

HR & Tax Alert



Quality In Everything We Do

UK: Changes to tax treatment of the Blackberry and similar hand-held devices

April 2006

Executive summary

Blackberrys and other similar devices such as smart phones that can be used, not only as a mobile telephones, but to check emails, deal with attachments, track appointments etc have been exempt under the mobile telephones exemption (S319 ITEPA 2003) since its introduction in 1999.

As these devices have developed and the additional features grown they have become, in the Revenue's view, more like small computers with a phone capability and from 6 April 2006 a tax charge may arise on these devices if they are supplied by an employer after 6 April and used for personal purposes.

Background

A mobile telephone is currently defined within the tax legislation as:

"telephone apparatus" means wireless telegraphy apparatus designed or adapted for the purpose of transmitting and receiving spoken messages and connected to a public telecommunication system (as defined in section 9(1) of the Telecommunications Act 1984 (c 12))...

As such, the Blackberry and similar devices meet this definition and are therefore considered mobile phones for the purposes of the personal use exemption. However, from 6 April 2006 the following definition will apply (assuming that the Finance Bill is passed without amendment):

"telephone apparatus" means wireless telegraphy apparatus designed or adapted for the primary purpose of transmitting and receiving spoken messages and used in connection with a public electronic communications service."

The key difference is that the new draft legislation refers to a **primary** purpose. As a result, HMRC have suggested that they will seek to exclude from this mobile phone exemption devices such as the Blackberry and smart phones due to their mobile phone functionality not being their primary purpose. No guidance has been given by HMRC to employers about how to determine whether a device's primary purpose is a mobile phone or whether the phone capability should be considered a secondary feature.

Next steps

Employers should consider the implications of this new tax charge across their workforce. If the Blackberry is used only for business use, and this is controlled and monitored with policies in place to prohibit private use, then a separate exemption may apply (s316 ITEPA 2003). Where private use continues, companies have a number of options open to them. Ernst & Young can work with employers to determine the best solution to meet their business needs.

Ernst & Young are currently working with HMRC to clarify their interpretation of "primary purpose" and how employers can determine this on a practical level.

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