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Category	Course title	Author
Tax	Accommodation benefit	Cath Hall

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Accommodation benefit

1. Introduction

A benefit which would be chargeable to Income Tax potentially arises when employees are provided with accommodation by reason of their employment. Since the value of this cannot be converted into money, there are special rules governing the taxation of this benefit. Those rules will be considered in this module.

1.1. Scope of the benefit

The basics of the benefit will be described below. However the provision of accommodation can be caught by the rules in the following additional circumstances:

- The employee owns or rents accommodation and the employer simply pays a rent allowance or additional salary to cover the cost of that accommodation. The additional payments are treated as normal remuneration;
- The employer provides accommodation under a scheme whereby the employee has waived salary to 'pay' for the provision but continues to be entitled to a higher wage. The employee remains taxable on the higher wage; and
- The employer provides accommodation but pays a gross wage from which rent is deducted. Again, tax is payable on the gross wage.

In these cases, no accommodation benefit charge would be payable to prevent the accommodation effectively being charged twice.

1.2. The benefit charge

There is a distinction between the benefit charge arising on the provision of living accommodation and accommodation other than living accommodation. It is therefore important to understand the difference between those two things.

There is no statutory definition of living accommodation. HMRC say that it is therefore given its 'everyday meaning' and they consider that it includes houses, flats, houseboats, holiday villas and apartments but not hotel rooms, other forms of board and lodgings and non-residential accommodation such as a workshops, garages or offices.

The general rule of thumb is that living accommodation is something that gives the occupant the necessary facilities to live independently such as full cooking facilities (even if these are shared).

These notes will consider the special charge on living accommodation as the benefit charge on non-living accommodation follows normal benefit rules.

2. Exemptions from the benefit

The benefit does not apply in the following circumstances:

- Where the accommodation is necessary for the proper performance of the duties of the employment;
- Where provision of accommodation is customary and is needed for the better performance of the duties;
- Where the special security exemption applies

If the accommodation charge does not apply as a result of these exemptions, then any council tax or water rates paid by the employer will be excluded from general earnings.

2.1. Necessary for the proper performance of duties

This can be a difficult test to pass as it has to be shown it is absolutely essential for the person to live in the property in order to properly perform the duties of the employment. It is not enough for the employer to require the employee to live there.

HMRC allow the following types of employees to be treated as falling within this exemption and it is often very difficult to get officers to accept the argument in relation to any other type of employee:

- Agricultural workers who live on farms or agricultural estates;
- Lock-gate and level-crossing gate keepers;
- Caretakers living on the premises (but only where it is a genuine full time caretaking job);
- Stewards and green keepers living on the premises; and
- Wardens of sheltered housing schemes living on the premises where they are on call outside normal working hours.

2.2. Customary and needed for the better performance of duties

For this to apply it must be shown that the accommodation is provided for the better performance of the duties and that it is customary for employers to provide such living accommodation.

The better performance test necessitates proving that the employee performed the duties better than if they lived elsewhere. This is not the same as enabling the employee to get to work more easily since it must be remembered that the duties do not commence until the employee is at work. HMRC will accept the better performance test is met if:

- The employee is required to be on call outside normal hours; and
- Is in fact frequently called out; and
- The accommodation is provided so that the employee may have quick access to the place of employment or other place to which the employee is called.

In relation to the customary test, it is not enough to show that the custom exists in relation to a particular employer but that it is customary in that kind of employment with that and other employers.

The types of employees who are accepted as falling within the above exemption include:

- Police officers including MOD police;
- Prison governors, officers and chaplains;
- Clergymen and ministers of religion (other than those with purely administrative duties);
- Pre-registration house officers;
- Members of HM Forces;
- Members of the Diplomatic Service;
- Managers of newsagent shops that have paper rounds;
- Managers of public houses living on the premises
- Managers of traditional off-licences (that is those with opening hours equivalent to those of a pub);
- Boarding schools where staff are provided with accommodation on or near the school to include the head, other teachers with pastoral responsibilities, the bursar, the matron and other medical staff; and
- Stable staff of racehorse trainers and certain other key workers.

For veterinary surgeons assisting in veterinary practices and managers of camping and caravan sites living on or adjacent to the site, HMRC accept the customary test is met but consider the better performance test has to be dealt with on a case by case basis.

2.3. Special security exemption

The benefit will not apply for an employee where:

- There is a special threat to the employee's security;
- Special security arrangements are in force; and
- The employee resides in the accommodation as part of those arrangements.

This may apply to members of the Government.

2.4. Directors

The second and third exemptions (necessary for proper performance and for better performance and customary) do not normally apply to directors. However if the person has no material interest in the company and one of the following applies, then the exemption can apply:

- The person is a full time working director of the company; or
- The company is non-profit making; or
- The company is established for charitable purposes only.

3. Calculating the benefit

The income tax benefit applies to all employees (with the above exemptions).

3.1. *The basic benefit*

The calculation of the basic benefit depends on whether the property is owned by the employer or rented by the employer, for provision to the employee.

If the property is owned by the employer, the benefit is calculated as the annual value, based on the gross rating value. This may be difficult to identify, in practice. Where the property is rented by the employer for provision to the employee, the benefit is calculated as the higher of the annual value or the rent paid by the employer.

These figures are pro-rated if the property is not available for the whole tax year.

In addition any contributions made by the employee i.e. rent paid reduces the basic benefit. A capital contribution could also reduce the amount upon which the benefit is based.

Example 1

Evelyn was provided with accommodation in relation to her employment, by her employer, from 1 February 2017. The annual value of the property is £10,000.

Christof was provided with accommodation in respect of his employment from 1 February 2017. The property was rented by his employer at an annual rental of £13,000. The annual value of the property is £8,000.

Evelyn – the annual value applies and the benefit is £10,000.

Christof – The rent paid by the employer is higher than the annual value of £8,000 and therefore the benefit is £13,000.

In each case the benefit is provided for the whole tax year and there are no employee contributions.

3.2. *Additional yearly benefit*

An additional benefit arises on the employee if the property is owned by the employer and the original cost is more than £75,000.

The benefit is calculated as:

$\text{£}(\text{Original cost} - 75,000) \times \text{official rate of interest at the start of the tax year}$

The original cost in the above calculation is increased by any capital improvements to the property before the **start** of the tax year in question.

However, there is an additional adjustment if the property was acquired more than six years before being provided to the employee. In that case, the original cost in the

above calculation of the benefit is replaced by the market value at the time it was first provided. The market value is still increased by subsequent capital improvements after that date.

Example 2

On 1 May 2014, Kane Ltd purchased a property for £120,000 and provided it to an employee, Serena, on 1 May 2015. The employee paid no rent in respect of the provision of the accommodation. The market value of the property at 1 May 2015 was £140,000.

The ORI is 2.5%.

The additional yearly rental benefit for Serena is:
 $£(120,000 - 75,000) \times 2.5\% = £1,125$

Market value does not apply in the above benefit. The provision of the property was less than six years from purchase.

Example

On 1 January 2016 an employer bought a house for £175,000 for its employee to live in. The kitchen was extended in February 2016 at a cost of £25,000 paid for by the employer, although £10,000 was reimbursed by the employee. The employee pays £1,000 rent per year, the annual value is £1,200 and the official rate of interest is 2.5%.

The benefit for 2017/18 is calculated as follows:

The market value basis does not apply. The cost of providing the accommodation is:

Cost of acquisition	£175,000
Improvements	£25,000
Less: amount reimbursed	(£10,000)
Cost	£190,000

Benefit calculation

Basic benefit:

Annual value	£1,200
Less: rent paid	(£1,000)
Net benefit	£200

Additional = £190,000 - £75,000	£115,000
Benefit = £115,000 x 2.5%	£2,875

Total benefit charge	£3,075
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4. Associated costs

The tax charge described above relates only to the accommodation itself. A separate tax charge will arise when the employer pays other costs such as utilities or provides furniture. Exemption from the main charge for living accommodation does not extend to the incidental expenses.

The tax treatment of different costs is as follows:

- Council tax, water rates: if an employer meets these costs, it is the meeting of a pecuniary liability so tax will be chargeable under normal principles. However, if the council tax etc. is paid for an employee who is exempt from accommodation benefit under the necessary rule, the customary rule or the security rule, then there is no tax or national insurance charge;
- Repairs: no charge will arise for repairs which would be the obligation of the lessor if the premises were let under a lease;
- Furniture: if furniture is provided, this is taxed using the 20% annual value calculation; and
- Other costs: costs such as cleaning, gardening etc would be fully taxable as a benefit. Buildings insurance is not a benefit as this is a cost borne by the owner not the tenant.

If the accommodation itself is not taxable because of the necessary rule, the customary rule or the security rule, the amount of taxable benefit arising in connection with certain expenses is capped.

Expenses capped in this way are:

- Heating, lighting and cleaning;
- Repairs; and
- Provision of furniture.

The cap is 10% of income being calculated as earnings plus benefits less allowable deductions and pension contributions.