

GUERNSEY STATUTORY INSTRUMENT

**The Income Tax (Guernsey) (Valuation of
Benefits in Kind) Regulations, 2008**

2008 - No 81

*Made**2nd December 2008**Laid before the States**28th January 2009**Coming into operation**1st January 2009*

THE STATES TREASURY & RESOURCES DEPARTMENT, in exercise of the powers conferred on it by section 8(2)(b) of the Income Tax (Guernsey) Law, 1975(a) hereby makes the following Regulations:-

Valuation of benefits – general

1. Subject to the provisions of any Ordinance made by the States in exercise of the powers conferred on them by section 8(2A)(b) of the Law, the amount of any benefit to be taken into account for the year of computation 2009 in calculating the assessable income of any employment shall, to the extent that the benefit consists of the use of property without a transfer of ownership be calculated in accordance with these Regulations.

Valuation of benefits from motor vehicles

2. (1) To the extent that the benefit arises as a consequence of the use of a motor vehicle, the amount of the benefit shall be the limited vehicle benefit charge or vehicle benefit charge, as the case may be, calculated in accordance with the tables contained in paragraph (2) of this Regulation.
- (2) The tables referred to in paragraph (1) of this regulation are as follows:-

Table 1

The limited vehicle benefit charge for the year of computation 2009 shall apply to the following:-

(a) Ordres en Conseil Vol XXV, p.124; Vol XXVI, pp.146, 200 and 292; Vol XXVII, pp.84, 118, 200,333 and 565; Vol XXVIII, pp.184, 278, 353 and 409; Vol XXIX, p.214; Vol XXXI, pp.406 and 473; Vol XXXII, p.307; No IV of 1991; No VI of 1992; No's IV and VIII of 1993; No XXV of 1994; No's III and VII of 1995; No V of 1996; No's IV and XXII of 1997; No's II and VI of 1999; No IV of 2000; No's VI and XVII of 2001; No VII of 2002; No's IV, XVIII and XXVI of 2003; Nos XII and XVI of 2004; and No's V and VI of 2005.

- (a) cars which are made available to employees for private use but where the private usage of the car is limited by the employer to use by the employee for travel to and from his place of work;
- (b) cars which are made available to employees for private use where the business use of the car amounts to more than 75% of the total usage of the car;
- (c) cars which are made available to employees for private use where the cars concerned form part of a pool;
- (d) motor vehicles other than cars, which are made available to employees for private use.

The limited vehicle benefit charge for the year of computation 2009 shall be calculated as follows:-

Type of Motor Vehicle	Amount of Benefit
Motor Cycles	NIL
Vans, lorries and other commercial vehicles	NIL
Cars	£1,050

and, for the purposes of this table, a car forms part of a pool only if, during 2009:

- (a) it was made available to, and actually used by, more than one employee; and
- (b) in the case of each such employee the vehicle was made available to him by reason of his employment but it was not in that year ordinarily used by one of them to the exclusion of the others; and
- (c) the vehicle's use for private purposes during 2009 was secondary to its use for business purposes.

Table 2

The vehicle benefit charge for the year of computation 2009 applicable to cars which are made available to employees for private use without any of the limitations referred to in Table 1 above, shall be calculated as follows:-

Cost of Car	Vehicle Benefit Charge
Less than £10,000	£3,150
£10,000 - £19,999	£5,250
£20,000 and over	36.75% of cost

Benefits from use of land and the provision of accommodation

3. (1) Subject to paragraph (2) of this regulation, the amount of any benefit consisting of the provision of accommodation for an individual employed in a hotel or guesthouse, or in any other employment approved by the Administrator for the purposes of this paragraph, is £20 per week or part of a week for any individual employed as a manager, and £20 per week or part of a week for the dependants of such a manager so accommodated, notwithstanding the number of such dependants, and £20 per week or part of a week for any other employee so accommodated.
- (2) The amount of any benefit consisting of the provision of accommodation for an individual employed in a hotel or guesthouse as a proprietary director, or proprietary employee, or for any dependant of such an individual shall be calculated as follows:-

Category of hotel or guesthouse, as determined by the States of Guernsey Commerce & Employment Department	Individuals other than children		Children of an age at 31.12.09			
	Single Person	Married Couples	up to 1 year	between 1 - 4 years	between 5 - 16 years	17 years & over & still in formal education
3, 4 & 5 Star	£1,995	£3,335	NIL	£315	£895	£1,315
1 & 2 Star	£1,735	£2,900	NIL	£315	£780	£1,155
Diamond Graded	£ 945	£1,590	NIL	£315	£420	£ 635

PROVIDED that where there is more than one child in respect of whom a benefit arises in accordance with the table above the amount of the benefit so arising shall be reduced as follows:-

For the second such child, by 10%

For the third such child, by 15%

For the fourth, or subsequent, such child, by 20%,

taking the eldest child as the first child, the second eldest as the second child and so on.

PROVIDED FURTHER that where the individual concerned is employed in a hotel or guesthouse situate in Alderney the benefit shall be ascertained in accordance with the table above by reference to the category that, in the opinion of the Administrator, the hotel or guesthouse, as appropriate, would have been included under had it been situate in Guernsey.

- (3) The amount of any benefit consisting of the use of land, the provision of accommodation, or a dwelling, whether situate in Guernsey or elsewhere, which is not covered by paragraph (1) or (2) of this regulation shall be equal to 15% of the assessable emoluments of the employee in respect of land or unfurnished accommodation or an unfurnished dwelling, or 17.5% in respect of furnished accommodation or a furnished dwelling (other than that part of the employee's emoluments which are attributable to the benefit calculated in accordance with this paragraph of this regulation).

PROVIDED that in the case of an employee who is a proprietary director or a proprietary employee of the company providing the benefit, the amount of the benefit shall be the open market rental value of the land, accommodation or dwelling.

PROVIDED further that an employee, not being a proprietary director nor a proprietary employee, may elect that the amount of the benefit ascertained in accordance with the preceding provisions of this paragraph shall not exceed the amount of the open market rental value of the land, accommodation or dwelling; and for the purposes of this proviso the onus to prove that the open market rental value of the land, accommodation or dwelling is less than the benefit so ascertained shall be upon the employee, and any such election in respect of the year of computation 2009 must be made before 31st December, 2011.

Other benefits

4. Where the amount of a benefit to be calculated in accordance with these Regulations is not covered by regulation 2 or 3, it shall be equal to 20% of the market value of the property concerned at 1st January, 2009 or, if later, on the date in 2008 when the property was first made available for the private use of the employee, provided that the Administrator may reduce the amount of benefit so calculated if, in his opinion, it is reasonable to do so, having regard to the other uses to which the property concerned is put, or any other factors that he considers should be taken into account.

Valuation of certain benefits not provided for the whole of a calendar year

5. Where a benefit whose amount is to be calculated in accordance with any of these Regulations other than regulations 3(1) and 3(3) is available to an employee for less than the whole of 2009, that amount shall be:

$$\frac{B}{365} \times \text{£}A$$

where:

"A" equals the benefit calculated in accordance with these Regulations; and

"B" equals the number of days on which the benefit was made available to the employee.

Provided that in relation to Regulation 3(3) that amount shall be:

$$\frac{B}{C} \times \text{£}A$$

where:

"A" equals the benefit calculated in accordance with these Regulations;

"B" equals the number of days on which the benefit was made available to the employee; and

"C" equals the number of days in which the employee was in Guernsey.

Definition

6. In these Regulations:-

"**Administrator**" means the Administrator referred to in section 205 of the Law.

"**Business use**" in relation to a car shall be ascertained by comparing the amount of mileage covered by the employee in that car wholly, exclusively and necessarily in the performance of his duties, during 2009, to the total mileage covered by the car, during the time that it was used by the employee in 2009.

"**Car**" means a motor vehicle other than a motor cycle, van, lorry or other commercial vehicle.

"**Cost of car**" means the actual gross cost to the employer of acquiring the car, taking into account the value of any part exchange and including the cost of all accessories, options and extras (whether fixed or otherwise) or, in the case of a car leased to the employer, the amount which in the opinion of the Administrator it would have cost the employer, on the basis of the above definition, to buy the car instead.

"**Dependants**" means any individuals who are dependent for the ordinary necessities of life upon the employee.

"**Emoluments**" has the same meaning as in the Law.

"**Guernsey**" includes Herm and Alderney.

"**The Law**" means the Income Tax (Guernsey) Law, 1975, as amended.

"**Market value**" in relation to any property means the amount which might reasonably be expected to be obtained if the property were sold on the open market, to an unconnected person, and assuming a legal and accessible market for the property concerned.

"**Motor cycle**" means a two wheeled motor vehicle designed solely or mainly for the carriage of one or more persons.

"**Motor vehicle**" means a mechanically propelled vehicle designed solely or mainly for use on public roads.

"**Open market rental value**", in relation to any land, accommodation or dwelling, means the amount which might reasonably be expected to be obtained if the land, accommodation or dwelling were let on the open market, to an unconnected person, and assuming a legal and accessible market for the letting of the land, accommodation or dwelling concerned.

"**Proprietary director**" and "**proprietary employee**" have the same meanings as in the Law.

"**Vans, lorries and other commercial vehicles**" means motor vehicles which, although designed to accommodate the carriage of passengers, are designed mainly for the purpose of carrying goods or burden relating to a profession, trade, commerce or manufacture.

"**Year of computation**" has the same meaning as in the Law.

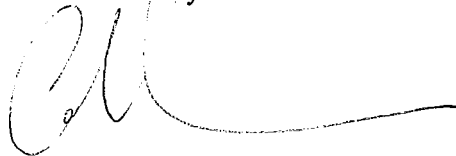
Citation

7. These Regulations may be cited as the Income Tax (Guernsey) (Valuation of Benefits in Kind) Regulations, 2008.

Commencement

8. These Regulations shall come into force on 1st January, 2009.

Dated this second day of December 2008



C N K PARKINSON
Minister, Treasury & Resources Department
for and on behalf of the said Department

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations increase the levels of benefits from motor vehicles and accommodation benefits for proprietary directors and proprietary employees in a hotel or guesthouse, by 5% (rounded to the nearest £5) over and above those included in the 2007 Regulations.