



States of Guernsey  
Revenue Service

# Benefits in Kind

## AN EXPLANATORY GUIDE

- Incorporating - [New scales/rates applicable for benefits provided in 2019](#)  
- [Statements of Practice & Extra Statutory Concessions](#)

*These notes are for guidance only. They do not replace the Law, have no binding force and do not affect any person's right of appeal.*

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## 1. What are benefits and why are they taxed?

Broadly, benefits may be defined as everything, not in the form of money, which an employee (and members of his family or household) receives from the employer or from other persons, by virtue of the employee's job. A simple description would be "perks of the job" and various examples are given in [section 6](#) of this guide.

The law tries to ensure that employees are treated evenly, no matter in what form they receive "payment".

## 2. What legislation has been introduced?

[The Income Tax \(Emoluments Amendments\) \(Guernsey\) Law 1995](#) provides the mechanism for charging all benefits to tax.

[The Income Tax \(Exemption of Benefits\) Ordinance 1995](#) provides exemption from tax for a number of specific benefits (see [section 5](#) of this guide).

[The Income Tax \(Guernsey\) \(Valuation of Benefits in Kind\) Regulations 1995](#) onwards ("the Regulations") set out the value to be placed on benefits which arise from the use of something but without the transfer of ownership.

The Law came into effect in relation to any benefits arising on or after 1st January 1996.

## 3. Who is affected by this law?

Employers are required to operate the Employees Tax Instalment ("ETI") Scheme on benefits.

Employees (including directors of companies) are also affected because they are ultimately responsible for tax arising on any benefits they receive. It is also the responsibility of each employee to ensure that all benefits received, that are not included in the ETI schedules, are declared separately on his income tax returns. The reason for this requirement is that an employee may receive taxable benefits of which his employer may be unaware, e.g. a gift from a customer.

Paper returns have to be submitted by 15 February, providing details of benefits provided in the previous calendar year which are unable to be dealt with under the ETI Scheme.

It is recognised that many employees receive no benefits and are unaffected by this Law.

#### 4. What about the people who control companies – are they affected?

Broadly, the control of a company lies in the hands of the person holding the majority of the shares or who otherwise can direct how the company operates (such as may be the case with a loan creditor). In essence, “controllers” are the people who own the company and as such have a rather different relationship with the company than someone who is simply an employee.

Consequently, an employee who **controls** a company is not charged to tax on a benefit if the company is not entitled to claim in its own tax computation the “expense” of providing the benefit. In effect, these transactions are tax neutral.

#### 5. What benefits are exempted?

The following benefits, which are reviewed from time to time, are specifically exempted:

- (a) The first **£450** of certain benefits provided to an employee is exempt from tax. This £450 exemption does NOT apply to any benefit whose value is determined by Regulations (for example, motor vehicles and accommodation benefits) nor emoluments arising under share option/share award schemes. It is necessary for the employer to take this exemption into account when benefits are included in an employee’s gross pay.
- (b) Contributions made by the employer to an occupational pension scheme approved under the provisions of section 150 of the Income Tax (Guernsey) Law 1975 (including premiums in respect of life cover provided by such a scheme).
- (c) Contributions made by the employer to personal pension schemes approved under section 157A of the Income Tax (Guernsey) Law 1975 (see also [paragraph 6\(l\)](#)).
- (d) Contributions which an employer is required to make for an employee under the Social Insurance Law.
- (e) Preferential (“cheap”) rate loans or interest free loans (but not subsidised loans) to the extent that the interest payable on such loans after 1 January 2008 qualifies as a deduction (or, in the case of an interest free loan, would qualify, if interest had been paid) under the provisions of [The Income Tax \(Tax Relief on Interest Payments\) \(Guernsey\) Ordinance 2007](#) (see also [paragraph 6\(m\)](#)).
- (f) The use of equipment provided for the performance of an employee’s duties and the provision of a specialised uniform or protective clothing (the wearing of such a uniform to and from work does not affect this exemption).

- (g) Catering facilities provided in a staff canteen (if available to employees generally) – also included are drinks provided to employees from vending machines.
- (h) Medical or life assurance premiums paid in respect of business travel.
- (i) Free or subsidised car parking (other than parking provided at, or near, the employee's place of residence, which is used principally for private purposes).
- (j) Business related entertaining.
- (k) Training facilities which are relevant to the employees' duties, or future expected duties (including the provision of relevant books, materials, accommodation, travel, etc.).
- (l) Long service awards (not cash) where service exceeds 10 years, up to a value of **£50** per employee for each year.
- (m) Transport to and from work where an employee has to work unsocial hours (broadly, where any journey starts between 10pm and 6am).
- (n) Creche facilities provided at work where the facilities are available to employees generally (but where the facilities are provided only to certain groups or categories of employees the Director will still accept that the facilities are provided to employees "generally").
- (o) The first **£2.50** (£2.50 for 2018, 2017, 2016, 2015 and 2014) per working day of non-transferable meal vouchers where there are no staff canteen facilities and the vouchers are made available to employees generally (a meal voucher will be treated as "non-transferrable" if the terms on which it is supplied by the employer make it clear that the voucher is for the use of the employee only).
- (p) Actual reasonable expenditure incurred in removal to Guernsey and establishment of a property in Guernsey by a newly recruited/transferred employee and the first **£13,750** (£13,453 for 2018, 2017, 2016, 2015 and 2014) of a disturbance allowance paid in relation to such an employee.
- (q) Travel to and from work for a severely disabled employee.
- (r) Accommodation for a clergyman or minister of religion (the Director will interpret this as covering accommodation provided for members of religious orders such as nuns).
- (s) Medical screening facilities where the facilities are available to employees generally to whom screening may be appropriate.

- (t) Group insurance cover for medical costs (e.g. BUPA, WPA, etc.) provided by the employer for his employees (but not individual arrangements) - this would include cover for the employee's dependants (such as a spouse and children). Insurance cover for critical illness is not considered to be insurance cover for medical costs for these purposes. Where an employer pays for critical illness cover for his employees, therefore, the costs of that cover may be a taxable benefit. See Statement of Practice M29 "Permanent health insurance" (available at [www.gov.gg/taxationstatementsofpractice](http://www.gov.gg/taxationstatementsofpractice)).
- (u) Insurance cover to protect an employee from civil actions, either from other employees or customers of his employer, owing to alleged negligence in the performance of his duties.
- (v) Certain private use of a motor vehicle - see [Fact Sheet 1](#) of this guide regarding motor vehicles.
- (w) Newspapers, periodicals, etc. provided by an employer for use in, and related to, the employee's job.
- (x) Any other benefits which are insignificant and arise purely incidentally from bona fide business expenditure paid by the employer.

**Note:** Where an employer makes a payment in respect of business expenditure (for example reimbursed travel expenses or payments made on behalf of an employee in relation to a business trip), such bona fide business expenditure is not treated as an emolument in the hands of the employee.

## 6. Which benefits are taxable?

As the types of benefit employees receive vary from job to job, it is impractical to compile a comprehensive list.

The relevant point is, however – does the employee derive the benefit because of his job?

Some examples of things provided to or for an employee which can be chargeable to tax are listed below. (**Note:** Some of the following were chargeable before the introduction of the benefits Legislation):

- (a) a motor vehicle or property which is available for private use – see Fact Sheets [1](#) and [2](#) of this guide;
- (b) awards of goods or assets, for example awards from staff suggestion schemes;
- (c) the payment of an employee's bills (for example, gas, electricity and oil bills, fines, insurance premiums, house repairs, etc.);

- (d) the provision of food, accommodation, board and lodgings, etc. – see [Fact Sheet 2](#) of this guide;
- (e) holidays (whether or not directly related to the employee’s job performance);
- (f) clothing (other than specialised uniforms or protective clothing);
- (g) performance incentive prizes (for example, gift vouchers etc.);
- (h) the supply of services (for example, an employee of a shipping company in receipt of free travel facilities);
- (i) the provision of domestic staff (for example a chauffeur, cleaner, gardener, handyman, caretaker, etc.);
- (j) individual health insurance cover;
- (k) insurance cover for critical illness is not considered to be insurance cover for medical costs. Where an employer pays for critical illness cover for his employees, therefore, the costs of that cover may be a taxable benefit. See Statement of Practice M29 “Permanent health insurance” (available at [www.gov.gg/taxationstatementsofpractice](http://www.gov.gg/taxationstatementsofpractice));
- (l) in the case of a proprietary director or a proprietary employee, any employer pension contributions to schemes approved under section 157A of the Income Tax (Guernsey) Law 1975 in excess of 25% of relevant earnings;
- (m) preferential (“cheap”) rate loans or interest free loans (including subsidised loans) (see also [paragraph 5\(e\)](#)). In circumstances where an employee is also a participator for the purposes of the “qualifying loans legislation”, please refer to the Statement of Practice E47 “Preferential Rate Loans to Employees – Interaction between Benefits in Kind and Loans to Participators Legislation” (available at [www.gov.gg/taxationstatementsofpractice](http://www.gov.gg/taxationstatementsofpractice)).

Whether or not an employee wants a particular benefit does not affect the charge to tax. If a benefit is made available to an employee it will form part of his income for tax purposes unless it is specifically exempt.

If an employee refuses a benefit offered or disclaims his right to it and therefore does not receive it, it will not be treated as a taxable benefit in his hands.

## 7. How is the benefit valued for tax purposes?

There are several different methods:

- (a) Where the benefit consists of the **use of property but without a transfer of ownership**, for example the use of a company car, the benefit is calculated in accordance with the Regulations (see [section 2](#) of this guide). The two [Fact Sheets](#) of this guide cover motor vehicles and accommodation, etc. The benefit for the use of a motor car will cover depreciation, insurance, maintenance, servicing, repairs and other running costs, as appropriate.

In the case of any other asset – unless the Director agrees that for any particular reason it should be less – the benefit will be 20% of the market value of the asset concerned at the beginning of the year, or the date it was first made available to the employee if later (see [section 8](#) for the meaning of “market value”).

- (b) Where the benefit consists of the **transfer of the ownership of any item (other than the employer’s trading stock)** the value is the market value of the item at the time of the transfer. For example, an employee working in a clothes shop who is given a DVD player by his employer will be charged to tax on the market value of the DVD player at the date of its transfer to him.
- (c) Where the benefit consists of a **service or advice** normally provided for customers in the course of the employer’s business, the value of the benefit is the average cost to the employer of providing that service or advice for his customers (see [section 8](#) for the meaning of “cost to the employer”). For example, a clerk employed by a firm of advocates may have the conveyancing on the purchase of a new dwelling carried out free of charge by his employer.

In such a case the benefit to the employee will be the cost to the employer of carrying out the conveyancing, for example the costs of secretarial and clerical time, stationery costs, etc. This is likely to be significantly less than a charge made to a client of the firm where an element of profit would be included.

- (d) The value of **any other benefit** which an employee may receive is the cost to the provider of providing the benefit (see [section 8](#) for the meaning of “cost to the provider”).

### Examples

1. A garage employee is entitled to purchase a car from stock with a discount of 20% off retail price and he purchases a £10,000 car for £8,000. If the car has cost the garage £8,200 to buy and £300 to service and valet, the benefit to the employee is £500, i.e. the cost to the garage of providing the benefit (£200 plus £300).



2. A slightly more complex example – Mr. X is required to visit Hong Kong on a business trip and as he is expected to attend social functions his employer asks Mr. X to take Mrs. X on the trip with him. The employer meets all costs.

If the only reason for Mr. X being on the trip is for business purposes, he is not taxable on any of the costs of travel or accommodation or other relevant expenses relating to him.

On the other hand, as the majority of the time spent in Hong Kong by Mrs. X is for non-business purposes, the cost of her travel and accommodation is a benefit in the hands of Mr. X.

Although each case is considered on its merits, in this particular example the Director may agree that the benefit should be reduced to recognise any part of the costs relating to Mrs. X which are attributable to assistance given by her to Mr. X in performing his duties. If the total cost of the trip for Mrs. X is £2,000 and 1/5th of her time is spent assisting Mr. X in making presentations to clients or attending functions with him at which clients are entertained, the Director may agree to reduce the benefit to £1,600 (4/5ths of £2,000).

## 8. What do “market value”, “cost to the employer” and “cost to the provider” mean in practical terms?

### “Market value”

This means the price that would be realised **in the open market** at the time of the event in question. This is likely to involve, to a certain extent, a personal opinion. If the employer and/or employee wish to put forward their opinions on the market value of any benefit, the Director will consider these. In exceptional cases, if the benefit is particularly valuable or especially difficult to evaluate (for example, an oil painting) it may be that the employer or the employee will consider obtaining a professional valuation.

Ultimately, if there is a dispute the Director may make an assessment to the best of his judgment against which the employee will have the right of appeal to the Guernsey Tax Tribunal. The Tribunal will then decide the matter based on the facts of the case. It is expected, however, that it should be possible to reach agreement on the value of benefits in the majority of cases.

### “Cost to the employer”

### “Cost to the provider”

Benefits valued by reference to the “cost to the employer” or “cost to the provider” are likely to follow a similar pattern to “market value” benefits, although there is more likely to be some documentary evidence available to help evaluate them.

Where the amounts of such benefits are relatively small and/or are frequently enjoyed by a number of employees, the Director is prepared to consider the adoption of a set sum which is then applied to each employee enjoying the benefit, thereby avoiding extensive calculations/correspondence on what are relatively insignificant items.

It is not the Director's intention for employers and employees to be put to a great deal of time and trouble in making precise valuations of minor benefits.

**9. Once the value of the benefit is calculated, is that the amount the employee will have to pay in income tax?**

No. The benefit is treated as if it is income and is taxed at no more than 20%. Put simply, £1,000 in benefit will cost a maximum of £200 in tax.

**10. Do benefits have to be passed through the ETI scheme?**

All benefits in kind must be passed through the ETI Scheme, by adding the amount of the benefit to the employee's gross pay in the pay period in which the benefit was provided. Tax should then be deducted from the total amount (i.e. as if the benefit had been paid in cash). The only exception will be where it is not possible for tax to be deducted from the benefit provided (for example, where there is no cash payment from which to deduct tax). In such circumstances it will be necessary for a benefits in kind form to be submitted by 15 February on an annual basis, and such forms will be issued, to the employer, on request.

Where the employee is in receipt of an ongoing benefit, such as the provision of a company car, the benefit should be calculated on a monthly basis. For example, if the employee was in receipt of a benefit of **£6,290** (as shown on page 14 of this booklet) an amount of **£524** should be added to his gross salary on a monthly basis and tax deducted on the total figure accordingly.

The first £450 of certain benefits provided to an employee is exempt from tax. This £450 exemption does NOT apply to any benefit whose value is determined by Regulations (for example, motor vehicles and accommodation benefits) nor emoluments arising under share option/share award schemes. It will be necessary for the employer to take this exemption into account when benefits are included in an employee's gross pay. For example:

An employee receives a benefit of £100 per month relating to individual health insurance cover. The £450 exemption can be apportioned accordingly. For example, the benefit to be included in each month's pay would be as follows:

Value of benefit	£100
Less exemption (£450/12)	<u>£ 38</u>
Taxable monthly benefit	£ 62

**11. Can the employer pay the tax due on the benefit in kind for the employee?**

Yes, if the employer wishes to pay the tax on the benefit, it is calculated as shown on [page 19](#).

**12. What if the employee receives a benefit but receives it only for part of a year?**

Where a benefit is not enjoyed for the whole of the year, the value of the benefit and thus the taxable amount will be calculated by reference to the time the benefit was provided.

This is based on the formula of:

$$\frac{\text{Number of days the benefit was available to the employee}}{365} \times \text{the amount of the benefit}$$

If an employee ceases to have use of a benefit the amounts to be included in the final month will need to be adjusted accordingly.

For example, if an employee ceases to have the use of a company car (the taxable benefit being £6,290) on 20 June 2019, he will have already been charged on 1/12th of the benefit for the months of January to May. An adjustment would be required for the June pay as follows:

$$\frac{\text{Number of days the benefit was available} \times 1/12 \text{ value of the benefit}}{\text{Number of days in the month}}$$

i.e.  $\frac{20 \times 524}{30} = \text{£}349.33$

Where the benefit arises from the use of land or the provision of accommodation and the benefit is calculated on a percentage of the employee's emoluments, the benefit is calculated as:

$$\frac{B \times \text{£}A}{C}$$

Where:

- "B" is the number of days for which the benefit was made available
- "C" is the number of days the employee was in Guernsey, and
- "A" is the benefit calculated as normal

For example, a new employee is provided with furnished accommodation from his date of arrival in Guernsey, and in that year he was in Guernsey for 50 days. His emoluments for the year were £3,000. The benefit would be:

$$\frac{50}{50} \times (£3,000 \times 17.5\%) = £525$$

**13. What if the employee reimburses the employer for part of the benefit provided?**

The benefit is reduced by the amount reimbursed to the employer by the employee.

## FACT SHEET 1

### Benefits from motor vehicles provided by employers for use by employees

(See [section D](#) of this Fact Sheet for definitions of various terms)

#### A. Exempt benefits

Motor vehicles which are used solely for the following purposes do not give rise to a benefit:

- any motor vehicle used only in the performance of the employee's duties;
- any motor vehicle used in the performance of the employee's duties and between his place of residence and normal place of work, if he is required to use the motor vehicle for business purposes outside of his employer's normal hours. Examples would be employee on call out duties and an employee who goes straight on-site without first reporting to the firm's place of business.

#### B. Scale charges

The amount of benefits shown below cover all costs relating to the provision of the motor vehicle including depreciation, insurance, maintenance, repairs, fuel and other running costs. The full scale charge will apply whether all or some of these expenses are met by the employer but see [section 13](#) regarding amounts reimbursed by the employee to the employer.

##### (1) Limited benefit charge - cars and other motor vehicles

This section relates to motor vehicles not exempt under **A** above which are used in the following circumstances:

- cars where the private usage is limited to travel to and from the place of work,
- cars where the business usage is more than 75% of total usage,
- cars where they form part of a car pool,
- other motor vehicles, made available for the employee's private use.

The benefits are as follows:

<b>2019</b>	Type of Motor Vehicle	<b>Amount of Benefit</b>
	Motor cycles	NIL
	Vans, lorries and other commercial vehicles	NIL
	Cars	£1,255

(2) **Car benefits**

The benefits not exempt under **A** or covered by the limited benefit charge in **B** above are as follows:

<b>2019</b>	<b>Cost of Car</b>	<b>Amount of Benefit</b>
	Less than £10,000	£3,770
	£10,000 - £19,999	£6,290
	£20,000 or over	35% of cost

**C. Limited vehicle benefit charge – reimbursement by employee in respect of private mileage**

Where a limited vehicle benefit charge arises under **B(1)** above and the employer is able to certify that a record has been maintained of all private mileage and the employee has reimbursed the employer in respect of such mileage at a rate of at least **64 pence** (61 pence for 2018, 2017, 2016, 2015 and 2014) per mile the Director will accept that no benefit should be brought into charge to tax, notwithstanding that the total amount reimbursed by the employee to the employer in the year may be less than the limited vehicle benefit charge.

**D. Definitions**

A “**car pool**” exists if the Director is satisfied that the car is available to and used by more than one employee, that it is not used by one employee to the exclusion of others and that private use is secondary to its business use.

“**Vans, lorries and other commercial vehicles**” means vehicles designed mainly for carrying goods or burden of a business nature.

“**Cost of car**” means the actual gross cost of acquiring the car by the employer without deducting the value of any part exchange but including the cost of all accessories, options and extras (whether fixed or otherwise) or, in the case of a car leased to the employer, the amount which in the opinion of the Director it would have cost the employer, on the basis of the above definition, to buy the car instead.

Example

A company acquires a car normally costing £30,000 for £25,000 after being granted a £5,000 part exchange allowance from the garage. Additional options, extras and accessories are added costing £3,000 and the employee pays £2,000 towards the cost of those extras.

The cost of the car, for benefit in kind purposes, is calculated as follows:

Cost before part exchange	£30,000
Add: options, extras and accessories	<u>£ 3,000</u>
	£33,000
Less: amount contributed by employee towards cost of extras	<u>(£ 2,000)</u>
Cost of car for benefit in kind purposes	£31,000

**“Business use”** means the mileage for business purposes compared to the total mileage of the vehicle while it is used by the employee.

## FACT SHEET 2

### Benefits from the provision of accommodation or a dwelling or land

#### A. Provision of accommodation – hotel and guesthouse employees only

##### **Board and Lodging**

The following scales/rates apply for **2019**. The benefit, less any amounts paid by the employee, should be included along with salaries/wages and returned on the quarterly ETI returns.

(1) **EMPLOYEES** (other than those within (2) or (3) below)

	<u>Accommodation</u>	<u>Food</u>
For each employee (no account is taken of spouse or number of dependants so long as they are not also employees)	£25 per week, or part of a week	£25 per week, or part of a week

(2) **EMPLOYED MANAGERS** (other than those within (3) below)

	<u>Accommodation</u>	<u>Food</u>
Self	£25 per week, or part of a week	£25 per week, or part of a week
Spouse and/or dependants of the above. The benefit applies to the first such person only.	£25 per week, or part of a week	£25 per week, or part of a week



(3) **PROPRIETARY DIRECTORS AND PROPRIETARY EMPLOYEES** (i.e. those controlling, directly or indirectly, more than 15% of the shares in the employing company).

Category of hotel or guesthouse, as determined by the Committee for Economic Development	Individuals other than children		Children of an age at 31.12.19*			
	Single Person	Married Couples	up to 1 year	between 1-4 years	between 5-16 years	17 years & over & still in formal education
3, 4 & 5 Star	£2,380	£3,985	NIL	£375	£1,070	£1,575
1 & 2 Star	£2,070	£3,465	NIL	£375	£ 925	£1,380
If food is also provided, the rates shown in paragraph <b>A(3)</b> above will be doubled						

\* where there is more than one child for whom a benefit arises the amount is reduced as follows:

For the second eldest child, by 10%

For the third eldest child, by 15%

For the fourth eldest or subsequent child, by 20%

For the purposes of section A(3) above, in the case of an establishment in Alderney:

- a guesthouse is treated as if it is a 1 or 2 star guesthouse in Guernsey,
- a hotel is treated as if it is a 1 & 2 Star hotel in Guernsey (unless special arrangements for alternative treatment have been made with the Director).

**B. Provision of accommodation or a dwelling or land - other employees**

In these cases the benefit is:

- 15% of the employee's assessable emoluments in the case of land, unfurnished accommodation or an unfurnished dwelling; or
- 17.5% of the employee's assessable emoluments in respect of furnished accommodation or a furnished dwelling;
- in the case of a proprietary director or a proprietary employee, the benefit is calculated on the basis of the open market rental value.

These benefits are reduced by any amounts contributed by the employee.

In order to protect employees from being charged an excessive benefit, an employee has the right to elect that the amount of the benefit shall not exceed the open market rental value, if this is less than the benefit calculated in the manner above. The election must be made within two years after the end of the relevant year.

### **IMPORTANT NOTE RELATING TO FACT SHEET 2**

**The scales/rates relating to hotels and guesthouses in A above may also be applied to persons in other kinds of employment (i.e. those to whom B applies) if the Director considers it appropriate. Anyone wishing to apply for such treatment on behalf of their employees should write to the Director.**

## BENEFITS IN KIND

### Statements of Practice and Extra Statutory Concessions

#### (1) Benefits in kind – tax paid by employer

Benefits must be included in the gross pay of employees and the ETI Scheme operated accordingly. If an employer wishes to pay the tax on behalf of his employees he may do so. The tax paid on behalf of the employee is also considered to be a taxable emolument and is calculated as follows:

- (i) The benefits involved must be included in the employee's gross pay and the ETI Scheme operated in the normal way.
- (ii) The tax on the grossed up benefit paid by the employer (as calculated below) must also be included in the employee's gross pay and the ETI Scheme operated in the normal way.

Value of benefits		£5,000
Grossed-up at 20%	<u>100</u>	<u>£1,250</u>
	80	<u>£6,250</u>
Tax thereon at 20%		<u>£1,250</u>

- (iii) The tax due from the employer on the benefit should be paid to the employee rather than remitted to Income Tax, to reimburse him for the tax deducted from his salary (the tax deducted from the salary should be included in the remittance of tax to Income Tax by the employer in the normal way under the ETI Scheme).

This is illustrated by way of an example:

Benefits included in employees' gross pay	£5,000
Tax deducted from employee and remitted to Income Tax	<u>£1,000</u>
Net benefit to employee	£4,000
Tax equivalent paid <u>to the employee</u> by the employer to meet the tax liability on the benefit and this sum <u>must also be included in the gross pay of the employee for tax purposes</u>	£1,250
Tax deducted from the employee and remitted to Income Tax	<u>£ 250</u>
Net benefit to the employee	£1,000

It can be seen from the example that the net benefit to the employee is still the same at £5,000 (i.e. £4,000 + £1,000).

## **(2) Profit sharing and other share option schemes**

Where shares are acquired on behalf of, or are allocated to, participating employees, or an option is granted enabling employees to acquire shares at a discount, there is a liability to income tax. For full details see section E43 of the Statements of Practice booklet, which is available at [www.gov.gg/taxationstatementsofpractice](http://www.gov.gg/taxationstatementsofpractice).

## **(3) Benefits in kind – application of the £450 exemption (see [section 5\(a\)](#) of this guide)**

It could be argued that the exemption provided to employees by the [Income Tax \(Exemption of Benefits\) Ordinance 1995](#) does not extend to certain items which would have been treated as emoluments prior to the [Income Tax \(Emoluments Amendments\) \(Guernsey\) Law 1995](#) coming into force (such as payments by employers to third parties which meet the pecuniary liability of the employee or the provision of benefits, not in cash, but which could be convertible to cash).

The exemption may be applied to such benefits, with effect from 1st January 1996, subject to the following exceptions:

- (1) any benefits valued by reference to the benefit regulations;
- (2) where the employer pays for any such items on behalf of an employee in respect of which the employee, in normal circumstances, would be entitled to claim income tax relief (for example, professional subscriptions to bodies approved under section 63 of the Law, retirement annuity premiums) the employee will still be able to claim whatever tax relief may be allowed as if he had made the payment himself;
- (3) any sums assessable in accordance with [section \(2\)](#) above relating to profit sharing schemes and other share option schemes, or payments from any similar schemes; and
- (4) with effect from 1st January 1998, any payments made on behalf of controlling directors which have been allowed in the company accounts.

(See next section re cash payments to employees).

## **(4) Cash payments**

Many employers make payments of cash to employees, for example round sum allowances, payments for reimbursement of travelling expenses, including accommodation costs, etc.

By way of clarification, payments in cash to the employee do not fall within the benefits legislation. Such payments would constitute emoluments in the same way as salaries, wages, commissions, etc.

If any part of such payments to an employee are subsequently used for any expense wholly, exclusively and necessarily incurred in the performance of the employee's duties then he may, in turn, make a claim for expenses under the provisions of section 8(3) of the Law.

Furthermore, any such payments being made by an employer should be included in, and returned under, the Employees Tax Instalment Scheme.

(An exception to the above would be if the Director had specifically agreed that, in any particular case, the amount paid by the employer covered no more than expenditure incurred wholly, exclusively and necessarily by the employee – in such circumstances the payment by the employer need not be returned as emoluments and the employee need not submit a formal claim for expenses - see also [section \(13\)](#)).

Notwithstanding the above, payments which fall within the following limits will not be charged to income tax nor will a formal expenses claim be required:

<b>Lump sum payments made to employees in respect of duties carried on outside of the island, including attendance at courses, conferences, etc</b>	<b>2019</b>	<b>2018</b>	<b>2017</b>
1. Incidental expenses allowance	Up to <b>£15.00</b> daily	up to <b>£15.00</b> daily	up to <b>£14.00</b> daily
2. Where bed and breakfast only is provided, a meal allowance	up to <b>£45.00</b> daily	up to <b>£44.00</b> daily	up to <b>£42.00</b> daily
3. Where neither accommodation nor meals are provided	up to <b>£151.00</b> daily	up to <b>£146.00</b> daily	up to <b>£141.00</b> daily

## **(5) Meal allowance**

Where a meal allowance is paid by an employer to an employee who is working unsocial hours, then the first **£4.00** per working day (£3.00 for 2018, 2017, 2016, 2015 and 2014) may be exempt from income tax. Unsocial hours may be defined as where an employee is required to work after 8.00pm in the evening or before 6.00am in the morning.

## **(6) Deductions from emoluments in relation to the provision of benefits**

Where deductions are made from salary, wages, etc. by an employer in relation to the provision of benefits to an employee then, following the decision in the case of Cordy v Gordon (9TC 304) the gross emoluments will still be charged to tax and any contributions made by the employee will be taken into account only in ascertaining the amount of the benefit to be charged to tax. See also Statement of Practice E15 “Deductions from emoluments in relation to the provision of benefits (including salary sacrifice)” (available at [www.gov.gg/taxationstatementsofpractice](http://www.gov.gg/taxationstatementsofpractice)).

## **(7) “Controllers” of companies – benefits valued under the regulations**

Although the intention in relation to “controllers” of companies was that there would be no tax difference between the amount allowed to the company and the amount chargeable on the “controller”, the effects of the present legislation are that the amount of any benefit ascertained under the Regulations (see [section 2](#)) may be reduced if the company can claim a lesser amount but it cannot be increased if the company is able to deduct a higher amount.

**NOTE: The above only applies to “controllers” of companies who are directors/employees. It does not apply to other employees.**

(Currently the Director does not propose taking any action to correct this situation but may do so if, at some time in the future, he believes that the provision is being exploited.)

## **(8) Mileage allowance**

With effect from 1st January 2018, where a mileage allowance of **65 pence** or less per mile (61 pence for 2018, 2017, 2016, 2015 and 2014) is paid to an employee who is required to use his own car for business use, it is accepted that no personal benefit arises and the allowance may be paid without deduction of income tax.

## **(9) Limited vehicle benefit charge – reimbursement by employee in respect of private mileage**

Where a limited vehicle benefit charge arises in 2017 in respect of an employee under the Income Tax (Guernsey) (Valuation of Benefits in Kind) Regulations (see [section 2](#) of this guide) and the employer is able to certify that a record has been maintained of all private mileage and the employee has reimbursed the employer in respect of such mileage at a rate of at least **64 pence** per mile (61 pence for 2018, 2017, 2016, 2015 and 2014), the Director will accept that no benefit will then be brought into charge to tax (notwithstanding that the total amount reimbursed by the employee to the employer in the year may be less than the limited vehicle benefit charge).

## (10) Motor car used for a mixture of chargeable and exempt purposes

Where someone is liable to a limited vehicle benefit charge and uses the motor car for a mixture of exempt/non-exempt purposes, then it is confirmed that the benefit charge will be reduced proportionately in respect of the exempt usage.

For example, if an employee is on call out duty one week out of every four then his benefit would be calculated as follows:

$$\text{£1,150} \times \frac{\text{273 days}}{\text{365 days}} = \text{£860}$$

[NB: If an employee uses a motor car to travel at lunchtime (whether to go home for lunch or to have lunch elsewhere), by concession, that travel will not be treated as being for private purposes.]

## (11) Motor cars – provision of fuel / reimbursement for fuel

Where an employee is provided with a motor car and fuel, no separate charge is levied in relation to the fuel.

If the employee is required to meet the cost of fuel used for private purposes, however, this is not treated as a reimbursement which may be deducted from the motor car benefit.

## (12) Motor cars – alternative fuel

The additional cost of enabling a company car to run on road fuel gases may be ignored when calculating the benefit in kind.

This would include any premium on the price of a car manufactured to run on road fuel gases, or the cost of conversion.

## (13) Allowances paid to employee to lease a car

Where an employer pays a specific allowance to an employee so that the employee can lease a car (in place of the employer leasing the car or purchasing a car for the employee's use) then, notwithstanding [section \(4\)](#), the Director is prepared to accept that the scale charge should still apply in these circumstances. If the allowance paid by the employer to the employee exceeds the actual cost of leasing the car, however, then the difference would constitute emoluments and should be included in, and returned under, the Employees Tax Instalment Scheme.

#### **(14) Plant and machinery gifted to employees which have been used in the employer's business**

If plant and machinery is gifted to an employee the value of the benefit will be taken as the full written down value of the plant and machinery.

Notwithstanding section 104(1)(c) of the Law, a balancing allowance may be granted to the employer.

In the case of an expensive motor car the balancing allowance would arise only on the restricted cost. In these circumstances the difference between the balancing allowance granted to the employer and the written down value which has been treated as a benefit in the employee's hands will be given as a deduction from profits.

This is on the basis that if the employer were to purchase a car for the sum of, say, £20,000 and immediately gift it to the employee, then a deduction of £20,000 would be allowed to the employer.

#### **(15) Assets hired by an employer made available for private use of an employee**

By way of clarification, it is confirmed that hiring would be considered to constitute short-term leasing for the purpose of the Regulations (see [section 2](#) of this guide).

#### **(16) Accommodation – payment of utility, etc. bills / reimbursement of utility, etc. bills**

The charge for accommodation contained in Regulation 3(3) (see [section 2](#) of this guide) does not include the costs of heating, lighting, water, etc. and these will be treated as an additional and separate benefit if paid directly by the employer or by reimbursement to the employee.

It therefore follows that if the employee pays these bills himself or reimburses the employer, this would not be treated as being a contribution towards the provision of the accommodation and could not be deducted from that benefit.

[NB: By contrast, the charges for accommodation arising under Regulation 3(1) and 3(2) are treated as including the costs of heating, lighting, water, etc.]

#### **(17) Accommodation – repairs and capital improvements to property**

The Director is prepared to consider, on a case by case basis, whether costs of repairs and capital improvements met by the employee are deductible from any accommodation benefit.



**(18) Provision of accommodation to employees who already maintain accommodation at their own expense in Guernsey and which is available for their full-time occupation**

Some employees are provided with accommodation for use whilst they are performing their duties.

Where the Director is satisfied that the following conditions apply, no benefit will be treated as arising.

The conditions are that:

- (1) the employer requires the employee to perform his duties at a specific location; and
- (2) the employer provides the employee with accommodation situated at that location; and
- (3) the accommodation provided is only used by the employee while he is performing his duties of his employer; and
- (4) the employee maintains accommodation at his own expense elsewhere in Guernsey, which is occupied by the employee when he is not occupying the accommodation provided by his employer.

**(19) Provision of accommodation to temporary employees who already maintain accommodation at their own expense in the normal country of residence and which is available for their full-time occupation**

If an employee is seconded to Guernsey on a temporary basis and is not covered by paragraph 7 of the Double Taxation Arrangement, or by Extra Statutory Concession E40, no benefit will arise in respect of accommodation provided in Guernsey if the following conditions are satisfied:

1. the employee is in Guernsey for a period or periods not exceeding 12 months in aggregate;
2. he has been required by his overseas employer to come and work in Guernsey;
3. the employee continues to maintain accommodation at his own expense in his country of normal residence, which immediately prior to his move to Guernsey was used as his main residence and which is available for his immediate reoccupation on his return to his normal country of residence.

Where the accommodation consists of bed and breakfast only, and the above conditions are met, a subsistence allowance of up to **£45** per day may also be exempt (£44 for 2018, £42 for 2017, £41 for 2016 and 2015, £40 for 2014).

It should be noted that if the employee is in Guernsey for a period exceeding twelve months then no part of the accommodation or subsistence allowance would be exempt from Guernsey income tax.

## **(20) Buildings available for use by employees, other than dwellings (and which would not ordinarily constitute accommodation)**

If an employee is allowed the use of a glasshouse, storage building or garage (or similar) then the benefit would ordinarily fall to be valued under the "catch all" Regulation (Regulation 4 – see [section 2](#) of this guide) and would be based on 20% of the market value of the structure.

If beneficial to the employee, the Director will accept that use of such a structure constitutes the use of land (such that the benefit would be based on 15% of emoluments. The open market value option would also be available.)

## **(21) Domestic employees**

Where accommodation is provided for domestic employees either "in house" or in separate accommodation (but not where a property is provided for the sole occupation of one employee and his dependants) then the Director will accept that the employees are in receipt of a benefit equivalent to that set out in Regulation 3(1) (see [section 2](#) of this guide) as an "other employee" if this would be beneficial to the employee concerned. The effect of this would be that the accommodation benefit would be £25 per week or part of a week (no account is taken of a spouse or other dependent so long as they do not also work for the same employer).

## **(22) Employee with "split" employment and where a spouse also has emoluments**

- (a) An employee may receive all or the majority of his emoluments from one employer and an accommodation benefit from another employer.

In such circumstances, in determining the amount of the benefit the emoluments from all sources are to be taken into account.

- (b) It is appreciated that in some cases employers may not be aware that an employee has another employment or, even if they are aware, they will probably have no knowledge of the amount of the emoluments from that employment. In these circumstances it is confirmed that the employer is simply required to return the benefit on the basis of the information which he could reasonably be expected to have. If any further recalculation of the benefit is required this will be dealt with by Income Tax.

- (c) Where spouses are both employees of the same employer and a benefit is provided which is enjoyed by them both (e.g. accommodation) then, for the purposes of calculating the amount of any benefit, they will be treated as being one employee rather than two.

Provided that where the measure of the benefit is affected by the extent of private usage, the private usage of both spouses will be taken into account; and

Provided also that where the extent of the benefit is determined by reference to the level of emoluments (such as can be the case for accommodation) only the emoluments of the higher earning spouse will be taken into account.

- (d) Where spouses enjoy an accommodation benefit but only one of them is receiving the benefit by virtue of an office or employment, then the emoluments which will be taken into account will be the emoluments of that employee only and not the spouse.

(This will mean that where, say, a bank manager is provided with use of a property by his employer and his spouse has a part-time job in, say, a shop, in arriving at the amount of the benefit the emoluments of the bank manager will be taken into account but those of the spouse would be ignored.)

### **(23) Non-resident directors**

Fees paid by Guernsey companies to non-resident directors are not liable to income tax and as a consequence a chargeable benefit will not arise in respect of accommodation provided to such individuals whilst visiting the island.

### **(24) Non-resident employees**

If non-resident employees are provided with accommodation while visiting the island then a chargeable benefit does arise.

Taking into account the very short periods of time that these persons often spend in the island and the relatively modest amount of income usually paid, in the majority of cases the benefit is likely to be minimal. However, there is still the requirement for the benefit to be included on the ETI returns submitted by the employer.

### **(25) Provision of accommodation for clergymen**

Under paragraph (q) of the [Income Tax \(Exemption of Benefits\) Ordinance 1995](#) the provision of accommodation for a clergyman or minister of any religious denomination is exempt where the accommodation belongs to any parochial authority, charity or ecclesiastical body. Where the accommodation is rented, any rent paid on behalf of the clergyman or minister by a parochial authority, charity or ecclesiastical body will similarly be exempt. This exemption does not apply to other disbursements such as utility bills, occupier's rates, etc – see also [section \(16\)](#).

## (26) Removal expenses

A The [Income Tax \(Exemption of Benefits\) \(Ordinance\) 1995](#) provides exemption for the payment by an employer of actual reasonable expenditure incurred in relation to an employee newly recruited or transferred to Guernsey from a place outside of Guernsey in his removal and re-establishment including expenditure incurred in respect of:

1. removal to Guernsey of household furniture and effects including motor vehicles;
2. storage of household furniture and effects including motor vehicles for up to 12 months;
3. estate agents fees, legal fees, taxes and duties incurred in respect of the purchase of a dwelling in Guernsey and the disposal of a dwelling outside Guernsey which the employee owned and occupied immediately prior to his removal to Guernsey;

and, with effect from **1st January 2019, £13,750** of a disturbance allowance (£13,453 for 2018, 2017, 2016, 2015 and 2014).

It is confirmed that where the employer reimburses the employee direct for such expenditure, no charge to tax arises provided that such payments have not already been exempted under the terms of the Ordinance.

**Although the Ordinance refers to expenditure in respect of a transfer to Guernsey, it may also apply to relocation expenses on leaving Guernsey. Only actual expenditure would be covered by this concession and full details would be required in each case. It would not extend to a disturbance allowance.**

B The following are not chargeable to income tax in relation to an employee newly recruited or transferred to Guernsey from a place outside of Guernsey:

1. Travelling expenses, provided these are paid:
  - (a) for a period of no longer than four months from the date that the employee took up employment or commenced duties in the island, as appropriate, or until occupation of a dwelling in Guernsey on a permanent basis, whichever is the sooner; and
  - (b) notwithstanding (a), for so long as the employee's dwelling in the previous location continues to be available for his or his family's accommodation or, where appropriate, a positive effort is being made to dispose of it.

Such exempt travelling expenses will be limited to those relating to scheduled air/rail fares to/from the last working location outside Guernsey.

2. The cost of temporary accommodation, provided that exemption will be limited to a maximum period of four months from the date the employee took up employment or commenced duties in the Island, as appropriate, or until occupation of a dwelling in Guernsey on a permanent basis, whichever is the sooner.

Further provided that the total amount to be exempt from tax as a consequence of the concessions contained in 1 and 2 above is not to exceed **£5,000** in aggregate unless, exceptionally, the Director agrees special circumstances apply such that this limit may be exceeded. (The above will apply whether the employer meets the costs of travel and temporary accommodation direct or makes reimbursement to the employee.)

### **(27) Professional subscriptions**

Where an employer either pays or reimburses a subscription to a professional body, not being a body approved by the Director under section 63 of the Law, such payment or reimbursement will not be chargeable to tax in the hands of the employee so long as membership of the professional body concerned is, in the opinion of the Director, relevant to the employee's employment.

### **(28) Exemption of training costs**

By way of clarification, it is confirmed that if the employer meets the cost of exam fees these will be covered by the exemption contained in the Ordinance.

### **(29) Air miles and similar incentive schemes**

No benefit will be charged in respect of such schemes.

### **(30) Mobile phones**

If an employer provides a mobile phone for use by an employee then, as an alternative to the benefit being based on 20% of the market value, the Director will accept a benefit based on the cost of the rental/calls (if the mobile 'phone is used at least partially for business purposes then the benefit will be based on an apportionment of the cost of calls only).

### **(31) Business trips with a partial private element**

If a bona fide business trip is undertaken but the employee chooses to incorporate into the trip, or to extend the trip for, a private purpose (for example to take a holiday, to visit relatives, etc.), then the benefit would be based on the additional cost to the employer, if any, of the private element.

If, therefore, the cost of travel would have been the same if the trip had been purely business then that will not give rise to any benefit in the hands of the employee.

### **(32) Provision of creche facilities**

Where an employer provides creche facilities for employees generally, any benefit is exempted by Ordinance. This exemption may be extended to creche facilities which are available to certain groups or categories of employee, for example, to all female employees, or full time staff, to the exclusion of other groups or categories of employee, e.g. male employees or part time staff.

### **(33) Benefits in kind administration**

- (a) Returns have to be made where it is not possible for the employer to include the benefits on ETI schedules (i.e. those cases where there is no, or insufficient, cash from which to deduct the tax). Returns for this purpose will be issued on request.

Employers' returns of benefits for the calendar year 2018 will be required by 15th February 2019. Employers may make returns by way of schedules, for example computer produced spreadsheets if this is preferred. The schedules should be attached to the return and the return noted "see schedules attached" or similar. The certificate on the return should still be completed.

Where an employer provides a number of miscellaneous benefits to a number of employees and it is believed, under a global computation, that the total amount for each employee does not exceed the £450 exemption limit then the benefits would not need to be included on the ETI schedules.

If an employer carries out such a calculation and the average per employee exceeds the £450 exemption limit, only the excess over £450, per employee, must be passed through the ETI Scheme.

(See, however, [section \(3\)](#) in relation to benefits not qualifying for the £450 exemption.)

The Director would only make approaches to the employer and/or the employee in order to calculate the level of benefit more accurately where he considered it necessary.

- (b) If it is discovered from a return made by an employer that benefits have been provided to an employee but the employee has failed to disclose the benefits on his personal tax return, then penalties would be considered in respect of the incorrect return only where it was believed the omission was other than a simple oversight.

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