

Employee Benefits in Kind Update – Mobile Phones

Changes to exemptions

The rules regarding the tax exemption for mobile phones were substantially amended by the Finance Act 2006, and this impacts from 6 April 2006. The changes are:

- the definition of the mobile phone has been revised;
- the number of mobiles provided for private use is now restricted to one;
- mobiles provided to members of the employee's family and household are excluded from exemption;
- improved legislation regarding payment for top-up cards

What were the old rules?

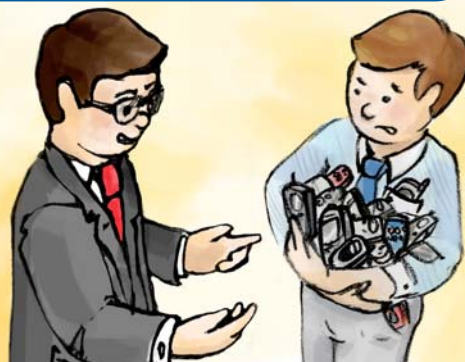
These defined a mobile as equipment, including that installed in a car, that could be used to transmit spoken words and was not connected to a landline. There was also a tax exemption for computer equipment up to £2,500 supplied to employees. It was HMRC's view that this exemption covered the provision of PDAs such as Blackberrys, therefore there was no need and distinguish whether a Blackberry was a mobile phone or a computer as either way it was not taxable. From 6 April 2006 all computers provided with a private element of use are taxable benefits.

New definition of a mobile phone

From 6 April 2006 the definition of a mobile has been expanded to include anything that can be used to gain access to the public electronic communications service. This covers, for example, a sim card provided independently of a mobile phone if an employee uses it in a mobile phone that is not provided by the employer.

'Business only' use

If mobiles are provided solely for business then there is no need to try and get within the exemption to avoid tax. Under this the private use should be not significant and the employer's policy should be clearly stated. Also any decision by the employer not to recover the costs of the private use should be a commercial decision because of the impractical nature of trying to calculate it. If there is any desire to reward the employee then this test will fail. Also, under the old rules, there was the possibility of a tax charge if a pay as you go mobile phone and top-up cards were provided to employees. This is because they fell open to be taxed under rules that caught vouchers and credit tokens. The law has now been tidied up so that no tax charge will arise.



Blackberrys and other PDAs

It is HMRC's assertion that these have now evolved far beyond an electronic diary in a telephone and have functions typically associated with computers. Therefore, with the removal of the exemption for computers provided for private use to employees, the provision of a Blackberry or PDA is technically taxable. However, the general exemption (explained below left) for items provided solely or business use with no significant private element may still allow them to be provided without a tax charge arising.

Barnes Roffe Topical Tips

- Review how many mobiles the company provides and ensure that any members of staff who now fall to be taxed are made aware of the options open, including handing back one or more mobile phones.
- Consider getting any benefits in kind coded out to the employee's notice of coding so they do not get a tax bill in one lump sum at the end of the year.
- Review your policy for the provision of PDAs or Blackberrys and ensure that the instructions to staff are watertight to enforce the rule that these are primarily for business use and that any private use is not significant, and no motive to reward the employee is included when the insignificant private use is not recharged to them.
- The rules on the payment of phone bills for private mobile phones owned by the employees have not changed and this will fall to be taxed with the PAYE and National Insurance rules. An exemption is available to staff to avoid being subject to PAYE for business calls only, but they will have to deal with this through their private tax returns.

Please consult your Barnes Roffe LLP contact partner for assistance on this important matter