the performance of the officer's duties.

#### **N1: Mileage Payments** S235A ITEPA 2003

*For 2016/17 onwards, no liability to tax or NIC arises in respect of certain mileage payments paid to Members (in connection with their activities as a member of that authority) using their own cars/vehicles to travel between their home and a permanent workplace, where home is within the authority area or no more than 20 miles from the area boundary.*

*For the purposes of this exemption, a member is a member of a relevant authority if they are an elected or appointed member of a county, district, London borough or parish council or the Council of the Isles of Scilly in England, a county, county borough or community council in Wales, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 in Scotland, or a district council in Northern Ireland.*

#### **N2: Meaning of Uniform**

*A deduction can be permitted for clothing that is recognisably a uniform or part of a uniform, where the Member is required by his or her duties to wear it and must bear the cost of it. A uniform in this context means a set of clothing of a specialised nature that is recognisable as a uniform and is intended to identify its wearer as having a particular occupation. Note that normal formal evening wear is unlikely to qualify as a uniform.*

#### **N3: Section 317 ITEPA 2003 and free or subsidised meals**

*There is no tax charge on the provision of meals for directors or employees if the meal is provided in a canteen or on the employer's premises and all the following conditions are all met:*

- *the meal is on a reasonable scale (HMRC might not regard a meal as being on a reasonable scale where it involves the provision of an elaborate menu, fine wines etc); and*
- *all employees, or all employees at a particular work location, may obtain a free or subsidised meal (or a voucher for one); and*
- *the meals are not provided as part of salary sacrifice or flexible remuneration arrangements.*

*Note that the exemption applies to meals provided in any canteen. The canteen does not necessarily have to be on the employer's premises or restricted to the employees of one employer. For example, on an industrial estate there may be a single canteen serving the employees of all employers on the estate. Meals provided in that canteen are within the exemption as long as they are available to all employees of the employers concerned.*

Regarding bullet point two, provided the same free or subsidised meals are available to all employees at the location, this condition should be met. If, for example, these meals are taken in the City Corporation's staff canteen (if it has one), where all employees are able to enjoy a free or subsidised free meal (the subsidy need not be the same for all employees), this condition should be met.

#### **N4: Trivial Benefit in Kind Exemption**

Under this exemption, if the City Corporation provides a benefit to Members, the benefit is exempt from tax as employment income if all the following conditions are satisfied:

- the cost of providing the benefit does not exceed £50 (or the average cost per Member if a benefit is provided to a group of employees and it is impracticable to work out the exact cost per person); and
- the benefit is not cash or a cash voucher; and
- the employee is not entitled to the benefit as part of any contractual obligation (including under salary sacrifice arrangements); and
- the benefit is not provided in recognition of particular services performed by the employee as part of their employment duties (or in anticipation of such services).

## **Option 2: Introduction of an Amended Financial Loss/Compensation Scheme**

As highlighted under Option 1 above, if the City Corporation pays an allowance to Members it will be taxable and liable to NIC as earnings regardless of whether it is actually paid to a Member. Furthermore, all Members will no longer be regarded as holding a voluntary office because they are entitled to the allowance.

As an alternative arrangement the City Corporation could potentially change the current financial loss scheme so that it makes compensation payments to Members in broadly two different circumstances. For example:

- Compensation for loss of employment income where this can be substantiated, and the Member is in another employment and suffers such a loss for performing their duties as a Member. This might be exempt from tax and NIC under Section 299A ITEPA 2003; or
- Where the above cannot be substantiated by the Member on making a claim and the committee/authorising body or individual so agrees to approve a compensation payment to cover other costs and overheads a Member might incur when performing their duties as a Member. These costs/expenses would be liable to tax and NIC as earnings. The amount could be capped (for example, at £3,000 per annum).

Providing it was correctly structured, a Member could submit a claim for a payment and only when and if the claim was approved would a potential tax and NIC liability be triggered. If a payment was made under set rules, via a claim system and approved on a case by case basis, (where claims could also be refused) there would be no entitlement created until such time as a claim was approved, thus tax and NIC would only be due once a claim is approved (but only if it does not meet the conditions of the exemption at Section 299A ITEPA 2003 – see further below).

This amended financial loss scheme could extend to all Members, including those who do not maintain another job due to the time commitment needed as a being a Member of the City Corporation. For members who are also employed, it might be possible for the amount paid under this scheme to be exempt from tax and NIC.

### **Section 299A ITEPA 2003**

Under Section 299A ITEPA 2003 where:

- a person holds a voluntary office with a relevant authority; and
- they carry out duties of the office in a period in which they are also employed; and
- a payment is made solely to compensate the person for lost employment income for the period (and accordingly does not exceed the amount of that lost income);

The amount can be paid free of tax and NIC.

A person holds a voluntary office where, at the time that payment is made, they:

- are not entitled to any payment or benefit in connection with carrying out the duties of the office
- have not received any such payment or benefit

- do not expect to receive any such payment or benefit

A “relevant authority” is defined by subsection (5) of section 299A and includes The Common Council of the City of London.

“Lost employment income” means the difference between:

- the amount of employment income, after deduction of tax and National Insurance contributions (NICs), that the person would have received from their employment for the period during which they carried out duties of the office, and
- the amount of employment income, after deduction of tax and NICs, that they did receive from the employment for that period.

### **Benefits in Kind**

If correctly structured, where a Member makes a successful claim for a payment which qualifies for the exemption at Section 299A ITEPA 2003, they might still be regarded as holding a voluntary office. The benefits in kind the City Corporation makes available should not then be liable to tax and NIC as employment income.

Where the payment does not qualify for the exemption at Section 299A ITEPA 2003 and is liable to tax and NIC as employment income, we would then expect the benefits in kind to be liable to tax and NIC as employment subject to the nature of the benefit and any exemption available. Please see the table above for further details about the tax and NIC treatment of these benefits.