Finance Bill 2016 cl 7 – taxable benefits

Employment Tax

01 July 2016

The decision in *Apollo Fuels* will be reversed by FB 2016 cl 7, which states that provisions for computing accommodation, cars and loan benefits-in-kind 'trump' paying full market value.

FB 2016,cl 7 will reverse the decision in *HMRC v Apollo Fuels, B Edwards and others* [2016] EWCA Civ 157 (17 March 2016). The Court of Appeal found that the lease of a car to an employee who paid lease charges at full market value was not a taxable benefit.

The government's amendments to the rules in cl 7 deal with the provision of living accommodation, cars and vans (and related benefits), and loans by an employer to an employee. Under these, the specific statutory provisions for calculating the tax charge on these benefits in kind will apply even if the employee pays full market value. The concept of 'fair bargain', however, remains for benefits taxable under ITEPA 2003 Pt 3 ch 10 (residual liability to charge).

As a result, if an employee gets a car, van or loan from their employer or is provided with living accommodation on the same terms as a member of the public, there will be a taxable benefit based on the statutory provisions for calculating the charge on these forms of benefit-in-kind. This is regardless of the fact that the employee is paying for the car, van, loan or accommodation on commercial terms.

However, the exception in ITEPA 2003 s 176 has been retained for loans advanced on ordinary commercial terms by an employer to an employee if it is a normal part of the business to lend money and comparable loans are made to ordinary members of the public.

In addition, cl 7 includes a proposed revision to ITEPA 2003 s 117 to include a similar exclusion to s 176 for cars and vans. So, if an employee hires a vehicle from an employer whose business is the hire of vehicles to members of the public and on similar terms to them there is no chargeable benefit in kind.

The CIOT thought that these exemptions for loans and vehicle hire made in the ordinary course of business should be replicated for living accommodation. This would put the matter beyond doubt that no benefit in kind arises in such circumstances, and so employers do not have the burden of checking that no benefit charge arises. Although there is an exemption in ITEPA 2003 s 98 for accommodation provided by a local authority (when provided on similar terms as the authority would to any other person) residential property is often let by other organisations in the ordinary course of their business. The CIOT wrote to HMRC suggesting that the government bring forward an amendment to cl 7 to include an exemption for living accommodation similar to those for loans and vehicle hire: that is that living accommodation let by an employer to an employee where the accommodation is let on the same terms as it would be let to a member of the public and the employer's business is the letting of property to members of the public does not give rise to a chargeable benefit in kind.

In response, HMRC has challenged us to identify instances where the accommodation benefit in kind charge would be greater than the rental charged to the employee. HMRC says it is unable to identify any circumstances under which the value of the benefit of provided living accommodation would not be reduced to nil by an arm's-length rental agreement which is why it took no action to include a specific exemption.

Consequently, unless we bring to HMRC's attention circumstances where an accommodation benefit charge could arise, or circumstances where a significant burden would arise to employers in evidencing that no benefit charge arises, no amendment will be made to cl 7. If you are aware of any such circumstances, please let us know.

Our full submission can be found on the CIOT website.