

Amendments to Clause 7: Taxable benefits: application of Chapters 5 to 7 of Part 3 of ITEPA 2003

Summary

1. This clause as published in Finance Bill 2016 introduced provisions to ensure that the concept of 'fair bargain' does not apply to certain taxable benefits in kind where the charge is based on tax rules specifying how the cash equivalent of that benefit should be calculated.
2. These amendments clarify that where a benefit falls within Chapters 5 and 6 of Part 3 of the Income Tax (Earnings and Pensions) Act 2003, it will remain a taxable benefit even if the cash equivalent of the benefit has been reduced to £nil. This ensures that charges relating to associated benefits or reliefs which rely on benefits under Chapters 5 and 6 being treated as the employee's earnings for the year remain.
3. These amendments also signpost which existing sections provide for the cash equivalent of benefits falling within Chapters 5 and 7.

Details of the amendments

4. Amendment 22 amends new subsection 97(1A) which relates to living accommodation provided by reason of the employment to an employee or a member of their family or household. Subsection (1A) will now include signposting to those sections which provide for the cash equivalent of the benefit.
5. Amendment 23 introduces new subsection 109(4) which disapplies subsections (2) and (3) when the cash equivalent of the benefit is nil whilst ensuring that the benefit is still treated as earnings of the employment for the year under Chapter 1.
6. Amendment 24 amends new subsection 114(1A) in respect of cars, vans and related benefits. It rewords the previous version, without changing the effect of what is proposed.
7. Amendment 25 amends existing section 120(2) and introduces new subsection (3) in respect of cars and introduces new subsections (2) and (3) to section 154 in respect of vans. These provide that where other provisions in the Act make reference to the employee's earnings for the year, this will apply even when the cash equivalent of the benefit of a car or van is nil.
8. Amendment 26 amends new subsection 173(1A) in respect of employment-related loans. Subsection (1A) will now include signposting to those sections which provide for the cash equivalent of the benefit.

Background note

9. The amendments provide further clarification to Clause 7 of the Finance Bill 2016 following comments made in a judgment issued by the Court of Appeal after the publication of that Bill.
10. The amendments confirm the government's policy intention as previously understood, which is that certain taxable benefits falling within Part 3 of ITEPA will remain to be treated as earnings of the employee's employment, even if the cash equivalent of the benefit has been reduced to nil.
11. The amendments also provide further simplification by signposting as appropriate, provisions for calculating the cash equivalent of the benefit.