

# 480(2013)

# Expenses and benefits

A tax guide

This guide sets out HM Revenue & Customs (HMRC) approach in applying legislation on employee travel. The guide itself has no binding force in law and does not affect any right of appeal by either party.

## 480

This booklet explains the tax law relating to expenses payments and benefits received by:

- directors, and
- employees earning at a rate of £8,500 or more a year.

It also explains the tax law relating to the valuation of non-cash benefits received by any taxpayer:

- on or after 6 April 1998 in connection with termination of employment, or
- from an employed-financed retirement benefits scheme.

For information on these non-cash benefits, read **Chapter 27** before you look at any other section of the booklet.

This booklet is based on the law in force at 6 April 2012. It has no binding force and does not affect your rights of appeal.

Certain specific aspects of the law affecting securities/share schemes apply from dates later than 6 April 2007. Please see the website address shown at Chapter 23.13 for more details.

References to the relevant legislation are shown at the side of each paragraph. If you are in doubt, consult the wording of the statute at [www.legislation.gov.uk](http://www.legislation.gov.uk)

New or revised material is indicated by a green line in the margin.

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# Chapter 1 Legal background

## 1.1

Under general tax law some, but not all, expenses payments and benefits are taxable remuneration. Since 1948 the Income Tax law has also contained special rules affecting most directors and employees. The broad effect of these special rules was that expenses payments made to them and benefits provided for them became taxable.

## 1.2

The Finance Act 1976 and subsequent Finance Acts have extended these special rules to a greater number of individuals and provided new arrangements for taxing a variety of benefits provided for directors and certain employees (for example, motor cars, loans and vans).

## 1.3

This booklet describes the scope of the legislation and the effect of the changes resulting from the Finance Act 1976 and subsequent Finance Acts. Most of the relevant provisions are now in Part 3 Chapters 2-11 Income Tax (Earnings and Pensions) Act 2003 (ITEPA 2003).

Unless otherwise stated the statutory references in this booklet are to ITEPA 2003. The full meanings of other abbreviations which also appear in the booklet are:

CAA 2001 Capital Allowances Act 2001

ESC Extra-statutory concession – followed by its letter and number

FA Finance Act – followed by year in which enacted

ICTA 1988 Income and Corporation Taxes Act 1988

ITTOIA 2005 Income Tax (Trading and Other Income) Act 2005

SI Statutory Instrument - followed by its number and the year in which it was made

TMA 1970 Taxes Management Act 1970.

## Enquiries

### 1.4

Enquiries by taxpayers (or their agents) about the application of the provisions of ITEPA 2003 to their particular circumstances should be made to the HMRC office dealing with their tax affairs.

## The benefits code

### 1.5

In ITEPA 2003 Income Tax is chargeable on employment income that includes:

- earnings – salary, wages, fees and other emoluments
- amounts treated as earnings – including the benefits code
- amounts which are not earnings but count as employment income (see Chapters 23 and 27 of this booklet).

*Sections 1(1), 62(1),  
7(5) and (6)*

*Sections 63(1)  
and (2)*

The benefits code concerns expenses payments to, and benefits provided for, directors and employees, subject to limitations for:

- certain directors (paragraph 1.10), and
- where the employment is an **excluded employment** (see paragraph 1.19).

## Deductible expenses

*Sections 336-338*

### 1.6

Directors or employees affected by these provisions will not necessarily have to pay tax on the full amount or value of expenses payments or benefits provided. They may be entitled to a deduction for certain expenses. Further information on this is given in Chapters 7-10 and Chapter 20.

## Who is affected?

*Section 63(1)*

*Section 67(1)*

*Section 216(3)*

### 1.7

The benefits code applies to:

- (a) directors and certain other persons in controlling positions whatever their remuneration, but not to certain full-time working directors and certain directors of charities and non-profit making concerns, and
- (b) employees, including the directors excluded under (a) above, who are remunerated at the rate of £8,500 or more a year including all expenses payments and benefits before the deduction of any allowable expenses other than:
  - contributions to an approved superannuation fund in respect of which the individual is entitled to tax relief as an expense
  - exempt profit-related pay
  - contributions under an approved payroll giving scheme.

Certain motoring expenses are disregarded for purposes of assessing the car and car fuel benefits described in Chapters 11 to 13. But all these motoring expenses, in addition to the car and fuel benefit charges mentioned in Chapters 11 to 13, must be taken into account for the purposes of the £8,500 test (see paragraph 11.14).

### 1.8

In the remainder of this booklet, unless otherwise indicated the word employee should be read as referring to directors and employees, other than those in an excluded employment (see paragraph 1.19).

## Directors

*Sections 67(1)  
and 67(2)*

### 1.9

The word **director** includes directors of companies and any person in accordance with whose instructions the directors are accustomed to act (other than a person who is merely a professional adviser). The word **company** includes an unincorporated association.

*Section 832*

*Section 216(3)*

The word director also includes a member of the committee which manages such an association and any member of a body whose affairs are managed by its members. But certain directors of charities or non-profit making concerns are excluded from the special rules as are certain full-time working directors - see paragraph 1.10 to 1.16.

## Exclusion of certain directors from the special rules

Section 67(3)

### 1.10

A full-time working director is defined as a **director who is required to devote substantially the whole of his or her time to the service of the company in a managerial or technical capacity.**

Sections 66(3)  
and 66(4)  
Sections 68(1)

### 1.11

A full-time working director whose rate of remuneration including all expenses payments and benefits has not exceeded, or does not exceed £8,500 a year and who, either as an individual or together with associates and relatives, does not own or control a **material interest** (*broadly more than 5% of the ordinary share capital*) in the company is excluded from the scope of the legislation.

Section 216(3)

### 1.12

Certain directors of charities or non-profit making concerns are also excluded from the special rules. To be excluded, such a director:

- must not own or control directly or indirectly a material interest (see paragraph 1.11) in the company employing him or her, and
- must not be remunerated at a rate of £8,500 or more a year including all expenses payments and benefits before deducting any allowable expenses, and
- must be either
  - a full-time working director as described in paragraph 1.10, or
  - a director of a charity or a non-profit making concern.

### 1.13

Even where the director satisfies the above conditions he or she will remain within the scope of the special rules if any of his or her employments with the same employer or with an associated employer is not an excluded employment.

## Meaning of charity

Section 505

### 1.14

The word charity as used above means a body **established for charitable purposes only**. A body or concern which has been granted charitable exemption for tax purposes by HMRC Executive Committee will be treated as a charity.

## Non-profit making companies

Section 216(3)

### 1.15

A **non-profit making company** is one which does not carry on a trade and whose functions do not consist wholly or mainly in the holding of investments or other property. The mere fact that the concern involved does not make a profit does not make it a non-profit making concern for the purposes of the legislation.

## General effect of the exclusions

### 1.16

The general effect of the exclusions is that they remove from the special rules:

- full-time working directors of any concerns
- members of committees who are treated as directors of unincorporated bodies or non-profit making concerns
- directors of charities,

provided that

- the individuals are not remunerated at a rate of £8,500 a year or more calculated in accordance with paragraph 1.7(b), **and**
- they do not hold a material interest in the body or concern employing them.

This paragraph should be read subject to the reservation in paragraph 1.13 above.

## Employees

### Section 201(2)

### 1.17

The special provisions apply to an employee if, for the appropriate tax year, the remuneration together with all expenses payments made to him or her and benefits provided for him or her amounts in all to £8,500 or more a year before deducting any expenses allowable for Income Tax. The special rules also apply to any of the full-time working directors or directors of charities or non-profit making concerns excluded under paragraphs 1.11 to 1.16 whose rate of remuneration is similarly £8,500 or more a year.

### Section 220

### 1.18

In this connection, all employments held by an individual under the same employer are treated as a single employment for the purposes of the £8,500 remuneration limit. Similarly, where an individual holds a number of employments with interconnected companies, these employments are regarded as if they were one employment for the purpose of deciding whether the individual is paid at a rate of £8,500 or more. And if any of the individual's employments with the same employer or with an associated employer is not an excluded employment, the individual will be within the scope of the special rules in respect of all those employments.

## Exclusion of certain employees from the special rules

### Section 63(4)

### Section 216(1)

### Section 63(2)

### 1.19

If an employee's remuneration does not amount to £8,500 or more a year, the employment is a lower paid employment. In this context the term employee does not apply to a director (paragraph 1.8). A lower paid employment is an excluded employment to which the special rules in the benefits code do not apply, with the exception of the provision of living accommodation and vouchers or credit-tokens.

## Meaning of employment

### Section 66(3)

### 1.20

The word employment as used in this booklet means any office or employment whose earnings are chargeable as employment income.

## Meaning of remuneration

### 1.21

For simplicity, the word **remuneration** has been generally used in this booklet in place of the word **earnings** in ITEPA 2003 and means any kind of pay for a job. It includes salaries, fees, pay, wages, overtime pay, leave pay, bonus, commission, perquisites, tips, gratuities, benefits in kind and expenses payments and allowances.

## Benefits provided for the family or household of an employee

### 1.22

Subject to minor exceptions any benefit provided for the members of the family or household of an employee ranks as if it were provided for the employee personally. The term family or household covers the employee's:

- spouse
- children and their spouses
- parents
- servants, dependants and guests
- registered civil partner.

Where benefits are provided in connection with loans and share incentive schemes there are different definitions of the family circle. For beneficial loan arrangements see paragraph 17.10.

## Provision of benefits by employer

### 1.23

Where expenses payments are made to, or benefits are provided for, an employee or members of the employee's family or household by the employer they are deemed to have been made or provided by reason of that employment - they are regarded as part of the reward for the job.

### 1.24

There is one statutory exception to this – where the employer is an individual and a benefit provided by the employer has been made in the normal course of domestic, family or personal relationships. In addition, paragraph 11.10 gives details of certain exemptions which apply where a company provides cars for two or more members of the same family.

## Provision of benefits by someone other than the employer

### 1.25

Benefits provided for employees (or members of their families or households) by reason of their employment by someone other than their employer are taxable in the same way as if they had been provided by their employer.

### 1.26

Finance Act 2011 introduced new rules in Part 7A ITEPA 2003, which apply in certain circumstances where there are arrangements to use third parties to reward employees. These rules are sometimes referred to as the 'disguised remuneration' regime. Broadly speaking, if third party arrangements are used to provide for what is in substance a reward or recognition, or a loan, in connection with the employee's current, former or future employment, then an Income Tax charge arises and the amount concerned will count as employment income.

*Section 201(1)*  
*Section 721(5)*  
*Section 174(6)*  
*Section 839*

*Sections 201(3)*  
*and 117*

*Section 201(3)*  
*- proviso*

*Section 201(2)*  
*Section 209*

*Section 554A*



Sections 554A,  
554B, 554C  
and 554D

### 1.27

The rules only apply where a defined step is taken through a ‘relevant third person’.

Section 554A

### 1.28

The direct employer is not a ‘relevant third person’ unless it is acting as a trustee.

Section 554A

### 1.29

A company that is a member of the same group of companies as the employing company at the time the step is taken is **not** a ‘relevant third person’ unless:

- the step is taken as part of a tax avoidance arrangement, or
- the group company is acting as a trustee.

Sections 554Z(5)  
and (6)

### 1.30

In determining whether two companies are members of the same group for this purpose, a special test is used. This test applies the group membership rules for Corporation Tax on chargeable gains with one modification. The chargeable gains test is a 75% test. For the purposes of the group exception, use 51% instead of 75%. But otherwise the test works the same way.

Sections 554E  
to 554X inclusive

### 1.31

The rules in Part 7A ITEPA contain detailed exclusions. These prevent the legislation from catching certain arrangements, even where there is a ‘relevant third person’ involved. Generally the exclusions are targeted at arrangements which are not tax avoidance arrangements. The exclusions are subject to conditions and cover topics such as employee share and share option schemes, employee car ownership schemes, certain pension schemes and transactions under employee benefit packages.

### 1.32

For more information on the new rules, please refer to the CWG2(2012), Chapter 5, paragraphs 166 to 167 titled *Employment income provided through third parties* (‘Disguised Remuneration’ rules).

## Close companies – treatment of benefits

Sections 1064(1), (2)  
and (4) CTA 2010

### 1.33

A benefit which falls within the special provisions described in this booklet is excluded from the extended definition of **distribution** for **close companies** which normally includes benefits in kind afforded to a participator or to an associate of a participator.

Part 9, Chapter 2  
CTA 2010

### 1.34

Broadly speaking, a **close company** is one under the control of five or fewer participators and their associates or of directors who are participators and their associates. There are special definitions for this purpose of **control**, **participator** and **associate**.

There are exceptions, for example, a company whose shares are quoted on the Stock Exchange is not normally close if 35% or more of its shares are held by the general public.

# Chapter 2 Dispersations - Notice of nil liability

## Section 65

### 2.1

To avoid the submission of details of routine expenses payments and benefits that would clearly involve no extra tax liability the legislation provides for **dispensations**. If the employer satisfies an Officer of HMRC that all the expenses he or she pays and benefits he or she provides would be fully covered by an expenses deduction the Officer may give a 'dispensation'. That is to say, the Officer may notify the employer that the special provisions will not apply to those payments or benefits so long as the circumstances remain the same.

### 2.2

There is a statutory tax exemption for Mileage Allowance Payments, below a certain amount, to employees. Consequently such payments cannot be included in a dispensation. Mileage Allowance Payments in excess of the exempt amount are taxable (see Chapter 16).

Nor are dispensations given for 'round sum' expense allowances. The Officer of HMRC will not give a dispensation if the effect would be to remove from the scope of the special rules an employee who would otherwise be within its terms.

### 2.3

Where a dispensation is given, the Pay As You Earn scheme does not apply to the payments or benefits concerned. The employer need not show the particular payments or benefits on the annual return he or she makes to HMRC (see Chapter 24), nor need the employee show them in his or her tax return.

### 2.4

More information on dispensations can be found on the HMRC website at [www.hmrc.gov.uk/paye/exb/schemes/dispensation.htm](http://www.hmrc.gov.uk/paye/exb/schemes/dispensation.htm) where you will find an online or downloadable application form P11DX.

You can also obtain an application form at any HMRC Enquiry Centre where you may also be able to access the HMRC website.

### 2.5

Dispensations are reviewed from time to time. The Officer can revoke a dispensation previously given. If the Officer does so the special provisions will apply to the payments or benefits concerned.

# Chapter 3 Tax treatment of expenses payments

## Section 70(1)

### 3.1

The provisions of the benefits code ensure that expenses payments made to an employee by reason of his or her employment will normally rank as remuneration of the employee to whom they are paid unless they are already taxable or are covered by a dispensation. For exceptions to this see Chapter 5.

### 3.2

Expenses payments include:

- advance payments on account of expenses and reimbursements of expenses incurred, including all kinds of travelling and entertaining expenses
  - for reimbursed motoring expenses see paragraph 11.13 and 11.14
- allowances related to specific expenses; for example, based on mileage or to meet subsistence whether calculated by reference to a fixed scale or otherwise
- round sum allowances for entertaining and other expenses
- amounts put at the disposal of the employee in respect of expenses and paid away by the employee
- expenses paid by the employee by means of a credit card in the employer's name
  - unless the card you have provided was used to make a business purchase, an employee has your prior authority for the purchase and when making the purchase an employee makes it clear that they are acting on behalf of your business.

## Section 70(2)

## Section 90(1)

For a purchase to be clearly on your business's behalf the following must apply:

- your employee must explain in advance that the purchase is on your behalf
- the supplier must accept that the purchase is on your behalf.

### 3.3

Further information about travelling and subsistence, cars, and entertainment, is given in Chapters 8-16 and 20.

# Chapter 4 Taxable benefits and facilities

## 4.1

*Section 201(1)*  
*Section 114(1)*  
*Section 174(1)*

Where the special provisions for an employment other than an excluded employment (paragraph 1.19) apply, all benefits provided count as remuneration of the employee for whom (or for whose family or household) they are provided.

### Particular benefits to which special taxing rules apply

*192, 211 and 223*  
*Sections 114, 149,*  
*174.*

## 4.2

Certain benefits such as cars and vans available for private use, loans, certain arrangements in connection with share incentive schemes, scholarships and tax not deducted from remuneration paid to directors are, however, taxed in accordance with special rules. There are also special rules for certain arrangements for providing employment income through third parties. See paragraph 1.26.

*Section 554A*

### Types of taxable benefits

*Section 201(2)*  
*Sections 97,*  
*201(2) and 315*  
*Section 205*

## 4.3

Benefits and facilities include:

*Section 149*

*Section 62,*  
*Sections 206(2)*  
*and (3)*  
*Sections 62 and 90*

*Section 223*

*Section 211*

*Section 201(2)*

- the provision of living or other accommodation, including light, heat, rates and domestic or other services (see Chapter 21)
- the use of any asset provided by the employer or another person acting on the employer's behalf, for example, the use of a motorcycle, an aircraft or yacht, or of furniture or a TV set. The way in which the benefit from the use of such an asset is valued is described in paragraph 6.7 except for cars which are considered in Chapters 11-13, vans which are considered in Chapter 14 and mobile phones which are considered in Chapter 22
- the provision of fuel for private motoring in a provided car (see Chapter 13)
- gifts of assets to the employee, or the sale to the employee of assets at less than their market value (this applies not only to assets such as a car or a house, but also to goods such as clothes, TV sets, wines or groceries)
- any expenses or liabilities incurred by the employee and paid direct by the employer, for example, hotel or restaurant bills, whether paid direct or through a credit card company
- Income Tax not deducted from remuneration paid to a director, but paid to HMRC by the employer and not reimbursed by the director (see Chapter 19)
- scholarships awarded to students by reason of their parents' employment (see Chapter 18)
- any other benefits or facilities of any kind, for example,
  - hotel accommodation and restaurant facilities arranged by the employer, holidays, childcare (but see Chapter 5 and Appendix 11 regarding the exemption of some forms of childcare)
  - shooting, fishing and other sporting facilities (but see Chapter 5 regarding the exemption of some sporting facilities)
  - work carried out at the employee's residence.

Further information on expenses and benefits and their tax treatment can be found on the HMRC website at [www.hmrc.gov.uk/payee/exb/a-z/a/index.htm](http://www.hmrc.gov.uk/payee/exb/a-z/a/index.htm)

## **PAYE Settlement Agreement (PSA)**

### **4.4**

A PSA is a flexible scheme an employer can use to settle any Pay As You Earn (PAYE) tax and National Insurance contributions (NICs) due to HMRC on three types of expense and benefit:

- minor items
- irregular items
- items it is impractical to operate PAYE on or to value for P9D/P11D purposes.

Under such a scheme an employer would settle the tax and NICs due on the items covered by a PSA with a single payment that includes both:

- the tax due on the expenses and benefits covered by the PSA – note that this tax would normally be payable by an employee (usually through their tax code), and that the tax the employer pays must be ‘grossed up’ taking account of the tax rates payable by the employees covered by the PSA
- Class 1B NICs, calculated not just on the value of the items covered by the PSA but also on the tax paid under the PSA – this is because paying an employee’s tax liability counts as providing them with a further benefit.

For more information go to [www.hmrc.gov.uk/paye/exb/schemes/PSA.htm](http://www.hmrc.gov.uk/paye/exb/schemes/PSA.htm)

## **Extension of Class 1A National Insurance Contributions (NICs)**

### **4.5**

Employers are required to pay Class 1A NICs on most benefits. See the P11D Guide and leaflet CWG5 for more information.

# Chapter 5 Non-taxable payments and benefits

The following expenses payments and benefits are not normally taxable under the provisions described in this booklet.

*Sections 264 and 266(3)*

## **Annual parties or similar functions**

Annual parties at Christmas or alternative functions of a similar nature, such as an annual dinner dance, which are open to staff generally and which cost no more than £150 per head to provide. Where there is more than one annual function and their total cost per head exceeds £150, only the functions that total £150 or less will not be taxed.

Please note that the figure of £150 quoted is not an annual allowance and the criteria set out at section 264 ITEPA 2003 must be satisfied to meet the exemption.

*Section 326*

## **Cost of purchasing assets from employees**

Costs which an employer incurs like any other buyer, in connection with the purchase of an asset from an employee.

*Section 210  
S.I.No 1596 2002*

## **Equipment provided for disabled employees**

Employees with a disability are not taxable on the benefit of the private use of equipment or services provided by their employer to enable them to take up or to continue work (for example, a wheelchair or hearing aid).

Equipment provided solely to carry out the duties of employment are exempt under the office accommodation, supplies and services exemption (see above) but where equipment is also used outside work so that private use is significant that exemption does not apply. This exemption ensures that no taxable benefit arises in these circumstances.

*Section 326A*

## **Fees relating to monitoring schemes relating to vulnerable persons**

With effect from 6 April 2010, there is no liability to Income Tax where an employer pays direct for, or reimburses an employee for, a fee for an application to join the Protection of Vulnerable Groups (Scotland) monitoring scheme.

*265, 266(1) and 267(2)*

## **Goodwill gifts**

The provision of goodwill entertainment for an employee, or for a member of the employee's family or household, provided that:

- the person providing the entertainment is neither the employer, nor a person connected with the employer
- neither the employer nor a person connected with the employer has directly or indirectly procured the provision of the entertainment, and
- the entertainment is not provided either in recognition of particular services which the employee has performed in the course of the employment or in anticipation of particular services which are to be performed by the employee in the course of the employment.

This exemption applies only when the cost of the entertainment is assessable under Section 73 (vouchers), Section 90 (credit tokens) or Section 201 (benefits in kind). It does not extend to liability under Section 62 or Section 70.

*Sections 270 and 324*

Certain gifts received by an employee if all the following conditions are satisfied:

- the gift consists of goods or a voucher or token only capable of being used to obtain goods
- the person making the gift is not the employer or a person connected with the employer
- the gift is not made either in recognition of the performance of particular services in the course of the employment or in anticipation of particular services which are to be performed
- the gift has not been directly or indirectly procured by the employer or by a person connected with the employer
- the gift cost the donor £250 or less, and
- the total cost of all gifts made by the same donor to the employee, or to members of the employee's family or household, during the Income Tax year is £250 or less.

**Health-screening and medical check-ups**

*Section 320B*

A maximum of one health-screening assessment and one medical check-up in any year.

- 'Health-screening assessment' means an assessment to identify employees who might be at particular risk of ill-health.
- 'Medical check-up' means a physical examination of the employee by a health professional for (and only for) determining the employee's state of health.

**Job-related living accommodation**

*Sections 99(1), (2) and 100*

The provision of living accommodation in certain circumstances, see paragraphs 21.2 and 21.4.

**Late night taxis**

*Section 248*

Where an employee is provided with a taxi paid for by his employer for a journey from work to home, this represents a benefit unless:

- the four late night working conditions are satisfied, and
- the number of journeys is no more than 60 a year.

Consequently an employee provided with a taxi from work to home once a week (52 times in a year) does not qualify for this exemption unless all the late night working conditions are satisfied, even though they have been provided with a taxi on fewer than 60 occasions in the year.

The late night conditions that must be satisfied are:

- 1) the employee is required to work later than usual and until at least 9.00pm
- 2) such late night working occurs irregularly, and
- 3) by the time the employee stops work, either public transport has ceased or it would not be reasonable to expect the employee to use it, and
- 4) the transport provided is by taxi or equivalent road transport.

In most cases it is clear whether an employee who works until at least 9.00pm also works later than usual. For example, most restaurant or public house employees usually work later than 9.00pm and consequently when doing so they do not work later than usual. They cannot therefore satisfy the first condition. Something is 'usual' if it conforms to a common or ordinary pattern. The first condition is intended to apply when someone is required, on occasion, to work later than usual and until at least 9.00pm.



If someone works later than usual and until later than 9.00pm this must be irregular. Irregular means not following a regular or established pattern. An employee who works later than usual and until at least 9.00pm every Friday, or on the last Friday of each month, is not working later than usual irregularly. Even if an employee works later than usual and until 9.00pm on one day each week, but on no particular day, this is not irregular.

It is a matter of fact whether public transport is still available. If an employee's journey home requires taking two or more forms of public transport and one of those has stopped by the time of the journey home, the third condition is satisfied for the whole journey. An employer may consider various factors when deciding whether it is reasonable to expect an employee to use public transport but because the journey frequency is reduced and/or must be completed in the dark, or the employee has had a long day and is tired, or has a heavy case to carry, or is travelling to an unmanned station, are not in isolation sufficient reasons to satisfy the second part of the third late night working condition. The extent to which a journey from work to home after 9.00pm on public transport is significantly different from a journey earlier in the day, so that it is reasonable for an employer not to expect an employee to undertake that journey, depends on the facts in each case.

### *Section 323*

#### **Long service and suggestion scheme awards**

Long service awards made to directors and employees as testimonials to mark long service, which take the form of tangible articles of reasonable cost, or of shares in an employing company (or another company in the same group) when the relevant period of service is not less than 20 years and no similar award has been made to the recipient within the previous 10 years. An article may be taken to be of reasonable cost where the cost to the employer does not exceed £50 per year of service.

### *Section 321*

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

- (a) the employer has established a scheme under which suggestions are made; the scheme is open on the same terms to all the employees, or to a particular class or description of them
- (b) the suggestion for which the award is made relates to the activities carried on by the employer
- (c) the suggestion is outside the scope of the employee's normal duties. The test is whether, taking account of his or her experience, the employee could not reasonably have been expected to put forward such a suggestion as part of the duties of the post
- (d) the suggestion is not made at a meeting held for the purpose of proposing suggestions
- (e) awards other than encouragement awards (see (i) on page 17) are only made following a decision to implement the suggestion, and are made directly to the employee or employees concerned
- (f) the decision to make an award other than an encouragement award is based on the degree of improvement in efficiency and/or effectiveness likely to be achieved, measured by reference to the prospective financial benefits and the period over which they would accrue, and the importance of the subject matter having regard to the nature of the employer's business



- (g) the amount of an award does not exceed:
  - 50% of the expected net financial benefit during the first year of implementation, or
  - 10% of the expected net financial benefit over a period of up to five years subject to an overriding maximum of £5,000. Where an award exceeds £5,000, the excess is not covered by this exemption
- (h) where an award is made jointly to two or more employees, the amount exempted at (g) above is divided between them in proportion to the amount paid to each
- (i) any encouragement award is of £25 or less. An encouragement award is one which is made in respect of a suggestion which has some intrinsic merit and/or reflects meritorious effort on the part of the employee in making the suggestion.

### **Meals and food vouchers**

*Section 317 as amended by section 60 FA 2010*

Section 317 as Free or subsidised meals provided on the employer's business premises, or in any canteen amended by section where meals are provided for the staff generally, or a ticket or token used to obtain such meals, if the meals are provided on a reasonable scale, and **either** all employees may obtain free or subsidised meals on a reasonable scale, whether on the employer's premises or elsewhere, or the employer provides free or subsidised meal vouchers for staff for whom meals are not provided.

This exemption does not apply in the case of a hotel, catering or similar business, to free or subsidised meals provided for its employees in a restaurant or dining room at a time when meals are being served to the public, unless part of it is designated as being for the use of staff only.

Nor does the exemption apply where free or subsidised meals are provided as part of salary sacrifice or flexible remuneration arrangements.

*Section 89*

Meal vouchers issued to employees provided that the vouchers are non-transferable, are used for meals only and the value of vouchers issued to employees does not exceed 15pence for each working day. Where any restriction is placed on their issue to employees they must be available to lower-paid staff. Where the value of the vouchers exceeds 15pence for each working day, the excess is taxed. The value of any voucher that does not comply with the above conditions is taxed in full. This does not apply for luncheon vouchers provided on or after 6 April 2013.

*Section 325*

### **Medical treatment abroad**

The cost of necessary medical treatment abroad borne by the employer, or borne by the employee and reimbursed by the employer, where an employee becomes ill or suffers injury while away from the UK in the performance of his or her duties, and of providing insurance for the employee against the cost of such treatment.

*Section 319*

### **Mobile phones**

The provision of one mobile phone provided by an employer to an employee (but not if provided to a family or household member) including any line rental and calls for that phone paid directly by an employer, unless any of these can be converted into money by the employee. Money an employer pays to an employee to use their own mobile phone is taxable.

See Chapter 22 for details.

## Section 316

### Office accommodation, supplies or services

Accommodation, supplies or services (for example, office services and equipment, and consumables) used by the employee in performing his or her duties, where the following conditions are satisfied:

- if the benefit is provided on or in the employer's premises the only condition is that any use of the benefit for private purposes by the employee is not significant
- if the benefit is provided elsewhere
  - the employer's sole purpose in providing it must be to enable the employee to perform the duties of his or her employment, and
  - any use of the benefit for private purposes by the employee is not significant, and
  - that the benefit is neither the provision of a motor vehicle, boat or aircraft, nor involves the extension, conversion or alteration of living accommodation or a building on land adjacent to it, or the construction of a building on such land.

## Sections 237, 261(1) and 267(2)

### Parking spaces

The provision of a car or motorcycle parking space, or facilities for parking bicycles at or near the employer's place of work.

## Section 316A

### Payments towards additional household costs incurred by employees who work at home

From 6 April 2003, the Income Tax charge that would previously have arisen when an employer contributes to the additional household costs incurred by employees who work from home, has been abolished.

Where an employee works regularly at home, under agreed flexible working arrangements, an employer may now pay up to £3 per week (£156 per year) (with effect from 6 April 2008) without supporting evidence of the cost.

If the employer pays more, then they must either:

- retain supporting evidence to show that the payment is wholly in respect of additional household expenses incurred by the employee in carrying out the duties at home, or
- seek an arrangement with their HMRC office whereby they can pay a higher amount without a need to retain supporting evidence.

## Section 307

### Pensions etc on retirement or death

Expenses incurred in the provision of any pension, annuity, lump sum, gratuity or similar benefit to be given to the employee or to any member of the employee's family or household on the employee's retirement or death. The cost of providing such benefits may in some circumstances be taxable under other provisions of ITEPA 2003.

### Purchases on employer's behalf

Businesses are often run in such a way that employees make payments on their employer's behalf. For example, an employee may buy stamps, stationery and items of equipment for the employer and be reimbursed the costs incurred from petty cash or by cheque. Such transactions are not providing the employee with either earnings or expenses because the employee has received no money of his own. Accordingly such reimbursements do not feature on the P11D.

## Removals expenses and benefits

Removal expenses borne or removal benefits provided by the employer may be exempt from tax and NICs. The exemption is due to employees who change residence as a result of starting a new job or as a result of a transfer within an employer's organisation.

Under the rules there is relief which exempts from tax the first £8,000 of removal expenses and benefits which qualify for the exemption. To qualify, removal expenses and benefits must fall within specific categories of expenses and benefits (see below), and the change of residence must satisfy a number of conditions.

The most important condition is that the employee must change his or her only or main residence as a result of:

- starting a new employment
- a change of the duties of the employment, or
- changing the place where the duties are usually performed.

It is not necessary for the employee to dispose of the old residence in order to qualify for relief. But there must be a change of his or her main residence. If a relocation is cancelled so that the employee does not in fact change the main residence, any expenses reimbursed or benefits provided in connection with the cancelled relocation will be taxable.

The new residence must be within reasonable daily travelling distance of the new normal place of work.

The old residence must not be within reasonable daily travelling distance of the new normal place of work.

In order to qualify for relief the removal expenses must normally be incurred or the benefits provided before the end of the year of assessment following the one in which the employee starts the new job. It does not matter when the employee moved to the new home.

Expenses and benefits which qualify for exemption can be grouped into six categories:

- disposal or intended disposal of old residence
- acquisition or intended acquisition of new residence
- transporting belongings
- travelling and subsistence
- domestic goods for the new residence
- bridging loans.

More details of these categories of exempt expenses and benefits can be found at Appendix 7.

Where the employee uses the services of a relocation management company the administration fees charged by the company are part of the costs to the employer of providing benefits for the employee.

To the extent that the benefits provided are qualifying removal benefits, the administration fee also qualifies for relief.

## Sections 311

### Re-training expenses and courses

Section 311 Costs met by an employer for an employee who is about to leave or has left within the previous year, to enable the employee to attend certain courses of re-training intended to help the employee get another job. If the employee has not left by the time the course starts, he or she must leave within two years after finishing it. The exemption is withdrawn if the employee is re-employed by the same employer in the two years following the end of the course and the employer is then required to advise HMRC within 60 days of this happening.

Exemption is only available if the employee has been in the employment of the employer for at least two years up to the time the course begins (or at the time the employment ceased) for courses:

- which are designed to teach or improve skills which will help the employee to find new work and are entirely devoted to those objectives
- which last no more than two years.

The opportunity to attend the course must have been given to all employees in a similar position. The expenses which are exempt are:

- fees for the course
- fees for examinations taken during or at the end of the course
- the cost of essential books
- the costs of travelling and subsistence to the extent that they exceed the costs normally incurred by the employee in travelling between home and normal place of work (or former place of work if the employee has left).

If, at the time the employee started the course, all the conditions were satisfied but the employee does not then leave the employment within two years after the end of the course or is re-engaged within that time, the employer must advise HMRC within 60 days and provide full details of the expenses not previously returned.

If, when the course started, it was clear or could have been established that all the conditions about the course and attendance would not be satisfied but the employer nevertheless did not make a return of the appropriate amounts to HMRC, he or she may be responsible for any tax due.

### Some travel between home and work

## Sections 248, 266(1) and 267(2)

Sections 248, The cost of transport (for up to 60 journeys in the year) which an employer provides to take an 266(1) and 267(2) employee home if either:

- the employee is occasionally required to work late (9.00pm or later) but those occasions are not regular, and
- by the time the employee can go home, either public transport between the employee's place of work and home has ceased, or it would not be reasonable in the circumstances for the employer to expect the employee to use it, or
- the employee normally travels to and from work in a car shared with other employees, and
- the employee cannot get home in the shared car because of unforeseen circumstances which could not reasonably have been anticipated.

See the section on late night taxis for more detail about the late working conditions (page 15).

*Section 242*

The benefit to employees of travel between home and work in a works bus provided that:

- the bus or minibus has a seating capacity of nine or more, and
- the service is available to all employees, and
- the main qualifying use of the service is travel by employees between home and their workplace or between workplaces, and
- substantially, the whole use of the service is by employees (and their children).

The benefit to employees of an employer subsidising a public transport bus service (or other public transport road service) used by employees for travelling wholly or partly between home and work or between workplaces provided that:

- the service is available to all employees, and
- is used for qualifying journeys (as defined for works buses).

The benefit of bicycles and/or cyclists' safety equipment (or vouchers to obtain these) lent to employees provided that:

- such bicycles and equipment are available generally to employees, and
- the employees' main use of the bicycles or equipment is for journeys between home and their workplace, or between workplaces.

*ESC A4*

Certain travelling expenses of unpaid directors of non-profit making companies and of directors holding office as part of a professional practice: see paragraphs 8.11 and 8.14 of booklet 490.

*Section 245*

Reasonable travelling and subsistence expenses reimbursed to or borne on behalf of employees where, owing to the dislocation of public transport by strikes or other industrial action, employees occupy hotel or other overnight accommodation at or near their permanent workplace, or incur extra costs in travelling to and from work.

*Section 246*

Assistance with the cost of travelling between home and work given to disabled persons. This exemption also applies to the car and car fuel scale charges in certain limited circumstances. See paragraphs 11.17 and 13.5.

*Section 305*

Travelling facilities provided between the mainland and offshore oil or gas rigs or platforms. And, where the timing of transport between the mainland and the rig make it necessary for employees to take overnight accommodation near the mainland departure point, subsistence expenses borne on behalf of, or reimbursed to, employees working on offshore oil or gas rigs or platforms.

**Sports facilities**

*Section 261*

Sports facilities generally available to the employer's employees and members of their families and households. This does not apply to facilities:

- available to the general public
- consisting of or provided in association with overnight or holiday accommodation
- provided on domestic premises, or
- consisting of mechanically propelled vehicles or vessels such as cars, motor-boats and aeroplanes.

### Trivial benefits

Strictly all benefits are subject to tax and NICs, unless there is a specific exemption. However, sensible practical administration of the tax system determines that benefits of a trivial nature (for example, a seasonal gift of a turkey or an ordinary bottle or two of wine) should not be charged as a benefit. Anything more lavish in quality or quantity remains chargeable.

There is no monetary limit to determine what is a trivial benefit. A cash benefit, or a benefit with money's worth, is never treated as a trivial benefit.

### Welfare counselling

The benefit of welfare counselling made available to all employees generally on similar terms is exempt from tax. For this purpose welfare counselling does not include:

- any medical treatment
- advice on finance or tax (other than debt counselling)
- advice on leisure or recreation
- legal advice.

### Work-related training expenses

There is a wide statutory exemption for payments or reimbursements, by employers or third parties, of expenditure on the provision of work-related training.

However, any payment or reimbursement of training costs which has as its purpose:

- an intention to reward the employee
- the provision to the employee of an employment inducement (for example, to take up a new job)
- enabling the employee to enjoy the facilities or benefits for entertainment or recreational purposes unconnected with 'work-related training' will **remain taxable**.

The rules provide for the following:

- expenditure which is incurred for a mixed purpose (part-reward, part-training) will need to be apportioned. Apportionment is not necessary just because an element of genuine training is enjoyable or recreational. For example, the incidental use of a hotel's swimming pool and leisure facilities during a residential course will not require apportionment
- exemption applies to both internal and external courses
- there is no territorial limitation on the location at which training is undertaken
- exemption extends to a range of training materials including audio/video tapes and compact/floppy disks
- exemption applies not only to the cost of providing qualifying training, but also extends to related costs, such as the cost of additional childcare and the travelling and subsistence costs of the trainee
- the definition of work-related training includes training which is linked to charitable and voluntary activities
- the exemption from tax is mirrored by a NIC exemption
- incidental overnight expenses can be paid tax-free to employees on training courses in the same way as such expenses can be paid tax-free when an employee is away on business
- generally, the exemption does not extend to the cost of providing the employee with, or with the use of, any asset once the training has ended. Exceptions are dealt with in Appendix 9.

*Section 210  
S.I.No 2080 2000*

*Section 250*

Further information and guidance about the exemption for work-related training is given in Appendix 9.

*Sections 270A,  
318 and 318A*

**Workplace nurseries and other employer-supported childcare**

Since 6 April 2005 new rules have applied to the provision of childcare benefits and childcare vouchers. Changes were made to employer-supported childcare in April 2011. See Appendix 11 for details.



# Chapter 6 Valuation of benefits

## General rule

*Sections 203(2)  
and 204*

### 6.1

The amount of a benefit which is treated as earnings from the employment is the cash equivalent value of the benefit. Apart from those benefits referred to in Chapters 11, 12, 13, 14, 17, 21, 22 and 23 the general rule is that the value for tax purposes of a benefit or facility provided for an employee or the employee's family or household is the expense incurred by the employer (or the provider of the benefit) in providing the benefit, less the amount made good by the employee to those providing the benefit.

### 6.2

If the benefit is shared with other people, the benefit to the employee is based on the cash equivalent value (the total cost minus any amount made good) of the benefit, apportioned as necessary if, for instance, the benefit is provided for use partly to the employee and partly to the employer. If a benefit is provided to the employee for both business and private purposes, no apportionment of the cash equivalent value is due. The full cash equivalent value represents the measure of the benefit provided to the employee for both private and business purposes, and this is the amount that must be returned on forms P11D and P11D(b). However, to determine the employment Income Tax liability for the benefit, the employee is entitled to seek a deduction under Sections 336-338 ITEPA (see paragraph 7.1) for expenses incurred for business use, to set against the cash equivalent value of the benefit.

*Section 365 ITEPA*

### 6.3

If the employee does not incur any expenses because the employer meets all the costs incurred for business purposes, but otherwise the employee would have incurred expenses for business use of the benefit, the employee is entitled to a deduction under Section 365 ITEPA, equivalent to the proportion that the business use of the benefit represented relative to its total use for business and private purposes. For example, if an asset provided as a benefit is used by an employee 40% for business use and 60% for private use, the cash equivalent value returned on form P11D/P11D(b) is for the full 100% use but for tax purposes the employee is entitled to a deduction under Section 365 equivalent to 40% of the cash equivalent value. Consequently, the tax liability will be based on 60% of the cash equivalent value, which represents the proportion of private use of the benefit.

*Exception -  
Section 62*

### 6.4

If the benefit consists of the transfer to the employee of any goods or assets which he or she is then able to sell for cash, the value of the benefit for tax purposes is the greater of:

- the second-hand value of the goods or assets in the employee's hands, or
- the expense incurred by the employer under paragraph 6.5 on page 25 (but see paragraph 6.9 on page 25).



## 6.5

Where the benefit consists of the employee being supplied with goods or services, the expense incurred by the employer should include the extra cost of:

- buying the goods or providing the services
- selecting and testing those goods or services
- storing, distributing and installing the goods or services
- servicing and other 'after sales' expenses.

*Section 328(1)*

## 6.6

Where any goods or services or any other benefit is supplied to the employee partly for private and partly for business use, the employee may be able to claim a deduction for the part of the cost that relates to business use, provided part or all of the expense would have been allowable under the expenses rule (see Chapter 7) had the employee met it.

### **Assets placed at disposal of employee**

*Section 205(2) and (3)*

## 6.7

The initial cost of an asset of the kind mentioned in paragraph 4.3 used by an employee is not treated as remuneration if the asset remains the property of the employer or of the person making it available for the use of the employee. In such a case the **annual value of the use of the asset** (or the rent or hire charge paid for it if this is greater) plus any current expenditure met by the employer or the person making the asset available, will count as remuneration of the employee. The **annual value** is taken as 20% of the market value of the asset when it was first used to provide a benefit.

Where an asset was first used to provide a benefit before 6 April 1980 the annual value is taken at 10% (not 20%) of its market value when first applied as a benefit. As indicated in paragraph 4.3 different rules apply to mobile phones, vans and cars.

### **Living accommodation**

*Sections 97 and 103*

## 6.8

As regards the provision of living accommodation for an employee and members of his or her family or household see Chapter 21.

### **Assets transferred to an employee**

*Section 206(2) and (3)*

## 6.9

The rules for assets transferred to employees are different depending on whether or not the asset has depreciated or been used.

### **Asset transferred to a director or employee or a member of his or her family or household before the asset has depreciated or been used**

The amount chargeable is:

- the greater of
  - the expense incurred by that person in connection with the provision of the asset, or
  - the second-hand value of the asset in the hands of the employee if it falls within the meaning of earnings in Section 62 ITEPA 2003

less

- any amount made good.

**Asset transferred to a director or employee or a member of his or her family or household after the asset has depreciated or been used**

Where an employee (or member of the employee's family or household) benefits from the transfer of an asset (other than a car, van, exempt bicycle or cyclist's safety equipment – see Chapter 5 – or living accommodation) at less than its market value, the benefit for tax purposes is the difference between the sum (if any) paid for the asset by the employee and so on and the higher of:

- the market value of the asset as at the date of transfer, or
- the market value of the asset when first applied as a benefit minus any sums already taken into account in taxing benefits derived from the use of that asset.

Where an asset not within the preceding paragraph (for example, a car, or something which had never been applied as a benefit) is similarly transferred and the asset has been used or has depreciated in value since its production or acquisition by the person transferring it, tax is charged on the market value of the asset at the time of transfer to the employee minus any amount paid for it by the employee.

# Chapter 7 Deductions for expenses

## *Sections 337 and 338* 7.1

An employee's remuneration for tax purposes is reduced by the cost of journeys:

- he or she has to make in the performance of the duties of the employment, or
- to a workplace he or she has to attend to carry out the duties of the employment, but not if the journey is ordinary commuting or private travel.

## *Section 336*

The employee is also entitled to a deduction for any other expenses which are incurred **wholly, exclusively and necessarily in the performance of the duties of the employment**, (but see Chapter 20 for an exception for some entertaining expenses).

## 7.2

No deduction is due for expenses which merely put employees in a position to perform the duties of their employment, other than for the cost of travel to a temporary workplace. For example, no deduction is due for the cost of buying ordinary work clothes.

## *Section 36, CAA 2001*

## 7.3

Where plant or machinery, such as a computer is necessarily provided by an employee, for use in the performance of the duties, he or she may be entitled to a deduction by way of capital allowances for depreciation related to its business use. No deduction is available if the employee's employer would have provided the plant or machinery necessary to do the job, but the employee chooses to provide it instead.

You can claim Annual Investment Allowances (AIA) on any purchase of equipment up to an annual amount of £50,000 in 2009–10, up to £100,000 in 2010–11 and 2011–12 and up to £25,000 in 2012–13. If the total is £50,000 or less, you can claim 100% of the total amount as AIA.

You can claim Writing Down Allowance on any balance of capital expenditure on plant and machinery that you haven't been able to claim the annual investment allowance for, and on residual balances of expenditure that you have carried forward from the previous accounting period. The rates are 20% for 2011–12 and 18% for 2012–13.

Since 2002–03, employees and office holders have not been able to obtain capital allowances for a car, motorcycle or cycle.

## *Sections 359(2) and (3) ICTA 1988*

## 7.4

If an employee obtains a loan, other than an overdraft, to purchase plant or machinery in respect of which he or she is entitled to capital allowances (paragraphs 7.2 and 7.3 above), he or she can obtain relief for interest paid on the loan. The interest has to be paid within three years after the end of the tax year in which the debt was incurred. The relief due will be restricted to take account of any private use of the plant or machinery.

### **Subscriptions to professional societies etc.**

## *Sections 343 and 344* 7.5

An employee may obtain a deduction for annual subscriptions paid to certain approved professional bodies or learned societies, where the body's activities are relevant to the duties of the employment.

A deduction may also be due for certain statutory fees paid to such bodies by an employee as a condition of carrying on the employment (for example, as a registered veterinary surgeon or a practising solicitor). A list of approved bodies is available at [www.hmrc.gov.uk/list3/index.htm](http://www.hmrc.gov.uk/list3/index.htm)

## Section 377

### **Deduction for expenditure on special security measures**

#### **7.6**

Employees who face a special threat to their personal physical security because of their work are entitled to a deduction equal to the tax charge which may arise in respect of the provision of, or payment for, security measures by their employer, or by somebody acting on the employer's behalf. A deduction is due if all the following conditions are satisfied:

- there must be special threat to the employee's personal physical security (for example, from terrorists or other groups who resort to violence)
- the threat must arise wholly or mainly by virtue of the particular office or employment concerned
- the person providing the benefits or reimbursing the expense must have the meeting of that threat as the sole object in bearing the cost
- in the case of a security service, the benefit resulting to the employee must consist wholly or mainly of an improvement in the employee's personal physical security.

#### **7.7**

Where an employee is provided with a security asset the full amount of the taxable benefit can be deducted if the provider intends the asset to be used solely to improve personal physical security. If the provider intends the asset to be used only partly to improve personal physical security the employee is entitled to a deduction for an appropriate proportion of the resulting benefit.

#### **7.8**

No deduction is due in respect of:

- security expenditure which an employee incurs out of his or her own pocket and which is not reimbursed by or on behalf of the employer
- any benefit arising from the provision of
  - cars, ships or aircraft
  - a dwelling or ground connected to a dwelling
  - living accommodation.

There is, however, a separate exemption for living accommodation which is provided as part of special security arrangements - see paragraph 21.2(c).

### **Employee liabilities and indemnities**

## Section 346

#### **7.9**

Employees are entitled to a deduction for costs or expenses incurred as a result of a claim that they are subject to liabilities imposed in respect of their actual or alleged acts or omissions in their capacities as employees.

#### **7.10**

A deduction is also due for the premiums paid on an insurance policy taken out solely to cover the costs or expenses referred to in paragraph 7.9 above.

#### **7.11**

In both cases, no deduction is allowed for a payment made in relation to arrangements for which tax avoidance is one of the main purposes.

## Chapter 8 Travelling and subsistence expenses

The current rules on the tax treatment of business travel by employees came into effect on 6 April 1998. The rules are explained in detail in booklet 490 *Employee travel - A tax and NICs guide for employers*. Please note that booklet 490 is not reprinted every year, so if you already have a copy you should use that. The latest edition of booklet 490 was issued in December 2007.

You can get a copy by contacting the HMRC office which deals with your PAYE, or [www.hmrc.gov.uk/helpsheets/490.pdf](http://www.hmrc.gov.uk/helpsheets/490.pdf)

The booklet 490 is also available through the Employer Orderline on 08457 646 646. For opening hours go to [www.hmrc.gov.uk/contactus](http://www.hmrc.gov.uk/contactus)

# Chapter 9 Employees engaged on international work

## **Additional expenses rules**

Where an employee goes abroad to work, or an overseas employee comes to work in the UK, some expenses for which a deduction is not due under the rules mentioned in Chapter 8, may still qualify for relief under special rules for foreign travel. The special rules for foreign travel are explained in Chapter 7 of the booklet 490 *Employee travel - A tax and NICs guide for employers*.

The text of the guide is at [www.hmrc.gov.uk/helpsheets/490.pdf](http://www.hmrc.gov.uk/helpsheets/490.pdf)

The booklet 490 is also available through the Employer Orderline on 08457 646 646. For opening hours go to [www.hmrc.gov.uk/contactus](http://www.hmrc.gov.uk/contactus)

# Chapter 10 Expenses for spouse accompanying employee on business trips

## 10.1

Where an employer (or another person acting on behalf of the employer) bears the travelling and subsistence expenses of an employee's spouse who accompanies him or her on a business trip, the **employee** is liable to tax on the cost of the spouse's trip unless **either**:

- relief is due under the special rules for employees working abroad (Chapter 9) or
- the expenses of the spouse's journey can be allowed under the ordinary expenses rule as incurred 'wholly, exclusively and necessarily in the performance of' the employee's duties. Whether such an allowance can be made will depend upon the facts of the particular case (see paragraphs 10.2 to 10.6).

## 10.2

A deduction for the spouse's expenses might be admissible if the spouse has some practical qualification directly associated with the employee's mission which she or he uses to assist the employee regularly during the trip. For example, as a competent linguist the spouse acts as translator at business meetings, when otherwise an outside interpreter would have been required. A spouse's expenses might also be allowed where the employee's health is so poor that it would be unreasonable to expect him or her to travel alone.

## 10.3

Where the spouse's presence is for the purpose of accompanying the employee at business entertainment functions, the expenses of the spouse's trip will first need to be considered under the rules, outlined in Chapter 20, about entertainment. If a disallowance for the expense is made in calculating the employer's tax liability, a deduction may be available under the ordinary expenses rule where the spouse's presence is essential in order to act as host or hostess at a series of business entertaining occasions which the employee is required to organise as part of the duties.

## 10.4

Where however the part played by the spouse is relatively unimportant (such as giving occasional assistance with clerical duties or making the travel and hotel reservations), or the main reason for the spouse's travel is personal, for example, to avoid the separation from the employee or to visit relatives abroad, the expenses will not be deductible under the ordinary expenses rule. It is not enough for the employee's spouse merely to attend functions where other guests are accompanied by their spouses.

### Keeping of records

## 10.5

Where it is asserted that a spouse's expenses are allowable for tax purposes it is important that the deduction should be supported by records. If it is claimed that the reason for the spouse's journey was to act as host or hostess during the business entertaining of overseas customers it should be borne in mind that the Officer of HMRC may ask for information about the occasions and the extent of any such entertaining.

## **Spouse's expenses borne by the employee**

### ***10.6***

Where the spouse's expenses are not borne by the employer (or another person acting on behalf of the employer) no deduction for tax purposes under the expenses rule described in paragraph 7.1 can normally be allowed.



# Chapter 11 Cars and vans available for private use - when a benefit charge is incurred

## 11.1

This chapter relates to company cars for the period from 6 April 2003 and to company vans from 6 April 2005.

## 11.2

‘Company car’ or ‘company van’ are the terms used in this guidance to describe a car or van for which an employee is chargeable to car or van benefit. ‘Vehicle’ denotes car or van.

### Definitions of car and van

**Car** means any mechanically propelled road vehicle except:

- (a) a goods vehicle (a vehicle of a construction primarily suited for the conveyance of goods or burden of any description), for example, a lorry. Estate cars and off-road recreational vehicles count as cars
- (b) a motorcycle
- (c) an invalid carriage, or
- (d) a vehicle of a type not commonly used as a private vehicle and unsuitable to be so used, for example, a Grand Prix racing car.

## 11.4

**Van** means:

- a vehicle of a construction primarily suited for the conveyance of goods or burden of any description (this does not include people)
- with a design weight (the weight which the vehicle is designed or adapted not to exceed when in normal use and travelling on a road laden) not exceeding 3,500 kilograms.

### Definitions of car and van: double cab pick-ups

## 11.5

With effect from 6 April 2002, vehicles commonly known as ‘double cab pick-ups’ are classified as cars or vans in line with their treatment for VAT.

There is more information at

[www.hmrc.gov.uk/manuals/eimanual/eim23150.htm](http://www.hmrc.gov.uk/manuals/eimanual/eim23150.htm)

There is no change to the treatment of these vehicles in earlier years, or to the existing treatment of any other vehicles.

### When is a charge incurred?

## 11.6

A car or van benefit charge is incurred whenever these conditions are met:

- a car or van
- is made available
- without any transfer of the property in it
- to an employee (or to a member of the employee’s family or household)
- by reason of the employment
- and is available for private use.

*Section 115*

*Section 114 and  
Section 120(cars)  
or Section 154  
(vans)*

## Section 114(3A)

### 11.7

In addition, for a van benefit charge to be incurred from 2005–06, private use by the employee or by a member of their family or household must be more than ‘insignificant’ (see paragraph 14.5 onwards).

### Vehicles part owned by the employee

### 11.8

The High Court has confirmed that car benefit applies to these cars and has always done so. The judgement applies equally to vans.

### Car or van provided by the employer

## Section 117

### 11.9

Where a vehicle is made available for the private use of an employee (or members of their family or household) by the employer it is deemed to be made available by reason of the employment, that is to say, it is deemed to go with the job.

There is one statutory exception to this. This is where the employer is an individual and it can be shown that the vehicle was provided in the normal course of ordinary domestic, family or personal relationships. For example, an individual who employs a son might, as a parent, provide the son with a vehicle to be used for private purposes only. Facts in support of a claim that it had been so provided would be that it had not been treated as a business asset and that no expense or capital depreciation allowance relating to it had been allowed as deductions in computing the parent’s taxable profits.

## Sections 169 and 169A

### 11.10

In addition to the statutory exemption mentioned above, a director or employee earning at a rate of £8,500 or more a year is not taxed on the benefit of a vehicle, or of fuel for that vehicle, made available for private use to a member of their family or household if the person to whom the car was made available is chargeable on the benefit in their own right.

A charge is similarly not made on any relative where the person to whom the vehicle was made available is not chargeable on the value of the benefit, provided that the person receives the vehicle in their own right as an employee, and **either**:

- it can be shown that equivalent vehicles are made available to employees in similar employment with the same employer who are unrelated to directors or those earning £8,500 or more a year, or
- it can be shown that the provision of an equivalent vehicle is in accordance with the normal commercial practice for a job of that kind.

### Cash alternatives to a company vehicle

### 11.11

Where an employee has the option of giving up the use of a company vehicle in return for a cash payment, the tax treatment depends on the choice made by the employee. If the employee keeps the use of the company vehicle the benefit is taxed accordingly. If the employee gives up the vehicle and takes the cash, the cash will form part of the employee’s remuneration for tax purposes.

## Calculating the charge

### 11.12

Where a charge applies, details of how to calculate it are at:

- Chapter 12 for car benefit
- Chapter 14 for van benefit.

If fuel is provided for the vehicle, see paragraph 11.16.

## The scope of the charge

### 11.13

The car, van and fuel benefit charges mentioned in this chapter, and in Chapters 12 to 14, are normally the only tax charges which can be made in respect of the benefit derived by an employee (or members of the employee's family or household) from a vehicle made available for private use by reason of their employment or from fuel provided for that vehicle. However, the expense of a chauffeur continues to count as an additional benefit, see paragraph 11.15.

Private motoring expenses paid directly on behalf of, or reimbursed to, the employee in respect of a company vehicle will not give rise to a tax liability in addition to the car, van and fuel benefit charge mentioned in this chapter and Chapters 12 to 14.

### 11.14

Note though, certain motoring expenses not separately charged to tax must nevertheless be taken into account in addition to the vehicle and fuel benefit charges in determining whether or not an employee is remunerated at a rate of £8,500 or more a year (see paragraph 1.7). The motoring expenses in question are those which are met by:

- the settling of a debt incurred personally by the individual in respect of motoring expenses
- the reimbursement of expenditure incurred by the employee in connection with the vehicle, or
- vouchers or credit cards provided by the employer or by reason of the individual's employment.

Approved Mileage Allowance Payments (AMAPs) are not taken into account, but the rate of remuneration is calculated without the benefit of any Mileage Allowance Relief; see Chapter 16.

## Expenses of a chauffeur

### 11.15

The expense incurred by an employer etc. in the provision of a chauffeur, whether for a company vehicle or an employee's own private vehicle, is a separate benefit assessable on the employee. The cash equivalent of that benefit is calculated in the same way as for other benefits in kind (see Chapter 6).

## Provision of fuel

### 11.16

The car or van benefit charge does not cover fuel provided for the company vehicle. If fuel is provided for a company car, or for a company van for which the benefit charge is under paragraph 14.3, a fuel benefit charge is also incurred.

Chapter 13 deals with the fuel benefit charge.

*Sections 120  
149 and 154*

*Section 239(5)*

*Sections 149 to  
153 (cars)  
Sections 160 to  
164 (vans)*

Sections 167 and 168  
Section 118(1)  
Section 247

## Exceptions to the car or van benefit charge

### 11.17

The only exceptions to the car, van and fuel benefit charges are:

- (a) Pooled cars or vans (see Chapter 15)
- (b) Vehicles in which private use by the employee is specifically prohibited and which are not so used. Both requirements must be satisfied for the exemption to apply
- (c) Cars provided for home to work travel to employees who are disabled if all these conditions are met:
  - the car has been adapted in accordance with the employee’s needs (or is an automatic where the employee’s disability prevents them from driving any other car)
  - it is only made available for business travel, home to work travel and travel for training within one or more of Sections 250, 255 or 311
  - other private use by the employee and any other person is prohibited
  - no other private use is in fact made of the car
- (d) From 2004–05 only, emergency vehicles meeting the conditions in paragraphs 11.18 to 11.22 below. They are also exempt from the general benefits charge (see Chapter 4).

Section 248A

## Exceptions: emergency vehicles (from 2004–05 only)

### 11.18

**The person** (this condition must be met): only those ‘employed in an emergency service’ qualify for the exemption. This means:

- constables and other persons employed for police purposes
- persons employed for the purposes of a fire, or fire and rescue service, and
- persons employed in the provision of ambulance or paramedic services.

### 11.19

**The vehicle** (this condition must be met): for the purposes of this exemption, an emergency vehicle:

- is a vehicle which is used to respond to emergencies, and
- either has fixed to it a lamp designed to emit a flashing light for use in emergencies (‘fixed’ indicates that the light must be a permanent fitting to the vehicle. It need not be permanently fixed to the exterior of the vehicle, but a vehicle with only a light which can be removed from the vehicle is not an ‘emergency vehicle’ for the purposes of this exemption), or
- would have such a lamp fixed to it but for the fact that a special threat to the personal physical security of those using it would arise by reason of it being apparent that they were employed in an emergency service.

### 11.20

**The terms** (this condition must be met): the emergency vehicle must be made available on terms which prohibit its private use other than when the person is on call (paragraph 11.21) or is engaged in on call commuting (paragraph 11.22).

### 11.21

**The person is ‘on call’** (either this condition or the next one must be met):

- at the time they use the emergency vehicle, the person must be liable, as part of normal duties, to be called on to use it to respond to emergencies
- use is not limited to ordinary commuting etc, but such use as is permitted can only be reasonably local to the area in which the employee lives and works (they are unlikely to be in a position to meet the previous bullet in this condition otherwise).

### 11.22

The person is engaged in 'on call commuting' (either this condition or the previous one must be met):

- at the time they use the emergency vehicle the person must be required to do so in order that it is available for their use, as part of normal duties, for responding to emergencies
- the emergency vehicle can only be used for ordinary commuting, or for travel between two places that is for practical purposes substantially ordinary commuting.

### Cars and vans in the motor industry

#### 11.23

Problems can arise in the motor industry in respect of demonstration, test and experimental vehicles. Where, as part of their normal duties, sales staff or demonstrators have to take a vehicle home for the express purpose of calling on a prospective customer, the vehicle will not on that account alone be regarded as available for private use. If, however, such a vehicle is otherwise available for the employee's private use, for example, at weekends or holidays, the appropriate car or van benefit charge will be assessable on the employee concerned.

#### 11.24

The use of test or experimental vehicles by engineers in both the motor and components industries will be considered in the light of the particular facts of the case by the HMRC office dealing with the tax liabilities of the employees concerned, but broadly any private use of the test or experimental vehicle by the employee will result in the imposition of the appropriate car benefit charge.

### Business travel and private use

#### 11.25

'Business travel' means travel for which expenses would qualify for deduction if they were incurred by the employee. Broadly, this means travelling expenses which involve two types of business journey:

- journeys which employees have to make in the performance of their duties, and
- journeys which employees make, to or from a place they have to attend, in the performance of their duties - but not journeys which are ordinary commuting or private travel.

Detailed guidance on the types of journey which give rise to qualifying travelling expenses is contained in booklet 490 *Employee travel - A tax and NICs guide for employers*.

#### 11.26

'Private use' means any use other than for the employee's business travel. This therefore includes commuting journeys.

*Section 118(2)*

# Chapter 12 Calculating the car benefit charge

## 12.1

Chapter 11 deals with the circumstances in which a car benefit charge is incurred from 6 April 2003. This chapter deals with the calculation of the car benefit charge from the same date.

### Method of calculation

## 12.2

Car benefit is calculated in a series of numbered steps (more details start at the paragraphs given):

- 1 Find the price of the car (paragraph 12.4)
- 2 Add the price of any accessories which fall to be taken into account (paragraph 12.8)
- 3 Make any required deductions for capital contributions by the employee (paragraph 12.16)
- 4 Find the appropriate percentage for the car (paragraph 12.22)
- 5 Multiply the figure at Step 3 by the appropriate percentage at Step 4 (paragraph 12.32)
- 6 Make any required deduction for periods when the car was unavailable (paragraph 12.35)
- 7 Make any required adjustment where the car is shared (paragraph 12.37)
- 8 Make any required deduction for payments by the employee for private use of the car (paragraph 12.38).

This method of calculation is modified in the case of classic cars (those 15 years of age or more; Steps 1 to 3, see paragraph 12.18).

There are special rules for disabled drivers affecting Step 1 (paragraph 12.7), Step 2 (paragraph 12.15) and Step 4 (paragraph 12.31).

Appendix 1 contains some examples.

### Cars which run on 'road fuel gas'

## 12.3

There are different rules for these cars:

- (i) Cars manufactured to run on road fuel gas: an adjustment at Step 1 (paragraph 12.6)
- (ii) Cars converted to run on road fuel gas: an adjustment at Step 2 (paragraph 12.14)

'Road fuel gas' means any substance which is gaseous at a temperature of 15°C and under a pressure of 1013.25 millibars, and which is for use as fuel in road vehicles. The two types of road fuel gas currently in use are compressed natural gas (CNG) and liquid petroleum gas (LPG).

*Section 121(1)*

*Section 137*

*Section 146*

*Sections 125(2)(b)  
and SI 2001  
No 1123*

## **Step 1: The price of the car**

### *Sections 122 to 124*

#### **12.4**

The price of a car means:

- its list price, if it has one, or
- its notional price, if it has no list price (see paragraph 12.5).

The list price is the inclusive price published by the manufacturer, importer or distributor of the car if sold singly in a retail sale in the open market in the UK on the day before the date of the car's first registration. It includes standard accessories, any relevant taxes (value added tax, car tax (where appropriate), any customs or excise duty, any tax chargeable as if it were a customs duty) and delivery charges, but excludes the new car registration fee because it is an administration fee, not a tax.

### *Section 123*

The list price is not the dealer's advertised price for the car, nor the price paid for the car, which may incorporate discounts or cashbacks from the list price.

### **The notional price of a car with no list price**

#### **12.5**

The normal price is the list price. Only if there is no list price can the notional price be used.

### *Section 124*

The notional price of a car is the price which might reasonably have been expected to be its list price if its manufacturer, importer or distributor had published a price as the inclusive price appropriate for a sale of a car of the same kind sold singly in a retail sale in the open market in the UK on the day before the date of the car's first registration.

The notional price includes all accessories equivalent to the qualifying accessories (paragraph 12.8) available with the relevant car at the time when it was first made available to the employee (for instance, all accessories which would otherwise be added at Step 2 as initial extra accessories, see paragraph 12.11), and any relevant taxes (as in paragraph 12.4).

### **Cars manufactured to run on 'road fuel gas' (type (ii) in paragraph 12.3)**

### *Section 146*

#### **12.6**

The price of the car found under Step 1 is reduced by so much of that price as it is reasonable to attribute to the car being manufactured in such a way as to be capable of running on road fuel gas rather than only on petrol.

Normally, this means replacing the price of the car which can run on road fuel gas with the (lower) price of the petrol-only equivalent model.

### **Automatic car for a disabled employee**

#### **12.7**

From 2009–10 only, if the only car that an employee who holds a disabled person's badge can drive is one with automatic transmission, the price of the car is the list (or notional, where appropriate) price of the closest manual equivalent, which is:

- a car first registered at or about the same time as the automatic car, and
- which does not have automatic transmission, but otherwise is the closest variant available of the make and model of the automatic car.



## Step 2: Accessories

### Qualifying accessories

#### Section 125(1)

#### 12.8

A qualifying accessory is an accessory which:

- (a) is made available for use with the car without any transfer of the property in the accessory
- (b) is made available by reason of the employee's employment
- (c) is attached to the car (whether permanently or not).

*Please note:*

- *condition (a) means that accessories which the employee owns are not included, for example, where an employee buys his or her own in-car stereo system for use in the company car.*
- *condition (c) means that only accessories which are attached to the car are qualifying accessories. A roof rack, for example, which can be removed from time to time will be a qualifying accessory if the other conditions are satisfied. But optional accessories such as car rugs, loose tools, maps and so on which are not attached to the car are not included.*

### Meaning of accessory

#### 12.9

'Accessory' includes any type of equipment, but does not include:

#### Section 125(2)

- (a) an accessory necessarily provided for use in the performance of the duties of the employment
- (b) equipment by means of which a car is capable of running on road fuel gas (see paragraph 12.14)
- (c) equipment to enable a disabled person to use the car (see paragraph 12.15)
- (d) a mobile phone.

*Please note:*

*condition (a) means that those accessories which are necessarily provided for use in the performance of duties of the employee's employment are not counted. An example would be a tow bar fitted as an option to a car because as part of the job the employee is required to tow a trailer carrying the equipment needed to carry out the duties of the job. The price of such a tow bar is disregarded at Step 2 and so it is not taxable as a benefit, whether or not any private use is made of it.*

#### Section 125A

From 6 April 2011 the cost of certain security enhancements will not be included in the cost of accessories where they are provided to safeguard the life of the employee because the nature of their employment creates a threat to their personal safety. These enhancements are:

- armour designed to protect the car's occupants from explosions or gunfire
- bullet resistant glass
- any modifications to the fuel tank designed to protect the contents from explosions or gunfire (including making the tank self sealing) and
- any modifications made to the car as a consequence of the preceding three examples.



## The rules for accessories

### 12.10

Accessories are dealt with in three groups:

- initial extra accessories (those with the car when it is first made available to the employee, paragraph 12.11)
- later accessories (those added after the car was first made available to the employee, paragraph 12.12)
- replacement accessories (which can be replacements for accessories in either of the above groups, paragraph 12.13). In all cases, the price includes any charge for delivering the accessory to the seller's place of business, value added tax and any fitting charges.

### Initial extra accessories

#### 12.11

The price of initial extra accessories is only added to a car with a list price (the notional price of the car at paragraph 12.5 includes them).

An initial extra accessory is a non-standard accessory which is available with the car at the time when it is first made available to the employee. The price of an initial extra accessory is:

- (a) the list price published by the manufacturer, distributor or importer of the car for the day immediately before the date of the car's first registration
- (b) if there is no such price, the list price published by the manufacturer, distributor or importer of the accessory at the time immediately before the accessory is first made available with the car, or
- (c) if there is no list price of either kind, the notional price (the inclusive price it might reasonably have been expected to fetch at the time immediately before the accessory is first made available with the car).

The price of those in category (a) is added whether or not they are available with the car in the tax year in question. The price of those in categories (b) and (c) are added if they remain available with the car at any time in the tax year in question.

Both list and notional prices are for the accessory if sold singly in a retail sale in the open market in the UK and include any relevant taxes (paragraph 12.4) other than car tax.

### Later accessories

#### 12.12

The price of any later accessories is added to all cars. The price is in either category (b) or (c) and 127(2) of paragraph 12.11, as appropriate, and is calculated on the same basis.

A later accessory is one which was not available with the car at the time when it is first made available to the employee, but is available in the tax year in question. Later accessories are disregarded if added before 1 August 1993 or if the price does not exceed £100.

The lower limit of £100 means that inexpensive accessories which are made available during the period are not included in the benefit charge. However, a set of items should not be divided for this purpose - for example, a set of four alloy wheels with a total cost of £300 is not treated as four separate wheels each with an individual cost of £75.

If a later accessory is added part way through a tax year, its price is included at Step 2 for the whole year. There is no time-apportionment.

*Sections 126(2)  
and 127(1)*

*Section 128*

*Section 129*

*Section 130*

*Sections 126(3)  
and 127(2)*

## **Replacement accessories**

### **12.13**

#### *Section 131*

A replacement accessory is an accessory which replaces another qualifying accessory ('the old accessory') and is of the same kind as the old accessory. 'Kind' for this purpose depends on function: a radio/cassette player and a radio/CD player are not of the same kind because their function is different, whereas alloy wheels are of the same kind as steel wheels because their function is the same.

Where the replacement accessory is not superior to the old accessory, Step 2 operates as though the replacement had not been made. The price of the original accessory continues to be counted (even though it may have been removed in an earlier tax year) and the price of the replacement is ignored.

Where an accessory is replaced by a superior accessory, the price of the replacement accessory is added at Step 2 in the normal way but the price of a non-standard old accessory is disregarded (note that the price of a standard accessory counted at Step 1 is not disregarded).

### **Cost of converting a car to run on 'road fuel gas' (type (ii) in paragraph 12.3)**

#### **12.14**

#### *Section 125(2)(b)*

The cost of equipment to enable a car to run on road fuel gas is not treated as an accessory and therefore the cost of conversion to run on road fuel gas is not added at Step 2.

### **Equipment for the disabled**

#### **12.15**

#### *Section 172*

Equipment to enable a disabled person to use the car is not counted as an accessory (and therefore its price is disregarded at Step 2) if it is either:

- designed solely for use by a chronically sick or disabled person (for example, hand controls for people who are unable to operate ordinary pedal controls, or fittings to enable a wheelchair user to use the car), or
- if the employee holds a disabled person's (blue) badge at the time the car is first made available to them, other equipment which is made available for use with the car as a non-standard accessory because it enables the employee to use the car in spite of the disability which entitles them to the blue badge (for example, optional power steering or electric windows on a car made available to an employee who would not be capable of operating it without them, but note that there is no reduction for such items if they are fitted as standard accessories because these are accounted for at Step 1).

### **Step 3: Capital contributions**

#### *Section 132*

#### **12.16**

The effect of Step 3 is to reduce the amount carried forward from Step 2 where the employee has contributed a capital sum, or capital sums, to expenditure on the provision of:

- the car (Step 1), or
- any qualifying accessory (so long as it is taken into account at Step 2).

The amount to be deducted is the lesser of:

- the total of the capital sums contributed by the employee in that and any earlier years to expenditure on the provision of the car or any qualifying accessory taken into account at Step 2, and
- £5,000.

Capital contributions are payments towards the cost of the car or qualifying accessories. They should not be confused with payments for private use of the car, see paragraph 12.37.

#### **Years when amount allowed**

#### *Section 132(2)*

#### **12.17**

The deduction under paragraph 12.16 is made for the year in which the contribution is made and all subsequent years in which the employee is chargeable to tax in respect of the car. Therefore, if the car is transferred from one employee to another, the first employee's contributions are not taken into account in calculating the benefit of that car for the second employee.

### **Steps 1-3: Changes for classic cars**

#### *Section 147*

#### **12.18**

Steps 1 to 3 are varied in the case of a classic car whose list price is low compared with its current value. A classic car is:

- 15 or more years old at the end of the tax year, and
- with a market value for the year of £15,000 or more, and
- that market value exceeds the amount carried forward from Step 3 above.

When all the above conditions are met, substitute the market value of the classic car for the year less any capital contribution for the amount otherwise carried forward from Step 3 above.

#### **Market value**

#### **12.19**

The market value of a classic car is the price which it might reasonably have been expected to fetch in a sale on the open market on the last day in the tax year when it was available to the employee, on the assumption that any qualifying accessories available with the car on that day are included in the sale.

Market values of classic cars may be found in specialist publications, contemporaneous sale documents or insurance details for the car concerned. If a classic car is bought in a poor state of repair and is restored during the year, then it is the market value of the restored vehicle on the last day in the tax year when it was available to the employee which is used, not the cost of the earlier purchase.

## Capital contribution towards classic cars

### 12.20

The amount to be deducted is calculated in exactly the same way and with the same limit as for other cars (paragraph 12.16).

## Price cap for expensive cars

Section 121(1)

### 12.21

From 2011–12 there is no restriction on the price of a car. The full price of the car determined in Steps 1 to 3 is used to calculate the car benefit so the figure carried forward at Step 3 is the figure multiplied by the appropriate percentage at Step 5.

For the years up to and including 2010–11 the price of a car at Step 3 was restricted to £80,000.

## Step 4: The appropriate percentage

### The approved CO<sub>2</sub> emissions figure

Sections 134 to 136

### 12.22

Cars registered in the UK and in other European Community countries must be submitted by their manufacturers or importers for a ‘type approval’ test. The level of CO<sub>2</sub> emitted by the car is one of the factors reviewed in the course of the test. The approved CO<sub>2</sub> emissions figure for car benefit purposes is that which is recorded on the type approval certificate summarising the results of the type approval testing procedure. The result of this test is available in various ways.

For cars first registered:

- on or after 1 January 1998 with an approved CO<sub>2</sub> emissions figure, see paragraphs 12.23 to 12.28
- on or after 1 January 1998 without an approved CO<sub>2</sub> emissions figure, see paragraph 12.29
- before 1 January 1998, see paragraph 12.32 for all such cars.

*Please note: for car benefit purposes, the CO<sub>2</sub> emissions figure that applies at the date of first registration is set for the life of the car.*

### Cars first registered in the UK from 1 March 2001

### 12.23

The approved CO<sub>2</sub> emissions figure is shown on the Vehicle Registration Document (V5) or Vehicle Registration Certificate (V5C).

### Cars first registered 1 January 1998 to 28 February 2001

### 12.24

The manufacturer should provide this information if asked to. Although manufacturers are entitled to charge a small fee, some manufacturers are happy to provide this information free of charge.

The Vehicle Certification Agency (VCA) supplies CO<sub>2</sub> (and other) emissions data in two formats:

- on a website at [www.vcacarfueldata.org.uk/index.asp](http://www.vcacarfueldata.org.uk/index.asp)
- in a booklet it publishes called New Car Fuel Consumption and Emissions Figures (though the website is normally more up to date). This is normally updated annually and can be downloaded from the website. Copies of the current and earlier printed editions can be ordered free of charge from the above website or by post from

Vehicle Certification Agency  
1 The Eastgate Office Centre  
Eastgate Road  
BRISTOL  
BS5 6XX.

As the VCA website figures relate to new cars currently on sale in the UK, employers will not be able to use the internet database to find the approved CO<sub>2</sub> emissions figure for a car sold as new, say, two years ago. However, the downloaded or printed version of the VCA booklet that was current at the time a car was first registered will provide a useful historical record.

### **What if I find two contradictory CO<sub>2</sub> emissions figures?**

#### **12.25**

The figures should normally be the same if they relate to the same car and the same year. But as the figures on the VCA website and in its booklet relate to new cars they may well be different to the figures on the SMMT website (to which readers were referred in earlier editions) for cars first registered between January 1998 and February 2001. You should make sure that you refer to the source of information that is most appropriate for the age of the car in question. If you have retained a copy of the VCA booklet from an earlier year, there is no need to check both databases once you have found the CO<sub>2</sub> figure for the right model of car and year. If you do happen to find a small discrepancy, then use the lower figure. If you find a larger discrepancy, then contact your HMRC office for advice.

Remember, for cars registered 1 March 2001 and later the Vehicle Registration Document (V5) or Vehicle Registration Certificate (V5C) will be the definitive source of the approved CO<sub>2</sub> emissions figure.

### **Cars with a CO<sub>2</sub> emissions figure first registered on or after 1 January 1998 only**

#### **12.26**

From 2008–09 to 2011–12, there are special rules for ‘qualifying low emissions cars’. These are cars (other than type E cars) with CO<sub>2</sub> emissions figures not exceeding exactly 120 g/km; the normal rounding rules are disappplied, so a car with CO<sub>2</sub> emissions of 121 g/km is not a QUALEC.

#### **12.27**

The appropriate percentage for QUALECs is 10%, though for 2010–11 to 2014–15 cars with CO<sub>2</sub> emissions figures between 1-75 g/km have an appropriate percentage of 5%. This is subject to an adjustment for diesel cars (see paragraph 12.30).

*Section 139*

*Section 139*

**12.28**

For all cars other than QUALECs, there is a ready reckoner in Appendix 2 which gives the appropriate percentages for a petrol-powered car for 2012–13 onwards. See previous editions for earlier years. This is subject to an adjustment for diesel cars (see paragraph 12.30).

**Cars first registered on or after 1 January 1998 without an approved CO<sub>2</sub> emissions figure**

**12.29**

The appropriate percentage for the very few cars with an internal combustion engine and one or more reciprocating pistons but without an approved CO<sub>2</sub> emissions figure is based on their engine size, as follows.

| Cylinder capacity of a car in cubic centimetres | Appropriate percentage |
|---|------------------------|
| 1,400 or less                                   | 15%                    |
| More than 1,400 but no more than 2,000          | 25%                    |
| More than 2,000                                 | 35%                    |

If the car does not have an internal combustion engine with reciprocating pistons, the appropriate percentage is:

- 0% for 2010–11 to 2014–15 inclusive for cars which cannot in any circumstances emit CO<sub>2</sub> by being driven.
- 35% in any other case (for example, a car with a rotary Wankel engine).

This is subject to adjustments for cars powered by other fuels as shown at paragraph 12.30.

**Cars first registered on or after 1 January 1998: adjustments to the appropriate percentage**

**12.30**

The following adjustments apply for 2011–12. See earlier editions for previous years.

| Type of fuel                                 | P11D code from 2011–12 | Former code   | Adjustment     | Note |
|--|------------------------|---------------|----------------|------|
| Zero emission cars (including electric cars) | E                      | E             | None           | 1    |
| Diesel cars (all Euro standards)             | D                      | D, L          | Supplement: 3% | 2    |
| All other                                    | A                      | P, B, C, H, G | None           | 3    |

Notes:

1 The appropriate percentage for type E cars is 0% for 2010–11 to 2014–15 inclusive. Then it reverts to the normal appropriate percentage for type E: currently 9%.

2 Subject to the overall maximum percentage of 35%.

3 Former type B cars have different CO<sub>2</sub> emissions figures for different fuels; the lowest CO<sub>2</sub> figures can still be used (normally that for gas).

## Cars first registered on or after 1 January 1998: reduction for disabled employees

### Section 138

#### 12.31

If the only car that an employee who holds a disabled person's badge can drive is one with automatic transmission, the appropriate percentage is calculated using the approved CO<sub>2</sub> emissions figure of the closest manual equivalent, which is:

- a car first registered at or about the same time as the automatic car, and
- which does not have automatic transmission, but otherwise is the closest variant available of the make and model of the automatic car.

## The appropriate percentage for all cars registered before 1 January 1998

### Section 142

#### 12.32

The appropriate percentage for every car first registered before 1 January 1998 is based on its engine size, even if (exceptionally) it has an approved CO<sub>2</sub> emissions figure:

| Cylinder capacity of a car in cubic centimetres | Appropriate percentage |
|---|------------------------|
| 1,400 or less                                   | 15%                    |
| More than 1,400 but no more than 2,000          | 22%                    |
| More than 2,000                                 | 32%                    |

If the car does not have an internal combustion engine with reciprocating pistons, the appropriate percentage is:

- 5% if it is propelled solely by electricity (for example, by a battery)
- 32% in any other case (for example, a car with a rotary Wankel engine).

*Please note: the adjustments in paragraph 12.30 and 12.31 do not apply to cars registered before 1 January 1998.*

## Step 5: Calculating the car benefit charge for a full year

### Section 121(1)

#### 12.33

The cash equivalent of the benefit of the car for a full year is calculated by multiplying the figure from Step 3 (the price of the car and accessories) by the appropriate percentage from Step 4.

## Step 6: Reductions for periods when car unavailable

### Section 143

#### 12.34

When the car is unavailable for any part of the year, the figure carried forward from Step 5 is reduced in proportion to the number of days of unavailability.

## Meaning of unavailable

### Section 143(2)

#### 12.35

A car is treated as being 'unavailable' on any day if the day falls:

- (a) before the first day on which the car is available to the employee, or
- (b) after the last day on which the car is available to the employee, or
- (c) within a period of 30 or more consecutive days throughout which the car is not available to the employee.

Section 145

## Replacement cars

### 12.36

If the normal car is not available for a period of less than 30 days, there is no reduction because the car is not deemed to be 'unavailable' during that period.

If during that period the employee is provided with a replacement car, it is not also charged as a benefit if it is not:

- materially better than the normal car, or
- provided as part of an arrangement whose purpose was to provide the employee with a materially better car than the normal car.

### **Step 7: Adjustment for shared car**

#### 12.37

A shared car is one:

- which is available to more than one employee concurrently
- made available by the same employer
- available concurrently for each employee's private use, and
- for which two or more of those employees are chargeable to tax for that year.

Where these conditions are fulfilled the benefit of the car to each employee is:

- calculated separately under Section 121 (paragraphs 12.4 to 12.37), and
- then reduced on a just and reasonable basis.

However, only availability to those chargeable on the benefit of the car is to be taken into account in making this reduction. Any availability to employees not so chargeable (either because their earnings are insufficient or because they are prohibited from using the car privately and do not do so) is to be disregarded. The total amount chargeable in respect of the car is therefore the same as if the car had been available to only one employee for private use and there had been no sharing.

### **Step 8: Reductions for private use**

#### 12.38

Payments that an employee makes for the private use of the car are deducted from the figure carried forward from Step 7 and can reduce the benefit charge to nil.

To qualify as a deduction:

- there must be a requirement in the year to make payments as a condition of the car being available for private use, and
- the payments must be specifically for that private use. Payments for supplies of services, such as petrol or insurance, do not count.

Any payments which the employee makes specifically for the private use of a replacement car as described in paragraph 12.36 are allowed as though they were payments for the private use of the normal car in that period.

Section 148

Section 144



# Chapter 13 Fuel provided for company cars and vans

*Section 149*

## **13.1**

Where fuel is provided for a car the benefit of which is taxed in accordance with Chapters 11 and 12 ('company cars'), a **fuel benefit charge** will normally apply to tax the fuel provided in addition to the car benefit charge. This is so whether or not the fuel is provided for private use.

*Section 160*

A fuel benefit charge also arises where fuel is provided for a van taxed in accordance with Chapters 11 and 14 ('company vans'), but only where the charge arises under paragraph 14.3.

See paragraph 13.5 below where:

- the fuel is provided only for business use, or
- the employee or their family is required to and does cover all private fuel costs personally for the whole period for which the company vehicle is available to them, and
- paragraph 13.9 where this applies only for part of that time.

'Vehicle' below means car or van.

## **Fuel for vehicles owned or hired by employees**

*Sections 62, 73 and 82*

## **13.2**

The fuel benefit charges do not apply to fuel provided for use in an employee's own vehicle, or in a vehicle hired by the employee. The expense incurred by an employer (or another person on behalf of the employer) in providing fuel for any such vehicle is taxable upon the employee. See also Chapter 16.

## **The remaining paragraphs deal only with fuel provided for 'company vehicles'.**

## **The provision of fuel**

*Sections 149(3) and 160(3)*

## **13.3**

Subject to paragraph 13.5 below, a fuel benefit charge is incurred where either:

- the cost of the fuel for the 'company vehicle' is met either directly or indirectly by some person other than the employee (or members of their family or household), or
- the employee is reimbursed for the cost of any fuel used in that vehicle.

Except as described in paragraph 13.12, the payment of a mileage allowance in connection with the use of a 'company vehicle' will normally constitute the provision of fuel.

## **Scope of the car and van fuel benefit charges**

*Sections 239(1)(2) and 269(1)*

## **13.4**

The fuel benefit charge is normally the only tax charge in respect of the provision of fuel for private use by an employee (or members of their family or household) in a 'company vehicle'. So the cost of fuel for private motoring reimbursed to the employee or paid on their behalf by the employer (for example, by way of credit card or a voucher) will not produce a tax liability in addition to the fuel benefit charge, **unless** the amount reimbursed exceeds the cost of that fuel. If the reimbursement is excessive, the 'profit element' will be chargeable to tax in the normal way.

Sections 151  
and 162

## Reducing the fuel benefit charges to nil

### 13.5

The fuel benefit charge is nil whenever fuel is provided for a 'company vehicle' and:

- (a) in the year the employee is required to make good to the person providing the fuel for private motoring (including travel between home and work) the whole of the expense incurred in its provision and in fact does so, or
- (b) fuel is made available only for business travel.

On (a), see paragraphs 13.10 and 13.11 for guidance on the meaning of 'making good' and paragraph 13.13 on the use of HMRC advisory fuel rates in this context.

In the context of (b), see paragraph 11.25 for the meaning of 'business travel'.

## Calculating the fuel benefit charges for a whole year

Sections 150

### 13.6

The car fuel benefit charge is calculated by multiplying two figures:

- a fixed sum (£20,200 for 2012–13 onwards), and
- the 'appropriate percentage' used to calculate the car benefit (see paragraph 12.22 onwards).

There is never any need to calculate a new appropriate percentage for car fuel benefit. In every case, whether or not the car has an approved CO2 emissions figure, the appropriate percentage used to calculate the car benefit charge is used to calculate the car fuel benefit charge.

For example, a car powered by petrol has CO2 emissions of 180g/km, so the appropriate percentage used to calculate the car benefit charge for 2012–13 is 27%.

The 2012–13 car fuel benefit charge for the car is £20,200 X 27% = £5,454.

Sections 161

### 13.7

There was no van fuel benefit charge until 2005–06, so any fuel provided in earlier years was covered by the van benefit charge.

The van fuel benefit charge is nil for 2005–06 and 2006–07, so its existence can be effectively ignored. From 2010–11 onwards, the charge is £550 (previously £500).

## Reducing the charge: car or van unavailable

Sections 152(1)  
and 163(1)

### 13.8

The fuel benefit charge is reduced proportionately for periods for which the 'company vehicle' is unavailable (see paragraph 12.34 and 14.11 respectively). The proportion by which the charge is reduced is the same for both the vehicle benefit and fuel benefit.

## Reduction because private fuel is withdrawn

Sections 152 and  
163

### 13.9

The fuel benefit charge is reduced if free fuel ceases to be provided to an employee during the tax year. This requires a decision to introduce conditions (a) or (b) at paragraph 13.5 above on a date in the year.

Any days after the provision of free fuel ceased on which the company vehicle was available are added to any days for which it was unavailable as described in paragraph 13.8. However, receiving free fuel again later in the same tax year will prevent any apportionment under this paragraph.

### **'Making good' fuel provided for private motoring**

*Sections 51(2)  
152(2)(c) and  
163(3)(c)*

#### **13.10**

Where the employee is required to make good the cost of all fuel provided for private motoring in a 'company vehicle' as described in paragraphs 13.5 or 13.9, they may do so by:

- (a) payment – that is by paying to the person providing the fuel a sum of money either directly or by deduction from their net salary or wages, or
- (b) reinstatement – that is by replacing the fuel provided for private use by a corresponding amount of fuel purchased from their own pocket, or
- (c) any combination of (a) or (b) above.

See paragraph 13.13 for how HMRC advisory fuel rates can simplify this for company cars.

#### **13.11**

The fuel benefit charge is only reduced in accordance with paragraph 13.5 or 13.9 if the employee makes good the cost of all the fuel provided for private motoring. If the employee fails to fully make good in this way, the fuel benefit charge as calculated under paragraphs 13.6 to 13.9 applies without any reduction for the repayments made by the employee.

### **Mileage allowance paid by the employer**

#### **13.12**

Where the employer does not directly meet the cost of fuel used for business in a 'company vehicle' but pays the employee a business mileage allowance, no fuel benefit charge will arise if the mileage allowance does no more than meet the cost of fuel used for business travel (see paragraph 11.25).

If the mileage allowance is excessive, but it is only paid for genuine business travel, the 'profit element' will be chargeable to tax in the normal way.

However, a car fuel benefit charge will arise where, for instance, the payments to the employee cover travel between home and work.

See paragraph 13.13 for how HMRC advisory fuel rates can simplify this for company cars.

### **Advisory fuel rates (for company cars only - not applicable to vans).**

#### **13.13**

We have published guidelines on fuel only mileage rates for company cars.

The full background about the advisory fuel rates and details of both current and past rates is at [www.hmrc.gov.uk/cars/fuel\\_company\\_cars.htm](http://www.hmrc.gov.uk/cars/fuel_company_cars.htm)

This makes clear that there is no obligation to use the advisory fuel rates.

Where employers wish to use them, they only apply where employers:

- reimburse employees for business travel in their company cars (paragraph 13.12), or
- require employees to repay the cost of fuel used for private travel in those company cars (paragraph 13.5 or 13.9).

# Chapter 14 Vans available for private use

## **i Important**

These rules only apply from 6 April 2005.

For earlier years, see previous editions of booklet 480.

### *Section 115*

#### **14.1**

Chapter 11 deals with the circumstances in which a van benefit charge is incurred from 6 April 2005. This chapter deals with the calculation of the van benefit charge from the same date.

#### **The amount of the charge**

### *Section 155*

#### **14.2**

The charge is nil if both the following requirements are satisfied throughout the year (or part of the year on when the van is available to the employee):

- the van must only be available to the employee for business travel and commuting. It must not in fact be used for any other private purpose except to an insignificant extent, and
- the van must be available to the employee mainly for use for the employee's business travel.

### *Section 155(3)*

#### **14.3**

If both the requirements at paragraph 14.2 are not met, the charge for 2007–08 onwards is £3,000.

#### **14.4**

If the van cannot in any circumstances emit CO<sub>2</sub> by being driven, the charge for 2010–11 to 2014–15 inclusive is nil.

#### **Insignificant**

### *Sections 114 (3A) and 155(3)*

#### **14.5**

The word 'insignificant' is not defined, so takes its normal meaning of 'too small or unimportant to be worth consideration' (New Oxford English Dictionary). Private use is to be considered insignificant if it is:

- insignificant in quantity in the tax year as a whole (that is, a few days at most)
- insignificant in quality (for example, a week's exclusive private use is clearly not insignificant)
- intermittent and irregular
- very much the exception in terms of the pattern of use of that van by that employee (or their family or household) in that tax year.

#### **14.6**

Examples of insignificant use are an employee who (using the van):

- takes an old mattress or other rubbish to the tip once or twice a year
- regularly makes a slight detour to stop at a newsagent on the way to work
- calls at the dentist on his way home.

#### **14.7**

Examples of use which is not insignificant are an employee who:

- uses the van to do the supermarket shopping each week
- takes the van away on a week's holiday
- uses the van outside of work for social activities.

#### **14.8**

If the van in which the private use takes place is shared (see 'shared vans' below), use is likely to be insignificant if it is not just and reasonable to reduce the benefit of the other sharer on account of it (precisely because the use which is 'too small or unimportant to be worth consideration').

### **Reductions in the charge**

#### *Section 156*

#### **14.9**

The charge is reduced for the following reasons, and in this order when:

- the van is unavailable (paragraph 14.10)
- the van is shared (paragraph 14.12)
- the payments are made for private use of the van (paragraph 14.16).

### **Reduction because van unavailable**

#### *Section 156*

#### **14.10**

When the van is unavailable for any part of the year, the benefit charge is reduced in proportion to the total number of days on which it is unavailable.

#### **14.11**

A van is treated as unavailable to an employee on any day if the day falls:

- before the first day on which the van is available to the employee
- after the last day on which the van is available to the employee
- within a continuous period of 30 or more days throughout which the van is, in fact, not available to the employee at all.

### **Shared vans**

#### *Section 157*

#### **14.12**

The next adjustment to the amount of the charge is to take into account whether the van is shared. A shared van is one which:

- is available to more than one employee concurrently
- is so made available by the same employer, and
- is available concurrently for each employee's private use.

#### **14.13**

#### *Section 157*

To calculate the charge on each employee sharing a van:

- calculate the charge (as above) as though the van were not shared, and then
- reduce that charge on a 'just and reasonable' basis.

#### **14.14**

There is a special rule where two members of the same family or household, 'E' and 'M', share a van and E is in excluded employment (that is, is not chargeable under the benefits code). In that case, E's use of the van is disregarded when applying the 'just and reasonable' reduction to the charge on M.

#### **14.15**

In general, the total charge for the shared van should be the same as if only one employee had used it. This is because a reduction in the charge for one employee is matched by an equivalent charge on another (or other) employees.

#### **Payments for private use**

#### *Section 158*

#### **14.16**

The amount chargeable on each employee is reduced pound for pound by the amount which the employee is required to pay, and actually pays, for private use of the van. This adjustment is made after any reduction because the van is shared.

#### **Van temporarily replaced**

#### *Section 159*

#### **14.17**

If a van is unavailable for fewer than 30 days and is replaced by another, there is no additional charge for the replacement van. Instead, it is treated as though it were the normal van for that period, meaning that the terms and conditions for the replacement are treated as though they applied to the normal van.

#### **Record keeping**

#### **14.18**

Employers will need to be able to substantiate the end of year returns they make on form P11D, including nil returns.

#### **14.19**

Where a benefit is declared, the employer will need to identify:

- each van used by an employee
- the age of each van (up to and including 2006–07)
- if a van is shared, by whom and in what proportions
- periods of 30 or more consecutive days when a van was incapable of use
- contributions required to be paid and actually paid by any employee having had private use of a van.

#### **14.20**

Where a nil return is made, it will be necessary to demonstrate that the necessary conditions have been complied with in practice as well as in theory. Useful information will include the terms and conditions on which the van is made available to the employee and mileage records showing actual use.

# Chapter 15 Pooled cars or vans

*Sections 167 and 168  
Sections 167(2)  
and 168(2)*

## 15.1

In this chapter references to cars include vans. A car is not considered to be available for private use if it is a pooled car. So no assessable benefit arises from its use.

*Sections 167(3)  
and 168(3)*

A car only qualifies as a pool car if all the following conditions are satisfied:

- (a) it is available to, and actually used by, more than one employee
- (b) it is made available, in the case of each of those employees, by reason of their employment
- (c) it is not ordinarily used by one of them to the exclusion of the others
- (d) any private use by an employee is merely incidental to their business use of it, and
- (e) it is not normally kept overnight on or near the residence of any of the employees unless it is kept on premises occupied by the provider of the car.

Employers need to be able to demonstrate that the conditions for the car or van to be a pool vehicle have been met, for instance by keeping mileage records to show when the car was used, by whom and for what journeys.

The word employee has its ordinary meaning here. The definition in paragraph 1.7 and 1.8 does not apply in connection with pooled cars.

### Meaning of 'merely incidental to'

*Sections 167(3)(d)  
and 168(3)(d)*

## 15.2

The expression '**merely incidental to**' imposes a qualitative rather than a quantitative test. The use of a car for what is primarily a business journey but embracing some limited private use would be within the terms of (b) in paragraph 15.1 above. A simple example might be where an employee who is required to undertake a long business journey is allowed to take a **pool car** home the previous night in readiness for an early morning start. The **office to home** journey although private is, in this particular context, subordinate to the lengthy business trip the following day and is undertaken to further the business trip. In short, it is **merely incidental** to the business use of the car on that occasion. A reservation is necessary in this type of case: if it happened too often, condition (e) in paragraph 15.1 above would not be met.

### Meaning of 'not normally kept overnight'

*Sections 167(3)(e)  
and 168(3)(e)*

## 15.3

It is accepted that a car is **not normally kept overnight** at or near the homes of employees if the number of occasions on which it is taken home by employees does not amount to more than 60% of the year. But where a car is garaged at the employees' homes on a large number of occasions, although for less than 60% of the year, it is unlikely that all the home to work journeys would satisfy the '**merely incidental to**' test in paragraph 15.2.

## 15.4

Where a chauffeur employed to drive **pooled cars** is obliged to take a pooled car home for retention overnight, the purely private use by the chauffeur in travelling between their normal place of work and his or her home would not of itself be regarded as disqualifying the car from treatment as a pooled car. Equally, the fact that in such circumstances the car was kept overnight at the chauffeur's home would not normally be regarded as disqualifying the car from counting as a pooled car.

## **Inadequate parking facilities, etc.**

### **15.5**

Subject to the exception mentioned at paragraph 15.4 above **all five** conditions at paragraph 15.1 must be satisfied if the car is to qualify for exemption as a **pooled car**. So a car which met the tests at (a) to (d) in paragraph 15.1, but which was normally taken home at night by an employee because of inadequate parking facilities at the employer's premises, would fail test (e) in paragraph 15.1 and would thus not count as a pooled car.



# Chapter 16 Mileage Payments and Passenger Payments

## Mileage Allowance Payments

*Section 229(2)*

### 16.1

Mileage Allowance Payments (MAPs) are defined as ‘amounts, other than passenger payments, paid to an employee for expenses related to the employee’s use of such a vehicle for business travel’ (see paragraph 16.10 ) about passenger payments; ‘such a vehicle’ refers to any car, van, motorcycle or cycle.

Please note that:

- the payment must be made direct to the employee, not to someone else for the employee’s benefit
- **only MAPs can be paid tax-free as AMAPs in the way described below.**

## Approved Mileage Allowance Payments (AMAPs)

*Sections 229(3) and 230*

### 16.2

Employees using their own cars, vans, motorcycles or cycles for business travel can receive a tax-free amount (the approved amount for Mileage Allowance Payments) instead of being taxable on what they received and having to obtain a deduction for expenses incurred. These tax-free amounts are called Approved Mileage Allowance Payments, or AMAPs for short.

### 16.3

AMAPs cover any general or mileage-related expenses in relation to the car itself (such as fuel, servicing, tyres, road fund licence, insurance and depreciation), plus interest on any loan to buy the vehicle. No additional deduction is available for expenses of that type.

They do not cover other expenses specific to the particular journey (such as parking charges, road tolls or accommodation) and the normal rules for deductions apply to expenses of this type.

*Section 230(2)*

### 16.4

The approved amount (the maximum that can be paid tax-free) is calculated as the number of miles of business travel by the employee (other than as a passenger, and whether or not they are reimbursed for them) multiplied by a rate expressed in pence per mile. The tax-free amount therefore depends only on business miles travelled and is not related to the actual expenses incurred.

### 16.5

There are three kinds of vehicles under the AMAPs scheme:

- cars or vans
- motorcycles
- cycles.

Each kind of vehicle is dealt with separately, though different vehicles of the same kind are dealt with as though they were the same vehicle. The rate in pence per mile for each kind of vehicle is in Appendix 3.

## **16.6**

Where an employee receives payments from two or more associated employments, all business travel is treated as though it related to a single employment when calculating whether the 10,000 mile limit for cars or vans has been reached.

## **16.7**

If you pay more than the approved amount, the excess should be returned on form P11D or P9D. If you pay the exact amount, do not notify HMRC at all, whether on forms P11D, or otherwise. If you pay less (or nothing at all), the employee is entitled to a deduction for the shortfall as Mileage Allowance Relief - see paragraph 16.9.

## **16.8**

There is a similar scheme for National Insurance contributions, but the rules and rates for NICs are slightly different - see the latest edition of booklet CWG2 Employer further guide to PAYE and NICs for details.

### **Mileage Allowance Relief (MAR)**

## **16.9**

If an employee is paid less than the approved amount, they are entitled to a deduction for the shortfall. Employers can agree with their HMRC office to make separate optional reports of negative amounts under a scheme called Mileage Allowance Relief Optional Reporting Scheme (MARORS) which only caters for negative amounts. Contact your HMRC office if you want to enter this scheme.

### **Passenger payments**

## **16.10**

There is an additional exemption from tax for payments to employees travelling on business journeys because they are carrying other employees, for whom the journeys are also business travel, as passengers. The payments must be made specifically because passengers are being carried and be in addition to Mileage Allowance Payments for the travel itself.

## **16.11**

Passenger payments can be paid to employees using:

- their own car or van (and so eligible for Approved Mileage Allowance Payments)
- a company vehicle for which they are chargeable to either car or van benefit (and so not eligible for Approved Mileage Allowance Payments).

## **16.12**

The maximum that can be paid tax-free is calculated as the number of business miles for which a passenger is carried multiplied by a rate expressed in pence per mile. The rate is in Appendix 3.

Miles for which no passenger payments are made are excluded from the calculation.

## **16.13**

Payments can be made for each passenger on the same journey.

*Sections 231  
and 232*

*Section 233*

*Section 234*

### **16.14**

If you pay more than the maximum amount, the excess should be returned on form P11D. If you pay the exact amount, do not notify HMRC at all, whether on forms P11D, P9D or otherwise. If you pay less (or nothing at all), there is no equivalent to Mileage Allowance Relief - the employee is not entitled to any deduction for the shortfall.

### **Record keeping**

#### **16.15**

Although payments within the above limits are exempt from tax, meaning that no report needs to be made to HMRC about them, employers should ensure that adequate records are kept to demonstrate that payments satisfy the conditions for exemption. Records should relate to miles travelled and not to actual expenses incurred (see paragraph 16.4).

# Chapter 17 Beneficial loan arrangements

## Section 175(1)

### 17.1

A Director or employee obtains a benefit by reason of the employment when he or she, or any of his or her relatives, is provided with a cheap or interest-free loan. The employee is generally taxable on the difference between interest at the appropriate official rate and the interest, if any, actually paid. Such loans are called beneficial loans.

### 17.2

It is not necessary for the loan to be advantageous to the recipient for a chargeable benefit to arise. It is sufficient if the cheap or interest-free loan is made by reason of the employment.

## Section 188(1)

### 17.3

The Director or employee can also benefit if a loan made by reason of his or her employment is released or written-off. The Director or employee is then no longer obliged to repay the amount he or she was lent. A tax charge will arise **irrespective of the terms of the loan which has been released or written-off.**

## Amount chargeable

## Section 175(3)

### 17.4

The amount chargeable is called the cash equivalent of the benefit of the loan. This is the difference between:

- the interest that would have been payable if the borrower had been required to pay interest on the loan at the appropriate 'official rate' (or rates) for the tax year concerned, and
- the amount of interest actually paid by the borrower for the same tax year.

## Section 181 (1)

Official rates are prescribed by the Treasury by means of Statutory Instruments. There are tables of official rates in Appendix 4. Detailed information on how to calculate the cash equivalent is given in paragraphs 17.27 to 17.30.

As regards the treatment of belated interest payments, see paragraph 17.35.

## Loans in foreign currencies

## Section 181(2)

### 17.5

Treasury regulations may specify different rates for use with certain loans made in the currency of a country outside the UK.

The loans are those where the benefit is obtained by a person who:

- normally lives in the country or territory where the currency in which the loan is made, and
- has lived in that country or territory at some time in the period of six years ending with the year of assessment concerned.

The phrases '**normally lives**' and '**has lived at some time**' are not defined in law and so have their ordinary common-sense meanings. A person normally lives in the place (if any) where, taking all the facts into account, one would normally expect him/her to be in the absence of some special reason to the contrary (such as a temporary period of employment elsewhere). 'Has lived at some time' carries an implication of continuity but not necessarily of permanence.

A table showing currencies for which official rates, different from that generally applicable have been prescribed, what those rates are and for which periods they apply, is in Table 3 of Appendix 4.

### **Meaning of 'loan'**

#### *Section 173(2)*

#### **17.6**

Loan means more than just lending money. It includes any form of credit.

It follows that any kind of advance made by reason of the employment is covered.

For example, any amount shown in the employer's books or records as owed by a director or employee will count as a loan.

### **Identifying the loan**

#### **17.7**

The identification of the loan or loans made is a crucial step in the process of dealing with beneficial loans. A loan (but not necessarily a debt consisting of some other form of credit (see paragraph 17.6 above)) is always created by an agreement between the borrower(s) and the lender(s). It is the agreement which sets out the scope of the loan. The terms of an agreement for a loan may take any one of a variety of forms. For example, they may provide that the loan is effectively to be divided into segments for the purposes of:

- securing it on assets, and/or
- calculating interest payable, and/or
- accounting.

So a single loan may:

- be represented by two or more accounts
- bear interest on different segments at different rates, and
- be secured on two or more assets.

In spite of all these factors, if the agreement under which it is made and accepted is an agreement for a single loan, it will remain a single loan and be treated as such for all the purposes of the beneficial loan rules unless and until it reaches the point where it may be aggregated with other loans in the calculation of the cash equivalent. (See paragraph 17.27.)

Just as a single loan may involve two or more accounts, rates of interest and forms of security, so two or more separate loans may be:

- subject to the same terms as regards interest, and/or
- secured on the same asset, and/or
- held in the same account.

The fact that two or more separate loans may be aggregated for a particular purpose of ITEPA 2003 does not make them a single loan or mean that they can be treated as such for any other purpose. Each form of credit other than a loan is a single loan for the purposes of the beneficial loan rules. So a series of similar forms of credit (for example, the provision of a monthly service on credit) is for those purposes a series of separate single loans.

An Alternative Finance Arrangement (Sections 46-57 Finance Act 2005) provided by an employer to an employee is taxed in the same manner as a beneficial loan. Such arrangements (for example, wakala or a diminishing musharaka) do not give rise to payment or receipt of interest, but they are taxed in the same way as equivalent arrangements that do give rise to interest.

## Meaning of 'making a loan'

*Section 173(2)(b)*

### 17.8

Making a loan includes:

- arranging a loan
- guaranteeing a loan
- in any way facilitating a loan, and
- taking over a loan from another person.

## Loans taken over from another person

*Section 174(4)(a)*

### 17.9

If the rights over an existing loan are taken over by another person the loan will remain within the charge if it was within the charge when it was first made. A loan within the scope of the charge cannot be removed from it by the original lender transferring his or her rights to another person. But a loan which was not within the charge when it was first made can be brought within it if it is taken over by a person mentioned in paragraph 17.11 below.

## Meaning of 'relative'

*Section 174(6)*

### 17.10

Relative is given a special meaning for the purposes of the charge on beneficial loans or their release or writing off.

Persons defined as relatives include:

- the employee's spouse
- the parents, children, and brothers and sisters of both spouses
- remoter ancestors or descendants of both spouses, for example, grandparents and grandchildren
- the spouses of all the persons mentioned above.

This definition is much wider than that used for other benefits of directors and employees within the benefits code (see paragraph 1.22).

## Meaning of 'loan obtained by reason of the employment'

*Sections 174(1) and (2)*

### 17.11

The phrase 'by reason of the person's employment' is given a special meaning in connection with the charge on beneficial loans or their release or writing off. The benefit of a loan or its release or writing off is obtained by reason of a person's employment if the loan is made by:

- the employer or a prospective employer - but there is an exception to this rule at 17.12
- a company or partnership
  - controlled by the employer, or
  - controlling the employer, or
  - under the same control as the employer
- a person having a material interest in a close company or in another company or partnership controlling that close company and the employee's employer
  - is that close company, or
  - controls it, or
  - is controlled by it.

But note the exception to this rule which is explained at paragraph 17.13 below. The extended meaning of ‘making a loan’ at paragraph 17.8 applies for the purpose of these rules.

Note also that a loan made by a person other than the employer may in some cases fall within the rules on employment income through third parties – see paragraph 1.26.

### **Exception for loans made by an employer who is an individual**

*Section 174(5)*

#### **17.12**

There is an exception to the rule in paragraph 17.11 that the benefit of a loan is obtained by reason of a person’s employment if it is made by his or her employer or prospective employer. No charge arises if it is shown that a loan has been made by an employer who is an individual, in the normal course of domestic, family or personal relationships.

### **Loans by persons with a material interest in a close company**

#### **17.13**

The exception explained in paragraph 17.12 applies to loans made by a person within the third bullet of paragraph 17.11 as well as to loans made by a person within the first bullet. So a loan made by an individual who has a material interest in a close company or in another company or partnership which controls such a company, is not a loan the benefit of which is obtained by reason of a person’s employment if it can be shown that the loan was made in the normal course of the lender’s domestic, family or personal relationships.

### **Qualifying loans**

*Sections 180(4) and (5)*

#### **17.14**

The rules set up a special category of loans called qualifying loans. A summary of loans which are ‘qualifying’ is set out in Appendix 5. Loans which are not qualifying are referred to in what follows as non-qualifying loans. Loans used to purchase land are not qualifying loans. The distinction between qualifying and non-qualifying loans is relevant in relation to:

- the exemption for qualifying loans on which the whole of any interest would be eligible for relief (see paragraph 17.15), and
- the exemptions for small loans (see paragraphs 17.16 and 17.17), and
- aggregation and non-aggregation of loans (see paragraph 17.27).

### **Exemptions for some qualifying loans**

*Section 178(5)*

#### **17.15**

There is no chargeable benefit on some qualifying loans. Exemption applies if the whole of any interest on the loan (or any interest which would be payable if the loan were interest-bearing) qualifies for tax relief under any of the categories in Appendix 5. Do not report such loans on the P11D.

The exemption does not apply if only part of the interest on the loan qualifies for tax relief. In that case the full cash equivalent of the loan should be reported on form P11D. Any tax relief due to the employee should be claimed by the employee, usually on his or her Self Assessment Tax Return.

### Example

Mr A had two interest-free loans from his employer as follows.

| Nature of loan                                | Amount of loan |
|---|----------------|
| Loan to purchase an interest in a partnership | £60,000        |
| Loan to buy land                              | £10,000        |

The loan to purchase the interest in the partnership is exempt (if it were interest-bearing all the interest would qualify for relief) and should not be reported on the P11D. The loan to buy the land is not exempt. So the full cash equivalent of the land loan must be reported on form P11D.

## Exemptions for small loans

### Section 180(1)

#### 17.16

No tax is chargeable if the total balance outstanding on all beneficial loans does not exceed £5,000 throughout the year of assessment in question. This means that, in strictness, where this exemption could be applicable it will be necessary to calculate and consider the total balance outstanding on all an individual's beneficial loans on a day to day basis. However, in practice, many loans will decrease steadily from the time they are taken out. As regards such loans the maximum balance in any year cannot exceed the balance at the beginning of that year (or in the case of a loan taken out in the year at the time when it was taken out). So it will be possible in such cases to know whether the exemption applies without knowing the maximum total balance outstanding day by day. Interest accrued is not added to the balance of a loan outstanding until the interest falls due for payment.

### Section 180(3)

#### 17.17

Where exemption under paragraph 17.16 is not due but would have been but for the existence of one or more qualifying loans (see paragraph 17.14) only the qualifying loans are taken into account for the purposes of the beneficial loan rules.

### Example

Ms B had three interest-free loans from her employer as follows.

| Nature of loan | Maximum outstanding balance |
|----------------|-----------------------------|
| Qualifying     | £50,000                     |
| Non-qualifying | £3,000                      |
| Non-qualifying | £2,000                      |

Total      £55,000

Since the maximum total balance outstanding in the year exceeds £5,000, exemption under Section 180(1) is not due. But apart from the qualifying loan the maximum total balance outstanding in the year would be £5,000. Since this does not exceed £5,000, exemption under Section 180(3) is due in respect of the non-qualifying loans. The qualifying loan will be charged as if it were the only beneficial loan.



## **Exemption where no benefit is derived from a loan to a relative**

### *Section 174(5)*

#### **17.18**

There is no chargeable benefit if a director or employee who is not in an excluded employment shows he or she got no benefit from a loan made to a relative of his or hers. This exemption protects an employee from a charge where there is a genuine arm's length transaction between the employer and the employee's relative. It also applies where a debt is released or written off.

## **Exemption for loans for fixed periods at a fixed rate of interest**

### *Section 177*

#### **17.19**

There is no chargeable benefit in any year of assessment on a loan made to a director or employee if the loan:

- is for a fixed and invariable period, and
- is at a fixed and invariable rate of interest, and
- when the loan was first made the interest paid on it in the year it was made was not less than the interest calculated at the appropriate official rate(s) for that year.

The tests to be satisfied for this exemption are stringent. The loan must be for a specific period which cannot be varied under any circumstances and the rate of interest must be fixed and incapable of alteration.

## **Exemption for 'commercial loans'**

### *Section 176*

#### **17.20**

There is no chargeable benefit on a loan made to a director or employee if:

- the loan was made by a person in the ordinary course of a business carried on by that person which includes the lending of money
- at the time when the employee loan was made the lender was making comparable loans (see paragraph 17.21) available to all his or her potential borrowers
- the comparable loans made by the lender at or about the time (see paragraph 17.23) as the employee loan was made, a substantial proportion (see paragraph 17.22) was made to members of the public at large with whom the lender was trading at arm's length (see paragraph 17.24)
- the same terms apply to all comparable loans (including the employee loan), and
- where the terms of the comparable loans (including the employee loan) are different from the original terms, the new terms were imposed in the ordinary course of the lender's business.

Note that the exemption is due only if all those conditions are satisfied.

This exemption also applies, on the same conditions regarding the giving of credit for making a loan, to the giving of credit to a director or employee by a person whose business includes the supply of goods or services on credit.

## Comparable loans

### 17.21

A loan is comparable with another if both are made:

- for the same or similar purposes, and
- on the same terms and conditions.

The words '**the same or similar purposes**' have their ordinary common sense meaning. A loan to buy shares in one company is made for a similar purpose to a loan to buy shares in another company. A loan to buy a holiday is not made for a similar purpose to a loan to buy a house.

The words '**on the same terms and conditions**' mean just what they say.

If two loans are:

- made on the basis of different lending criteria, or
- carry interest at different rates, or
- have different terms as to repayment or security

they are not made on the same terms and conditions.

Similarly, since any fees charged in connection with the making of a loan (for example, valuation fees, administration or arrangement fees, reservation or booking fees) are part of the terms and conditions of the loan, a loan where no such fees are charged cannot, by definition, have been made on the same terms and conditions as one where such fees are charged.

## Substantial proportion

### 17.22

The substantial proportion test operates by reference to numbers of loans and not by reference to total amounts lent. So if 50% or more of the comparable loans made at, or about, the same time when the employee loan was made, were made to members of the public at large this test will be satisfied. Whether a proportion below 50% would be enough will be a matter of fact or degree.

## At or about the time the employee loan was made

### 17.23

The law does not specify the period within which the loans to be taken into account in applying the substantial proportion test have to be made. This allows the application of common sense. If a public offer for loans for the same or similar purposes and on particular terms and conditions is open from 1 April to 31 December all such loans made in that period will have been made at or about the same time for the purposes of the substantial proportion test.

## Members of the public at large

### 17.24

The public at large means, in this context, the public in general as distinct from a particular section of the public. The essential difference is between ordinary customers with whom the lender deals on an arm's length basis and other borrowers with whom the lender has a special relationship – for example, employees, former employees or suppliers. This does not mean that loans made by specialised lenders such as merchant banks which do not lend to the general public are automatically excluded from the exemption. The criterion is not whether a substantial proportion of the comparable loans was

made to all and sundry but whether such a proportion of those loans was made to ordinary customers with whom the lender was dealing at arm's length.

### **Exemption for loans varied onto 'commercial' terms**

#### *Section 176(5)*

#### **17.25**

There is no chargeable benefit on a loan, made to a director or employee, which has been varied onto the same terms as apply to loans made to members of the public, if:

- a substantial proportion of relevant loans (see paragraph 17.26) are held by members of the public (see paragraph 17.24), and
- at the time of variation of the employee loan, members of the public with existing loans from the lender had a right to vary their loans on the same terms and conditions as applied to the variation of the employee loan, and
- any such loans to members of the public so varied are held on the same terms as the employee loan, and
- where the terms of the relevant loans (including the employee loan) are different from those immediately after the time of variation, the new terms were imposed in the ordinary course of the lender's business.

In deciding whether rights to vary loans are on the same terms and conditions, and whether loans are held on the same terms:

- penalties, interest and similar amounts incurred by the borrower as a result or varying the loan, and
- fees, commission or other incidental expenses incurred by the borrower for the purpose of obtaining the loan, are disregarded.

### **Relevant loans**

#### **17.26**

For the purpose of the exemption for varied loans, the relevant loans are:

- the employee loan in question, and
- any existing loans which were varied at, or about, the time of the variation of the employee loan, so as to be held on the same terms as the employee loan, and
- any new loans made by the lender at, or about, the time of the employee loans which are held on the same terms as the employee loan.

### **Calculation of chargeable benefit from a beneficial loan**

#### **Aggregation of loans between the same borrower and lender**

#### *Section 187*

#### **17.27**

Where there is more than one loan owing to a close company by one of its directors, the company may elect to treat certain loans as a single loan for the purposes of calculating the chargeable benefit for a year.

The loans which can be dealt with in this way (aggregated) are those which are:

- not qualifying loans (see paragraph 17.14)
- in the same currency, and
- beneficial (see paragraph 17.1).

Loans which are exempt from charge cannot be aggregated. They include:

- commercial loans (see paragraph 17.20), and
- loans falling within any of the exemptions mentioned in paragraphs 17.12 and 17.16 to 17.19.

The fact that a particular director has one or more loans which cannot be aggregated does not mean that his or her other loans cannot be aggregated but an election must cover all loans which can be aggregated.

#### Example

A director of a close company has five cheap loans in sterling from his employer outstanding on a given day in a tax year. One of these loans is a qualifying loan which is not exempt because the interest only partly qualifies for relief. The other four loans are non-qualifying loans but one of them is a 'commercial' loan.

The company may elect to aggregate the three remaining loans for the year but it cannot elect to aggregate two of them and deal with the third separately.

The company election cannot be reversed by the director.

An election is effective only if the company gives HMRC written notice of it within 91 days of the end of the tax year concerned. An election is effective only for one tax year.

### Calculation of the chargeable benefit - 'the cash equivalent'

#### 17.28

There are two alternative ways of working out the chargeable benefit from a cheap or interest-free loan or loans.

The **normal averaging method** (see paragraph 17.29) applies automatically unless:

- the director or employee elects for the other (the '**alternative precise method**'), or
- the officer of HMRC gives notice that he or she intends to use the '**alternative precise method**'.

#### Section 182

#### 17.29

The normal averaging method of calculation is based on:

- the average amount of the loan (or aggregated loan - paragraph 17.27) calculated by reference to its maximum opening and closing balances at the beginning and end of the tax year. If the loan was not in existence throughout the whole year, the average is based on the maximum balances on the dates the loan was made or discharged.
- the average appropriate '**official rate**' of interest for the tax year – or for such shorter period as the loan was in existence.

The step by step calculation is as follows:

- 1 Find the maximum amount of the loan outstanding on
  - 5 April preceding the year of assessment, or
  - if the loan was made during the year, the date on which it was made
- 2 Find the maximum amount of the loan outstanding on
  - 5 April within the year of assessment, or
  - if the loan was discharged during the year, the date on which it was discharged
- 3 Add together the maximum amounts found at Steps 1 and 2, and divide the result by two. This is the average loan
- 4 Multiply the average loan found at Step 3 by the number of whole months for which the loan was outstanding in the year and divide the result by 12. For the purpose of this calculation months begin on the sixth day of the calendar month
- 5 Multiply the result by the appropriate average official rate of interest in force during the period that the loan was outstanding in the year

- 6 Deduct any interest which was paid by the director or employee in respect of the loan for that year.

For an example, see Appendix 6.

### **'Alternative precise method' of calculating the chargeable benefit**

#### *Section 183*

#### **17.30**

Broadly, the alternative method of calculation involves:

- dividing the appropriate official rate by 365, and
- applying that to the total of the maximum amounts of the loan (or loans) outstanding on each day in the tax year.

In effect the total amounts of the maximum balances on the loan (or aggregated loan) for each day are converted into the equivalent balance for one day to which one day's interest charge at the appropriate official rate is then applied.

Any interest paid on the loan for the tax year is then deducted to arrive at the chargeable benefit for that year. For an example, see Appendix 6.

### **Election for the alternative precise method of calculating the benefit**

#### **17.31**

Either the employee or the officer of HMRC can elect for the alternative precise method of calculating the cash equivalent. An election covers all beneficial loans which the director or employee has outstanding at any time in the year of assessment concerned. It is not possible to elect to have some dealt with by the alternative precise method and others by the normal averaging method.

### **Time limit for elections made by directors and employees for the alternative precise method of calculating the benefit**

#### *Section 183(2)*

#### **17.32**

The time limit for making an election for the alternative method of calculation is 31 January in the next tax year but one after the relevant year of assessment. So an election for 2007–08 must be made by 31 January 2010 if it is to be valid.

### **What interest paid is to be taken into account in calculating the chargeable benefit**

#### *Section 175(3)*

#### **17.33**

When calculating the chargeable benefit from a beneficial loan for any year it is necessary to deduct interest paid on it which satisfies the following conditions:

- it must have actually been paid
- it must have been paid for the year of assessment.

It does not have to be paid in the year of assessment to qualify.

### **Meaning of 'interest'**

#### **17.34**

Interest has a special technical meaning. In particular, a payment which a person makes voluntarily or agrees voluntarily to make cannot be interest. So a payment cannot be interest for a year unless an obligation to pay interest existed in that year.

## **Recalculation of the chargeable benefit where interest is due but not paid until after the assessment has become final**

### **17.35**

When interest, which a director or employee has to pay for a particular year, is paid after the assessment on the benefit for that year has become final, the law allows him or her to make a claim for the assessment to be recalculated to take the belated interest payment into account.

A claim to this relief can be made at any time up to the end of the general time limits that are applicable to individuals making claims for repayment of Income Tax.

## **'Cash equivalent' to be treated as interest paid**

### **17.36**

An amount equal to the cash equivalent of the benefit of any loan will be treated as paid by the director or employee as interest in respect of that loan.

## **Treatment of notional interest paid**

### **17.37**

The amount treated under the beneficial loan rules as interest paid is so treated for all the purposes of ITEPA 2003 (other than those rules themselves). The notional interest is treated as accruing during the year and paid on 5 April in the year unless the director or employee ceases to be in employment to which the benefits code applies, in which case the interest is treated as paid on the last day in the year on which the employee is in such employment. (See Appendix 6.)

## **Directors' current or loan accounts with a close company**

### **17.38**

If the directors own all the share capital of the company and either formally or informally decide that sums withdrawn by them from the company are remuneration, or on account of remuneration, the withdrawals are not loans. Pay As You Earn should be applied at the time of each withdrawal. If the directors make withdrawals which are not remuneration or on account of remuneration, the withdrawals may put the directors in debt to the company. If they do, charges on beneficial loans may arise unless they fall within one of the exemptions (see paragraphs 17.12 and 17.16 to 17.20). Interest paid on a debt incurred by overdrawing an account, or under similar arrangements, does not qualify for relief under the interest relief rules. Whilst this restriction is more commonly applied to bank overdrafts, it applies equally to a director's overdrawn current account with his or her company. It follows that no part of the interest or notional interest on an overdrawn current account will be eligible for relief irrespective of the use to which the money is put.

## **Joint and several loans**

### **17.39**

If a loan is made jointly and severally to two or more directors or employees who are chargeable to tax in respect of the loan, the cash equivalent of the benefit of the loan is apportioned between them in a just and reasonable way.

# Chapter 18 Scholarships

*Section 776 ITTOIA*

## **18.1**

Although the income from a scholarship is exempt from a tax charge in the scholar's hands, scholarships awarded to students by reason of their parents' employment will normally give rise to a tax charge on the parent unless the parent is in an excluded employment (see paragraph 1.19).

*Section 215*

### **'By reason of the employment'**

*Section 212*

## **18.2**

For the purpose of taxing a director or employee with the value of a scholarship provided by reason of his or her employment for a member of his or her family or household the phrase 'by reason of the employment' is given an extended meaning. As well as covering the situations described in paragraphs 1.23 to 1.25, a scholarship is treated as having been awarded 'by reason of' the parent's employment if it is awarded under 'arrangements entered into' by the employer or any person connected with the employer. This applies whether or not expense is directly incurred by the employer and thus covers situations where, for example, the expense is met by an educational trust set up by the employer or anyone else under arrangements made with the employer or someone connected with the employer.

As to the meaning of connected person see paragraph 18.6 below.

### **'Fortuitous' awards**

*Section 213*

## **18.3**

The legislation excludes from a tax charge any scholarship provided from a trust fund or under a scheme for full-time education or instruction where:

- in the relevant tax year not more than 25% by value of the awards go to members of the families or households of the employees whether or not the employee:
  - (a) is an excluded employment (see paragraph 1.19)
  - (b) is resident or ordinarily resident in the UK, or
  - (c) the duties of the individual's employment are performed outside the UK, and
- the award was not provided by reason of the parent's employment (disregarding for this purpose only the extended meaning given to this phrase in paragraph 18.2).

## **18.4**

Thus scholarships awarded to the children of all employees – whether or not the employees are within the special rules described in this booklet or are working overseas – are taken into account for the purpose of the 25% test mentioned above. Furthermore, the 25% test cannot operate to prevent a tax charge unless the connection between the award and the parent's employment is purely fortuitous.

### **Cost of the benefit**

*Section 214*

## **18.5**

If the provision of a scholarship from a trust fund is taxable as an employment-related benefit the cost of the benefit (that is, the amount treated as the employee's income) is the total of the payments made from the fund to the person holding the scholarship.

*Section 211(3)*  
*Section s839*  
*ICTA 1988*

## **Definitions**

### **18.6**

The word ‘**scholarship**’ as used in this Chapter is defined as including an exhibition, bursary or other similar educational endowment. The term ‘**connected person**’ covers most family relationships, the trustee of a settlement where the trustee is connected with any person who is a settlor or with a body corporate connected with the settlement, and partners except as regards certain commercial transactions. Similarly, companies are connected with other companies if they are controlled either directly or indirectly by the same person or by a person connected with him or her. There are special definitions for these purposes of ‘settlement’, ‘settlor’, ‘company’, ‘control’ and ‘relative’.



# Chapter 19 Tax not deducted from remuneration paid to directors

## Section 223

### 19.1

A tax charge arises if an employer bears the tax which should have been deducted from a director's remuneration. These rules only apply to **company directors** (see paragraph 19.3 below).

They ensure that a tax charge will arise where both the following conditions are satisfied:

- the employer, on paying remuneration to a director, (or otherwise making it available to the director) fails to deduct the full amount of income tax due under the PAYE regulations, and
- someone other than the director pays to HMRC the tax the employer has failed to deduct and the director does not make good all the tax paid.

#### Example

A company votes remuneration of £10,000 to a director and then pays this or otherwise makes it available to the director without deducting tax of £4,000 under PAYE.

At a later date, the company pays the £4,000 tax. The legislation ensures that in addition to the voted remuneration of £10,000, the director will be assessed upon remuneration equal to the tax accounted for by the company, that is £4,000, minus any amount made good by the director.

## Limitation to directors

## Sections 216(3), 223(7) and (8)

### 19.2

The tax charge described above does not apply to company directors who are:

- full-time working directors who do not hold a 'material interest' in the company (see paragraphs 1.10, 1.11 and 1.16), or
- directors of charities or non profit-making concerns (see paragraphs 1.12 to 1.16).

## Year of assessment

## Section 223(4)

### 19.3

Subject to paragraph 19.5 below the tax charge upon the director will arise for the tax year in which the employer pays to HMRC the tax that was not deducted when remuneration was paid or otherwise made available to the director.

## Payment of tax by the company after cessation of employment

## Section 223(5)

### 19.4

Where, after the directorship has ceased, the company pays the tax properly deductible from the remuneration paid to the director, the tax charge will arise in the tax year in which the directorship ceased. This prevents the avoidance of a tax charge until a time when the director is no longer employed or, if still employed, is no longer a director.

## Section 223(6)(a)

### 19.5

No tax charge arises if the company pays the tax after the director's death. The director's estate does not have to make good on the director's behalf any tax accounted for by the company after his or her death.

# Chapter 20 Entertaining expenses

## 20.1

This Chapter applies to all employees and directors. In the context of this Chapter references to a trade include references to any business, profession or vocation.

### Employees of concerns carrying on a trade

*Section 577 ICTA  
and Section 45  
ITTOIA*

## 20.2

Where an individual is employed by a trading organisation (including a nationalised industry) the broad effect of the Taxes Acts is to prohibit a tax deduction for entertaining expenditure.

The disallowance for tax purposes of entertaining expenses may be made in one of two ways, in computing the tax liability of the employer, or in computing that of the employee. The course followed will depend upon the circumstances in which entertaining expenses are incurred.

*Section 577 ICTA  
Section 45(2)  
ITTOIA*

## 20.3

Where an employee receives an allowance which is specifically earmarked for entertaining, and the employer is not a tonnage tax company, the payment is disallowed in calculating the employer's tax liability. This is also the case for any other kind of payment which is specifically made by the employer for entertaining, for example, where the employer meets the employee's bills for entertaining or reimburses the employee for expenditure on entertaining.

*Section 357*

## 20.4

Where a payment is disallowed to the employer, or if the employer is a tonnage tax company, the employee is not affected by the special provisions about entertaining mentioned in paragraph 20.2. Such an employee is entitled to a tax deduction for expenditure on business entertainment which is allowable under the ordinary expenses rule mentioned in Chapter 7. In such circumstances, a deduction may be due if the employee is required for genuine business reasons to entertain customers, suppliers, or other business connections in the course of performing the duties of the employment.

The expenses of a particular occasion are normally allowable if the purpose was to discuss a particular business project. They may also be allowable if the purpose was to maintain an existing business connection or to form a new one, even though no business was actually done.

## 20.5

Where the entertaining expenses incurred on a particular occasion are allowable no restriction is made for the cost of the employee's own meal.

## 20.6

If the entertainment expenses are not deductible under the ordinary expenses rule the employee is taxable on amounts reimbursed by the employer even though those amounts may have been disallowed to the employer. Thus no allowance can be given for entertaining personal friends or business acquaintances where there is no business obligation to entertain them. Reciprocal entertaining between business acquaintances, even though some business topic happens to be discussed, may be really for social and not business reasons and, if so, this expense is not allowable.

### **20.7**

It is for this reason that the expense of entertaining colleagues, that is, other employees of the same organisation, is not normally allowed. Furthermore, a PAYE Settlement Agreement should be completed to account for any tax and NICs due.

#### *Section 356*

### **20.8**

Where an employee meets entertaining expenses from an inclusive salary or from a round sum allowance paid by the employer to cover expenditure besides entertaining, the disallowance is made in calculating the employee's tax liability.

### **20.9**

Where entertaining expenditure is not allowable the disallowance extends also to expenditure incidental to the entertainment. Thus, the cost of the employee's own meal, of a taxi to and from a restaurant, or the cost of hiring a room for entertaining, would all be treated for tax purposes in the same way as the cost of the entertaining itself.

## **Business entertaining and gifts**

#### *Section 356(3)*

### **20.10**

Entertaining includes hospitality of any kind and also expenditure on business gifts other than free samples of the trader's own products distributed with the aim of advertising to the general public. There is, however, a limited exception for gifts which incorporate a conspicuous advertisement for the donor. This exception does not extend to gifts of food, drink, tobacco, or vouchers exchangeable for goods. Further, it is subject to the condition that the aggregate cost to the donor of the gifts does not exceed £50 a year in the case of any one recipient.

#### *Section 358(3)*

## **Employees of concerns not carrying on a trade**

#### *Section 336*

### **20.11**

Employees of non-trading concerns such as the Civil service and the Armed Forces are entitled to a deduction for entertainment expenses which are incurred wholly, exclusively and necessarily in the performance of their duties.

## **Keeping records**

### **20.12**

Employees who believe they are entitled to a deduction for entertaining expenses should be able to support the deduction with reasonable records of the amounts spent on particular occasions, the nature of the entertainment, the persons entertained and the reason for the entertaining.

# Chapter 21 Provision of living accommodation

## Basis of liability

*Section 102*

### 21.1

Subject to paragraphs 21.2 and 21.3 below, where an employee is provided with living accommodation by his or her employer (or by another person where the provision is by reason of the employment) the employee is liable to tax on the value of the accommodation provided. This also applies where, by reason of an individual's employment, accommodation is provided for members of his or her family or household as defined in paragraph 1.22. This rule applies whether or not the employee is in an excluded employment (see paragraph 1.19).

## Exemption

*Sections 99 and 100*

### 21.2

Subject to paragraph 21.3 below, no tax charges in respect of the provision of living accommodation will arise where:

- (a) it is necessary for the proper performance of the employee's duties that he or she should reside in the accommodation, or
- (b) the accommodation is provided for the better performance of the employee's duties and the employment is one of the kinds for which it is customary for employers to provide accommodation for the employee, or
- (c) there is a special threat to the employee's security, special security arrangements are in force and the employee resides in the accommodation as part of those arrangements.

*Section 314*

Where exemption is due in any of the above circumstances it also extends to any tax charge that might arise in respect of council tax, water charges or rates reimbursed to, or paid on behalf of, the employee concerned.

*Sections 99(3)*

### 21.3

Where accommodation is provided by a company for a director of the company or an associated company the exemption provided by (a) or (b) in paragraph 21.2 above is not given unless the director:

- (a) has no 'material interest' (see paragraph 1.11) in the company, and
- (b) is a 'full-time working director' (see paragraph 1.10) or the company is non-profit making or is a charity (see paragraphs 1.14 and 1.15).

## Provision of living accommodation 'by reason of employment'

*Sections 97(2) and 98*

### 21.4

Where living accommodation is provided for an employee or for members of his or her family or household by the employer it is deemed to have been provided by reason of that employment.

There are two exceptions to this. The first is where the employer is an individual and it can be shown that the provision was made in the normal course of domestic, family or personal relationships. The second exception is where the accommodation is provided by a local authority for one of its employees and the terms of the employee's occupation are no more favourable than those on which similar premises are made available by the local authority to persons who are not employed by it, but whose circumstances are similar to those of the employee concerned.

## The cost of providing living accommodation

### 21.5

The cost of the property is calculated by adding its purchase price to the cost of improvements. The purchase price includes expenditure incurred in acquiring an estate or interest in the property. For example, a premium paid under a lease is part of the cost of the property. From the total of the purchase price and improvements is deducted any reimbursements made by the employee and any sums paid by the employee for the grant of a tenancy. For example, if the cost to an employer of a property and an extension was £130,000 and the employee reimburses £10,000 to the employer, the cash equivalent of the benefit will be based on the net cost to the employer of £120,000. In some circumstances the market value of the property will be substituted for its cost (see paragraphs 21.6 to 21.8).

### Substitution of market value for cost

### 21.6

Where, on or after 31 March 1983, an employee occupies provided living accommodation for the first time and any interest in the property was held by the person providing the accommodation (or by a person connected with the provider of the accommodation) throughout a period beginning 6 years before the date of the employee's first occupation, the market value of the property at that date (plus the actual cost of subsequent improvements) is substituted for the actual cost of providing the accommodation. This market value rule applies only if the actual cost of providing the accommodation (including improvements) exceeds £75,000.

### 21.7

For the purposes of paragraph 21.6 above, the market value of the property is to be estimated on the basis of the price it might reasonably be expected to fetch in the open market assuming vacant possession and disregarding any option in respect of the property held by the employer, the provider of the accommodation or by the employee or anyone connected with those persons.

### 21.8

For living accommodation whose provision (including improvements) cost more than £75,000 the effect of paragraphs 21.6 and 21.7 above is:

- for all occupancies which began before 31 March 1983 the cash equivalent of the benefit is based on the actual cost
- for occupancies which began after 30 March 1983 the market value basis will apply if the provider of the accommodation had held any interest in it throughout the period of the six years ending with the date when the employee first occupied the property. Otherwise the actual cost basis applies.

Where the market value basis applies the market value as at the date of first occupation by the employee will remain the basis of calculating the benefit for so long as the employee remains in residence, subject to the addition of the cost of any subsequent improvements.

## Calculation of cash equivalent: accommodation cost £75,000 or less

Section 105

### 21.9

- (a) The cash equivalent of the benefit of the accommodation is the annual value of the property occupied (or, if greater, the total of any rent payable and any amount attributed in respect of a lease premium – see paragraph 21.11) less any rent paid by the employee. Annual value for this purpose is defined in the same way as the annual value which was formerly used for rating purposes. Annual value is the rent the property would fetch if it were let on the open market. The figure taken for income tax purposes is usually the same as the gross value for rating purposes which applied before the introduction of the Community Charge.
- (b) The annual value of property situated in the UK is taken as follows:
  - England and Wales: 1973 gross rating value
  - Northern Ireland: 1976 gross rating value
  - Scotland: 1985 gross rating value divided by 2.7. Thus a 1985 gross rating value of £270 in Scotland is reduced to £100.
- (c) Following the introduction of the Council Tax new properties will not appear on the rating lists. Estimated gross annual values are used for new properties as the basis of the Income Tax charge. In Scotland where the estimate is of a 1985 gross rating value that figure is divided by 2.7 in accordance with the concession outlined above.
- (d) If the accommodation is provided for less than a year, then the annual value is proportionally reduced. The same principle applies to any rent payable by the provider or to any amount attributed in respect of a lease premium.
- (e) See paragraph 21.13 onwards for advice on calculating the cash equivalent of the benefit where the living accommodation costs over £75,000.

ESC A56

Section 106

### 21.10

The employee is also liable to tax in respect of any occupier's liabilities borne by the employer.

## Calculation of cash equivalent: accommodation cost £75,000 or less: lease premiums

Section 105A

### 21.11

- (a) Where a lease premium is payable and the property is subject to a lease for a term of ten years or less which was entered into or extended on or after 22 April 2009, in addition to any rent payable, an amount is to be attributed in respect of the lease premium.
- (b) But an attribution is not required if the property consists of premises or a part of premises that are mainly used for purposes other than the provision of living accommodation. For example where the premises are mainly used as a shop and the living accommodation consists of a flat above the shop.
- (c) If an attribution is required, the lease premium is treated as rent paid and spread over the duration of the lease. The amount to be attributed in respect of a lease premium is given by the formula  $(A \div B) \times C$  where:
  - A is the taxable period (in days). This will generally be the period in the tax year for which the accommodation is provided.
  - B is the term of the lease (in days)
  - C is the total amount of lease premium that has been paid or will be payable by the provider.

An example of how the formula applies in a simple case is given on page 79.

## Section 105B

- (d) There are special rules for attributing the lease premium for leases with break clauses. For this purpose a break clause is a provision of a lease that gives a person a right to terminate the lease which can be exercised in such a way that the term of the original lease will be 10 years or less. The Employment Income Manual has guidance including a worked example on the application of these rules.

### 21.12

#### Example

On 1 October 2012, an employer enters into a lease of living accommodation with a gross rating value of £1,000 that it provides rent-free to an employee from that date.

The lease is for a term of five years and does not contain a break clause. Under the lease, the employer pays rent of £120 per calendar year and a premium of £70,000 payable in two instalments, £30,000 on 1 October 2012 and £40,000 on 1 October 2013.

For 2012-13:

A is 187 days (1 October 2012 to 5 April 2013)

B is 1,826 days

C is £70,000

The amount of lease premium to be attributed will be  $(A \div B) \times C = £7,168$ .

The total of the rent payable for the taxable period (£60) and the amount of lease premium attributed (£7,168) less any rent paid by the employee (nil) is greater than the gross rating value so the cash equivalent of the benefit will be £7,228.

### Calculation of cash equivalent: accommodation cost over £75,000

#### 21.13

Where the cost of the property is over £75,000 (see paragraph 21.5) then the cash equivalent of the benefit is:

- (a) the cash equivalent as calculated for property costing £75,000 or less (see paragraphs 21.9 and 21.11)
- (b) plus the excess of the cost (or deemed cost, see paragraphs 21.6 to 21.8) of the property, including the cost of any improvements over £75,000 multiplied by the 'official rate' of interest (see paragraph 17.4) in force at the beginning of the tax year. This figure is called the 'additional yearly rent'
- (c) minus any rent payable by the employee to the extent that it exceeds the annual value or the total of any rent payable and any amount attributed in respect of a lease premium, (see paragraph 21.9(a)).

If the accommodation is provided for less than a year, then the cash equivalent is proportionally reduced.

## Section 106



## 21.14

### Example

By reason of his employment a senior executive is provided by his employer with a house which cost the employer £175,000 in June 1998. The gross rating value of the property is £1,000 and the executive is required to pay his employer a rental of £1,500 per annum. Assuming that the executive occupied the property throughout the tax year and that the 'official rate' in force at 6 April (the beginning of the tax year) was 7.25%, the tax charges upon the employee for the year will be:

(a) benefit under Section 105 (paragraph 21.9)

(No charge arises because the rental of £1,500 payable by the employee is more than the gross rating value of £1,000) NIL

(b) the additional yearly rent

|                                   |          |        |
|-----------------------------------|----------|--------|
| • cost of providing accommodation | £175,000 |        |
| minus                             | £75,000  |        |
| excess is                         | £100,000 |        |
| • £100,000 x 7.25% =              |          | £7,250 |

(c) Excess of rental payable over gross rating value

|                                       |        |            |
|---------------------------------------|--------|------------|
| • rental payable by employee          | £1,500 |            |
| minus                                 |        |            |
| gross rating value                    | £1,000 |            |
| unused excess rent                    |        | minus £500 |
| The cash equivalent of the benefit is |        | £6,750     |

## Annual value equal to open market rental value of the accommodation

ESC A91

### 21.15

In some circumstances the annual value (see paragraph 21.9(a)) may be the full open market rental value of the accommodation. In these circumstances the cash equivalent of the benefit will be calculated as if the property cost £75,000 or less, regardless of its actual cost.

## Accommodation provided to more than one employee

Section 108

### 21.16

Where a property consisting of living accommodation is provided to two or more directors or employees in the same period, the cash equivalent of the living accommodation to each director or employee will be reduced. Reductions will be made having regard to all the relevant facts so that the total cash equivalent for all the directors and employees concerned is not more than the cash equivalent had the property been provided as living accommodation to a single director or employee.

## Provision of benefits or facilities connected with living accommodation

Section 201

### 21.17

If the employee concerned is not in an excluded employment (see paragraph 1.19) he or she is also liable to tax on the expense incurred by the provider of the accommodation on benefits or facilities connected with the accommodation. Such expenses would include heating, lighting, garden maintenance, domestic or other services, and repairs and decorations except those within paragraph 21.20.



*Section 205(2) and  
(3)*

*Section 206(2)  
Section 206(3)*

*Section 315*

### **21.18**

Similarly, if the provider of the accommodation also equips the accommodation with furniture and this remains the provider's property, the director or employee is taxable on the annual value of the use of this as described in paragraph 6.5 whilst, if furniture is given or transferred to a director or employee earning at a rate of £8,500 a year or more, a taxable benefit will normally arise (see paragraph 6.9).

### **21.19**

The sums assessable upon a director or employee in respect of benefits or facilities connected with the accommodation may be restricted if the individual concerned is entitled to the exemption described in paragraph 21.2. Further information regarding this possible restriction of the tax charge relating to such ancillary services is given below.

### **21.20**

Where a director or employee is entitled to the exemption described in paragraph 21.2 and expenditure is reimbursed to him or her, or is incurred in respect of any of the following:

- heating, lighting or cleaning the premises concerned
- repairs to the premises, their maintenance or decoration
- the provision in the premises of furniture, etc. which is normal for domestic occupation, the sum assessable in respect of this expenditure is not to exceed the limit specified in paragraph 21.19.

### **21.21**

The limit mentioned above is 10% of the net earnings of the employment and associated employments minus any contribution made by the employee to the expenditure set out in paragraph 21.20. For this purpose net earnings means the total remuneration as described in paragraph 1.21 (excluding the expenditure in paragraph 21.20 above) after deducting any capital allowances, pension contributions, retirement annuity payments and expenses allowable for tax purposes. If the accommodation is provided for less than a year the percentage of the net earnings referred to above is proportionately reduced.

*Section 313*

### **21.22**

Expenditure on the following items in connection with living accommodation provided for a director or employee or for members of his or her family or household is not treated as giving rise to benefits assessable under the special rules:

- structural alterations and additions to the premises, and
- expenditure which would normally be the landlord's responsibility, for example, repairs to the structure and the outside of the property (including drains and gutters, etc.) and repairs to installations in the property for the supply of water, gas and electricity and for sanitation (including sinks, baths and lavatories) and for heating.

## Deduction for business expenses

### 21.23

Where the accommodation provided is simply a home for the employee and his or her family, the question of any deduction under the expenses rule described in Chapter 7 does not arise. Where the employee is necessarily obliged to use part of the property exclusively for business, the expense of such use may be deducted in arriving at the tax charge. For example, there may be circumstances in which part of the accommodation has to be reserved for business purposes, such as a showroom. In these cases, an appropriate deduction may be given for tax purposes.

### 21.24

If accommodation is provided for an employee, for example, in a flat or hotel, while the employee is on business duties away from his or her home and normal place of work, the cost of this may be allowable as a deduction under the expenses rule. For example, a company in Yorkshire may rent a London flat for an employee who has to make frequent business trips to London. The extent of any deduction will depend upon the circumstances. If the accommodation is no more than an alternative to hotel accommodation and is not available for private occupation the whole cost of renting and running the flat may be allowed as a deduction. On the other hand, if the employee or his or her family also had the use of the flat as a private residence any allowance would be restricted.

Provided living accommodation will never be included in a dispensation and so even if there is a potential deduction under the expenses rules, the provision of the accommodation must be reported on form P11D each year.

### 21.25

If, however, a London flat is provided for an employee whose job is in London and the flat is used by the employee as a pied à terre no allowance would be due. Equally, if the flat is used by the employee or the employee's family as their only or second home, no deduction for tax purposes would be due.

# Chapter 22 Mobile phones and BlackBerrys

## Section 319

### 22.1

There is no charge to tax on:

- one mobile phone provided to an employee, or
- any line rental or the cost of any private calls for that phone paid for by the employer

unless they can be converted into money by the employee.

### 22.2

One mobile phone may consist of two connections (for example, two SIM cards) to the same number, one in a handset and another in a hands-free phone in a car. However, two connections to two different numbers represents two mobile phones.

### 22.3

A mobile phone provided to a member of an employee's family or household is taxable in all circumstances, unless the family or household member is provided with the phone as an employee in their own right. Money an employer pays to an employee to use their own mobile phone is taxable.

## Section 316

### 22.4

If an employer provides a mobile phone to an employee solely for business use, and private use is not significant, there is no charge to tax. Consequently, it is possible for an employer to provide two, or more, mobile phones to an employee, without creating a tax charge, if one (or more) is provided solely for business use (and private use is not significant) and only one is provided for private use. But if two mobile phones are provided for private use, or for mixed private and business use, only one is exempt. It is up to the employee and the employer to decide which one is exempt and which one is chargeable as a benefit.

## Section 319

### 22.5

Where apparatus is clearly designed or adapted for the primary purpose of transmitting and receiving spoken messages and is used in connection with a public communications service, the fact that it can also be used for other functions will not prevent it from falling within the meaning of mobile phone.

This means that smartphones will fall within the meaning of mobile phone. Certain devices that were primarily designed and adapted as Personal Digital Assistants (PDAs) in the past have evolved over time so that many modern consumer PDAs are likely to be smartphones. This is an area of rapidly changing technology and it is not possible to be certain about the application of the definition of mobile phone to future or new forms of smartphone.

It is important to note that there are many types of devices that have telephone functionality which do not qualify as mobile telephones. The definition does not cover apparatus that is designed or adapted for a primary purpose other than transmitting or receiving spoken messages, even if that apparatus is also capable of being used in this way.

Examples of apparatus that does not fall within the definition of a mobile phone include satellite navigation devices, devices that are solely PDAs and tablet and laptop computers.

In general, devices that use Voice Over Internet Protocol (VOIP) systems to make and receive telephone calls will not satisfy the primary purpose test.

# Chapter 23 Securities/Share Options and Securities/Share-related benefits

## HMRC Approved Share and Share Option schemes

### Annual Returns

#### 23.1

Companies which operate approved employee share schemes must make annual returns. The annual returns for these schemes are available on the HMRC website and should be sent to:

Specialist Personal Tax  
Employee Shares and Securities Unit  
Nottingham Team  
1st Floor, Fitzroy House  
Castle Meadow Road  
NOTTINGHAM  
NG2 1BD

### EMI returns

#### 23.2

Companies must notify the grant of EMI options to HMRC within 92 days of the date of grant. Annual returns must be made on form EMI40 available on the HMRC website and sent to the address below.

Specialist Personal Tax  
Employee Shares and Securities Unit  
Nottingham Team  
1st Floor, Fitzroy House  
Castle Meadow Road  
NOTTINGHAM  
NG2 1BD

## Securities and Securities Options without tax & NIC advantages

#### 23.3

Where employees receive securities (including shares) or options over securities (including share options) other than under HMRC approved schemes, the rules in Chapters 1 to 5 of Part 7 ITEPA 2003 apply. These extend to a range of chargeable events following the acquisition of securities. The meaning of 'securities' is at Section 420.

### Operation of PAYE/NICs

#### 23.4

If the securities are Readily Convertible Assets (RCA), there may be a PAYE and NIC obligation (see Chapter 26 of this booklet). Employment-related securities are RCAs if 'trading arrangements' exist in relation to those securities. They may also be deemed to be RCAs the same shares qualify for a Corporation Tax deduction in accordance with S1006 to S1012 CTA 2009.

*Chapters 1 to 5 of  
part 7*

*Section 698  
Section 700*

Section 421J  
Section 222 ITEPA  
2003

Paragraph 23  
Schedule 4,  
SS(C)R 2001

Section 421J(10)

## What information should be provided to HMRC

### 23.5

Information about the following events must be provided:

- the acquisition of securities or interests in securities by reason of an employee's employment (whether or not any tax charge arises from their acquisition), including acquisitions giving rise to benefits chargeable under the 'notional loan' provisions of Chapter 3C, Part 7
- the grant of securities options, the acquisition of securities following the exercise of the option, the assignment or release of securities options and the receipt of benefits in money or money's worth in connection with the securities options (Section 477)
- any chargeable event in relation to restricted securities and restricted interests in securities (Section 426)
- any chargeable event in relation to convertible securities and interests in convertible securities (Section 438)
- doing anything which gives rise to a taxable amount (counting as employment income) by reason of an artificial enhancement or reduction of the market value of securities (Section 446L)
- any event discharging a notional loan relating to securities and interests in securities acquired for less than market value (Section 446U)
- a disposal of securities or interests in securities for more than market value (Chapter 3D of Part 7)
- the receipt of a benefit which gives rise to a taxable income counting as employment income under Section 447.

If the employee has agreed to meet the cost of the employer's secondary National Insurance contributions arising from securities option gains chargeable under Section 476 or an amount that counts as employment income under either Section 426 or Section 438, the information sent to HMRC must include details of:

- the amount of secondary NICs on the gain
- the amount met by the employee, and
- the date when payment (of the secondary NICs) was made by the employee.

Where there is a chargeable event and PAYE is applicable, but the employer is unable to deduct the necessary sum from the employee, the employer has to pay over the shortfall to HMRC. If the employee does not reimburse the employer the amount of the shortfall within 90 days, see Chapter 26 of this booklet.

## How should this information be provided - form 42

### 23.6

The information required above must be provided on form 42, the form specified by HMRC, available from [www.hmrc.gov.uk/shareschemes/ann-app-schemes.htm](http://www.hmrc.gov.uk/shareschemes/ann-app-schemes.htm)

It is acceptable to use your own spreadsheets or substitute forms provided they give the same details specified on form 42.

### 23.7

Where the acquisition of shares gives rise to benefits chargeable under the 'notional loan' provisions of Section 446S, the 'notional loan' should be returned on forms P11D each year (as a beneficial loan) until discharged, paid off or the shares are sold.

## When should the information be provided

*Section 421J(3)*

### **23.8**

Information relating to a reportable event must be provided to HMRC before 7 July following the tax year in which the reportable event takes place. The information must be provided whether or not a notice has been received requiring the information.

*Section 421J(5)*

In addition to this 7 July deadline, if a notice is issued by HMRC requiring information about employment-related securities then it must be provided by the date shown in the notice.

## Who should provide the information

*Section 421L*

### **23.9**

Each of the following have an obligation to ensure that the information is provided:

- the employer
- any host employer (the person treated as the employer for PAYE purposes) of the employee
- the person from whom, the securities, interests or options were acquired
- the person issuing the securities (with certain exceptions, see Section 421L(6)).

Once one of them provides the information this will be sufficient to satisfy the obligations of the others.

## Where to send the information

### **23.10**

The information should be sent to the address shown at 23.1.

## Employees

### **23.11**

Employees may need to provide details of taxable amounts arising from employment-related securities to HMRC for Self Assessment purposes. Please see Self Assessment guidance notes available on the HMRC website.

## Securities and securities options provided through third parties

*Section 554A*

### **23.12**

There are new rules which may apply where arrangements use third parties to reward employees, including by way of securities and securities options. See paragraph 1.26.

## Further information

### **23.13**

More information about HMRC approved share schemes is at [www.hmrc.gov.uk/shareschemes/ss\\_manual.htm](http://www.hmrc.gov.uk/shareschemes/ss_manual.htm)

# Chapter 24 Procedures to be followed by employer and employee

SI 744 1993  
(Regulation 46)

## Employer

### 24.1

At the end of each tax year the employer is required to give particulars of the expenses payments, benefits and facilities provided for each of his or her employees who is not in an excluded employment as set out in paragraph 1.19. Form P11D provided by HMRC is used for the purpose.

### 24.2

A person providing benefits for the employees of another will also be required to submit information in respect of the individuals for whom he or she has provided benefits.

### 24.3

Where an employer has a number of employees within the scope of the special rules mentioned in this booklet but to whom he or she has not paid any expenses or provided any benefits, the employer need not complete separate forms P11D for these individuals.

### 24.4

The individual forms P11D for those employees who have received expenses and benefits, together with any form P11D(b) Return of Class 1A National Insurance contributions certifying that all the required forms P11D have been sent, should be submitted to your HMRC office by 6 July each year. Further detailed advice is given in form P11D (Guide) which is available from the Employer Orderline.

### 24.5

Employers are also required to provide, for each employee for whom a form P11D is due, a statement of the information shown on the employee's form. The statement should be provided by 6 July.

## Employee

### 24.6

An employee is required to include any expenses payments and the taxable value of any benefits provided for him or her, and members of his or her family or household, in an annual tax return. In general the gross amounts are to be shown even though a deduction is claimed under the expenses rule described in Chapter 7. Where a net benefit figure has been agreed with the HMRC office it is sufficient to enter the net figure in the return. Where a dispensation has been given by HMRC office (see Chapter 2) the payments or the cost of benefits covered by the dispensation should not be included.

### 24.7

Where you are unable to agree with us whether an item is taxable or whether relief is due under the Employment Income expenses rule (see Chapter 7), you will need to make a Self Assessment tax return if you do not already do so. If we do not agree with the figures you use in your tax return we will make an amendment to your Self Assessment. You may then appeal against our amendment.

## **24.8**

If you want to appeal against the amendment to your Self Assessment you should write to the officer dealing with your case within 30 days of the amendment, giving your reasons why you do not agree with the amendment, sending any further information that you want us to consider as well. You can also ask for payment of all or part of the tax in dispute to be postponed until the matter is resolved.

We will consider any further information you send us and try to reach agreement with you. If we cannot agree, you can:

- ask for the amendment to be reviewed by an HMRC officer not previously involved in the matter, or
- notify your appeal to an independent tribunal.

If you opt for a review you can still notify your appeal to the tribunal after the review has finished.

## **24.9**

You can find further information about appeals and reviews at [www.hmrc.gov.uk/dealingwith/appeals.htm](http://www.hmrc.gov.uk/dealingwith/appeals.htm)

You can find out more about tribunals on the Tribunals Service website at [www.tribunals.gov.uk/tax](http://www.tribunals.gov.uk/tax) or you can phone them on 0845 223 8080.



# Chapter 25 Guidance on completion of forms P11D

## 25.1

A separate form P11D should be used for each employee who is not in an excluded employment (paragraph 1.19). Apart from the information given in this booklet reference should also be made to the P11D(Guide), booklet CWG5 *Class 1A National Insurance contributions on Benefits in Kind* and the booklet CWG2 *Employers Further Guide to PAYE and NICs*. Copies of these may be obtained from the Employer Orderline or our website.

## 25.2

A form P11D should be completed by the employer or by the person making the expenses payments to, or providing benefits for, the employee where the payment or provision is by reason of the individual's employment (see paragraphs 1.23 to 1.25). Employees should send their Section 336 claims for deduction against expenses to their own HMRC office.

## 25.3

Each form P11D should contain details of all expenses payments and benefits provided for the employee concerned (whether the payment is made to the director or employee personally or to a third party including a credit card company) except those items for which a dispensation has been given by your HMRC office or are covered by a PAYE settlement agreement (see booklet CWG2 *Employers Further Guide to PAYE and NICs*). Expenses payments from which tax has been deducted under PAYE should also be included.

## 25.4

Any benefits provided for the employee's spouse, family or household member must be treated as though they had been provided for the employee personally. See paragraph 1.22.

## 25.5

Employers pay Class 1A National Insurance contributions on a number of benefits. These are identified on the form P11D by a brown box with a 1A indicator. Further detailed advice is given in leaflet CWG5 *Class 1A National Insurance contributions on Benefits in Kind* and form P11D (Guide).

However, it is important to note the employer must pay the Class 1A NICs due by 19 July after the end of the tax year if paying by post or cash and by 22 July if paying electronically. If the employer pays late, or does not pay enough, interest will be charged on the amount outstanding after 19 July.

### Information in list form

## 25.6

Some employers find it convenient to provide the information in list form. Your HMRC office may give you permission to use a list in place of P11D returns provided that the list:

- is easily readable and in font size not less than Arial 11 when printed
- is organised by employee, not by benefit type
- includes each employee's name, gender and National Insurance number or date of birth
- includes all the expenses and benefits provided to an employee on the same list (not separate lists for each benefit type)
- shows the benefit code letters as on form P11D (example, 'F' = car and car fuel benefit).

Where an employer also has permission from their HMRC office to informally payroll some or all expenses and benefits and they wish to return this information in list form, they must also:

- provide a separate list for payrolled expenses and benefits (we cannot accept a list that contains a mixture of payrolled and non-payrolled benefits)
- clearly mark the list containing the payrolled expenses and benefits 'PAYROLLED' on the front and at the top of each page.

You will still have to provide a covering certificate saying that to the best of your knowledge or belief the details provided are fully and truly stated. You must still send a P11D(b) *Return of Class 1A NICs due* even if you have received permission to send P11D information in list format. Your HMRC office may still ask you to complete individual P11D forms for directors and certain employees.

## **Electronic filing of Expenses and Benefits returns**

### **25.7**

Electronic filing of expenses and benefit returns (forms P11D, P11D(b) and P9D) and returns under the Mileage Allowance Relief Optional Reporting Scheme (MARORS) can offer several benefits to employers including:

- speedier information flow
- accuracy of data reporting with reduced errors
- less paper and clerical handling.

The electronic filing options available are detailed below:

- PAYE Online Filing for Employers
- Online End of Year Expenses and Benefits Forms (new from April 2013)
- Electronic Data Interchange (EDI)
- Magnetic Media.

## **PAYE online filing for employers**

### **25.8**

This service is available to any PAYE employer and enables secure submission of expenses and benefits return forms P11D, P9D and Class 1A National Insurance contributions form P11D(b) through the HMRC's Government Gateway using the internet.

You can submit your returns using the free HMRC software provided or by using commercial software provided by a third party (some of which is also free). In either case you must first enrol with HMRC to use the PAYE online Filing service before you can submit your returns using this option.

We cannot accept the submission of returns under the Mileage Allowance Relief Optional Reporting Scheme (MARORS) or amended P11D/P11D(b) returns using this filing option.

For further information on the PAYE Online Filing for Employers service go to [www.hmrc.gov.uk/payexb/overview/forms.htm](http://www.hmrc.gov.uk/payexb/overview/forms.htm)

## **Online end of year expenses and benefits forms**

### **25.9**

These online forms, available from April 2013, enable small to medium sized employers to create and send P11D, P9D and P11D(b) forms electronically that relate to the years 2012–13 onwards.

They will also provide the following facility to:

- submit a nil P11D(b) return form electronically

- submit P11D/P11D(b) forms electronically for those expenses and benefits that have been fully payrolled
- create amended forms P11D/P9D/P11D(b) for printing and posting to HMRC
- create P11D/P11D(b) forms for those expenses and benefits that have been part payrolled, for printing and posting to HMRC.

For further information on the new Online End of Year Expenses and Benefits Forms go to [www.hmrc.gov.uk/payexb/overview/forms.htm](http://www.hmrc.gov.uk/payexb/overview/forms.htm)

## **Electronic Data Interchange (EDI)**

### **25.10**

We can accept expenses and benefits returns on forms P11D,P11D(b) and returns under the Mileage Allowance Relief Optional Reporting Scheme (MARORS) using the Electronic Data Interchange (EDI).

This option enables the electronic submission of expenses and benefits returns in the form of a structured data transmission through a secure communications link between HMRC and the employer. It does require additional software and is more suited to larger employers, employers with a high turnover of employees or employers who already have the EDI capability for other business reasons. Smaller employers may find that filing over the internet is a more cost-effective option.

If you wish to file your expenses and benefits returns using EDI and you do not already have the capability, you must first register with HMRC.

For further information on filing of returns using EDI go to [www.hmrc.gov.uk/payexb/file-or-pay/fileonline/EDI.htm](http://www.hmrc.gov.uk/payexb/file-or-pay/fileonline/EDI.htm)

## **Magnetic Media**

### **25.11**

We can also accept expenses and benefit returns form P11D and returns under the MARORS on computer produced 3½ inch floppy disk but not a Return of Class 1A National Insurance contributions on form P11D(b).

If using this filing option, your form P11D(b) must be submitted on paper.

The HMRC document 'EEC1', detailing the technical specification required for the submission of expenses and benefits on Magnetic Media can be found at [www.hmrc.gov.uk/softwaredevelopers/payexb/magmedia/exb.htm](http://www.hmrc.gov.uk/softwaredevelopers/payexb/magmedia/exb.htm)

Please note: CDs and memory sticks are not HMRC approved formats of Magnetic Media and we no longer accept information on open reel tapes or data cartridges.

## **How to find out more**

### **25.12**

For more information about the online services we provide to employers (and contractors in the construction industry) go to [www.hmrc.gov.uk](http://www.hmrc.gov.uk) and select 'employers' or contact Online Services Helpdesk:

|           |  |
|-----------|--|
| Email     | <a href="mailto:helpdesk@ir-efile.gov.uk">helpdesk@ir-efile.gov.uk</a> |
| Telephone | 0845 60 55 999   |
| Fax       | 0845 366 7828  |
| Minicom   | 0845 366 7805  |

## Effects of VAT

### 25.13

The amount to be included on forms P11D should include the **full amount** of VAT paid whether or not it may be recovered in whole or in part by the employer from HMRC.

## Entertaining expenses

### 25.14

Chapter 20 explains that entertaining expenses will often be disallowed when calculating the tax liability of the business. However, the full amount of all sums paid out in relation to entertainment should still be shown on forms P11D.

## Use of assets

### 25.15

When you are entering an amount in the section use of assets you must show the gross figure before any deduction for expenses. This will apply even if you have reached an agreement with your HMRC office on the basis to use when calculating the private use of the asset.

## Subscriptions

### 25.16

In addition to subscriptions to professional and learned societies related to the employment (see paragraph 7.5) entries at the section for 'Other items' on form P11D should include initial and annual subscriptions to clubs catering for leisure or sporting activities and to other societies, where the expense of the subscription is borne by, or on behalf of, the employee. Initial and annual subscriptions relating to credit cards provided for an employee by reason of his or her employment are exempt from a tax charge and should not be included on form P11D.

## Penalties

### 25.17

An employer who fails to make a return on form P11D within the appropriate time limit may incur a penalty not exceeding £300, with a further penalty not exceeding £60 a day if the failure continues.

### 25.18

There is also a penalty for making an incorrect return on form P11D. The penalty is a maximum of £3000 per form.

### 25.19

There are also penalties for:

- late filing of form P11D(b) *Return of Class 1A NICs due*
- making incorrect returns on form P11D(b) *Return of Class 1A NICs due*.

For further information on P11D(b) penalties see helpbook CWG5 *Class 1A National Insurance contributions on benefits in kind*.

## Further information

### 25.20

If you have any difficulties completing forms P11D, P9D, or the P11D(b) you can:

- go to [www.hmrc.gov.uk](http://www.hmrc.gov.uk)
- phone the Employer Helpline on 08457 143 143.  
For opening hours go to [www.hmrc.gov.uk/contactus](http://www.hmrc.gov.uk/contactus)

# Chapter 26 Remuneration in non-cash form, for example, payments by intermediaries

## PAYE tax not borne by the employee

*Part 11 Chapters 3 and 4*

### 26.1

In some circumstances the PAYE rules deem an employer (or other person providing income to an employee) to have made a payment of income on which PAYE must be accounted.

These include:

- payments made by an intermediary of the employer
- payments made to an employee of a non-UK employer
- some payments to non-resident employees
- some payments in respect of a mobile UK workforce
- income provided in the form of a readily convertible asset (such as shares or securities)
- the provision of certain vouchers and some occasions when an employee uses a credit card or other token
- the provision of certain employment income through third parties – see paragraph 1.26.

The PAYE must be remitted to HMRC whether or not the ‘employer’ has recouped that amount from the employee by deduction from cash wages or otherwise.

*Section 687  
Section 689  
Section 690  
Section 691  
Section 696  
Section 693 to 695*

*Sections 687A and 695A*

### 26.2

If any part of the PAYE tax is not recovered from the employee within 90 days of the date on which the payment of income is treated as having been made, the amount of PAYE which could not physically be deducted from the employee’s pay in the relevant income tax period (e.g. weekly or monthly) is treated as additional income.

Please see the latest edition of CWG2 ‘Employer Further Guide to PAYE and NICs’, Chapter 5 for income tax and CWG5 ‘*Class1A National Insurance contributions on benefits in kind*’ Appendix 1 for NICs treatment, under ‘Income Tax paid’.

*Section 222  
ITEPA 2003*

*Regulation 22(4)  
SS(C)R 2001*

### 26.3

The amount of PAYE that has not physically been deducted from cash earnings and which has not been recovered by the employer within 90 days of the relevant payment of income is also liable to Class 1 NICs in the earnings period in which day 90 falls.

### 26.4

This applies to all directors and employees whether or not earning at a rate of £8,500 or more a year.

# Chapter 27 Non-cash benefits in connection with termination of employment or from employer-financed retirement benefit schemes

## Chapter 2 Part 7A

### 27.1

Settlements made on termination of employment may include the provision of benefits in non-cash form. Non-cash benefits may also be provided under an employer-financed retirement benefits scheme.

For example, a former employee is allowed to use a company car for a period after the termination. Another example is where instead of paying cash in settlement, property is transferred.

This chapter may tax sums funded through or provided under a 'third party' employer-financed retirement benefit scheme – see paragraph 1.26. Part 7A also contains provisions to avoid double charging of tax.

Both Part 7A and Section 394 can lead to tax on relevant benefits provided under an employer-financed retirement benefit scheme. The legislation first looks to charge such benefits via Part 7A, but if excluded there, then Section 394 may sweep up. If tax is charged on the benefit under Section 394 ITEPA 2003 then there is no charge to tax on the benefit under any other provision of ITEPA, providing the 394 charge arose as a fall-back from any other charges under general earnings of Chapter 2 of Part 7A. 'Relevant benefits' are defined in Section 393B ITEPA 2003. If the benefit provided is not a relevant benefit and was not charged under Chapter 2 of Part 7A it is not taxable under section 394 but may be taxed elsewhere.

## Section 401

This section taxes benefits made in connection with termination of employment - but only if they are not taxed under any other section.

For example, where it is part of the employment contract that property is transferred on termination, that is taxed elsewhere and so not under this section.

This section applies to benefits made available by anyone in connection with termination of an employment.

## Sections 401(1) and 401(4)

Where such benefits are made to the employee's spouse, relative or dependant, their value is taxed on the employee. Any such benefits made on the employee's behalf or instructed by the employee are also taxed on the employee.

## Section 58 Finance Act 1998

### 27.2

Finance Act 1998 introduced new rules for valuing such non-cash benefits received on or after 6 April 1998.

## Section 398 ITPA 2003

### 27.3

Similar rules apply to non-cash relevant benefits received from an employer-financed retirement benefits scheme (see EIM15120, EIM15025 and EIM45710).

## The basic rule for valuing non-cash relevant benefits under Sections 401 and 393 ITEPA 2003

### 27.4

The taxable value of the non-cash benefit is the greater of:

- its convertible value
- its cash equivalent.

In practice, **convertible value** only needs to be considered if the benefit has grown in value since being acquired by the person providing it - for example, if a former employer transfers to the former employee property worth £75,000 at termination (its convertible value) which cost £30,000. Otherwise, the employee need only consider the 'cash equivalent' of the benefit. The 'cash equivalent' of the benefit is found by applying rules in the benefits code (Part 3 ITEPA 2003).

If you have 'made good' some of the cost of the benefit, this is deducted in arriving at the taxable value.

### Cash equivalent of benefits (excluding provided accommodation)

#### Part 3

### 27.5

The cash equivalent is found by applying the appropriate rules from Part 3 ITEPA 2003 which are relevant to the type of benefit provided.

For example, where the benefit is the use of a car the rules in Chapter 11 of this booklet 'Cars and vans available for private use' would be appropriate.

But some adjustment to those rules is necessary. For example:

- the rules here apply to all taxpayers - not just to directors and those earning £8,500 or more (see paragraph 1.7)
- some provisions in Part 3 ITEPA 2003 will not apply because they deal specifically with circumstances during employment
- for 'employee' read 'former employee' as necessary
- only those rules in Part 3 ITEPA 2003 which deal with determining the 'cash equivalent' of benefits apply. Other rules are not relevant.

These adjustments must be borne in mind when using rules elsewhere in this booklet.

The appropriate rules in this booklet for some particular benefits are:

- other benefits Chapter 6 (page 24)
- use of a car Chapter 11 (page 33)
- car fuel Chapter 13 (page 49)
- beneficial loan Chapter 17 (page 60)
- mobile telephone Chapter 22 (page 83).

### Cash equivalent of provided accommodation

#### Sections 398(6) and 415(7)

### 27.6

The rules in Chapter 21 of this booklet apply – with one modification.

If the 'cost of providing the accommodation' (as defined in 21.5) is £75,000 or less, the tax charge is the same as in 21.9. If the 'cost of providing the accommodation' (as defined in 21.5) is more than £75,000, and the 'sum made good' by the employee exceeds the greater of (1) the 'annual value' (as defined in 21.9) and (2) the rent paid by the employee, then, the amount to be subtracted in 21.11(c) is that excess.



*Section 684 and Regulations 91/93 and 96 Income Tax (PAYE) Regulations 2003 (S12003/2682)*

## **Reporting: termination benefits**

### **27.7**

Under regulations brought in by the Finance Act 1998, the former employer reports to HMRC all the termination settlement details within 92 days of the end of the tax year.

The former employer must give you a copy of that report within the same time limit.

### **27.8**

Any figures for benefit values in the report will be based on those in force for the year of the termination. These may need to be updated to those in force for the year in which you actually receive or enjoy the benefit: follow the guidance above to do this.

## **Reporting: employer-financed retirement benefits schemes**

*Section 251(1) to (2) (e)–(f) FA2004 (S12005/3453)*

### **27.9**

Under regulations brought in by Finance Act 2004 the person appointed to deal with the scheme tax liabilities must:

- notify HMRC when a scheme comes into operation by 31 January following the end of the year of assessment in which it first comes into operation
- report details of relevant benefits provided by 7 July following the end of the tax year in which they are provided.

## **Exemptions and reliefs**

### **27.10**

The main exceptions and reliefs from tax in respect of charges within Section 401 ITEPA 2003 are for:

*Section 403(1)*

- the first £30,000 in respect of an employment (note that all charges within the Section for that employment, and for any other employment with the same or an associated employer, must be added together before applying the exception)
- payments and benefits made on death
- payments and benefits made on account of injury or disability
- for 'foreign service' – this may apply if you were not Resident and Ordinarily Resident in the UK during the employment. Your HMRC office can advise.

*Section 406(a)  
Section 406(b)  
Section 413-414*

### **27.11**

The main exceptions and reliefs from tax for charges under Section 394 ITEPA 2003 are for:

*Section 393B (2)-(3)  
ITEPA 2003 Paragraphs 53 and 54 Schedule 36  
Finance Act 2004  
Section 395 ITEPA 2003*

- benefits given by reason of ill-health or disablement whilst an employee
- benefits given by reason of death by accident whilst an employee
- benefits chargeable under Part 9 ITEPA (pension income)
- benefits resulting from employer contributions made before 6 April 2006 provided that those contributions have been taxed on the employee and the scheme's income and gains are all taxed in the UK
- benefits of a description set down in regulations.



# Appendix 1 Car benefit - examples of calculations

All examples relate to 2012–13.

## Steps 1 and 2 (Chapter 12 paragraphs 12.4 to 12.15)

### Example 1

A car with a list price (including standard accessories, VAT, number plates and delivery) of £17,960 is made available to an employee. It is supplied with optional metallic paint costing £245, the price for which is published by the car's manufacturer. Before being made available to the employee it is also fitted with an electrically operated radio aerial from an independent manufacturer costing £95 (including fitting).

All the optional accessories are qualifying accessories. The radio aerial has a price of less than £100 but it was made available at the time the car was made available and so the 'de minimis' limit of £100 does not apply.

#### Calculation

|                              |  |                |
|------------------------------|--|----------------|
| <i>Section 123</i>           | Step 1: Car  | £17,960        |
|                              | Step 2:  |                |
| <i>Section 127(1)(a)</i>     | <b>plus</b> Initial extra accessories in the car manufacturer's price list   |                |
|                              | • Metallic paint   | £245           |
| <i>Section 127(1)(b)</i>     | <b>plus</b> Initial extra accessories not in the car manufacturer's price list (use price of accessory manufacturer) |                |
|                              | • Radio aerial   | £95            |
| <i>Section 121(1) Step 2</i> | Price of the car after Step 2  | <b>£18,300</b> |

### Example 2

Employee and car as in Example 1. In September of the tax year, two extra accessories are fitted

- a CD player with a list price of £360 (including fitting etc.); the employee contributes £100
- roof rails with a list price of £80; the employee contributes £50.

#### Calculation

|                                   |   |                |
|-----------------------------------|---|----------------|
| <i>Sections 126(3) and 127(2)</i> | As above                                | £18,300        |
|                                   | <b>plus</b> later accessory (CD player) | £360           |
|                                   |   | £18,660        |
| <i>Section 121(1) Step 2</i>      | <b>minus</b> capital contributions      |                |
|                                   | CD player                               | £100           |
|                                   | Price of the car after Step 2           | <b>£18,560</b> |

*Sections 126(3) and 132(1)(b)*

The price of the roof rails is not added because they are below the 'de minimis' limit of £100 and therefore the capital contribution towards them is not deducted.

The figure at Step 2 is increased for the whole year because the CD player was added in the year. There is no time-apportionment.

### Examples continued

#### Steps 4 to 6 (Chapter 12 paragraphs 12.21 to 12.38)

##### Example 3 – Petrol car

- Price of the car is £15,000. Approved figure of CO<sub>2</sub> emissions is 173g/km.
- Round down 173 to 170.
- Look up appropriate percentage in Appendix 2 – 25%.
- No adjustments are required at paragraph 12.30, so this is the appropriate percentage.
- The figure at Step 5 is £15,000 × 25% = £3,750.

##### Example 4 – Diesel car

- Price of the car is £15,000. Approved figure of CO<sub>2</sub> emissions is 166g/km.
- Round down 166 to 165.
- Look up appropriate percentage in Appendix 2 – 24%.
- Add 3% diesel supplement (see paragraph 12.30), so appropriate percentage is 27%.
- The figure at Step 5 is £15,000 × 27% = £4,050.

##### Example 5 – Hybrid electric car with petrol

- Price of the car is £18,000. Approved figure of CO<sub>2</sub> emissions is 104g/km.
- Round down 104 to 100
- Appropriate percentage for a petrol-powered hybrid with CO<sub>2</sub> emissions of 100% is 11% (Appendix 2).
- No adjustment from paragraph 12.30 is required.
- The figure at Step 5 is £18,000 × 11% = £1,980.

## Appendix 2 Car benefit - the appropriate percentage

Ready reckoner for petrol-powered cars, see Chapter 12, paragraph 12.38

| CO <sub>2</sub> emissions (g/km) | 2012-13 | 2013-14 | 2014-15 |
|----------------------------------|---------|---------|---------|
| Zero                             | 0%      | 0%      | 0%      |
| 1-75                             | 5%      | 5%      | 5%      |
| 76-94                            | 10%     | 10%     | 11%     |
| 95                               | 10%     | 11%     | 12%     |
| 100                              | 11%     | 12%     | 13%     |
| 105                              | 12%     | 13%     | 14%     |
| 110                              | 13%     | 14%     | 15%     |
| 115                              | 14%     | 15%     | 16%     |
| 120                              | 15%     | 16%     | 17%     |
| 125                              | 16%     | 17%     | 18%     |
| 130                              | 17%     | 18%     | 19%     |
| 135                              | 18%     | 19%     | 20%     |
| 140                              | 19%     | 20%     | 21%     |
| 145                              | 20%     | 21%     | 22%     |
| 150                              | 21%     | 22%     | 23%     |
| 155                              | 22%     | 23%     | 24%     |
| 160                              | 23%     | 24%     | 25%     |
| 165                              | 24%     | 25%     | 26%     |
| 170                              | 25%     | 26%     | 27%     |
| 175                              | 26%     | 27%     | 28%     |
| 180                              | 27%     | 28%     | 29%     |
| 185                              | 28%     | 29%     | 30%     |
| 190                              | 29%     | 30%     | 31%     |
| 195                              | 30%     | 31%     | 32%     |
| 200                              | 31%     | 32%     | 33%     |
| 205                              | 32%     | 33%     | 34%     |
| 210                              | 33%     | 34%     | 35%     |
| 215                              | 34%     | 35%     | 35%     |
| 220                              | 35%     | 35%     | 35%     |

*Except where noted in the table, the exact CO<sub>2</sub> figure is always rounded down to the nearest 5 grams per kilometre (g/km). For example, CO<sub>2</sub> emissions of 188g/km are treated as 185g/km.*

*Paragraph 12.30 contains details of any adjustments for cars powered by other fuels.*

# Appendix 3 Mileage Allowance Payment (see Chapter 16)

## Mileage Allowance Payments for vehicles owned by employees, and Passenger Payments

### *Section 230 (2)*

#### **Mileage Allowance Payments for 2011–12 onwards**

| Kind of vehicle | Rate   |
|-----------------|--|
| Car or van      | 45p per mile for the first 10,000 miles<br>25p per mile after that |
| Motorcycle      | 24p per mile   |
| Cycle           | 20p per mile   |

### *Section 234 (1)*

#### **Passenger payments**

|                                |             |
|--------------------------------|-------------|
| Car or van only, per passenger | 5p per mile |
|--------------------------------|-------------|

#### **Mileage Allowance Payments from 2002–03 to 2010–11**

| Kind of vehicle | Rate   |
|-----------------|--|
| Car or van      | 40p per mile for the first 10,000 miles<br>25p per mile after that |
| Motorcycle      | 24p per mile   |
| Cycle           | 20p per mile   |

#### **Passenger payments**

|                                |             |
|--------------------------------|-------------|
| Car or van only, per passenger | 5p per mile |
|--------------------------------|-------------|

# Appendix 4 Beneficial loan arrangements

## Official rates

### 1. Table of average official rates.

Use the table below to find the average official rate of interest for years when:

- the loan was outstanding throughout the income tax year, and
- you are using the normal averaging method of calculation (paragraph 17.29).

| Year    | Average official rate |
|---------|-----------------------|
| 2002–03 | 5.00%                 |
| 2003–04 | 5.00%                 |
| 2004–05 | 5.00%                 |
| 2005–06 | 5.00%                 |
| 2006–07 | 5.00%                 |
| 2007–08 | 6.25%                 |
| 2008–09 | 6.10%                 |
| 2009–10 | 4.75%                 |
| 2010–11 | 4.00%                 |
| 2011–12 | 4.00%                 |

For the 2012–13 average official rate, check the HMRC website, go to [www.hmrc.gov.uk/rates/interest-beneficial.htm](http://www.hmrc.gov.uk/rates/interest-beneficial.htm) after the end of the 2012–13 tax year.

### 2. Table of actual official rates.

Use the table below in cases not within 1 above.

| From     | To       | Rate  |
|----------|----------|-------|
| 06.11.94 | 05.10.95 | 8.00% |
| 06.10.95 | 05.02.96 | 7.75% |
| 06.02.96 | 05.06.96 | 7.25% |
| 06.06.96 | 05.11.96 | 7.00% |
| 06.11.96 | 05.08.97 | 6.75% |
| 06.08.97 | 05.03.99 | 7.25% |
| 06.03.99 | 05.01.02 | 6.25% |
| 06.01.02 | 05.04.07 | 5.00% |
| 06.04.07 | 28.02.09 | 6.25% |
| 01.03.09 | 05.04.10 | 4.75% |
| 06.04.10 | current  | 4.00% |

### 3. Official rates for foreign currencies.

Loans within paragraph 17.5 made in Japanese Yen.

| From     | To | Rate |
|----------|----|------|
| 06.06.94 |    | 3.9% |

Loans within paragraph 17.5 made in Swiss Francs.

| From     | To      | Rate |
|----------|---------|------|
| 06.06.94 | 5.07.94 | 5.7% |
| 06.07.94 |         | 5.5% |

The P11D (Int) is available through the Employer Orderline.

Internet [www.hmrc.gov.uk/employers](http://www.hmrc.gov.uk/employers)

phone 08457 646 646.

For opening hours go to [www.hmrc.gov.uk/contactus](http://www.hmrc.gov.uk/contactus)

# Appendix 5 'Qualifying loans'

**The following is a brief summary of loans which count as qualifying loans (see Chapter 17, paragraph 17.14).**

- 1 Any loan or form of credit interest which is (or would be if any were paid) deductible in whole or part in computing the profits of a trade, profession or vocation carried on in the UK by the borrower.
- 2 Any loan the interest on which is (or would be if any were paid) deductible in whole or in part in computing the profits of a property income business carried on in the UK by the borrower.
- 3 Any loan (other than an overdraft or credit card account) made to the personal representatives of a deceased person before the grant of representation to pay Capital Transfer Tax or Inheritance Tax on the personal property of the deceased. Such a loan will cease to be 'qualifying' one year after it is taken out.
- 4 Any loan (other than an overdraft or credit card account) to an individual used for purchase of:
  - (a) an interest in a partnership, or contribution of capital or advance to a trading or professional partnership, in which (in either case) the borrower is an active participant, or
  - (b) ordinary share capital in a close company or making a loan of money to such a company for use in its business, or in an associated company's business, provided the borrower either owns more than 5% of the ordinary share capital or owns some share capital and works in the management of the company for the greater part of his or her time, or
  - (c) shares in an employee controlled company, that is, a company in which at least 50% of the issued ordinary share capital and voting power is beneficially owned by full-time employees. The company must be a trading company or the holding company of a trading group and must be unquoted and resident in the UK.
- 5 Any loan (other than an overdraft or credit card account) used to pay off a loan within 2, 3 or 4 above.
- 6 Any loan (other than an overdraft or credit card account) used by the holder of an office or employment to buy machinery used in his work. Such a loan will cease to be 'qualifying' on the third anniversary of the end of the year of assessment in which it is taken out.
- 7 Any loan (other than an overdraft or credit card account) made before 9 March 1999 and used by an annuitant who is 65 years of age or older to purchase a life annuity, provided the loan is secured on property which is the borrower's main residence.

# Appendix 6 Taxation of beneficial loan arrangements

## Example showing the calculation of benefits chargeable

Chapter 17, paragraphs 17.27 - 17.30 cover the main points.

The facts on which this example is based are stated below.

### Example

A close company has for some years advanced funds to a director at 3% interest payable quarterly on 31 March, 30 June, 30 September and 31 December by deduction from salary. The balance on the loan account on 5 April preceding the year of assessment was £29,000. The director repaid £1,000 on 30 June in the year of assessment so that the balance at the end of that year was £28,000.

Part of the loan balance was a loan of £3,000 made in the preceding year to help him buy a share in a partnership.

£20,000 was a loan used to buy his only residence. This loan was taken out immediately after and to top up an endowment mortgage of £20,000 with a building society. Of the remainder of the loan, £2,000 was used to buy a season ticket and the other £4,000 outstanding at the beginning of the year represented the balance of a loan to pay for a holiday.

Of the total repayment of £1,000, £200 was set against the partnership loan, £500 against the house loan, £200 against the season ticket loan and the other £100 against the holiday loan. The appropriate official rate was 10% throughout the year in question.

All the loans are between the same borrower and lender, and all require a 'cash equivalent' to be ascertained. The company elects that the loans which can be treated as a single loan are to be so treated. Consequently the house loan, the season ticket loan and the holiday loan which are 'non-qualifying' (see paragraph 17.14) are aggregated (see paragraph 17.27). So for the purposes of calculating the total chargeable benefit there are two loans as follows:

| Type           | Balance at start | Balance at end |
|----------------|------------------|----------------|
| Qualifying     | £3,000           | £2,800         |
| Non-qualifying | £26,000          | £25,200        |

As the total balance outstanding exceeded £5,000 in the year, exemption under S180(1) is not due (see paragraph 17.16). Since the total balance outstanding on the non-qualifying loans exceeded £5,000 in the year, exemption under S180(3) is not due for those loans (see paragraph 17.17).

### Interest paid on the partnership loan for the year was

| Date paid    | Interest at 3%        | Paid     |
|--------------|-----------------------|----------|
| 30 June      | One quarter on £3,000 | = £22.50 |
| 30 September | One quarter on £2,800 | = £21.00 |
| 31 December  | One quarter on £2,800 | = £21.00 |
| 31 March     | One quarter on £2,800 | = £21.00 |
| Total paid   |                       | £85.50   |

### Interest paid on the aggregated loan for the year was

| Date paid    | Interest at 3%         | Paid      |
|--------------|------------------------|-----------|
| 30 June      | One quarter on £26,000 | = £195.00 |
| 30 September | One quarter on £25,200 | = £189.00 |
| 31 December  | One quarter on £25,200 | = £189.00 |
| 31 March     | One quarter on £25,200 | = £189.00 |
| Total paid   |                        | £762.00   |

*Continued*

**Example** *continued*

**Liability on the normal 'averaging' method (see paragraph 17.29)**

A. Partnership loan

$$\frac{\pounds 3,000 + \pounds 2,800}{2} \times \frac{12}{12} \times \frac{10}{100} = \pounds 290.00$$

**Minus** interest actually paid in respect of the partnership loan =  $\pounds 85.50$

**Chargeable benefit**  $\pounds 204.50$

B. Aggregated loans

$$\frac{\pounds 26,000 + \pounds 25,200}{2} \times \frac{12}{12} \times \frac{10}{100} = \pounds 2,560.00$$

**Minus** interest actually paid in respect of the aggregated loan =  $\pounds 762.00$

**Chargeable benefit**  $\pounds 1,798.00$

**Total cash equivalent =  $\pounds 204.50 + \pounds 1,798.00 = \pounds 2,002.50$**

*Continued*



**Example** *continued*

**Liability on the alternative precise method (see paragraph 17.30)**

A. Partnership loan

| <b>Period</b>  |                            |              |                |
|--|----------------------------|--------------|----------------|
| 6 April to 30 June (86 days)   | £3,000 for 86 days at 10%  | =            | £70.68         |
| 1 July to 5 April (279 days)   | £2,800 for 279 days at 10% | =            | £214.02        |
|  |                            | <b>Total</b> | <b>£284.70</b> |
| <b>Minus</b> interest actually paid in respect of the partnership loan |                            |              | £85.50         |
|  | <b>Chargeable benefit</b>  |              | <b>£199.20</b> |

B. Aggregated loan

| <b>Period</b>  |                             |              |                  |
|--|-----------------------------|--------------|------------------|
| 6 April to 30 June (86 days)                                   | £26,000 for 86 days at 10%  | =            | £612.60          |
| 1 July to 5 April (279 days)                                   | £25,200 for 279 days at 10% | =            | £1,926.24        |
|  |                             | <b>Total</b> | <b>£2,538.84</b> |
| Minus interest actually paid in respect of the aggregated loan |                             |              | £762.00          |
|  | <b>Chargeable benefit</b>   |              | <b>£1,776.84</b> |

**Total cash equivalent = £199.20 + £1,776.84 = £1,976.04**

Note that, although the director repaid £1,000 on 30 June, the maximum balances of the non-aggregated and aggregated loans outstanding on that day were £3,000 and £26,000 and these amounts have been taken into account in the alternative precise method of calculation.

The 'normal averaging method' of calculation, which would be applied automatically (see paragraph 17.28), operates marginally to the director's disadvantage. If he considers it worthwhile he could make an election for the 'alternative precise method' of calculation (see paragraphs 17.31 and 17.32).

The director will be treated as having paid £2,003 (or £1,977 if an election for the 'alternative precise method' is made) interest on the loans in addition to the £847.50 actually paid (see paragraphs 17.36 and 17.37).

# Appendix 7 Relocation expenses

## 1. Removal expenses and benefits which qualify for exemption (see Chapter 5)

Expenses and benefits which qualify for exemption can be grouped into six categories:

- disposal or intended disposal of old residence
- acquisition or intended acquisition of new residence
- transporting belongings
- travelling and subsistence
- domestic goods for the new residence
- bridging loans.

## 2. Disposal expenses and benefits

The property must be owned by, or a tenancy or other interest held by:

- the employee
- the employee and one or more members of his or her family or household (see Chapter 1, paragraph 1.22); or
- one or more members of the employee's family or household.

2.1 The property, or the interest in it, must be disposed of, or be intended to be disposed of, in consequence of a change of residence to which the removals relief applies (see Chapter 5).

2.2 Disposal also includes intended disposal. The expenses of a sale that falls through will still be expenses which qualify provided that the employee does still change his or her residence.

2.3 The specific expenses and benefits covered are:

- legal fees or services connected with the disposal
- legal fees or services connected with the redemption of a loan relating to the property. A loan relates to a property if it was raised to acquire the property, or if it was secured on the property
- penalties for redeeming a loan relating to the property
- estate agent's or auctioneer's fees or services
- advertising
- disconnection of electricity, gas, water or phone services
- if the property is left empty awaiting disposal
  - any rent paid for the period when the property is empty
  - insurance for the period
  - maintenance of the property during the period
  - preserving the security of the property during the period.

The Council Tax for the period is not allowable.

## 3. Acquisition expenses and benefits

Acquisition covers both the purchase of a new residence and the acquisition of a tenancy or other interest.

3.1 The property must be acquired by, or the tenancy or other interest held by:

- the employee, or
- the employee and one or more members of the employee's family or household (see Chapter 1, paragraph 1.22), or
- one or more members of the employee's family or household.

3.2 Relief is also available where an intended acquisition does not take place, either for reasons outside the control of the person acquiring the interest, or because that person reasonably decides not to go ahead.

- 3.3 The specific expenses and benefits covered are:
- legal expenses and services connected with the acquisition
  - legal expenses and services connected with any loan raised to acquire (the interest in) the property
  - procurement or arrangement fees connected with such a loan
  - mortgage indemnity premiums
  - survey or inspection of the property
  - Land Registry fees in England and Wales
  - fees payable to the Keeper of the Registers of Scotland
  - fees payable to the Land Registry in Northern Ireland or to the Registry of Deeds for Northern Ireland
  - Stamp Duty
  - connection of electricity, gas, water and phone services.

#### **4. Transport of belongings**

This covers the physical removal of domestic belongings from the old residence to the new, and the costs of insuring them in transit.

##### 4.1 Removal includes:

- packing and unpacking
- temporary storage if a direct move from the old residence to the new is not made
- taking down domestic fittings in the old residence if they are to be taken to the new residence, and re-attaching them on arrival there.

The domestic belongings covered are those of the employee and members of the employee's family or household.

#### **5. Travel and subsistence**

The employee can have eligible travel and subsistence for:

- preliminary visits to the new location
- travelling between the old home and the new work location
- travelling between the new home and the old work location (where the house move takes place before the job transfer)
- temporary living accommodation (see 5.5 below)
- travelling between the old home and the temporary living accommodation
- travelling between the new home and the temporary living accommodation (where the house move takes place before the job transfer)
- travelling from the old home to the new home when the move takes place.

##### 5.1 Members of the employee's family or household (see paragraph 1.22) can have eligible travel and subsistence for:

- preliminary visits to the new location
- travelling from the old home to the new home when the move takes place.

##### 5.2 Where a child stays behind at the old location or is sent ahead to the new location in order to ensure continuity of education, relief may be available for the child's costs of travel and subsistence.

The conditions are that:

- the child must be a member of the employee's family or household, and
- must be under 19 at the beginning of the year of assessment in which the job move takes place.

##### 5.3 Relief is available for the cost of subsistence in the area where the child stays, and for the costs of travel between that area and the employee's old or new home.

## International moves

5.4 Where a foreign national comes to the UK for employment his or her travelling costs and those of his or her spouse and family may be eligible for relief under Section 373 and 374 ITEPA 2003. If the expenses do qualify for relief in this way they are not expenses which qualify for exemption for the purposes of the removals relief. The effect of this is that the foreign national will be able to get the travelling costs as well as £8,000 of removal expenses tax-free.

Where a person resident in the UK goes abroad to work the travel costs and those of that person's spouse and children may be eligible for relief under Section 341 and 342 or 370 and 371 ITEPA 2003. If the expenses do qualify for relief they are not expenses which qualify for exemption for the purposes of the removals relief. The effect of this is that the employee will be able to get the travelling costs as well as £8,000 of removal expenses tax-free.

5.5 The relief for temporary living accommodation (see 5 on page 107) applies where the employee intends to move to permanent accommodation to complete the relocation. So for an employee who lives in a hotel until the old home is sold and a new home purchased, or who moves into a rented house at the new location for the same reason, the hotel and the rented property represent temporary living accommodation.

5.6 Where the employer provides temporary living accommodation in a hotel or similar, the measure of the benefit to be charged or counted against the £8,000 limit is the cost to the employer. Where the accommodation counts as living accommodation for the purposes of Section 97 ITEPA 2003 (see Chapter 21) the measure of the benefit is the amount that would otherwise be chargeable under Section 97.

5.7 Subsistence is defined for the purposes of the removals legislation as meaning 'food, drink and temporary living accommodation'.

## 6. Domestic goods for the new residence

Relief under this heading is available where:

- the employee, or
- the employee and one or more members of the employee's family or household, (see paragraph 1.22), or
- one or more members of the employee's family or household disposes of an interest in the old home and acquires an interest in the new home.

The relief applies where domestic goods intended to replace items used at the old home which are not suitable for use in the new home are purchased or provided by the employer.

## 7. Bridging loans

Relief is available where:

- bridging loan interest is reimbursed to the employee, or
- the employer 'makes' a cheap or interest-free loan (see paragraph 17.8) to the employee which meets the conditions below.

7.1. The general conditions are that:

- the employee, or
- the employee and one or more members of the employee's family or household (paragraph 1.22), or
- one or more members of the employee's family or household  
(a) disposes of an interest in the old home and acquires an interest in

the new home

- (b) has to take out a loan to bridge the gap between the date when the interest in the new property is acquired and the date when the sale proceeds of the old property are available
  - (c) uses the loan only to redeem loans relating to the old home or to acquire the new home. A loan relates to the old home if it was raised to acquire the property, or if it was secured on the property, and
  - (d) the loan does not exceed the market value of the old home at the time the new home is acquired.
- 7.2 Where the bridging loan is not provided or facilitated by the employer, and the conditions at (a), (b), (c) and (d) above are satisfied, the interest on the loan is an expense which qualifies for exemption. If either or both of the conditions at (c) and (d) are not met the eligible interest is restricted to the amount that would be payable if the loan met both conditions.
- 7.3 Where the employer makes a loan (see 17.8) to the employee or to a member of the employee's family or household, and conditions (a) to (d) above are met, relief may be available if the total of all other qualifying expenses and benefits is less than £8,000.

Relief is calculated using the formula

$$\frac{A}{B \times C} \times 365$$

where:

- A** is the difference between the total of all other qualifying expenses and benefits and £8,000
- B** is the maximum amount of the loan outstanding between the date the loan is made and the date when the time limit expires, and
- C** is the official rate of interest (see Appendix 4) in force at the time when the loan is actually made.

The result is rounded up to the nearest whole number. The answer is treated as a number of days. The charge to tax under Section 173 ITEPA 2003 is calculated on the basis that the loan was made that many days later than it was actually made.

If the loan is repaid before the end of the number of days calculated by using the formula there is no charge to tax under Section 173.

# Appendix 8 Incidental overnight expenses

## General rule for the treatment of employment expenses

Under general Income Tax law, a director or employee is taxable on the full amount of earnings received and this generally includes reimbursed expenses he or she may receive. The employee may, however, obtain a deduction from those earnings under Section 336 ITEPA 2003 for qualifying expenses. That is to say, the level of income is reduced by the qualifying expenditure in calculating the tax due.

To qualify under Section 336, the expenditure needs to be incurred wholly, exclusively and necessarily in the performance of the duties of the employment.

For travelling expenses, there is a deduction under Sections 337 or 338 ITEPA 2003 for the cost of journeys:

- an employee has to make in the performance of the duties of the employment, or
- to a workplace an employee has to attend to carry out the duties of the employment, but not if the journey is ordinary commuting or private travel.

These tests have been interpreted very strictly by the Courts over the years.

## Deductible subsistence expenses

*Sections 337 and 338*

The expenses rule which applies to travel costs also covers related subsistence costs. This type of expenditure qualifies for a deduction where it is part of the cost of travel necessarily incurred in the performance of the duties, or for necessary attendance at a temporary workplace. So, in general, payments by an employer for an employee's accommodation and subsistence when staying away from home overnight on business are not taxed.

Allowable expenses can include the cost of a meal, the cost of a reasonable level of refreshments (both alcoholic and non-alcoholic) with the meal and refreshments such as tea, coffee or soft drinks taken between meals.

## Incidental overnight expenses

Employees staying away from home overnight on business often incur additional expenses of a personal nature. Examples include newspapers, laundry and home telephone calls.

Although the expenditure may arise as a consequence of working away from home, it is not incurred necessarily nor in the performance of the employee's duties. Under the expenses rule that apply to travel costs this type of expenditure would not be allowable as a deduction. If this expenditure was met either wholly or in part by the employer, tax would be due under the general rule for taxing income.

*Section 240*

A special exemption provides that employers can pay for incidental overnight expenses relating to a qualifying period up to a tax-free limit, without any tax consequences for the employee.

## Qualifying period

A qualifying period for this exemption is a continuous period throughout which an employee has to stay away from home, including at least one overnight stay away from home, and where the expense of travelling qualifies for tax relief under the normal rules.

## **Types of payments**

The exemption covers all possible ways in which employers could pay these incidental overnight expenses including:

- payment by non-cash vouchers
- expenses paid by the employee by means of a credit card in the employer's name
- benefits in kind, for example, where the employer arranges directly with a hotel to pay the bill
- cash payments, such as allowances or reimbursed expenses.

## **Tax-free limits**

The maximum amounts of incidental overnight expenses an employer may pay tax-free are:

- £5 per night for overnight stays anywhere within the UK, and
- £10 per night for overnight stays outside the UK.

In calculating the total amount of expenditure any Value Added Tax (VAT) paid must be included.

If the employer exceeds these limits, the whole of the payment becomes taxable not just the excess.

## **Employee repays excess over limit**

Employers are encouraged to introduce clear policies on the payments of incidental overnight expenses and the refunding of overpaid amounts. Where a policy requiring repayment of any amounts in excess of the tax-free limits is in force, an employee has no entitlement to the excess. In these circumstances, the employee would not be taxed on the payment provided the excess was paid back. However, if the refund by the employee is not made within a reasonable time of the overpayment (whether in the same tax year or soon after the end of the tax year), there may be reporting consequences. Details may need to be given on form P11D – ask your local HMRC office if this applies.

## **Employee's unreimbursed incidental overnight expenses**

The special exemption for incidental overnight expenses is designed to reduce the burden on employers of identifying and reporting to HMRC what would otherwise be taxable expenses.

So there is no relief for expenses which are not reimbursed by the employer.

## **More than one night away**

The total of the exemptions for each night is simply compared to the total of the payments for that period. For example, where an employee claims £20 for a four night stay away from home in the UK the exemption would apply even if the employee spent £5 on the first night, £5 on the second, £6 on the third and £4 on the fourth because the total does not exceed the total exemption limit (four nights at £5 exemption per night).

This rule must be applied to an unbroken run of consecutive nights in its entirety. An employer may not choose to break up a period of say five nights into one consecutive period of four nights plus one stand alone night.

## **National Insurance contributions**

National Insurance contributions are not payable on any payments of incidental overnight expenses qualifying for the Income Tax exemption.

## **Dispensations**

Payments falling within the exemption for incidental overnight expenses are taken out of tax and so do not need to be included in a dispensation.

Some dispensations agreed in the past may include an element for incidental overnight expenses – for example, if the travelling and subsistence payments covered incidental overnight expenses.

It is not necessary to review such dispensations with a view to excluding the incidental overnight expenses element. Such dispensations will be reviewed at the normal review date.

## **Working Rule Agreements**

Employees in the construction and allied industries in receipt of payments under a Working Rule Agreement, may not always be undertaking journeys qualifying within the terms of the expenses rules that apply to travel costs (see above). Employers wishing to make payments of incidental overnight expenses, in addition to tax-free lodging allowances under a Working Rule Agreement, will have to identify those journeys which qualify for tax relief. Only in such cases will the personal incidental expenses be exempt from tax.

## **More than one employee's incidental overnight expenses on the same bill**

The payment of incidental overnight expenses should be made to individual employees within the limits of the individual exemptions. Sometimes a number of employees' hotel bills are aggregated and paid directly by the employer. If the individual expenditure cannot be readily identified, a reasonable apportionment will be accepted.

## **Employer's checks**

The employer should be satisfied that:

- the amounts paid do not exceed the maximum amounts payable tax free
- there is no double payment of incidental overnight expenses – for example, by paying the standard allowance for incidental overnight expenses and reimbursing in full a hotel bill already including such charges as home phone calls.

## **Form P11D**

If a dispensation, covering business travel and subsistence, exists and any incidental overnight expenses fall within the exemption detailed above, no entries are needed.

If there is no dispensation, enter on the form P11D the amount excluding any exempt incidental overnight expenses for each employee who received expenses payments. For example, if the employer paid a hotel bill for £87, which included £4 of incidental overnight expenses, he or she would enter £83 on form P11D for that employee.

If you do not have a dispensation and any incidental overnight expenses are not within the exemption, the employer must show the whole amount on form P11D.



## Appendix 9 Work-related training

Chapter 5 provides an outline of the rules, which exempt from tax the cost of work-related training provided for employees. No deduction is due for the costs of training which employees undertake at their own expense. Those rules, contained in Section 250 to 254, operate by reference to a number of terms, each of which is defined in the rules. A general explanation of these defined terms follows.

### Work-related training

**Work-related training** is training for an employee's current employment or a 'related employment'.

It is defined as any training course or other activity which is designed to impart, instil, improve or reinforce any knowledge, skills, or personal qualities which:

- are, or are likely to prove, useful to the employee when performing his or her duties, or
- will qualify or better qualify the employee to undertake the employment, or to participate in charitable or voluntary activities arising through the employment.

The term includes a wide-range of practical and theoretical skills, so long as those skills are relevant to the employee. Where leadership team skills are appropriate to the employee, participation in activities such as Outward Bound, Raleigh International, or Prince's Trust will qualify. The cost of an employee's participation in a genuine Employee Development Scheme, which seeks to improve the employee's attitude towards training by commencing with an enjoyable course as an introduction to more concentrated job-related training, will also qualify.

### Related employment

Qualifying training is training which is undertaken with an employment or prospective employment in view.

**A related employment is:**

- any office or employment held with the employer or which is to be held with the employer or a connected person
- any such office or employment to which the employee has or can realistically expect to have a serious opportunity of being appointed.

The intention here is to include all genuine training, in a range of competencies, which the employee would need to advance his or her career, or to achieve a career move with his or her employer.

Training in leisure type activities, unless exceptionally an activity which has a genuine connection with that employee's work duties, is excluded. Tax charges then apply in the normal way.

### Related costs

The exemption applies to expenditure upon the provision of 'work-related training' as defined above, or on certain costs related to such training.

Related costs, in connection with qualifying training, are:

- costs which are incidental to the employee's undertaking the training
- costs incurred in connection with an assessment of what the employee has gained from the training, which need not be by way of formal examination

- the cost of obtaining for the employee any qualification, registration or award where entitlement is as a result of the training or assessment in question. Awards which are made in recognition of, rather than as a reward for training achievement, such as a course scarf, tie or mascot would qualify as a 'related cost'.

### **Expenditure excluded from Section 250**

The rules provide that 3 main types of expenditure are excluded from the exemption:

- facilities or benefits which are provided for entertainment or recreational purposes unconnected with acquiring the knowledge, skills or personal qualities which satisfy the definitions of work related training
- the cost of facilities or benefits which reward the employee for performing, or performing in a given way, the duties of his or her employment
- facilities or benefits which provide an employment inducement which is unconnected with acquiring, in any way, knowledge, skills or personal qualities which satisfy the definitions of work-related training.

It follows that normal meals, refreshments and the leisure activities which are offered within a training course are not brought into tax. Nor, for example, would the costs of safe-driver training offered to those driving significant business mileage. In contrast, if the same employer sent the same group of people to an evening at the go-kart track the expense would rank as excluded expenditure and so would be taxable.

### **Related costs – travel and subsistence**

Exemption also applies to the employee's costs of travel and subsistence to the extent that those same expenses would be deductible under Section 336, or would qualify for mileage allowance relief, if the employee had undertaken the training in the performance of the duties of his or her office or employment, and had incurred and paid those expenses.

### **Provision of assets**

Generally, the exemption does not apply to the cost of providing the employee with, or with the use of, any asset.

The general rule does not apply to:

- assets provided or available for use only in the course of training
- assets provided or available for use in the course of training and in the performance of the employee's duties, but not otherwise used
- assets consisting of training materials provided in the course of training
- an asset which is something made by the employee in the course of training, or is incorporated into something which is so made.

Typically, a computer made available for training, or work and training, which is not available for private use, will qualify. Training materials comprising audio/video tapes, course books or literature, stationery, CD and 'floppy' disks used for training may be retained by the employee tax-free.

# Appendix 10 Self Assessment - expenses and benefits

This appendix contains:

- information about form P11D and P9D material
- some additional tips for employers.

Tips have been taken from material previously published in booklets issued to larger employers who provide benefits in kind and expenses payments.

## Forms and working sheets

Forms P11D, P9D and form P11D(b) and the P11D Guide are updated each year.

In addition, the following material is available:

- optional working sheets for employers to calculate the cash equivalent of the following benefits – the sheets are numbered as follows:
  - 1 living accommodation
  - 2 car benefit and fuel benefit
  - 3 vans
  - 4 interest-free and low interest loans
  - 5 relocation expenses
  - 6 mileage allowance payments and passenger payments.

Working sheets are provided to help employers calculate the cash equivalent value of a benefit that should be returned on a P11D. The use of a working sheet is optional. Completed working sheets should be retained by the employer to help answer any questions from the employee, or from HMRC. You must not send working sheets with your P11D returns. It may also be useful when preparing forms P11D for the following year.

- form P11D(Int) contains details of official rates of interest and average official rates of interest for the year. This information is needed to calculate the benefit arising from interest-free and low interest loans. Form P11D is usually available in the March before the tax year ends.

## Substitute forms and lists

The Self Assessment tax return was changed in April 2008 and the order of the boxes on the P11D no longer matches the order of boxes on the Self Assessment tax return. However the P11D does still carry the same box numbers 9 to 16, alongside benefit or expense figures. We suggest that employers who supply P11D information on substitute forms or lists use the same order as on the P11D and use the same box numbers.

If P11D information is presented to HMRC and employees in this way:

- the same format will meet both obligations
- it will be easier for employees to complete their tax return correctly, if they get one
- it will reduce the number of questions from employees to employers and HMRC
- it will help HMRC offices to process P11D information more quickly and efficiently.

This does not mean that HMRC will not agree substitute forms or lists which are not ordered in this way. We recognise that such a change could be costly or inconvenient for some employers.

Employers who are seeking approval to use substitute P11Ds which are copies, or very near copies of the official form or have already been given approval to use substitute forms or lists and want to make changes, can seek help and advice from the Employer's Helpline on 08457 143 143. For opening hours go to [www.hmrc.gov.uk/contactus](http://www.hmrc.gov.uk/contactus)

### **How to get form P11D and P9D material**

You should download forms P11D, P11D Working Sheets, P11D(b) and P9D from the links on the Expenses and Benefits pages of the HMRC website, go to [www.hmrc.gov.uk/payexb/overview/forms.htm](http://www.hmrc.gov.uk/payexb/overview/forms.htm)

If you cannot download these forms, you can contact the Employer Orderline to place an order for any of the forms required.

The Employer Orderline contact details are as follows:

Internet [www.hmrc.gov.uk/employers/orderline.htm](http://www.hmrc.gov.uk/employers/orderline.htm)

Phone 08457 646 646.

For opening hours go to [www.hmrc.gov.uk/contactus](http://www.hmrc.gov.uk/contactus)

Textphone users should use the typetalk service on 0800 95 95 98 quoting the orderline phone number.

The form P11D(Int), which contains details of official rates of interest, is available online or from the Orderline from the end of March in the year this booklet was published.

### **Electronic filing of expenses and benefits**

Employers can file expenses and benefits electronically using PAYE Online for Employers (via the internet), Online End of Year Expenses and Benefits forms, Electronic Data Interchange (EDI) or Magnetic Media (floppy disk).

These options offer:

- speedier information flow
- accuracy of data reporting with reduced errors
- less paper and clerical handling.

### **How to find out more**

For more information about the electronic and online services we provide to employers (and contractors in the construction industry) go to [www.hmrc.gov.uk](http://www.hmrc.gov.uk) and select 'employers' or contact:

Online Services Helpdesk

Email [helpdesk@ir-efile.gov.uk](mailto:helpdesk@ir-efile.gov.uk)

Phone 0845 60 55 999

Fax 0845 366 7828

Minicom 0845 366 7805

### **Tips for employers**

The tips given here are of particular interest to employers who provide benefits in kind and expenses.

### **Tips about expenses and benefits in kind**

Some clear messages are that you should:

- look at all the expenses and benefits you provide to see whether you are following the proper procedures, for example, for operating PAYE and/or for reporting details to HMRC (P11D details, and so on)

- if in doubt about whether something is a benefit, get reliable advice. Look in this booklet or contact the Employer's Helpline on 08457 143 143. For opening hours go to [www.hmrc.gov.uk/contactus](http://www.hmrc.gov.uk/contactus)
- review any Dispensations you have to make sure they are operating properly and you know which staff they apply to
- consider what additional items might be suitable for a Dispensation, for information go to [www.hmrc.gov.uk/paye/exb/schemes/dispensation.htm](http://www.hmrc.gov.uk/paye/exb/schemes/dispensation.htm) which should help you to decide. If in doubt about whether an item can be covered by a dispensation, contact the Employer Helpline on 08457 143 143 for advice
- consider what items might be suitable for a PAYE Settlement Agreement (PSA).

### Tips on completing P11Ds

Please pay particular attention to the following when completing P11Ds. This will make sure that they do not need to be returned to you for correction before they can be dealt with:

- the entries on the return must be clear and legible
- the font size should be not less than Arial 11
- use the employee's National Insurance number, or the date of birth and gender to allow HMRC to locate the employee or director.
- When completing car details:
  - an electronic car (fuel type E) does not have CO2 emissions
  - the *Dates car available from* box should only be completed when the car was first provided in that tax year
  - the *Dates car available to* box should only be completed when the car was withdrawn in that tax year. Do not enter 5 April unless the car was withdrawn from the employee or director on 5 April.
- When completing interest-free and low interest loans details:
  - the *Dates loan was made* box should only be completed when the loan was first provided in that tax year
  - the *Dates loan was discharged* box should only be completed when the loan was discharged in that tax year. Do not enter 5 April unless the loan was discharged on 5 April.

### Tips on Dispensations and PAYE Settlement Agreements (PSAs)

There is no obligation on employers to tell employees about Dispensations, and PSAs which affect them. But without it they might not understand why something was not shown on their P11D details (or why they did not get a form P11D at all), and might raise a query with the Payroll Office.

There are mixed views about the best way to give the information to the employees involved.

This seems to depend on what was included in the arrangement, which and how many employees received the item, and so on.

The main alternative suggestions have been:

- publish full details of all the Dispensation/PSA items and give enough information so employees can identify which items apply to them (for example, in any in-house magazine or staff manual)
- provide each member of staff with a private notice of the items which apply to them.

This could be done:

- with the form P11D
- on appointment or when the dispensation/PSA was first applied.

## **Details of expenses and benefits in kind for employees**

Employers must provide details of expenses and benefits in kind ('P11D details') and mileage allowance payments in excess of the exempt AMAPs (Approved Mileage Allowance Payments) amount (see Chapter 16) to relevant employees.

They can do this by:

- photocopying forms P11D and other information sent to HMRC
- copying an approved substitute P11D which they use for their return to HMRC
- designing their own format.

## **Substitute forms**

There is no need for employers to agree with HMRC the format of P11D (and other) information provided to employees.

The tips which follow are for employers who want to design their own form, probably produced by a computer system. We assume the aim is to give employees all their information about expenses and benefits in one go, probably on one piece of paper.

- We suggest you start from the official form P11D as this shows the details you need to provide to employees for each item of expenses and benefits. You do not have to give employees 'nil' details of items which they do not receive. This means that for most employees your form can be much shorter than the official form and this can free up space (on an A4 sheet) to include explanatory text or cross-reference to guidance elsewhere (for example, in the staff manual).
- A strong recommendation is that you include a message on the form saying keep it for tax record purposes. We also strongly recommend that you include on your form the tax return box numbers which are shown on the official P11D for each item, and explain this to staff. The official P11D gives some wording you could lift for these purposes.

## **Further information**

If you have questions please contact:

- the Employer Helpline on 08457 143 143. For opening hours go to [www.hmrc.gov.uk/contactus](http://www.hmrc.gov.uk/contactus)
- your HMRC office.

# Appendix 11 Employer Supported Childcare

Changes were made to employer supported childcare in April 2011. These changes reduce the exempt amount for childcare vouchers and directly contracted childcare for some employees who join an employer's scheme on or after 6 April 2011. Guidance for employers and employees is available on the HMRC website, go to [www.hmrc.gov.uk/thelibrary/esc-qa.htm](http://www.hmrc.gov.uk/thelibrary/esc-qa.htm)

## What are the exemptions?

- 1 There are three exemptions from Income Tax and NICs for the benefit of childcare provided or supported by the employer. The rules are similar but each exemption works differently. In summary, no tax will apply in the following circumstances where the qualifying conditions are met.
  - a) The employee is provided with childcare in a nursery or playscheme on premises made available by the employer or for which the employer is at least partly responsible for financing and managing the scheme. Where the relevant conditions are met the whole cost of the benefit is exempt from tax and NICs – see Employer provided nursery or playscheme below.
  - b) Childcare vouchers are provided to employees up to the relevant exempt amount – see Childcare vouchers below.
  - c) Other childcare made available to the employee up to the relevant exempt amount – see Other employer supported childcare below.

Where the value of the childcare voucher or other childcare provision exceeds the relevant exempt amount the excess is taxed and liable to NICs. If childcare is provided that does not comply with the qualifying conditions, it is taxed in full and liable to NICs.

For those employees who join an employer's scheme on or after 6 April 2011 the employer will have to make an estimate of the employee's earnings in order to work out the relevant exempt amount. More information about the estimation of earnings can be found on the HMRC website, go to [www.hmrc.gov.uk/thelibrary/esc-qa.htm](http://www.hmrc.gov.uk/thelibrary/esc-qa.htm)

An employee is only entitled to one exempt amount in a tax week. For example, if the relevant exempt amount is £55 and an employer provides childcare vouchers of £55 in a week for use at a local nursery, and provides £55 of after school care, the employee will only be entitled to receive one exempt amount of £55. All amounts in excess of the limit will be liable to tax and NICs.

## Tax-free childcare voucher allowance

| Pay and benefits                               | Maximum weekly voucher order | Maximum monthly voucher order |
|--|------------------------------|-------------------------------|
| Less than £41,450                              | £55                          | £243                          |
| £41,450 to £150,000                            | £28                          | £124                          |
| £150,000 or more with effect from 6 April 2013 | £25                          | £110                          |
| Pre 6 April 2011 scheme member                 | £55                          | £243                          |



*Section 318*

**Employer provided nursery or playscheme**

- 2 Nursery or playscheme places, provided by the employer are exempt from tax and NICs if:
  - the employer alone make premises available for the nursery or playscheme, or
  - the employer, jointly with others, for example, voluntary bodies, local authorities or with other employers make premises available, and
  - the nursery places are offered in a scheme open to either all of the employer's employees, or all of the employer's employees at the location where the scheme operates.
- 3 For a jointly run nursery or playscheme to qualify:
  - it must be on premises made available by one or more of the participants in the joint scheme, and
  - the employer must be wholly or partly responsible for financing and managing the nursery or playscheme.
- 4 Whether the nursery or play scheme is provided by one employer, or through a joint scheme, tax exemption will only apply if the facilities comply with any legal requirement for local authority registration.

**Meaning of 'making the premises available'**

*Section 318(6)*

- 5 The employer, or one of the participants in a joint scheme, must make the premises available by either:
  - using premises that are part of the employer's, or another participant's, existing freehold or leasehold property (or equivalent in Scotland), or
  - acquiring premises specially, by freehold or leasehold, or by hiring suitable premises on licence, for example, a local hall.
- 6 Providing the employer, or one of the participants in a joint scheme, makes the premises available, the facilities can be anywhere but the nursery or playscheme cannot be provided on premises that are wholly or mainly used as a private dwelling.

**Meaning of 'wholly or partly responsible for finance and management' in a joint scheme**

*Section 318(7)*

- 7 Overall, the employer's role in financing and managing the provision of childcare must be a real one. The employer must be accountable for the provision, and liable to be called to account if things go wrong.  
'Finance' requires a commitment to provide capital and funding for the nursery or playscheme. It requires more than buying in places from a commercial nursery and may be met where, for example, the employer:
  - agrees to meet a set proportion of the overall cost of providing the care, or
  - provides financial guarantees to a joint committee or joint company, or
  - gives a long term undertaking to pay a fixed periodical contribution (for example, for the cost of a given number of places) which is calculated to ensure the overall financial viability of the care facility.  
'Management' means more than being occasionally consulted about the broad policies that apply to a particular nursery or playscheme. It does not necessarily mean day-to-day management or direct responsibility for care of the children. However, it does require close involvement by the employer in:
  - appointing and monitoring the performance of those engaged to look after the children
  - the extent of the care provided



- the allocation of places, and
- financial management.

The management involvement can be through an in-house committee, or an associated company or partnership set up for the purpose.

- 8 Places will be exempt in nurseries and playschemes where sub-contractors provide the day-to-day childcare, so long as the conditions governing the provision of premises or the responsibility for finance and management are met.

### **Provision of nursery or play scheme places to other employees**

- 9 Spare places in a qualifying nursery or playscheme can be given to people who are not the employer's employees without affecting the employees' tax position.
- 10 If places in a nursery on the employer's own premises are provided to another employer's employees who are working at that location, they will also be exempt from tax on the value of the provision.

### **Childcare vouchers**

#### *Section 270(A)*

- 11 Childcare vouchers up to the relevant exempt amount are exempt from tax providing:
  - the vouchers are used to pay for qualifying childcare
  - the employee is a parent or has parental responsibility for a child, and
  - the vouchers are offered in a scheme that is (subject to one exception) open to all employees.

For the exception, please see the explanation of 'open to all' at paragraph 22.

- 12 If childcare vouchers are provided with a value in excess of the relevant exempt amount, only the excess is chargeable for tax.

#### *Section 318(A)*

### **Other employer supported childcare**

- 13 Other qualifying childcare up to the relevant exempt amount provided by the employer for the use of employees is exempt from tax and NICs where:
  - the provision is provided for a qualifying child, and
  - the provision is offered in a scheme that is (subject to one exception) open to all employees. For the exception, please see the explanation of 'open to all' at paragraph 22.
- 14 Other employer supported childcare includes childcare purchased by the employer directly from the childcare provider for the use of the employer's employees. An example of this is a place in a commercial nursery contracted by the employer and made available to the employee for his/her child. It does not include the payment by an employer of an employee's own childcare bill or a cash allowance paid to the employee towards his or her childcare costs.
- 15 If the cost to the employer of providing the childcare exceeds the relevant exempt amount only the excess is chargeable for tax.

- 16 If the employer pays a retainer, but no care is provided, the exemption is not due and the benefit is chargeable to Income Tax and NICs. An example of this might be if the child is away on holiday and the nursery requires a retainer. As no care has been provided, the exemption is not due for that period.

## Definitions

### Meaning of child

#### *Section 318(B)*

- 17 A qualifying child is:
- a child up to 1 September after their 15th birthday, or
  - a child up to 1 September after their 16th birthday if the child is on the blind register or came off it in the last 28 weeks, or if the parent receives Disability Living Allowance for the child, and
  - the child is the employee's child or is a child living with the employee for whom he or she has parental responsibility.

#### *Section 318(B)5*

- 18 Parental responsibility means all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and the child's property.

### Meaning of qualifying childcare

#### *Section 318C*

#### 19 Qualifying childcare

The rules seek to ensure that only childcare which meets nationally recognised standards will attract the exemptions from Income Tax and NICs. In general terms, the childcare must be registered with or approved by the relevant authorities. The rules are complex because different statutory powers apply to England, Wales, Scotland and Northern Ireland.

#### 20 Registered childcare

Childcare provided away from the child's home must be registered:

- in England and Wales for children up to and including 7 years
- in Scotland for children up to and including 16 years
- in Northern Ireland for children up to and including 12 years.

Registered childcare within the United Kingdom consists of:

#### **In England only**

- A person registered under Part 3 of the Childcare Act 2006. This will include persons on the following registers operated by Ofsted
  - The Early Years Register
  - The General Childcare Register — compulsory part
  - The General Childcare Register — voluntary part
- Schools – care provided by the governing body of a school is approved if it takes place
  - outside normal school hours (this means the normal hours of compulsory education adopted by the school as appropriate for the age of the child)
  - on school premises, or
  - on premises that are covered by the inspection of the whole school activity by Ofsted or the equivalent inspection body for certain independent schools
- Other care providers – a domiciliary worker or nurse from an agency registered under the Domiciliary Care Agencies Regulations 2002 providing childcare in the child's home.

### **In Wales only**

- a childcare provider registered in accordance with Part 2 of the Children and Families (Wales) Measure 2010
- out-of-school hours childcare, provided by a school on the school premises, or by a local authority
- a person approved under the Approval of Child Care Providers (Wales) Scheme 2007 providing childcare in the child's home or if several children are being looked after, in the home of one of the children
- a domiciliary worker or nurse from an agency registered under the Domiciliary Care Agencies (Wales) Regulations 2004 providing childcare in the child's home
- a foster parent in relation to a child other than one whom the foster parent is fostering but only in those cases where due to the age of the child the care provided does not fall within the first and third bullet points in this section.

### **In Scotland only**

- a childcare provider registered by the Scottish Commission for the Regulation of Care
- out-of-school hours childcare clubs registered by the Scottish Commission for the Regulation of Care
- childcare provided in the child's home by, or introduced through, childcare agencies, sitter services and nanny agencies which are required to be registered.

### **In Northern Ireland only**

- Child minding or day care in accordance with Part XI of the Children (Northern Ireland) Order 1995
- out-of-school hours childcare, provided by a school on the school premises, or by an Education and Library Board or
- a person approved under the Tax Credits (Approval of Home Child Care Providers) Scheme (Northern Ireland) 2006 providing childcare in the child's home
- a foster parent in relation to a child other than one whom the foster parent is fostering but only in those cases where due to the age of the child the care provided does not fall within the first and third bullet points in this section.

### **Outside the UK**

Childcare provided outside of the UK cannot generally be accepted as 'qualifying childcare' as it is outside of the jurisdiction of UK inspection and registration. The only exemption to this is childcare provided by a person approved under a Ministry of Defence accreditation scheme abroad.

### **Childcare that is not 'qualifying childcare'**

'Qualifying childcare' does not include care provided by a relative of the child in the child's own home. This includes relatives who are registered or approved childcare providers. For these purposes a relative means:

- parent
- step-parent
- foster parent
- grandparent
- aunt or uncle
- brother or sister whether by blood, half-blood, marriage or civil partnership.

Childcare provided by relatives can be qualifying childcare in the following circumstances:

- the relative is a registered or approved childcare provider
- the care is provided away from the child's own home
- the care is provided to non-related children in addition to the related or children.

### Meaning of 'open to all'

*Section 270A(5) and 318A(5)*

21 Childcare should be offered under a scheme to which all employees are eligible to apply. The condition does not mean that every employee who wants a childcare place in a scheme must receive a place. Employers may need to prioritise places if more employees apply than the number of places available. How childcare places are prioritised is up to the employer but the scheme should not exclude members of your staff from applying for a place on the basis of:

- grade or position
- level of salary (subject to one exception)
- length of service
- gender.

22 Similarly, childcare voucher schemes should be generally open (subject to one exception) to all employees. The condition is not, however, breached if any of the employer's employees cannot participate in the scheme due to:

- not having any eligible children
- not using eligible childcare
- no advantage being gained in accepting vouchers in place of cash pay.

The exception is that the 'open to all' condition is not breached where employees who earn on or near the National Minimum Wage (NMW) are unable to join an employer's scheme due to the requirement to safeguard payment of the NMW in full.

*Section 318(8)*

The exception does not apply if childcare is provided in a nursery or playscheme. For the workplace nursery exemption, the 'open to all' condition is breached if workers who earn on or near the NMW are prevented from joining the employer's scheme due to the requirement to safeguard payment of the NMW in full.

### Meaning of 'tax week'

*Section 270A(7) and 318A(7)*

23 A 'tax week' means one of the successive periods in a tax year beginning with the first day of that tax year and every seventh day after that. The last day of a tax year or, in the case of a tax year ending in a leap year, the last two days is treated as a separate week.

### Record keeping

24 The employer should maintain a record of the childcare or childcare voucher scheme rules (for example, letter to all employees or staff handbook) as evidence of meeting the availability condition.

25 Employers are responsible for ensuring that the exemptions are only applied where the full conditions are met. Employers should be satisfied:

- that the child for whom the childcare costs arise is a qualifying child, and
- that the childcare provided is registered or approved and that this has not expired.

- 26 HMRC will accept that employers have done all they can to be satisfied that the conditions have been met if the employer follows these steps:
- made available the scheme rules and included in them that employees must notify the employer of any changes in their circumstances, including in their childcarer's registration or approval status
  - maintained a record of the child's name and date of birth for whom the childcare costs met by the vouchers arise\*
  - maintained a record of the childcarer's registration or approval number/copy of current letter of approval along with a record of when the registration/approval is due to expire\*
  - a process is in place to account for tax where registration or approval of the childcarer has lapsed.

*\*If a childcare voucher provider company administers the scheme on behalf of the employer they can, by arrangement with the employer, obtain and hold this information as long as the employer has access to it.*

### **Employers can check whether a childcarer's registration or approval is valid**

#### **In England**

Ofsted (Office for Standards in Education, Children's Services and Skills):

- go to [www.ofsted.gov.uk](http://www.ofsted.gov.uk)
- phone 08456 40 40 40.

#### **In Scotland**

Social Care and Social Work Improvement Scotland:

- go to [www.careinspectorate.com](http://www.careinspectorate.com)
- phone 0845 600 9527.

#### **In Northern Ireland**

The Health and Social Services Trust go to [www.nidirect.gov.uk/childcare](http://www.nidirect.gov.uk/childcare)

#### **In Wales**

Care and Social Services Inspectorate Wales:

- go to [www.wales.gov.uk](http://www.wales.gov.uk)
- phone 0845 010 3300 (English) or 0845 010 4400 (Welsh).

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