

Farmworkers' benefits

In recent months HM Revenue & Customs (HMRC) has been challenging farms and estates to provide evidence to support the tax treatment of benefits provided to employees. The cost of getting the tax treatment wrong, or being unable to provide documentary evidence to support the treatment, can be severe with the employer suffering both employee and employer National Insurance Contributions (NIC) going back up to 6 years in addition to penalties and interest. In addition, if any liability falls upon the employee, many employers will feel duty bound to settle the liability resulting in the need for a "grossing-up" process to be applied.

Farm vehicles

Farm employees often have use of farm vehicles. If the use is purely business there should be no tax consequences but only if the employee's contract prohibits private use or if employer/employee have agreed in writing this is to be the case.

If private use is permitted then consider whether the vehicle is a car or a van/ commercial vehicle since the tax treatment is different. The tax/ NIC cost of providing a car can be significant if it is made available for an employee's private use (no matter whether or not private use occurs).

The tax treatment of a 'van' is less punitive but it is no less important to consider the implications. Usually journeys from home to work are treated as private but an employee may take a van home if needed for work the next morning without a tax charge arising. It is important that the employee does not use the van for any other private use otherwise a tax charge will arise. The employer must ensure the employee's contract sets out the restrictions on the van's use. Alternatively HMRC will accept a mileage log to support the van was not used for private purposes apart from the usual commute but in practice it is difficult probably to persuade farm staff to keep an accurate log when many journeys are short, across fields etc.

Care should be taken where a main driver is mentioned on the insurance policy since this may contradict the actual use.

Provision of rent free accommodation

Farm workers are often provided with free or reduced rent accommodation. Where it is necessary or customary for the employee to be provided with such accommodation no tax charge will arise. Under the relevant test the employment duties must necessitate accommodation and HMRC accepts that agricultural workers living on the farm should have a strong case to qualify under this exemption. However this exemption is never available to a director owning more than 5% of the employer company shares.

The employee's contract must include a provision requiring the worker to live in accommodation in order to better perform duties. If called upon by HMRC you must be able to provide evidence that, by living on the farm, the employee does perform duties better – this is relatively easy on livestock farms but thought should be given to what supporting evidence can be produced on mixed or arable farms or where a high number of employees are provided with accommodation.

It is possible for the accommodation to be provided "off farm" however a more robust argument is needed to show that it is either necessary or customary and the further away from the farm, the more difficult the case will be to justify.

Cost of accommodation

The rule as regards whether an expense is taxable as a benefit in kind broadly follows the respective responsibilities of landlord and tenant as set out in the Landlord and Tenant Act 1954. “Landlord” costs are not taxable on the employee whereas “tenant” costs are.

Repairs and maintenance to the exterior of the property or to internal utility and sanitary installations are not assessable on the employee nor is insurance of the property. Expenditure incurred on other internal repairs and maintenance is assessable as a benefit in kind.

A benefit in kind also arises in respect of expenses incurred on utilities and the provision of furniture. If caught under this provision, employees exempt from the accommodation charge will have a limit on the amount on which they are taxed at 10% of their salary. Council tax, water and sewerage charges are not taxable as benefits.

In all cases invoices must be addressed to the employer, otherwise NIC becomes payable by both the employee and employer.

Mobile phones

Where mobile phones are contracted and paid for by the employer and only one phone per person is provided there is no assessable benefit. It does not matter if there is any private use. It is crucial the contract is with the employer otherwise a tax and NIC charge will arise.

Please contact your usual Chavereys contact if you have any specific questions on the above.

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