Accommodation Benefit provided by the Higher and Further Education Sector Employers

Employment Tax

01 April 2019

From 6 April 2019, HMRC will no longer accept that the ‘customary’ exemption is appropriate to job-related accommodation provided by employers to employees within the Higher and Further Education (HFE) Sector.

This change to the tax treatment of job-related accommodation in the HFE sector was quietly announced by HMRC. They contacted ‘all’ affected HFE employers in February either directly by email or via the representative bodies ‘who routinely cascade messages’ plus a copy was sent to the British Universities Finance Directors Group (BUFDG) for their website.

Customary and better performance

ITEPA 2003 s99(2) states that employer provided accommodation will not create a taxable benefit in kind where it is provided:

- for the better performance of the duties of the employment; and
- it is customary for employers to provide accommodation to employees where they carry out that particular kind of employment.

Customary test

HMRC’s December Employer Bulletin (EB) reminded employers that, when considering whether the customary test is met, the test is not whether it is customary for an institution to provide the accommodation, but rather whether it is the norm in the sector for a class of employee to be provided with accommodation.

HFE sector

HMRC has stated that it has been established that less than half of the employees in the HFE sector are provided with such living accommodation. No information has been provided as to how this was established or whether different categories of institution or classes of employees (for example, bursars, caretakers, academic staff, vice chancellors, etc) have been researched separately or only the sector as a whole. However, HMRC has concluded that from the 6 April 2019 they will no longer accept that the ‘customary’ exemption is appropriate to accommodation provided by employers within the HFE Sector.

Educational establishments (for example independent schools) that provide purely ‘school age’ education are not affected by this change. HMRC has also confirmed that institutions providing such education that also undertake an element of further education are not affected by the change. Furthermore, HMRC has confirmed that it will take no action where the customary exemption has been claimed in previous years, except in the case of error.

Alternative exemptions

In some cases it may be possible to rely on the ‘representative occupier exemption’. This exemption was given when the current legislation was enacted in 1977. Those who were defined as representative occupiers prior to April 1977 can continue to receive job-related accommodation tax-free provided that the circumstances are unchanged and certain conditions are met (see HMRC’s Employment Income Manual (EIM), paragraph 11337).

Alternatively, an institution may be able to demonstrate that occupation of the particular property (as opposed to any other property) is essential to the proper performance of the duties of the employment (see EIM11341).

Otherwise, unless institutions can produce evidence that it remains customary within their sector for a particular class of employee to be provided with accommodation for the better performance of the employee’s duties the continued provision of such accommodation will become a taxable benefit-in-kind.

What should members do?

Members with HFE clients may like to ensure that their clients are aware of this change and have reviewed any affected arrangements. All HFE institutions that provide job-related accommodation have been asked to confirm to HMRC by 30 April 2019 the ‘tax status’ of job-related accommodation the institution continues to provide.