

## **Taxing Times for Academics**

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The deadline for submitting this year's tax return draws close. All over the country, academics will be gritting their teeth and getting down to one of the least pleasant of annual tasks. They will do well to consider that all is not as it was. Her Majesty's Revenue and Customs seems to be targeting academics, and the unwary academic is certainly an easy target.

HMRC has problems with academics claiming research expenses. The academic research system could almost have been designed to bamboozle tax inspectors. The university employer requires its academic employees to do research and benefits from their efforts. But the academic also benefits personally. Publications boost the university's ranking in the Research Assessment Exercise (RAE), but they also enhance the academic's own reputation and career prospects. And it is generally the academic who controls the work – choosing the research topic, deciding how to do the research, and formulating the argument. Now, for the average tax inspector, whose sole criteria for allowing employment expenses is that they are incurred “wholly, exclusively and necessarily in the

performance of the duties of the employment” (Section 336 Income Tax (Earnings and Pensions) Act 2003), this is terribly confusing.

Time was when academics could walk the tax inspector through this research wonderland, explaining who paid for what. Not now; there are fewer tax inspectors; they have less time to spare and performance indicators deter close interest in the aberrant behaviour of academics. Tax inspectors now have a positive incentive to close cases quickly and this discourages lengthy listening. They see universities - as do many others - as little different from other large organisations. Charities they may be, but universities employ people to produce a competitive good to be sold in a market. And that is actually the nub of the issue: Is university research a business activity?

HMRC argues that the academic incurs no personal costs in conducting research because research is part of the academic’s job. The university wants its employees to conduct research and so the university must be paying the costs of this research – all of them. To university managers, often no more familiar than tax inspectors with the niceties of academic research, this is work done for the university, organised by the university – and paid for by the university. As one university manager assured HMRC recently, an academic “is not expected to take part in research and incur these costs personally.” And yet, universities patently do not pay the full costs of research.

Academics find the cash to cover marginal research costs themselves. Most obviously, they apply for Research Council grants. But so great is the pressure to publish - and thus

to have research findings to write about - that money is solicited from a variety of sources – government departments and their agencies, international organisations, consultants, charities, trade unions, industry, and even wealthy individuals. And academics themselves contribute. It is sobering to reflect on just how much of an academic's research is self-funded.

These days, an academic might expect money enough from the departmental research budget to pay for a conference or two each year, not enough to remain research active for long. The university provides a library, but the academic resorts to Amazon for the latest books. To be sure, the university supplies an office, but not an office anywhere near large enough to hold all the detritus of modern research. Nor does the university expect its employees to do their research in office hours: they are to work at home, to provide an office there, and a computer, and a library, and whatever else keeps body and soul together while the mind is working. This is not a lifestyle choice to avoid a journey to the factory; it is part and parcel of the job – as is bearing the costs imposed by working at home.

Of course, lots of employees work from home and do not expect the costs to be tax deductible. This is because their employers pay the costs. Compare the lot of someone doing research in, say, HM Treasury with that of an employee doing research in a university. Both investigate, both publish their findings, both work away from the office. But the civil servant would not dream of finding his own research funding and contributing to research costs from his own pocket.

Once upon a time, it might have been argued that the civil servant did research only because his employer required it, whereas the academic did research to please himself. The distinction has disappeared: universities not only insist that research is part of the academic's job, but also that they do the job properly. Much university funding hangs on the academic's publication performance, and it is no longer unusual for departments to tell their staff where to publish. Some advise academics what research to do. Some sell the services of their academics, most obviously to the pharmaceutical industry.

Ever since 1997, the British Universities Finance Directors Group has considered publicly-funded research a business activity. Some universities continued to claim the tax advantages of charitable status, arguing quaintly that the purpose of university research is to advance human knowledge. The argument is faint these days, drowned out by the clamour to make university research useful to industry and the economy. Third-stream funding is to make up for the shortfall in government largess, and intellectual property rights are to facilitate the commercial exploitation of research. And so, universities forsake the tax advantages of the charity for the tax advantages of the commercial organisation.

HMRC does not automatically accept that university research is a business activity, but will allow itself to be convinced by any university putting forward a case. Universities accept the challenge with gusto, providing frenetic IPR activity and bustling technology transfer offices as evidence of their intention to exploit research commercially. Also

effective is demonstrating that the university's research is controlled and directed by the university, and not driven by the curiosity of individual academics. Consider this from the vice-chancellor of Keele: "What has to be recognised is that each individual university is the employer of the people who do the research, and it is the university who holds the research grant." (*THES*, 28 August 2008, p.35).

Academic taxpayers fall into 3 categories:

1. Those who claim no research expenses because they incur very few
2. Those who claim no research expenses because they declare no extra income and argue that one will roughly cancel out the other
3. Those who claim research expenses.

The last group now has decisions to make. It can retreat into one of the other two categories, or it can claim that research expenses relate to activity that has nothing to do with the university and its research. What academics can no longer do is persuade HMRC that they incur deductible research expenses as part of their job. If research expenses are to be admissible, they must be for research that is very much not part of the job.

The Association of University Administrators held a conference at about this time last year, looking at the financial implications of giving up the tax advantages that go with charitable status. It might also have considered the research implications. An artificial distinction between university research and other research has all sorts of interesting implications. If academics are to make their research costs tax deductible, they need

research activity (and eventually research income) that has no association with the university. Starting a research sideline is one possibility; more practical is diverting existing research. It is not necessary to start a separate company, but it is as important for the individual academic as for the university to demonstrate that research activity is a business. External examining for derisory fees and refereeing papers for free only suggest to HMRC that the academic is deep into charitable endeavour.

Wherever possible, the academic's research income should be kept clear of university accounts. Consultancy is to be preferred over research grants. If research grants must be used to fund research, they should be held at another institution to which the academic can be sub-contracted. This is because any additional research income which comes via the university, even if specifically for research activity, would be deemed to arise "by virtue of the employment" (i.e. taxable) and related research expenses would almost certainly fail the "wholly, exclusively and necessarily" test (i.e. not tax deductible). And in as much as the product of research is so evidently publication, it is probably wise to dissociate some publication from the university, making clear that it was not produced as part of a university job. Publications that yield taxable royalties suggest themselves. That should complicate whatever metrics exercise succeeds the RAE. It would also seem to complicate intellectual property rights in as much as the university claims IPR on the grounds that the employee does research as part of his job. It is much harder to claim IPR from research that is not specifically part of the job.

In short, this is a mad turn of events from which no one benefits. Academic research must suffer, and what remains of academic goodwill towards universities may disappear altogether. Once that is gone, the next step is into a managerialist world in which the university tells the academic what research to do. University research will then be scarcely distinguishable from research in large, commercial R&D labs, where only stealthy bootlegging and surreptitious skunkwork keep independent thinking alive.