

EXECUTIVE COUNCIL

CONFIDENTIAL

Title of Report: The Taxes (Benefits in Kind) (Amendment) Rules 2012

Paper No: 276/11

Date: 14 December 2011

Report of: Commissioner of Taxation

1.0 Purpose

To present to Honourable Members amendments to the Taxes (Benefits in Kind) Rules 2003 to review rates and clarify dwelling house benefits and travel expenses.

2.0 Recommendations

It is recommended that Honourable Members;

(a) approve the proposals detailed in paragraph 5 below so that subsidiary legislation to amend the Benefit in Kind Rules can be drafted for implementation from 1 January 2012;

(b) instruct AG's office to draft legislation for submission to Executive Council in early 2012 with the legislation being back dated to 1 January 2012; and

(c) authorise an announcement of the changes before the end of the year, so that taxpayers have adequate notice of the change.

3.0 Summary of Financial Information

	2011/12
	£
Personal Tax Refunds	2,500

Minimal financial effect.

4.0 Background

- 4.1 The Benefit in Kind (BIK) rules were first introduced from 1 January 2004 as a result of ExCo papers 328/03 and 342/03, amendments to these rules were made in 2004, ExCo paper 24/04. These rules provided for a limited number of non-cash benefits provided by employers to be a taxable charge. This paper has been prepared to allow reconsideration of two areas where confusion has become evident.
- 4.2 Firstly, for those employees provided with a dwelling house by their employer for their exclusive use the original intention was that the actual cost paid by the employer for heating and/or electricity would be charged as income under Taxes Legislation 1997 section 8(1)(b) gains and profits from employment. If the employer provides a single room or shared accommodation, the employee is taxed on an assumed charge of £3 per day, subject to a maximum of £1000.
- 4.3 The wording of the legislation was recently queried by a local accountant so this was checked with Attorney General Chambers. It has been concluded that the legislation does not accord with the original intention (as set out above). As written, the legislation requires that the rate for **all** heating and/or electricity provided by employers should be charged at the rate of £3 per day. This rate does not differentiate for the number of rooms a property may have.
- 4.4 Secondly, it has been brought to our attention that it is not clear on what basis we charge a flight paid by an employer as a BIK on the employee. This can be problematic when more than one flight is provided by an employer in a tax year.

5.0 Proposed amendments

- 5.1 It is proposed that the legislation is amended to simplify the BIK policy and introduce an annual value for heating and electricity for a dwelling house:
- a) Heating and Electricity – Where a dwelling house is provided for an employee's exclusive use, it is proposed that a taxable charge of £500 per room is made, subject to a maximum of £3,500 per annum. This sum has been estimated to reflect current average costs. Employees who are in shared accommodation will continue to be charged at £3 per day.
- b) Flights – Under BIK rules 3 and 4, all travel expenses paid by the employer are chargeable as a benefit, however rule 5 allows exceptions to rules 3 and 4 so that flights at the start and end of the contract and one flight per calendar year are exempt. These are not charged as a BIK for employees who are not normally resident in FI immediately before commencement of the employment. It is proposed to amend Rule 5(5) to clarify the one journey per calendar year an employee is entitled as an exception will be the most expensive flight during the calendar year. Any further flights during that year will be charged as a BIK under Rule 4(1).

Please note the BIK values are the amounts chargeable to tax and the employee will pay income tax at 21% or 26%, plus 1% employee medical services tax on the values. The values are **not** the actual amounts paid as tax by the employee

6.0 Financial Implications

This may result in a small loss in tax revenue of £2,500 due to previous assessments from 2004 to 2010 being revised so the rate for heat and/or electricity is taken as £3 per day, rather than the actual amounts incurred by the employer being charged as income on the employee.

The Benefit in Kind (BIK) values currently being used were set in 2003 and no longer reflect current values, and it is proposed to add this to the budget process so the rates are reviewed on a yearly basis as part of the budgetary review, starting in May 2012.

7.0 Legal Implications

The Benefit in Kind Rules can be amended by subsidiary legislation but (owing to competing priorities) it has not been possible to draft the amending legislation in advance.

The amendments should be relatively straightforward and, if the proposals are approved, it should be possible for the amending legislation to be submitted to Executive Council in the early part of 2012.

It would be possible for the legislation to be back-dated to have effect from 1 January 2012, so that it applies for the whole of the forthcoming tax year.

However, as a matter of good practice, taxpayers should be warned in advance about this, so that they have adequate notice of the change and can arrange their affairs accordingly.

8.0 Human Resources implications

This recommendation would require a redrafting of all related HR documentation. This activity will be subsumed within the current HR workload and therefore there will be no requirement for additional resources as a result.