

Tax Guide for the valuation of 'payments in kind'

January 2002

This **Update** is being published by virtue of Rule 47 of the Fringe Benefit Rules, 2001 (L.N. 125/2001), and is intended to provide further guidance on the taxation of fringe benefits.

This Update is to be construed as an integral addition to the "Tax Guide" published in January 2001. The Update follows the sequence used in the Fringe Benefit Rules, 2001 which were published in May 2001.

Rule 2(1) In rule 2 (1) of the Fringe Benefit Rules under the definition of "associated company" the word "a company" should be inserted after the word "means"

Rule 2(2)(b) In rule 2 (2) (b) of the Fringe Benefit Rules after the words "in that company" should be added "or in an associated company"

Rule 14 (2) The private use percentage of a vehicle as determined by sub-article (2) of Rule 14 is being reduced from 20% to 0%. This means that the private use of a vehicle where the provisions of Rule 14 (2) (a) and (b) apply is not deemed to constitute a fringe benefit as from 1st January 2002.

*Effective
as from
1/1/2002*

However, the provisions of Rule 14 (2) (c) still apply and the employer is required to apply to the Commissioner of Inland Revenue on the appropriate form available from the Inland Revenue Department. The '0%' can be applied only subject to the relevant authority being dispensed by the Commissioner.

It is also to be noted that the '0%' rate applies only to employees who are salesmen or support persons. Officers of a company, even if they are performing the duties of a *salesman or support person*, are not eligible to benefit from this provision.

Rule 15
Capital contribution
by an employee
towards the cost of a
car

The Fringe Benefit Rules do not contemplate instances where a capital contribution is made by the employee towards the cost of the purchase of the relevant car to be considered for the valuation of the particular car fringe benefit. A car fringe benefit is always calculated on the basis of the 'full' value of the car, including all taxes payable, when new as defined in the Fringe Benefit Rules, 2001.

Rule 16

*Effective
as from
1/1/2002*

The provisions of Rule 16 are being repealed as from 1st January 2002. Henceforth the private use of a company van is not deemed to constitute a fringe benefit.

Rule 18 (5) (c)
Reimbursement on
rate per kilometre
basis

The logbook referred to in rule 18(5)(c) and referred to on the Tax Guide, page 20, may take the form of an electronic record showing all the necessary details of the relevant car being used plus details of distance traveled per day, nature of business trips; etc.

Rule 20 (1)□
Private use of
property

The use of any type of vehicle which is specifically excluded from the definition of "vehicle" under Rule 8 is not to be deemed to constitute a fringe benefit under this Rule.

Tax Guide for the valuation of 'payments in kind'

January 2002

Rule 23
Accommodation not constituting a benefit by reason of employment or office

The use by a shareholder of a dwelling house which has been transferred by the company to the individual within the time limit and under the conditions as laid down in L.N. 124 of 2001 and L.N. 244 of 2001, shall not be deemed to constitute a fringe benefit for the period starting 1st January 2001 till the date of transfer.

This provision applies also to dwelling houses which have been transferred within the time stipulated in L.N. 124 of 2001 and L.N. 244 of 2001 by the company to another company that satisfies the conditions of Rule 23 of L.N. 125 of 2001.

Rule 23(c)

When the creditor referred to in this sub-rule is a bank and the bank is also a debtor of an associated company, the provisions of this sub-rule will not apply as long as it is shown that the bank's debt is not a long term loan or that it is not connected with the financing of the loan to the property owning company.

Rule 25

'In-house benefit reduction'

The Lm300 (maximum) in-house benefit reduction, where applicable, is tied to the beneficiary not the benefit. This means that a beneficiary who receives three separate in-house benefits with a total value of e.g. Lm900, will only be allowed a reduction of Lm300.

This also means that, on the other hand, when two beneficiaries receive a 'joint' benefit (e.g. a joint beneficial loan arrangement) each of the beneficiaries will be allowed a maximum reduction of Lm300 on his part of the benefit.

Rule 26 (2) (ii)
'Beneficial loan arrangements'

The benchmark rate for interest for the purposes of Rule 26 (2) (ii) on any other loan shall be 8.00% as from 1st January 2002

Rules 32; 33 and 34

Transfer of cars

When the transfer of a car to an employee or office holder constitutes a fringe benefit, the value of the fringe benefit shall be equal to the higher of the original cost or the market value plus the cost of any accessories fitted, less the total benefit received and less the amount (if any) paid by the beneficiary to the employer for the actual transfer.

When the car is older than 6 years (as from date of 1st registration) the original cost will be reduced by 40%. Please refer to sub-rules 34(1)(d) and (e) and (3)(b)(i).

Example:

A company grants the use of a car purchased at Lm15,000 to an office holder. The beneficiary receives a fringe benefit of Lm2227.5 per annum for 5 years on which he pays tax. The company decides to sell the car to the beneficiary after 5 years at a price of Lm5000.

Cost of Car	Lm15,000
Less value of fringe benefit to date of transfer =(Lm2227.5 X 5years)	Lm 11,137
Less Amount paid to employer	<u>Lm 5,000</u>
	<u>(Lm 1,137)</u>

In this case the value of the resulting fringe benefit is Lm0

Tax Guide for the valuation of 'payments in kind'

January 2002

Value of benefit under Rule 32 consisting of the reimbursement of interest incurred on a loan from third parties

Reimbursement by an employer of a part or the whole of the expense incurred by an employee in acquiring a loan from a third party as defined in the Rules is considered as a reimbursement of a private expense and is calculated on the actual value of interest subsidised.

Example:

An employee who is employed with company ABC acquires a loan of Lm30,000 at 6.25%. The employer reimburses or subsidises the employee to the amount of difference between the rate of 6.25% and an agreed rate of 2.5%.

The value of the benefit shall be equal to:
 $6.25\% - 2.5\% = 3.75\%$ of Lm30,000 = Lm1125

This would be an 'external' fringe benefit under Category 3 and is not eligible for the Lm300 'in-house' benefit reduction' as per Rule 25.

Rule 34

For the purposes of this rule, a property may be considered as an 'in-house property' only if supplied directly by the 'employer' to his employee. This means that any property supplied by associated companies or persons or third parties does not qualify as an 'in-house benefit' and the beneficiary will not be entitled to the 'in-house benefit reduction'.

Rule 39 (2) (j)

'Cost of providing insurance against expenses for medical treatment or an insurance policy under which a benefit is payable only in the event of death or injury while in service'

This rule limits the "exemption" on the cost of providing insurance to company personnel to the level of the lowest cover provided under a scheme open generally to employees. The term 'available generally to employees' would refer to a company-wide scheme that involves the great majority of workers in the company but not necessarily all employees. As a general rule the 'great majority of workers' would mean at least 75% of workers. Any provided amount of insurance cover above the lowest provided cover is taxable.

However, as from 1st January, 2002 in the case of 'officers' of the company, the "exemption" on the cost of providing insurance is being raised to three (3) times the level of the lowest cover provided under a scheme available generally to employees. This limit is also extended to other intermediate levels of insurance cover that may be available to higher employees.

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as from
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Example 1

Company ABC employs [besides the director and a manager] 70 professional/clerical employees, 1 driver/messenger and 2 labourers. The company awards, as part of a remuneration package, insurance against expenses for medical treatment to professional/clerical employees only. The lowest cover afforded to the lowest clerical employee [e.g. a clerk] is worth Lm200 per annum. Certain higher level employees enjoy a higher cover of Lm400 per annum while the director and the manager are afforded still higher covers (Lm1000 per annum).

In this particular case, the insurance provided is considered as provided under a scheme available generally to employees. The "exemption" applies to the level of the lowest insurance cover provided (i.e. Lm200) to all employees. In the case of 'officers', management and higher employees who are afforded a higher insurance cover, the maximum "exemption" level would be Lm600 (3 times Lm200).

Tax Guide for the valuation of 'payments in kind'

January 2002

- Rule 39(2)(k)** The provision of this sub-rule extend also to the use of a fax machine used by the employee for the purpose of the business of the employer.
- Rule 39 (2) (r)** By virtue of Rule 39 (2) (r) the Commissioner has approved that the following categories of work-related health benefits should be considered as exempt benefits:
- Occupational health benefits**
- **Work-related medical examinations/ medical screening**
These would be examinations or tests carried out by a medical practitioner, nurse, dentist, etc where the employee is required to undergo examination or test in order to commence new employment, transfer to a different job with the same employer, or to gain entry to a superannuation fund.
 - **Work-related preventive care health**
This refers to any form of care provided for the purpose of preventing the employee from suffering from an injury or illness that is related to the employee's employment. The provision of free drugs, vaccines, etc in connection with the above is also exempt. It is a condition for this exemption that the care provided is part of a screening program that is generally applied to all employees having the same employment-related health risks.
 - **Work-related counselling**
This refers to individual or group counselling related to matters such as safe work practices, health, fitness, stress management drug or alcohol abuse. It is a condition for this exemption that the care provided is part of a program that is generally available to all employees having the same employment-related health risks.
- Rule 40 (1) (a) (2)** By 'reasonable subsistence allowance' is meant a maximum non-taxable allowance of Lm60 per day.
- Rule 41 (a)** The term 'cost of journey by sea to one of the said islands.....' is considered applicable also to a journey by air (helicopter).

FURTHER INFORMATION

This tax guide update, together with other relating information to Income Tax can be found on the IRD's web site at :

<http://www.magnet.mt/economy/ird>

You can also download from the same site a spreadsheet that calculates FSS deductions, incorporating fringe benefits. The spreadsheet may also be obtained on floppy disk on request from the FSS Division (Block 3 – Floriana).

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