FALKLAND ISLANDS

Taxes (Benefits in Kind) Rules 2003

(S.R. & O. No. 27 OF 2003)

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[DATE OF COMMENCEMENT: 1ST JANUARY 2004, AND EFFECTIVE FOR THE COMPUTATION OF CHARGEABLE INCOME FROM 1ST JANUARY 2005]
(Unless otherwise indicated)

IN EXERCISE of my powers under sections 8(1)(c) and 204(1) of the Taxes Ordinance 1997 and all other powers in that behalf enabling me, I hereby make the following Rules —

1 Citation and commencement

(1) These Rules may be cited as the Taxes (Benefits in Kind) Rules 2003.

(2) These Rules shall come into force on 1st January 2004 and shall have effect for the computation of chargeable income for years of assessment beginning on or after 1st January 2005

2 Interpretation

(1) In these Rules "prescribed benefit" means a benefit prescribed by these Rules for the purposes of section 8(1)(c) of the Taxes Ordinance.

(2) For the purposes of these Rules, unless the context otherwise requires-

(a) **"the employer"**, in relation to an employee, means the employer of that employee;

(b) **"the employee"**, in relation to an employer, means an employee of that employer;

(ba) a director of a company is to be treated as being an employee of that company;

[S. 26/Ord. 6/11/w.e.f. 1/7/11.]

(c) any reference to a loan includes a reference to any form of credit and to any arrangement, guarantee or other facility connected with the provision of a loan;

(d) any reference to a member of the family of an employee includes the spouse, parent, child, grandparent, grandchild, brother or sister of the employee and any person living

with the employee as his partner and any child of such a person living with the employee;

(e) any reference to a child of any person includes a reference to a stepchild of his, an illegitimate child of his if he has married the other parent after the child's birth and an adopted child of his if the child was under the age of 18 years when he was adopted;

(f) anything done on behalf of or by arrangement with or at the direction of an employer shall be deemed to have been done by that employer; and

(g) anything done to, by or for a member of the family of any employee shall be deemed to have been done to, by or for the employee.

(3) In these Rules "motor vehicle" means any mechanically propelled road vehicle other than -

(a) a vehicle of a **construction** primarily suited for the conveyance of goods or burden of any description the design weight of which exceeds 3,500 kilograms;

(b) a mobility scooter, that is to say, a vehicle which is specially designed and constructed (not merely adapted) for the use of a person with a disability and has an unladen weight not exceeding 254 kilograms;

(c) a motor cycle, that is to say, a vehicle, not being a mobility scooter, with fewer than 4 wheels and an unladen weight which does not exceed 410 kilograms;

(d) a moped or motor scooter.

[Sch. Ord. 18/2022/w.e.f. 09/11/2022]

(4) In these Rules-

"agriculture" means arable farming, dairy farming and livestock breeding and keeping, the use of land as grazing land and meadow land, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes; and

"horticulture" means the production of horticultural produce for sale, and horticultural produce means fruit, flowers, vegetables and herbs, trees and shrubs, other than trees grown for the purpose of afforestation, and seeds for the reproduction of any such produce.

3 Benefits prescribed for section 8(1)(c) of 1997 Ordinance

(1) The following benefits are prescribed benefits for the purposes of section 8(1)(c) of the Taxes Ordinance-

(a) the payment by an employer of or in respect of any travel expenses incurred by or in respect of an employee;

(b) the use by an employee of a motor vehicle provided by the employer;

(c) the provision by an employer of a loan to the employee;

(d) the provision by an employer of any living accommodation, including board, heating and electricity of the accommodation, for the use of the employee.

[S.R. & O. 2/04/w.e.f. 1/1/04.]

(2) Paragraph (1) has effect subject to the following provisions of these Rules.

4 Annual values of prescribed benefits

(1) The annual value of a benefit consisting of the payment of or in respect of any travel expenses is the amount of the payment.

(2) The annual value of a benefit consisting of the use of a motor vehicle is £60 for each day the employee enjoys the use of the vehicle but subject to a maximum value of £4,500.

[S.17(2)(a)/Ord. 8/2021/c.i.f. 1/1/22 and has effect for the computation of chargeable income for years of assessment beginning on or after 1 January 2023.]

(3) The annual value of a loan in a year during which it is written off in whole or in part is the amount written off in that year.

(4) The annual value of a loan in a year during which the loan subsists and is not written off, or is written off in part only, is an amount equal to the amount of interest which would have been paid in respect of the loan during the year if it had borne interest at the rate equal to the base lending rate plus 3 per cent less the amount of any interest actually paid in that year.

(5) The annual value of a loan which falls within both paragraphs (3) and (4) in any year of assessment is the higher of the values found in accordance with those paragraphs.

(6) The annual value of a dwelling house provided to or for the benefit of a person by reason of his employment shall be calculated from Table A below, read with paragraph (7).

(7) The annual value shown in the third column of Table A is the value for each room in a house, and, accordingly, in relation to any particular house, that value is to be multiplied by the number of rooms in the house, but for the purposes of the Table-

(a) the maximum number of rooms which may be taken into account in calculating the annual value of any house is 7; and

(b) garages, outbuildings, porches, bathrooms, lavatories, larders, halls and passages shall be disregarded.

TABLE A
DWELLING HOUSES

Recipient	Description of Dwelling House	Annual Value per Room
Any employee	A dwelling house which is substantially furnished	£1,500
Any employee	A dwelling house which is not substantially furnished	£1,150

[S.17(2)(b)/Ord. 8/2021/c.i.f. 1/1/22 and has effect for the computation of chargeable income for years of assessment beginning on or after 1 January 2023.]

(8) The annual value of-

(a) the use or occupation of any accommodation, other than a dwelling house; and

(b) any board, heating or electricity (subject to paragraph (8B),

[S. 7(2)(a)/Ord. 18/12/effective in relation to benefits accruing on or after 1 January 2013.]

shall be the corresponding value in the second column of Table B for each day the employee enjoys the benefit, but it shall not exceed the specified maximum.

[S.R. & O. 2/04/w.e.f. 1/1/04 and s. 30/Ord. 13/16/w.e.f. 1/1/14.]

(8A) The amount found under paragraph (8) or (8B) shall be increased in accordance with paragraph (9) in cases where that paragraph applies.

[S. 7(2)(b)/Ord. 18/12/effective in relation to benefits accruing on or after 1 January 2013.]

(8B) Where a benefit consists of exclusive use of a dwelling house, the annual value of the provision of heating or electricity (or both) is £750 per room (for which purpose paragraph (7)(a) and (b) above apply).

[S. 7(2)(c)/Ord. 18/12/effective in relation to benefits accruing on or after 1 January 2013; & S.17(2)(d)/Ord. 8/2021/c.i.f. 1/1/22 and has effect for the computation of chargeable income for years of assessment beginning on or after 1 January 2023.]

TABLE B
BOARD AND ACCOMMODATION

Benefit	Annual value
Board and accommodation, including heating or electricity (or both)	£18.50 subject to a maximum of £6,100
Board and accommodation, excluding heating or electricity (or both)	£14 subject to a maximum of £4,600
Accommodation only	£7 subject to a maximum of £2,300
Board only	£7 subject to a maximum of £2,300
Heating or electricity (or both)	£4.50 subject to a maximum of £1,500

[S.R. & O. 2/04/w.e.f. 1/1/04.; S.17(2)(c)/Ord. 8/2021/c.i.f. 1/1/22 and has effect for the computation of chargeable income for years of assessment beginning on or after 1 January 2023.]

(9) In any case where the accommodation is used by an employee and also by the spouse or child of that person by reason of his employment, the annual value for that benefit shall be increased-

(a) in respect of the spouse, by an amount equal to 20 per cent of the amount specified in Table B as the annual value of that benefit; and

(b) in respect of each child, by an amount equal to 10 per cent of that amount.

Rule 2(2)(f) does not apply for the purposes of this paragraph.

5 Exceptions from rules 3 and 4

(1) Rule 3 does not apply to the following benefits, which accordingly are not prescribed benefits for the purposes of section 8(1)(c) of the Taxes Ordinance 1997-

(a) the benefit of a loan the annual value of which is less than £500 or where an employee has more than one loan outstanding in the same year, the benefit of those loans to the extent that the aggregate annual value of all the loans is less than £500;

(b) any benefit not within sub-paragraph (a), the annual value of which, calculated in accordance with rule 4, is less than £50;

(c) the provision of any sum which in the hands of the employee is (or would be, if the employee had defrayed the expenses) deductible in computing the employee's chargeable income;

(d) the provision of a motor vehicle which-

(i) is provided for an employee who is necessarily obliged to use the vehicle in the performance of the duties of his employment; and

(ii) is not used for any other purpose.

Rule 2(2)(g) does not apply for the purposes of this sub-paragraph.

(2) Where, at any time an employee is employed in the Falkland Islands and, immediately before the commencement of the employment, the employee was not normally resident in the Falkland Islands, any benefit the employee, or the spouse or any child of the employee, enjoys of having the costs of any travel wholly or partly met or reimbursed by the employer by reason of the employment in the Falkland Islands shall not be a prescribed benefit.

Rule 2(2)(g) does not apply for the purposes of this paragraph.

(3) Paragraph (2) does not apply to the aggregate amount met or reimbursed by the employer in any year in relation to any employee to the extent that the aggregate amount exceeds the cost of economy class flights (or equivalent) between the Falkland Islands and that employee's country of origin (or vice versa, as the case may require), at the same time (or as nearly as may be at the same time) as the actual journey takes place.

In this paragraph "country of origin" means the place where the employee was usually resident immediately before the employment in the Falkland Islands began.

(4) Paragraph (2) does not apply to the cost of journeys taken by an employee's child aged 18 or over at the beginning of the journey to the Falkland Islands or to the country of origin.

(5) Paragraph (2) only applies in relation to one return journey in each calendar year for each individual within paragraph (2) except in the last year of the employment when (subject to paragraph (3)) it also applies to the final journey back to the country of origin.

(5A) Where an employer wholly or partly meets or reimburses the costs of travel in respect of more than one return journey in a calendar year and paragraph (5) requires paragraph (2) to be

applied only in relation to one return journey (for one or more individuals), the journey to which paragraph (2) applies is that in respect of which the employer incurs the highest cost.

[S. 7(3)/Ord. 18/12/effective in relation to 2013and later calendar years.]

(6) Rule 3(1)(c) does not apply to-

(a) a loan made by an employer carrying on a business which includes the making of loans if the loan was made in the ordinary course of that business and is of an amount and on terms comparable to loans available generally to customers of that business;

(b) a loan made by an individual and shown to have been made in the normal course of his domestic, family or personal relationships.

(7) Rule 3(1)(d) does not apply-

(a) if the employee is employed in agriculture or horticulture (but otherwise it applies in relation to all employees); or

[S. 31/Ord. 13/16/w.e.f. 1/1/14.]

(b) in any case where the Commissioner is satisfied that it is necessary for the employee to live in the accommodation in order to carry out the duties of his employment; or

(c) if the accommodation is not situated on-shore in the Falkland Islands.

Rule 2(2)(g) does not apply for the purposes of this paragraph.

6 Reduction of annual values in certain cases

(1) Where a person is in receipt of a prescribed benefit for part only of a year, the annual value of the benefit found in accordance with rule 4(6) and (7) shall be reduced by a corresponding proportion.

[S.R. & O. 2/04/w.e.f. 1/1/04.]

(2) The annual value of any benefit shall be reduced by an amount equivalent to any amount which the employee pays in respect of the benefit (but shall not be reduced below zero to produce a loss).

(3) The Commissioner may determine that the annual value of a benefit shall be reduced to a figure specified in the determination in any case where he considers such a reduction to be just and equitable.

7 Revocation of earlier Rules

The Income Tax (Annual Values) Rules 1997 and the Taxes (Excess Benefits) Rules 1994 are revoked but without prejudice to their application in relation to the computation of chargeable income for any chargeable period ending before 1st January 2004.