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Benefit-in-Kind - Civil and Public Service Employees

1. Introduction

As for other employees, office holders and directors, public sector employees are liable to income tax under the benefit-in-kind provisions of section 118 of the Taxes Consolidation Act 1997 unless the benefit in question is specifically exempted; (see the [Employers Guide to Benefit in Kind](#)).

Benefits-in-kind are not usual in a public sector context. However, the following instructions cover the three most likely situations which arise in the case of civil and public servants, viz.:

- Private use of an official motor vehicle,
- Provision of living accommodation, and
- Provision of crèche facilities.

It should be noted that where a public sector employee receives a benefit, the expense of which is incurred by a public body other than the public body which employs that individual, a benefit-in-kind arises which should be charged to income tax, USC and PRSI by the public body which employs the individual. The onus is on the employing public body to obtain the details of the expense incurred by the other body from that body so as to enable it to calculate the correct liability on the benefit.

2. Private use of an official motor vehicle

Detailed guidance on how to calculate the benefit-in-kind, as well as the circumstances in which it arises, are given in the [Employers Guide to Benefit-in-kind – Private use of company cars](#).

Attention is drawn to the circumstances in which a car may be treated as being in a car pool and, therefore, as not giving rise to a benefit-in-kind.

3. Living accommodation

Detailed guidance on how to calculate the benefit-in-kind where accommodation is provided in employer-owned accommodation, (or in accommodation owned by another public body), is given in the [Employers Guide to Benefit-in-kind – Free or subsidised accommodation](#). In brief, the benefit-in-kind is the aggregate of:

- The annual value of the use of the accommodation, and
- Any other expenses incurred by the employer in connection with the provision of the accommodation (other than the cost of acquisition); e.g. electricity, waste charges.

The annual value of the use of a premises is the annual rent which an employer might reasonably expect to obtain for the property if the property were rented on an arm's-length basis, the employer met costs such as repairs, maintenance and insurance, and the tenant met the usual tenant expenses. It can be determined either by taking 8% of the current market value of the property, or getting an auctioneer's estimate of the annual rent likely to be obtained. Where part only of the premises is occupied, any necessary apportionment may be made to arrive at a fair value for the rent of accommodation of a similar size and similar standard, and in the same general location.

It should be noted that a taxable benefit will **not** arise where an employee or office holder is required by the terms of his or her employment to live in accommodation provided by the employer in part of the employer's business premises so that the employee or office holder can properly perform his or her duties ('better performance test'), and either:

- 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 and office holders of the class in question, or
- It is necessary, in the particular class of trade, for employees or office holders of the class in question to live on the premises.

In the context of public sector employees and office holders, "trade" and "business premises" are to be understood as encompassing, respectively, the activities which the public body is required or permitted to do by statute and the premises at which those activities are carried out.

It is accepted that the 'better performance test' is met in practice where -

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

Examples of such employees or office holders include:

- Governors and chaplains in prisons,
- Caretakers living on the premises (where they are in a genuine full-time caretaking job).

4. Crèche facilities

An employer could subsidise crèche facilities, leading to a charge to benefit-in-kind, in a number of ways, viz.:

- a) By making a financial payment to a childcare provider,
- b) By paying some or all of the overheads incurred in running the facility; (for example, light and heat),

- c) By providing to a childcare provider at no cost or at a reduced rent a premises or part of a premises which it has rented from a third party, or
- d) By providing a premises (or part of a premises), owned by it, to a childcare provider at no cost or at a reduced rent.

A charge to benefit-in-kind could also arise where a crèche is available to employees or office holders which is provided, or subsidised in any of the above ways, by another public body, (such as the Office of Public Works), and the costs of this provision or subsidy are not made good by the employees or office holders. Their employer is responsible for the collection of the income tax, USC and PRSI on such benefits.

In the situations outlined at a) and b) above, the expense incurred by the employer should be apportioned over the number of child places provided. The benefit-in-kind provided to each employee or office holder can, therefore, be determined based on the number of children he or she has availing of the crèche services, and the proportion of the year during which the services were availed of.

For example, from October, an employee places two children in a crèche for which the employer pays the light, heat and running expenses amounting to €20,000 per annum. There are twenty places in the crèche. The benefit amounts to €1,000 per child place. Therefore, the charge to benefit-in-kind on the employee amounts to one quarter of €1,000 (three months of the year) by two children = €500.

In situation c), the amount to be apportioned is the difference between the rent paid by the employer and the rent received by the employer from the childcare provider.

In situation d), the annual value of the use of the premises should be determined using the approach outlined in section 3 in relation to the provision of living accommodation.

Where the facility is provided or subsidised by another public body such as the OPW the same rules apply in relation to establishing the cost of the benefit-in-kind but it is the employing department or office that is responsible for the collection of income tax, USC and PRSI from the employees or office holders in respect of the benefit received.