

# Benefit In Kind (“BIK”)

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# Presentation Agenda

## Morning :

- Understanding Benefit in Kind (BIK)
- Taxation of BIK
- Common types of BIK

\* Coffee Break\*



# Presentation Agenda

## Mid- day :

- Employer benefits not liable to Tax
- Salary Sacrifice Arrangements
- Other Tax Free Benefits provided by employers
- Legal framework and employer responsibilities
- Revenue guidelines and compliance requirements
- Avoiding common reporting errors
- Best Practices Managing BIK
- PAYE Settlement Agreements

\*Lunch\*



# Presentation Agenda

## Afternoon :

- Revenue Penalties for non compliance
- Review of case studies and real-world scenarios
- Group discussions on BIK challenges
- Interactive Q&A session

# Understanding Benefit In Kind (“BIK”)



A “Benefit In Kind” is defined by the Revenue Commissioners as :

*“any non-cash benefit of monetary value that an employer provides to its employee”.*

These are benefits that cannot be converted into cash **but** have a **cash value**.

They are usually something that an employee **has the use of** but **does not own**.

Examples :

Company car, Company van, Employer provided accommodation, Goods paid for by employer on behalf of an employee, Preferential loan interest rates.

# Understanding Benefit In Kind (“BIK”)



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## Benefit In Kind Vs Perk

The difference between a BIK and a Perquisite (‘perk’) is the **method of calculating the taxable value** for the purpose of determining the employee’s tax liability.

### ‘*BIK*’

- *Something an employee has use of without having ownership of.*
- *The benefit is **not** capable of being turned into money.*

### ‘*Perk*’

- *The **ownership** of the item does not sit with the employer.*
- *Something that **is money** or can be turned into money easily.*

# Understanding Benefit In Kind (“BIK”)



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## Examples;

*(i) An employee leases an apartment / or a car and the monthly lease is paid for by the employer.*

*This is a Perk as the employee is liable to the lease.*

*(ii) An employer owns an apartment / or car and allows the employee to live/use the asset for private use and for free.*

*This is a BIK as the employer owns the apartment.*

## A ‘Perk’ is

- valued at the **market value on the date** which it is given to the employee.
- liable to Income Tax, PRSI and USC on the **expense amount** incurred by the employer
- Reduced by any amount made good by the employee.

# Understanding Benefit In Kind (“BIK”)



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- Benefits and Perks possess value (i.e considered taxable income for the employee)
- Employers are obligated to withhold relevant taxes through the PAYE system.
- Crucial that employers and employees understand the tax liabilities and implications associated with offering such benefits.
- Neglecting BIK can lead to tax consequences for both the employer and employee.

# Understanding Benefit In Kind (“BIK”)



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## Benefit in Kind

- If an individual earns **less than €1,905** in a tax year, benefits are not taxable (*\*does not apply to company directors*).
- Special BIK rules apply to :  
*Company Car, Company Van, Preferential Loans, Living Accommodation, Medical Insurance*
- Some Employer Provided Benefits are not taxable :  
*Travel Pass, Cycle to Work Scheme, Share Schemes, Canteen Facilities, Some Accommodation, Approved Pension Schemes, Work provided Computers and Phones, Small Benefit Exemption*

## Taxation of BIK – How BIK is valued for tax purposes



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- Director/Employees of a company must pay PAYE, PRSI & USC on their income, including on their BIK.
- The taxable value of the non-cash benefit is also referred to as the “**notional pay**” amount.
- The “notional pay” amount is also subject to **employers’ PRSI**.
- Employer is responsible for deducting the relevant taxes at the **appropriate rates**.
- What is the BIK value ???

## How BIK is valued for tax purposes

**(A) General practice** is to take the value of the BIK as being the higher of;

(1) the expense/cost incurred by the employer in providing the benefit to the employee,

or

(2) the value realisable by the employee for the benefit money/money's worth

**LESS** any amount repaid/reimbursed by the employee.



## How BIK is valued for tax purposes



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**(B) Goods provided by an employer** (i.e electrical goods)  
the amount liable to income tax is the higher of;

(1) the expense/cost incurred by employer in providing the good,

or

(2) the value realisable on sale of the good by the employee

LESS any amount repaid/reimbursed by the employee.



## Taxation of BIK – How BIK is valued for tax purposes



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- Where the **employer is the manufacturer of the goods** concerned, and the expense incurred in providing the employee with the BIK is normally lower than the amount that the goods would realise if sold on the open market.

The higher of these two amounts is the value subject to tax.

- Where **durable goods** have been used or depreciated by the employer before being provided to the employee, it is the **value of the goods at the time of their provision** to the employee that should be charged to tax. (i.e depreciation is taken into account)

This is the case even if that value is less than the cost of the goods to the employer.

## Taxation of BIK – How BIK is valued for tax purposes

(C) **Free Use of Assets** - such as Furniture or Artwork (**other than** Accommodation, Employer provided Cars/Vans) :

- The employer **remains in possession** of the asset but makes it available for use by an employee.
- In these circumstances the value of the BIK for income tax purposes is the annual value of the use of the asset ..... which is **5% of the market value** of the asset when it was first provided by the employer to any employee.
- The taxable BIK in respect of the asset will apply for each tax year for which an employee has the use of it.
- Where there is use of an asset for **part of the year** only, the amount of the BIK should be time-apportioned accordingly.

## Taxation of BIK – How BIK is valued for tax purposes



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### Example :

*An employer furnishes an employee's apartment with new furniture, at no cost to the employee. The furnishings, which remain the property of the employer cost €10,000. Three years later the furnishings are provided to another employee, at which point they are valued at €7,000.*

The annual value of the use of the furniture for the first employee is €500 ( $€10,000 \times 5\%$ ).

The annual value for the second employee is the same, as the taxable BIK is calculated based on the value of the asset when it was **first provided** to any employee.



# Taxation of BIK – How BIK is valued for tax purposes



## (D) Transfer of Assets

- Where an employer **gives an asset** (i.e a car or a house) to an employee **by way of a transfer**, the value of the taxable benefit for the year in which the benefit is provided must be calculated by reference to the higher of:

(1) the **expense incurred** by the employer in connection with the provision of the benefit  
**or**

(2) the **value realisable** on sale

LESS any amount made good by the employee.

- Where the asset has been depreciated, it is the **market value of the asset at the date of transfer**, not the cost of acquisition to the employer which is the taxable benefit.





## Personal Tax Rates 2025 :

### *Income Tax (single person) :*

First €44,000 @ 20%

Balance @ 40%

### *PRSI :*

*Employer; 11.15%*  
*8.9% (if weekly income < €495)*

*Employee; 4.2% (Class A1)*

### *USC:*

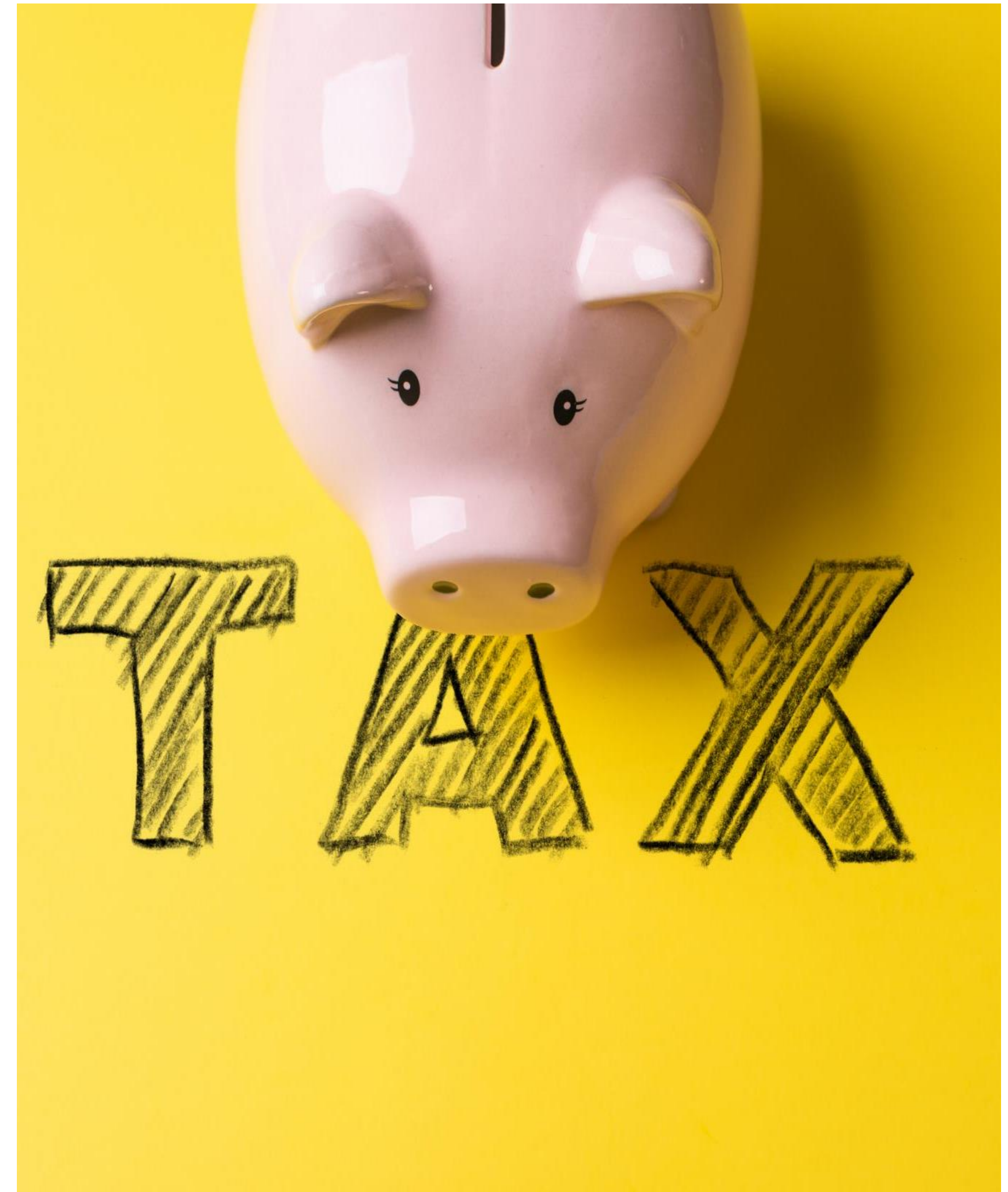
€0 - €12,012 @ 0.5%

€12,012 - €27,382 @ 2.0%

€27,382 – €70,044 @ 3.0%

€70,044 and above @ 8%

*\*No USC applies to total earnings < €13,000 p.a.*



# Common types of BIK

## Special BIK rules

- 1. Company Cars**
- 2. Company Vans**
- 3. Preferential Loans**
- 4. Employer Provided Accommodation**
- 5. Private Medical Insurance**
- 6. Childcare Facilities**





# Company Cars



- Where a car is provided by an employer to an employee and it is available for their **private use – BIK !**
- Deemed to be available for ‘private use’ unless :
  - (i) terms on which it is made available prohibit private use, and*
  - (ii) no such use is made of the vehicle in the tax year.*
- Travel to and from work is generally regarded as private use.
- BIK applies to the provision of a **vehicle and the associated costs of running the vehicle** paid for on behalf of the employee. The employer bears all the running costs, including motor tax, insurance, servicing, and fuel, and these costs are factored into the overall BIK calculation framework, rather than being taxed separately as an additional benefit.

- A **Car**’ ‘is ;

*“any mechanically propelled road vehicle designed, constructed or adapted for the carriage of the driver, or the driver and one or more persons.”*

- Subsequent adaptation of a vehicle does **not alter** the fact that the vehicle was **originally designed** and **constructed for the carriage of one or more persons**.
- As such, the vehicle would remain a car for tax purposes.

- From **1 January 2023**, the employee will be liable to BIK on the ‘**Cash Equivalent**’ of the private use of the vehicle.
- This is calculated by reference to ;
  - (1) a percentage of the **Original Market Value (‘OMV’)** of the car,  
reduced by
  - (2) The cars CO2 **emissions** band and the annual **business mileage** travelled
- The **OMV** of a vehicle is ;
  - the price the vehicle may reasonably fetch if sold in the State
  - this will include any relevant VRT or other Irish taxes.

➤ Temporary Reduction to Original Market Value (Finance Act 2023 – 2025)

| Year of assessment | All cars in categories A, B, C and D | All cars in category E | All vans (including electric vans) | Electric vehicles |
|--------------------|--------------------------------------|------------------------|------------------------------------|-------------------|
| 2023               | €10,000                              | 0                      | €10,000                            | €45,000*          |
| 2024               | €10,000                              | 0                      | €10,000                            | €45,000*          |
| 2025               | €10,000                              | 0                      | €10,000                            | €45,000*          |

➤ **Temporary Reduction to Original Market Value** - This has been extended in Budget 2026 for both Cars and Vans :

| Year of Assessment | All Cars category A,B,C,D | All Vans (Including Electric) |
|--------------------|---------------------------|-------------------------------|
| 2026               | €10,000                   | €10,000                       |
| 2027               | €5,000                    | €5,000                        |
| 2028               | €2,500                    | €2,500                        |

# Company Cars

- Budget 2026 introduced new A1 Category
- Cash Equivalent’ :  $OMV \times (CO2 \text{ Category Vs Business Mileage})$

| Vehicle Category | CO2 Emissions (CO2 g/km)                      |
|------------------|-----------------------------------------------|
| A1               | 0g/km                                         |
| A                | 0g/km up to and including 59g/km              |
| B                | More than 59g/km up to and including 99g/km   |
| C                | More than 99g/km up to and including 139g/km  |
| D                | More than 139g/km up to and including 179g/km |
| E                | More than 179g/km                             |

- Method for calculation of BIK ‘Cash Equivalent’ : *OMV x (CO2 Category Vs Business Mileage)*

| Lower Limit | Upper Limit | A1 | A    | B     | C  | D     |
|-------------|-------------|----|------|-------|----|-------|
| Kilometres  | Kilometres  | %  | %    | %     | %  | %     |
| -           | 26,000      | 15 | 22.5 | 26.25 | 30 | 33.75 |
| 26,001      | 39,000      | 12 | 18   | 21    | 24 | 27    |
| 39,001      | 48,000      | 9  | 13.5 | 15.75 | 18 | 20.25 |
| 48,001      | -           | 6  | 9    | 10.5  | 12 | 13.5  |

- Categories A-D -> *Original Market Value - €10,000 x (% based on emissions vs business mileage)*
- Category E emissions cars -> *Original Market Value x (% based on emissions vs business mileage)*

## *Example 1 :*

*Tony has been provided with the use of a company car by his employer, TPP Ltd, for the full year on 1 January 2024. The OMV of the car is €28,000. All running costs are met by his employer. Per the manufacturer, the car produces 120g/km in CO<sub>2</sub> emissions. Business kilometres for 2024 are estimated at 32,000 kilometres.*

- 120g/km CO<sub>2</sub> emissions puts the car in vehicle Category C.
- As Tony drives 32,000 kilometres in the year, the cash equivalent is equal to ;  
*OMV €28,000 x 24% (mileage between 26,001 and 39,000)*
- Temporary reduction to OMV will apply.

## **2024 BIK Calculation:**

Cash Equivalent (€28,000 – €10,000) x 24% = €18,000 x 24% = €4,320

**Amount subject to BIK €4,320 (\*nominal value)**

*\*if the car was category E, the €10,000 temporary reduction would not be applicable.*

## *Example 2 :*

*Fleur has the use of a car provided by her employer in 2024. The OMV of the car was €28,000. The estimated business kilometres in the year are 31,630 kilometres. Fleur made good to her employer €1,000 in respect of the cost of the car. The car produces 140g/km in CO<sub>2</sub> emissions.*

- 140g/km in CO<sub>2</sub> emissions puts the car in vehicle category D.
- As Fleur drives 31,630 kilometres in the year, the cash equivalent is equal to;  
*OMV of €28,000 x 27% (mileage between 26,001 km and 39,000 km).*
- Taking account of the temporary reduction to OMV, the OMV may be reduced by €10,000.
- The cash equivalent of the use of the car is then reduced by the €1,000 made good by Fleur.

### **BIK calculation for 2024:**

Cash Equivalent (€28,000 – €10,000) x 27% = €18,000 x 27% = €4,860

Less amount made good by Fleur (€1,000)

**Amount subject to BIK €3,860 (\*nominal value)**

## Vehicle available for less than a year :

- The 'Cash Equivalent' is reduced proportionately:  $A \times B / C$

*A = Actual business kilometers*

*B = Full Year ( In days)*

*C = Part of Year (in **days**) for which the car is available*

## Overseas duties

- A vehicle provided to a director/employee **will not be regarded as available for private use** for the part of the year in which the individual is outside the state for the purpose of performing duties of employment, provided **ALL** of the following conditions are met :
  - (1) The aggregate number of days spent outside the State **for the purpose of performing the duties** of the office or employment is **at least 30 complete days** in the tax year (any holiday period abroad is excluded),
  - (2) The individual travels abroad **without** the vehicle, **and**
  - (3) The vehicle is **not available for use by the individual's family or household** during the director or employee's period of absence from the State.

## Electric Cars

An 'electric vehicle' is one that derives its motive power **exclusively from an electric motor**.

Hybrid vehicles are not electric vehicles.

The tax treatment applicable to employer provided electric vehicles varies depending on ;

- (1) the **Date** the vehicle was first provided to the employee,
- (2) the **Period** for which the vehicle is made available to the employee **for private use**, and
- (3) the **OMV** of the vehicle.

As SEAI grants are paid after the registration of the vehicle, the OMV is not reduced by the value of the SEAI grant.

For an electric vehicle made available for an employee's private use during the years **2023 to 2027**, the Cash Equivalent will be calculated based on the actual OMV of the vehicle reduced by:

- **€35,000** in respect of vehicles made available in the **2023, 2024 and 2025** year(s) of assessment;
- **€20,000** in respect of vehicles made available in the **2026** year of assessment; and
- **€10,000** in respect of vehicles made available in the **2027** year of assessment.

Temporary Reduction of €10,000 is also available for 2023 – 2028.

If the reduction reduces the OMV to nil, a BIK charge will not arise.

Any portion of OMV remaining, after the reduction is applied, is chargeable to BIK at the prescribed rates.

| Year of Assessment | Relief on Electric Vehicle | Temporary Reduction to OMV | Total Reduction |
|--------------------|----------------------------|----------------------------|-----------------|
| 2023               | €35,000                    | €10,000                    | €45,000         |
| 2024               | €35,000                    | €10,000                    | €45,000         |
| 2025               | €35,000                    | €10,000                    | €45,000         |
| 2026               | €20,000                    | -                          | €20,000         |
| 2027               | €10,000                    | -                          | €10,000         |

## Electric Charging Facilities :

**Exempt** from BIK where;

- (a) The electric charging facilities are provided **on the employer's business premises**.
- (b) The facility must be available to **all** employees and directors.

## Home Charging Facilities :

**Exempt** from BIK where;

1. Employee must have **private use of an employer provided electric vehicle** which is liable to BIK,
2. Must be **installed in a qualifying residence** in the state,
3. The **employer must retain ownership** of the charging facility,
4. **Only one** charging facility can be provided to an employee.

**\*all** of the above must be met for a BIK exemption to apply.

## Home Charging Facilities – Bills for the charging of the vehicle :

Where an employer is providing a vehicle to his or her employee and the employee is incurring home **electricity costs**, provided it can be shown that the employer is only reimbursing for the running costs of that employer provided vehicle, it would be reasonable for this reimbursement to be **paid free of tax**.

**Sufficient documentation** must be retained by the employee to verify amounts.



# Company Vans



A '**Van**' is a mechanically propelled vehicle which :

- is designed or constructed solely or mainly for the carriage of goods or other burden,
  - has a roofed area or areas to the rear of the driver's seat,
  - has no side windows or seating fitted in that roofed area or areas, and
  - has a gross vehicle weight not exceeding 3,500 kilograms.
- Where a crew cab or other similar type of vehicle meet **all** of the above conditions, it is regarded as a van rather than a car.
- If a van is **adapted** in such a way that it no longer meets the criteria (such as if rear seats are fitted), the vehicle no longer satisfies the criteria to be regarded as a Van for BIK purposes.
- Therefore, the vehicle should be treated as a Car, and the BIK should be calculated accordingly.

## Example :

*Cian works for a marketing company. His employer provided him with a car which he was required to use during his working day and was also entitled to use it for private use. Cian's employer decided to modify the car so that marketing materials could be transported more effectively. His employer removed the back seats from the car for storage and tinted the rear windows black for security purposes.*

In this instance the vehicle will remain a 'car' for the purposes of BIK for the following reasons:

(1) the vehicle was originally designed and constructed for the carriage of one or more persons,

and

(2) the definition of 'van' for tax purposes requires that the vehicle must be designed or constructed solely or mainly for the carriage of goods or other burden and therefore does not include cars which are adapted into vans.

# Company Vans

From **1 January 2023**, the percentage used in the calculation of the **cash equivalent** of the use of a van increased **from 5% to 8%** of the OMV. (Applies regardless of the business mileage).

## Limited Private Use of a Van

BIK will **not** arise in respect of the private use of a van provided to an employee where **all** of the following conditions are met:

- (1) The van is supplied for the purposes of the **employee's work**;
- (2) The employee is **required by their employer to bring the van home after work**;
- (3) Apart from travel between the employee's home and their workplace, **other private use of the van by the employee is forbidden by the employer**, and there is in fact no other private use; **and**
- (4) In the course of work, **the employee spends at least 80% of their time away from the premises** of the employer.

# Company Vans

## Example :

*John is a maintenance technician working for a facilities management company. The company provides him with a van which he is required to take home each day due to early morning call outs. John spends over 80% of his working time away from his employer's premises. The company's policy prohibits private use of the van apart from travel between home and work, and John adheres to this policy.*

In this case, no BIK arises as all the conditions for the limited private use of a van exemption are met.



## Pooled Vehicles – Cars and Vans

A vehicle included in a car / van pool is treated as not available for the private use if, in the tax year, **all** of the following conditions are met:

- (1) The vehicle is **available** to, and **actually used** by, **more than one** of the employees concerned,
- (2) For **each employee**, the vehicle is made available to them by **reason of their employment**,
- (3) The vehicle is **not ordinarily used by any one employee to the exclusion of the others**,
- (4) For each employee concerned, any **private use** of the vehicle by him or her is **merely incidental** to his or her business use, and
- (5) The vehicle is **not normally kept overnight** in any of the employees' homes.



## Weight Exemption

**No BIK** will arise in respect of the private use of a **commercial vehicle** with a gross vehicle weight (i.e., gross laden weight) in excess of 3,500kg.

## Chauffeur Driven Cars

In the case of chauffeur driven cars two separate charges arise:

- (1) BIK in respect of the **provision** of the **car, and**
- (2) BIK in respect of the expenses incurred by the employer for the **provision** of the **chauffeur.**

The total expense incurred by the employer in providing the chauffeur (e.g, chauffeur's salary) is chargeable as BIK, less any amount made good by the employee.



## Fuel Cards

### Business Use Only :

Where provided for business use only, **no BIK** will arise.

### Business and Private Use :

Where provided for private use, the element private usage is **liable to relevant taxes**.

\*Records of mileage and fuel expenses should be kept up to date.



## Records to be Kept – Employer provided cars and vans

- Employers must put in place a **robust business process** whereby business mileage covered by employees is **recorded** and can be **verified**.
- Employers and employees are **required to keep a logbook**. The logbook must be **certified** by the employer as being **true and accurate**, to the best of his or her knowledge and belief.
- In the case of **vans**, Revenue will accept a **Tachometer/Tripmeter reading**, taken each Friday evening and again on Monday morning, to show that no private mileage was undertaken over the weekend.
- In a case where a person fails to give particulars of business / private mileage for the year, or the particulars delivered are not satisfactory, the **business kilometres may**, in the absence of sufficient evidence to the contrary, be determined by deducting 8,000 kms from the total number of kilometres travelled in the year.



## Caution – the ‘8K RULE’

This deals with a scenario where there are no records produced or where the records are not satisfactory.

Revenue emphasize that the use of 8,000km for private mileage is intended for **exceptional circumstances** only and it should not be as a benchmark by an employer to have a more favourable BIK charge.

**The onus is on the employers to ensure that sufficient records are kept.**

**Revenue are entitled to reject the employers calculation** and recalculate the taxable value of the BIK if they deem necessary.



## Caution – THE “LESSER THAN RULE”

Another important consideration is defining what is allowable as a **business journey**.

According to Revenue:

*“Where an employee, in the performance of the duties, begins a business journey directly from home or returns directly to home, then the expenses of travel and subsistence that may be reimbursed without deduction of tax\* are the lesser of those incurred on the journey between:*

*(i) Home to the temporary work location;*

*or*

*(ii) The normal place of work (the office/employers base) and the temporary location”.*



# Preferential Loans





## Preferential Loans

A '**preferential loan**' is a loan made by an employer to an employee, or the spouse of an employee, in respect of **which no interest is payable**, or the **interest is payable at a rate lower** than the Revenue specified rate.

Specified Rates:

- *4% Qualifying Home Loans*
- *13.5% All other Loans*

PAYE, USC & PRSI is applied to the **difference** (interest rate saving) between **the interest applied** by the employer in the tax year and the **amount of interest which would have been payable** in the tax year **if the loan had been subject to the specified rate**.



## Preferential Loans

### “Specified Rates”

Where the loan is a mortgage used by the individual **solely to purchase, repair, develop or improve a MAIN residence** used by either:

- (a) the individual,
- (b) a former or separated spouse or civil partner of the individual, or
- (c) a dependent relative (where the residence is provided by the individual rent-free),

or to pay off another mortgage used for such purpose, **a specified rate of 4% applies.**

Where preferential loans do not fall into the above, the **specified rate is 13.5%.**



## Preferential Loans

### Example 1:

*John works for a car dealership. He received a loan of €50,000 from his employer to assist with the purchase of a house. Interest **of 5%** was payable on the loan in the same year. John **did not make any capital or any interest repayments** on the loan in that year. Is this a preferential loan?*

Yes, this is a preferential loan.

John has received a loan from his employer and although the interest payable on the loan is above the specified rate of 4%, **no interest was actually paid** by John in the tax year.

John effectively paid a rate of 0% interest for the period.

Specified rate vs what was actually paid - BIK will arise at 4% of the loan – taxable benefit of this amount will arise.



## Preferential Loans

### Example 2:

*Anna works for a bank and receives a loan of €80,000 from her employer to assist with the purchase of a house. Interest of 3% was payable on the loan in the same year and Anna paid this interest in full. During this time, interest of 3% was applied to similar loans issued to external customers. Is this a preferential loan?*

**No**, this is not a preferential loan.

Although Anna has received a loan from her employer, on which interest paid is below the specified rate of 4%, Anna's employer is in the business of issuing the type of loan provided to Anna, and **the interest rate applied to Anna's loan is the same as the rate which was applied to similar loans issued to external customers** in the same period.



## Preferential Loans

### Example 3 :

*A preferential loan was taken out to **acquire a main residence**, and the balance outstanding on the loan was €200,000. Interest was payable at a **rate of 3%** and interest paid during the year was €6,000. No capital repayments were made.*

The amount of interest, which would have been paid at the specified rate of 4% is €8,000 (€200,000 @ 4%)

This can also be expressed as follows:

$$\text{Interest paid} \times \text{specified rate/loan rate} = €6,000 \times 4 / 3 = €8,000$$

**Therefore, taxable benefit of €2,000**



## Preferential Loans

### Example 4:

*A preferential loan was taken out on 1 July to **acquire furniture**, and the balance outstanding on the loan was €10,000. The loan was interest free and no capital repayments were made.*

The amount of interest, which would have been paid at the specified rate is €675

This is calculated as follows:  $€10,000 \times 13.5\% \times (6 / 12)$  - (time apportioned)

**Therefore, taxable benefit of €675**



## Preferential Loans

### Example 5:

*Throughout the tax year an individual has an interest free non-main residence preferential loan of €10,000. On 1 October the individual made a capital repayment of €2,000 (i.e loan balance reduced to €8,000)*

The **amount of interest**, which would have been paid at the specified rate is €1,282.

This is calculated as follows:

$$€10,000 \times 13.5\% \times (9/12) = €1,012$$

$$\text{plus } €8,000 \times 13.5\% \times (3/12) = €270$$

**Therefore, total taxable benefit of €1,282**



## Preferential Loans

### Anti-Avoidance – Loans or Interest Written Off

This provision was made to prevent tax avoidance by drawing up a loan agreement under which interest is payable but the interest or the capital is written off, in whole or in part.

**The amount of the loan that is written off in any year is taxed as if it were a perquisite of the relevant employment received in that year (i.e liable to income tax, PRSI and USC).**



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# Provision of Accommodation





## Provision of free of subsidised accommodation

- BIK will arise where accommodation is made available to an employee, **by his/her employer**, for their **private use**.
- The employee will be liable to tax on;
  - (a) the **annual value** or **market rent** of the property,
  - plus**
  - (b) any **related expenses paid by the employer** (such as light or heat).
- The specific manner in which the charge to tax is calculated **depends on whether** the property is **owned or rented** by the employer.



## Provision of free of subsidised accommodation

### (i) Employer-Owned Accommodation

The value of the BIK to the employee is the aggregate of:

- i) the **annual value** of the use of the accommodation (i.e market value rent), **and**
- ii) **any expense incurred** by the employer in connection with the provision of the accommodation, such as the cost of light and heat.

The annual value of employer owned accommodation should be **reviewed annually** for as long as the property is available to that employee.



## Provision of free of subsidised accommodation

### Example 1:

*An employer provides an employee with the use of a two-bedroom apartment **owned by the employer**, rent free. According to the CSO website, similar type two-bedroom apartments in the area are currently let for **€2,500 per month**.*

**Notional pay of €30,000 (i.e. €2,500 per month) must be added to the employee's salary for the purposes of calculating Income Tax, PRSI and USC.**



## Provision of free of subsidised accommodation

### Example 2 :

*An employer provides two employees with a house, owned by the employer, at a total subsidised rent of €1,000 per month. A letting agent estimate indicates that the annual value of rent for the house is €32,000.*

The total taxable BIK is €20,000 (i.e. €32,000 – (€1,000 x 12)).

This must be split between the two employees and therefore the taxable BIK for each individual is €10,000 (i.e. €20,000 ÷ 2).

**Notional pay of €10,000 must therefore be added to each of the employees' salary for the purposes of calculating Income Tax, PRSI and USC .**



## Provision of free of subsidised accommodation

### Exemption – Employee Required to Live on Premises

A taxable BIK will **not** arise where an employee – Meets the ‘**better performance test**’

*This is where the employee is required, by the terms of his or her employment, to live in accommodation provided by the employer in part of the employer's business premises, so that the employee can properly perform his or her duties.*

**This exemption does not apply to company directors.**

Some examples include:

- (a) The employee is required to be on call outside normal working hours
- (b) The employee is in fact frequently called out
- (c) The accommodation is provided so that the employee can have quick access to the place of employment.



## Provision of free of subsidised accommodation

### (ii) Accommodation Rented by Employer

Where accommodation is **rented**, as market rent, by an employer for an employee this is regarded as a ‘**perquisite**’ (as opposed to a BIK where the employer **owns** the premises).

The value of the perquisite provided for the calculation of PAYE, PRSI and USC purposes is:

(a) the **actual** amount of **rent paid**

**less**

(b) **any amount** which the employee **makes good** to the employer in respect of the accommodation.



## Provision of free of subsidised accommodation

### Employer-Provided Furniture

Where furniture, which **remains in the employer's ownership**, is provided for an employee's use, a BIK arises on the **annual value** of the use of the furniture.

The annual value of the use of the furniture is **5% of the market value** of the asset when it was **first provided** by the employer to **any** employee.

This is the amount that must be taken into account as notional pay for the purposes of calculating Income Tax, PRSI and USC



## Provision of free of subsidised accommodation

### *Example 1 :*

*On 1 January, an employer provides an employee with a fully furnished employer owned property. The annual value of the property is €24,000. The furniture was previously used by another employee. It was originally valued at €10,000 when used by the other employee but is now valued at €5,000.*

The total taxable BIK is:

- Annual value of Property: €24,000
- Furniture: €10,000 x 5% €500
- **Total amount subject to BIK: €24,500**

The annual value of the use of the furniture is 5% of the market value of the asset when it was first provided by the employer, regardless of its current value.

**Notional pay of €24,500 must be added to the employee's salary and taxed accordingly.**



## Provision of free of subsidised accommodation

### Provision of Accommodation Plus Meals at a Temporary Work Location

In some instances, as an alternative to paying subsistence, employers may choose to **provide accommodation and meals at a temporary location** where their employees are working.

Where this occurs, Revenue is prepared to accept that a **taxable benefit will not arise** in the hands of the employee where **all** of the following conditions are satisfied:

- (i) the accommodation provided is **not the principal private residence of the employee**  
and
- (ii) if the **accommodation is rented** by the employer, the rent paid represents the **reasonable cost** of accommodation for the location;  
and
- (iii) the reimbursement as regards **meals** represents no more than a **reasonable reimbursement** of the actual cost.

# Coffee Break





CMG Training  
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# Medical Insurance





## Private Medical Insurance

- An employer might pay medical insurance premiums on behalf of an employee - This is a **taxable benefit**
- If an individual **pays their own medical insurance**, the TRS (Tax Relief at Source) discount will be applied to the cost of the premium. (i.e individual cannot claim back any further TRS).
- Where an **employer pays** medical insurance premiums on behalf of an employee, the employer pays a reduced premium to the authorised insurer (i.e the insurer applies TRS to the gross amount).
- The employer will need to return, to Revenue, the value of the TRS (in corporation tax return).
- The value of the benefit to the employee, is the gross value of the insurance premium.
- An employer must add **this gross value**, as notional pay, to your employee's pay to deduct the relevant taxes (Income Tax, PRSI and USC).



## Private Medical Insurance

### Example 1 :

**Kevin renews his medical insurance policy on 1 January 2023. The notice issued by the insurance provider shows both the gross and net premium due:**

- **Gross premium: €2,500**
- **Amount on which TRS is calculated: €1,000 (i.e. maximum for an adult)**
- **TRS: €200 (€1,000 x 20%)**
- **Reduced (net) premium payable to authorised insurer is €2,300 (i.e. €2,500 - €200).**

A claim to Revenue is not required by Kevin as

- (i) he has paid his medical insurance himself and
- (ii) he has received tax relief directly via the TRS system.



## Private Medical Insurance

### Example 2:

**Brian's employer renews his policy on 1 January 2023. The gross value of the policy is €2,500 and the net of tax relief amount is €2,300. Brian is charged to income tax, USC and PRSI under the PAYE system on the gross premium of €2,500.**

Brian has not benefited from the TRS arising on the premium paid by his employer.

He is entitled to tax relief of €200 ( $€1,000 \times 20\%$ ).

The TRS be claimed from Revenue by Brian (i.e. by filing an Income Tax Return).



## Private Medical Insurance

### Example 3:

Employer pays 75% of the premium of an employee with the employee paying 25%.

- Gross premium is €1,500.
- Net Premium €1,300 (€1,500 less TRS = (€1,000 x 20%)).
- Total payment to insurer is €975 by employer and €325 by employee (€1,300).
- TRS paid by company to Revenue = (€1,000 x 75% = €750 X standard rate 20% ) = €150.
- Employer pays TRS €150 to Revenue.
- Employee is liable to income tax, USC and PRSI on €1,125 (€975 + €150), Gross Employer contribution.

Employee already received 25% of the TRS on the element of the premium that they paid (€1,000 x 25%) = €250 x standard rate 20%) = €50.

**The employee makes a claim to Revenue in relation to the balance of tax relief due of €150, which the employer paid to Revenue.**



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# Childcare Facilities





## Childcare Facilities

### (i) Employer Provided Facility

Where an **employer provides** free or subsidised childcare facilities to their employees, a **BIK will arise**.

The value of the BIK will be calculated as follows;

- **any expenses** (other than the cost of acquisition) incurred by the employer in connection with **the provision of the premises**, e.g. insurance, maintenance etc.

**and**

- **any expense** incurred by the employer in connection with the provision of the **childcare services**, e.g. salaries etc.

\* Where the facility is **used by more than one employee**, the value of the BIK should be **apportioned**, based on the number of children concerned for each employee, and should lead to a result which is fair and reasonable



## Childcare Facilities

### (ii) Independent Facility

- Where an employer pays / subsidises the cost of an **independent crèche or childcare facility**, the cost borne by the employer is a taxable **perquisite** - Income Tax, PRSI and USC must be applied.
- In such circumstances, where an employer makes a block payment to a crèche or childcare facility, the amount paid should again be **apportioned** and treated as **notional pay** of the respective employees.
- The apportionment should be **fair and reasonable**.



## Gym Membership

- An employer may pay **Gym Membership or Club Subscriptions** for an employee.
- These payments are treated as a **BIK**.
- The value of the benefit is **the cost of the membership or subscription**.
- This gross value must be added as notional pay, and is liable to the relevant payroll taxes



## Meal Allowances

### (I) Canteen Meals :

- An employer may provide free or subsidized meals in staff canteens for **all** employees.
  - Meals must be **provided in the staff canteen**.
  - This does **not include external** third party restaurants (etc).
- \* The **taxable value if not exempt** will be the costs of the canteen, divided by the number of staff who can use the facility.



## Meal Allowances

### (II) Meal Vouchers :

- Meal vouchers provided to staff **are taxable.**
- The value of the benefit face value, less 19 cents.

### (III) Client entertainment :

- Where an employee has to engage in client entertainment meals as **part of their duties**, these meals are not deemed BIK.

### (IV) Seasonal Parties :

- The cost of **seasonal parties** are not a BIK to the employee, provided the event is available to **all employees.**



## **Certain Benefits not liable to Tax**

- 1. Small Benefit Exemption**
- 2. Travel Pass**
- 3. Cycle To Work Scheme**
- 4. Share Schemes**
- 5. Canteen Facilities**
- 6. Approved Pensions**





## Small Benefit Exemption (SBE) - Vouchers

- Small benefits may be exempt from income tax if certain criteria for the SBE are met.
- Up to **FIVE** small benefits can be given to an employee annually to the aggregate sum of €1,500 tax free.
- Only the **first five** may qualify for the exemption.
- The small **benefits cannot be in the form of cash or cannot be redeemed in part/full for cash**.
- The benefit **cannot be part of a salary sacrifice arrangement** (i.e in the terms of employment).





## Small Benefit Exemption - Vouchers

- If a single voucher **exceeds the max.** threshold, then the voucher will be considered a taxable perquisite for income tax purposes.
- An employer may incur **minor fees** or **postage** charges when they are providing vouchers to their employees. This nominal cost is not added to the face value of the voucher when determining whether the SBE threshold has been exceeded.
- From 1 January 2024 – Enhanced Employer Reporting ; An employer is obliged to report to Revenue **the date and value of any small benefit**, where the exemption to tax applies, to the individual (i.e. in real time) on or before the date the benefit is granted.





## Small Benefit Exemption - Vouchers

### Example 1 :

Maria works in an engineering company and earns €91,000 per annum. The company is undergoing a reorganisation and, as part of the reorganisation, in June 2024 Maria agreed to the following changes in her terms of employment:

- a. Marina's salary will be reduced to €90,000, and
- b. Marina will also receive a single shopping voucher of €500 per annum.

Maria has received the shopping voucher as part of arrangement she made in exchange for a reduction in her salary.

As such, the voucher was part of a salary sacrifice arrangement and will therefore not qualify for the small benefit exemption.

**Maria's employer is required to operate IT, USC and PRSI on the cost of providing the voucher**





## Small Benefit Exemption - Vouchers

### Example 2 :

Noel's employer provides him with a gift card valued at €400 when the company reached its financial targets in June 2024. The gift card can either be used in store or online by Noel to purchase goods and services. It can also be inserted into a cash machine and used to withdraw cash.



As the gift card is **redeemable**, in full or in part, for cash it will not qualify for the purposes of the small benefit exemption. Noel's employer must operate IT, USC and PRSI on the cost of providing the gift card.

**This is the case irrespective of the fact that Noel might not actually use the card to withdraw cash**



## Small Benefit Exemption - Vouchers

### Example 3 :

During 2025 David receives the following benefits from his employer:

1. A hamper at Easter valued at €500, and
2. A voucher at Christmas worth €900.

As the cumulative value of both incentives does not exceed the monetary limit of €1,500, the small benefit exemption will apply to both incentives.

The employer is required to report each of these benefits to Revenue in real time.





## Small Benefit Exemption - Vouchers

### Example 4 :

Mary receives six vouchers, that cannot be redeemed for cash, worth €200 each, in 2025.

Vouchers one to five inclusive qualify for exemption under the SBE, as the cumulative value does not €1,500.

Voucher six does not qualify as the maximum number of five incentives in the relevant tax year is exceeded.

**The cost to the employer of providing voucher six will be subject to IT, USC and PRSI.**

The employer is required to report each of the benefits to Revenue in real time.





# Salary sacrifice schemes and their implications





## Salary sacrifice schemes and their implications

- Taxes Consolidation Act 1997 provides that in the case of a **Revenue approved** salary sacrifice arrangement, the employee will not be liable to PAYE, USC or PRSI on the **portion of the salary they have sacrificed**.
- A salary sacrifice arrangement is where an employee **forgoes the right to receive any part of their remuneration** due under their terms or contract of employment, and **in return**, their **employer provides a benefit**.
- Salary sacrifice arrangements that **meet the following conditions** may be regarded as being effective:
  - (i) there must be a **bona fide and enforceable alteration** to the terms and conditions of employment,
  - (ii) the alteration **must not be retrospective** and must be **evidenced in writing**, and
  - (iii) there must be **no entitlement to exchange the benefit for cash**.



# Salary sacrifice schemes and their implications

## Revenue Approved Salary Sacrifice Arrangements

Revenue approved salary sacrifice arrangements may only be entered into in exchange for the following benefits:

- a) bus, rail or ferry **travel passes issued** by an approved transport provider,
- b) exempt shares appropriated under **approved profit-sharing schemes**, and
- c) **bicycles and safety equipment**

There are a number of specific conditions attaching to each of the above measures which must be met in order to avail of a tax exemption.

To qualify for the exemption, the remuneration sacrificed must be from the same year of assessment as the year in which the benefit is provided



# Salary sacrifice schemes and their implications

## Revenue Approved Salary Sacrifice Arrangements

Where the salary sacrifice arrangement is **not a Revenue approved scheme**, the employee will not be regarded as having sacrificed a portion of their salary.

In such cases, gross pay remains taxable in full under Schedule E.

Where an exempt employee benefit is provided to a spouse, civil partner or other connected person, rather than an employee, it will **not be treated as an exempt** employee benefit.

\* Instead, the value of the benefit will be treated as salary which has been applied by the employee and will be taxed accordingly



# Salary sacrifice schemes and their implications

## Revenue Approved Salary Sacrifice Arrangements

**Example :** *(Bona Fide purposes and Exchange for a payment)*

Ava works in a company and earns €32,000 per annum. The company is currently restructuring its remuneration policy and has asked her to take a pay cut of €1,000 per annum in exchange for an annual travel pass issued by an approved transport provider worth €1,000, which she intends to use to commute to work.

Ava will also receive a payment of €1,000 in the first year of this restructuring to compensate her for this change.

As Ava received a **compensating payment** in exchange for her salary sacrificed.

Both the exempt employee benefit (the travel pass) and the compensating payment of €1,000 **will be taxable in full.**



# Salary sacrifice schemes and their implications

## (A) Travel passes issued by an approved transport provider

This will **not** be treated as taxable pay where the employer either:

(1) **Pays for the pass on behalf of your employee,**

or

(2) **Enters into a salary sacrifice arrangement with your employee.**





# Salary sacrifice schemes and their implications

## (b) Approved profit-sharing schemes ('APSS')

If an employer operates an APSS, they may allocate '**Tax Free**' shares to an employee, provided certain conditions are met.

Your employer can allocate shares to you up to a maximum annual limit of **€12,700**.

The shares allocated must be **held in a trust** set up by your employer.

The shares must be held in the trust for a **specified period of retention** (generally two years).

If an employee leaves the shares in the trust for three years, they will be exempt from Income Tax.

Your employer may allow you to use your annual bonus to buy shares under an approved scheme.



# Salary sacrifice schemes and their implications

## (b) Approved profit-sharing schemes ('APSS')

The employee will be liable to USC and PRSI on the value of the **shares when they are appropriated to them**. Your employer will make the necessary deductions through payroll.

### Sale of Shares **BEFORE** the three years:

- The employee may instruct the trustee to sell or transfer their shares after two years, but before three full years.
- If sold/transferred, **Income Tax will arise at the standard rate (20%) on the original market value** of the shares.
- The employee must pay this tax to the trustee before the transfer takes place. The trustee will remit this amount to Revenue on your behalf.
- This **will be set against the final tax liability** on the disposal or transfer of your shares.



# Salary sacrifice schemes and their implications

## (b) Approved profit-sharing schemes ('APSS')

**No additional USC and PRSI will arise** (paid at the time the shares were appropriated).

If the final liability is higher than the tax paid to the trustee, the individual must pay this additional amount to Revenue under the self-assessment system.

The individual must include details of the transaction in their tax return.



# Salary sacrifice schemes and their implications

## (b) Approved profit-sharing schemes ('APSS')

### Sale of Shares AFTER the three years :

If the employee leaves the shares in the trust for **three years**, they will be exempt from Income Tax.

An Employee will however be liable to **Capital Gains Tax (CGT)** whenever they dispose of the shares.

The disposal must be reported to Revenue even if no tax is due.

An employer will not deduct any tax or report a disposal for an employee— CGT is a self assessment tax

When calculating the chargeable gain, the market value of the shares at the date of appropriation is the cost of acquisition.



# Salary sacrifice schemes and their implications

## Example 1:

Adam is an employee of Mon Ltd. On 1 January 2022 1,000 shares were appropriated to him. The market value of these shares was €3,000 on this date (€3 per share). The shares were put into an employer set up trust.

He will pay PRSI and USC on the €3,000.

On 31 March 2025, Adam instructs the trustee to sell the shares for €5,000 (€5 per share).

As Adam disposed of his shares **after three years**, he does not pay any Income Tax on the value of the shares.

Adam must **pay CGT** on the increase in value of the shares (€2,000).



# Salary sacrifice schemes and their implications

## Example 1:

Rose is an employee of Mon Ltd. On 1 January 2023 1,000 shares were appropriated to her. The market value of these shares was €3,000 on this date (€3 per share). On 31 March 2025, Rose instructs the trustee to sell the shares for €2,000.

As Rose disposed of her shares after **two years**, but **before the three year period**, she must **pay income tax** on the €2,000 (the share value on the date of the sale).

No PRSI or USC will arise on the disposal as the PRSI and USC should have been paid on the date on appropriation 1 January 2023.

# Salary sacrifice schemes and their implications

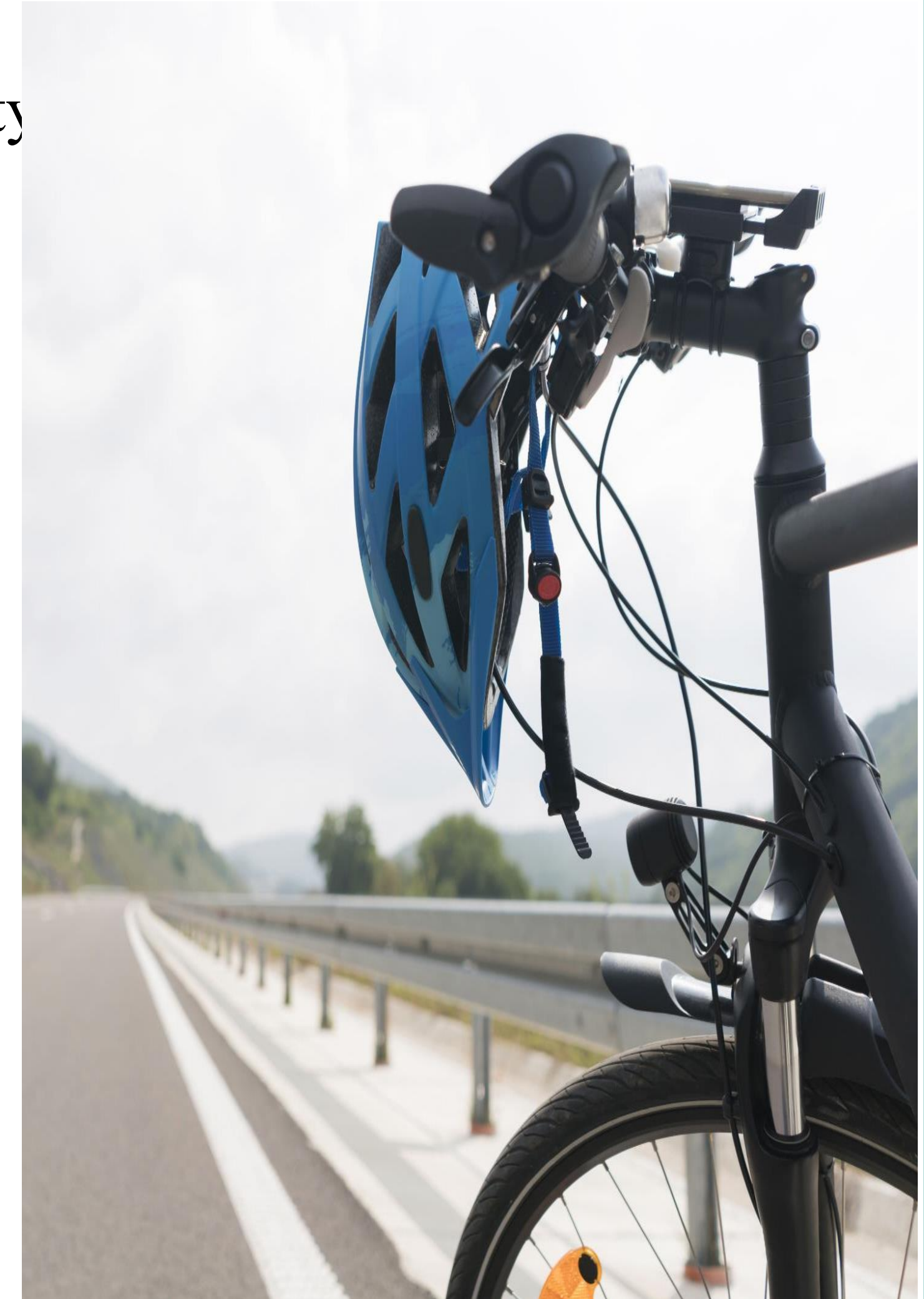
## Provision of bicycles for directors and employees

The Cycle to Work Scheme allows a company to purchase new bikes and safety equipment for their employees.

Items purchased under the scheme are not a taxable BIK.

Items purchased under the scheme must:

- Be used for **qualifying journeys**
  - Cost no more than **€1,500 per employee** for an electric bike or **€1,250** other bicycles (any excess is a BIK).
  - From 1 January 2023 cargo bikes which cost no more than €3,000 are included in the cycle-to-work scheme be purchased by the employer
- \* The exemption does not apply where an employee or director is reimbursed.*





## Provision of bicycles for directors and employees

- An employee can only avail of the scheme **once every four years**.
- If an employer **spends less** than the relevant limit on an employee in a year, the difference **cannot be made up in the remaining three years**.
- The tax year in which the bicycle is provided counts as the first year.
- Can agree with employees to operate the scheme using a salary sacrifice arrangement. Payments can be spread over 12 months under this arrangement.
- If your employee leaves or retires they should pay any outstanding balance before the date of leaving or retirement.
- If you purchase **equipment abroad**, the invoices must be in euros. Delivery charges are included as part of the cost.



## Provision of bicycles for directors and employees

- The employer is not required to monitor the use of the bike.
- List of qualifying equipment on Revenue website.
- VAT incurred on the bike or safety equipment cannot be reclaimed by the employer as the equipment is not used for the purpose of a taxable supply.



## Other Tax Free benefits provided by Employers

### Canteen Meals / Meal Vouchers

Where a free or subsidised meal is provided in a staff canteen to **ALL** staff generally, no taxable BIK will arise.

Where an employer provides a meal voucher to employees, this is a taxable benefit. The value of the 'perk' must be taken into account for income tax, PRSI and USC.

### Pension Contributions

Pension contributions paid by an employer in respect of an employee to a Revenue Approved scheme, shall not be regarded as a taxable perk.

### Professional Subscriptions

Generally an amount paid by an employer for a professional membership is taxable, however in some cases the payment may not give rise to a tax liability.



# Legal Framework and Employer Responsibilities





## Legal Framework and Employer Responsibilities

- Benefits in Kind are chargeable to income tax under Schedule E.
- S112 Tax Consolidation Act (“TCA”) 1997 provides that *“tax is charged under Schedule E on an individual having or exercising an office or employment in respect of all salaries, fees, wages, perquisites or profits from the office of employment”*.
- The general provision for BIK is set out in S118 of the TCA 1997.
- Revenue Commentary :  
As the valuation of some benefits can be dependent on a number of variables, (i.e business travel in the case of a company car), Revenue accepts that employers can base the taxable value of such benefits on a “best estimate”.



## Legal Framework and Employer Responsibilities

The rules governing the calculation of the BIK :

- (i) arising from an employer provided car are set out in s121 TCA 1997 .
- (ii) arising from the provision of a van are set out in s121A TCA 1997.
- (iii) apply to employer provided accommodation are set out in S118 TCA 1997.
- (iv) the rules relating to BIK on preferential loans are set out in S122 TCA 1997.
- (v) the rules relating to the BIK on employer provided bicycles are set out in S118(5G) TCA 1997.
- (vi) The provision for a 5% annual usage BIK charge when an employer makes an asset not specifically referred to elsewhere available for an employee's personal use are set out in S119(4) TCA 1997

*\* There is also various case law in relation to the treatment of BIK.*



*Where an employer incurs an expense and only a proportion of it is attributable to the provision of a benefit, only that proportion of the expense will be relevant.*

### **Case Law - *Westcott v Bryan* [1969] 45 TC 476**

In this case, Arthur Bryan occupied a house owned by the company of which he was managing director. The house was larger than Mr Bryan would have liked but the company insisted that he live there and entertain customers. The entertainment of visitors was an important part of the company's business as a substantial proportion of the company's production was exported.

Mr Bryan was assessed under Schedule E in respect of the gas, electricity, water, insurance, cleaning and a proportion of telephone charges and gardener's emoluments which were paid by his employer. Mr Bryan objected to this.

It was held that the expenditure should be **apportioned** on the grounds that it represented expenditure on accommodation and facilities for the company's visitors as well as for the Mr Bryan as an employee.

Sachs L.J. observed in the Court of Appeal, the apportionment should be on a “**rough and ready basis, no precise formula can as a rule be used**”.



*Sometimes an employer, who sells goods or services in the course of their business, will provide the benefit of those goods or services to their employees free or at a lower price than they are normally sold.*

**Case Law - *Pepper v Hart* [1992] 65 TC 421**

The case concerned a number of schoolmasters who were entitled to have their sons educated at the college in which they were employed in return for a payment equal to 20% of the normal fees. The education of the children at reduced fees was a benefit to the schoolmasters; the point at issue concerned the amount of that benefit.

The schoolmasters contended that the payment of 20% of the normal fees **covered all the additional costs** (i.e. marginal cost) **incurred by the college in educating these boys** and, as such, no BIK charge would arise.

This view was ultimately held by the Court.

*\* There is no marginal expense to the employer, therefore no BIK shall arise.*



# Employer Responsibilities

## *Employer responsibilities include:*

- Responsible for calculating the **value** of the benefit.
- **Deducting the appropriate amounts** through the PAYE system to ensure the correct taxes are being deducted.
- Ensure the BIK is **reported** within the requisite **timeframe**.



# Revenue Guidelines and Compliance Requirements





## Revenue Guidelines

- Revenue have increased their focus on employment tax compliance.
- ✓ *Therefore internal payroll controls and checks are critical !!!*
- Revenue have published several BIK guidance **Tax and Duty Manuals** on their Revenue Website, as well as information on Revenue.ie in relation to BIK.
- **Real Time Reporting**
- From 1 January 2024, introduction of **Enhanced Reporting Requirements (ERR)**.
- **PAYE Settlement Agreement (PSA)** facility.



## Compliance Requirements

### Real Time Reporting

- From **1 January 2019**, employers are obliged to report their employees' pay and statutory deductions to Revenue, on or before the date they pay their staff. This is known as '**real-time reporting**'.
- **Real-time reporting** makes it easier for employers to deduct, and pay at the right time, the correct amounts of taxes.
- Provides **increased visibility and assurance for employees** as their payroll information is available to view, in real-time, in myAccount.
- Employers must use the most **up to date Revenue Payroll Notification (RPN)** to calculate the employee statutory deductions.
- Employers must **register as an employer** and deduct relevant taxes as appropriate under the PAYE system.
- Employers must report their payroll to Revenue **on or before** the date they pay their staff.



## Compliance Requirements

### Real Time Reporting

**Before running payroll**, request the latest **RPN** for each employee.

- This ensures you are using the correct tax credits and cut-off points.
- The RPN tells you how much you need to deduct for the relevant taxes.



## Compliance Requirements

### Enhanced Employer Reporting (EER)

- New system on **1 January 2024**, which requires employers to report details of **certain benefits** and payments made to staff in real time, which means on or before they are given to employees.
- This new system of Enhanced Employer Reporting (EER) places a very **significant admin burden** on businesses, particularly SME's.
- ERR is required for all **Travel and Subsistence, Remote Working Daily Allowances of €3.20 per day** and items that meet the **Small Benefit Exemption**.
- This has resulted in increased scrutiny of these items in the course of **Revenue PAYE interventions**.
- If an employer omits to report any small benefit or payment made to an employee, they face a **€4,000 penalty** even where there may be no risk of an underpayment of tax.
- Because these payments have to be reported **in real-time**, the penalty could apply even where an omission is discovered by an employer and subsequently reported to Revenue at the earliest opportunity.



## Compliance Requirements

### What is within scope of EER?

- Payments directly **incurred by an employer** are not within the scope of EER (i.e expenses incurred by an employer on behalf of an employee on a company credit card).
- Therefore, the expenses **have to be incurred by the employee directly (i.e the employee must have to be reimbursed for the expense incurred)**.
- If an employee has multiple Travel & Subsistence claims in a month but these are all paid at once, they can be reported at one time and not individually.
- Enhanced Reporting Requirements is a **separate reporting requirement from payroll**.
- If these are being reported through payroll it will be necessary to ensure the facility enables the splitting of the Enhanced Reporting Requirements items from payroll.



## Avoiding common reporting errors

### 1. Misunderstanding PAYE modernization (Real Time Reporting)

Many Irish businesses still struggle to grasp the real time reporting requirements introduced by PAYE modernization in 2019.

This leads to **incorrect or late submissions** to Revenue, triggering fines and potential Revenue audits.

#### How to Avoid :

- Use Revenue approved payroll **software** that automatically handles real time submissions.
- Set up a strict **internal schedule to review** and submit data for every pay run, on or before pay day.
- **Double check figures** to avoid errors from the start – corrections can be complex and time consuming.



## Avoiding common reporting errors

### 2. Incorrect Calculation of PRSI and USC

PRSI classes, USC thresholds and income bands change frequently.

Misclassifying employees or missing updated thresholds results in underpayment or overpayment, compromising your payroll compliance and attracting Revenue scrutiny.

#### How to Avoid :

- **Accurately classify each employee** under the correct PRSI category from day one.
- **Keep up with annual Budget** announcements that often adjust rates for PRSI and USC.
- Invest in an **automated payroll system** that auto updates rates to minimize manual errors.
- Frequent **training** for payroll staff and new staff.



## Avoiding common reporting errors

### 3. Mishandling Benefits in Kind

Failure to calculate and report BIK correctly remains one of the most common payroll errors.

#### How to Avoid :

- **Identify** all BIK employees.
- Calculate their value using **Revenues specific formulas** and guidance.
- Include '**notional pay**' in payroll calculations so it's taxed correctly through PAYE.
- **Double check figures/ have controls in place** to avoid errors.



## Avoiding common reporting errors

### 4. Poor Record Keeping and GDPR Compliance

Payroll data must be kept for **six years** under Revenue rules.

**Mishandling** sensitive employee information can lead to GDPR breaches.

**Poor systems** can lead to compliance risk – both financial and reputational.

#### How to Avoid :

- Maintain a **secure, centralised digital system** for all pay slips, records and payroll data.
- Implementing **strict across** controls so only authorized personnel handle sensitive data.
- **Regularly audit your data storage** and retention policy to align with GDPR and Revenue requirements.



## Avoiding common reporting errors

### 5. Assuming a payslip is just a formality

Employees are **legally entitled** to a detailed payslip, under the Payment of Wages Act 1991.

**Omissions or inaccuracies can spark disputes** or even claims to the Workplace Relations Commission.

#### How to Avoid :

- Every payslip must clearly show Gross Pay , All deductions itemised and Net Pay

Transparency builds trust and reduces the risk of legal complications.



# Best Practices and Managing BIK





## Best practices in BIK administration / Managing BIK

1. Ensure adequate travel **records** are maintained for all employees/directors.
2. Records should be **reviewed** at updated at **least monthly** (ensuring the correct BIK is charged through payroll, on a real time basis, and is reflective of actual business KM's travelled).
3. Undertake tax review to **identify any potential gaps** in current processes.
4. It is reasonable to assume that Revenue will check that businesses are fully compliant, so records should be **kept up to date and ready and available for review at any time.**



## Best practices in BIK administration / Managing BIK

5. The use of a **Digital Technology** (i.e smartphone app or a distance tracker for vans) can help to ensure tax compliance by providing evidence of ‘actual’ rather than ‘claimed’ business trips.
6. Any queries regarding the treatment of benefits/perks should be discussed with a **tax professional**.
7. Ensure Employee’s are made aware of any potential BIK and tax applicable to benefits – **training days and employee manuals** provided.



# Maximize Tax Efficiency





## Maximise Tax Efficiency

- **Limit personal use** of company cars and vans (i.e ensure commercial vehicles are strictly used for business purposes only).
- The employee can make **contributions** towards to cost of the noncash benefit.
- Keep **accurate** actual mileage **records**.
- Ensure **proper classification** of vehicles.



## Maximise Tax Efficiency

- Explore **alternative options** to providing company vehicles – i.e reimburse mileage instead of providing vehicles.
- Consider the provision of **electric vehicles** as company vehicles.
- Consider ‘**pooled**’ vehicles (No BIK will arise).
- Utilise more tax-free employee benefits (i.e Small Benefit Exemption, Cycle to Work Scheme)



## Employee communication and transparency

To ensure transparency and trust in the employer and its payroll system, the following is of assistance:

- **Clear communication** with employees.
- **Upskill staff** to be able to provide concise and clear information in relation to BIK.
- **Clear and accurate** pay slips.
- **Prior** to providing employees with non cash benefits, advise in relation to the relevant BIK that will arise.
- **Communicate any changes** in tax rates to employee's prior to issuing any payslip with new tax rate changes.



## Employee communication and transparency

To ensure transparency and trust in the employer and its payroll system, the following is of assistance:

- **Onboarding meetings and materials**
- **Regular workshops and seminars** - conduct workshops and seminars dedicated to employee benefits.
- Encourage employee's to **review** their pay slips regularly and raise any queries they may have.



CMG Training  
The Irish Institute of Professional Education

# PAYE Settlement Agreements ('PSA')





## PAYE Settlement Agreements (PSA)

- A PSA is a practical way of enabling employers to settle the income tax, USC and PRSI on minor taxable benefits provided to employees (for example, items not covered by the small benefit exemption) without the requirement to account for these taxable benefits through the normal PAYE process.

*i.e Irregular minor benefits such as staff entertainment, small gifts, prizes.*

- The employee therefore enjoys the benefit without having to be concerned about a subsequent tax liability.
- **In advance of the 31 December deadline**, it is therefore vital that employers consider whether they have a requirement to submit a PSA application to account for taxes due on taxable employee benefits and expenses which have not been accounted for via the PAYE system during the year.



## PAYE Settlement Agreements (PSA)

### What benefits qualify?

The employer may avail of PSA to remit the taxes arising on benefits that meet all the following criteria:

- *The emolument must be a **non cash benefit** and **impracticable to allocate a value to individual employees**,*
- *The benefit must be **minor in nature and amount**, and*
- ***Irregular** with regard to the frequency the benefit is provided.*

If any of the above criteria are not met, the benefit must be taxed through the PAYE system as normal.

Some known examples include :

*Taxis for non business purposes, staff lunches, staff entertainment*



## PAYE Settlement Agreements (PSA)

### How Does the PSA process work ?

- In order to avail of a PSA, an application must be filed with Revenue by 31 December of the same year. E.g. for the 2026 tax year, the application must be filed with Revenue no later than 31 December 2026.
- The PSA, together with payment of the corresponding tax liability, must be submitted to Revenue no later than 23 January of the following year. E.g. for the 2026 tax year, the submission and payment must be made by 23 January 2027.
- In calculating the taxes due on these benefits, **the employer must treat the value of the benefit as an after-tax amount** received by the employee and then **re-gross this value based on the employee's marginal tax rate** for the year in question.
- Employer PRSI must also be calculated on the re-grossed amount.
- The total taxes due and PSA submission can be processed via the Revenue On-line System (ROS).

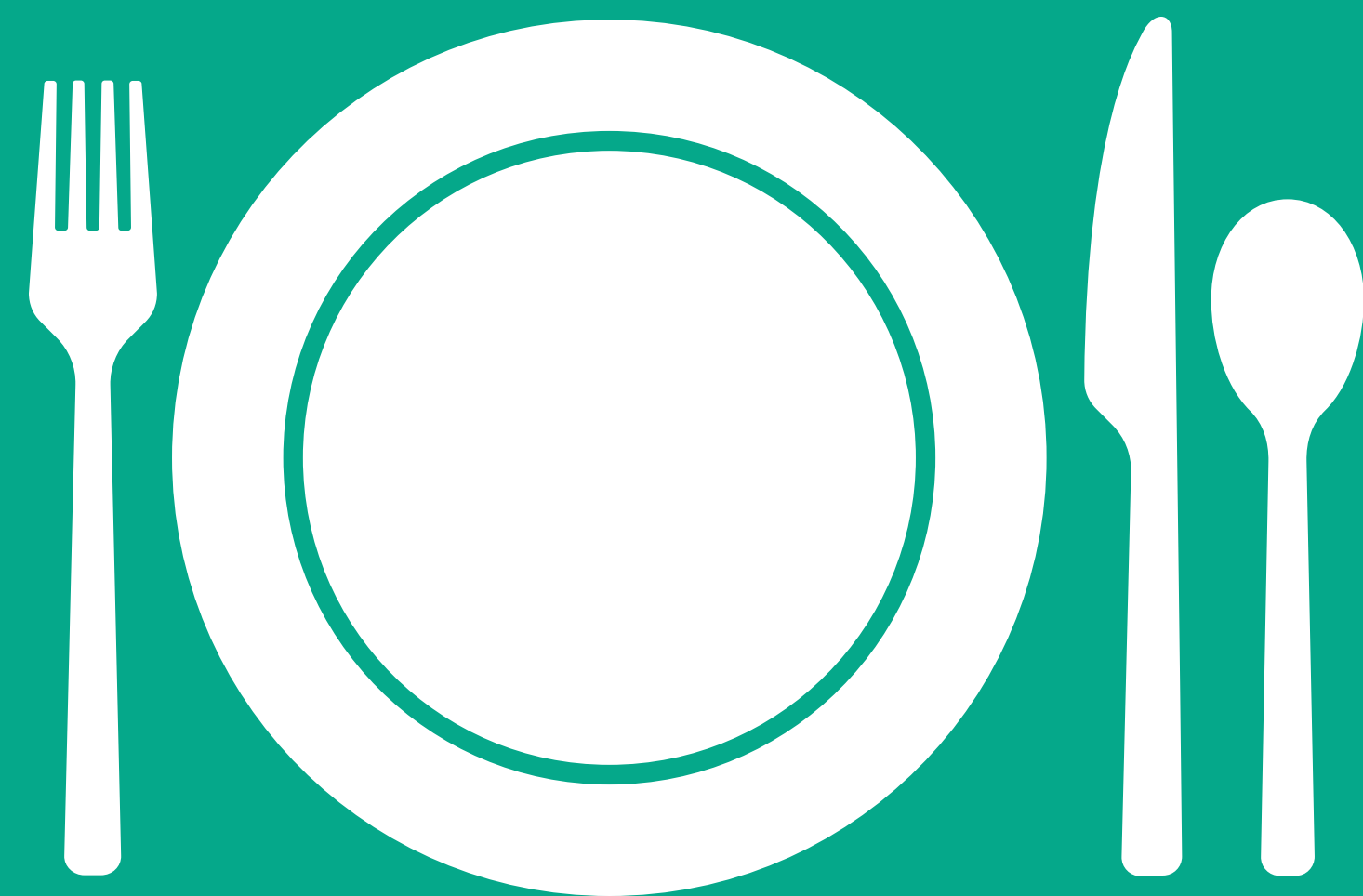


## PAYE Settlement Agreements (PSA)

### How Does the PSA process work

- Historically, Revenue only required the PSA submission post-year end to provide details on an aggregate basis (as opposed to employee by employee), namely, (i) the aggregate amount of the qualifying emoluments, (ii) the total number of employees in receipt of these emoluments and (iii) the taxes due on a grossed-up basis.
- However, in recent years, there has been a noticeable increase in Revenue activity on **PSA submissions seeking more granular detail** on the benefits provided.
- We fully expect this approach to continue.
- There has been a significant increase in Revenue PAYE compliance checks over the last 18 months, with minor and irregular benefits being a feature of these reviews.
- The PSA process provides employers with the opportunity to carry out a full in year review of benefits that may not have been processed through payroll but may meet the qualifying criteria for inclusion on a PSA.

# Lunch





# Revenue Penalties for Non Compliance





## Revenue Penalties for non-compliance – Payroll

- There is an expectation on Revenue's part that employers undertake a payroll self-review or "health-check" on a regular basis.
- Self Review Benefits :
  - i) Allows employers to identify any shortfalls in their employment tax processes
  - ii) Take remedial action early without having to submit an Unprompted Voluntary Disclosure to Revenue
  - iii) Avoids a Revenue penalty
- **Dealing with amendments early will minimise any underpayments of tax, aswell as any interest on late payments.**
- Where an employer fails to :
  - (a) send a return, statement, notification or certificate,
  - (b) to remit income tax to Revenue,
  - (c) to make a deduction or repayment in accordance with regulations made under section 986, TCA 1997 or
  - (d) to keep and maintain a register of employees in accordance with section 988A,

**that 'person' shall be liable to a fixed penalty of €4,000.**



## Revenue Penalties for non-compliance – Payroll

- Where that employer is a company, the Secretary of that company shall be liable to a separate fixed penalty of €3,000 in respect of each such failure.

### Failure by an employer to produce records :

- Where an employer fails to comply with a requirement of an authorised officer to produce any records which that officer requires for the purposes of his or her enquiry, that employer shall be liable to a penalty of €4,000.

*This is in addition to statutory penalties which range from 3% to 100% of the tax due.*



## Penalties for non-compliance

### Example :

Sam is an account manager and drives a company car with an OMV of €25,000. Suppose in 2021, Sam claimed annual business mileage of 28,000 kms and payroll applied reduced BIK tax of 24% (on the €25,000) of €6,000 instead of €7,500.

However, when *Revenue* undertook an audit, Sam could not produce sufficient evidence of this business mileage and so the following tax and penalties were applied:

Underpaid tax: €1,500

Fixed penalties: €4,000

Statutory penalty: €750 (10% of tax due)

**TOTAL CHARGE: €6,250 ( this is not including interest on the late payment!!)**

➤ *Note: this example is based on just one driver for a company, for one year !!*



## Penalties for non-compliance

### Self Correction to Revenue

Taxpayers who participate in self-correction may not suffer a fixed penalty should a number of conditions be met :

- (1) The taxpayer notifies Revenue through ROS or **in writing** within **the applicable timeframe**,
- (2) Taxpayer **provides a computation of correct tax and statutory interest payable** , and
- (3) **Payment in full** accompanies the submission.

Timeframe for self correction without penalty :

- (i) Form 11 (self assessment) – 12 months from the filing date (usually mid Nov online)
- (ii) Corporation Tax – 12 months from the filing date
- (iii) PAYE, USC, PRSI – before 31 October of the year following the year the monthly PAYE return is due to be filed.



## Penalties for non-compliance

### Qualifying Disclosure

A qualifying disclosure is information you give to Revenue if you:

- (a) have not reported all of your income or gains(i.e omission of information)
- or**
- (b) have made an error on your tax return.

This qualifying disclosure may be 'unprompted' or 'prompted'.

- An **unprompted qualifying disclosure** is a disclosure made at any time before a Revenue audit notification letter issues, or an investigation starts.
- A **prompted qualifying disclosure** is a disclosure made after you have received notice of a Revenue audit.  
The disclosure must be made between:
  - (a) the date you were informed of the audit start date
  - and**
  - (b) the date the audit starts.



## Penalties for non-compliance

To make a qualifying disclosure, you must:

- give **all relevant information** about the issues that have resulted in tax being due,
- **state the amount of tax and interest** due, and the periods for which they are due,
- send this to Revenue in **writing**, sign it, or have it signed on your behalf,
- include a **declaration** that as far as you know all information in the disclosure is correct and complete,  
**and**
- include a **payment** for any tax or duty, and interest due for late payment.

To be accepted by Revenue, a disclosure must be accompanied by a payment of the tax or duty, and the interest due.

It is possible to arrange for payment in instalments.



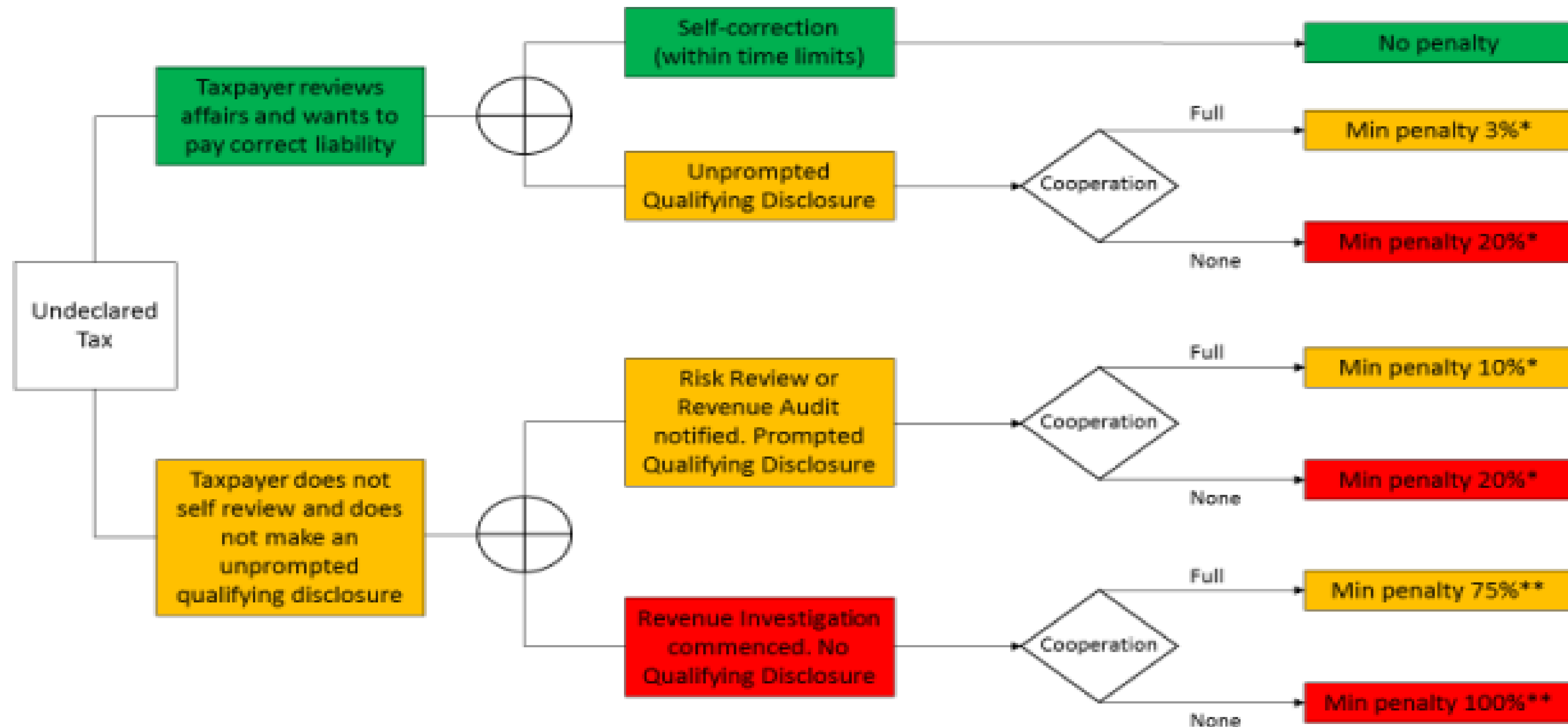
## Penalties for non-compliance

### Penalty rates

- Revenue will review your disclosure to check if it is a qualifying disclosure.
- In a case where a penalty arises, the amount of the penalty is generally calculated by Revenue, agreed with the taxpayer, and paid.
- The amount of the penalty will depend on whether:
  - (i) your disclosure was unprompted or prompted,
  - (ii) the additional tax due is above €6,000,
  - (iii) your error was careless or deliberate,
  - and**
  - (iv) you co-operated fully during the process.
- Penalties must be paid in full.

## Penalties for non-compliance

### Summary - Taxpayer behaviour determines consequences



# Penalties for non-compliance

| Disclosures                                                   | Category of Behaviour                               | Penalty %<br>Full cooperation not given by taxpayer | Penalty %<br>Prompted Qualifying Disclosure and full cooperation | Penalty %<br>Unprompted Qualifying Disclosure and full cooperation |
|---------------------------------------------------------------|-----------------------------------------------------|-----------------------------------------------------|------------------------------------------------------------------|--------------------------------------------------------------------|
| All qualifying disclosures in this category                   | Careless behaviour without significant consequences | 20%                                                 | 10%                                                              | 3%                                                                 |
| First qualifying disclosure in these categories               | Careless behaviour with significant consequences    | 40%                                                 | 20%                                                              | 5%                                                                 |
|                                                               | Deliberate behaviour                                | 100%                                                | 50%                                                              | 10%                                                                |
| Second qualifying disclosure in these categories              | Careless behaviour with significant consequences    | 40%                                                 | 30%                                                              | 20%                                                                |
|                                                               | Deliberate behaviour                                | 100%                                                | 75%                                                              | 55%                                                                |
| Third or subsequent qualifying disclosure in these categories | Careless behaviour with significant consequences    | 40%                                                 | 40% (no reduction)                                               | 40% (no reduction)                                                 |
|                                                               | Deliberate behaviour                                | 100%                                                | 100% (no reduction)                                              | 100% (no reduction)                                                |

# Revenue Compliance Framework Levels

|                     | Level 1                                                                                 | Level 2                                                       | Level 3                                                       |
|---------------------|-----------------------------------------------------------------------------------------|---------------------------------------------------------------|---------------------------------------------------------------|
| Objective           | Support Compliance                                                                      | Challenge Non-Compliance                                      | Tackle High-Risk Cases/Practices                              |
| Corrective Options  | Payment of liability<br>self-correction<br>Filing/ amendment of relevant returns        | Payment of liability<br>Filing/ amendment of relevant returns | Payment of liability<br>Filing/ amendment of relevant returns |
| Disclosure Position | Unprompted Disclosure Available                                                         | Prompted Disclosure Available                                 | No Qualifying Disclosure                                      |
| Activity            | Self-Reviews<br>Profile Interviews<br>Bulk issue non-filer reminders<br>CCF Engagements | Risk Review<br>Audit                                          | Investigation                                                 |



# Review of Cases and Real World Scenarios





# Case I – Determining who is liable to BIK





## Sarah Baylis Vs HMRC (UK Case, October 2016)

### *Determining who is liable to the BIK*

#### Background :

- Sarah Balyis was employed by Val Wyatt Marine Ltd (“VWML”), in the role as financial controller.
- Her father, Alec Baylis, was VWML's majority shareholder and managing director.
- Several years prior to the assessment, Alec Baylis had an extra-marital affair but did not obtain a divorce or legal separation from his wife, Judith Baylis, and they maintained a joint bank account and retained a close relationship.
- Judith suffered from a number of physical and mental health conditions, and it was recommended that she was moved from a clinic into care.
- Sarah signed a contract with the nursing home, and VWML paid the care fees.



## Sarah Baylis Vs HMRC (UK Case, October 2016)

### Background :

- The P11Ds (UK form of reportable benefits given by employers) were submitted on the basis that the care home fees were a BIK attached to Alec.
- Meanwhile, Alec informed Sarah that her position as financial director would be given to another employee, who had recently begun working for the company. As a result of this, Alec and Sarah's relationship broke down.
- Board minutes, were filed stating that the classification of the nursing home costs paid by the company were to be **changed** from a BIK to Alec, to a BIK to Sarah.
- A disclosure report was sent to HMRC informing them of the amendment.
- HM Revenue & Customs assessed Sarah to tax on the basis that the BIK had been omitted from her tax returns.



## Sarah Baylis Vs HMRC (UK Case, October 2016)

### The case :

- In order for Sarah Baylis to sign the contract on behalf of VWML, and for the company to be bound by her actions, there must have been an agency relationship.
- When determining whether she signed the contract as agent or in her personal capacity, the following questions were considered:
  1. Did Alec authorise VWML to pay the care home fees?
  2. Did Alec authorise Sarah to act as agent for VWML when signing the contract?
  3. Was Sarah acting in that capacity when she signed the contract?
- After some deliberation, the Court accepted that an agency relationship was place. This was because Alec was in control of the business during the relevant period and he was clearly aware that these payments were being made by the company.



## Sarah Baylis Vs HMRC (UK Case, October 2016)

### Who was liable :

- It was therefore accepted that VWML had contracted to pay Judith's fees, and so the amounts paid were a benefit for a member of the employee's family.
- As Judith was a member of both Alec's and Sarah's family, the question was who bears liability?
- Sarah argued that the legislation sets out a hierarchical approach to direct the employer as to who should bear the tax charge. In that hierarchy, “the person’s spouse” comes before “the person’s parents”, therefore Alec was liable to tax on the BIK.
- HMRC disagreed, and argued that it was for the employer to decide who should bear the tax as the employer knew the background facts about both employees.
- The Courts were unable to identify any rules giving the employer discretion as to who should be taxed on a BIK. It was stressed that “taxes are imposed upon subjects by Parliament”, and not by employers.
- **The Courts therefore agreed that the hierarchy provided in the legislation was correct and Sarah was not liable to a BIK charge on the fees.**



# Case II – BIK on the provision of Company Vehicles





## Appellant (a Company) Vs Revenue Commissioners – [May 2022 hearing]

### *BIK on the provision of two Land Rover Discovery's to two of the company directors*

- This case concerns the Appellant's appeal of a PAYE/PRSI/USC Notice of Estimation of Amounts Due, that issued on 11 December 2018, for the years 2015, 2016 and 2017 in the amount of **€31,680**.
- The estimate arose from the Appellant's provision to its two Director's of BIK in the form of the use of two Land Rover Discovery's.
- Appeal was by way of a hearing in the offices of the Tax Appeals Commission, in May 2022. Both Directors has also submitted a written argument to the Commissioner.
- At the hearing, the Appellant raised a point against the Estimation of liability;

*“The Land Rover Discovery was a vehicle that does not fall into the category of a “car” under S121(a) TCA 1997, and with that effect, there was no unremitted tax due to Revenue”.*



## Appellant Vs Revenue Commissioners

- The Appellant also argued that Revenue had overstated the original market value of the vehicle. However, no evidence was called at the hearing regarding the valuation, and this argument was not pursued.
- The Appellant did not dispute that they made available to its Directors, two 'Land Rover Discovery 4' vehicles, for their personal use, within the meaning of S121 TCV 1997. Both of these vehicles were equipped with 5 doors, side windows and rear seats.
- The Appellant paid tax to the Revenue, for a BIK in respect of the Director's use of the vehicles for the relevant tax years, at the rate of 5% of the original market value of the vehicles, as applicable to vans under S121 TCA 1997.
- In 2018, Revenue opened an intervention in respect of the Appellant's remittal of tax for the relevant tax years. The estimation of taxes due to Revenue, was calculated on the basis that a rate of 30% should have been applied to the vehicles as applicable to "cars" under S121(3) TCA 1997.
- The Appellant duly appealed this decision.



## Appellant Vs Revenue Commissioners

- Section 121(2) TCA 1997 is entitled “***Benefit of use of car***” therein provides:

*“In relation to a person chargeable to tax in respect of an employment, this section shall apply for a year of assessment in relation to a car which, by reason of the employment, is made available (without a transfer of the property in it) to the person and is available for his or her private use in that year”.*

- Section 121(1)(a) TCA 1997 defines a “**Car**” in the following manner:-

*“‘Car’ means any mechanically propelled road vehicle designed, constructed or adapted for the carriage of the driver or the driver and one or more other persons other than*

*(a) a motorcycle;*

*(b) a van (within the meaning of section 121A), or*

*(c) a vehicle of a type not commonly used as a private vehicle and unsuitable to be so used”*



## Appellant Vs Revenue Commissioners

### Submissions :

- The Appellant submitted that a 'Land Rover Discovery 4' *does not fall within the definition of a "car" pursuant to section 121(a) of the TCA 1997*, with the consequence that it **does not qualify as a benefit in kind chargeable to tax under that section.**
- The Appellant emphasised that notwithstanding that it previously remitted tax to the Revenue for a BIK of the personal use of two vans, it was not contending in the appeal that the vehicles met the statutory definition for a van under section 121A of the TCA 1997.
- Its fundamental point was that, **being neither a van nor a car, they fell outside the statutory framework relating to the taxation of vehicles provided as a benefit in kind** and consequently could not give rise to a charge to tax.



## Appellant Vs Revenue Commissioners

### Submissions :

- The Appellant made several points in support of this argument.
- Firstly, it contended that a 'Land Rover Discover 4' could not be considered a "road vehicle".

*They submitted that to be capable of being so defined a vehicle must be one that's use is “**restricted to...the road**”.*

- The Appellant produced a variety of facts, stats and manufacturer claims relating to the toughness of the vehicle to demonstrate the extent of its usability on off-road terrain. It could, for instance, function in temperatures ranging from -40 degrees to +50 degrees centigrade; it had a wading depth of 900 millimetres, could tilt to 30 degrees and ascend a slope with a gradient greater than the ramp in an Olympic ski-jump competition.
- All of this showed that it was not restricted to road use in the way that vehicles such as a Toyota Corolla or a Ford Focus were and thus **fell outside the statutory definition of a car.**



## Appellant Vs Revenue Commissioners

### Submissions :

- Next, the Appellant argued that a 'Land Rover Discovery 4' was not **“designed for the carriage of a driver”**.
- The Appellant pointed out that the definition of a **van** under section 121A of the TCA 1997 was a vehicle designed **“...solely or mainly for the carriage of goods or other burden”**.
- Furthermore, the definition of a **Car** under section 286 4 of the TCA 1997, which provides for increased wear and tear allowance for taxis and cars on short term hire, is a vehicle **“...primarily suited to the carriage of passengers and not the conveyance of goods.”**
- The Appellant contrasted these provisions with the terms of section 121 of the TCA 1997, which contains no words akin to **“designed solely or mainly”** or **“primarily suited”**.
- The import of this, according to the Appellant, was **that in order to be a car a vehicle must be designed with only one purpose in mind, namely the carriage of a driver.**



## Appellant Vs Revenue Commissioners

### Submissions :

- To show that the carriage of passengers was not the exclusive purpose of the designers of the 'Land Rover Discovery 4', the Appellant adverted to its capacity of 1,137 litres behind the second row of seats and 2,406 litres with this row folded down.  
The latter figure made it 61% more spacious than a VW Golf van, which itself was not designed for the carriage of passengers.
- The Appellant defended that the design purpose of the Land Rover was the carriage of goods and other material and that it possess a gross train weight of 6,630 kg, more than twice that of a Ford Focus. This demonstrated a design purpose other than the carriage of persons.
- Finally, the Appellant stated that a 'Land Rover Discovery 4' was "*a vehicle of a type **not** commonly used as a private vehicle and unsuitable to be so used*". Consequently, it was outside the definition of a car by virtue of section 121(1)(a)(c) of the TCA 1997, which excludes such vehicles.
- The Appellant also pointed to the fact that for the purposes of VRT, VAT and Insurance, the Land Rovers were classified as 'commercial vehicles' and that only 1% of Irish Road users had this specific type of vehicle, which made it an 'uncommon' choice of vehicle for people.



## Appellant Vs Revenue Commissioners

### Revenue Stated :

- The Revenue Respondent submitted that a 'Land Rover Discovery 4' of the kind owned by the Appellant and given to the Directors for the relevant tax years for their personal use constitutes a "car" under section 121 of the TCA 1997.
- Firstly, to the fact that the Appellant had **taken the view initially** that their use was taxable as a benefit in kind, albeit at the lower 5% rate applicable to vans.
- It was only **after the compliance check** and intervention that resulted in the application of the rate of 30% on the original market value that the Appellant adopted the position that a Land Rover Discovery 4 fell outside the statutory framework altogether.
- Revenue argued that they were road vehicles designed and constructed for the carriage of passengers. It further submitted that it **could not credibly be said that they were uncommon on the roads**. Indeed, this was how they were being used by the Directors personally.



## Appellant Vs Revenue Commissioners

### Revenue Stated :

- The Respondent submitted that the status of the vehicles as commercial vehicles for the purposes of VRT, VAT and insurance was irrelevant to the question of whether the vehicles were “Cars” under section 121 of the TCA 1997 and accordingly taxable as a benefit in kind under that provision.

### Analysis :

- The starting point for the analysis of the issues is to confirm that **in an appeal before the Commission, the burden of proof rests with the Appellant**, who must prove on the **balance of probabilities that an assessment to tax is incorrect**.



## Appellant Vs Revenue Commissioners

### Analysis :

- The relevant legislation in this appeal is S121 of the TCA 1997 - BIK. Provisions concerning the “commercial” classification of the vehicles for the purposes of VRT, VAT and Insurance are not relevant.
- In the Commissioner’s view S121 of the TCA 1997 is clear in its meaning. In order to be a “Car”, the vehicle must be *“a mechanically propelled road vehicle designed, constructed or adapted for the carriage of the driver or the driver and one or more other persons”*.
- The legislation does not impose a requirement, as the Appellant contends, that to be road car a vehicle must be designed only for use on the roads.
- Likewise, there is nothing in the wording of the provision to suggest that a car must be designed with just a single purpose in mind, namely the carriage of passengers



## Appellant Vs Revenue Commissioners

### Analysis :

- The Commissioner found that the variety of facts and statistics highlighted in written submission and during the hearing do not bring a 'Land Rover Discovery 4' outside the definition of a car.
- It is doubtless true that it is more rugged and has a greater range of capabilities than, for instance, an average saloon or a hatchback (etc)
- These factors are, however, not relevant to the question of whether a Land Rover Discovery 4 can operate on the roads and was designed by its manufacturer to carry a driver and a passenger or passengers.
- **The Commissioner found that a Land Rover Discovery 4, is a road vehicle designed for the carriage of driver and passengers and thus meets the essential definition of a car under S121(1)(a) of the TCA 1997.**
- **The Commissioner determines that the decision appealed whereby the Appellant was assessed to have an amount due to the Respondent in respect of PAYE/PRSI and USC for the years 2015, 2016 and 2017 in the amount of €31,680.03 must stand.**



# Case III – Employer provided living accommodation



### *Provision of Living Accommodation to the Appellant by his employer is a BIK – the ‘Better Performance Test’*

This is an appeal against a determination of the Revenue Commissioners made in November 2016 that;

*“the provision of living accommodation to the Appellant by his employer is chargeable to income tax as a benefit-in-kind under S118 of the TCA 1997”.*

The Appellant was paid a gross basic salary of €38,000 - €40,000 per annum.

He was provided with accommodation for the duration of his employment. The accom was a residential property occupied by the Appellant and one other person.

The other person lived at the residence since before the company acquired the property in 1975.

The Appellant’s employer is a charitable trust governed by a Trust Deed.

The Appellant presented a fixed term employment contract which included an Accommodation Clause noting :

## - “Accommodation :

*You will **be provided with accommodation** at [X] for the duration of your fixed term herein. The provision of any accommodation is entirely **at the discretion** of [X] and subject to terms and conditions set out in the schedules hereto.*

*You acknowledge and accept the [X] right to **deduct from your salary and benefit in kind tax payable** in respect of the provision of accommodation.*

*For the avoidance of any doubt the provision of accommodation to you by [X] shall not in a way Interfere with the [X] entitlement to terminate your employment in accordance with the terms of this Agreement. You acknowledge and accept that in the even your employment is terminated for whatever reason you will immediately be required to vacate any accommodation provide by [X]. “*

- In a communication from the Revenue Commissioners to the Appellant in August 2016 it is stated:

*“I consider the provision of the accommodation by your employer is subject to benefit in kind. It may be desirable for both you and your employer to reside very close to your place of employment but I do not see it as a requirement, for your duties as a [X] to live in accommodation provided by your employer.*

*I cannot accept that your duties meet the criteria of ‘the better performance test’ as the role of a [X] could not be seen as being required to live in accommodation provided by your employer.”*

- **A Notice of Appeal was received by the Tax Appeals Commission on 30 November 2016.**

## Appellant's Argument

*“ To date my employer has not deducted the tax due to ‘**an administrative oversight**’. My purpose in writing is to seek clarification on the matter of payment of said tax, as I note from your website that there are certain conditions which exist, whereby an individual will not be liable for the payment of BIK tax. Below I have outlined some of the duties which I undertake beyond the normal 9-5 of office hours:*

*(1) It is a regular part of my role to provide out of office hours support to [X], typically early mornings, evenings and weekends working on administration, functions, meetings, greeting visitors, and looking after resident guests. Some duties can often be required with very short notice.*

*(2) I am listed primary contact for [X] in the event of alarms going off or in the event of an emergency.*

*(3) I am required to provide backup to [X] during any absences and to assist the [X] at weekends.*

*(4) I am often required to be available at short notice to assist the [X] in the event of unforeseen circumstances or emergencies*

*The house in which I currently live is located across the road from the [X]. It is not actually possible for me to live in [X]. As such, I am located in the closest possible accommodation to my place of work.*

## Appellant's Argument

A letter from the HR manager of the company was also submitted which noted :

*[Appellant] duties and responsibilities have unexpectedly increased and evolved during this contracted time.*

*[Appellant] was asked to reside at [X] which is 100 metres from the [X] to ensure the proper performance of his duties. Because of the location of the [X] accommodation, he is listed as the contact person for the [X].*

*He is also listed as the contact person in the event of alarms going off and is the person who will give access to emergency services to enter the grounds when necessary.*

*[Appellant] is also required to open up and close the building. The duties also require [Appellant] to cover the absences of the [X] and to provide assistance at evenings and weekends at such ceremonies.*

*There is also an expectation that the [Appellant] will provide assistance to the [X] at short notice and give support outside normal office hours which includes being available to assist at functions, look after staying guests and attend meetings.*

**\* The general manager also submitted a letter to this effect.**

## Revenue's Argument

The Revenue Commissioners submit that the Appellant **has not adduced evidence** to demonstrate that he comes within S118(3) TCA 1997 and more particularly the '**better performance test**'.

## The relevant paragraph in the Tax and Duty Manual states:

“A taxable benefit will not arise where an employee (but not a director) is required by the terms of his or her employment to live in accommodation provided by the employer in part of the employer's business premises so that the employee can properly perform his or her duties ('better performance test'), and either –

1. the accommodation is provided in accordance with a practice which, since before 30 July 1948, has commonly prevailed in trades of the class in question as respects employees of the class in question, or
2. it is necessary, in the particular class of trade, for employees of the class in question to live on the premises.

## Revenue's Argument

The Revenue Commissioners acknowledge that the Appellant has provided evidence from the [X] that his duties have been extended since the Fixed Term Contract was signed in August 2014.

However, the Revenue Commissioners submit that the Appellant has failed to discharge the **burden of proof that he is required to reside at the accommodation, and not elsewhere, in order properly to perform his duties.**

The Revenue Commissioners submit that the Appellant has failed to adduce evidence to satisfy the ‘**better performance test**’ particularly on the **frequency** with which he may have been called out and the **reason** for being called out.

The Revenue Commissioners submit that while it may be desirable for the Appellant to reside in close proximity to his place of work, there is no evidence that because of the accommodation the Appellant was better able to perform his duties, but **rather it was more convenient for the Appellant to get to his place of work.**

## Analysis

The accommodation was owned by the [X] and provided by the [X] for use by the Appellant.

The Appellant **did not make payments for the accommodation**, in the nature of rent or otherwise, to the [X]. This means the **expense incurred by the [X] in connection with the provision of the accommodation to the Appellant comes within the charge to income tax in section 118(1) - BIK.**

### Decision

*“ I determine that the determination of the Revenue Commissioners made on 22 November 2016 that the provision of living accommodation to the Appellant by the [X] is chargeable to income tax as a benefit-in-kind under section 118 of the Taxes Consolidation Act, 1997 shall stand.”*

\* The provision of full time accommodation ( i.e 24/7 accommodation) to the employee was more of a convenience to the employee. The ‘better performance test’ was not met.



# Case IV – Private Use of a vehicle Vs Pooled Vehicles



### Company Car, Pooled Vehicle and BIK

- Appellant (a company) purchased a car for €110,000 in January 2008, with the intention of selling it to a high end Dublin taxi company.
- The appellant company was unable to sell the car and retained ownership of same until November 2014.
- On foot of a Revenue audit in November 2015, a Notice of Estimate was raised for the years 2012, 2013 and 2014 as Mr X was a director and 99% owner of the company in the years of question, and it was noted that BIK was due on the car. **The car was deemed a pooled vehicle, however Revenue had the view that the car was available for personal use by Mr X, the director.**
- Amounts raised in the notice of estimation :

2012 - €19,000

2013 - €19,000

2014 - €15,930

***Total circa €54,000***

## Revenue's Argument

- Revenue were not satisfied that there was sufficient evidence provided by the appellant that the car was only used for business purposes as :
  - a) There was **no log book of business** used kept by the appellant
  - b) The **NCT certs mileage** was not consistent with those trips of the appellant as claimed
  - c) It was difficult to understand how the company **could not secure a purchaser for the vehicle for in excess of 7 years**
  - d) **No evidence** was produced by the appellant to show **that private use was prohibited**

### Commissioners View of the facts in this case

- Where a car is made available in any year to an employee by reason or their employment that car shall be deemed to be available in that year for their private use unless:
  - i) the **terms** on which the car is made available prohibit private use; and
  - ii) **no private use** of the car is made by the employee in that year
- S121(b)(i)(I) is a two stage test,
  1. the first of which being whether the terms on which the car was made available prohibited private use of the car, and
  2. the second being whether no private use of the car was made by the employee that year.

**Both of these parts of the two stage test must be satisfied** in order to establish that a car does not fall within the charge to tax

### Commissioners View of the facts in this case

**First stage of the test :** No evidence was submitted to the Commissioner during the course of the appeal which established that private use of the car was prohibited by the Appellant.

**Second stage of the test :** the evidence given by the Director was that the car was only used in conjunction with the Appellant's business, specifically it was used for travel to make lodgements in the bank and also to visit customers and collect cheques

### **‘Pooled Vehicle’:**

The Director gave unchallenged direct evidence that the car was **only used for company business and that it was kept on the Company's premises at all times**. Director stated that he lives approximately 5 miles from the Company's premises and that he never used the car for personal use. The Director also gave evidence that the car was mainly used by two of the Company's office employees when they needed to make bank lodgements or to meet with customers and collect cheques.

The Director also had his own private vehicle that he kept at his own residence

### Commissioners View of the facts in this case

The Commissioner considered the evidence and submissions made on behalf of both the Appellant and the submissions made on behalf of the Revenue.

The Commissioner **accepted the evidence given by the Director that the car was used only for business purposes.**

The mileage for the car as set out in the NCT Certificates was on average 112 km per week.

The Director gave evidence that lodgements would regularly be made to the Company's bank account and that the car would be used for meeting customers and collecting cheques and that this would be done by the office staff.

Director gave evidence that the nearest bank to the Company's premises is 8 km away. The Commissioner accepts that this would have necessitated a 16 km round trip to the bank a number of times per week by one of the Company's office staff.

The Commissioner also accepts the reality that the company's business would have involved the need to travel to meet customers and to collect cheques.

**The Commissioner ruled in favour of the Appellant**

## Other Issues in recent years



- Timing of Vouchers to staff and other small gifts provided to individuals during the year
- Meals provided to staff - must be provided to all staff to eliminate a BIK issue
- Converting 'cars' into 'vans'
- Personal use of company vans outside of work hours
- Misunderstanding BIK in companies and how it applies
- Companies not keeping appropriate records of BIK (i.e Motor Vehicle mileage).



# Group Discussions on BIK Challenges





**Thank you**