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## Living accommodation provided by employers Changes to concessionary tax treatment from 6 April 2021

Where living accommodation is provided by an employer for an employee, director or the employee or director's family or household, a benefit in kind liable to both Income Tax and National Insurance Contributions can arise.

### Exemptions for 'job related' accommodation

There are exemptions from a benefit in kind charge for certain types of 'job related' accommodation.

The first exemption applies where the accommodation provided is 'necessary for the proper performance of the duties of the employment'. This is a strict test, which is only satisfied where it can be demonstrated that occupation of the particular property is essential to the proper performance of the duties of the employment.



An example of where such occupation may be regarded as essential is a caretaker living on the premises. This would only cover those with a genuine full-time caretaking job who are on call outside normal working hours.

For farm employees, it is relatively easy to demonstrate that it is essential for an employee responsible for livestock to reside on the farm, but for arable and fruit employees it may be less easy. HM Revenue & Customs' (HMRC) own internal guidance manual states that agricultural workers who live on farms or agricultural estates may be accepted as being within the exemption. Nevertheless, HMRC guidance is not sufficient defence in law, therefore each case must be considered on its own merits.

To support any exemption claimed, the employee's terms of employment should record the duties which make the accommodation necessary for the proper performance of their duties. Further, the employer should retain suitable evidence to demonstrate the employee's contract truly reflects those duties.

A second exemption applies where the accommodation is provided for the 'better performance of the duties' and it is 'customary' in that occupation to provide living accommodation for employees. Examples of such occupations include police officers, members of HM Forces, managers of public houses living on the premises and boarding school staff. 'Customary' is not defined in law and HMRC's guidance does not automatically recognise agricultural workers in this category, therefore HMRC may challenge this argument if used.

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In all circumstances, living accommodation provided for a company director, including shadow director, will not be treated as 'job related' unless the person does not own more than 5% of the shares in the company and either the employment is as a full-time working director or the company is non-profit-making or is set up for charitable purposes.

### **Retired agricultural employees**

It is not unusual for an agricultural employee, residing in accommodation which qualifies for the exemption, to continue to occupy that property into their retirement under a secure tenancy. In this situation the benefit will continue to be exempt provided that property is not improved significantly, which results in an increase in the market value by more than 20%, in the last five years of employment or during retirement. Furthermore, the exemption can remain if the individual is provided with replacement accommodation, so long as this property's market value at the first point of that occupation does not exceed the original property's value at the same time.



However, if the 20% limit is exceeded, the exemption is no longer available and a taxable benefit in kind arises as explained later.

### **Withdrawal of exemption for representative occupiers**

An extra statutory concession, which historically has provided an exemption for employees who were treated as 'representative occupiers' up to 5 April 1977, has been withdrawn with effect from 6 April 2021.

The concession treated the living accommodation for such employees as exempt provided their circumstances remained unchanged after 1977.

The exemption also applied to employees who succeeded to a post carrying representative status.

A representative occupier was an employee:

- who resided in a house provided rent free by the employer;
- who as a term of the contract of employment was required to reside in that particular house and was not allowed to reside anywhere else; and
- whose occupation of the house was for the purpose of the employer, the nature of the employment being such that the employee was reasonably required to reside in it for the better and more effectual performance of the duties.

Employers who have benefited from this concession in the past should review their position and consider whether it is possible the other job related exemptions apply, if not consider benefit in kind reporting requirements.

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## Calculation of living accommodation benefit in kind

Where living accommodation is provided to an employee and the job related exemptions do not apply, it is necessary to calculate the 'cash equivalent' of the benefit in kind.

The rules for calculation depend on whether the accommodation is owned or rented by the employer.

- Where the accommodation is employer owned and where the cost, including improvements, of that property is not more than £75,000, the benefit is the annual gross rateable value. This value is often relatively low since it is based on the property's value in 1973. For a more recently constructed property it is necessary for the employer to estimate the figure which HMRC can ask the District Valuer to confirm or adjust as necessary. Due to the values involved an HMRC challenge is unusual.
- Where the cost to the employer is more than £75,000, in addition to the annual gross rateable value, there is a further benefit calculated by applying the official rate of interest, currently 2%, to the excess of the cost over £75,000.
- Where the accommodation is owned by the employer and is made available for use by the employee more than six years after it was first acquired, then the additional benefit is calculated by applying the official rate of interest to the excess over £75,000 of the open market value of the property when first made available to the employee.
- If an employee occupies a property which is rented by the employer, the value of the benefit is the rent actually paid by the employer.

Any rent paid by the employee is deducted in arriving at the taxable benefit.

If the employee qualifies for a job related exemption, any council tax or water rates paid by the employer also qualifies for the exemption. Otherwise, council tax and water rates paid by the employer will be taxable.

Irrespective of whether an exemption applies, any other expenses paid on behalf of the employee will be taxable other than property repair expenditure which is the responsibility of the employer, for example exterior painting and structural repairs. However, where a job related exemption applies and a taxable benefit arises on expenses, such as heating and lighting paid on behalf of the employee, the taxable benefit on the expenses is restricted to 10% of the employee's earnings from the employment.

In all cases where a taxable benefit arises the employer is liable for Class IA National Insurance Contributions.