

Application of PAYE/PRSI to BIK - 1 January 2004

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General Issues

1. An employee whose income (inclusive of taxable benefits-in-kind) is less than €1,905 is not liable to income tax on non-cash benefits-in-kind provided. Does this income limit apply in respect of the employment from which the benefits are provided or does the employee's previous income from previous employers reckon for the purposes of the €1,905 limit? How does this apply to connected employers?

Income from a previous employment does not reckon for the purposes of the €1,905 limit except where the previous employment has been held by the employee with a connected body corporate. All employments held by an individual under the same concern or within a group of two or more concerns, one of which controls the rest, are treated as a single employment for the purposes of the €1,905 limit.

2. Does the €1,905 income limit apply to Directors?

No. In the case of directors, all benefits-in-kind are chargeable irrespective of the level of income. Furthermore, an employee who also holds a position as director in the same concern or under any concern within the same group, is liable to income tax and PRSI on any non-cash benefits provided in respect of the employment / directorship whatever the income.

Employer Issues

3. Define 'best estimate'

An employer will be regarded as having made a best estimate where a genuine attempt has been made to calculate the taxable benefit (also known as the notional pay) based on all details available to the employer at the time the benefit is provided. If the employer has any doubt about the valuation of any benefit-in-kind the relevant regional tax district should be consulted.

4. What happens if the calculated PAYE / PRSI liability for the pay period exceeds the amount of pay?

If the calculated PAYE/PRSI liability exceeds the employee's pay, the employer is obliged to account for and remit the total PAYE/PRSI due on the combined actual and notional pay (in full) with the relevant monthly P30 return. The amount not deducted from the employee's pay or any 'shortfall' not deducted in the particular pay period may be recouped from the employee by collecting it over remaining pay periods in the tax year. The PAYE paid on account by the employer at the time the benefit was provided must be

recouped from the employee in full by March 31st of the following tax year, otherwise, the employee will be treated as having received a further benefit on the relevant 31st March equivalent to the amount of un-recouped income tax and the employer must operate PAYE/PRSI on this amount.

5. Does the employer have to collect the full amount of PAYE/PRSI due on the benefit in the relevant pay period where there is sufficient actual pay in that period to cover the full PAYE/PRSI due?

In the case of PRSI the full amount due must be deducted. In the case of PAYE due on the benefit, the employer may spread the deduction over several pay periods within the tax year where the deduction in one pay period would cause hardship. However, regardless of the manner in which the PAYE/PRSI is recouped from the employee, the employer must remit the full PAYE/PRSI due on the benefit with the appropriate P30 having regard to the date the benefit was provided.

6. What happens if the employee leaves and there is "PAYE paid on account" or a 'shortfall of PAYE' not recouped from the employee?

If the employee leaves the company before the amount paid on account by the employer or any 'shortfall' has been recouped, the employer must, upon receipt of a form P11D, return details of the un-recouped income tax. The taxpayer will be pursued directly by Revenue for the income tax arising on the further benefit arising.

7. An employee has a company car and the notional pay is spread over the entire year. What happens in a Week 53 Tax Year?

If an employer has charged the calculated taxable benefit (the notional pay for the year) over the 52 weeks, no notional pay should be included in the 53rd pay day as the full notional pay will have been charged in the 52 weeks.

8. Can an employer still pay the PAYE & PRSI Liability on the employee's behalf?

Under the new arrangements, employers may continue to discharge the PAYE/PRSI liability arising on benefits provided. However, the PAYE/PRSI must be calculated on a grossed up basis - taking the taxable benefit provided as the net (after tax and employee PRSI) amount received by the employee and regressing that amount at the employee's marginal rate of tax and PRSI. Whether the grossed up "notional pay" should be reflected in the employees payroll / P60 depends on the extent and frequency of the benefit provided.

Minor and Irregular Benefits

Where the benefit is minor and irregular, the employer may discharge the PAYE/PRSI liability in a similar fashion to the practice which prevailed prior to the introduction of the PAYE/PRSI on benefits. The employer may contact the relevant tax office to agree the liability arising and submit a supplementary form P35. However, the PAYE/PRSI liabilities (including employer PRSI) must be calculated on a grossed up basis (net benefit re-grossed at the employees' marginal rate of tax and PRSI).

Regular or Substantial Benefits

For regular or substantial benefits, where the employer wishes to discharge the PAYE/PRSI liability, the net benefit must be re-grossed at the employee's marginal rate of tax and PRSI and PAYE/PRSI accounted for on this re-grossed amount. The re-grossed amount reckons as emoluments of the employee and must be put through the payroll as normal and be included together with details of tax and PRSI thereon on all relevant documentation - TDC, P60, P45, P35.

9. What is the status of existing agreements between employers and tax offices?

Existing agreements with tax offices may no longer be valid after 31 Dec 2003.

Employers should contact the appropriate regional tax office with a view to making new agreements where appropriate having regard to the application of PAYE/PRSI to benefits with effect from 1 Jan 2004.

10. What happens when an employee goes on career break / maternity leave and retains certain benefits?

The employer must account for the PAYE on the notional pay (even if there may be no actual remuneration from which to deduct) and the employer may put in place some other mechanism to recoup the PAYE so paid from the employee.

11. What returns are required in respect of notional pay figures?

Whereas employers are not required to show notional pay figures separately on individual employee documentation (P45's , P60's), employers are required to keep records of all benefits provided to employees and calculations of the amounts taken into account. These will be required in the event of an audit. The P35 summary sheet for 2004 will include an additional field to record the total notional pay for the year for the employees listed on the P35. This is the only reporting requirement in respect of notional pay to which PAYE/PRSI has been applied.

12. Is an employer required to make any adjustments for notional pay after the end of the tax year where 'best estimate' was used and documented to show that all reasonable efforts were made to determine the correct notional pay amount for a tax year?

Where a bona fide 'best estimate' was used and documented to show that all reasonable efforts were made to determine the correct BIK amount for a tax year, the employer will not be required to make any adjustments for BIKs after the end of the tax year. This is on the understanding that the best estimate was calculated by reference to all relevant information available to the employer and was revisited, where appropriate, before the end of the tax year e.g. it is expected that an employer who calculated a best estimate of the notional pay for an employee in respect of a company car in January would revisit the best estimate before the end of the tax year (having regard to the actual business miles done compared to the estimated mileage taken in January). It is not sufficient that a best estimate be calculated in January and not revisited at all. In general, it is expected that the difference between the best estimate and the correct notional pay would not be substantial.

13. An employer is on the Direct Debit system paying P30 tax. Is it necessary to increase the Direct Debit in the situation where a notional payment is included in one particular week?

Yes it will be necessary to increase the Direct Debit in these circumstances. The employer should contact the Collector General, Direct Debit Section, Apollo House, Tara Street Dublin 2 in writing or by fax (Fax No 01 6717020) to advise them of the adjustment.

14. An employer who returns the P35 on an annual basis gives a benefit in the middle of the tax year. When does the PAYE/PRSI due on notional pay become due?

Employers who make annual P35 returns are required to remit the PAYE/PRSI due on any notional pay for the year in the same manner that the PAYE/PRSI on ordinary salary is due for the year. Therefore, the P35 would be submitted along with the Total PAYE/PRSI due (on actual and notional pay) after the end of the tax year (but before the due payment date). The presence of notional pay does not alter the usual P30 / P35 filing dates.

15. Will forms P11D still be issued?

Yes. The employer requirement to complete a form P11D on request has not been rescinded. Where an employer receives a form P11D, there will be a requirement on the employer to return all benefits to which PAYE/PRSI does not apply, e.g. free or discounted shares, employers paying PRSA contributions on behalf of employees.

16. What are the consequences of either incorrect operation or non-operation of PAYE / PRSI on benefits (penalties etc)?

The existing penalties for non-operation of PAYE/PRSI on cash remuneration will apply equally to the non-operation of PAYE/PRSI on benefits. In the case of incorrect operation where the employer has made a best estimate (see question 3 above) penalties will not generally be applicable.

17. Are there any plans to redesign the Tax Deduction Card to provide an additional column for notional pay?

Not at this time. The existing Tax Deduction Card has a free column for use by the employer. The column in question is Column F which is headed 'For Employer use- Net Pay, Employers PRSI etc.' This column can be used for Notional Pay if required.

18. Is an employer required to show notional pay separately on the employee's payslip?

There is no requirement under tax legislation for an employer to show the notional pay separately but there may be Employment Law implications. Any queries in this regard should be referred to the Department of Enterprise, Trade and Employment. To avoid potential queries from employees, showing the notional pay separately could prove useful.

19. How do the new arrangements affect the Christmas Bonus and how it is treated?

A cash bonus at Christmas should be put through the payroll and PAYE/PRSI applied as normal. Where the bonus is in non-cash form, if the value is less than €100 per employee and no other non-cash benefits has been received by the employee during the year, PAYE/PRSI need not be applied (covered by the one off small benefit exclusion). If the value of the non-cash bonus exceeds €100 or where the small benefit exclusion has already been availed of, the full value of the bonus must be treated as notional pay.

20. How are premiums paid by an employer for Permanent Health Insurance Cover for employees treated?

Company policies

Many employers pay "sick pay" where employees are out of work for extended periods due to illness. The employer might take out a policy of insurance to cover the costs should such an eventuality arise. Where the policy is a general one to cover all employees PAYE/PRSI need not be applied to the premiums paid under such a policy of insurance taken out by the employer.

Contributions paid by the employer on behalf of an employee

PAYE/PRSI need not be applied to an employer paid contribution to a Revenue approved policy or scheme to the extent that the combined contribution (employee's and employer's) does not exceed the relevant 10% limit. Any excess over the 10% should be put through the payroll and PAYE/PRSI applied. Where the premiums are in respect of an unapproved policy or scheme, the premiums paid by the employer must be treated as notional pay and PAYE/PRSI must be applied.

21. An employer contributes money towards to a sick scheme (fund). The employees also contribute from their net pay to the sick scheme. How is the employer's contribution treated under the new arrangements? If an employee is out of work through sickness and is paid from this fund, is this subject to PAYE/PRSI?

PAYE/PRSI need not be applied to the employer's contribution to such a scheme. However any payments from such a fund which exceeds the employee's contribution would generally be taxable. Full particulars of the scheme should be forwarded to the appropriate regional tax office for a ruling.

22. Is "notional pay" reckonable for the purposes of calculating the relevant age based limits for PRSA contributions?

Yes.

Company Car / Company Van Issues

23. What is the position if I do very little private mileage in my company car?

In the absence of evidence to the contrary, the minimum private mileage that an employer may accept for the purposes of calculating notional pay will be 5,000 miles per annum. A claim by an employee that lower private mileage occurred must be accompanied by reliable documentary evidence which must be retained by the employer.

24. There are new procedures relating to the taxable benefit for 'company vans'. Will these be implemented on a retrospective basis?

The Finance Act 2003 did not introduce a new tax charge for vans. Under existing legislation (which applies up to 31 Dec 2003), the private use of a company van is taxable. The basis for calculating the benefit in kind on a company van has changed with effect from 1 Jan 2004. The new rules do not apply retrospectively.

25. If an employee only has restricted access to a vehicle, for example, only allowed to use the vehicle two days a week, how will the taxable benefit be calculated?

Where the vehicle is kept on the company premises for the remaining five days of the week and the employee or the employee's spouse or any member of his or her household is prohibited from using the vehicle and does not in fact use the car during those days then the taxable benefit should be computed by reference to the number of days the vehicle is available for private use.

26. What kind of evidence can an employer accept in order to apply a discount to the Original Market Value of a company vehicle provided to an employee for the purposes of calculating the 'cash equivalent' of the benefit?

For a discount to apply, it must be shown that (a) the discount was actually received and (b) the discount was normally obtainable in a single retail sale in the open market. Generally, the bill of sale should indicate the actual price paid (which can easily be compared to the list price) thus indicating the amount of the discount. If the discount is less 10% or less, no further action is required. Where the discount received was greater than 10%, employers are advised to obtain evidence from the vendor (the garage) i.e. written confirmation that the discount received was also obtained in single retail sales to other third parties.

27. What happens if a capital sum paid by an employee towards a company car is not fully set off in the first year?

Any balance of the lump sum contribution that could not be set off in the first year may be taken into account in computing the taxable benefit (the notional pay) in the second year.

28. What kind of record keeping are employers required to keep in relation to establishing the business mileage incurred by an employee?

Employers must put in place some mechanism whereby business mileage covered by employees is recorded e.g. the employee could keep a log book showing business journeys. This is not a new requirement. Under existing arrangements, (which applied up to and including the 2003 tax year) employers are required to keep similar records for the

purposes of completing forms P11D annually. Also, employees using the alternative basis for calculating benefit in kind on a company car are required to keep a log book under existing arrangements. The log book must be certified by the employer, as being to the best of his/her knowledge and belief, true and accurate.

29. How do you arrive at the taxable benefit for a motorcycle provided by the employer?

For motorcycles less than 410 kilograms, the annual taxable benefit is calculated at 5% of the market value of the motorcycle when it was first provided plus any other annual expenses paid in connection with same e.g. insurance, tax, petrol and repairs etc. less any amount made good by the employee to the employer. Motorcycles over 410 kilograms are within the definition of a car for benefit in kind purposes and the taxable value must be calculated on the same basis as a car.

30. Where an employer provides a minibus to pick up employees / drop them home, what is the position. This would be common late at night, early in the morning where no public transport is available?

While this arrangement does constitute a benefit, PAYE/PRSI need not be applied to the benefit arising provided the following conditions are met- The bus service is provided to transport employees on journeys that are between the home and a workplace or between workplaces The bus service is available to employees generally whether or not all of the employees use the service The main use of the service is for qualifying journeys for employees.

31. Does the payment of toll charges by an employer for an employee give rise to a taxable benefit?

Whether or not a taxable benefit arises will depend on the nature of the journey undertaken by the employee. If the employee is traveling to and from work and pays toll charges which the employer reimburses, the reimbursement should be put through the payroll and PAYE/PRSI charged. Reimbursement of toll charges incurred on business journeys may be paid free of tax.

32. Is the private use of lorries liable to PAYE/PRSI?

Any private use of a commercial vehicle with a gross vehicle weight (i.e. gross laden weight) in excess of 3,500kg will not give rise to a taxable benefit in kind.

33. Where an employee who has the use of a company van goes directly to work from home in the morning and brings the van home every evening, will there be a taxable benefit?

Where a van is available for private use, a taxable benefit arises. However, such private use will not be taxable where the following conditions are met: (1) the van is supplied by the employer to the employee for the purposes of the employee's work, (2) the employee is required by the employer to bring the van home after work, (3) apart from travelling from work to home and back to work, other private use of the van by the employee is forbidden by the employer, and there is in fact no other private use, (4) in the course of his or her work, the employee spends at least 80% of his or her time away from the premises of the employer to which he or she is attached.

34. Are all vans exempt from the benefit in kind charge following the Ministers recent announcement?

No. Where all of the conditions outlined in the Minister for Finance's statement (set out in the answer to question 32 above) are not satisfied, the taxable benefit is 5% of the original market value (VAT / VRT inclusive) of the van less any amount made good by the employee directly to the employer.

35. Are cars exempt from the benefit in kind charge where all the conditions set out in the Minister 's announcement are satisfied?

No. The exemption from the benefit in kind charge is confined to vans only.

36. Is a crew cab a van or a car? Is a Jeep a van or a car?

How the vehicle is treated depends on whether it falls within the definition of a 'car' or the definition of a 'van'. Essentially, a 'car' means; any mechanically propelled road vehicle designed, constructed or adapted for the carriage of the driver or the driver and one or more persons other than (a) a motorcycle, (b) a van or (c) a vehicle not commonly used as a private vehicle and unsuitable to be so used. The definition of a car includes motorcycles over 410kgs. A van means a vehicle which was designed or constructed solely or mainly for the carriage of goods or other burden, and which has a roofed area or areas to the rear of the driver's seat and no seats or side windows in that area. Adapting say a four - seater crew cab (e.g. taking out the back seats) would not change the vehicle from being a car to a van, as subsequent adaptation cannot alter the original purpose of design or construction. Even with the back seats removed, the vehicle would still be classed as a car for benefit in kind purposes having regard to the original construction. If the vehicle does fall into the definition of a van, the vehicle is not automatically excluded from the benefit in kind charge. There will be no charge to tax only where all of the following conditions are satisfied:

(1) the van is supplied by the employer to the employee for the purposes of the employee's work,

(2) the employee is required by the employer to bring the van home after work,

(3) apart from travelling from work to home and back to work, other private use of the van by the employee is forbidden by the employer, and there is in fact no other private use,

(4) in the course of his or her work, the employee spends at least 80% of his or her time away from the premises of the employer to which he or she is attached.

37. What is the position if the vehicle is adapted? If I have a car and I take out the backs seats and black out the rear side windows, is the vehicle now a van?

No. A car is defined as any mechanically propelled road vehicle designed, constructed or adapted for the carriage of the driver or the driver and one or more persons other than (a) a motorcycle, (b) a van or (c) a vehicle not commonly used as a private vehicle and unsuitable to be so used. Subsequent adaptation of the vehicle does not alter the fact that

the vehicle was designed, constructed for the carriage of one or more persons.

38. What is the position if I put in back seats and fit rear windows in a van?

Once there are rear seats fitted etc, the vehicle no longer satisfies the criteria to be regarded as a van for benefit in kind purposes. Therefore, the vehicle should be treated as a car and the taxable benefit calculated accordingly. For the purposes of calculating the taxable benefit, the employer should consult the relevant regional office for a ruling on the Original Market Value that should be used.

39. A company has several sites located all over the country. It is impractical to bring back the van to a central location (the employers premises) every night. If the van is brought home by an employee, does a taxable benefit arise?

Where a van is available for private use, a taxable benefit arises. However, such private use will not be taxable where the following conditions are met: - (1) the van is supplied by the employer to the employee for the purposes of the employee's work, (2) the employee is required by the employer to bring the van home after work, (3) apart from travelling from work to home and back to work, other private use of the van by the employee is forbidden by the employer, and there is in fact no other private use, (4) in the course of his or her work, the employee spends at least 80% of his or her time away from the premises of the employer to which he or she is attached.

40. In the case of Van which forms part of a Van Pool, will Revenue accept a Tachometer/Tripmeter reading taken each Friday evening and again on Monday morning to show that no private mileage was done over the weekend?

Yes this is acceptable.

41. Company A is a UK registered company who provides staff to Company B (a Dublin based company) in return for a management fee (which includes the cost of the employee's salary). Company B provides a company car to the employee who carries out his duties in Dublin. What is the position in relation to the benefit-in-kind arising from the availability of the company car for the private use of the employee?

The facts of each case would have to be ascertained - copies of the contract of employment and terms and conditions of employment - relationship if any between the two companies - copy of contract between the Irish and UK company would have to be submitted to the relevant regional tax office for a ruling.

42. What is the position where for example a car distributor gives an award to the sales person of the year (the sales person could be from one of a number of garages i.e. an employee of the garage not the car distributor)?

Where arrangements are in place whereby the award is routed through the particular garage, the amount of the award (if cash) or the taxable value of the award should be put through the normal payroll and PAYE/PRSI applied. Where no such arrangements are in place, the car distributor is responsible for remitting the tax and PRSI due on the award.

43. Can an employer use their own system for calculating the taxable benefit arising from the use of a company car or must they use the ready reckoner provided in the Employer's Guide to operating PAYE and PRSI on certain benefits?

There is no onus on the employer to use the ready reckoner. Whatever method is used, the employer must ensure that the correct PAYE/PRSI is deducted.

Where an employee's annual business mileage is known in advance (or the employer estimates what it is likely to be) the total benefit in kind charge can be estimated at the beginning of the year and the resultant notional pay may be averaged out over the relevant pay periods

e.g. Original Market Value €20,000 Estimate Business Mileage 18,000

Notional pay is €20,000 X 24% = €4,800 per annum or €92.30 notional pay per week.

However, the employer should make periodic checks of the cumulative business mileage during the year to ensure that the aggregate PAYE and PRSI liabilities for the year are on track having regard to the originally estimated business mileage (See Chapter 5, paragraph 5.2.4 of the Employer's Guide).

44. Give an example how the ready reckoner works where the employee is on holiday and the business mileage stays the same.

Example

Payroll week 47 (business miles to date 14,500) - Use Pay week 47 Band 2 (13559 to 18077)

Payroll week 48 (business miles still 14,500 - say employee on holiday) - Use Pay week 48 Band 2 (13847 to 18462)

Payroll week 49 (business miles still 14,500 - say employee on holiday) - Use Pay week 49 Band 2 (14136 to 18846)

Payroll week 50 (business miles now 15,000) - Use Pay week 50 Band 2 (14424 to 19231)

45. I am a travelling sales representative. Generally, I operate from home and I travel between customers during the day. What do I record as business mileage?

Travel to and from your place of work is private mileage. Therefore, travel from home to your first customer is private mileage and travel from your last customer back home is private mileage. Travel between customers is business mileage.

46. What evidence will Revenue accept where the private mileage for a company car is less than 5,000 miles?

Where an employee claims that his or her private mileage is less than 5,000 miles in the year, the employer must calculate the taxable benefit by reference to a minimum of 5000 private mileage unless the employee provides evidence (which must be retained by the employer) to show that the private mileage is less. Acceptable evidence would be a log book of business journeys and mileage involved or some other form of account of the business miles done. The private mileage can be calculated by deducting the recorded business mileage from the total mileage according to the milometer reading.

47. What is the situation where the employee pays for private fuel while using a company car for work purposes?

Where an employee pays for his own private fuel which does not involve a direct contribution to the employer, the amount expended by the employee is ignored for the purposes of calculating the taxable benefit.

48. Is there any taxable benefit where company vans kept at the employers' premises?

Where the van is part of a van pool, there will be no taxable benefit. A van can be treated as being in a van pool if- (a) the van is made available to, and is actually used by, more than one employee and is not ordinarily used by one employee to the exclusion of the others, and (b) any private use of the van by the employees is merely incidental to business use, and (c) it is not normally kept overnight at the home of any of the employees. Where a van is not part of a van pool but kept at the employers premises on days off and at weekends, picked up from there each working day to be used for business purposes throughout the day and dropped back there every evening and any private use during the day is merely incidental, no taxable benefit arises.

49. In the case of second hand cars can an employer use the cost rather than the original market value for the purposes of calculating the taxable benefit?

No. The taxable benefit must be computed by reference to the original market value of the car.

50. Where the employer pays car tax and insurance for an employee's private car, is that a benefit? Yes the amount paid by the employer is a taxable benefit.

51. What is the position if most (but not all) of the car pool criteria are satisfied?

Once all the criteria - (a) the car is made available to, and is actually used by, more than one employee and is not ordinarily used by one employee to the exclusion of the others, and (b) any private use of the car by the employees is merely incidental to business use, and (c) it is not normally kept overnight at the home of any of the employees. are satisfied, no taxable benefit arises. If any of the criteria are not satisfied, a taxable benefit arises.

Accommodation Issues

52. Hotel Staff - Accommodation provided in the hotel or in Staff accommodation near the company premises? How is this viewed under the new arrangements?

To qualify for exemption from the benefit in kind charge the following conditions must be met: (a) the employee must be required by the terms of his or her employment to live in the accommodation provided by the employer in part of the employer's business premises, so that he or she can properly perform his or her duties, and either (b) the accommodation is provided in accordance with a practice which, since before 30 July 1948, has commonly prevailed in trades of the class in question as respects employees of the class in question, or (c) it is necessary, in the particular class of trade, for employees of the class in question to live on the premises. Generally, hotel staff would not qualify for exemption from a benefit in kind charge. In the case of a room provided in the hotel itself, the taxable benefit should be based on the rent which the employer could reasonably expect to obtain if the property was let on an arm's length basis. Where the accommodation consists of a house/apartment etc near the company's premises the taxable benefit may be based on 8% of the market value of the relevant property or where documentary evidence is available to show that the rental value of the property is lower, such rental value. Where the accommodation is furnished a taxable benefit equal to 5% of the market value of the furniture when first provided will also arise. Where two or more employees share the accommodation provided, the taxable benefit should be apportioned. If an employer has any doubt about the treatment of accommodation provided to staff, the relevant regional tax office should be consulted.

53. Where nursing staff are provided with accommodation, will this give rise to a taxable benefit?

Student nurses

Where accommodation is provided to student nurses engaged in grant funded diploma programs under the auspices of the Dept. of Health / Health Authorities, no taxable benefit arises.

All other Staff

The taxable benefit will be:

the annual value - 8% of the current market value of the property or

where documentary evidence is provided, the rent which the employer could reasonably expect to obtain if the property was let on an arm's length basis,

(plus 5% of the value of the furnishings when first provided, if appropriate).

Where two or more employees share the accommodation provided, the annual value (the taxable benefit) should be apportioned. The rules governing the taxable benefit arising from free accommodation are set out in Chapter 7 of the Employer's Guide to operating

PAYE and PRSI on certain benefits.

54. Where a room / accommodation is provided for a company manager in the company premises in the event that he or she has to work late or has to stay over occasionally and the employee's spouse or family members are not entitled to stay in the accommodation, does this give rise to a taxable benefit?

The provision of accommodation in such circumstances would not qualify for the exemption referred to in question 51 above. Consequently a taxable benefit arises. The employer should contact the relevant regional tax office with a view to arriving at the value of the taxable benefit.

55. What is the position in respect of accommodation provided to Au Pairs?

Generally, Au Pairs who are required by the terms of their employment to 'live in' and who are "on call" would qualify for the exemption referred to in question 51 above, and in such circumstances no taxable would arise from the provision of accommodation. Where these circumstances do not arise there is a taxable benefit which should be calculated by reference to rent the employer might reasonably expect to get for the room if rented at arms length, plus 5% of the market value of the furniture when first provided, if appropriate.

56. Where a company has an existing agreement with the local tax office regarding subsidised rents for foreign employees, can this continue or do the rules set out in chapter 7 of the Employer's Guide apply?

With effect from 1 Jan 2004, the rules set out in Chapter 7 of the [Employer's Guide to operating PAYE and PRSI](#) on certain benefits guide apply. The new arrangements supersede any existing agreements.

Miscellaneous Issues

57. Will there be any communications from Revenue to Employees on this issue. A preliminary issue of certificates of tax credits and standard rate cut-off point for 2004 issued recently containing a brief notice regarding the application of PAYE/PRSI to certain benefits with effect from 1 Jan 2004. All employees who had benefit in kind included in their certificate of tax credits and standard rate cut-off point for previous years received this notice indicating that the benefit in kind amount has been deleted for 2004. A further notice will be included in the issue of certificates (incorporating the Budget increases) for 2004. 58. Will there be an Employees guide or information leaflet?

Revenue Leaflet IT 20 (Taxation of Benefits from Employment) is currently being updated to incorporate the changes. The updated version will be available on the Revenue website shortly.

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59. An employee will shortly be made redundant and receive a lump sum payment. The employee currently have the use of a company car and will continue to have the use of that car for approx 1 year after cessation, until the lease expires at which time the car will then be returned to the employer. Should the value of the car use be included as notional pay or is it part of the termination payment?

The treatment of the use of the company car will depend on the facts prevailing in each case and in particular the employee's terms of employment and terms of any severance agreement/termination package. Generally speaking, if the continued use of the company car forms part of the termination package and was not provided for in the employee's contract of employment, then the relevant taxable value should be included as part of the termination payment, and taxed accordingly, otherwise it should be treated as notional pay. Cases of difficulty should be referred to the appropriate regional tax office with a view to seeking a determination on the correct treatment.

60. Does a taxable benefit arise where as a result of a company raffle or draw for employees, an employee receives a non-cash prize for best performance?

A taxable benefit will arise in these circumstances. However, where the prize is in non-cash form, if the value is less than €100 and no other non-cash benefits has been received by the employee during the year, PAYE/PRSI need not be applied (covered by the one off small benefit exclusion).

61. Define 'tangible articles' in regard to Long Service Awards.

Tangible articles refer to awards given in a form other than vouchers, bonds or cash for example a gold watch.

62. Are Exceptional Performance Awards taxable?

Exceptional Performance Awards in cash have always been and continue to be taxable; there has been no change in this regard. Such awards must be put through the payroll and PAYE/PRSI must be applied. Where the award is non-cash format e.g. in the form a gift, the value of the gift must now be treated as notional pay and PAYE/PRSI applied.

63. Is the loan of an art object subject to tax?

There is no charge in the treatment of certain art objects loaned. The exemption in force prior to 1 Jan 2004 still applies i.e. the loan of art objects kept in buildings of significance where the Revenue Commissioners have determined that members of the public have reasonable access to view both the object and the significant building.

64. How is the notional pay applied to a joint preferential loan where only one spouse is an employee?

In the case of a married couple the notional pay must be calculated by reference to the entire loan - not just half - and is treated as notional pay of the spouse in employment. PAYE/PRSI in respect of the full amount of the notional pay must be deducted from the actual cash salary of the spouse in employment. Where the loan is in the joint names of

two individuals who are not married and only one of them is an employee, the notional pay must be calculated by reference to the portion of the loan applicable to the employee.

Example

Preferential loan of €100,000 granted by an employer in the joint names of an employee and his partner (who is not an employee of the company) at 2% for the purpose of purchasing their private residence.

The interest chargeable in 2004 is €2,000

The interest chargeable at the specified rate is €3,500 ($€100,000 \times 3.5\%$)

Employee's Taxable Benefit $€1,500 \times 50\% = €750$

65. Preferential Loans - Should the interest payable at the specified rate be calculated on a reducing balance during the year as the loan is being paid back in instalments?

There are various methods used how interest can be calculated e.g. on a reducing balance basis, by reference to the amount outstanding at the start of each year or by reference to the amount outstanding at the mid point of each year. Whatever basis the employer uses to calculate the interest payable at the preferential rate, he or she should use the same basis for calculating the interest payable at the specified rate e.g. if the actual interest is calculated on a reducing balance basis, the interest at the specified rate should also be calculated on a reducing balance basis.

66. What is the position in relation to preferential loans that continue after the employee has retired. Are these taxable benefits?

Preferential loans that continue after an employee has retired remain chargeable as benefits. However, where the former employee is not in receipt of cash emoluments from the employer e.g. pension, PAYE/PRSI need not be applied but the benefit should be reported on Form P11D. Where the employee is in receipt of cash emoluments from the employer e.g. pension then the employer must operate PAYE/PRSI on the notional pay arising.

67. Does the small benefits exemption apply to a one off benefit or can it apply to several small benefits e.g. 4 vouchers of €25 during the year?

The small benefits relief applies to a one off benefit in the year. If an employer is providing small benefits on an ongoing basis, e.g. €25 voucher every so often, the first voucher may be ignored and all subsequent vouchers must be taken into account as notional pay.

68. What is the position if an employer pays taxi fares for an employee?

The payment of taxi fares for non-business journeys (e.g. travel to and from work) constitutes a taxable benefit. However, PAYE/PRSI need not be applied to the benefit arising from the provision of taxi transport on an irregular basis to an employee where the employee is required to work late (after 11.30pm) by the employer and the provision of

the taxi transport is provided to ensure the safety of the employee. In all other circumstances, PAYE /PRSI must be applied to such outlays unless the travel is in the nature of business travel. Where the taxi is shared by more than one employee, an apportionment will be necessary.

69. What is the position in relation to a contribution paid by an employer to the employee's social club?

Where the social is organized for staff generally, and membership is available to all employees, PAYE/PRSI need not be applied to any reasonable contribution made by the employer to the club.

70. How are Bonus Bonds treated?

With effect from 1 January 2004, the expense incurred by the employer on the bonus bonds (on the understanding that the amount realisable by the employee would not be significantly greater than the such expense) should be put through the payroll and PAYE/PRSI applied. Some of the bonus bond schemes operate on the basis that bonus points are purchased by the employer and awarded to the employees, who are then in a position to draw down on the points and purchase goods and services to the value of the points accumulated. In these circumstances, PAYE/PRSI should be operated by reference to the date the points are awarded to the employees. (Where there is an agreement between the employer and the employee that the employer will pay the PAYE/PRSI liabilities, the net benefit must be re-grossed at the employee's marginal rate of tax and PRSI and except where the benefit is regarded as minor and irregular the re-grossed amounts should be put through the payroll).

71. Are vouchers under €100 exempt?

No. The €100 small benefits relief is a yearly small benefits relief and applies to a one off benefit not exceeding €100 during the year. If an employer gives each employee one single €100 voucher in the year, the value of the voucher can be disregarded for PAYE/PRSI purposes. If the employer gives two vouchers worth €100 each, the value of the first voucher may be disregarded but the value of the second voucher has to be included as notional pay for PAYE/PRSI purposes. If the employer gives one voucher for €200, the value of that voucher (the entire €200) must be taken as notional pay.

72. Are expenses incurred by an employer on meals/overnights subject to PAYE/PRSI?

Revenue Information Leaflet IT54 sets out the criteria necessary for the payment of tax free subsistence expenses. Unless the criteria set out are satisfied, PAYE /PRSI must be applied to all such expense payments / reimbursements. [Leaflet IT54](#) is available from any tax office or via the Revenue Commissioners website (www.revenue.ie)

73. What is considered to be an employee's normal place of work e.g. IT / people working at home rather than the office of the employer or working in both places?

Determining an employee's normal place of work is a question of fact that can only be considered based on the specific facts of each case. For the home to be regarded as the normal place of work, there must be an objective requirement that the duties of the employment have to be carried out there. Doing work at home does not automatically

dictate that the home is regarded as the normal place of work e.g. many teachers may prepare work at home but the school is still regarded as their normal place of work. Furthermore, the employer's premises would generally be regarded as the normal place of work for employees where travel is an integral part of their work (involving daily appointments with customers). Revenue [Leaflet IT54](#) contains some guidelines on an employee's normal place of work. Revenue [Leaflet IT69](#) sets out the position in relation to e-Workers, and the treatment of equipment provided by the employer at the employees home (where it is established that the employees home is the normal place or work). Where the employer has any difficulty in relation to an employee's normal place of work, the relevant regional tax office should be consulted with all of the relevant facts.

74. In the case of Long Service Awards, does the exemption apply to over 20 years only? What about awards for over 5 or 10 years service, how are they treated?

For the exemption to apply, the award must be a testimonial to mark service of not less than 20 years. Therefore any benefit provided for 5 or 10 years service must be treated as notional pay and is accordingly liable for PAYE/PRSI.

75. What is the position in relation to employers incurring the cost of air fares for non-nationals / individuals recruited abroad taking up employment in the State. Is this a taxable benefit?

Yes. However, there may be some measure of relief provided for under the Revenue Statement of Practice IT 1/91 (Removal and Relocation Expenses). This is contained in Appendix 4(i) of the [Employer's Guide](#).

76. Medical Insurance Relief - Is it taxed at source and is the employee also entitled to a Tax Credit?

Where the employer pays the full premium for employees, he is required to apply PAYE and PRSI to the gross (pre Tax Relief at Source) premium. Therefore, to ensure that the employee is granted the relief afforded by TRS, the employee will be given a tax credit (at the standard rate) for the gross premium in his or her certificate of tax credits.

77. What is the position where the employer pays 50% of the medical insurance premium for an employee? How does it impact on the employee's entitlement to Tax Credits?

This is best answered by way of an example:

In this case the employer discharges the full amount of the premium and recovers 50% of the premium (net of TRS) from the employee.

Assume the Gross Premium is €1,000

TRS (Tax Relief at Source) € 200

Net Premium € 800

Recovered from employee € 400

The taxable benefit (notional pay) is:

Gross premium €1,000

Less

Amount made good by employee € 400

Notional pay € 600

Note : The employee is entitled to a tax credit of €1,000 @ 20% in his or her certificate of tax credits.

78. A company pays medical insurance on behalf of its employees. It is deducted by Direct Debit from the company on a monthly basis. Is it in order for them to apply the notional pay for this benefit on a monthly basis?

If the employer pays the premium on a monthly basis, the notional pay arising on this benefit can be calculated monthly.

79. If an employee has a laptop PC and an ISDN lines at home and leaves the employers premises / place of work to continue to work at home, can the employee claim a mileage allowance for the mileage to and from home?

Travel to and from home to work is private mileage. Mileage allowance cannot be paid free of tax in these circumstances.

80. Where an employee's home phone bill is paid by the employer, is the benefit 50% of the calls cost or 50% of the rental plus calls cost?

If there is no business use at all and the telephone bill is paid by the employer, 100% of the cost to the employer should be taken as notional pay. Where the telephone is used for business purposes and the employer pays for the phone bill, the amount to be taken into account is 50% of the cost to the employer (50% of the phone bill inclusive of the monthly / bi-monthly rental charge). Where a lower private use is proven e.g. 20%, this lower percentage may be taken as the notional pay. (this would have to be evidenced e.g. a periodic analysis of calls made over a given periods and relevant evidence should be retained by the employer).

81. Where a corporate credit card is used for both business and private purchases, how are the interest / annual fee charges treated?

Assuming that the employee reimburses the employer for private transactions, as the card is the employer's, any interest or charges are the employer's responsibility and should not be treated as notional pay. If the employee does not reimburse the employer for private transactions, the cost of the private transactions must be treated as notional pay.

82. Entertainment Expenses? Are these regarded as notional pay?

Yes

83. Does the payment of indemnity insurance by an employer on behalf directors give rise to a taxable benefit?

The treatment will depend on whether the indemnity insurance is in place to a) provide cover for the director personally - proceeds of the policy would go to the director (I understand that such insurance may not be allowed under Company Law) or b) provide cover for the company - proceeds of the policy would go to the company. If (a) applies the expense incurred by the company is a benefit and PAYE/PRSI must be applied to any contribution made by the company. Where (b) applies there is no taxable benefit.

84. Where the employer provides free canteen meals to all canteen staff but not to general staff - is the exemption due or not?

The exemption provided for in the legislation dictates that the canteen / meals provided must be available to staff generally. If the canteen / meals are restricted to a set group of staff members, then there is a benefit and the cost must be apportioned between eligible staff.

85. My staff get tips from customers. Some are cash from customers. Some via credit cards? How are they treated under the new arrangements?

Where the tips are routed through the employer, PAYE/PRSI must be applied to the amount paid (including employer PRSI). If tips are received directly from patrons, there is no obligation on the employer to operate PAYE/PRSI on the amounts received. (The employees are obliged to declare the tips received in their annual return of income). In the case of credit card tips the employer must operate PAYE/PRSI on the amounts of the tips received.

86. What is the position where a company pays a pension contribution for one particular employee every year - this employee is a senior executive?

The legislation provides for an exemption from income tax in respect of an expenses incurred by an employer in or in connection with the provision for a director or employee, or for the director's or employee's spouse, children or dependants, of any pension, annuity, lump sum, gratuity or other like benefit to be given on the death or retirement of the director or employee. Whether or not the exemption applies will depend on the nature of the pension contribution. In general, PAYE/PRSI need not be applied to a contribution by an employer to a Revenue approved pension scheme. Where the employer is paying into a personal PRSA for the employee, PAYE/PRSI need not be applied to the contribution. However, details of the contributions made should be returned by the employer on request on a form P11D. In the case of an employer's contributions to a RAC on behalf of an employee, in general PAYE/PRSI need not be applied to the extent that the contribution does not exceed the relevant age based limits. However, the employer should consult with the relevant regional tax office in the first instance.

87. Employees pay into a scheme which enables other employees to obtain loans at a preferential rate. There is no contribution from the employer. However, one of the company directors acts as a trustee.

Full particulars of the scheme should be submitted to the relevant regional tax office for a ruling.

88. A company engages a licensed carrier to transport their workers from a set point in their home area to work. The employees pay €2 if they use the bus which would be at a preferential rate. The transport is used by a number of employees though all employees do not use it all the time. There is no monthly ticket in place. Is this a taxable benefit?

While this arrangement does constitute a benefit, PAYE/PRSI need not be applied where the following conditions apply- The bus service is provided to transport employees on journeys that are between the home and a workplace or between workplaces The bus service is available to employees generally whether or not all of the employees use the service The main use of the service is for qualifying journeys for employees.

89. If an employee uses a company mobile phone for private calls and pays for the private calls, how is the taxable benefit calculated?

Where a mobile phone is provided for business purposes a taxable benefit will not be treated as arising where any private use is incidental. Where the employee reimburses the employer for the cost of private calls, there will be no taxable benefit arising e.g. any taxable benefit is reduced by any amount made good by the employee to the employer.

90. What is the position in relation to staff discounts?

This is best illustrated by example. An employer buys goods costing €80 each. If he allows staff to buy same from him at cost (€80), there is no taxable benefit. If he allows staff to buy at €50 each, then the taxable benefit is €30 and this must be included as notional pay.

91. How many incidental/small vouchers can an employer give to an employee in the year?

Just one, up to the value of €100. The small benefits relief applies to a one off benefit. If an employer is providing small benefits on an ongoing basis, e.g. €25 voucher on a quarterly basis, the first voucher under €100 may be ignored but PAYE/PRSI must be applied to all subsequent vouchers given to the employee in that year.

92. Does the employer who gives out Christmas Hampers or something to the value of €100, add the value of the Hamper/Gift to another benefit (say for example - Medical Insurance paid by the employer), and then take away the €100 and then charge the PAYE / PRSI on the balance?

If an employer is giving a small benefit covered by the one off small benefits relief (€100), the taxable value of the small benefit can be ignored completely for payroll purposes. In the example above, the full amount of the medical insurance premium (gross before TRS) must be included in the payroll. The value of the Christmas Hamper should not be included in the payroll (on the assumption that the small benefit relief has not previously been used by the employee).

93. What happens if an employee is unable to make use of a golf club subscription paid by the employer e.g. due to long term illness or does not make use of the membership for whatever reason?

The taxable benefit is the cost of the annual subscription to the employer and this amount

must be treated as notional pay when the employer incurred that cost. If the employee does not make use of the benefit provided, the position remains unchanged

94. Arrears - What is Revenue's position in relation to employees who had been careless in the past with declaring benefits provided up to now?

Where benefits provided in the past have not been declared, details should be supplied to the appropriate regional tax district with a view to rectifying the position. In most cases, it should be possible for arrangements to be made to clear the arrears over a period of time - where the quantum of the arrears warrants it, the arrears may be collected by reduction of the employees tax credit over as appropriate.

95. If the employee works away from base and the employer pays for the hotel, is this a taxable benefit?

If an employee is working away for 3 days with his job and is paid subsistence, is this a taxable benefit? If the expense payments are within the criteria set out in Revenue [leaflet IT54](#), no liability would arise. Otherwise, they are taxable and PAYE/PRSI must be operated on the amounts involved.

96. Many staff in the hotel and catering industry get free meals?

How is this viewed under the new arrangements? Where the free meals facility is available to all employees generally, PAYE/PRSI need not be applied to the benefit arising provided that the free meals are not provided to the employees in a restaurant or dining room at a time when meals are being served to the public, unless part of the dining room or restaurant is designated for the use of staff only.

97. It is necessary in certain circumstances for companies to provide security measures and systems for certain directors / senior employees to ensure their safety and security and that of their families. This may be as a result of the profile of the individual or the company, would be done with the protection of the company's business in mind and typically would only arise in relatively rare cases. Does a taxable benefit arise?

Such benefits are chargeable to tax and PAYE/PRSI must be applied to the amounts involved in providing the security measures and systems.

98. As part of frequent air travel by its employees an entitlement will frequently arise to air miles. Often such entitlements are left by the employer to the employee for use at his / her discretion. While the entitlements arise on foot of travel expenditure incurred by the employer, a cost does not arise for the employer in relation to the provision of this benefit due to the air miles / TAB points having no cost. Can you confirm that no BIK charge arises as no cost arises to the employer in providing the use of these points to the employee?

PAYE/ PRSI need not be applied to the benefit arising to employees in such circumstances.

99. A company pays the premium for a personal life assurance policy on behalf of an employee. Does this give rise to a taxable benefit?

Yes. The amount of the premium must be taken into account for PAYE/PRSI purposes.

100. How are uniforms provided by an employer for employees to be treated?

PAYE/PRSI need not be applied to expenditure incurred in the provision of items of protective clothing or clothing bearing logos or of such a colour and design as to be readily identifiable as uniforms (as opposed to regular suits of clothing) where the uniforms remain the property of the employer. Where the expense incurred by the employer does not fall into this category, the employer should consult with the relevant regional tax office for a ruling. December 2003 Revenue Commissioners