



Accommodation For Employees

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Within some industries, particularly agriculture, it is commonplace for accommodation to be provided as part of the job, the employer can claim the running costs against tax. However, providing accommodation for employees is a complex benefit when looking at the tax implications and the effect on their rates of pay. In this factsheet we highlight some of the more basic points, but as the rules are complex we recommend that specific advice should be sought in individual cases. There may also be changes to the rules outlined below, following a review of accommodation benefits by the Office of Tax Simplification and we outline in red the points to watch.

Broadly, there are two types of Accommodation that you can provide;

1. **Board & Lodge** broadly means the provision of the employee's meals and somewhere to sleep and does not apply to self-contained living accommodation.

Example 1 – Employee paid £900 per month, the employer provides board and lodging but deducts £150 per month from the pay. The actual cost to the employer in providing the board and lodge is £180 per month. The employer must operate PAYE on the full wage of £900 per month and then deduct the £150 so that the employee is being taxed on the £900. There is also a benefit of £30 per month where the employee is being charged less than the cost to the employer, this is taxable and should be declared on form P11d.

Please note that under the Rent a Room Scheme the employer can earn up to a threshold of £4,250 per year tax-free from letting out furnished accommodation in their home. This exemption covers a room or an entire floor. If, however the expenses exceed the income received, you would be better declaring the income and claiming the expenses in the usual way.

2. **Living Accommodation** is when an employer provides an employee with the use of a property with means of independent living such as cooking facilities etc. Living accommodation is usually a taxable benefit for the employee unless it falls under one of the following statutory exemptions;
 - **Proper performance of the employee duties** – where the employee has to occupy a particular property (as opposed to any other property) essentially for the proper performance of the duties of the employment, OR

- **Better performance of the employee's duties and where it is customary for an employer to provide accommodation**, like with agricultural workers – to qualify the employee should have speedy access to the place of work and be on call outside of normal working hours, OR
- **For Security reasons** - you have to live there for protection as your job poses a threat to your personal security, it is rare for this to apply.

The exemption covers the cost of providing the accommodation (based on rent paid or on rateable value), water and sewerage charges, and council tax. All other household expenses would be a taxable benefit if paid by the employer. Please note Company Directors are unlikely to qualify for exemption.

The Office of Tax Simplification have recommended that HMRC review the rules and tighten the definitions to distinguish what is a 'perk' and what is really necessary to get the job done, taking into account the following key elements;

- Whether the worker has necessarily to live on site to protect buildings, people or assets
- Whether the worker regularly works very long hours
- Whether the worker needs accommodation because of regulatory requirements.

We recommend that you carefully review your Employee Contracts and their accommodation arrangements to ensure that job descriptions are accurate and clearly show reasons why there is a need for tied accommodation that would fall within the proposed tighter guidelines.

If HMRC do tighten up the rules, many employees may have to pay tax on their accommodation in the near future and the employer will have to pay class 1A national insurance contributions (currently 13.8%) on the provision of the benefit.

Accommodation Offset and the National Minimum Wage (NMW)

The provision of accommodation by the employer should be taken into account when calculating a worker's rate of pay and is the only benefit in kind that counts towards the national minimum wage. There is a limit to the amount that an employer can count towards the pay, called the accommodation offset, this is currently £5.08 per day or £35.56 per week.

Where the employer is a landlord of their employee and charges rent, the employer is required to deduct from total paid remuneration the entire amount of the rent the employee pays, then they can add back the accommodation offset (which is the maximum amount that can count as part of their pay) to determine whether the employee has received a rate of pay in excess of the NMW. In other words, the higher the accommodation charge, the lower a worker's pay when calculating minimum wage.

In circumstances where a full weekly wage is paid, and the employee as a tenant pays a fair rent, even though there is no question of trying to overcharge or underpay, you may be surprised to find you are not paying the NMW.

Example 2 - the employee earns £7 per hour, is paid weekly, works an average of 40 hours per week and resides in accommodation provided by his employer. We have three scenarios, firstly where the employee does not pay any rent, secondly where the rent is the same as the accommodation offset, and thirdly where rent is paid of £700 per month (£161.54 per week).

	£	£	£
Weekly charge to employee for Accommodation	0.00	35.56	161.54
Weekly wage	280.00	280.00	280.00
Accommodation offset	35.56	35.56	35.56
Less rent charged	(0.00)	(35.56)	(161.54)
Total pay	315.56	280.00	154.02
Pay per hour (total pay / 40)	7.89	7.00	3.85

Where the employee is paying what might be regarded as a commercial rate for a cottage of £700 per month, the rate of pay falls below the National Minimum Wage which is currently £6.70 per hour (age 21 and above) by £2.65 (£6.70-£3.85). In this case, to ensure that the NMW legislation is complied with whilst the employee pays rent of £700 per month, the employee should receive pay of £9.65 per hour, rather than the £7 they currently receive.

The legislation is very wide, and it seems that the employer will be treated as providing the accommodation regardless of whether the occupation of the accommodation by the employee is optional. If the employer owns or rents the accommodation but there is no direct link with the job, the legislation still applies.

Costs of providing Accommodation to Employees

The employer will fund the costs of the property less any rent reimbursed by the employee, plus if the accommodation is a chargeable benefit some class 1 A national insurance (currently at 13.8%). All of this cost can be deducted from employer taxable profits. The employee will pay tax and national insurance on their wages, plus tax on the provision of any benefit in kind.

Example 4 - Continuing from example 3, assuming that the cost to the employer of providing the accommodation (rental equivalent of the property, plus council tax and water charges) is £750 per month or £173.08 per week, we will look at the costs both if the provision of the accommodation was a taxable benefit in kind, and alternatively if the provision of the accommodation qualifies as exempt. We assume a tax rate of 20%.

*A - Firstly, where the employee has **free accommodation**, the value of the benefit in kind would be £173.08 (the cost to the employer, no reimbursement by the employee),*

	Taxable Accommodation £	Exempt Accommodation £
Employer		
Gross pay	280.00	280.00
Cost of accommodation	173.08	173.08
Less charged to employee	0	0
Employers national insurance on gross pay (£280-£153)*13.8%	17.53	17.53
Class 1A national insurance on benefit £173.08x13.8%	23.89	0
Total charge to the accounts	494.50	470.61
Tax saved assumed rate at 20%	-98.90	-94.12
Total cost to the employer per week	395.60	376.49

Employee

Gross pay	280.00	280.00
Less tax and national insurance (assuming no other income)	-32.78	-32.78
Less rent paid	0	0
Less tax on benefit in kind (£173.08x20%)	-34.62	0
Net wage for employee	212.60	247.22

*B - Secondly, where **the employee pays £161.54 per week for the accommodation**, the value of the benefit in kind would be £11.54 (£173.08 cost to employer - £161.54 rent charged to employee). However, to comply with the NMW legislation, the employee's hourly rate would need to be increased from £7 to £9.65, as we calculated in example 3;*

	Taxable	Exempt
	Accommodation	Accommodation
Employer	£	£
Gross pay	386.00	386.00
Cost of accommodation	173.08	173.08
Less charged to employee	-161.54	-161.54
Employers national insurance on gross pay (£386-£153)*13.8%	32.15	32.15
Class 1A national insurance on benefit £11.54x13.8%	1.59	0
Total charge to the accounts	431.28	429.69
Tax saved assumed rate at 20%	-86.26	-85.94
Total cost to the employer per week	345.02	343.75

Employee

Gross pay	386.00	386.00
Less tax and national insurance (assuming no other income)	-66.70	-66.70
Less rent paid	-161.54	-161.54
Less tax on benefit in kind (£11.54x20%)	-2.31	0
Net wage for employee	155.45	157.76

In conclusion;

- If the accommodation qualifies as exempt both the employer and employee are financially better off and where appropriate contracts and agreements should be drafted to support this.
- In the above examples where the employer charges rent, despite paying a higher hourly rate to the employee, the total cost to the employer is less, by £50.58 on taxable accommodation and by £36.05 on exempt accommodation, the rent from the employee more than compensates for the extra pay and the associated employers Nic.
- In the above examples where the employer charges rent, the net wage for the employee is much lower, where the accommodation is taxable their net pay will be £57.15 less, where it is exempt their net pay will be £89.46 less.
- The remuneration package for the employee will be more attractive, therefore, if the accommodation is provided free of rent, on a lower hourly rate, although the cost for the employer will be higher.

Protected Tenancies and other considerations

If you let a cottage to an employed farm worker without any agreement then they can qualify for protected agricultural tenancy rights. To avoid this, you can charge a rent for the property (a minimum of £250 per annum) to create an Assured Shorthold Tenancy (AST) to avoid the creation of protected rights.

However, in charging a rent, you make the property an investment asset rather than a trading workers cottage, which for VAT purposes becomes an exempt supply, and you are not necessarily entitled to reclaim input tax on the costs. If you wish to claim input VAT, the amounts claimed must fall within the partial exemption limits (less than £625 per month on average and the input vat in period attributable to exempt supplies must be less than 50% of the total input vat claimed).

If you provide a cottage to an employed farm worker (who is required to occupy the property to properly perform his or her duties) where there is an unprotected service tenancy or an AST then the property would normally qualify for 100% Agricultural Property Relief (APR) against inheritance tax. However, in cases where there is an assured agricultural occupation the rate of APR may be restricted to only 50%, care should be taken, particularly with tenancies arising between 10 March 1981 -1 September 1995.

There are a number of considerations when providing accommodation, and you need to consider your position carefully, and whether short term gains could store up long term problems.

How we can help

We would be happy to discuss the options with you. Please contact us if you would like further advice.