FRINGE BENEFITS

Tax Guide

Office of the Commissioner for Revenue – Malta
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FRINGE BENEFITS TAX GUIDE

This guide is published by the Office of the Commissioner for Revenue to provide explanations and instructions on the application of the Fringe Benefits Rules (SL 123.55). It replaces the Fringe Benefits Tax Guide that was published in January 2001 and the updates to that guide.

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Chapter 1: Background

What is a fringe benefit?

"Fringe benefit" means any benefit provided or deemed to be provided by reason of an employment or office. The basis for the taxation of fringe benefits is article 4(1)(b) of the Income Tax Act, which applies to all gains or profits derived from an employment or office, regardless of whether they are received in cash or in kind and whether they are received in terms of the normal conditions of the contract of service or by way of a special or ex gratia allowance. The income from an employment or office reported in tax returns must therefore include the value of fringe benefits, and employers must account for fringe benefits provided to their employees under the FSS system. Beneficiaries who fail to declare the fringe benefit will be liable to additional tax for omission as contemplated by the Income Tax Acts. Employers who fail to report the fringe benefits properly and in time will be subject to penalties.

When a payment or other benefit represents a reward for services rendered by a person, it is taxable not only when it is provided directly from the employer to the employee but also when it is provided indirectly, that is either by third parties or to third parties.

Although fringe benefits have the nature of normal income they have certain characteristics which warrant special regulation. The Fringe Benefits Rules (SL 123.55) were prescribed in order to:

- ensure that no doubts are raised as to the taxation of fringe benefits,
- establish in which circumstances and to what extent are fringe benefits subject to tax, and
- determine their value.

The guide explains the provisions contained in the Fringe Benefits Rules ("the Rules"). It also explains how employers are to account for fringe benefits for the purposes of the Final Settlement System (FSS) Rules (SL 372.14).

To whom does this guide apply?

This guide refers to fringe benefits provided to employees and persons holding an office.

Payments in kind for services rendered by a self-employed person are also taxable, but the manner in which they are to be valued and accounted for is not regulated by the Fringe Benefits Rules and they are outside the scope of this guide.

Employees and employers

An employee is a person who performs services under a contract of employment, whether that contract is expressed or implied, and whether on a full or part-time basis. An employer is a person for whom services are performed by an employee.

Office-holders

The term officer applies to:

- directors of a company
- persons who perform functions similar to those of company directors, even though they may be called by another name
- persons on whose instructions the directors of a company are accustomed to act
- shareholders who hold directly or indirectly more than 5% of the ordinary share capital or of the voting rights in a company
- partners of a civil or commercial partnership
- persons who hold any other office, such as the liquidators of a company or members of a commission or tribunal.

Companies and partnerships

In respect of benefits provided to an officer of a company or a partnership, the company or partnership has the same obligations for fringe benefits purposes as an employer even if the officer is not engaged under a contract of employment.

Associated company

A benefit provided by a company (A) to an employee or officer of an associated company (B) is deemed to be provided by virtue of the employment or office as if it were paid by B. Two companies are associated if -

- they form part of a group as defined in the Income Tax Act, or
- more than fifty percent of the voting rights or of the ordinary shares are held directly or indirectly by the same persons.

Members of the family or of the same household

When a benefit is provided to a member of the family or of the household of a person who is in employment or holds an office it is treated as if it were provided to that person. An exception to this rule will of course apply if it results that the member of the family or the household received that benefit in his or her own right.

"Members of the family" of a person are that person's spouse, ascendants and their spouses, and children, adoptive children and their spouses. "Members of the same household" of a person are those persons who ordinarily reside in the same residence - whether related or not to him.

Example - Directors and relatives

A company makes a company car available for the private use of the spouse of one of its directors. The private use of a company car is a fringe benefit. If the spouse is not an employee or an officer of the company then the use of the car will be deemed to be a fringe benefit provided to the director. The same applies also where the car is not owned by that company but by its parent or another associated company.

Persons who have ceased to be in employment or to hold an office

When a person who was in employment receives, or continues to receive, a benefit by virtue of his past employment, that benefit is treated as a fringe benefit. The same principle applies to persons who cease to hold an office.

When a benefit in these circumstances is provided by way of a pension it will be valued in accordance with these guidelines but will be taxed as a pension under article 4(1)(d).

Controlling position

For certain purposes, the manner in which the rules apply depends on whether a shareholder or a director of a company is also in a controlling position of that company. A person is in a controlling position of a company:

- if he holds, directly or indirectly, 25% or more of the voting rights or of the ordinary shares of that company or an an associated company;
- if he is, directly or indirectly, a shareholder in that company and the shares so held, together with any shares held directly or indirectly in that company by a member or members of his family represent an aggregate of more than 50% of the ordinary share capital or the voting rights in that company:
- he is an individual who is a director and is not registered with the competent authority set up under the Employment and Training Services Act as a full time employee with that company or with an associated company.

References in these guidelines to “employee” and “employer”

References in these guidelines to “employee” include a reference to an officer, to a person who has ceased to be in employment or to hold an office, and to a member of the family or household of an employee or officer.

In the case of benefits provided to an officer, references in these guidelines to “employer” include a reference to the company or partnership of which that beneficiary is an officer or to the person who is responsible for the payment of that remuneration for duties performed under the terms of appointment to that office. When an employer is a company, references in these guidelines to benefits provided by an employer include a reference to benefits provided by an associated company.

Presumption of fringe benefit

Benefits provided in the following circumstances are presumed to be provided by virtue of an employment or office:

- benefits provided by employers to their employees
- benefits provided by companies and partnerships to their officers (as defined below)
- benefits provided by a company to an individual who is not an employee or an officer of that company but is an employee or an officer of an associated company or a person who is related to that employee or officer

When it results that a benefit is a reward for services rendered in an employment or office, it will be treated as a fringe benefit without the need to apply the above presumptions, even when provided by third parties.

An exception to above presumptions applies when it results that:

- the benefit is purely a personal donation, or
- it is paid in settlement or on account of a debt that is not connected with the employment or office, or
- it falls to be treated as a dividend in terms of the relevant provisions of the Income Tax Act, or
- the benefit consists in drawings made by a partner on account of his share of profits and accounted as such in the records of the partnership.

Certain exceptions also apply by virtue of express provisions in the rules, and these are referred to below in this guide in the chapters dealing with the respective category of benefits or in Chapter 6.

Categories of fringe benefits

The three categories

Fringe Benefits are classified under three categories:

1 Car benefits

These include:

- the use of cars owned, leased or hired by employers and made available to their employees for their private use; and
- cash allowances paid to employees in respect of the use of their own cars.

This category of benefits is discussed in Chapter 3 of this guide.

2 Use of assets including accommodation

This refers to the use of assets owned or leased by employers and made available to their employees for their private use. This excludes the use of cars, which falls under Category 1, but includes the private use of residences, boats, aeroplanes, furniture, machinery etc.

This category of benefits is discussed in Chapter 4 of this guide.

3 Other benefits

These are any other benefits provided to employees that do not fall in the two categories above. Such benefits would include, amongst others, transfers of assets at subsidised prices, low interest rate loans, payment or reimbursement by the employer of private costs (utility bills, school fees etc), and the provision of free or discounted goods and services like travel, entertainment, insurance, meals, domestic services, professional advice, provision of transport etc.

This category of benefits is discussed in Chapter 5 of this guide.

Shared fringe benefits

When a fringe benefit is shared by two or more beneficiaries, its value is apportioned among the beneficiaries and each beneficiary will be subject to tax separately on his respective share. The tax which the employer is required to withhold under the FSS system is to be calculated by reference to each separate share.

Interaction with the other provisions of the Income Tax Act

Once fringe benefits are taxable in the same way as normal salaries and wages, an employer who incurs a cost in providing fringe benefits is normally entitled to a deduction from his income in respect of that cost. The right to the deduction does not arise from the Fringe Benefits Rules but from the normal provisions of the Income Tax Acts relating to deductions. Accordingly, the right to the deduction is subject to the conditions and restrictions contained in those provisions, and the amount of the deduction is not necessarily equal to the value of the corresponding fringe benefit as determined in accordance with the Fringe Benefits Rules.

Similarly, when a fringe benefit consists of a transfer of an asset to an employee, the valuation under the Rules does not affect the value on which income tax may be chargeable on that transfer in the hands of the transferor.

On the other hand, when a fringe benefit consists of a transfer of an asset to an employee, and the employee subsequently transfers that asset, the cost of acquisition that will be taken into account, when relevant, in the computation of the tax on the subsequent transfer will be the consideration that the employee had paid for that asset plus the value of the fringe benefit.

The reduced rate of tax of 15% that may be claimed in accordance with the Part-Time Work Rules does not apply to fringe benefits received from a part-time employment and the value of the fringe benefit in such cases is not considered to constitute part of the €10,000 ceiling for part-time emoluments that qualify for the 15% rate. If an employee qualifies for the 15% tax on part-time emoluments, and he is also in receipt of fringe benefits from that employment, the value of the benefits is to be reported separately from the part-time income on the same FS3 using the relative fringe benefit boxes.

Fringe benefits arising in Malta

Fringe benefits are subject to tax only in those circumstances where the income from the relative employment or office falls within the scope of the Income Tax Acts. Accordingly, fringe benefits arising in Malta are always subject to tax (saving the exemptions allowed by the rules), while a fringe benefit arising outside Malta is subject to tax if the beneficiary or his spouse is ordinarily resident and domiciled in Malta or if he is resident and receives the benefit in Malta.

Fringe benefits arise in Malta if the services under the relative employment or office are performed wholly or mainly in Malta. Fringe benefits arising by reason of the office of a company director arise in Malta when the company is managed and controlled in Malta.

Chapter 2:
Obligations of employers

Registration

Any person who provides fringe benefits to his employees and any company or partnership that provides fringe benefits to its officers, even though it may not have any employees, is considered to be an employer by the Office of the Commissioner for Revenue. Such persons, companies and partnerships are therefore to register as employers with the CfR and must obtain a PE number to enable the lodgement of FS3, FS5 and FS7 documents as required.

Records

General

Employers must keep records that show how the valuation of the fringe benefit/s was determined and the Commissioner for Revenue may request to view such records. To assist employers, the CfR has drawn up a template that shows the information that must be retained by employers. This template is for demonstrative purposes only and the format given need not be strictly adhered to as long as all the information shown on the template is retained and made available to the department on request. Employees may request to be supplied with the information contained therein.

Employers must ensure they retain adequate records to substantiate the tax treatment of fringe benefits and these will not consist only of the records for the period during which the benefit was provided but also records relating to the acquisition by the employer of the asset that is used by or that was transferred to the employee. For example, in the case of a continuing benefit, such as the use of a car, the value is determined at the commencement of the benefit and will not vary except in certain special circumstances, such as when the car is replaced, or the use is discontinued. But the value of the benefit for any pay period will need to be supported by the records that refer to the manner in which the value was originally determined. The valuation of a one-off benefit is made only for the pay period during which it is provided, but the valuation criteria must be substantiated also by the source documents.

Records to be kept for company cars

Employers need to keep specific records of all owned, hired or leased cars irrespective of whether they use them to provide fringe benefits to their employees or for other purposes. A list of all such cars must be kept and is to be submitted to the Office of the Commissioner for Revenue when so requested.

The records must show the following information:

- a description of each vehicle: registration number, make and model;
- the year of first registration in Malta;
- in the case of second hand cars brought from overseas, the year of first registration outside Malta;
- the car value when new, inclusive of all taxes and licences, to which must be added back any discounts obtained. This must be supported by the relative invoices/documents. In the case of second hand cars brought from overseas, the value when new will be determined according to the Price Lists issued by the Commissioner for Revenue;
- the name of the beneficiary, indicating also if he is a salesman or support person;
- address and description of the place where the vehicle is garaged (if car is garaged/kept overnight by the employer); and
- if the car is owned by the employer, or leased or hired.

Request for further information

The Commissioner may request from an employer a full list of all vehicles and other movable and immovable assets used by the employer, whether owned directly by the employer or leased or hired, and regardless of whether the vehicles and other assets are being used for fringe benefit purposes.

Integration with FSS

Accounting for fringe benefits with other emoluments

The value of fringe benefits is determined in accordance with the valuation provisions of the Fringe Benefits Rules as explained in this guide. The value of a fringe benefit is subject to tax as emoluments and is to be accounted for by employers through the Final Settlement System (FSS).

Employers are responsible for reporting the value of fringe benefits provided by them or by associated companies. The disclosure of fringe benefits provided by third parties (e.g. tips) over which the employer has no control is the sole responsibility of the employee.

Determining the FSS deduction

The FSS tax deductions are to be calculated by reference to the total taxable emoluments but deducted from the cash portion. The steps involved are:

- determine the fringe benefit value for the pay period in accordance with these guidelines;
- add the fringe benefit value for that pay period to the salary and wages earned in that pay period;
- calculate the FSS tax deductions by reference to the gross amount (fringe benefit value plus salary/wages); and
- deduct the FSS tax deduction from the cash portion.

50% rule

There is a rule under the FSS provisions that limits the amount of tax that can be deducted from a pay packet to 50% of the total emoluments made in that period. This limitation applies to the cash portion of the emoluments, so that the maximum deduction is 50% of the cash portion of the emoluments for the period.

FSS forms

Employers are obliged to identify the value of fringe benefits under separate categories on the FS3 and to identify the total value (less any non-taxable portion of the car cash allowance) of fringe benefits of all categories on the FS5 and the FS7. The categories of fringe benefits are Category 1 (car benefits), Category 2 (use of assets) and Category 3 (other benefits), as explained below.

Employers are also obliged to show on the employee pay slip the gross value of the fringe benefits taken into account in calculating the FSS deductions. There is no obligation to separately identify the value of the fringe benefits by category on the pay slip. The table below summarizes these reporting requirements.

Form	Cash earnings excluding fringe benefits	Fringe benefits including car cash allowance		FSS deductions on salary + fringe benefits
		Gross	Categorised	
Employee slip	✔	✔		✔
FS3	✔		✔	✔
FS5	✔	✔		✔
FS7	✔	✔		✔

The actual tax on the value of fringe benefits need not be identified and therefore is not reported separately.

As with all tax matters, all fringe benefits calculations and tax paid are to be supported by comprehensive records including fiscal receipts or tax invoices.

Chapter 3:
Category 1 Fringe Benefits

Category 1 – Car benefits

Benefits related to the use of motor vehicles can be of two types:

- use of car;
- car cash allowances.

This guide uses the term "car" to denote any motor vehicle whose use falls within the scope of the Rules.

A motor vehicle is any mechanically propelled road vehicle which is constructed or adapted as a means of transport for individuals, or which is constructed or adapted for the conveyance of goods but which is also suitable as a means of transport for individuals. However, the use of the following vehicles is not treated as a fringe benefit:

- a vehicle with a design weight of more than 3500 kilograms;
- a van, defined as a mechanically propelled road panel vehicle or utility or any other commercial vehicle whose construction is primarily suited for the conveyance of goods with no seating capacity for passengers except for seating adjacent to the driver;
- a motorcycle; and
- a vehicle designed to be used by a severely disabled person.

Use of a car

The fringe benefit arises if there is normally an element of personal use of a car owned, hired or leased by the employer. A personal use element is presumed:

- where a car is placed at the disposal of one particular person, or
- where it is available for use outside normal hours of duty, or
- where it is not kept on the premises of the employer (or company or partnership) overnight and during weekends, or
- whenever it is used regularly for private purposes.

Individuals who are employed as drivers or messengers and who, in the performance of their duties are required to use cars owned, leased or hired by their employer but are not permitted to use the vehicle outside working hours are not considered to be enjoying a fringe benefit even though they may park the car near their private residence. This provision does not apply to any employee who is not employed as a driver and/or messenger and who is not required to use cars owned or leased by the employer in the normal performance of his/her duties. Penalties will apply in cases where the private use element of cars is not properly certified.

For the purposes of calculating the value of the fringe benefit, the same criteria will apply for all cars whether 'owned' or 'leased' or 'hired' by the employer.

Annual value of the use of a car

The annual value of the benefit of the use of a car depends on

- the car value
- the car use value;
- the maintenance value;
- the fuel value; and
- the private use value.

The car value

The car value is:

- In the case of cars that are purchased new by the employer, the value is the actual cost as shown in the purchase documents, and which is to include value added tax, customs duty, registration tax and any other taxes, the costs of any extras, whether fitted before or after delivery, and delivery charges. The cost is net of any discount that may have been granted as long as it was available to the general public, such as a trade fair discount or a special offer. Discounts that the employer may have obtained on a personal basis or under special arrangements are to be added to the actual cost.
- In the case of cars that were purchased by the employer as second hand, or that are leased by the employer, the car value is the price of that car when it was new, including taxes and costs of extras and of delivery as stated above. When not otherwise available, this price may be determined by reference to information obtainable from Malta Transport or on the basis of a written opinion of an independent car surveyor.
- In the case of classic cars the value would be the price that the vehicle would fetch if sold on the open market on the date when the benefit is first provided. A vehicle is a classic car if the price on the open market is more than €23,300 and it exceeds the original price. Moreover, the car has to be more than 15 years old.

An increase in the car value through the addition of extra accessories affects the calculation of the relative fringe benefit as from the date that the extras are fitted.

The car use value

The value of the use of a car is 17% of the car value. For cars which are older than 6 years the car use value is 10%. A vehicle is deemed to be more than 6 years old on and after the sixth anniversary of the date when it was first registered for road use.

The maintenance value

This represents the value of insurance, servicing, road and driving licence. etc but excludes fuel and garaging. It is a percentage of the car value:

- if the car value is less than or equal to €28,000 it is 3% of the car value;
- if the car value is more than €28,000 it is 5% of the car value.

The fuel value

This is a percentage of the car value:

- if the car value is less than or equal to €28,000 it is 3% of the car value;
- if the car value is more than €28,000 it is 5% of the car value.

The 'fuel value' is only taken into account when the employer pays for fuel or reimburses the actual fuel costs. Where, however, a separate cash allowance is paid in respect of fuel, the fringe benefit on the car is computed without the fuel benefit rate, and the cash allowance is taxed in full without any deduction.

The private use value

This is a percentage of the total of the car use value, maintenance value and fuel value and represents the value of the private use of the car. The applicable percentage depends on the value of the car when new as shown below.

Car Value		Private Use Value	
From	To		
0	€16,310	30%	***Of the total of:***
€16,311	€21,000	40%	***[1] the car use value,***
€21,001	€32,620	50%	***[2] the maintenance value, and***
€32,621	€46,600	55%	***[3] the fuel value***
over	€46,600	60%	

Vehicles used for point-to-point service only

The private use of a car is deemed to have no value when:

- the car value is €16,310 or less; and
- the car is solely or mainly used for point-to-point service. A point-to-point service is presumed to exist when the relevant car is heavily used for business purposes such as in the case when an employee is required to deliver goods or services or provide transport to clients and other employees.

In these cases, the employer is required to apply on the appropriate form available from the Office of the Commissioner for Revenue to reduce the private use value to 0%.

EXAMPLE 1

New car (not more than 6 years old) - Car value €16,500 - Fuel paid by employer

Step 1	Calculate car use value	17% of car value = 17% x 16,500 = 2,805
Step 2	Add maintenance value	3% of car value = 3% x16,500 = 495
Step 3	Add fuel value	3% of car value = 3% x 16,500 = 495
Step 4	Calculate private use value	Determine % from table, in this case: 40% 40% x (2,805 + 495 + 495) = 1,518
In this example the employee's salary is 'inflated' by €1,518 (i.e. €126.50 per month) before FSS deductions		

EXAMPLE 2

New car (not more than 6 years old) - Car value €30,000 - Fuel paid by employer

Step 1	Calculate car use value	17% of car value = 17% x 30,000 = 5,100
Step 2	Add maintenance value	5% of car value = 5% 30,000 = 1,500
Step 3	Add fuel value	5% of car value = 5% x 30,000 = 1,500
Step 4	Calculate private use value	Determine % from table, in this case: 50% 50% x (5,100 + 1,500 + 1,500) = 4,050
In this example the employee's salary is 'inflated' by €4,050 (i.e. €375 per month) before FSS deductions		

EXAMPLE 3

Car that is more than 6 years old - Car value €18,000 - fuel paid by employer

Step 1	Calculate car use value	10% of car value = 10% x 18,000 = 1,800
Step 2	Add maintenance value	3% of car value = 3% 18,000 = 540
Step 3	Add fuel value	3% of car value = 5% x 18,000 = 540
Step 4	Calculate private use value	Determine % from table, in this case: 40% 40% x (1,800 + 540 + 540) = 1,152
In this example the employee's salary is 'inflated' by €1,152 (i.e. €96 per month) before FSS deductions		

As the car use value, the maintenance value and the fuel value are all represented by percentages of the car value, and as the private use value is a percentage of the total of those values, the formula for calculating the private use value can be simplified as follows:

Car value €	Motor vehicle less than 6 year old		Motor vehicles more than 6 years old	
	With fuel	No fuel	With fuel	No fuel
0 - 16,310(*)	6.90%	6.00%	4.80%	3.90%
16,311 - 21,000	9.20%	8.00%	6.40%	5.20%
21,001 - 28,000	11.50%	10.00%	8.00%	6.50%
28,001 - 32,620	13.50%	11.00%	10.00%	7.50%
32,621 - 46,600	14.85%	12.10%	11.00%	8.25%
Over 46,600	16.20%	13.20%	12.00%	9.00%

(*) In the case of a car which is approved as used only for point to point service, the value of the fringe benefit for this bracket (not exceeding €16,310) is zero.

Car purchased by the employee

When an employee who uses a car that is owned or leased by the employer intends to purchase that car, any payment he makes before the actual transfer of ownership by way of deposit or instalments will not be taken into account in the valuation of the car use value. The use of the car will still be considered as a fringe benefit until the transfer of ownership is effected and the fringe benefit value up to that date will be computed on the full value of the car.

The transfer of the ownership of the car can constitute a further fringe benefit, as explained in Chapter 3 of this guide. But at that stage, the amounts paid by the employee will be taken into account. Moreover, the value of the fringe benefit for the use of the car will also be treated as part of the price paid by the employee (see Chapter 5 "Transfer of company car").

Part year

When a car fringe benefit is availed of for part of a year (e.g. an employee who takes up or who terminates his employment during the year) the yearly value of the fringe benefit will be reduced accordingly. The monthly value of the fringe benefit is to be taken at 1/12th of the annual value. The value for part of a month is the annual value multiplied by the number of days for the month in question divided by 365.

When the car is temporarily unavailable for a period of 30 days or more, a pro rata deduction will be made from the fringe benefit value.. If a replacement car is made available during this period, the original valuation will still apply. There will be no deduction from the fringe benefit value if the car is not available for use for less than 30 days.

Replacement car

If a car is replaced, except when the replacement is a temporary measure (e.g. when replacing a car which is being repaired), a new valuation will have to be made based on the value of the new car. The new valuation will commence from the date when the new car is first used or made available.

Car cash allowance

If cash is paid to an employee by way of a car allowance with respect to the use of his own car for business purposes, the allowance is taken as having a fringe benefit component. The annual fringe benefit value is the amount of the cash allowance reduced by 50%, provided that the reduction in any calendar year cannot exceed €1,170.

Any reimbursement (including a reimbursement made by means of vouchers, credit cards etc) in relation to fuel paid to an employee who is already in receipt of a car cash allowance is added to that allowance and the 50% or €1,170 maximum deduction applies on the total amount.

The deduction of €1,170 or 50% of the allowance as set out above applies only when:

- the employee uses his own car; and
- the allowance is specified in a collective agreement or in the employee's contract of employment; and
- the employee is not a director or a partner or a person in a controlling position of a company or a partnership;
- the employee does not benefit from the use of another car owned by the employer.

When any of the above conditions is not met the full cash allowance is taxable.

Multiple car cash allowances

When a beneficiary receives more than one car cash allowance, either from the same employer or from associated employers or from separate employers, the 50% deduction with a maximum of €1,170 can only be used once, i.e. on one cash allowance only. When an employee who benefits from a car cash allowance becomes entitled to another car cash allowance from another employer, it is his responsibility to give all relevant information to the other employer so that this rule can be properly applied.

EXAMPLE

A beneficiary receives two car cash allowances of €250 per month.

On the 1st car allowance the taxable value of the fringe benefit will be €3,000 less €1,170 = €1,830. On the 2nd car allowance the taxable value of the fringe benefit will be €3,000 less €0 = €3,000.

Reimbursements on rate per kilometre basis

Where reimbursements are made to an employee for using his/her own car for business and such reimbursements are made according to the distance travelled (e.g. where expenses are reimbursed on the basis of an agreed number of cents per km travelled) these reimbursements do not constitute a fringe benefit provided:

- the rate of payment for each kilometre travelled does not exceed 35 cents per kilometre,
- payments only cover the business use element,
- all reimbursable travel is recorded in a logbook readily available at any time for verification by the CfR, and
- the log book is retained by the employer for at least 6 years.

If any one of these conditions is not met, the full reimbursement value will be considered as a fringe benefit and will be subject to the same valuation criteria as a car cash allowance.

Chapter 4:
Category 2 Fringe Benefits

Category 2 - use of assets, accommodation and related costs

Category 2 fringe benefits relate to the private use by an employee of assets, other than motor vehicles, that are owned, leased or hired by the employer, including living quarters, furniture, boats, aeroplanes, machinery etc. In the case of immovable property, the benefit is deemed to be provided on the date of the first occupation by the beneficiary, while in the case of movable assets the benefit is deemed to be provided when it is first made available to the beneficiary. In any case, the benefit continues for as long as the asset is available to the beneficiary.

The use of computers, telephones and certain other equipment and facilities is exempt from tax. Exemptions are discussed in Chapter 6 of this guide.

Valuation

The annual value of property and other assets used or made available to an employee is determined as follows:

- In the case of immovable property owned by the person providing the benefit, the annual value is 5% of the higher of the market value and the cost. The 5% rate applies not only to accommodation but also to the use of any immovable property such as garages, offices, stores, fields, boathouses etc.
- When immovable property is held by the employer under title of emphyteusis, the annual value is the higher of (a) 5% of the market value of the property and (b) [5% of the cost of the property] + [the annual ground rent].
- For benefits falling under this category arising out of the use of movable assets owned by the employer, the annual value will be equal to 12% of the higher of the cost and the market value. After six (6) years of ownership, the cost of the asset for valuation purposes will be taken to be the original cost reduced by 40%.
- When the employer rents the immovable property or movable asset from an unrelated third party, the annual value is the actual rent paid by the employer. If he rents it from a related person, the value will be the rent that would be payable to an unrelated person.

The market value

The market value is estimated on the basis of the price which the asset might reasonably be expected to fetch in the open market at the time when it is first made available. In the case of immovable property the valuation is made of the free and unencumbered ownership of the property assuming vacant possession and therefore disregarding any ground rent or other burdens charged on the property.

Persons to whom this rule applies are advised to ask for a valuation of the asset by an expert valuer as on the applicable date in order to be able to estimate the value of their fringe benefit. The Commissioner may appoint his own experts to obtain an estimate of the market value. If the department's valuation exceeds the value on which the employer has determined the value of the fringe benefit by more than 15%, the value of the fringe benefit will be deemed to have been under-declared. When the difference is 15% or less, the declared value will be accepted. However, if the beneficiary does not produce his own expert's valuation, or produces it to the department only after the Commissioner has made his estimate, the Commissioner's valuation will be applied even if the difference is less

than 15%.

When the Commissioner's valuation has been applied under the procedure explained above, the beneficiary may appeal to the Administrative Review Tribunal. An expert's valuation exhibited in the tribunal by any of the parties and confirmed by the valuer under oath will constitute the market price. If both parties produce their valuations, the tribunal will decide the matter after obtaining a further valuation from an independent expert. But if the independent expert's valuation does not exceed the beneficiary's valuation by more than 15%, the beneficiary's valuation will be accepted.

The cost

The cost of immovable property owned by the employer is the price paid or payable for the acquisition of the ownership of that property. Where the property was acquired by the employer under a perpetual or emphyteutical grant, the cost is the premium paid on the deed. This is subject to the adjustments explained below.

Costs that increase the value of the property

Any expenditure met by the employer that increases the value of the relevant property or asset permanently, such as improvements and additions, will effectively increase both the cost and the market value. An example would be when an extension is added to an existing building or an existing old building is converted or reconstructed, or when a yacht is equipped with extra berths, engines or other accessories. In such cases, a new valuation of the relevant property/asset must be made and the value of the fringe benefit re-calculated accordingly.

Ordinary costs

Any expenditure, met by the employer, connected with the normal use of the asset but which does not increase the value permanently (e.g. water, electricity, domestic services, redecoration, repairs, professional fees, insurance etc.) also constitutes a fringe benefit. Such expenditure must be added to the value of the fringe benefit for the year in which it is incurred.

When an employer provides the property as security for a business debt by means of a public deed, an insurance policy over that property that is taken out for the purpose of the security is not to be taken into account in the valuation of the fringe benefit.

Deductions

Where the owner leases immovable property or the movable asset to the employee, a fringe benefit will also arise if the rent agreed upon is less than the value determined as stated above, but the rent payable by the employee is deducted from that value.

The value of the benefit is reduced by any rent paid by the employee and by any payments made by the employee by way of reimbursement of bills or other expenditure connected with the use of the asset to the extent that the value of such payments were taken into account when calculating the value of the fringe benefit.

Records must be kept by the employer regarding any payments or reimbursements made by the employee.

EXAMPLE A

An employer makes an 'owned' property available to an employee for the year 2013. During that year, the employer pays bills connected with the use of the property but the employee reimburses €1,500 out of the €5,000 paid by the employer. The property was purchased for €120,000 but is valued by a certified appraiser at 1st January 2013 at

€200,000.		
Step 1	Calculate annual value	5% of the higher of the market value and the cost = 5% x €200,000 = €10,000
Step 2	Add expenditure incurred by employer	€10,000 + €5,000
Step 3	Deduct expenditure reimbursed by employee	€10,000 + €5,000 – €1,500 = €13,500
In this example the employee's salary is 'inflated' by €13,500 (i.e. €1,125 per month) before FSS deductions		

EXAMPLE B

A company rents property for €2,000 per month and it puts it at the disposal of a director. In addition, the company pays bills to the value of €5,000. The director makes no payments in relation to the property.

Step 1	Calculate yearly rental value	€2,000 x 12 - €24,000
Step 2	Add expenditure incurred by employer	€24,000 + €5,000 = €29,000
In this example the employee's salary is 'inflated' by €29,000 (i.e. €2,417 per month) before FSS deductions		

EXAMPLE C

An employer acquires property under title of emphyteusis. He has paid €200,000 premium and the annual ground rent is €2,000.He puts the property at the disposal of the employee when its market value (free and unencumbered) is €220,000. The employer incurs no further costs in connection with the property.

Step 1	Calculate 5% of the market value	5% of €220,000 = €11,000
Step 2	Calculate [5% of the premium] + [ground rent]	5% of €200,000 + €2,000 = €12,000
Step 3	Take the higher amount	€12,000
In this example the employee's salary is 'inflated' by €12,000 (i.e. €1,000 per month) before FSS deductions		

Accommodation not constituting a fringe benefit

Accommodation does not constitute private use of the property, and will therefore not be treated as a fringe benefit, in any of the following circumstances:

- the relevant property is considered an official residence allocated by a public authority or an institution of a public nature in virtue of a public office
- the accommodation is allocated temporarily on account of special security measures
- the employee is bound in terms of his contract of service to reside in accommodation provided by the employer in the business premises of the employer or in premises attached or adjacent to the employer's business premises. This applies when residence in that accommodation is required for the better performance of the employee's duties and it is customary for employers to provide such accommodation in connection with those or similar duties. This rule does not apply to accommodation provided to an employee of a company who holds a controlling position.

Accommodation is not treated as a benefit provided by reason of an employment or office, and will therefore not be subject to tax, if all the following conditions are satisfied:

- the property is owned by a company and the accommodation is provided to an individual who is, directly or indirectly, a shareholder of that company or to members of his family
- the shareholder, or the members of his family, are not employees of the company and do not receive any form of remuneration from it
- the company does not carry on any trade or business and does not claim group relief or any deduction for losses brought forward from previous years
- the company does not own any assets other than immovable property and cash and bank deposits
- if the company owns immovable property other than that in which the accommodation in question is provided, that other property is similarly used as accommodation by a shareholder or a member of his family
- the company does not have any liabilities except for long term loans from a bank or a financial institution, or from an individual who is, directly or indirectly, a shareholder
- if the company has any long term loan from a bank, it is not financed by a back-to-back loan from an associated company

Private use of aircraft and vessels

- The private use of aircraft and vessels will not be treated as a fringe benefit if all the following conditions are satisfied:
- the aircraft or vessel is owned by a company and it is used solely and free of any charge (in cash or in kind) by one or more individuals who are, directly or indirectly, shareholders of that company or members of their family, or by guests accompanying any such individuals
- the shareholders, or the members of their family, are not engaged with the company under any contract of service or contract for services and do not receive any form of remuneration from it
- all costs incurred in connection with the aircraft or vessel are not in any way claimed as a deduction for Maltese income tax purposes against the income of any other person. These costs include the cost of financing the acquisition of the aircraft or vessel and its equipment, the cost of improvements, repairs, maintenance, fuelling, provisioning and operation of the aircraft or vessel, as well the fees and remuneration payable to the crew, licence fees, berthing fees, pilotage fees and fees for port or airport services. The company keeps full record of all such costs

- the company does not carry on any trade or business. It does not receive any income from any source whatsoever except for investment income. It does not claim capital allowances and does not claim group relief or any deduction for losses brought forward from previous years
- the company owns only one aircraft or one vessel and does not own any other assets apart from cash and bank deposits or assets that are necessary for the ownership and operation of the aircraft or vessel
- the company does not have any liabilities except for long term loans from a bank or a financial institution, or from an individual who is, directly or indirectly, a shareholder
- if the company has any long term loan from a bank, it is not financed by a back-to-back loan from an associated company

Chapter 5:

Category 3 Fringe Benefits

Category 3 - Other benefits

Any other benefit not falling under Category 1 or Category 2 is deemed to fall under this category. The benefits falling under this category may consist of the transfer of assets or the provision of services for no consideration or for a discounted or subsidised price, or the payment of private costs. They include, for example, low interest rate loans, free or discounted travel, entertainment, insurance, meals, domestic services, professional advice or transport, and the reimbursement of utility bills and school fees.

Valuation

As a rule, the value of a Category 3 benefit is the cost or the market value, whichever is the higher, of the goods or services less any price paid for the benefit by the employee. In the case of the payment or reimbursement of bills and fees, the value is the actual amount paid by the employer net of any contribution by the employee.

The market value is the price which the goods or services would fetch if sold or provided in the open market.

Where the benefit consists of a transfer of an asset, the cost is the price at which the employer had acquired that asset, increased by the cost of any additions, improvements or accessories.

When immovable property was acquired by the employer under an emphyteutical grant, the cost is the premium paid increased by a sum representing the capitalisation of the annual ground rent. In the case of perpetual emphyteusis, the capitalisation rate is 5% (ground rent x 20). The capitalised value of temporary ground rent is to be established by an expert valuer.

The cost of movable assets is the price paid for their acquisition, but if the asset is more than 6 (six) years old the cost is taken to be 60% of the price.

When the employer incurs a cost in transferring property or assets to the employee, thst cost is to be added to the cost or the market value of that property or asset.

The consideration paid by the employee is the price paid, if any, for the acquisition of the goods or services in question. When property transferred by the employer to the employee is subject to ground rent, the capitalised value of the ground rent is deemed to be a price paid by the employee, in addition to any premium or other consideration that he pays for the acquisition. In the case of perpetual emphyteusis, the capitalisation rate is 5% (ground rent x 20). In the case of temporary emphyteusis the rate is to be determined by an expert valuer.

These general rules are subject to the considerations that apply in the situations discussed below.

Transfer of company car

When an employee acquires a car that had been owned or leased by the employer and he had been subject to tax for the private use of that car (see Chapter 3 of this guide) before the transfer, the consideration that he is deemed to pay for the acquisition is the price that he has actually paid, including any payment made before the actual transfer on account of that price, increased by the total value of the fringe benefit which was charged to him for the private use of that car. The value after the deduction cannot be less than zero.

EXAMPLE

A company grants the use of a new car purchased for €21,200 to an employee. The beneficiary is charged to tax for the fringe benefit value of the private use of that car at €2,438 per annum for 5 years. The employee buys the car after 5 years for €8,000.

Cost of car:		€21,200
Less value of fringe benefit for the use of the car for 5 years:	€2,438 x 5	
	=	€12,190
Less price paid by the employee:		€ 8,000
Value of fringe benefit:		€ 1,010

In-house fringe benefits

In-house benefits are benefits that consist in the transfer of goods or the provision of services that are manufactured, produced or processed by the employer or are otherwise treated as provided by the employer as part of his business. The value of in-house benefits before deductions is the selling price, that is, the price at which the goods or services in question are normally sold, taking into account any discounts available to the general public at the time of the provision of the benefit. This value is then reduced by the price, if any, paid by the employee. Moreover, in-house benefits qualify for the "in-house benefit reduction". This reduction amounts to the lower of €700 and the value of that benefit before the reduction.

The total in-house benefit reduction with respect to all benefits provided to the same beneficiary during any year cannot exceed €700. No in-house benefit reduction is allowed with respect to the value of a benefit provided to a person in a controlling position.

No value is attributable to an in-house benefit that is provided on a working day and consumed or availed of on the employer's business premises.

Beneficial loan arrangements

The provision of a loan to an employee constitutes a fringe benefit. For this purpose a "loan" is any form of credit, including any kind of advance and any amount shown in the employer's books or records as owed by an employee.

Drawings from a partnership or a company made by partners and shareholders on account of the share of their profits

and accounted for as such are not to be treated as a benefit. Drawings on account of remuneration due to them represent payments of emoluments and are subject to FSS deductions accordingly. Drawings which put the partner or shareholder in debt fall within the meaning of a loan and the value of the benefit is chargeable on the beneficiary as a fringe benefit.

The value of the benefit is the excess, if any, of the interest that would have been payable if the beneficiary had been required to pay interest on the loan at the benchmark rate, over the amount of interest that he actually pays, if any, for the period in question.

The current benchmark rate is 6.5%, but the Commissioner is empowered to determine any other rate as the benchmark rate and may determine different rates for different types of loans.

The above rules are subject to exceptions in the following cases.

Loans to shareholders holding more than 25% in the capital and voting rights

A loan by a company to a shareholder who holds more than 25% of the ordinary share capital and voting rights is treated as having no value and therefore does not give rise to a tax liability under the Rules.

Loans by banks and financial institutions to their employees

A special valuation rule applies in the case loans advanced by licensed banks or financial institutions to their employees. The benchmark interest rate in this case is the rate on the main refinancing operations as applied by the Central Bank of Malta. Moreover, the value of the fringe benefit in this case qualifies for the in-house benefit reduction as explained above.

Benefits in connection with loans from third parties

When an employer pays or reimburses an employee for part or the whole of the interest on a loan from a third party, the employer's contribution is considered as a reimbursement of a private expense and constitutes a fringe benefit. Its value is the actual amount of interest that is subsidized.

EXAMPLE

An employee who is employed with company ABC acquires a loan of €100,000 at 8.5%. The employer reimburses or subsidises the employee to the amount of difference between the rate of 8.5% and an agreed rate of 2.5%. The value of the benefit is equal to: 8.5% - 2.5% = 6% of €100,000 = €6,000

Share option and share award schemes

Another form of benefit is the right to acquire shares in a company. In terms of typical share option schemes, employees of a company would be given the option to buy or subscribe to shares in the company, or in an associated company, at a given price. The option would be valid for a certain period, and an employee may therefore exercise that option at a time when the value of the shares may have increased.

The grant of an option to acquire shares is not, in itself, a taxable benefit. The company will, however, be treated as providing a taxable fringe benefit if and every time that the employee exercises the option and acquires shares in the company.

Similarly, the company is treated as providing a benefit whenever it transfers shares to its employees under a share award scheme.

The value of the benefit is the excess, if any, of the market value of the shares at the time when the shares are transferred over the price paid for those shares by the employee, but the tax on this value is charged at the flat rate of 15%. For the purpose of the taxation of this fringe benefit, the taxable value is treated as income that is separate and distinct from the beneficiary's other income. The benefit is treated as income derived at the time when the employee acquires the shares and as arising in the country where the employer is performing his duties at that time.

The employee may subsequently transfer the shares at a profit. For the purpose of determining the taxable profit in such an event the cost of the shares is not be the price actually paid by the employee but the market value (if higher) established for the purpose of determining the fringe benefit.

EXAMPLE

In 2012 an individual is granted an option to purchase shares in the company that employs him at €3 each. In 2016 the employee exercises his option by purchasing 1,000 shares at €3 each. The market value of shares at that time is €5 each). In 2018 the employee sells the shares at €7 each.

- There was no fringe benefit in 2012
- The exercise of the option in 2016 (i.e. when the employee acquires the shares) constitutes a fringe benefit
- The amount of the fringe benefit is the difference between the market price of the shares and the option price at the time the option is exercised, that is, €5,000 - €3,000 = €2,000
- The tax payable on the fringe benefit is 15% of €2,000 = €300;

The gain on the disposal of the shares in 2018 will constitute a capital gain chargeable under article 5 of the Income Tax Act. It is calculated on the difference between the sale price of the shares and the market price of the shares at the time when the option was exercised, that is: €7,000 – €5,000 = €2,000

Free or subsidised air and sea transport tickets

When the benefit consists of the provision of air or sea transport ticket provided by an employer who is in the airline or shipping line business, the value of the fringe benefit is the higher of the following amounts:

- the actual cost incurred by the employer in providing the benefit, and
- 20% of the market value of the relevant economy fare ticket.

The value so determined is then reduced by the in-house benefit reduction

Free or subsidised meals

The value of a benefit consisting in the provision of free or subsidised meals is the actual cost to the employer reduced by the price, if any, paid by the beneficiary.

The benefit is not taxable if the meals are provided in a canteen where meals are provided for the staff generally.

If the employer is a hotel, or a restaurant, or a similar establishment, this concession does not apply if the meals are provided in a dining area at a time when meals are served to the public unless part of the dining area is designated as reserved for the use of staff.

Private Expenses

When private expenses of an employee are borne by an employer, the employer would be providing a fringe benefit. An employer may cover private expenses either by paying directly for them or by reimbursing the cost or part of the cost to the employee. The value of the fringe benefit is the amount actually paid or reimbursed plus any other costs directly incurred by the employer for the provision of the benefit.

Private expenses include utility bills, school fees, scholarships, entertainment, travel and all payments that are made by an employer for the benefit or in the interest of an employee. Rule 39, however, lists a number of situations where payments made or reimbursed by an employer to an employee are not treated as fringe benefits. These are discussed in Chapter 6.

Chapter 6: Exemptions

Exemptions referred to in previous chapters

The rules provide for a number of situations where a benefit, or what might otherwise be presumed to constitute a benefit, is not taxed, or is not taxed fully. A number of exemptions, and the relative conditions, have been referred to in the previous chapters. These include:

- The use of a van and certain other vehicles, as explained in Chapter 3
- Part of the car cash allowance, as explained in Chapter 3
- The private use of immovable property owned by a non-trading company and used as accommodation by a shareholder or a member of his family, as explained in Chapter 4
- The private use of aircraft and vessels owned by a non-trading company and used by a shareholder or a member of his family, as explained in Chapter 4
- The in-house benefit reduction, as explained in Chapter 5
- In-house benefits consumed at the place of work, as explained in Chapter 5
- Bank loans to bank employees, as explained in Chapter 5
- A loan at favourable terms made by a company to a person who holds more than 25% of the share capital and of the voting rights, as explained in Chapter 5
- Travel tickets when they are provided as an in-house benefit, as explained in Chapter 5
- Part of the value of shares issued or transferred to an employee under a share option or share award scheme. This benefit also qualifies for a special tax rate, as explained in Chapter 5

In addition to the exemptions, allowances and special provisions referred to in the previous chapters, rule 39 lists a number of situations where payments made or reimbursed by an employer are not to be treated as benefits provided by reason of an employment or office. They are therefore not subject to tax.

Exemptions covered by rule 39

Expenses necessarily incurred in the production of the income

In terms of the Income Tax Act, an employee may claim a deduction for expenditure that he necessarily incurs in the production of his income. A deduction cannot be claimed if the employee recovers the cost from the employer, but the reimbursement of that cost will not be treated as a fringe benefit.

Expenses incurred in the interest of the employer

If an employee incurs out of pocket expenses on the instructions and in the exclusive interest of the employer, the reimbursement of the cost will not constitute a fringe benefit. This applies as long as the reimbursement is made against the production of receipts. The receipts must be kept by the employer for any inspection that may be requested by the Office of the Commissioner for Revenue.

Business travel

The reimbursement of the costs of business travel is not a fringe benefit. Business travel means travelling for the purpose of marketing, concluding business transactions and attending business seminars and meetings. It also includes travelling for other purposes as long as it is approved as business travel by the Commissioner.

When the employee is accompanied by members of his family, or the duration of the stay is out of proportion to the business purpose of the journey, or whenever travel otherwise includes a private element, it will not be considered as business travel and the full cost will be treated as a private cost. But when the private element is negligible or purely incidental it will be disregarded.

When the journey is to a destination outside Malta, the costs that are covered by the exemption are the cost of the journey and back, including related insurance, as well as the cost of accommodation and meals and a reasonable subsistence allowance. A subsistence allowance means any payment calculated to compensate the employee for the increased cost of living while abroad to the extent that the increase is not already included in the costs of the accommodation and meals. The said subsistence allowance may not exceed a maximum non-taxable allowance of €140 per day.

In the case of business travel between Malta and Gozo, the costs which are exempt are those incurred in connection with a journey by sea or by helicopter to one of the islands by an employee who normally resides in the other island, including the cost of the transport of a car and one meal. If the visit to an island lasts more than one day, the costs include the cost of transport within that island, accommodation and meals.

Relocation costs

When an employee is required to perform services outside his country of residence under a new employment or posting, the payment or reimbursement of the relocation costs is not treated as a fringe benefit. This applies as long as the new employment or posting lasts, or is expected to last, for at least 12 months.

Relocation costs include the cost of the journey of the employee and his spouse and dependent children, as well as the cost of transportation of furniture and personal effects. The costs covered by the exemption include both the costs of relocation to the country where the employee takes up his employment or posting and the costs of resettlement in the employee's country of residence. Accommodation costs are not covered by this exemption.

Travelling between shifts

When an employee works outside his country of residence on a shift basis and the employer covers the costs of the employee's journeys between shifts, the payment or reimbursement is not regarded as a fringe benefit. Journeys between shifts are the journey to the country of residence immediately at the end of a work period and the journey to the country where the employee reports for duties at the commencement of the next work period. Unless the Commissioner otherwise approves in any particular case, the exemption applies only to shifts with a work period that normally lasts for not more than 4 weeks and a rest period that is normally at least one third of the work period.

EXAMPLE

3 days work – 1 day rest:	Exemption applies
3 weeks work – 1 week rest:	Exemption applies
3 weeks work – 2 weeks rest:	Exemption does not apply
6 weeks work – 2 weeks rest:	Exemption does not apply

Training courses

The costs of education and training courses for employees are exempt. This applies when the course leads to the acquisition of knowledge or skills that are necessary for the duties of an employee, or directly related to increasing effectiveness in the performance of an employee's present or prospective duties. It is not a condition that the course should lead to the employee gaining a qualification.

The qualifying costs are the fees for the course and the cost of essential books and course material. Where the course is not held at the employee's normal place of work, relevant expenses also include the additional expenses incurred in travelling to and from the course, and reasonable payments for subsistence whilst on the course. If the course is held outside Malta the relevant expenses also include the cost of the journey, accommodation and subsistence allowance as in the case of business travel.

The above does not override the exemption on scholarships provided for in article 12(1)(i) of the Income Tax Act.

Subscriptions

Subscription fees paid or reimbursed by an employer in respect of an employee's membership in a recognised professional body are exempt if the employee is employed as a member of that profession or if membership is required by the terms of the contract of employment.

The cost of newspapers or periodicals, or subscriptions to newspapers, periodicals and magazines or journals pertaining to the profession or trade relevant to an employee's duties will not be regarded by the Commissioner as a fringe benefit. This applies also to the provision of similar items by electronic means, such as internet facilities. However, the cost is not exempt where there is no business use or where the business use is merely incidental.

Insurance for business purposes

Insurance or indemnity paid by a company for the purpose of providing cover against personal liability that may arise from the performance of the functions of its officers is exempt. The cost of providing insurance over the life of an employee or of an employee's property is also exempt if the insurance is required in connection with security for a loan or other liability that is directly related to the employer's business.

Organised transport

Costs incurred by an employer for providing organised transport to his employees in general or to a category of employees are not regarded as a fringe benefit. Organised transport means transport in a vehicle with a seating capacity of 10 or more persons from defined pick-up points to the place of work and back.

Gifts

It has already been stated that pure gifts are not taxable. However, the fact that a particular benefit is termed as "gift" or "ex gratia" is not enough to exempt it from tax. Any cash or asset given by an employer to an employee is presumed to be a benefit by reason of employment or office unless it is proved to be a pure donation or unless it is expressly exempt.

It is common practice for employers to give employees gifts at Christmas time or other festive seasons or similar events. The rules exempt this type of gift as long as it is of moderate value. If the total value of gifts given to any particular employee in any year exceeds €120, or such other amount as may be approved by the Commissioner, the gifts will be treated as a fringe benefit.

The cost of an annual Christmas party or similar function, such as an annual dinner dance, which is open to staff generally will not be considered by the Commissioner to constitute a taxable fringe benefit.

Insurance policies and health related costs

Rule 39 exempts the following costs:

- The cost of an insurance policy for employees to cover costs of medical treatment, or to provide for payment in the case of injury or death on duty. In the case of company directors, the exemption applies as long as the benefit is granted under a scheme that is available generally to the company's employees. Where the cost of providing insurance is not the same for all beneficiaries, the amount that is covered by the exemption in any particular case is limited to a maximum of three times the cost of providing insurance to any other beneficiary under the scheme in question.
- The cost of a medical examination, test or screening that an employee may be required to undergo in order to take a new employment or a new post or to gain entry to a superannuation fund.
- The cost of medical care, medicine and other medical treatment that is provided as a prevention against injury or illness related to an employment as part of a programme available generally to employees exposed to the same work-related health risks.
- The cost of individual or group counselling relating to safe work practices, health, fitness, stress management or drug or alcohol abuse that is provided as part of a programme available generally to employees exposed to the same work-related health risks.

Telephones and computers

Payments or reimbursements made for fixed or mobile telephones and for internet services are not regarded as fringe benefits as long as the relative receipts are produced to the employer. The use of a telephone or mobile set or a fax machine, or a computer or related equipment provided by an employer and used by the employee for the purpose of the business of the employer is also exempt.

Recreational or child minding facilities

The provision of recreational facilities on the employer's business premises is exempt.

The cost of providing childcare facilities for the benefit of employees is not taxable provided that the beneficiary does not claim the deduction provided for by article 14C of the Income Tax Act.

Uniforms and safety clothing

The cost of uniforms and safety clothing that an employee is under obligation to wear in terms of his contract of employment or of any law does not constitute a fringe benefit.

Long service awards

Long service awards granted in recognition of 15 years or a longer period of service are exempt up to a maximum of €120 per year of service provided thatt no similar award has been made to the same employuee within the previous 10 years.

Suggestion scheme awards

Awards under suggestion schemes available to employees are exempt where the following conditions are satisfied:

- there is a formally constituted scheme under which suggestions are made, and it is open to all employees (or all employees within specified grades) on equal terms;
- the suggestion for which the award is made is outside the scope of the employee's normal duties;
- the award is of a reasonable amount;
- the beneficiary is not a director.

Appendix A: Forms

FS3, FS5 and FS7 documents – Forms are available on the CfR website

In the item C3 in the monthly form FS5 (Gross Emoluments part) one has to report the total value of fringe benefits of all categories less any non-taxable car cash allowance.

At the end of the year, the value of benefits under each category is to be reported separately in the form FS3 in the items C5, C6 and C7. A car cash allowance has to be reported in full in box C5, and the allowable deduction against it (if applicable) is to be reported in box C8. The total of boxes C5, C6 and C7 (excluding Share Options) less the amount shown in C8 has to be shown in box C3. In the box C3a one has to report the Share Options fringe benefits that were taxed at 15%.

In the FS7 form the amount of box C3 should agree with the total of box C3 in all FS3s submitted.

The forms FB1 and FB2 – Forms are available on the CfR website

Form FB1 is a template history sheet for each type of Fringe Benefit paid to a director, a shareholder, employee etc. Employers must retain the information detailed on this form for each individual who receives a fringe benefit (except for a Car Cash Allowance). The use of this form is not mandatory, however, the information shown on the form must be retained by all employers and be readily available to the Office of the Commissioner for Revenue whenever required.

Form FB2 is an application form which an employer has to submit to the CfR where he requests a reduction of the Personal Use rate to 20% in the case of vehicles heavily used for point-to-point service or delivery.