tax insider

We can work it out!

By Peter Rayney, March 2021

Peter Rayney explores how benefits are calculated on company assets provided to directors and employees.

Companies frequently provide assets for the private use of their directors and employees, ranging from mobile phones, computers, cars, bicycles, living accommodation to more exotic assets such as yachts, planes and helicopters.

These benefits are taxed in accordance with the wide-ranging employment benefits code. The calculation of the taxable benefit on certain assets, such as company cars, vans or living accommodation is subject to special computational rules, which are not covered here.

This article reviews the taxable benefit on all other assets, and some of the practical implications.

Basic charging provisions

Company-owned assets that are made available for the private use of the director/employee are dealt with by ITEPA 2003, s 205. Private use by a member of the director's/employee's family or household is also caught. Such assets are treated as being available for private use throughout the year unless their availability specifically prevents private use and no private use is made of it (ITEPA 2003, s 205(1B)).

The cost of the director's/employment-related benefit is based on the higher of:

- the annual value – being 20% of the market value of the asset when it was first provided (to anyone in the business, not just the current director employee who is enjoying its use); and
- any rental charge paid by the company for the asset.

This taxable benefit figure is also increased by any ongoing expenses relating to the provision of the relevant asset.

Any VAT charged must be added to the cost of providing the asset, even if it's recoverable by the company (see HMRC's Employment Income manual at EIM15525). However, VAT is generally not recoverable to the extent that an asset has a non-business purpose. Whilst 'business purpose' is not defined in the legislation, it would include assets used for sporting and leisure-oriented activities, for the personal benefit of a director in connection with non-business activities (see HMRC's VAT Input Tax manual at VIT10200).

Potential reductions in taxable benefit

Since 6 April 2017, legislation at ITEPA 2003, s 205A calculates an appropriate reduction in the calculated tax charge for 'non-availability'. This supersedes HMRC's prior practice and provides for a statutory basis for adjusting the charge so that the taxable benefit excludes the days the asset is not available for private use.

The determination of when an asset is not available for private use can be complex. Broadly, to be classed as 'unavailable' the relevant asset must (for more than 12 hours on the relevant day) be undergoing repair or maintenance, not be in a usable condition, or could not legally be used. Similarly, any days where the director/employee is required to use the asset solely in the performance of their employment duties is treated as not available for private use (ITEPA 2003, s 205A(2)).

Where an asset has shared use, ITEPA 2003, s 205B provides for the tax charge to be calculated on a 'just and reasonable' basis.

Making good

The taxable benefit amount is reduced by any payment 'made good' by the director/employee, generally representing their cash contribution to the company for providing the relevant benefit.

For non-payrolled benefits, the director/employee can only secure a reduction in their benefit charge for a tax year by ensuring it is paid to the company by 6 July following the end of that year. The 'making good' payment could be made as a deduction from their (post-PAYE/National Insurance contributions (NICs)) net earnings.

Example: Company-owned helicopter

Tricia Caputo is the Chairman and 100% owner of Sundon Football Club Ltd. She is also a qualified helicopter pilot and expects to be able to use the helicopter for travelling to football matches, club use, and personal enjoyment.

On 31 March 2021, the company purchased a second-hand helicopter in an arm's length transaction for £350,000 (including VAT). It also anticipates that the annual running costs (including pilot, fuel, repairs, maintenance, insurance and so on) would be in the region of £200,000.

Becky Wilson, the Finance Director, has indicated that she may be able to negotiate 10% business use of the helicopter with HMRC. She estimates Tricia's annual taxable benefit for the helicopter to be in the region of £243,000, calculated as follows:

		£
Annual value	20% x £350,000	70,000
Annual running costs		200,000
Total		270,000
Less: Potential deduction for business use (10%)		(27,000)
Net taxable benefit		£243,000

This calculation has been queried by Tricia, indicating that she only expects to use the helicopter for private use about 50 days a year at most. However, Becky has to explain to her that it is not actual private use that matters. The taxable benefit legislation focuses on its availability for use by Tricia; see the decision in *Antique Buildings Ltd v HMRC* [2010] UKFTT 97 (TC) (although this decision preceded ITEPA 2003, s 205, which now effectively prescribes when an asset is 'not available' for private use).

Tricia's taxable benefit charge will be based on the number of days the helicopter is available for her use. It is possible to exclude days when the helicopter is 'out of action' or is undergoing repairs or maintenance (if this exceeds 12 hours in the relevant day) and it is not clear whether this forms part of Becky's 10% estimate for business use.

Tricia's benefit might be reduced if the club were able to use the helicopter in a commercially operated chartering business. However, HMRC would seek robust evidence about the use by the chartering business to determine the extent to which the helicopter was not available to Tricia, such as the terms of the agreement between the club and the chartering business.

This example shows that the taxable benefit arising on an expensive asset can be very substantial indeed.

Class 1A NICs

The Class 1A NICs charge, currently levied at the rate of 13.8%, generally arises on all ‘taxable benefits’ provided.

However, while the calculation of the benefit for Class 1A NICs purposes generally follows the tax rules, there is one significant difference. A Class 1A NICs charge will arise on the full annual value of mixed-use assets. There is no reduction for business use although no charge should arise where the private use is insubstantial.

Subsequent transfer of company asset to director/employee

A special rule applies where the company transfers an asset to a director/employee that has previously been used by them. In such cases, ITEPA 2003, s 206 states that the recipient director’s/employee’s employment income tax charge is based on the greater of:

- the market value of the asset at the time of transfer; and
- the market value of the asset when it was first provided by the company to the relevant director/employee less the taxable amounts that have already been charged for the use of the asset.

However, the transfer of computers and bicycles that have previously been made available is simply based on the market value of the transferred asset at the time of transfer (ITEPA 2003, s 206(6)).

Practical point

It is normally much easier to avoid a benefit or negotiate a reduction where assets are made available to employees for business use only, since a clear restriction can be placed on their use/availability. On the other hand, this is much more difficult where assets are provided to director shareholders, who have much greater control over the company’s assets.