

FINANCE ACT 2009

EXPLANATORY NOTES

INTRODUCTION

Section 71: Taxable Benefit of Living Accommodation: Lease Premiums

Summary

1. **Section 71** changes the rules for taxing the benefit in kind charge where employees are provided with living accommodation by reason of their employment. This is to stop attempts to avoid tax through the payment of a lease premium rather than a full market rent for the use of the accommodation. The section introduces a rule that means the value of the lease premium will be taken into account when working out the benefit in kind charge.

Details of the Section

2. Subsection (1) indicates that Chapter 5 of Part 3 of the Income Tax Earnings and Pensions Act 2003 (ITEPA) is amended by the section. The Chapter sets out the rules under which living accommodation provided to an employee, or a member of the employee's family or household, by reason of the employee's employment is a taxable benefit in kind.
3. Subsection (2)(a) amends section 105(3) of ITEPA, which defines the "rental value of the accommodation", so that it is qualified by new subsections (4) and (4A).
4. Subsection (2)(b) substitutes a new section 105(4) of ITEPA and inserts new subsections (4A) and (4B).
5. New section 105(4) sets out two criteria that have to be satisfied before new section 105(4A) applies. It also defines the term "the relevant period" for the purposes of the amendments introduced by the section.
6. Paragraph (a) of new section 105(4A) provides that subsection 105(3) of ITEPA does not apply to the relevant period and paragraph (b) applies instead. Paragraph (b) provides that the rental value of the accommodation is the rental amount payable in respect of the lease for the period by the person at whose cost the accommodation is provided.
7. New section 105(4B) defines the reference in new sections 105(4) and (4A) of ITEPA to 'a rental amount payable by P in respect of the relevant period' as being the sum of the rent for the period payable by that person and any amount attributed to the period in respect of a lease premium in accordance with new sections 105A and 105B of ITEPA.
8. Subsection (3) of the section inserts a new section 105A and 105B into ITEPA.
9. New section 105A(1) provides for amounts in respect of a lease premium, payable in relation to a lease with a term of 10 years or less, to be attributed to the taxable period if the net amount of the lease premium is greater than zero. It provides that this attribution does not apply if the living accommodation is part of premises used mainly for a purpose other than the provision of living accommodation.

*These notes refer to the Finance Act 2009 (c.10)
which received Royal Assent on 21 July 2009*

10. New section 105A(2) sets out the formula for working out the amount of any lease premium to be attributed to a taxable period. This is dependent on the term of the lease, the number of days in the relevant period and the net amount of the lease premium payable in relation to the lease.
11. New section 105A(3) refers to new section 105B for provision about the application of new section 105A to certain leases with break clauses.
12. New section 105A(4) defines the “net amount payable in relation to lease by way of a lease premium” for the purposes of new section 105A.
13. New section 105A(5) defines the term “lease premium” for the purposes of new section 105A and new section 105B.
14. New section 105A(6) further defines “premium” as including a grassum in relation to the application of the section to leases in Scotland.
15. New section 105B(1) provides that the section applies to a lease which contains one or more relevant break clauses. The subsection also introduces the term “original lease” in respect of such leases.
16. New section 105B(2) defines “break clause” and “relevant break clause” for the purposes of the section.
17. New section 105B(3) provides that the term of the lease and the net amount payable by way of a lease premium for the purposes of new section 105A are to be determined on the assumption that any relevant break clause is exercised in such a way that the term of the lease is as short as possible.
18. New section 105B(4) deems, for the purposes of new section 105A the parties to a lease to be parties to a further lease if a relevant break clause is not exercised in such a way that the term of the original lease is as short as possible and introduces the term “notional lease” in respect of such leases. Paragraphs (a) and (b) of the subsection set out how the term of a notional lease is to be determined.
19. New section 105B(5) sets out how the end of the term of a notional lease is to be determined.
20. New section 105B(6) sets out how the net amount payable for the purposes of new section 105A in relation to a notional lease by way of a lease premium is to be determined where the term of the notional lease ends in accordance with paragraph (a) of subsection (5) of new section 105B.
21. New section 105B(7) set out how the net amount payable for the purposes of new section 105A in relation to a notional lease by way of a lease premium is to be determined where the term of the notional lease ends in accordance with paragraph (b) of subsection (5) of new section 105B.
22. New section 105B(8) defines the meaning of “relevant proportion” for the purposes of subsection (7) of new section 105B.
23. Subsection (4) of the clause provides that it will only have effect for leases entered into on or after 22 April 2009. The clause will not apply to leases entered into before that date, except where the lease has been extended after that date.
24. Subsection (5) deals with lease extensions to which the new rules apply by virtue of subsection (4). It provides that the additional term of the lease created by the extension is treated as the whole of the term of the lease for the purposes of the new rules, and that those rules only apply to a lease premium paid in respect of the additional term of the lease starting on or after that date.
25. Subsection (6) defines “lease premium” for the purposes of the clause as having the same meaning as in new sections 105A and 105B.

Background Note

26. Where an employee (or a member of their family or household) is provided with accommodation by reason of the employee's employment there is a tax charge on the benefit to the employee of that accommodation. Where rent is paid by the person at whose cost the accommodation is provided the charge is based on the actual rent paid (less any amount made good by the employee), where that is more than the annual value of the accommodation. However, some arrangements are being entered into that involve upfront payments, which are described as a lease premium, and payment of a very small rent in order to try to avoid paying tax.
27. The section ensures that where a lease premium is paid for a lease of 10 years or less, the same tax treatment will follow as if the lease premium were actual rent paid. The taxable amount in any tax year will be treated as the amount of the lease premium spread over the duration of the lease plus the amount of any rent paid by the person at whose cost the accommodation is provided less any amount made good by the employee. The new rules will not apply where the lease is in respect of living accommodation which forms part of premises which is used by the person at whose cost the accommodation is provided, mainly for a purpose which is not the provision of living accommodation.