



# Income Tax (Earnings and Pensions) Act 2003

## 2003 CHAPTER 1

### PART 3

EMPLOYMENT INCOME: EARNINGS AND BENEFITS ETC. TREATED AS EARNINGS

#### CHAPTER 1

##### EARNINGS

## 62 Earnings

- (1) This section explains what is meant by “earnings” in the employment income Parts.
- (2) In those Parts “earnings”, in relation to an employment, means—
  - (a) any salary, wages or fee,
  - (b) any gratuity or other profit or incidental benefit of any kind obtained by the employee if it is money or money’s worth, or
  - (c) anything else that constitutes an emolument of the employment.
- (3) For the purposes of subsection (2) “money’s worth” means something that is—
  - (a) of direct monetary value to the employee, or
  - (b) capable of being converted into money or something of direct monetary value to the employee.
- (4) Subsection (1) does not affect the operation of statutory provisions that provide for amounts to be treated as earnings (and see section 721(7)).

*Status: Point in time view as at 06/04/2003.*

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## CHAPTER 2

### TAXABLE BENEFITS: THE BENEFITS CODE

#### *The benefits code*

#### **63 The benefits code**

- (1) In the employment income Parts “the benefits code” means—
  - this Chapter,
  - Chapter 3 (expenses payments),
  - Chapter 4 (vouchers and credit-tokens),
  - Chapter 5 (living accommodation),
  - Chapter 6 (cars, vans and related benefits),
  - Chapter 7 (loans),
  - Chapter 8 (notional loans in respect of acquisitions of shares),
  - Chapter 9 (disposals of shares for more than market value),
  - Chapter 10 (residual liability to charge), and
  - Chapter 11 (exclusion of lower-paid employments from parts of benefits code).
- (2) If an employment is an excluded employment, the general effect of section 216(1) (provisions not applicable to lower-paid employments) is that only the following Chapters apply to the employment—
  - this Chapter,
  - Chapter 4 (vouchers and credit-tokens),
  - Chapter 5 (living accommodation), and
  - Chapter 11 (exclusion of lower-paid employments from parts of benefits code).
- (3) Section 216(5) and (6) explain and restrict the effect of section 216(1).
- (4) In the benefits code “excluded employment” means an employment to which the exclusion in section 216(1) applies.

#### **64 Relationship between earnings and benefits code**

- (1) This section applies if, apart from this section, the same benefit would give rise to two amounts (“A” and “B”)—
  - (a) A being an amount of earnings as defined in Chapter 1 of this Part, and
  - (b) B being an amount to be treated as earnings under the benefits code.
- (2) In such a case—
  - (a) A constitutes earnings as defined in Chapter 1 of this Part, and
  - (b) the amount (if any) by which B exceeds A is to be treated as earnings under the benefits code.
- (3) This section does not apply in connection with living accommodation to which Chapter 5 of this Part applies.
- (4) In that case section 109 applies to determine the relationship between that Chapter and Chapter 1 of this Part.

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- (5) This section does not apply if section 193 (notional loan where acquisition of shares made for less than market value) applies.
- (6) In that case sections 194 (amount of notional loan) and 196 (effects on other income tax charges) apply to determine the relationship between Chapters 1 and 8 of this Part.

## **65 Dispensations relating to benefits within provisions not applicable to lower-paid employment**

- (1) This section applies for the purposes of the listed provisions where a person (“P”) supplies the Inland Revenue with a statement of the cases and circumstances in which—
  - (a) payments of a particular character are made to or for any employees, or
  - (b) benefits or facilities of a particular kind are provided for any employees, whether they are employees of P or some other person.
- (2) The listed provisions” are the provisions listed in section 216(4) (provisions of the benefits code which do not apply to lower-paid employments).
- (3) If the Inland Revenue are satisfied that no additional tax is payable by virtue of the listed provisions by reference to the payments, benefits or facilities mentioned in the statement, they must give P a dispensation under this section.
- (4) A “dispensation” is a notice stating that the Inland Revenue agree that no additional tax is payable by virtue of the listed provisions by reference to the payments, benefits or facilities mentioned in the statement supplied by P.
- (5) If a dispensation is given under this section, nothing in the listed provisions applies to the payments, or the provision of the benefits or facilities, covered by the dispensation or otherwise has the effect of imposing any additional liability to tax in respect of them.
- (6) If in their opinion there is reason to do so, the Inland Revenue may revoke a dispensation by giving a further notice to P.
- (7) That notice may revoke the dispensation from—
  - (a) the date when the dispensation was given, or
  - (b) a later date specified in the notice.
- (8) If the notice revokes the dispensation from the date when the dispensation was given—
  - (a) any liability to tax that would have arisen if the dispensation had never been given is to be treated as having arisen, and
  - (b) P and the employees in question must make all the returns which they would have had to make if the dispensation had never been given.
- (9) If the notice revokes the dispensation from a later date—
  - (a) any liability to tax that would have arisen if the dispensation had ceased to have effect on that date is to be treated as having arisen, and
  - (b) P and the employees in question must make all the returns which they would have had to make if the dispensation had ceased to have effect on that date.

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### *General definitions for benefits code*

#### **66 Meaning of “employment” and related expressions**

- (1) In the benefits code—
  - (a) “employment” means a taxable employment under Part 2, and
  - (b) “employed”, “employee” and “employer” have corresponding meanings.
- (2) Where a Chapter of the benefits code applies in relation to an employee—
  - (a) references in that Chapter to “the employment” are to the employment of that employee, and
  - (b) references in that Chapter to “the employer” are to the employer in respect of that employment.
- (3) For the purposes of the benefits code an employment is a “taxable employment under Part 2” in a tax year if the earnings from the employment for that year are (or would be if there were any) general earnings to which the charging provisions of Chapter 4 or 5 of Part 2 apply.
- (4) In subsection (3)—
  - (a) the reference to an employment includes employment as a director of a company, and
  - (b) “earnings” means earnings as defined in Chapter 1 of this Part.

#### **67 Meaning of “director” and “full-time working director”**

- (1) In the benefits code “director” means—
  - (a) in relation to a company whose affairs are managed by a board of directors or similar body, a member of that body,
  - (b) in relation to a company whose affairs are managed by a single director or similar person, that director or person, and
  - (c) in relation to a company whose affairs are managed by the members themselves, a member of the company,
 and includes any person in accordance with whose directions or instructions the directors of the company (as defined above) are accustomed to act.
- (2) For the purposes of subsection (1) a person is not to be regarded as a person in accordance with whose directions or instructions the directors of the company are accustomed to act merely because the directors act on advice given by that person in a professional capacity.
- (3) In the benefits code “full-time working director” means a director who is required to devote substantially the whole of his time to the service of the company in a managerial or technical capacity.

#### **68 Meaning of “material interest” in a company**

- (1) For the purposes of the benefits code a person has a material interest in a company if condition A or B is met.
- (2) Condition A is that the person (with or without one or more associates) or any associate of that person (with or without one or more such associates) is—

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- (a) the beneficial owner of, or
  - (b) able to control, directly or through the medium of other companies or by any other indirect means,  
more than 5% of the ordinary share capital of the company.
- (3) Condition B is that, in the case of a close company, the person (with or without one or more associates) or any associate of that person (with or without one or more such associates), possesses or is entitled to acquire, such rights as would—
- (a) in the event of the winding-up of the company, or
  - (b) in any other circumstances,
- give an entitlement to receive more than 5% of the assets which would then be available for distribution among the participators.
- (4) In this section—
- “associate” has the meaning given by section 417(3) of ICTA except that, for this purpose, “relative” in section 417(3) has the meaning given by subsection (5) below, and
  - “participator” has the meaning given by section 417(1) of ICTA.
- (5) For the purposes of this section a person (“A”) is a relative of another (“B”) if A is—
- (a) B’s spouse,
  - (b) a parent, child or remoter relation in the direct line either of B or of B’s spouse,
  - (c) a brother or sister of B or of B’s spouse, or
  - (d) the spouse of a person falling within paragraph (b) or (c).

## **69 Extended meaning of “control”**

- (1) The definition of “control” in section 840 of ICTA (which is applied for the purposes of this Act by section 719) is extended as follows.
- (2) For the purposes of the benefits code that definition applies (with the necessary modifications) in relation to an unincorporated association as it applies in relation to a body corporate.

## **CHAPTER 3**

### **TAXABLE BENEFITS: EXPENSES PAYMENTS**

## **70 Sums in respect of expenses**

- (1) This Chapter applies to a sum paid to an employee in a tax year if the sum—
  - (a) is paid to the employee in respect of expenses, and
  - (b) is so paid by reason of the employment.
- (2) This Chapter applies to a sum paid away by an employee in a tax year if the sum—
  - (a) was put at the employee’s disposal in respect of expenses,
  - (b) was so put by reason of the employment, and
  - (c) is paid away by the employee in respect of expenses.

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- (3) For the purposes of this Chapter it does not matter whether the employment is held at the time when the sum is paid or paid away so long as it is held at some point in the tax year in which the sum is paid or paid away.
- (4) References in this Chapter to an employee accordingly include a prospective or former employee.
- (5) This Chapter does not apply to the extent that the sum constitutes earnings from the employment by virtue of any other provision.

## **71 Meaning of paid or put at disposal by reason of the employment**

- (1) If an employer pays a sum in respect of expenses to an employee it is to be treated as paid by reason of the employment unless—
  - (a) the employer is an individual, and
  - (b) the payment is made in the normal course of the employer's domestic, family or personal relationships.
- (2) If an employer puts a sum at an employee's disposal in respect of expenses it is to be treated as put at the employee's disposal by reason of the employment unless—
  - (a) the employer is an individual, and
  - (b) the sum is put at the employee's disposal in the normal course of the employer's domestic, family or personal relationships.

## **72 Sums in respect of expenses treated as earnings**

- (1) If this Chapter applies to a sum, the sum is to be treated as earnings from the employment for the tax year in which it is paid or paid away.
- (2) Subsection (1) does not prevent the making of a deduction allowed under any of the provisions listed in subsection (3).
- (3) The provisions are—
  - section 336 (deductions for expenses: the general rule);
  - section 337 (travel in performance of duties);
  - section 338 (travel for necessary attendance);
  - section 340 (travel between group employments);
  - section 341 (travel at start or finish of overseas employment);
  - section 342 (travel between employments where duties performed abroad);
  - section 343 (deduction for professional membership fees);
  - section 344 (deduction for annual subscriptions);
  - section 346 (deduction for employee liabilities);
  - section 351 (expenses of ministers of religion);
  - section 353 (deductions from earnings charged on remittance).

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## CHAPTER 4

### TAXABLE BENEFITS: VOUCHERS AND CREDIT-TOKENS

#### *Cash vouchers: introduction*

#### **73 Cash vouchers to which this Chapter applies**

- (1) This Chapter applies to a cash voucher provided for an employee by reason of the employment which is received by the employee.
- (2) A cash voucher provided for an employee by the employer is to be regarded as provided by reason of the employment unless—
  - (a) the employer is an individual, and
  - (b) the provision is made in the normal course of the employer’s domestic, family or personal relationships.
- (3) A cash voucher provided for an employee and appropriated to the employee—
  - (a) by attaching it to a card held for the employee, or
  - (b) in any other way,is to be treated for the purposes of this Chapter as having been received by the employee at the time when it is appropriated.

#### **74 Provision for, or receipt by, member of employee’s family**

For the purposes of this Chapter any reference to a cash voucher being provided for or received by an employee includes a reference to it being provided for or received by a member of the employee’s family.

#### *Meaning of “cash voucher”*

#### **75 Meaning of “cash voucher”**

- (1) In this Chapter “cash voucher” means a voucher, stamp or similar document capable of being exchanged for a sum of money which is—
  - (a) greater than,
  - (b) equal to, or
  - (c) not substantially less than,the expense incurred by the person at whose cost the voucher, stamp or similar document is provided.
- (2) For the purposes of subsection (1) it does not matter whether the document—
  - (a) is also capable of being exchanged for goods or services;
  - (b) is capable of being exchanged singly or together with other vouchers, stamps, or documents;
  - (c) is capable of being exchanged immediately or only after a time.
- (3) Subsection (1) is subject to section 76 (sickness benefits-related voucher).

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## 76 **Sickness benefits-related voucher**

- (1) This section applies where—
- (a) the expense incurred by the person at whose cost a voucher, stamp or similar document is provided (“the provision expense”) includes costs to that person of providing sickness benefits (“sickness benefits costs”),
  - (b) the voucher, stamp or document would be a cash voucher (apart from this section) but for the fact that the sum of money for which it is capable of being exchanged (“the exchange sum”) is substantially less than the provision expense, and
  - (c) the whole or part of the difference between the exchange sum and the provision expense represents the sickness benefits costs.
- (2) The voucher, stamp or document is a cash voucher within the meaning of this Chapter if—

$$E = PE - D$$

or

$$E \text{ is not substantially less than } PE - D$$

where—

E is the exchange sum,

PE is the provision expense, and

D is the amount of the difference between E and PE which represents the sickness benefits costs.

- (3) In this section “sickness benefits” mean benefits in connection with sickness, personal injury or death.

## 77 **Apportionment of cost of provision of voucher**

If a person incurs expense in or in connection with the provision of vouchers, stamps or similar documents for two or more employees as members of a group or class, the expense incurred in respect of one of them is to be such part of that expense as is just and reasonable.

*Cash vouchers: exceptions*

## 78 **Voucher made available to public generally**

This Chapter does not apply to a cash voucher if—

- (a) it is of a kind made available to the public generally, and
- (b) it is provided to the employee or a member of the employee’s family on no more favourable terms than to the public generally.

## 79 **Voucher issued under approved scheme**

- (1) This Chapter does not apply to a cash voucher received by an employee if—



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- (a) it is issued under a scheme, and
  - (b) at the time when it is received the scheme is a scheme approved by the Inland Revenue for the purposes of this section.
- (2) The Inland Revenue must not approve a scheme for the purposes of this section unless they are satisfied that it is practicable for income tax in respect of all payments made in exchange for vouchers issued under the scheme to be deducted in accordance with PAYE regulations.

## **80 Vouchers where payment of sums exempt from tax**

This Chapter does not apply to a cash voucher if it is—

- (a) a document intended to enable a person to obtain payment of a sum which would not have constituted employment income if paid to the person directly, or
- (b) a savings certificate where the accumulated interest payable in respect of it is exempt from tax (or would be so exempt if certain conditions were met).

*Benefit of cash voucher treated as earnings*

## **81 Benefit of cash voucher treated as earnings**

- (1) The cash equivalent of the benefit of a cash voucher to which this Chapter applies is to be treated as earnings from the employment for the tax year in which the voucher is received by the employee.
- (2) The cash equivalent is the sum of money for which the voucher is capable of being exchanged.

*Non-cash vouchers: introduction*

## **82 Non-cash vouchers to which this Chapter applies**

- (1) This Chapter applies to a non-cash voucher provided for an employee by reason of the employment which is received by the employee.
- (2) A non-cash voucher provided for an employee by the employer is to be regarded as provided by reason of the employment unless—
  - (a) the employer is an individual, and
  - (b) the provision is made in the normal course of the employer's domestic, family or personal relationships.
- (3) A non-cash voucher provided for an employee and appropriated to the employee—
  - (a) by attaching it to a card held for the employee, or
  - (b) in any other way,is to be treated for the purposes of this Chapter as having been received by the employee at the time when it is appropriated.

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### **83 Provision for, or receipt by, member of employee’s family**

For the purposes of this Chapter any reference to a non-cash voucher being provided for or received by an employee includes a reference to it being provided for or received by a member of the employee’s family.

*Meaning of “non-cash voucher”*

### **84 Meaning of “non-cash voucher”**

- (1) In this Chapter “non-cash voucher” means—
  - (a) a voucher, stamp or similar document or token which is capable of being exchanged for money, goods or services,
  - (b) a transport voucher, or
  - (c) a cheque voucher,
 but does not include a cash voucher.
- (2) For the purposes of subsection (1)(a) it does not matter whether the document or token is capable of being exchanged—
  - (a) singly or together with other vouchers, stamps, documents or tokens;
  - (b) immediately or only after a time.
- (3) In this Chapter “transport voucher” means a ticket, pass or other document or token intended to enable a person to obtain passenger transport services (whether or not in exchange for it).
- (4) In this Chapter “cheque voucher” means a cheque—
  - (a) provided for an employee, and
  - (b) intended for use by the employee wholly or mainly for payment for—
    - (i) particular goods or services, or
    - (ii) goods or services of one or more particular classes;
 and, in relation to a cheque voucher, references to a voucher being exchanged for goods or services are to be read accordingly.

*Non-cash voucher: exceptions*

### **85 Non-cash voucher made available to public generally**

This Chapter does not apply to a non-cash voucher if—

- (a) it is of a kind made available to the public generally, and
- (b) it is provided to the employee or a member of the employee’s family on no more favourable terms than to the public generally.

### **86 Transport vouchers under pre-26th March 1982 arrangements**

- (1) This Chapter does not apply to a transport voucher provided for an employee of a passenger transport undertaking under arrangements in operation on 25th March 1982 which meet the condition in subsection (2).
- (2) The condition is that the arrangements are intended to enable the employee or a member of the employee’s family to obtain passenger transport services provided by—

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- (a) the employer,
  - (b) a subsidiary of the employer,
  - (c) a body corporate of which the employer is a subsidiary, or
  - (d) another passenger transport undertaking.
- (3) In this section—
- “passenger transport undertaking” means an undertaking whose business consists wholly or mainly in the carriage of passengers or a subsidiary of such an undertaking, and
- “subsidiary” means a wholly-owned subsidiary within the meaning of section 736 of the Companies Act 1985 (c. 6).

#### *Benefit of non-cash voucher treated as earnings*

### **87 Benefit of non-cash voucher treated as earnings**

- (1) The cash equivalent of the benefit of a non-cash voucher to which this Chapter applies is to be treated as earnings from the employment for the tax year in which the voucher is received by the employee.
- (2) The cash equivalent is the difference between—
- (a) the cost of provision, and
  - (b) any part of that cost made good by the employee to the person incurring it.
- (3) In this Chapter the “cost of provision” means, in relation to a non-cash voucher, the expense incurred in or in connection with the provision of—
- (a) the voucher, and
  - (b) the money, goods or services for which it is capable of being exchanged, by the person at whose cost they are provided.
- (4) In the case of a transport voucher, the reference in subsection (3)(b) to the services for which the voucher is capable of being exchanged is to the passenger transport services which may be obtained by using it.
- (5) If a person incurs expense in or in connection with the provision of non-cash vouchers for two or more employees as members of a group or class, the expense incurred in respect of one of them is to be such part of that expense as is just and reasonable.
- (6) This section is subject to section 89 (reduction for meal vouchers).

### **88 Year in which earnings treated as received**

- (1) In the case of a non-cash voucher other than a cheque voucher, the amount treated as earnings under section 87 is to be treated as received—
- (a) in the tax year in which the cost of provision is incurred, or
  - (b) if later, in the tax year in which the voucher is received by the employee.
- (2) In the case of a cheque voucher, the amount treated as earnings under section 87 is to be treated as received in the tax year in which the voucher is handed over in exchange for money, goods or services.

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- (3) Where a cheque voucher is posted it is to be treated as handed over at the time of posting.

## **89 Reduction for meal vouchers**

- (1) This section applies where—
- (a) the non-cash voucher is a meal voucher,
  - (b) it is provided for an employee for use on a working day, and
  - (c) meal vouchers are made available to all employees (if any) employed by the same employer in lower-paid employment within the meaning of Chapter 11 of this Part (see section 217).
- (2) The total of the cash equivalents of the benefit of any meal vouchers so provided is to be reduced by 15p for each working day for which the vouchers are provided.
- (3) In this section—
- “meal voucher” means a non-cash voucher which—
- (a) can only be used to obtain meals,
  - (b) is not transferable, and
  - (c) is not of the kind in respect of which no liability to income tax arises under section 266(3)(e) (subsidised meals), and
- “working day” means a day on which the employee is at work.
- (4) Section 83 (references to provision for an employee include provision for a member of the employee’s family) does not apply to subsection (1)(b).

### *Credit-tokens: introduction*

## **90 Credit-tokens to which this Chapter applies**

- (1) This Chapter applies to a credit-token provided for an employee by reason of the employment which is used by the employee to obtain money, goods or services.
- (2) A credit-token provided for an employee by the employer is to be regarded as provided by reason of the employment unless—
- (a) the employer is an individual, and
  - (b) the provision is made in the normal course of the employer’s domestic, family or personal relationships.

## **91 Provision for, or use by, member of employee’s family**

For the purposes of this Chapter—

- (a) any reference to a credit-token being provided for an employee includes a reference to it being provided for a member of the employee’s family, and
- (b) use of a credit-token by a member of an employee’s family is to be treated as use of the token by the employee.

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### *Meaning of “credit-token”*

#### **92 Meaning of “credit-token”**

- (1) In this Chapter “credit-token” means a credit card, debit card or other card, a token, a document or other object given to a person by another person (“X”) who undertakes—
  - (a) on the production of it, to supply money, goods or services on credit, or
  - (b) if a third party (“Y”) supplies money, goods or services on its production, to pay Y for what is supplied.
- (2) A card, token, document or other object can be a credit-token even if—
  - (a) some other action is required in addition to its production in order for the money, goods or services to be supplied;
  - (b) X in paying Y may take a discount or commission.
- (3) For the purposes of this section—
  - (a) the use of an object given by X to operate a machine provided by X is to be treated as its production to X, and
  - (b) the use of an object given by X to operate a machine provided by Y is to be treated as its production to Y.
- (4) A “credit-token” does not include a cash voucher or a non-cash voucher.

### *Credit-tokens: exception*

#### **93 Credit-token made available to public generally**

This Chapter does not apply to a credit-token if—

- (a) it is of a kind made available to the public generally, and
- (b) it is provided to the employee or a member of the employee’s family on no more favourable terms than to the public generally.

### *Benefit of credit-token treated as earnings*

#### **94 Benefit of credit-token treated as earnings**

- (1) On each occasion on which a credit-token to which this Chapter applies is used by the employee in a tax year to obtain money, goods or services, the cash equivalent of the benefit of the token is to be treated as earnings from the employment for that year.
- (2) The cash equivalent is the difference between—
  - (a) the cost of provision, and
  - (b) any part of that cost made good by the employee to the person incurring it.
- (3) In this section the “cost of provision” means the expense incurred—
  - (a) in or in connection with the provision of the money, goods or services obtained on the occasion in question, and
  - (b) by the person at whose cost they are provided.

*Status: Point in time view as at 06/04/2003.*

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- (4) If a person incurs expense in or in connection with the provision of credit-tokens for two or more employees as members of a group or class, the expense incurred in respect of one of them is to be such part of that expense as is just and reasonable.

*General supplementary provisions*

**95 Disregard for money, goods or services obtained**

- (1) This section applies if the cash equivalent of the benefit of a cash voucher, a non-cash voucher or a credit-token—
- (a) is to be treated as earnings from an employee’s employment under this Chapter, or
  - (b) would be so treated but for a dispensation given under section 96.
- (2) Money, goods or services obtained—
- (a) by the employee or another person in exchange for the cash voucher or non-cash voucher, or
  - (b) by the employee or a member of the employee’s family by use of the credit-token,
- are to be disregarded for the purposes of the Income Tax Acts.
- (3) But the goods or services are not to be disregarded for the purposes of applying sections 362 and 363 (deductions where non-cash voucher or credit-token provided).
- (4) In the case of a transport voucher, the reference in subsection (2)(a) to the services obtained in exchange for the voucher is to the passenger transport services obtained by using it.

**96 Dispensations relating to vouchers or credit-tokens**

- (1) This section applies where a person (“P”) supplies the Inland Revenue with a statement of the cases and circumstances in which—
- (a) cash vouchers,
  - (b) non-cash vouchers, or
  - (c) credit-tokens,
- are provided for employees whether they are the employees of P or some other person.
- (2) If the Inland Revenue are satisfied that no additional tax is payable by virtue of this Chapter by reference to the vouchers or credit-tokens mentioned in the statement, they must give P a dispensation under this section.
- (3) A “dispensation” is a notice stating that the Inland Revenue agree that no additional tax is payable by virtue of this Chapter by reference to the vouchers or credit-tokens mentioned in the statement supplied by P.
- (4) If a dispensation is given under this section, nothing in this Chapter applies to the provision or use of the vouchers or credit-tokens covered by the dispensation.
- (5) If in their opinion there is reason to do so, the Inland Revenue may revoke a dispensation by giving a further notice to P.
- (6) That notice may revoke the dispensation from—

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- (a) the date when the dispensation was given, or
  - (b) a later date specified in the notice.
- (7) If the notice revokes the dispensation from the date when the dispensation was given—
- (a) any liability to tax that would have arisen if the dispensation had never been given is to be treated as having arisen, and
  - (b) P and the employees in question must make all the returns which they would have had to make if the dispensation had never been given.
- (8) If the notice revokes the dispensation from a later date—
- (a) any liability to tax that would have arisen if the dispensation had ceased to have effect on that date is to be treated as having arisen, and
  - (b) P and the employees in question must make all the returns which they would have had to make if the dispensation had ceased to have effect on that date.

## CHAPTER 5

### TAXABLE BENEFITS: LIVING ACCOMMODATION

#### *Living accommodation*

#### **97 Living accommodation to which this Chapter applies**

- (1) This Chapter applies to living accommodation provided for—
- (a) an employee, or
  - (b) a member of an employee's family or household,
- by reason of the employment.
- (2) Living accommodation provided for any of those persons by the employer is to be regarded as provided by reason of the employment unless—
- (a) the employer is an individual, and
  - (b) the provision is made in the normal course of the employer's domestic, family or personal relationships.

#### *Exceptions*

#### **98 Accommodation provided by local authority**

This Chapter does not apply to living accommodation provided for an employee if—

- (a) the employer is a local authority,
- (b) it is provided for the employee by the authority, and
- (c) the terms on which it is provided are no more favourable than those on which similar accommodation is provided by the authority for persons who are not their employees but whose circumstances are otherwise similar to those of the employee.

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## **99 Accommodation provided for performance of duties**

- (1) This Chapter does not apply to living accommodation provided for an employee if it is necessary for the proper performance of the employee's duties that the employee should reside in it.
- (2) This Chapter does not apply to living accommodation provided for an employee if—
  - (a) it is provided for the better performance of the duties of the employment, and
  - (b) the employment is one of the kinds of employment in the case of which it is customary for employers to provide living accommodation for employees.
- (3) But if the accommodation is provided by a company and the employee (“E”) is a director of the company or of an associated company, the exception in subsection (1) or (2) only applies if, in the case of each company of which E is a director—
  - (a) E has no material interest in the company, and
  - (b) either—
    - (i) E's employment is as a full-time working director, or
    - (ii) the company is non-profit-making or is established for charitable purposes only.
- (4) “Non-profit-making” means that the company does not carry on a trade and its functions do not consist wholly or mainly in the holding of investments or other property.
- (5) A company is “associated” with another if—
  - (a) one has control of the other, or
  - (b) both are under the control of the same person.

## **100 Accommodation provided as result of security threat**

- This Chapter does not apply to living accommodation provided for an employee if—
- (a) there is a special threat to the security of the employee,
  - (b) special security arrangements are in force, and
  - (c) the employee resides in the accommodation as part of those arrangements.

### **[<sup>F1</sup>100A Homes outside UK owned through company etc**

- (1) This Chapter does not apply to living accommodation outside the United Kingdom provided by a company for a director or other officer of the company (“D”) or a member of D's family or household if—
  - (a) the company is wholly owned by D or D and other individuals (and no interest in the company is partnership property), and
  - (b) the company has been the holding company of the property at all times after the relevant time.
- (2) The company is “the holding company of the property” when—
  - (a) it owns a relevant interest in the property,
  - (b) its main or only asset is that interest, and
  - (c) the only activities undertaken by it are ones that are incidental to its ownership of that interest.
- (3) The company is also “the holding company of the property” when—



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- (a) a company (“the subsidiary”) which is wholly owned by the company meets the conditions in paragraphs (a) to (c) of subsection (2),
  - (b) the company's main or only asset is its interest in the subsidiary, and
  - (c) the only activities undertaken by the company are ones that are incidental to its ownership of that interest.
- (4) “Relevant interest in the property” means an interest under the law of any territory that confers (or would but for any inferior interest confer) a right to exclusive possession of the property at all times or at certain times.
- (5) “The relevant time” is the time the company first owned a relevant interest in the property; but this is subject to subsection (6).
- (6) If—
- (a) none of D's interest in the company was acquired directly or indirectly from a person connected with D, and
  - (b) the company owned a relevant interest in the property at the time D first acquired an interest in the company,
- “the relevant time” is the time D first acquired such an interest.

#### Textual Amendments

F1 Ss. 100A, 100B inserted (retrospectively) by Finance Act 2008 (c. 9), s. 45

### 100B Section 100A(1): exceptions

- (1) Section 100A(1) does not apply if subsection (2), (3) or (4) applies.
- (2) This subsection applies if—
  - (a) the company's interest in the property was acquired directly or indirectly from a connected company at an undervalue, or
  - (b) the company's interest in the property derives from an interest that was so acquired.
- (3) This subsection applies if, at any time after the relevant time—
  - (a) expenditure in respect of the property has been incurred directly or indirectly by a connected company, or
  - (b) any borrowing of the company directly or indirectly from a connected company has been outstanding (but see subsection (7)).
- (4) This subsection applies if the living accommodation is provided in pursuance of an arrangement the main purpose, or one of the main purposes, of which is the avoidance of tax or national insurance contributions.
- (5) In subsection (2) references to the acquisition of an interest include the grant of an interest.
- (6) For the purposes of that subsection, an interest is acquired at an undervalue if the total consideration for it is less than that which might reasonably have been expected to be obtained on a disposal of the interest on the open market; and “consideration” here means consideration provided at any time (and, for example, includes payments by way of rent).

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- (7) For the purposes of subsection (3)(b), no account is to be taken of—
- (a) any borrowing at a commercial rate, or
  - (b) any borrowing which results in D being treated under Chapter 7 (taxable benefits: loans) as receiving earnings.
- (8) In subsection (4) “arrangement” includes any scheme, agreement or understanding, whether or not enforceable.
- (9) In this section “connected company” means—
- (a) a company connected with D, with a member of D's family or with an employer of D, or
  - (b) a company connected with such a company.]

#### Textual Amendments

**F1** Ss. 100A, 100B inserted (retrospectively) by [Finance Act 2008 \(c. 9\), s. 45](#)

### 101 Chevening House

This Chapter does not apply to living accommodation provided for an employee if the accommodation is—

- (a) Chevening House, or
- (b) any other premises held on the trusts of the trust instrument set out in the Schedule to the Chevening Estate Act 1959 (c. 49),

and the employee is a person nominated in accordance with those trusts.

*Benefit of living accommodation treated as earnings*

### 102 Benefit of living accommodation treated as earnings

- (1) If living accommodation to which this Chapter applies is provided in any period—
- (a) which consists of the whole or part of a tax year, and
  - (b) throughout which the employee holds the employment,
- the cash equivalent of the benefit of the accommodation is to be treated as earnings from the employment for that year.
- (2) In this Chapter that period is referred to as “the taxable period”.
- (3) Section 103 indicates how the cash equivalent is calculated.

*Calculation of cash equivalent*

### 103 Method of calculating cash equivalent

- (1) The cash equivalent is calculated—
- (a) under section 105 if the cost of providing the living accommodation does not exceed £75,000; and
  - (b) under section 106 if the cost of providing the living accommodation exceeds £75,000.

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- (2) Section 104 (general rule) sets out how to calculate the cost of providing living accommodation for the purpose of determining whether or not it exceeds £75,000.
- (3) In this Chapter—  
“annual value”,  
“person involved in providing accommodation”, and  
“the property”,  
have the meaning given by sections 110 to 113, and “the taxable period” has the meaning given by section 102(2).

#### **104 General rule for calculating cost of providing accommodation**

For any tax year the cost of providing living accommodation is given by the formula—

$$A + I - P$$

where—

A is any expenditure incurred in acquiring the estate or interest in the property held by a person involved in providing the accommodation,

I is any expenditure incurred on improvements to the property which has been incurred before the tax year in question by a person involved in providing the accommodation, and

P is so much of any payment or payments made by the employee to a person involved in providing the accommodation as represents—

- (a) reimbursement of A or I, or
- (b) consideration for the grant to the employee of a tenancy or sub-tenancy of the property.

*Accommodation costing £75,000 or less*

#### **105 Cash equivalent: cost of accommodation not over £75,000**

- (1) The cash equivalent is to be calculated under this section if the cost of providing the living accommodation does not exceed £75,000.
- (2) The cash equivalent is the difference between—
  - (a) the rental value of the accommodation for the taxable period, and
  - (b) any sum made good by the employee to the person at whose cost the accommodation is provided that is properly attributable to its provision.
- (3) The “rental value of the accommodation” for the taxable period is the rent which would have been payable for that period if the property had been let to the employee at an annual rent equal to the annual value.
- (4) But if the person at whose cost the accommodation is provided pays rent for the whole or part of the taxable period at an annual rate greater than the annual value—
  - (a) subsection (3) does not apply to that period or (as the case may be) that part of it; and

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- (b) instead the “rental value of the accommodation” for that period or part is the rent payable for it by that person.
- (5) If the rental value of the accommodation for the taxable period does not exceed any sum made good by the employee as mentioned in subsection (2)(b), the cash equivalent is nil.

*Accommodation costing more than £75,000*

**106 Cash equivalent: cost of accommodation over £75,000**

- (1) The cash equivalent is calculated under this section if the cost of providing the living accommodation exceeds £75,000.
- (2) To calculate the cash equivalent—

*Step 1*

Calculate the amount that would be the cash equivalent if section 105 applied (cash equivalent: cost of accommodation not over £75,000).

*Step 2*

Calculate the following amount (“the additional yearly rent”)—

$$\text{ORI} \times (C - £75,000)$$

where—

ORI is the official rate of interest in force for the purposes of Chapter 7 of this Part (taxable benefits: loans) on 6th April in the tax year, and

C is the cost of providing the accommodation calculated—

- (a) in accordance with section 104 (general rule for calculating cost of accommodation), or
- (b) in a case where section 107 applies (special rule for calculating cost of providing accommodation), in accordance with that section instead.

*Step 3*

Calculate the rent which would have been payable for the taxable period if the property had been let to the employee at the additional yearly rent calculated under step 2.

*Step 4*

Calculate the cash equivalent by—

- (a) adding together the amounts calculated under steps 1 and 3, and
- (b) (if allowed by subsection (3)) subtracting from that total the excess rent paid by the employee.
- (3) In step 4—
- (a) paragraph (b) only applies if, in respect of the taxable period, the rent paid by the employee in respect of the accommodation to the person providing it exceeds the rental value of the accommodation for that period as set out in section 105(3) or (4)(b), as applicable, and

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- (b) “the excess rent” means the total amount of that excess.

## 107 Special rule for calculating cost of providing accommodation

- (1) This section contains a special rule for calculating the cost of providing living accommodation which—
- (a) operates for the purposes of step 2 of section 106(2) (calculating the additional yearly rent), and
  - (b) accordingly only operates where the cost of provision for the purposes of section 106(1) (as calculated under section 104) exceeds £75,000.
- (2) This section applies if, throughout the period of 6 years ending with the date when the employee first occupied the accommodation (“the initial date”), an estate or interest in the property was held by a person involved in providing the accommodation.

It does not matter whether it was the same estate, interest or person throughout.

- (3) For any tax year the cost of providing the living accommodation for the purposes mentioned in subsection (1)(a) is given by the formula—

$$MV + I - P$$

where—

MV is the price which the property might reasonably be expected to have fetched on a sale in the open market with vacant possession as at the initial date,

I is any expenditure incurred on improvements to the property which has been incurred during the period—

- (a) beginning with the initial date, and
- (b) ending with the day before the beginning of the tax year,

by a person involved in providing the accommodation, and

P is so much of any payment or payments made by the employee to a person involved in providing the accommodation as represents—

- (a) reimbursement (up to an amount not exceeding MV) of any expenditure incurred in acquiring the estate or interest in the property held on the initial date,
- (b) reimbursement of I, or
- (c) consideration for the grant to the employee of a tenancy or sub-tenancy of the property.

- (4) In estimating MV no reduction is to be made for an option in respect of the property held by—
- (a) the employee,
  - (b) a person connected with the employee, or
  - (c) a person involved in providing the accommodation.

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### *Apportionment of cash equivalent*

#### **108 Cash equivalent: accommodation provided for more than one employee**

- (1) If, for the whole or part of a tax year, the same living accommodation is provided for more than one employee at the same time, the total of the cash equivalents for all of the employees is to be limited to the amount that would be the cash equivalent if the accommodation was provided for one employee.
- (2) The cash equivalent for each of the employees is to be such part of that amount as is just and reasonable.

### *Other tax implications*

#### **109 Priority of this Chapter over Chapter 1 of this Part**

- (1) This section applies if—
  - (a) under this Chapter the cash equivalent of the benefit of living accommodation is to be treated as earnings from an employee’s employment for a tax year, and
  - (b) under Chapter 1 of this Part an amount would, apart from this section, constitute earnings from the employment for the year in respect of the provision of the accommodation.
- (2) The full amount of the cash equivalent is to be treated as earnings from the employment for that year under this Chapter.
- (3) The amount mentioned in subsection (1)(b) is to constitute earnings from the employment for the year under Chapter 1 of this Part only to the extent that it exceeds the amount mentioned in subsection (2).

### *Supplementary*

#### **110 Meaning of “annual value”**

- (1) For the purposes of this Chapter the “annual value” of living accommodation is the rent which might reasonably be expected to be obtained on a letting from year to year if—
  - (a) the tenant undertook to pay all taxes, rates and charges usually paid by a tenant, and
  - (b) the landlord undertook to bear the costs of the repairs and insurance and the other expenses (if any) necessary for maintaining the property in a state to command that rent.
- (2) For the purposes of subsection (1) that rent—
  - (a) is to be taken to be the amount that might reasonably be expected to be so obtained in respect of the letting of the accommodation, and
  - (b) is to be calculated on the basis that the only amounts that may be deducted in respect of services provided by the landlord are amounts in respect of the cost to the landlord of providing any relevant services.
- (3) If living accommodation is of a kind that might reasonably be expected to be let on terms under which—
  - (a) the landlord is to provide any services which are either—

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- (i) relevant services, or
  - (ii) the repair, insurance or maintenance of any premises which do not form part of the accommodation but belong to or are occupied by the landlord, and
- (b) amounts are payable in respect of the services in addition to the rent, the rent to be established under subsection (1) in respect of the accommodation is to be increased under subsection (4).
- (4) That rent is to include—
- (a) where the services are relevant services, so much of the additional amounts as exceeds the cost to the landlord of providing the services;
  - (b) where the services are within subsection (3)(a)(ii), the whole of the additional amounts.
- (5) In this section “relevant service” means a service other than the repair, insurance or maintenance of the accommodation or of any other premises.

#### **111 Disputes as to annual value**

- (1) This section applies if there is a dispute as to the amount of the annual value of living accommodation for the purposes of this Chapter.
- (2) The question is to be determined by the General Commissioners.
- (3) The Commissioners must hear and determine the question in the same way as an appeal.

#### **112 Meaning of “person involved in providing the accommodation”**

For the purposes of this Chapter “person involved in providing the accommodation” means any of the following—

- (a) the person providing the accommodation;
- (b) the employee’s employer (if not within paragraph (a));
- (c) any person, other than the employee, who is connected with a person within paragraph (a) or (b).

#### **113 Meaning of “the property”**

For the purposes of this Chapter “the property”, in relation to living accommodation, means the property consisting of that accommodation.

*Status: Point in time view as at 06/04/2003.*

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## CHAPTER 6

### TAXABLE BENEFITS: CARS, VANS AND RELATED BENEFITS

#### *General*

#### **114 Cars, vans and related benefits**

- (1) This Chapter applies to a car or a van in relation to a particular tax year if in that year the car or van—
  - (a) is made available (without any transfer of the property in it) to an employee or a member of the employee’s family or household,
  - (b) is so made available by reason of the employment (see section 117), and
  - (c) is available for the employee’s or member’s private use (see section 118).
- (2) Where this Chapter applies to a car or van—
  - (a) sections 120 to 148 provide for the cash equivalent of the benefit of the car to be treated as earnings,
  - (b) sections 149 to 153 provide for the cash equivalent of the benefit of any fuel provided for the car to be treated as earnings, and
  - (c) sections 154 to 166 provide for the cash equivalent of the benefit of the van to be treated as earnings.
- (3) This Chapter does not apply if an amount constitutes earnings from the employment in respect of the benefit of the car or van by virtue of any other provision (see section 119).
- (4) The following provisions of this Chapter provide for further exceptions—
  - section 167 (pooled cars);
  - section 168 (pooled vans);
  - section 169 (car available to more than one member of family or household employed by same employer).

#### **115 Meaning of “car” and “van”**

- (1) In this Chapter—
  - “car” means a mechanically propelled road vehicle which is not—
    - (a) a goods vehicle,
    - (b) a motor cycle,
    - (c) an invalid carriage, or
    - (d) a vehicle of a type not commonly used as a private vehicle and unsuitable to be so used;
  - “van” means a mechanically propelled road vehicle which—
    - (a) is a goods vehicle, and
    - (b) has a design weight not exceeding 3,500 kilograms,
 and which is not a motor cycle.
- (2) For the purposes of subsection (1)—
  - “design weight” means the weight which a vehicle is designed or adapted not to exceed when in normal use and travelling on a road laden;



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“goods vehicle” means a vehicle of a construction primarily suited for the conveyance of goods or burden of any description;

“invalid carriage” has the meaning given by section 185(1) of the Road Traffic Act 1988 (c. 52);

“motor cycle” has the meaning given by section 185(1) of the Road Traffic Act 1988.

## **116 Meaning of when car or van is available to employee**

- (1) For the purposes of this Chapter a car or van is available to an employee at a particular time if it is then made available, by reason of the employment and without any transfer of the property in it, to the employee or a member of the employee’s family or household.
- (2) References in this Chapter to—
  - (a) the time when a car is first made available to an employee are to the earliest time when the car is made available as mentioned in subsection (1), and
  - (b) the last day in a year on which a car is available to an employee are to the last day in the year on which the car is made available as mentioned in subsection (1).
- (3) This section does not apply to section 138 (automatic car for a disabled employee).

## **117 Meaning of car or van made available by reason of employment**

For the purposes of this Chapter a car or van made available by an employer to an employee or a member of the employee’s family or household is to be regarded as made available by reason of the employment unless—

- (a) the employer is an individual, and
- (b) it is so made available in the normal course of the employer’s domestic, family or personal relationships.

## **118 Availability for private use**

- (1) For the purposes of this Chapter a car or van made available in a tax year to an employee or a member of the employee’s family or household is to be treated as available for the employee’s or member’s private use unless in that year—
  - (a) the terms on which it is made available prohibit such use, and
  - (b) it is not so used.
- (2) In this Chapter “private use”, in relation to a car or van made available to an employee or a member of the employee’s family or household, means any use other than for the employee’s business travel (see section 171(1)).

## **119 Where alternative to benefit of car offered**

- (1) This section applies where in a tax year—
  - (a) a car is made available as mentioned in section 114(1), and
  - (b) an alternative to the benefit of the car is offered.
- (2) The mere fact that the alternative is offered does not result in an amount in respect of the benefit constituting earnings by virtue of Chapter 1 of this Part (earnings).

*Status: Point in time view as at 06/04/2003.*

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### *Cars: benefit treated as earnings*

#### **120 Benefit of car treated as earnings**

- (1) If this Chapter applies to a car in relation to a particular tax year, the cash equivalent of the benefit of the car is to be treated as earnings from the employment for that year.
- (2) In such a case the employee is referred to in this Chapter as being chargeable to tax in respect of the car in that year.

#### **121 Method of calculating the cash equivalent of the benefit of a car**

- (1) The cash equivalent of the benefit of a car for a tax year is calculated as follows—

*Step 1*

Find the price of the car in accordance with sections 122 to 124.

*Step 2*

Add the price of any accessories which fall to be taken into account in accordance with sections 125 to 131.

*Step 3*

Make any deduction under section 132 for capital contributions made by the employee to the cost of the car or accessories.

*Step 4*

If the amount carried forward from step 3 exceeds £80,000, the interim sum is £80,000.

In any other case, the interim sum is the amount carried forward from step 3.

*Step 5*

Find the appropriate percentage for the car for the year in accordance with sections 133 to 142.

*Step 6*

Multiply the interim sum by the appropriate percentage for the car for the year.

*Step 7*

Make any deduction under section 143 for any periods when the car was unavailable.

The resulting amount is the provisional sum.

*Step 8*

Make any deduction from the provisional sum under section 144 in respect of payments by the employee for the private use of the car.

The result is the cash equivalent of the benefit of the car for the year.

- (2) The method of calculation set out in subsection (1) is modified in the special cases dealt with in—
  - section 146 (cars that run on road fuel gas), and

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section 147 (classic cars: 15 years of age or more).

(3) The cash equivalent may be reduced under section 148 where the car is shared.

### *Cars: the price of a car*

## **122 The price of the car**

For the purposes of this Chapter the price of a car means—

- (a) its list price, if it has one, or
- (b) its notional price, if it has no list price.

## **123 The list price of a car**

- (1) In this Chapter a car’s “list price” means the price published by the car’s manufacturer, importer or distributor (as the case may be) as the inclusive price appropriate for a car of that kind if sold—
- (a) in the United Kingdom,
  - (b) singly,
  - (c) in a retail sale,
  - (d) in the open market, and
  - (e) on the day immediately before the date of the car’s first registration.
- (2) The “inclusive price” means the price inclusive of—
- (a) any charge for delivery by the manufacturer, importer or distributor to the seller’s place of business, and
  - (b) any relevant taxes (see section 171(1)).

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

- (1) In this Chapter a car’s “notional price” means the price which might reasonably have been expected to be its list price if its manufacturer, importer or distributor (as the case may be) had published a price as the inclusive price appropriate for a sale of a car of the same kind sold—
- (a) in the United Kingdom,
  - (b) singly,
  - (c) in a retail sale,
  - (d) in the open market,
  - (e) on the day immediately before the date of the car’s first registration, and
  - (f) with accessories equivalent to the qualifying accessories (see section 125) available with the car at the time when it was first made available to the employee.
- (2) In this section “inclusive price” has the same meaning as in section 123.

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### *Cars: treatment of accessories*

#### **125 Meaning of “accessory” and related terms**

- (1) In this Chapter “qualifying accessory” means 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 employment, and
  - (c) is attached to the car (whether permanently or not).
- (2) For the purposes of this Chapter “accessory” includes any kind of equipment but does not include—
  - (a) equipment 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;
  - (c) equipment to enable a disabled person to use a car (see section 172);
  - (d) a mobile telephone (within the meaning given in section 319(2)).
- (3) But subsection (2)(b) does not apply in relation to a car to which section 137 (different CO<sub>2</sub> emissions figure for bi-fuel cars) applies.
- (4) In this Chapter—
 

“standard accessory” means an accessory equivalent to an accessory assumed to be available with cars of the same kind as the car in question in arriving at the list price, and

“non-standard accessory” means any other accessory.

#### **126 Amounts taken into account in respect of accessories**

- (1) The price of the following accessories is to be taken into account under step 2 of section 121(1)—
  - (a) in the case of a car with a list price, the price of any initial extra accessory, and
  - (b) in the case of any car, the price of any later accessory.
- (2) In this Chapter an “initial extra accessory” means a qualifying accessory which—
  - (a) is a non-standard accessory,
  - (b) is available with the car at the time when it is first made available to the employee, and
  - (c) if it is an accessory in relation to which there is no published price of the manufacturer, importer or distributor of the car (see section 128), is available with the car in the tax year in question.
- (3) In this Chapter a “later accessory” means a qualifying accessory which—
  - (a) is available with the car in the tax year in question,
  - (b) was not available with the car at the time when it was first made available to the employee,
  - (c) was not made available with the car before 1st August 1993, and
  - (d) has a price of at least £100.
- (4) In this section references to the price of an accessory are to—
  - (a) its list price, if it has one, or

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(b) its notional price, if it has no list price.

(5) This section is subject to section 131 (replacement accessories).

### **127 The list price of an accessory**

- (1) For the purposes of this Chapter the list price of an initial extra accessory is—
- (a) the published price of the manufacturer, importer or distributor of the car (see section 128), or
  - (b) if there is no such price, the published price of the manufacturer, importer or distributor of the accessory (see section 129).
- (2) For the purposes of this Chapter the list price of a later accessory is the published price of the manufacturer, importer or distributor of the accessory (see section 129).

### **128 Accessory: published price of the car manufacturer etc.**

- (1) In this Chapter the “published price of the manufacturer, importer or distributor of the car” in relation to an accessory means the price published by the car’s manufacturer, importer or distributor (as the case may be) as the inclusive price appropriate for an equivalent accessory if sold with a car of the same kind—
- (a) in the United Kingdom,
  - (b) singly,
  - (c) in a retail sale,
  - (d) in the open market, and
  - (e) on the day immediately before the date of the car’s first registration.
- (2) The “inclusive price” means the price inclusive of—
- (a) any charge for delivery by the manufacturer, importer or distributor to the seller’s place of business,
  - (b) any relevant taxes other than car tax (see section 171(1)), and
  - (c) any charge for fitting the accessory.

### **129 Accessory: published price of the accessory manufacturer etc.**

- (1) In this Chapter the “published price of the manufacturer, importer or distributor of the accessory” in relation to an accessory means the price published by or on behalf of the manufacturer, importer or distributor of the accessory (as the case may be) as the inclusive price appropriate for such an accessory if sold—
- (a) in the United Kingdom,
  - (b) singly,
  - (c) in a retail sale,
  - (d) in the open market, and
  - (e) at the time immediately before the accessory concerned is first made available for use with the car.
- (2) The “inclusive price” means the price inclusive of—
- (a) any charge for delivery by the manufacturer, importer or distributor to the seller’s place of business,
  - (b) any relevant taxes other than car tax (see section 171(1)), and

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- (c) in the case of an accessory permanently attached to the car, the price which the seller would charge for attaching it.
- (3) In the case of an initial extra accessory, the time referred to in subsection (1)(e) may be a time before the car is first made available to the employee.

### **130 The notional price of an accessory**

- (1) In this Chapter the “notional price” of an accessory means the inclusive price which it might reasonably have been expected to fetch if sold—
  - (a) in the United Kingdom,
  - (b) singly,
  - (c) in a retail sale,
  - (d) in the open market, and
  - (e) at the time immediately before the accessory concerned is first made available for use with the car.
- (2) The “inclusive price” means the price inclusive of—
  - (a) any charge for delivery by the manufacturer, importer or distributor to the seller’s place of business,
  - (b) any relevant taxes other than car tax (see section 171(1)), and
  - (c) in the case of an accessory permanently attached to the car, the price which the seller would charge for attaching it.
- (3) In the case of an initial extra accessory, the time referred to in subsection (1)(e) may be a time before the car is first made available to the employee.

### **131 Replacement accessories**

- (1) This section applies where—
  - (a) a later accessory is available with the car in the tax year in question,
  - (b) that accessory (“the new accessory”) replaced another qualifying accessory (“the old accessory”) in that year or an earlier tax year, and
  - (c) the new accessory is of the same kind as the old accessory.
- (2) If the new accessory is not superior to the old accessory, the cash equivalent of the benefit of the car for the tax year is to be calculated under step 2 of section 121(1) as if—
  - (a) the replacement has not been made, and
  - (b) the new accessory is a continuation of the old accessory.
- (3) If the new accessory is superior to the old accessory and the conditions in subsection (4) are met, the cash equivalent of the benefit of the car for the tax year is to be calculated under step 2 of section 121(1)—
  - (a) as if the old accessory was not available with the car in that tax year, or
  - (b) where the price of the old accessory would (apart from this section) be added to the price of the car under step 2 of section 121(1) as an initial extra accessory, as if it was not available with the car at the time when the car was first made available to the employee.
- (4) The conditions mentioned in subsection (3) are that—
  - (a) the old accessory was a non-standard accessory, and

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- (b) both the old and the new accessory would (apart from this section) be taken into account under step 2 of section 121(1) in calculating the cash equivalent of the benefit of the car for the year.
- (5) For the purposes of this section a new accessory is superior to an old accessory if the price of the new accessory exceeds whichever is the greater of—
  - (a) the price of the old accessory, and
  - (b) the price of an accessory equivalent to the old accessory at the time immediately before the new accessory is first made available for use with the car.
- (6) In this section references to the price of an accessory are to—
  - (a) its list price, if it has one, or
  - (b) its notional price, if it has no list price.

*Cars: capital contributions by employee*

**132 Capital contributions by employee**

- (1) This section applies if the employee contributes a capital sum to expenditure on the provision of—
  - (a) the car, or
  - (b) any qualifying accessory which is taken into account in calculating the cash equivalent of the benefit of the car.
- (2) A deduction is to be made from the amount carried forward from step 2 of section 121(1)—
  - (a) for the tax year in which the contribution is made, and
  - (b) for all subsequent years in which the employee is chargeable to tax in respect of the car by virtue of section 120.
- (3) The amount of the deduction allowed in any tax year is the lesser of—
  - (a) the total of the capital sums contributed by the employee in that year and any earlier years to expenditure on the provision of—
    - (i) the car, or
    - (ii) any qualifying accessory which is taken into account in calculating the cash equivalent of the benefit of the car for the tax year in question, and
  - (b) £5,000.

*Cars: the appropriate percentage*

**133 How to determine the “appropriate percentage”**

- (1) The “appropriate percentage” for a car for a year depends upon when the car was first registered.
- (2) If the car was first registered on or after 1st January 1998, the “appropriate percentage” depends upon whether the car—
  - (a) is a car with a CO<sub>2</sub> emissions figure (see section 134(1)),
  - (b) is a car without a CO<sub>2</sub> emissions figure (see section 134(2)), or

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(c) is a diesel car to which section 141 applies,  
and is determined under sections 139 to 141.

(3) If the car was first registered before 1st January 1998, the “appropriate percentage” is determined under section 142.

#### **134 Meaning of car with or without a CO<sub>2</sub> emissions figure**

(1) In this Chapter a “car with a CO<sub>2</sub> emissions figure” means—

- (a) a car first registered on or after 1st January 1998 but before 1st October 1999 to which section 135 applies,
- (b) a car first registered on or after 1st October 1999 to which section 136 applies, or
- (c) a car first registered on or after 1st January 2000 which is a car to which section 137 (bi-fuel cars) applies.

(2) In this Chapter a “car without a CO<sub>2</sub> emissions figure” means any other car first registered on or after 1st January 1998.

*Cars: appropriate percentage: first registered on or after 1st January 1998*

#### **135 Car with a CO<sub>2</sub> emissions figure: pre-October 1999 registration**

(1) This section applies to a car first registered on or after 1st January 1998 but before 1st October 1999 if when it was so registered—

- (a) it conformed to a vehicle type with an EC type-approval certificate (see section 171(1)), or
  - (b) it had a UK approval certificate (see section 171(1)),
- which specifies a CO<sub>2</sub> emissions figure in terms of grams per kilometre driven.

(2) The car’s CO<sub>2</sub> emissions figure is that specified figure.

(3) This is subject to section 138 (automatic car for a disabled employee).

#### **136 Car with a CO<sub>2</sub> emissions figure: post-September 1999 registration**

(1) This section applies to a car first registered on or after 1st October 1999 if it is so registered on the basis of—

- (a) an EC certificate of conformity (see section 171(1)), or
- (b) a UK approval certificate (see section 171(1)),

which specifies a CO<sub>2</sub> emissions figure in terms of grams per kilometre driven.

(2) The car’s CO<sub>2</sub> emissions figure is that specified figure unless more than one figure is specified, in which case the car’s CO<sub>2</sub> emissions figure is the figure specified as the CO<sub>2</sub> emissions (combined) figure.

(3) This is subject to—

- (a) section 137 (bi-fuel cars), and
- (b) section 138 (automatic car for a disabled employee).



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### **137 Car with a CO<sub>2</sub> emissions figure: bi-fuel cars**

- (1) This section applies to a car first registered on or after 1st January 2000 if it is so registered on the basis of—
  - (a) an EC certificate of conformity (see section 171(1)), or
  - (b) a UK approval certificate (see section 171(1)),which specifies separate CO<sub>2</sub> emissions figures in terms of grams per kilometre driven for different fuels.
- (2) The car's CO<sub>2</sub> emissions figure is—
  - (a) the lowest figure specified, or
  - (b) if there is more than one figure specified in relation to each fuel, the lowest CO<sub>2</sub> emissions (combined) figure specified.
- (3) This is subject to section 138 (automatic car for a disabled employee).

### **138 Car with a CO<sub>2</sub> emissions figure: automatic car for a disabled employee**

- (1) This section applies where—
  - (a) a car with a CO<sub>2</sub> emissions figure has automatic transmission (“the automatic car”),
  - (b) at any time in the year when the automatic car is available to the employee (“E”), E holds a disabled person's badge, and
  - (c) by reason of E's disability, E must, in the event of wanting to drive a car, drive a car which has automatic transmission.
- (2) If, under sections 135 to 137, the automatic car's CO<sub>2</sub> emissions figure is more than it would have been if the automatic car had been an equivalent manual car, the CO<sub>2</sub> emissions figure for the automatic car is to be the CO<sub>2</sub> emissions figure for an equivalent manual car.
- (3) In subsection (2) “an equivalent manual car” means a car which—
  - (a) is first registered at or about the same time as the automatic car, and
  - (b) does not have automatic transmission, but otherwise is the closest variant available of the make and model of the automatic car.
- (4) For the purposes of this section a car has automatic transmission if—
  - (a) the driver of the car is not provided with any means by which the driver may vary the gear ratio between the engine and the road wheels independently of the accelerator and the brakes, or
  - (b) the driver is provided with such means, but they do not include—
    - (i) a clutch pedal, or
    - (ii) a lever which the driver may operate manually.
- (5) For the purposes of this section a car is available to an employee at a particular time if it is then made available, by reason of the employment and without any transfer of the property in it, to the employee.

### **139 Car with a CO<sub>2</sub> emissions figure: the appropriate percentage**

- (1) The appropriate percentage for a year for a car with a CO<sub>2</sub> emissions figure depends upon whether the car's CO<sub>2</sub> emissions figure exceeds the lower threshold for that year.

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- (2) If the car's CO<sub>2</sub> emissions figure does not exceed the lower threshold for the year, the appropriate percentage for the year is 15% ("the basic percentage").
- (3) If the car's CO<sub>2</sub> emissions figure does exceed the lower threshold for the year, the appropriate percentage for the year is whichever is the lesser of—
- (a) the basic percentage increased by one percentage point for each 5 grams per kilometre by which the CO<sub>2</sub> emissions figure exceeds the lower threshold for the year, and
  - (b) 35%.
- (4) The lower threshold is—

TABLE

<i>Tax year</i>	<i>Lower threshold (in g/km)</i>
2003-04	155
2004-05 and subsequent tax years	145

- (5) If the car's CO<sub>2</sub> emissions figure is not a multiple of 5, it is to be rounded down to the nearest multiple of 5 for the purposes of this section.
- (6) This section is subject to—
- (a) section 141 (diesel cars), and
  - (b) any regulations made by the Treasury under section 170(4) (power to reduce the appropriate percentage).

#### **140 Car without a CO<sub>2</sub> emissions figure: the appropriate percentage**

- (1) The appropriate percentage for a year for a car without a CO<sub>2</sub> emissions figure is determined under this section.
- (2) If the car has an internal combustion engine with one or more reciprocating pistons, the appropriate percentage for the year is—

TABLE

<i>Cylinder capacity of car in cubic centimetres</i>	<i>Appropriate percentage</i>
1,400 or less	15%
More than 1,400 but not more than 2,000	25%
More than 2,000	35%

For this purpose a car's cylinder capacity is the capacity of its engine as calculated for the purposes of VERA 1994.

- (3) If subsection (2) does not apply, the appropriate percentage for the year is—
- (a) 15%, if the car is an electrically propelled vehicle, and
  - (b) 35%, in any other case.

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- (4) For the purposes of this section a vehicle is not an electrically propelled vehicle unless—
- (a) it is propelled solely by electrical power, and
  - (b) that power is derived from—
    - (i) a source external to the vehicle, or
    - (ii) an electrical storage battery which is not connected to any source of power when the vehicle is in motion.
- (5) This section is subject to—
- (a) section 141 (diesel cars), and
  - (b) any regulations made by the Treasury under section 170(4) (power to reduce the appropriate percentage).

#### **141 Diesel cars: the appropriate percentage**

- (1) This section applies to a diesel car first registered on or after 1st January 1998.
- (2) To determine the appropriate percentage for such a car for a year—

*Step 1*

Determine whether the car is a car with a CO<sub>2</sub> emissions figure or a car without a CO<sub>2</sub> emissions figure (see section 134).

*Step 2*

Take what would be the appropriate percentage for the car for the year under section 139 or 140 as appropriate.

*Step 3*

The appropriate percentage for the car for the year is whichever is the smaller of—

- (a) the figure resulting from the addition of 3 percentage points to the figure found under step 2, and
  - (b) 35%.
- (3) In this section “diesel car” means a car which is propelled solely by diesel.
- (4) This section is subject to any regulations made by the Treasury under section 170(4) (power to reduce the appropriate percentage).

*Cars: appropriate percentage: first registered before 1st January 1998*

#### **142 Car first registered before 1st January 1998: the appropriate percentage**

- (1) The appropriate percentage for a car first registered before 1st January 1998 is determined under this section.
- (2) If the car has an internal combustion engine with one or more reciprocating pistons, the appropriate percentage for the year is—

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TABLE

<i>Cylinder capacity of car in cubic centimetres</i>	<i>Appropriate percentage</i>
1,400 or less	15%
More than 1,400 but not more than 2,000	22%
More than 2,000	32%

For this purpose a car's cylinder capacity is the capacity of its engine as calculated for the purposes of VERA 1994.

- (3) If subsection (2) does not apply, the appropriate percentage for the year is—
- (a) 15%, if the car is an electrically propelled vehicle, and
  - (b) 32%, in any other case.
- (4) For the purposes of this section a vehicle is not an electrically propelled vehicle unless—
- (a) it is propelled solely by electrical power, and
  - (b) that power is derived from—
    - (i) a source external to the vehicle, or
    - (ii) an electrical storage battery which is not connected to any source of power when the vehicle is in motion.

*Cars: unavailability or payments for private use*

### 143 Deduction for periods when car unavailable

- (1) A deduction is to be made from the amount carried forward from step 6 of section 121(1) if the car has been unavailable on any day during the tax year in question.
- (2) For the purposes of this section a car is unavailable on any day if the day—
- (a) falls before the first day on which the car is available to the employee,
  - (b) falls after the last day on which the car is available to the employee, or
  - (c) falls within a period of 30 days or more throughout which the car is not available to the employee.
- (3) The amount of the deduction is given by the formula—

$$\frac{U}{Y} \times A$$

where—

U is the number of days in the year on which the car is unavailable,

Y is the number of days in that year, and

A is the amount carried forward from step 6.

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(4) This section is subject to section 145 (modification where car temporarily replaced).

#### **144 Deduction for payments for private use**

- (1) A deduction is to be made from the provisional sum calculated under step 7 of section 121(1) if, as a condition of the car being available for the employee's private use, the employee—
  - (a) is required in the tax year in question to pay (whether by way of deduction from earnings or otherwise) an amount of money for that use, and
  - (b) makes such payment.
- (2) If the amount paid by the employee in respect of that year is equal to or exceeds the provisional sum, the provisional sum is reduced so that the cash equivalent of the benefit of the car for that year is nil.
- (3) In any other case the amount paid by the employee in respect of the year is deducted from the provisional sum in order to give the cash equivalent of the benefit of the car for that year.
- (4) In this section the reference to the car being available for the employee's private use includes a reference to the car being available for the private use of a member of the employee's family or household.
- (5) This section is subject to section 145 (modification where car temporarily replaced).

#### **145 Modification of provisions where car temporarily replaced**

- (1) This section applies if—
  - (a) the car normally available to an employee ("the normal car") is not available to the employee for a period of less than 30 days,
  - (b) another car ("the replacement car") is made available to the employee in order to replace the normal car for the whole or part of that period,
  - (c) the employee is chargeable to tax in respect of both the normal car and the replacement car by virtue of section 120, and
  - (d) the replacement car meets condition A or B.
- (2) Condition A is met if the replacement car is not materially better than the normal car.
- (3) Condition B is met if the replacement car is not made available to the employee under an arrangement of which the main purpose, or one of the main purposes, is to provide the employee with the benefit of a car which is materially better than the normal car.
- (4) If this section applies—
  - (a) section 143 (deduction for periods when car unavailable) applies so that the replacement car is to be treated as unavailable on the days of the period during which it replaces the normal car, and
  - (b) section 144 (deduction for payments for private use) applies as if the replacement had not been made and the replacement car were a continuation of the normal car.
- (5) A replacement car is regarded as materially better than the normal car if—
  - (a) it is materially better in quality, or

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- (b) when calculating the cash equivalent of the benefit of the replacement car, the interim sum calculated under step 4 of section 121(1) is materially higher than the interim sum calculated in relation to the normal car.

*Cars: special cases*

**146 Cars that run on road fuel gas**

- (1) This section applies if the car—
- (a) has been manufactured so as to be capable of running on road fuel gas, and
  - (b) is not a car to which section 137 (different CO<sub>2</sub> emissions figure for bi-fuel cars) applies.
- (2) The price of the car found under step 1 of section 121(1) is to be 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 in such a way as to be capable of running only on petrol.

**147 Classic cars: 15 years of age or more**

- (1) This section applies in calculating the cash equivalent of the benefit of a car for a tax year if—
- (a) the age of the car at the end of the year is 15 years or more,
  - (b) the market value of the car for the year is £15,000 or more, and
  - (c) that market value exceeds the amount carried forward from step 3 of section 121(1).
- (2) For the amount carried forward from step 3 substitute the market value of the car for the tax year in question less any deductions under subsection (6).
- (3) The market value of a car for a tax year is the price which the car might reasonably have been expected to fetch on a sale in the open market on—
- (a) the last day of that year, or
  - (b) the last day in that year on which the car is available to the employee if that is earlier.
- (4) It is assumed that any qualifying accessories available with the car on that day are included in the sale.
- (5) Subsection (6) applies if the employee contributes a capital sum to expenditure on the provision of—
- (a) the car, or
  - (b) any qualifying accessory which is taken into account in determining the market value of the car.
- (6) A deduction is to be made from the market value of the car—
- (a) for the tax year in which the contribution is made, and
  - (b) for all subsequent years in which the employee is chargeable to tax in respect of the car by virtue of section 120.
- (7) The amount of the deduction allowed in any tax year is the lesser of—

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- (a) the total of the capital sums contributed by the employee in that year and any earlier years to expenditure on the provision of—
  - (i) the car, or
  - (ii) any qualifying accessory which is taken into account in determining the market value of the car for the tax year in question, and
- (b) £5,000.

*Cars: reduction where shared car*

#### **148 Reduction of cash equivalent where car is shared**

- (1) This section applies if in a tax year a car—
  - (a) is available to more than one employee concurrently,
  - (b) is so made available by the same employer, and
  - (c) is available concurrently for each employee's private use,and two or more of those employees are chargeable to tax in respect of the car in that year by virtue of section 120.
- (2) The cash equivalent of the benefit of the car to each of those employees for that year—
  - (a) is to be calculated separately under section 121, and
  - (b) is then to be reduced on a just and reasonable basis.
- (3) If the employment of any of the employees mentioned in subsection (1)(a) is an excluded employment, the availability of the car to that employee is to be disregarded for the purposes of subsection (2)(b).
- (4) In this section the reference to the car being available for each employee's private use includes a reference to the car being available for the private use of a member of the employee's family or household.

*Car fuel: benefit treated as earnings*

#### **149 Benefit of car fuel treated as earnings**

- (1) If in a tax year—
  - (a) fuel is provided for a car by reason of an employee's employment, and
  - (b) that person is chargeable to tax in respect of the car by virtue of section 120,the cash equivalent of the benefit of the fuel is to be treated as earnings from the employment for that year.
- (2) The cash equivalent of the benefit of the fuel is calculated in accordance with sections 150 to 153.
- (3) Fuel is to be treated as provided for a car, in addition to any other way in which it may be provided, if—
  - (a) any liability in respect of the provision of fuel for the car is discharged,
  - (b) a non-cash voucher or a credit-token is used to obtain fuel for the car,
  - (c) a non-cash voucher or a credit-token is used to obtain money which is spent on fuel for the car, or
  - (d) any sum is paid in respect of expenses incurred in providing fuel for the car.

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- (4) References in this section to fuel do not include any facility or means for supplying electrical energy for an electrically propelled vehicle.

### **150 Car fuel: calculating the cash equivalent**

- (1) The cash equivalent of the benefit of the fuel is the appropriate percentage of £14,400.
- (2) The “appropriate percentage” means the appropriate percentage determined in accordance with sections 133 to 142 for the purpose of calculating the cash equivalent of the benefit of the car for which the fuel is provided.
- (3) But the cash equivalent may be—
- (a) nil where either of the conditions in section 151 is met;
  - (b) proportionately reduced under section 152;
  - (c) reduced under section 153.

### **151 Car fuel: nil cash equivalent**

- (1) The cash equivalent of the benefit of the fuel is nil if condition A or B is met.
- (2) Condition A is met if in the tax year in question—
- (a) the employee is required to make good to the person providing the fuel the whole of the expense incurred by that person in connection with the provision of the fuel for the employee’s private use, and
  - (b) the employee does make good that expense.
- (3) Condition B is met if in the tax year in question the fuel is made available only for business travel (see section 171(1)).

### **152 Car fuel: proportionate reduction of cash equivalent**

- (1) The cash equivalent of the benefit of the fuel is to be proportionately reduced if for any part of the tax year in question the car for which the fuel is provided is unavailable (within the meaning of section 143 (deduction for periods when car unavailable)).
- (2) The cash equivalent of the benefit of the fuel is also to be proportionately reduced if for any part of the tax year in question—
- (a) the facility for the provision of fuel as mentioned in section 149(1) is not available,
  - (b) the fuel is made available only for business travel (see section 171(1)), or
  - (c) the employee is required to make good to the person providing the fuel the whole of the expense incurred by that person in connection with the provision of the fuel for the employee’s private use and the employee does make good that expense.
- (3) The fact that any of the conditions specified in subsection (2) is met for part of a tax year is to be disregarded if there is a time later in that year when none of those conditions is met.
- (4) Where the cash equivalent is to be proportionately reduced under subsection (1) or (2) (or under both those subsections), the reduced amount is given by the formula—



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$$CE \times \frac{Y-D}{Y}$$

where—

CE is the amount of the cash equivalent before any reduction,

Y is the number of days in the tax year in question, and

D is the total number of days in that year on which either the car is unavailable or one or more of the conditions in subsection (2) is met.

### 153 Car fuel: reduction of cash equivalent

If a reduction of the cash equivalent of the benefit of the car for which the fuel is provided is made under section 148 (reduction of cash equivalent where car is shared), a corresponding reduction is to be made in relation to the cash equivalent of the benefit of the fuel.

*Vans: benefit treated as earnings*

### 154 Benefit of van treated as earnings

If this Chapter applies to a van in relation to a particular tax year, the cash equivalent of the benefit of the van is to be treated as earnings from the employment for that year.

### 155 Method of calculating the cash equivalent of the benefit of a van

- (1) The method of calculation of the cash equivalent of the benefit of a van for a tax year depends upon whether the van is a shared van for the whole or any part of that year.
- (2) If the van is not a shared van for the whole or any part of the year, the cash equivalent of the benefit of the van for the year is the value of exclusive availability calculated in accordance with section 157.
- (3) If the van is a shared van for the whole of the year, the cash equivalent of the benefit of the van for the year is the value of shared availability calculated in accordance with section 160.

This is subject to subsection (7) where more than one shared van is available to an employee.

- (4) If the van is a shared van for only part of the year the cash equivalent of the benefit of the van for the year is the total of—
  - (a) the value of exclusive availability calculated in accordance with section 157 (for the period when it is not a shared van), and
  - (b) the value of shared availability calculated in accordance with section 160 (for the period when it is a shared van).

This is subject to subsection (7) where more than one shared van is available to an employee.

- (5) The value of shared availability calculated in accordance with section 160 under section 161 (normal calculation) takes account of—
  - (a) the shared van, and

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- (b) where that van is made available by the employer, any other vans made available by the employer (whether or not to the employee or a member of the employee's family or household) which are shared vans for the whole or any part of the tax year in question.
- (6) The value of shared availability calculated in accordance with section 160 under section 164 (alternative calculation) takes account of—
  - (a) the shared van, and
  - (b) where that van is made available by the employer, any other vans made available by the employer to the employee or a member of the employee's family or household which are shared vans for the whole or any part of the tax year in question.
- (7) Accordingly, if more than one shared van, which is made available by the same employer, is available to an employee in a tax year the total of the cash equivalents in respect of those vans is calculated by—
  - (a) taking the value of shared availability calculated once in accordance with section 160, and
  - (b) if any of those vans is a shared van for only part of the year, adding the value of exclusive availability in respect of each of those vans calculated in accordance with section 157.
- (8) This section is subject to section 166 (limit of cash equivalent).

## **156 Meaning of “shared van”**

- (1) For the purposes of sections 155 to 165 a van is a shared van for a period if condition A or B is met.
- (2) Condition A is met if throughout the period the van is available concurrently to more than one employee of the same employer.
- (3) Condition B is met if—
  - (a) the period is one throughout which the van is available to different employees of the same employer (a “shared period”), and
  - (b) the circumstances are such that the employee or employees to whom the van is available at any given time in the period are not necessarily the same as those to whom it is available at any other given time in the period.
- (4) But if the van is available to only one employee for a period exceeding 30 days (an “exclusive period”)—
  - (a) the exclusive period does not count towards any period that would otherwise be a shared period,
  - (b) the shared period is to be treated as ending when the exclusive period begins, and
  - (c) a further shared period may begin after the end of the exclusive period.
- (5) If a van is a shared van for part of a day, it is to be treated for the purposes of this section as shared throughout that day.

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*Vans: value of exclusive availability*

## 157 Value of exclusive availability

The value of exclusive availability is calculated as follows— *Step 1*

Determine the age of the van.

*Step 2*

If the age of the van is less than 4 years at the end of the tax year in question, the basic value of the van for the year is £500.

In any other case, the basic value of the van for the year is £350.

*Step 3*

Make any deduction from the basic value of the van under section 158 for any periods when the van was unavailable or a shared van.

The resulting amount is the provisional sum.

*Step 4*

Make any deduction from the provisional sum under section 159 in respect of payments by the employee for the private use of the van.

The result is the value of exclusive availability.

## 158 Deduction for periods of unavailability or shared use

- (1) A deduction is to be made from the basic value of the van calculated under step 2 of section 157 if there are any excluded days during the tax year in question.
- (2) In this section an “excluded day” means a day on which—
  - (a) the van is unavailable (see subsection (4)), or
  - (b) the van is a shared van.
- (3) The amount of the deduction is given by the formula—

$$\frac{E}{Y} \times B$$

where—

E is the number of excluded days in the year,

Y is the number of days in the year, and

B is the basic value of the van calculated under step 2 of section 157.

- (4) For the purposes of this section a van is unavailable on any day if the day—
  - (a) falls before the first day on which the van is available to the employee,
  - (b) falls after the last day on which the van is available to the employee, or
  - (c) falls within a period of 30 days or more throughout which the van is not available to the employee.

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## **159 Deduction for payments for private use**

- (1) A deduction is to be made from the provisional sum calculated under step 3 of section 157 if, as a condition of the van being available for the employee's private use, the employee—
  - (a) is required in the tax year in question to pay (whether by way of deduction from earnings or otherwise) an amount of money for that use, and
  - (b) makes such payment.
- (2) If the amount paid by the employee in respect of that year is equal to or exceeds the provisional sum, the provisional sum is reduced so that the value of exclusive availability is nil.
- (3) In any other case the amount paid by the employee in respect of the year is deducted from the provisional sum in order to give the value of exclusive availability.
- (4) If the van is a shared van for any part of the tax year in question, the reference in subsection (1) to the employee's private use in that year is to be read as a reference to the employee's private use in that part of the year when the van is not a shared van.
- (5) In this section any reference to the van being available for the employee's private use includes a reference to the van being available for the private use of a member of the employee's family or household.

*Vans: value of shared availability*

## **160 Value of shared availability**

The value of shared availability is calculated under—

- (a) section 161, or
- (b) section 164 where the employee makes a claim for that section to apply.

## **161 Value of shared availability: normal calculation**

- (1) The value of shared availability is calculated as follows—

### *Step 1*

Identify the van or vans involved in the calculation. They are—

- (a) the shared van, and
- (b) where that van is made available by the employer, any other vans made available (whether or not to the employee or a member of the employee's family or household) by the same employer which are shared vans for the whole or any part of the tax year in question.

### *Step 2*

Determine whether the employee is a participating employee within the meaning of section 162.

If the employee is not, then the value of shared availability is nil.

### *Step 3*

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Determine the total number of participating employees within the meaning of section 162.

*Step 4*

Find the basic value of the van for the year under section 163 or, where more than one van is involved, the basic value of each of those vans for the year under that section.

*Step 5*

Calculate the reckonable amount which is given by the formula—

$$\frac{BV}{PE}$$

where—

BV is the basic value of the van or, where more than one van is involved, the total of the basic values of each of those vans, and

PE is the total number of participating employees.

*Step 6*

If the reckonable amount exceeds £500, the provisional sum is £500.

In any other case, the provisional sum is the reckonable amount.

*Step 7*

Make any deduction from the provisional sum under section 165 in respect of payments by the employee for the private use of the van or vans involved.

The result is the value of shared availability.

- (2) The calculation is made under this section in relation to a participating employee regardless of—
- (a) the number of vans involved which are available to the particular employee,
  - (b) the fact that a particular van involved is or is not available to, or used by, the employee, or
  - (c) the extent to which a particular van involved is available to, or used by, the employee.

## **162 Shared van: meaning of “participating employee”**

- (1) If only one van is involved, an employee is a participating employee for the purposes of section 161 if—
- (a) the van is available to the employee for the employee’s private use while it is a shared van, and
  - (b) the employee makes private use of it at least once while it is a shared van.
- (2) If more than one van is involved, an employee is a participating employee for the purposes of section 161 if—
- (a) one of the vans is available to the employee for the employee’s private use while it is a shared van, or

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- (b) some or all of the vans are available to the employee for the employee's private use while they are shared vans,  
 and the employee makes private use of at least one of the vans involved while it is a shared van.
- (3) In this section—
- (a) any reference to a van being available for an employee's private use includes a reference to the van being available for the private use of a member of the employee's family or household, and
- (b) any reference to an employee making private use of a van includes a reference to a member of the employee's family or household making private use of it.

### 163 Shared van: basic value

- (1) The basic value of a shared van is calculated as follows—

*Step 1*

Determine the age of the van.

*Step 2*

If the age of the van is less than 4 years at the end of the tax year in question, the interim value of the van is £500.

In any other case, the interim value of the van is £350.

*Step 3*

Make a deduction from the interim value if there are any excluded days during the tax year in question.

The amount of the deduction is given by the formula—

$$\frac{E}{Y} \times IV$$

where—

E is the number of excluded days in the year,

Y is the number of days in the year, and

IV is the interim value of the van.

The result is the basic value of the van for the year.

- (2) In this section an “excluded day” means a day on which—
- (a) the van is not a shared van, or
- (b) the van is incapable of use.
- (3) For the purposes of this section a van is to be treated as incapable of use on any day if the day falls within a period of 30 days or more throughout which the van is incapable of being used at all.

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## **164 Value of shared availability: alternative calculation**

- (1) This section applies if the employee makes a claim for this section to apply instead of section 161.
- (2) The value of shared availability is calculated as follows—

### *Step 1*

Identify the van or vans involved in the calculation. They are—

- (a) the shared van, and
- (b) where that van is made available by the employer, any other vans made available by the same employer to the employee or a member of the employee's family or household which are shared vans for the whole or any part of the tax year in question.

### *Step 2*

Determine the number of relevant days for the van, or where more than one van is involved, for each of those vans.

### *Step 3*

Calculate the provisional sum which is given by the formula—

$$RD \times \pounds 5$$

where RD is the number of relevant days for the van or, where more than one van is involved, the total of the number of relevant days for each of those vans.

### *Step 4*

Make any deduction from the provisional sum under section 165 in respect of payments by the employee for the private use of the van or vans involved.

The result is the value of shared availability.

- (3) For the purposes of this section a relevant day is a day—
  - (a) which falls in the tax year in question, and
  - (b) during which (or during part of which) the employee or a member of the employee's family or household makes private use of the van concerned while it is a shared van.
- (4) For the purposes of section 95 of TMA 1970 (incorrect return etc.) a claim under this section is to be treated as a claim for relief.

## **165 Deduction for payments for private use**

- (1) A deduction is to be made from the provisional sum calculated under step 6 of section 161(1) or step 3 of section 164(2) if, as a condition of the van or vans involved being available for the employee's private use, the employee—
  - (a) is required in the tax year in question to pay (whether by way of deduction from earnings or otherwise) an amount of money for that use, and
  - (b) makes such payment.

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- (2) If the relevant sum in respect of that year is equal to or exceeds the provisional sum, the provisional sum is reduced so that the value of shared availability is nil.
- (3) In any other case the relevant sum in respect of the year is deducted from the provisional sum in order to give the value of shared availability.
- (4) The relevant sum is found by—
  - (a) taking for any van involved the amount paid by the employee as a condition of it being available for the employee's private use in respect of the period when it is a shared van in the year concerned, and
  - (b) where more than one van is involved, adding together all the amounts found under paragraph (a).
- (5) In this section any reference to a van being available for the employee's private use includes a reference to the van being available for the private use of a member of the employee's family or household.

*Vans: limit of cash equivalent*

**166 Vans: limit of cash equivalent**

If—

- (a) the cash equivalent of the benefit of vans to an employee for a tax year would (apart from this section) total more than £500, and
- (b) no more than one of the vans is available to the employee for the employee's private use, or the private use of a member of the employee's family or household, at any one time in the year,

the cash equivalent of the benefit of the vans to the employee for the year is to be £500.

*Cars and vans: exceptions*

**167 Pooled cars**

- (1) This section applies to a car in relation to a particular tax year if for that year the car has been included in a car pool for the use of the employees of one or more employers.
- (2) For that tax year the car—
  - (a) is to be treated under section 114(1) (cars to which this Chapter applies) as not having been available for the private use of any of the employees concerned, and
  - (b) is not to be treated in relation to the employees concerned as an employment-related benefit within the meaning of Chapter 10 of this Part (taxable benefits: residual liability to charge) (see section 201).
- (3) In relation to a particular tax year, a car is included in a car pool for the use of the employees of one or more employers if in that year—
  - (a) the car was made available to, and actually used by, more than one of those employees,
  - (b) the car was made available, in the case of each of those employees, by reason of the employee's employment,



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- (c) the car was not ordinarily used by one of those employees to the exclusion of the others,
- (d) in the case of each of those employees, any private use of the car made by the employee was merely incidental to the employee's other use of the car in that year, and
- (e) the car was not normally kept overnight on or in the vicinity of any residential premises where any of the employees was residing, except while being kept overnight on premises occupied by the person making the car available to them.

### **168 Pooled vans**

- (1) This section applies to a van in relation to a particular tax year if for that year the van has been included in a van pool for the use of the employees of one or more employers.
- (2) For that tax year the van—
  - (a) is to be treated under section 114(1) (vans to which this Chapter applies) as not having been available for the private use of any of the employees concerned, and
  - (b) is not to be treated in relation to the employees concerned as an employment-related benefit within the meaning of Chapter 10 of this Part (taxable benefits: residual liability to charge) (see section 201).
- (3) In relation to a particular tax year, a van is included in a van pool for the use of the employees of one or more employers if in that year—
  - (a) the van was made available to, and actually used by, more than one of those employees,
  - (b) the van was made available, in the case of each of those employees, by reason of the employee's employment,
  - (c) the van was not ordinarily used by one of those employees to the exclusion of the others,
  - (d) in the case of each of those employees, any private use of the van made by the employee was merely incidental to the employee's other use of the van in that year, and
  - (e) the van was not normally kept overnight on or in the vicinity of any residential premises where any of the employees was residing, except while being kept overnight on premises occupied by the person making the van available to them.

### **169 Car available to more than one member of family or household employed by same employer**

- (1) This section applies where—
  - (a) an employee ("E") and a member of the employee's family or household ("M") are employed by the same employer, and
  - (b) as a result of a car being made available to M in a tax year, E would (apart from this section) be chargeable to tax in respect of the car in that year by virtue of section 120.
- (2) The cash equivalent of the benefit of the car and of any fuel provided for the car by reason of E's employment is not to be treated as E's earnings for that year if—

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- (a) M is chargeable to tax in respect of the car in that year by virtue of section 120, or
  - (b) where M's employment is an excluded employment, M had the benefit of the car in M's own right as an employee and condition A or B is met.
- (3) Condition A is met if equivalent cars are made available on the same terms to employees who—
- (a) are in similar employment to M with the same employer, and
  - (b) are not members of the family or household of employees of that employer who are employed in employment which is not an excluded employment.
- (4) Condition B is met if the making available of an equivalent car is in accordance with the normal commercial practice for an employment of the kind held by M.

### *Orders*

#### **170 Orders etc. relating to this Chapter**

- (1) The Treasury may by order substitute a greater amount for that for the time being specified in—
- (a) step 4 of section 121(1) (car: maximum interim sum),
  - (b) section 126(3)(d) (car: minimum price of later accessory),
  - (c) section 132(3)(b) (car: maximum contributions deduction),
  - (d) section 147(1)(b) (classic car: minimum value), or
  - (e) section 147(7)(b) (classic car: maximum contributions deduction).
- (2) An order under subsection (1) must specify the tax years to which it applies.
- (3) The Treasury may by order provide for a “lower threshold” different from that specified in the Table in section 139(4) (car with a CO<sub>2</sub> emissions figure) to apply for tax years beginning on or after 6th April 2005 or such later date as may be specified in the order.
- (4) The Treasury may by regulations provide for the value of the appropriate percentage as determined under sections 139 to 141 to be reduced—
- (a) by such amount,
  - (b) in such circumstances, and
  - (c) subject to such conditions,
- as may be prescribed in the regulations.
- (5) The Treasury may by order substitute a different amount for that specified in section 150(1) (car fuel: cash equivalent).
- (6) An order under subsection (5) must specify the tax years to which it applies, being tax years beginning after that in which it is made.

### *Supplementary*

#### **171 Minor definitions: general**

- (1) In this Chapter—

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“business travel”, in relation to any employee, means travelling the expenses of which, if incurred and paid by the employee, would (if Chapter 2 of Part 4 did not apply) be deductible under sections 337 to 342, section 353 or under Chapter 5 of Part 5 (other than section 377);

“diesel” means any diesel fuel within the definition in Article 2 of Directive 98/70/EC of the European Parliament and of the Council;

“EC certificate of conformity” means a certificate of conformity issued by a manufacturer under any provision of the law of a Member State implementing Article 6 of Council Directive 70/156/EEC, as amended;

“EC type-approval certificate” means a type-approval certificate issued under any provision of the law of a Member State implementing Council Directive 70/156/EEC, as amended;

“relevant taxes” means any car tax, any value added tax, any customs or excise duty and any tax chargeable as if it were a customs duty;

“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;

“UK approval certificate” means a certificate issued under—

- (a) section 58(1) or (4) of the Road Traffic Act 1988 (c. 52), or
- (b) Article 31A(4) or (5) of the Road Traffic (Northern Ireland) Order 1981 (S.I. 1981/154 (N.I. 1)).

- (2) In this Chapter references to the date of first registration in relation to a car or van are to the date on which the vehicle was first registered under VERA 1994 or under corresponding legislation of any country or territory.
- (3) In this Chapter references to the age of a car or a van at any time are to the interval between the date of first registration of the vehicle and that time.
- (4) In this Chapter “disabled person’s badge” means a badge—
  - (a) which is issued to a disabled person under section 21 of the Chronically Sick and Disabled Persons Act 1970 (c. 44) or section 14 of the Chronically Sick and Disabled Persons (Northern Ireland) Act 1978 (c. 53), or has effect as if it had been issued under one of those provisions, and
  - (b) which is not required to be returned to the issuing authority under or by virtue of the provision referred to in paragraph (a).

## **172 Minor definitions: equipment to enable a disabled person to use a car**

- (1) In section 125(2)(c) “equipment to enable a disabled person to use a car” means equipment—
  - (a) which is designed solely for use by a chronically sick or disabled person, or
  - (b) which is made available for use with the car because it enables a disabled employee to use the car in spite of the disability.
- (2) In this section—

“disabled employee” means an employee who, at the time when the car is first made available to the employee, holds a disabled person’s badge, and

“the disability” means the disability entitling the disabled employee to hold the disabled person’s badge.

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## CHAPTER 7

### TAXABLE BENEFITS: LOANS

#### *Introduction*

#### **173 Loans to which this Chapter applies**

- (1) This Chapter applies to a loan if it is an employment-related loan.
- (2) In this Chapter—
  - (a) “loan” includes any form of credit, and
  - (b) references to making a loan (and related expressions) include arranging, guaranteeing or in any way facilitating a loan.
- (3) Sections 288 and 289 make provision for exemption and relief for certain bridging loans connected with employment moves.

#### **174 Employment-related loans**

- (1) For the purposes of this Chapter an employment-related loan is a loan—
  - (a) made to an employee or a relative of an employee, and
  - (b) of a class described in subsection (2).
- (2) For the purposes of this Chapter the classes of employment-related loan are—
  - A*  
A loan made by the employee’s employer.
  - B*  
A loan made by a company or partnership over which the employee’s employer had control.
  - C*  
A loan made by a company or partnership by which the employer (being a company or partnership) was controlled.
  - D*  
A loan made by a company or partnership which was controlled by a person by whom the employer (being a company or partnership) was controlled.
  - E*  
A loan made by a person having a material interest in—
    - (a) a close company which was the employer, had control over the employer or was controlled by the employer, or
    - (b) a company or partnership controlling that close company.
- (3) In this section—
  - “employee” includes a prospective employee, and
  - “employer” includes a prospective employer.

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- (4) References in this section to a loan being made by a person extend to a person who—
  - (a) assumes the rights and liabilities of the person who originally made the loan, or
  - (b) arranges, guarantees or in any way facilitates the continuation of a loan already in existence.
- (5) A loan is not an employment-related loan if—
  - (a) it is made by an individual in the normal course of the individual's domestic, family or personal relationships, or
  - (b) it is made to a relative of the employee and the employee derives no benefit from it.
- (6) For the purposes of this section a person ("X") is a relative of another ("Y") if X is—
  - (a) Y's spouse,
  - (b) a parent, child or remoter relation in the direct line either of Y or of Y's spouse,
  - (c) a brother or sister of Y or of Y's spouse, or
  - (d) the spouse of a person falling within paragraph (b) or (c).

#### *Benefit of taxable cheap loan treated as earnings*

### **175 Benefit of taxable cheap loan treated as earnings**

- (1) The cash equivalent of the benefit of an employment-related loan is to be treated as earnings from the employee's employment for a tax year if the loan is a taxable cheap loan in relation to that year.
- (2) For the purposes of this Chapter an employment-related loan is a "taxable cheap loan" in relation to a particular tax year if—
  - (a) there is a period consisting of the whole or part of that year during which the loan is outstanding and the employee holds the employment,
  - (b) no interest is paid on it for that year, or the amount of interest paid on it for that year is less than the interest that would have been payable at the official rate, and
  - (c) none of the exceptions in sections 176 to 179 apply.
- (3) The cash equivalent of the benefit of an employment-related loan for a tax year is the difference between—
  - (a) the amount of interest that would have been payable on the loan for that year at the official rate, and
  - (b) the amount of interest (if any) actually paid on the loan for that year.
- (4) If there are two or more employment-related loans, this section applies to each separately.
- (5) This section is subject to—
  - section 180 (threshold for benefit of loan to be treated as earnings);
  - section 186 (replacement loans).

### **176 Exception for loans on ordinary commercial terms**

- (1) A loan on ordinary commercial terms is not a taxable cheap loan.

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- (2) In this section a “loan on ordinary commercial terms” means a loan—
- (a) made by a person (“the lender”) in the ordinary course of a business carried on by the lender which includes—
    - (i) the lending of money, or
    - (ii) the supplying of goods or services on credit, and
  - (b) in relation to which condition A, B or C is met.
- (3) Condition A is met if—
- (a) at the time the loan was made comparable loans were available to all those who might be expected to avail themselves of the services provided by the lender in the course of the lender’s business,
  - (b) a substantial proportion of the loans (consisting of the loan in question and the comparable loans) made by the lender at or about the time the loan in question was made were made to members of the public,
  - (c) the loan in question is held on the same terms as comparable loans generally made by the lender to members of the public at or about the time the loan in question was made, and
  - (d) where those terms differ from the terms applicable immediately after the loan in question was first made, they were imposed in the ordinary course of the lender’s business.
- (4) For the purposes of condition A a loan is comparable to another loan if it is made for the same or similar purposes and on the same terms and conditions.
- (5) Condition B is met if—
- (a) the loan has been varied before 6th April 2000,
  - (b) a substantial proportion of the relevant loans were made to members of the public,
  - (c) the loan in question is held on the same terms as relevant loans generally made by the lender to members of the public at or about the relevant time, and
  - (d) where those terms differ from the terms applicable immediately after the relevant time, they were imposed in the ordinary course of the lender’s business.
- (6) Condition C is met if—
- (a) the loan has been varied on or after 6th April 2000,
  - (b) a substantial proportion of the relevant loans were made to members of the public,
  - (c) at the relevant time members of the public who had loans from the lender for similar purposes had a right to vary their loans on the same terms and conditions as applied in relation to the variation of the loan in question,
  - (d) the loan in question as varied is held on the same terms as any existing loans so varied, and
  - (e) where those terms differ from the terms applicable immediately after the relevant time, they were imposed in the ordinary course of the lender’s business.
- (7) For the purposes of condition B and C—
- (a) the “relevant time” is the time of the variation of the loan in question, and
  - (b) the “relevant loans” are—

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- (i) the loan in question,
  - (ii) any existing loans which were varied at or about the relevant time so as to be held on the same terms as the loan in question after it was varied, and
  - (iii) any new loans which were made by the lender at or about that time and are held on those terms.
- (8) No account is to be taken of amounts which are incurred on fees, commission or other incidental expenses by the person to whom a loan is made for the purpose of obtaining the loan—
- (a) in determining for the purposes of condition A whether loans made by a lender before 1st June 1994 are made or held on the same terms or conditions, or
  - (b) in determining for the purposes of condition B or C whether rights to vary loans are exercisable on the same terms and conditions or loans are held on the same terms.
- (9) No account is to be taken of amounts which are incurred on penalties, interest or similar amounts by the person to whom a loan is made as a result of varying the loan in determining for the purposes of condition B or C whether rights to vary loans are exercisable on the same terms and conditions or loans are held on the same terms.
- (10) For the purposes of this section a “member of the public” means a member of the public at large with whom the lender deals at arm’s length.

### **177 Exceptions for loans at fixed rate of interest**

- (1) A fixed rate loan made on or after 6th April 1978 is not a taxable cheap loan by reason only of an increase in the official rate of interest since the year in which the loan was made if the condition in subsection (2) is met.
- (2) The condition in this subsection is met if the amount of interest paid on the loan for the tax year in which it was made was equal to or greater than the interest that would have been payable at the official rate for that year.
- (3) A fixed rate loan made before 6th April 1978 is not a taxable cheap loan if the condition in subsection (4) is met.
- (4) The condition in this subsection is met if the rate of interest for the loan is equal to or greater than the rate which could have been expected to apply to a loan made—
  - (a) at the same time as the loan in question,
  - (b) on the same terms (other than as to the rate of interest), and
  - (c) between persons not connected with each other dealing at arm’s length.
- (5) In this section a “fixed rate loan” means a loan—
  - (a) made for a fixed period which cannot be changed, and
  - (b) made at a fixed rate of interest which cannot be changed during that period.

### **178 Exception for loans where interest qualifies for tax relief**

A loan is not a taxable cheap loan in relation to a particular tax year if, assuming interest is paid on the loan for that year (whether or not it is in fact paid), the whole of that interest—

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- (a) is eligible for relief under section 353 of ICTA (general provision for relief for payments of interest, excluding MIRAS),
- (b) would be eligible for relief under that section but for the fact that it is a payment of relevant loan interest to which section 369 of ICTA applies (mortgage interest payable under deduction of tax),
- (c) is deductible in computing the amount of the profits to be charged under Case I or II of Schedule D in respect of a trade, profession or vocation carried on by the person to whom the loan is made, or
- (d) is deductible in computing the amount of the profits to be charged under Schedule A in respect of a Schedule A business carried on by that person.

### **179 Exception for certain advances for necessary expenses**

- (1) An advance by an employer to an employee for the purpose of paying for—
  - (a) necessary expenses, or
  - (b) incidental overnight expenses,
 is not a taxable cheap loan in relation to a particular tax year if the following conditions are met.
- (2) The conditions are—
  - (a) that at all times in the tax year in question the amount outstanding on such advances made by the employer to the employee does not exceed £1,000,
  - (b) that the advance is spent within 6 months after the date on which it is made, and
  - (c) that the employee accounts to the employer at regular intervals for the expenditure of the amount advanced.
- (3) If, on an application made by the employer, the Inland Revenue are satisfied that there is good reason to do so in the case of a particular advance, they may authorise that either or both of the following limits are increased in relation to that advance—
  - (a) the sum of money specified in subsection (2)(a);
  - (b) the time limit specified in subsection (2)(b).
- (4) An application under subsection (3)—
  - (a) must be in writing, and
  - (b) must contain such particulars and be supported by such evidence as the Inland Revenue may require.
- (5) In this section “necessary expenses” are expenses (including travel expenses) which—
  - (a) the employee is obliged to incur and pay as holder of the employment, and
  - (b) are necessarily incurred in the performance of the duties of the employment.
- (6) In this section “incidental overnight expenses” are expenses which—
  - (a) are incidental to the employee’s absence from the place where the employee normally lives,
  - (b) relate to a continuous period of such absence in relation to which the overnight stay conditions are met, and
  - (c) would not be deductible under Part 5 if the employee incurred and paid them and Chapter 2 of Part 4 (mileage allowances and passenger payments) did not apply.



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- (7) In subsection (6)(b) “the overnight stay conditions” has the same meaning as in section 240 (exemption for incidental overnight expenses) (see section 240(4)).

## **180 Threshold for benefit of loan to be treated as earnings**

- (1) The cash equivalent of the benefit of an employment-related loan is not to be treated as earnings of the employment for a tax year under section 175(1)—
- (a) if the normal £5,000 threshold is not exceeded, or
  - (b) where the loan is a non-qualifying loan and that threshold is exceeded, if the £5,000 threshold for non-qualifying loans is not exceeded.
- (2) The normal £5,000 threshold is not exceeded if at all times in the year the amount outstanding on the loan (or, if two or more employment-related loans which are taxable cheap loans are outstanding in the year, the aggregate of the amount outstanding on them) does not exceed £5,000.
- (3) The £5,000 threshold for non-qualifying loans is not exceeded if at all times in the year the amount outstanding on the loan (or if two or more employment-related loans which are non-qualifying loans are outstanding in the year, the aggregate of the amounts outstanding on them) does not exceed £5,000.
- (4) In this section a “non-qualifying loan” means a taxable cheap loan which is not a qualifying loan.
- (5) For the purposes of this section a loan is a “qualifying loan” in relation to a particular tax year if, assuming interest is paid on the loan for that year (whether or not it is in fact paid), the whole or part of that interest—
- (a) is eligible for relief under section 353 of ICTA (general provision for relief for payments of interest, excluding MIRAS),
  - (b) would be eligible for relief under that section but for the fact that it is a payment of relevant loan interest to which section 369 of ICTA applies (mortgage interest payable under deduction of tax),
  - (c) is deductible in computing the amount of the profits to be charged under Case I or II of Schedule D in respect of a trade, profession or vocation carried on by the person to whom the loan is made, or
  - (d) is deductible in computing the amount of the profits to be charged under Schedule A in respect of a Schedule A business carried on by that person.

### *Calculation of amount of interest at official rate*

## **181 The official rate of interest**

- (1) “The official rate of interest” for the purposes of this Chapter means the rate applicable under section 178 of FA 1989 (general power of Treasury to specify rates of interest).
- (2) Regulations under that section may make different provision in relation to a loan if—
- (a) it was made in the currency of a country or territory outside the United Kingdom, and
  - (b) the employee normally lives in that country or territory, and has actually lived there at some time in the period of 6 years ending with the tax year in question.

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- (3) Subsection (2) does not affect the general power under section 178(3) of FA 1989 to make different provision for different purposes.

## 182 Normal method of calculation: averaging

The normal method of calculating for the purposes of this Chapter the amount of interest that would be payable on a loan for a tax year at the official rate is as follows.

### *Step 1*

Calculate the average amount of the loan outstanding during the tax year—

1. Find the maximum amount of the loan outstanding on 5th April preceding the tax year or, if the loan was made in the tax year, on the date it was made.
2. Find the maximum amount outstanding on 5th April of the tax year or, if the loan was discharged in the tax year, on the date of discharge.
3. Add these amounts together and divide the result by 2.

### *Step 2*

If the official rate of interest changed during the period in the tax year when the loan was outstanding, calculate the average official rate of interest for that period as follows—

1. Multiply each official rate of interest in force during the period by the number of days when it is in force.
2. Add these products together.
3. Divide the result by the number of days in the period.

### *Step 3*

Calculate the amount of interest that would be payable on the loan for the tax year at the official rate as follows—

$$A \times I \times \frac{M}{12}$$

where—

A is the average amount of the loan outstanding during the tax year obtained from step 1,

I is the official rate of interest in force during the period in the tax year when the loan was outstanding or, if the official rate changed, the average official rate of interest obtained from step 2, and

M is the number of whole months during which the loan was outstanding in the year.

For this purpose a month begins on the sixth day of the calendar month.

## 183 Alternative method of calculation

- (1) The alternative method of calculating for the purposes of this Chapter the amount of interest that would be payable on a loan for a tax year at the official rate applies for a tax year—

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- (a) if the Inland Revenue so require, by notice to the employee, or
  - (b) if the employee so elects, by notice to the Inland Revenue.
- (2) Notice may be given on or before the first anniversary of the normal self-assessment filing date for the tax year in relation to which the question arises whether the loan is a taxable cheap loan.
- (3) The alternative method is as follows—
  - Step 1*

Find for each day in the tax year in question the maximum amount of the loan outstanding on that day and multiply it by the official rate of interest in force on that day.
  - Step 2*

Add together each of the amounts obtained under step 1.
  - Step 3*

Divide the result by the number of days in the tax year.
- (4) Where in any tax year the cash equivalent of the benefit of the same taxable cheap loan is to be treated as earnings of two or more employees then, for the purposes of determining the cash equivalent of the benefit of the loan, the alternative method applies if—
  - (a) the notice under subsection (1)(a) is given to all those employees, or
  - (b) the notice under subsection (1)(b) is given by all those employees.

*Supplementary provisions relating to taxable cheap loans*

**184 Interest treated as paid**

- (1) This section applies where the cash equivalent of the benefit of a taxable cheap loan is treated as earnings from an employee's employment for a tax year under section 175(1).
- (2) The employee is to be treated for the purposes of the Tax Acts as having paid interest on the loan in that year equal to the cash equivalent.
- (3) But the employee is not to be treated as having paid that interest for the purposes of this Chapter or of any of the other Chapters of this Part listed in section 216(4) (provisions of the benefits code which do not apply to lower-paid employment).
- (4) The interest is to be treated—
  - (a) as accruing during the period in the tax year during which the employee holds the employment and the loan is outstanding, and
  - (b) as paid by the employee at the end of the period.
- (5) The interest is not to be treated—
  - (a) as income of the person making the loan, or
  - (b) as relevant loan interest to which section 369 of ICTA applies (mortgage interest payable under deduction of tax).

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### **185 Apportionment of cash equivalent in case of joint loan etc.**

Where in any tax year the cash equivalent of the benefit of the same taxable cheap loan is to be treated as earnings of two or more employees—

- (a) the cash equivalent of the benefit of the loan (determined in accordance with the provisions of this Chapter) is to be apportioned between them in a just and reasonable manner, and
- (b) the portion allocated to each employee is to be treated as the cash equivalent of the benefit of the loan so far as that employee is concerned.

### **186 Replacement loans**

- (1) This section applies where an employment-related loan (“the original loan”) is replaced, directly or indirectly, by—
  - (a) a further employment-related loan, or
  - (b) a loan which is not an employment-related loan but which in turn is, in the same tax year or within 40 days after the end of the tax year, replaced, directly or indirectly, by a further employment-related loan.
- (2) In such a case, for the purposes of calculating the cash equivalent of the benefit of the original loan under section 175(3), section 182 (normal method of calculating interest at the official rate) applies as if the replacement loan, or each of the replacement loans, were the same loan as the original loan.
- (3) Where section 182 is applied as modified by subsection (2) then for the purposes of section 175(3)(b) the amount of interest actually paid on the loan for the tax year in question is the total of—
  - (a) the amount of interest actually paid on the original loan for that year, and
  - (b) the amount of interest actually paid on the replacement loan or on each of the replacement loans for that year.
- (4) In this section a “further employment-related loan” means a loan which is an employment-related loan made in relation to—
  - (a) the same or other employment with the person who is the employer in relation to the original loan, or
  - (b) employment with a person who is connected with that employer.

### **187 Aggregation of loans by close company to director**

- (1) This section applies where, in relation to any tax year, there are employment-related loans between the same lender and borrower which are aggregable with each other.
- (2) The lender may elect for aggregation to apply for that tax year in the case of the borrower.
- (3) The effect of the election is that all the aggregable loans are to be treated as a single loan for the purposes of—
  - section 175 (benefit of taxable cheap loan treated as earnings),
  - the provisions of this Chapter relating to the calculation of the cash equivalent of the benefit of a taxable cheap loan, and
  - section 184 (interest treated as paid).

*Status: Point in time view as at 06/04/2003.*

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- (4) For this purpose loans are aggregable for any tax year if they are made in the same currency and all the following conditions are met in relation to each of them—
- (a) there is a time in the tax year when—
    - (i) the loan is outstanding,
    - (ii) the lender is a close company, and
    - (iii) the borrower is a director of that company;
  - (b) at all times in the tax year the rate of interest on the loan is less than the official rate applying at that time;
  - (c) the loan is not a qualifying loan within the meaning of section 180 (see section 180(5)).
- (5) An election under this section must be made by the lender in a notice given—
- (a) to the Inland Revenue, and
  - (b) before 7th July after the end of the tax year to which the election relates.

*Loan released or written off*

**188 Loan released or written off: amount treated as earnings**

- (1) If—
- (a) the whole or part of an employment-related loan is released or written off in a tax year, and
  - (b) at the time when it is released or written off the employee holds the employment in relation to which the loan is an employment-related loan (“employment E”),
- the amount released or written off is to be treated as earnings from the employment for that year.
- (2) But if the employment has terminated or become an excluded employment and there was a time when—
- (a) the whole or part of the loan was outstanding,
  - (b) the employee held the employment, and
  - (c) it was not an excluded employment,
- subsection (1) applies as if the employment had not terminated or become an excluded employment.
- (3) Where subsection (2) applies, any loan which replaces directly or indirectly the employment-related loan is to be treated as an employment-related loan in relation to employment E if—
- (a) it would, if employment E had not terminated or become excluded employment, have been an employment-related loan in relation to employment E, and
  - (b) it is not an employment-related loan in relation to other employment.
- (4) This section is subject to section 189 (exception where double charge).

*Status: Point in time view as at 06/04/2003.*

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## **189 Exception where double charge**

(1) Section 188 (loan released or written off: amount treated as earnings) does not apply if, by virtue of any other provision of the Income Tax Acts, the amount released or written off—

- (a) is employment income of the employee, or
- (b) is or is treated as income of the employee (or of the employee as a borrower) which is not employment income and upon which that person is liable to pay income tax.

This is subject to subsections (2) and (3).

(2) If, as a result of subsection (1), Chapter 3 of Part 6 (payments and benefits on termination of employment etc.) would be the only provision by virtue of which the amount released or written off would be income of the employee—

- (a) section 188 does apply, and
- (b) accordingly Chapter 3 of Part 6 does not apply.

(3) If—

(a) an amount is treated as the employee's income under section 677 of ICTA (sums paid to settlor otherwise than as income) in respect of a capital sum paid in relation to the release or writing-off of the loan, and

(b) the amount released or written off exceeds the amount so treated as income, section 188 does apply but only the amount of the excess is to be treated as earnings from the employment for the tax year in question under that section.

### *General supplementary provisions*

## **190 Exclusion of charge after death of employee**

(1) On the employee's death a taxable cheap loan is to be treated—

- (a) for the purposes of this Chapter as ceasing to be outstanding, and
- (b) for the purposes of section 182 (normal method of calculating interest at the official rate) as being discharged on the date of death.

(2) Section 188 (loan released or written off: amount treated as earnings) does not apply in relation to a release or writing off which takes effect on or after the death of the employee.

## **191 Claim for relief to take account of event after assessment**

(1) A claim may be made for relief in the following cases.

(2) The first case is where—

- (a) the tax payable by an employee for a tax year in respect of a loan has been decided on the basis that, for the purposes of section 175 (benefit of taxable cheap loan treated as earnings), the whole or part of the interest payable on the loan for that year was not paid, and
- (b) it is subsequently paid.

(3) The second case is where—

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- (a) the tax payable by an employee for a tax year in respect of a loan has been decided on that basis that, for the purposes of section 188 (loan released or written off: amount treated as earnings), the loan has been released or written off in that year, and
  - (b) the whole or part of the loan is subsequently repaid.
- (4) The third case is where—
- (a) the tax payable by an employee for a tax year in respect of a loan has been decided on the basis that—
    - (i) section 288 (limited exemption of certain bridging loans connected with employment moves), and
    - (ii) section 289 (relief for certain bridging loans not qualifying for exemption under section 288),will not apply because the condition in section 288(1)(b) (which requires that the limit on the exemption under section 287(1) has not been reached) will not be met, and
  - (b) that condition is met.
- (5) Where a claim is made under this section the tax payable is to be adjusted accordingly.

## CHAPTER 8

### TAXABLE BENEFITS: NOTIONAL LOANS IN RESPECT OF ACQUISITIONS OF SHARES

#### *Introduction*

#### **192 Application of this Chapter**

- (1) This Chapter applies where—
- (a) shares in a company are, or an interest in shares in a company is, acquired by an employee or a person connected with an employee, and
  - (b) the right or opportunity to acquire the shares or interest in shares was available by reason of the employment.
- (2) The shares may be in the employer, or in another company.
- (3) A right or opportunity to acquire shares or an interest in shares which is made available by the employer is to be regarded as made available by reason of the employment unless—
- (a) the employer is an individual, and
  - (b) the right or opportunity is made available in the normal course of the employer's domestic, family or personal relationships.
- (4) In this Chapter—
- “the acquisition” means the acquisition of shares or an interest in shares mentioned in subsection (1), and
  - “the employment-related shares” means the shares or interest in shares acquired.

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### *Acquisition of shares for less than market value*

#### **193 Notional loan where acquisition for less than market value**

- (1) This section applies if—
  - (a) no payment is made for the employment-related shares at or before the time of the acquisition, or
  - (b) the payment made at or before that time is less than—
    - (i) the market value at that time of fully paid up shares of their class, or
    - (ii) if the employment-related shares consist of an interest in shares, the proportion of the market value at that time of fully paid up shares of the same class as those in which the interest subsists that corresponds to the size of the interest.
- (2) For the purposes of subsection (1), any obligation to make payment or further payment at some later time is to be disregarded.
- (3) The provisions listed in subsection (4) apply as if a loan (“the notional loan”) had been made to the employee by the employer at the time of the acquisition which—
  - (a) is an employment-related loan as defined in section 174, and
  - (b) is interest-free.
- (4) The provisions are—
  - section 175 (benefit of taxable cheap loan treated as earnings),
  - section 178 (exception for loans where interest qualifies for tax relief),
  - section 180 (threshold for benefit of loan to be treated as earnings),
  - section 182 (normal method of calculation: averaging),
  - section 183 (alternative method of calculation),
  - section 184 (interest treated as paid),
  - section 185 (apportionment of cash equivalent in case of joint loan etc.), and
  - section 187 (aggregation of loans by close company to director).
- (5) This section is subject to—
  - section 491 (approved SIPs: no charge on award of shares as taxable benefit),
  - section 519 (approved SAYE option schemes: no charge in respect of exercise of option),
  - section 524 (approved CSOP schemes: no charge in respect of exercise of option),
  - section 540 (enterprise management incentives: no charge on acquisition of shares as taxable benefit),
  - section 542 (exemption: offer made to public and employees), and
  - section 544 (exemption: different offers made to public and employees).

#### **194 The amount of the notional loan**

- (1) The amount of the notional loan initially outstanding is—

**MV - DA**

where—

MV is—



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- (a) the market value of fully paid up shares of the same class as the employment-related shares, or
- (b) if the employment-related shares consist of an interest in shares, the proportion of the market value of fully paid up shares of the same class as those in which the interest subsists that corresponds to the size of the interest, and

DA is the total of any deductible amounts.

- (2) For the purposes of subsection (1) each of the following is a “deductible amount”—
  - (a) any payment made for the employment-related shares at or before the time of the acquisition;
  - (b) any amount that constitutes earnings from the employee’s employment under Chapter 1 of this Part (earnings) in respect of the acquisition;
  - (c) if the acquisition results from the exercise of a share option—
    - (i) any amount that constitutes earnings from the employment under Chapter 1 of this Part (earnings) in respect of the receipt of the share option,
    - (ii) any amount that is treated as earnings from the employment under Chapter 10 of this Part (taxable benefits: residual liability to charge) in respect of its receipt, and
    - (iii) any amount that counts as employment income of the employee under section 476 or 477 (charge on employee on exercise etc. of option by employee or another person) in respect of the exercise; and
  - (d) if the acquisition results from the exercise of a share option and an amount counts as employment income of the employee under section 526 (approved CSOP schemes: charge where option granted at a discount) in respect of the share option, so much of that amount as is attributable to the employment-related shares.
- (3) The amount of the notional loan outstanding at any subsequent time is the difference between—
  - (a) the amount initially outstanding, and
  - (b) the amount of any payments or further payments made for the employment-related shares after the acquisition but before that time.

## **195 Discharge of notional loan: amount treated as earnings**

- (1) The notional loan is to be treated as discharged when the following occurs—
  - (a) payments or further payments for the employment-related shares equal to the amount initially outstanding have been made,
  - (b) if the employment-related shares were not fully paid up at the time of the acquisition, any outstanding or contingent obligation to pay for them ceases to bind the employee or any person connected with the employee,
  - (c) the employment-related shares are disposed of so that neither the employee nor any person connected with the employee any longer has a beneficial interest in them, or
  - (d) the employee dies.
- (2) If—
  - (a) a notional loan is discharged as a result of an event specified in subsection (1) (b) or (c), and

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- (b) at the time of that event the employee holds the employment by reason of which the right or opportunity to make the acquisition was available, the amount of the notional loan outstanding immediately before the occurrence of the event is to be treated as earnings from the employment for the tax year in which the event occurs.
- (3) But if the employment has terminated or become an excluded employment before that event and there was a time when—
- (a) the whole or part of the notional loan was outstanding,
  - (b) the employee held the employment, and
  - (c) it was not an excluded employment,
- subsection (2) applies as if the employment had not terminated or become an excluded employment.

### *Supplementary provisions*

#### **196 Effects on other income tax charges**

Nothing in this Chapter affects any liability to income tax arising in respect of the acquisition by virtue of—

- (a) Chapter 1 of this Part (earnings), or
- (b) section 476 or 477 (charge on employee on exercise etc. of option by employee or another person).

#### **197 Minor definitions**

- (1) In this Chapter—
- “employee” includes a prospective employee;
  - “interest in shares” means an interest in shares less than full beneficial ownership and includes an interest in the proceeds of sale of part of the shares, but not a right to acquire shares;
  - “market value” has the same meaning as it has for the purposes of TCGA 1992 by virtue of Part 8 of that Act;
  - “shares” includes—
    - (a) stock, and
    - (b) any securities as defined in section 254(1) of ICTA.
- (2) In this Chapter references to the acquisition of shares or an interest in shares include receipt by way of allotment or assignment or in any other way.
- (3) In this Chapter references to payment for the employment-related shares include giving any consideration in money or money’s worth or making any subscription, whether in pursuance of a legal liability or not.
- (4) In this Chapter—
- “the acquisition”, and
  - “the employment-related shares”,
- have the meaning indicated in section 192(4).

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## CHAPTER 9

### TAXABLE BENEFITS: DISPOSALS OF SHARES FOR MORE THAN MARKET VALUE

#### 198 Shares to which this Chapter applies

- (1) This Chapter applies to shares in a company which have, or an interest in shares in a company which has, been acquired by an employee or a person connected with an employee, if the right or opportunity to acquire the shares or interest in shares was available by reason of the employment.
- (2) In this Chapter, “employment-related shares” means shares, or an interest in shares, acquired as mentioned in subsection (1).
- (3) The shares may be in the employer, or in another company.
- (4) A right or opportunity to acquire shares or an interest in shares which is made available by the employer is to be regarded as made available by reason of the employment unless—
  - (a) the employer is an individual, and
  - (b) the right or opportunity is made available in the normal course of the employer’s domestic, family or personal relationships.

#### 199 Disposal for more than market value: amount treated as earnings

- (1) This section applies if—
  - (a) employment-related shares are disposed of so that neither the employee nor any person connected with the employee any longer has a beneficial interest in them, and
  - (b) the disposal is for a consideration which exceeds the market value of the employment-related shares at the time of the disposal.
- (2) But this section does not apply if the disposal occurs after the death of the employee.
- (3) The amount given by the following formula is to be treated as earnings from the employee’s employment for the tax year in which the disposal occurs—

### CD- MV

where—

CD is the amount or value of the consideration for the disposal, and

MV is the market value of the employment-related shares at the time of the disposal.

- (4) But if—
  - (a) the employment has terminated or become an excluded employment before the disposal, and
  - (b) at the time of the acquisition of the employment-related shares the employee held, or was about to hold, the employment and it was not an excluded employment,

this section applies as if the employment had not terminated or become an excluded employment.

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- (5) If the employment-related shares consist of an interest in shares, the references in this section to the market value of the employment-related shares are to the proportion corresponding to the size of the interest of the market value of the shares in which the interest subsists.

## 200 Minor definitions

- (1) In this Chapter—
- “employee” includes a prospective employee;
  - “interest in shares” means an interest in shares less than full beneficial ownership and includes an interest in the proceeds of sale of part of the shares, but not a right to acquire shares;
  - “market value” has the same meaning as it has for the purposes of TCGA 1992 by virtue of Part 8 of that Act;
  - “shares” includes—
    - (a) stock, and
    - (b) any securities as defined in section 254(1) of ICTA.
- (2) In this Chapter references to the acquisition of shares or an interest in shares include receipt by way of allotment or assignment or in any other way.
- (3) In this Chapter “employment-related shares” has the meaning indicated in section 198(2).

## CHAPTER 10

### TAXABLE BENEFITS: RESIDUAL LIABILITY TO CHARGE

#### *Introduction*

## 201 Employment-related benefits

- (1) This Chapter applies to employment-related benefits.
- (2) In this Chapter—
- “benefit” means a benefit or facility of any kind;
  - “employment-related benefit” means a benefit, other than an excluded benefit, which is provided in a tax year—
    - (a) for an employee, or
    - (b) for a member of an employee’s family or household,
 by reason of the employment. For the definition of “excluded benefit” see section 202.
- (3) A benefit provided by an employer is to be regarded as provided by reason of the employment unless—
- (a) the employer is an individual, and
  - (b) the provision is made in the normal course of the employer’s domestic, family or personal relationships.

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- (4) For the purposes of this Chapter it does not matter whether the employment is held at the time when the benefit is provided so long as it is held at some point in the tax year in which the benefit is provided.
- (5) References in this Chapter to an employee accordingly include a prospective or former employee.

## **202 Excluded benefits**

- (1) A benefit is an “excluded benefit” for the purposes of this Chapter if—
  - (a) any of Chapters 3 to 9 of the benefits code applies to the benefit,
  - (b) any of those Chapters would apply to the benefit but for an exception, or
  - (c) the benefit consists in the right to receive, or the prospect of receiving, sums treated as earnings under section 221 (payments where employee absent because of sickness or disability).
- (2) In this section “exception”, in relation to the application of a Chapter of the benefits code to a benefit, means any enactment in the Chapter which provides that the Chapter does not apply to the benefit.

But for this purpose section 86 (transport vouchers under pre-26th March 1982 arrangements) is not an exception.

### *Cash equivalent of benefit treated as earnings*

## **203 Cash equivalent of benefit treated as earnings**

- (1) The cash equivalent of an employment-related benefit is to be treated as earnings from the employment for the tax year in which it is provided.
- (2) The cash equivalent of an employment-related benefit is the cost of the benefit less any part of that cost made good by the employee to the persons providing the benefit.
- (3) The cost of an employment-related benefit is determined in accordance with section 204 unless—
  - (a) section 205 provides that the cost is to be determined in accordance with that section, or
  - (b) section 206 provides that the cost is to be determined in accordance with that section.

### *Determination of the cost of the benefit*

## **204 Cost of the benefit: basic rule**

The cost of an employment-related benefit is the expense incurred in or in connection with provision of the benefit (including a proper proportion of any expense relating partly to provision of the benefit and partly to other matters).

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## **205 Cost of the benefit: asset made available without transfer**

- (1) The cost of an employment-related benefit (“the taxable benefit”) is determined in accordance with this section if—
  - (a) the benefit consists in—
    - (i) an asset being placed at the disposal of the employee, or at the disposal of a member of the employee’s family or household, for the employee’s or member’s use, or
    - (ii) an asset being used wholly or partly for the purposes of the employee or a member of the employee’s family or household, and
  - (b) there is no transfer of the property in the asset.
- (2) The cost of the taxable benefit is the higher of—
  - (a) the annual value of the use of the asset, and
  - (b) the annual amount of the sums, if any, paid by those providing the benefit by way of rent or hire charge for the asset,
 together with the amount of any additional expense.
- (3) For the purposes of subsection (2), the annual value of the use of an asset is—
  - (a) in the case of land, its annual rental value;
  - (b) in any other case, 20% of the market value of the asset at the time when those providing the taxable benefit first applied the asset in the provision of an employment-related benefit (whether or not the person provided with that benefit is also the person provided with the taxable benefit).

If those providing the taxable benefit first applied the asset in the provision of an employment-related benefit before 6th April 1980, paragraph (b) is to be read as if the reference to 20% were a reference to 10%.
- (4) In this section “additional expense” means the expense incurred in or in connection with provision of the taxable benefit (including a proper proportion of any expense relating partly to provision of the benefit and partly to other matters), other than—
  - (a) the expense of acquiring or producing the asset incurred by the person to whom the asset belongs, and
  - (b) any rent or hire charge payable for the asset by those providing the asset.

## **206 Cost of the benefit: transfer of used or depreciated asset**

- (1) The cost of an employment-related benefit is determined in accordance with this section if—
  - (a) the benefit consists in the transfer of an asset, and
  - (b) the asset has been used, or has depreciated, since the person transferring the asset (“the transferor”) acquired or produced it.
- (2) The cost of the benefit is the market value of the asset at the time of the transfer.
- (3) But the cost of the benefit (“the current benefit”) is the higher of the market value of the asset at the time of the transfer and the amount calculated in accordance with subsection (5) if—
  - (a) the asset is not a car (within the meaning of Chapter 6),

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- (b) the asset has previously been applied in the provision of a relevant employment-related benefit (whether or not the person provided with that benefit is also the transferee), and
  - (c) the transferor first applied the asset in the provision of an employment-related benefit after 5th April 1980.
- (4) In this section “relevant employment-related benefit” means an employment-related benefit the cost of which was to be determined in accordance with section 205.

- (5) The amount referred to in subsection (3) is calculated in accordance with the following steps—

*Step 1*

Determine the tax years in which the asset was applied in the provision of a relevant employment-related benefit (including, if appropriate, the current tax year).

*Step 2*

Determine the cost of the benefit for each of those tax years in accordance with section 205.

*Step 3*

Calculate the total of the amounts determined under step 2.

*Step 4*

Calculate the market value of the asset at the time when the transferor first applied it in the provision of an employment-related benefit.

*Step 5*

Deduct the total calculated under step 3 from the market value calculated under step 4.

The result is the amount referred to in subsection (3).

*Supplementary provisions*

**207 Meaning of “annual rental value”**

- (1) For the purposes of this Chapter the “annual rental value” of land is the rent which might reasonably be expected to be obtained on a letting from year to year if—
- (a) the tenant undertook to pay all taxes, rates and charges usually paid by a tenant, and
  - (b) the landlord undertook to bear the costs of the repairs and insurance and other expenses (if any) necessary for maintaining the land in a state to command the rent.
- (2) For the purposes of subsection (1) that rent—
- (a) is to be taken to be the amount that might reasonably be expected to be so obtained in respect of the letting, and
  - (b) is to be calculated on the basis that the only amounts that may be deducted in respect of services provided by the landlord are amounts in respect of the cost to the landlord of providing any relevant services.

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- (3) If the land is of a kind that might reasonably be expected to be let on terms under which—
- (a) the landlord is to provide any services which are either—
    - (i) relevant services, or
    - (ii) the repair, insurance or maintenance of any premises which do not form part of the land but belong to or are occupied by the landlord, and
  - (b) amounts are payable in respect of the services in addition to the rent,
- the rent to be established under subsection (1) in respect of the land is to be increased under subsection (4).
- (4) That rent is to include—
- (a) where the services are relevant services, so much of the additional amounts as exceeds the cost to the landlord of providing the services;
  - (b) where the services are within subsection (3)(a)(ii), the whole of the additional amounts.
- (5) In this section “relevant service” means a service other than the repair, insurance or maintenance of the land or of any other land.

## **208 Meaning of “market value”**

For the purposes of this Chapter the market value of an asset at any time is the price which the asset might reasonably be expected to fetch on a sale in the open market at that time.

## **209 Meaning of “persons providing benefit”**

For the purposes of this Chapter the persons providing a benefit are the person or persons at whose cost the benefit is provided.

## **210 Power to exempt minor benefits**

- (1) The Treasury may make provision by regulations for exempting from the application of this Chapter such minor benefits as may be specified in the regulations.
- (2) An exemption conferred by such regulations is conditional on the benefit being made available to the employer’s employees generally on similar terms.

### *Special rules for scholarships*

## **211 Special rules for scholarships: introduction**

- (1) Sections 212 to 214 supplement the preceding provisions of this Chapter in the following ways—
  - section 212 provides for certain scholarships provided under arrangements entered into by an employer or a connected person to be regarded as provided by reason of an employment;
  - section 213 provides that this Chapter does not apply to certain scholarships provided under a trust fund or a scheme;



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section 214 provides a different method of determining the cost of an employment-related benefit if it consists in the provision of a scholarship from a trust fund.

- (2) Section 215 limits the extent to which section 331 of ICTA (exemption for scholarship income) applies to a scholarship whose provision constitutes an employment-related benefit.
- (3) In this section and sections 212 to 215 “scholarship” includes a bursary, exhibition or other similar educational endowment.

## **212 Scholarships provided under arrangements entered into by employer or connected person**

- (1) A scholarship which is provided for a member of an employee’s family or household is to be regarded for the purposes of this Chapter as provided by reason of the employment if it is provided under arrangements entered into by—
  - (a) the employer, or
  - (b) a person connected with the employer.
- (2) Subsection (1) applies whether or not the arrangements require the employer or the connected person to contribute directly or indirectly to the cost of providing the scholarship.
- (3) A scholarship is not to be regarded as provided by reason of an employment by virtue of subsection (1) if—
  - (a) the employer is an individual, and
  - (b) the arrangements are made in the normal course of the employer’s domestic, family or personal relationships.
- (4) This section is without prejudice to section 201(3).

## **213 Exception for certain scholarships under trusts or schemes**

- (1) This Chapter does not apply to an employment-related benefit consisting in the provision of a scholarship if conditions A, B, C and D are met.
- (2) Condition A is that the scholarship would not be regarded as provided by reason of the employment if section 201(3) and section 212 were disregarded.
- (3) Condition B is that the holder of the scholarship is a full-time student.
- (4) Condition C is that the scholarship is provided from a trust fund or under a scheme.
- (5) Condition D is that, in the tax year in which the scholarship is provided, not more than 25% of the total amount of relevant payments is attributable to scholarships provided by reason of a person’s employment.
- (6) For the purposes of conditions B and D “full-time student” means a person who is in full-time education at a university, college, school or other educational establishment.
- (7) For the purposes of condition D—

“employment” includes any employment within the meaning of the employment income Parts (see section 4), whether or not it is a taxable employment under Part 2;

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“relevant payments” means the payments made from the fund or scheme mentioned in condition C in respect of scholarships held by full-time students.

#### **214 Scholarships: cost of the benefit**

If an employment-related benefit consists in the provision of a scholarship from a trust fund—

- (a) section 204 does not apply, and
- (b) the cost of the benefit is the total of the payments made from the fund to the person holding the scholarship.

#### **215 Limitation of exemption for scholarship income in section 331 of ICTA**

If an employment-related benefit consists in the provision of a scholarship, section 331(1) of ICTA (exemption for scholarship income) applies only in relation to the holder of the scholarship.

## **CHAPTER 11**

### TAXABLE BENEFITS: EXCLUSION OF LOWER-PAID EMPLOYMENTS FROM PARTS OF BENEFITS CODE

#### *Introduction*

#### **216 Provisions not applicable to lower-paid employments**

- (1) The Chapters of the benefits code listed in subsection (4) do not apply to an employment in relation to a tax year if—
  - (a) it is lower-paid employment in relation to that year (see section 217), and
  - (b) condition A or B is met.
- (2) Condition A is that the employee is not employed as a director of a company.
- (3) Condition B is that the employee is employed as a director of a company but has no material interest in the company and either—
  - (a) the employment is as a full-time working director, or
  - (b) the company is non-profit-making or is established for charitable purposes only.

“Non-profit-making” means that the company does not carry on a trade and its functions do not consist wholly or mainly in the holding of investments or other property.

- (4) The Chapters referred to in subsection (1) are—
  - Chapter 3 (taxable benefits: expenses payments);
  - Chapter 6 (taxable benefits: cars, vans and related benefits);
  - Chapter 7 (taxable benefits: loans);
  - Chapter 8 (taxable benefits: notional loans in respect of acquisitions of shares);
  - Chapter 9 (taxable benefits: disposals of shares for more than market value);
  - Chapter 10 (taxable benefits: residual liability to charge).

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(5) Subsection (1)—

- (a) means that in any of those Chapters a reference to an employee does not include an employee whose employment is within the exclusion in that subsection, if the context is such that the reference is to an employee in relation to whom the Chapter applies, but
- (b) does not restrict the meaning of references to employees in other contexts.

(6) Subsection (1) has effect subject to—

- section 188(2) (discharge of loan: where employment becomes lower-paid),
- section 195(3) (discharge of notional loan: where employment becomes lower-paid),
- section 199(4) (disposal for more than market value: where employment becomes lower-paid), and
- section 220 (employment in two or more related employments).

*What is lower-paid employment*

**217 Meaning of “lower-paid employment”**

- (1) For the purposes of this Chapter an employment is “lower-paid employment” in relation to a tax year if the earnings rate for the employment for the year (calculated under section 218) is less than £8,500.
- (2) Subsection (1) is subject to section 220 (employment in two or more related employments).

**218 Calculation of earnings rate for a tax year**

- (1) For any tax year the earnings rate for an employment is to be calculated as follows—

*Step 1*

Find the total of the following amounts—

- (a) the total amount of the earnings from the employment for the year within Chapter 1 of this Part,
- (b) the total of any amounts that are treated as earnings from the employment for the year under the benefits code (see subsections (2) and (3)),
- (c) the total of any amounts that are treated as earnings from the employment for the year under Chapter 12 of this Part (payments treated as earnings), and
- (d) in the case of an employment within section 56(2) (deemed employment of worker by intermediary), the amount of the deemed employment payment for the year (see section 54),

excluding any exempt income.

*Step 2*

Add to that total any extra amount required to be added for the year by section 219 (extra amounts to be added in connection with a car).

*Step 3*

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Subtract the total amount of any authorised deductions (see subsection (4)) from the result of step 2.

*Step 4*

The earnings rate for the employment for the year is given by the formula—

$$R \times \frac{Y}{E}$$

where—

R is the result of step 3,

Y is the number of days in the year, and

E is the number of days in the year when the employment is held.

- (2) Section 216(1) (provisions not applicable to lower-paid employment) is to be disregarded for the purpose of determining any amount under step 1.
- (3) If the benefit of living accommodation is to be taken into account under step 1, the cash equivalent is to be calculated in accordance with section 105 (even if the cost of providing the accommodation exceeds £75,000).
- (4) For the purposes of step 3 “authorised deduction” means any deduction that would (assuming it was an amount of taxable earnings) be allowed from any amount within step 1 under—
  - section 346 (employee liabilities),
  - section 352 (agency fees paid by entertainers),
  - section 355 (corresponding payments by non-domiciled employees with foreign employers),
  - section 368 (fixed sum deductions from earnings payable out of public revenue),
  - section 370 (travel costs and expenses where duties performed abroad: employee’s travel),
  - section 371 (travel costs and expenses where duties performed abroad: visiting spouse’s or child’s travel),
  - section 373 (non-domiciled employee’s travel costs and expenses where duties performed in UK),
  - section 374 (non-domiciled employee’s spouse’s or child’s travel costs and expenses where duties performed in UK),
  - section 376 (foreign accommodation and subsistence costs and expenses (overseas employments)),
  - section 377 (costs and expenses in respect of personal security assets and services),
  - section 713 (payroll giving to charities),
  - section 592(7) of ICTA (contributions to exempt approved schemes),
  - section 594 of ICTA (contributions to exempt statutory schemes), or
  - section 262 of CAA 2001 (capital allowances to be given effect by treating them as deductions).

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## **219 Extra amounts to be added in connection with a car**

- (1) The provisions of this section apply for the purposes of section 218(1) in the case of a tax year in which a car is made available as mentioned in section 114(1) (cars, vans and related benefits) by reason of the employment.
- (2) Subsection (3) applies if in the tax year—
  - (a) an alternative to the benefit of the car is offered, and
  - (b) the amount that would be earnings within Chapter 1 of this Part if the benefit of the car were to be determined by reference to the alternative offered exceeds the benefit code earnings (see subsection (4)).
- (3) The amount of the excess is an extra amount to be added under step 2 in section 218(1).
- (4) For the purposes of subsection (2) “the benefit code earnings” is the total for the year of—
  - (a) the cash equivalent of the benefit of the car (calculated in accordance with Chapter 6 of this Part), and
  - (b) the cash equivalent (calculated in accordance with that Chapter) of the benefit of any fuel provided for the car by reason of the employment.
- (5) Subsection (6) applies if in the tax year there would be an amount of general earnings consisting of—
  - (a) earnings within Chapter 1 of this Part, or
  - (b) an amount treated as earnings from the employment under Chapter 3 (expenses payments) or Chapter 4 (vouchers and credit-tokens) of this Part, if section 239 or 269 (exemptions in respect of payments or benefits connected with taxable cars etc.) did not apply to the discharge of a liability, or to a payment or benefit, in connection with the car.
- (6) The amount of general earnings mentioned in subsection (5) is an extra amount to be added under step 2 in section 218(1).
- (7) Section 216(1) (provisions not applicable to lower-paid employment) is to be disregarded for the purpose of determining any amount under this section.

### *Treatment of related employments*

## **220 Related employments**

- (1) This section applies if a person is employed in two or more related employments.
- (2) None of the employments is to be regarded as lower-paid employment in relation to a tax year if—
  - (a) the total of the earnings rates for the employments for the year (calculated in each case under section 218) is £8,500 or more, or
  - (b) any of them is an employment falling outside the exclusion contained in section 216(1) (provisions not applicable to lower-paid employment).
- (3) For the purposes of this section two employments are “related” if—
  - (a) both are with the same employer, or
  - (b) one is with a body or partnership (“A”) and the other is either—
    - (i) with an individual, partnership or body that controls A (“B”), or

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(ii) with another partnership or body also controlled by B.

## CHAPTER 12

### PAYMENTS TREATED AS EARNINGS

#### **221 Payments where employee absent because of sickness or disability**

- (1) This section applies if—
  - (a) an employee is absent from work because of sickness or disability, and
  - (b) a qualifying sickness payment is made in respect of the employee's absence from work.
- (2) But this section does not apply if the qualifying sickness payment constitutes earnings from the employment by virtue of any other provision.
- (3) The qualifying sickness payment is to be treated as earnings from the employment in respect of the period of absence.
- (4) If the qualifying sickness payment is made from funds to which the employer and the employer's employees have made contributions, only the amount of the payment which it is just and reasonable to attribute to the employer's contributions is treated as earnings under this section.
- (5) In this section "qualifying sickness payment" means a payment which meets conditions A and B.
- (6) Condition A is that the payment is made—
  - (a) to the employee or to a member of the employee's family,
  - (b) to the order of such a person, or
  - (c) to the benefit of such a person.
- (7) Condition B is that the payment is made—
  - (a) by reason of the employment, and
  - (b) as a result of arrangements entered into by the employer.

#### **222 Payments by employer on account of tax where deduction not possible**

- (1) This section applies if—
  - (a) an employer is treated by virtue of sections 687, 689 and 693 to 700 as having made a payment of income of an employee ("the notional payment"),
  - (b) the employer is required by virtue of section 710(4) to account to the Inland Revenue for an amount of income tax ("the due amount") in respect of the notional payment, and
  - (c) the employee does not, before the end of the period of 30 days beginning with the date on which the employer is treated as making the notional payment, make good the due amount to the employer.
- (2) The due amount is to be treated as earnings from the employment for the tax year in which the date mentioned in subsection (1)(c) falls.

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- (3) In this section “employer”, in relation to any provision of sections 687, 689, 693 to 700 or 710, means the person taken to be the employer for the purposes of that provision.

It also includes a person who is treated as making a payment of PAYE income by virtue of section 689(2) (payments by person for whom employee works but who is not the employer).

## **223 Payments on account of director’s tax other than by the director**

- (1) This section applies if in a tax year—
- (a) a person (“P”) makes a payment to another person who is employed as the director of a company,
  - (b) the payment is of, or on account of, earnings from the director’s employment,
  - (c) PAYE regulations require P to deduct an amount of income tax (“the deductible tax”),
  - (d) P deducts none, or only some, of the deductible tax, and
  - (e) either or both of the following occur—
    - (i) P accounts to the Board of Inland Revenue for some or all of the deductible tax (whether or not P has actually deducted the amount accounted for);
    - (ii) one or more persons other than P (apart from the director) account to the Board of Inland Revenue for some or all of the deductible tax.
- (2) For the purposes of this section it does not matter whether the director’s employment is held at the time when P makes the payment mentioned in subsection (1)(a) so long as it is held at some point in the tax year in which the payment is made.
- (3) References in this section to employment as a director accordingly include prospective or past employment as a director.
- (4) The deductible tax accounted for to the Board of Inland Revenue is to be treated as earnings of the director from the director’s employment for the tax year in which it is accounted for.
- (5) But if—
- (a) the deductible tax is accounted for after the director’s employment has ceased, and
  - (b) the employment ceased in a tax year before the one in which the deductible tax is accounted for,
- the deductible tax is treated as earnings for the tax year in which the director’s employment ceased.
- (6) The following rules apply to the calculation of the amount to be treated as earnings under this section—
- (a) any amount accounted for after the death of the director is to be disregarded;
  - (b) if P deducts some of the deductible tax, the amount treated as earnings is reduced by the amount deducted;
  - (c) if the director makes good to P or to another person some or all of the deductible tax which P or the other person accounts for, the amount treated as earnings is reduced by the amount made good.

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- (7) This section does not apply if the director has no material interest in the company and either—
- (a) the director is employed as a full-time working director of the company, or
  - (b) the company is—
    - (i) non-profit-making, or
    - (ii) established for charitable purposes only.
- (8) In this section—
- “director” has the same meaning as in the benefits code (see section 67);
- “director’s employment”, in relation to a person who is employed as a director, means that employment;
- “full-time working director” has the same meaning as in the benefits code (see section 67);
- “material interest” has the same meaning as in the benefits code (see section 68);
- “non-profit-making”, in relation to a company, means that—
- (a) the company does not carry on a trade, and
  - (b) its functions do not consist wholly or mainly in the holding of investments or other property.

## **224 Payments to non-approved personal pension arrangements**

- (1) Contributions paid by an employer under non-approved personal pension arrangements made by the employee are to be treated as earnings from the employment for the tax year in which they are paid.
- (2) Subsection (1) does not apply if or to the extent that the contributions are chargeable to income tax as the employee’s income apart from this section.
- (3) For the purposes of this section—
  - (a) “personal pension arrangements” has the meaning given by section 630(1) of ICTA, and
  - (b) arrangements are “non-approved” if they are not “approved” within the meaning of that section.

## **225 Payments for restrictive undertakings**

- (1) This section applies where—
  - (a) an individual gives a restrictive undertaking in connection with the individual’s current, future or past employment, and
  - (b) a payment is made in respect of—
    - (i) the giving of the undertaking, or
    - (ii) the total or partial fulfilment of the undertaking.
- (2) It does not matter to whom the payment is made.
- (3) The payment is to be treated as earnings from the employment for the tax year in which it is made.
- (4) Subsection (3) does not apply if the payment constitutes earnings from the employment by virtue of any other provision.



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- (5) A payment made after the death of the individual who gave the undertaking is treated for the purposes of this section as having been made immediately before the death.
- (6) This section applies only where—
- (a) the earnings from the employment are general earnings to which any of the provisions mentioned in subsection (7) apply, or
  - (b) if there were general earnings from the employment they would be general earnings to which any of those provisions apply.
- (7) The provisions are—
- (a) section 15 (earnings of employee resident, ordinarily resident and domiciled in the UK),
  - (b) section 21 (earnings of employee resident and ordinarily resident, but not domiciled, in UK, except chargeable overseas earnings),
  - (c) section 25 (UK-based earnings of employee resident but not ordinarily resident in UK), and
  - (d) section 27 (UK-based earnings of employee not resident in UK).
- (8) In this section “restrictive undertaking” means an undertaking which restricts the individual’s conduct or activities.

For this purpose it does not matter whether or not the undertaking is legally enforceable or is qualified.

## **226 Valuable consideration given for restrictive undertakings**

- (1) In a case where—
- (a) an individual gives a restrictive undertaking in connection with the individual’s current, future or past employment, and
  - (b) valuable consideration that is not in the form of money is provided in respect of—
    - (i) the giving of the undertaking, or
    - (ii) the total or partial fulfilment of the undertaking,section 225 applies as it would if a payment of an amount equal to the value of the consideration had been made instead.
- (2) For this purpose—
- (a) merely assuming an obligation to make over or provide valuable property, rights or advantages is not valuable consideration, but
  - (b) wholly or partially discharging such an obligation is.

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