
*Changes to legislation: There are currently no known outstanding effects
for the Finance Act 2017, SCHEDULE 2. (See end of Document for details)*

SCHEDULES

SCHEDULE 2

Section 7

OPTIONAL REMUNERATION ARRANGEMENTS

Optional remuneration arrangements

1 In Part 3 of ITEPA 2003 (employment income: earnings and benefits etc treated as earnings), in Chapter 2 (taxable benefits: the benefits code), after section 69 insert—

“69A Optional remuneration arrangements

- (1) Subsections (2) to (7) have effect for the purposes of the benefits code.
- (2) A benefit provided for an employee is provided under “optional remuneration arrangements” so far as it is provided under arrangements of type A or B (regardless of whether those arrangements are made before or after the beginning of the person's employment).
- (3) “Type A arrangements” are arrangements under which, in return for the benefit, the employee gives up the right (or a future right) to receive an amount of earnings within Chapter 1 of Part 3.
- (4) “Type B arrangements” are arrangements (other than type A arrangements) under which the employee agrees to be provided with the benefit rather than an amount of earnings within Chapter 1 of Part 3.
- (5) A benefit provided for an employee is to be regarded as provided under optional remuneration arrangements (whether of type A or type B) so far as it is just and reasonable to attribute the provision of the benefit to the arrangements in question.
- (6) Where a benefit is provided for an employee under any arrangements, the mere fact that under the arrangements the employee makes good, or is required to make good, any part of the cost of provision is not to be taken to show that the benefit is (to any extent) provided otherwise than under optional remuneration arrangements.
- (7) Where a benefit is provided for an employee partly under optional remuneration arrangements and partly otherwise than under such arrangements, the benefits code is to apply with any modifications (including provision for just and reasonable apportionments) that may be required for ensuring that the benefit is treated—
 - (a) in accordance with the relevant provision in the column 2 of the table so far as it is provided under optional remuneration arrangements, and
 - (b) in accordance with the relevant provision in column 1 of the table so far as it is provided otherwise than under such arrangements.

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Column 1	Column 2
Section	Section
81(1)	81(1A)(b)
87(1)	87A(1)(a)
94(1)	94A(1)(a)
102(1A)	102(1B)(b)
120(1)	120A(1)(a)
149(1)	149A(2)(a)
154(1)	154A(1)(a)
160(1)	160A(2)(a)
175(1)	175(1A)(b)
203(1)	203A(1)(a)

69B Optional remuneration arrangements: supplementary

- (1) For the purposes of the benefits code “the amount foregone”—
 - (a) in relation to a benefit provided for an employee under type A arrangements means the amount of earnings mentioned in section 69A(3);
 - (b) in relation to a benefit provided for an employee under type B arrangements means the amount of earnings mentioned in section 69A(4);
 - (c) in relation to a benefit provided for an employee partly under type A arrangements and partly under type B arrangements, means the sum of the amounts foregone under the arrangements of each type.
- (2) Subsection (3) applies where, in order to determine the amount foregone with respect to a particular benefit mentioned in section 69A(3) or (4), it is necessary to apportion an amount of earnings to the benefit.
- (3) The apportionment is to be made on a just and reasonable basis.
- (4) In this section and section 69A references to a benefit provided for an employee include a benefit provided for a member of an employee's family or household.
- (5) In this section and section 69A—

“benefit” includes any benefit or facility, regardless of its form and the manner of providing it;

“earnings” means earnings within Chapter 1 of Part 3 (and includes a reference to amounts which would have been such earnings if the employee had received them).”

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Benefits in kind: amount treated as earnings

2 Part 3 of ITEPA 2003 (employment income: earnings and benefits in kind etc treated as earnings) is amended as follows.

3 (1) Section 81 (benefit of cash voucher treated as earnings) is amended as follows.

(2) After subsection (1) insert—

“(1A) Where a cash voucher to which this Chapter applies is provided pursuant to optional remuneration arrangements—

- (a) subsection (1) does not apply, and
- (b) the relevant amount is to be treated as earnings from the employment for the tax year in which the voucher is received by the employee.

(1B) In this section “the relevant amount” means—

- (a) the cash equivalent, or
- (b) if greater, the amount foregone with respect to the benefit of the voucher (see section 69B).”

(3) At the end insert—

“(3) For the purposes of subsection (1B), assume that the cash equivalent is zero if the condition in subsection (4) is met.

(4) The condition is that the benefit of the voucher would be exempt from income tax but for section 228A (exclusion of certain exemptions).”

4 After section 87 insert—

“87A Benefit of non-cash voucher treated as earnings: optional remuneration arrangements

(1) Where a non-cash voucher to which this Chapter applies is provided pursuant to optional remuneration arrangements—

- (a) the relevant amount is to be treated as earnings from the employment for the tax year in which the voucher is received by the employee, and
- (b) section 87(1) does not apply.

(2) To find the relevant amount, first determine which (if any) is the greater of—

- (a) the cost of provision (see section 87(3)), and
- (b) the amount foregone with respect to the benefit of the voucher (see section 69B).

(3) If the cost of provision is greater than or equal to the amount foregone, the “relevant amount” is the cash equivalent of the benefit of the non-cash voucher (see section 87(2)).

(4) Otherwise, the “relevant amount” is the difference between—

- (a) the amount foregone, and
- (b) any part of the cost of provision that is made good by the employee, to the person incurring it, on or before 6 July following the relevant tax year.

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- (5) If the voucher is a non-cash voucher other than a cheque voucher, the relevant tax year is—
 - (a) the tax year in which the cost of provision is incurred, or
 - (b) if later, the tax year in which the employee receives the voucher.
- (6) If the voucher is a cheque voucher, the relevant tax year is the tax year in which the voucher is handed over in exchange for money, goods or services.
- (7) For the purposes of subsections (2) and (3), assume that the cost of provision is zero if the condition in subsection (8) is met.
- (8) The condition is that the non-cash voucher would be exempt from income tax but for section 228A (exclusion of certain exemptions).”

5 In section 88 (year in which earnings treated as received)—

- (a) in subsection (1), after “87” insert “ or 87A ”;
- (b) in subsection (2), after “87” insert “ or 87A ”.

6 After section 94 insert—

“94A Benefit of credit-token treated as earnings: optional remuneration arrangements

- (1) If the conditions in subsections (2) and (3) are met in relation to any occasions 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—
 - (a) the relevant amount is to be treated as earnings from the employment for that year, and
 - (b) section 94(1) does not apply in relation to the use of the credit-token on those occasions.
- (2) The condition in this subsection is that the credit-token is used pursuant to optional remuneration arrangements.
- (3) The condition in this subsection is that AF is greater than the relevant cost of provision for the tax year.

In this section “AF” means so much of the amount foregone (see section 69B) as is attributable on a just and reasonable basis to the use of the credit-token by the employee in the tax year pursuant to the optional remuneration arrangements to obtain money, goods or services.

- (4) The “relevant amount” is the difference between—
 - (a) AF, and
 - (b) any part of the relevant cost of provision for the tax year that is made good by the employee, to the person incurring it, on or before 6 July following the tax year which contains the occasion of use of the credit-token to which the making good relates.
- (5) But the relevant amount is taken to be zero if the amount given by paragraph (b) of subsection (4) exceeds AF.
- (6) For the purposes of this section the “relevant cost of provision for the tax year” is determined as follows—

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Step 1 Find the cost of provision with respect to each occasion of use of the credit-token by the employee in the tax year pursuant to the optional remuneration arrangements to obtain money, goods or services.

Step 2 The total of those amounts is the relevant cost of provision for the tax year.

- (7) But the relevant cost of provision for the tax year is to be taken to be zero if the condition in subsection (8) is met.
- (8) The condition is that use of the credit token by the employee in the tax year pursuant to the optional remuneration arrangements to obtain money, goods or services would be exempt from income tax but for section 228A (exclusion of certain exemptions).
- (9) In this section “cost of provision” has the same meaning as in section 94.”
- 7 In section 97 (living accommodation to which Chapter 5 applies), in subsection (1A)(b), for “the cash equivalent of” substitute “ an amount in respect of ”.
- 8 In section 98 (accommodation provided by local authority), in the words before paragraph (a), for “This Chapter” substitute “ In section 102 (benefit of accommodation treated as earnings) subsection (1A) (accommodation provided otherwise than pursuant to optional remuneration arrangements) ”.
- 9 (1) Section 99 (accommodation provided for performance of duties) is amended as follows.
- (2) In subsection (1), for “This Chapter” substitute “ In section 102 (benefit of accommodation treated as earnings) subsection (1A) (accommodation provided otherwise than pursuant to optional remuneration arrangements) ”.
- (3) In subsection (2), for “This Chapter” substitute “ In section 102 (benefit of accommodation treated as earnings) subsection (1A) ”.
- 10 In section 100 (accommodation provided as result of security threat), in the words before paragraph (a), for “This Chapter” substitute “ In section 102 (benefit of accommodation treated as earnings) subsection (1A) (accommodation provided otherwise than pursuant to optional remuneration arrangements) ”.
- 11 In section 100A (homes outside UK owned by company etc), in subsection (1), for “This Chapter” substitute “ In section 102 (benefit of accommodation treated as earnings) subsection (1A) (accommodation provided otherwise than pursuant to optional remuneration arrangements) ”.
- 12 In section 101 (Chevening House), in the words before paragraph (a), for “This Chapter” substitute “ In section 102 (benefit of accommodation treated as earnings) subsection (1A) (accommodation provided otherwise than pursuant to optional remuneration arrangements) ”.
- 13 (1) Section 102 (benefit of living accommodation treated as earnings) is amended as follows.
- (2) In subsection (1), for the words before paragraph (a) substitute “ This section applies if living accommodation to which this Chapter applies is provided in any period (“the taxable period”)— ”.

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- (3) The words in subsection (1) from “the cash equivalent” to the end become subsection (1A).
- (4) After subsection (1A) insert—
- “(1B) If the benefit of the accommodation is provided pursuant to optional remuneration arrangements—
- (a) subsection (1A) does not apply, and
- (b) the relevant amount is to be treated as earnings from the employment for that tax year.”
- (5) Omit subsection (2).
- (6) At the end insert—
- “(4) Section 103A indicates how the relevant amount is determined.”
- 14 In section 103 (method of calculating cash equivalent), in subsection (3), for “102(2)” substitute “ 102(1) ”.
- 15 After section 103 insert—

“103A Accommodation provided pursuant to optional remuneration arrangements: relevant amount

- (1) To find the relevant amount, first determine which (if any) is the greater of—
- (a) the modified cash equivalent of the benefit of the accommodation (see sections 105(2A) and 106(2A)), and
- (b) the amount foregone with respect to the benefit of the accommodation (see section 69B).
- (2) If the amount mentioned in subsection (1)(a) is greater than or equal to the amount mentioned in subsection (1)(b), the “relevant amount” is the cash equivalent of the benefit of the accommodation (see section 103).
- (3) Otherwise, the “relevant amount” is the difference between—
- (a) the amount foregone with respect to the benefit of the accommodation, and
- (b) the deductible amount (see subsections (7) and (8)).
- (4) If the amount foregone with respect to the benefit of the accommodation does not exceed the deductible amount, the relevant amount is taken to be zero.
- (5) For the purposes of subsections (1) and (2), assume that the modified cash equivalent of the benefit of the accommodation is zero if the condition in subsection (6) is met.
- (6) The condition is that the benefit of the accommodation would be exempt from income tax but for section 228A (exclusion of certain exemptions).
- (7) If the cost of providing the living accommodation does not exceed £75,000, the “deductible amount” means any sum made good, on or before 6 July following the tax year which contains the taxable period, by the employee to the person at whose cost the accommodation is provided that is properly attributable to its provision.

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- (8) If the cost of providing the living accommodation exceeds £75,000, the “deductible amount” means the total of amounts A and B where—
- A is equal to so much of MG as does not exceed RV;
 - B is the amount of any excess rent paid by the employee in respect of the taxable period;
- MG is the total of any sums made good, on or before 6 July following the tax year which contains the taxable period, by the employee to the person at whose cost the accommodation is provided that are properly attributable to its provision (in the taxable period);
- RV is the rental value of the accommodation for the taxable period as set out in section 105(3) or (4A)(b) (as applicable).
- (9) In subsection (8) “excess rent” means so much of the rent in respect of the taxable period paid—
- (a) by the employee,
 - (b) in respect of the accommodation,
 - (c) to the person providing it, and
 - (d) on or before 6 July following the tax year which contains the taxable period,
- as exceeds the rental value of the accommodation.
- (10) Where it is necessary for the purposes of subsection (1)(b) and (3)(a) to apportion an amount of earnings to the benefit of the accommodation in the taxable period, the apportionment is to be made on a just and reasonable basis.
- In this subsection “earnings” is to be interpreted in accordance with section 69B(5).”
- 16 (1) Section 105 (cash equivalent: cost of accommodation not over £75,000) is amended as follows.
- (2) In subsection (1), after “equivalent” insert “ or modified cash equivalent ”.
- (3) After subsection (2) insert—
- “(2A) The modified cash equivalent is equal to the rental value of the accommodation for the taxable period.”
- 17 (1) Section 106 (cash equivalent: cost of accommodation over £75,000) is amended as follows.
- (2) In subsection (1), after “equivalent” insert “ or modified cash equivalent ”.
- (3) After subsection (2) insert—
- “(2A) To calculate the modified cash equivalent—
- (a) apply steps 1 to 3 in subsection (2), as if the words “cash equivalent” in step 1 were “modified cash equivalent (for the purposes of section 105)”;
 - (b) calculate the modified cash equivalent by adding together the amounts calculated under steps 1 and 3 as applied by paragraph (a).”
- 18 (1) Section 109 (priority of Chapter 5 over Chapter 1 of Part 3 of the Act) is amended as follows.

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- (2) In subsection (1)(a), for “the cash equivalent of the benefit of living accommodation” substitute “ an amount ”.
- (3) In subsection (2), for “of the cash equivalent” substitute “ mentioned in subsection (1) (a) ”.
- (4) In subsection (4), in the words before paragraph (a), for “cash equivalent of the benefit of the living accommodation” substitute “ amount mentioned in subsection (1)(a) ”.
- 19 In section 114 (cars, vans and related benefits), in subsection (2)—
- (a) in paragraph (a), for “the cash equivalent of” substitute “ an amount in respect of ”;
 - (b) in paragraph (b), for “the cash equivalent of” substitute “ an amount in respect of ”;
 - (c) in paragraph (c), for “the cash equivalent of” substitute “ an amount in respect of ”;
 - (d) in paragraph (d), for “the cash equivalent of” substitute “ an amount in respect of ”.
- 20 (1) Section 119 (where alternative to benefit of car or van offered) is amended as follows.
- (2) For subsection (1) substitute—
- “(1) This section applies where in a tax year—
- (a) a car is made available as mentioned in section 114(1),
 - (b) the car's CO₂ emissions figure (see sections 133 to 138) does not exceed 75 grams per kilometre, and
 - (c) an alternative to the benefit of the car is offered.”
- (3) In the heading, before “car” insert “ low emission ”.
- 21 In section 120 (benefit of car treated as earnings), after subsection (3) insert—
- “(4) This section is subject to section 120A.”
- 22 After section 120 insert—

“120A Benefit of car treated as earnings: optional remuneration arrangements

- (1) Where this Chapter applies to a car in relation to a particular tax year and the conditions in subsection (3) are met—
 - (a) the relevant amount (see section 121A) is to be treated as earnings from the employment for that tax year, and
 - (b) section 120(1) does not apply.
- (2) In such a case (including a case where the relevant amount is nil) the employee is referred to in this Chapter as being chargeable to tax in respect of the car in the tax year.
- (3) The conditions are that—
 - (a) the car is made available to the employee or member of the employee's household pursuant to optional remuneration arrangements,

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- (b) the amount foregone (see section 69B) with respect to the benefit of the car for the tax year is greater than the modified cash equivalent of the benefit of the car for the tax year (see section 121B), and
- (c) the car's CO₂ emissions figure (see sections 133 to 138) exceeds 75 grams per kilometre.”

23 After section 121 insert—

“121A Optional remuneration arrangements: method of calculating relevant amount

- (1) To find the relevant amount for the purposes of section 120A, take the following steps—

Step 1 Take the amount foregone with respect to the benefit of the car for the tax year.

Step 2 Make any deduction under section 132A in respect of capital contributions made by the employee to the cost of the car or accessories.

The resulting amount is the provisional sum.

Step 3 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 “relevant amount” for the purposes of section 120A.

- (2) Where it is necessary, for the purpose of determining the “amount foregone” under step 1 of subsection (1), to apportion an amount of earnings to the benefit of the car for the tax year, the apportionment is to be made on a just and reasonable basis.

In this subsection “earnings” is to be interpreted in accordance with section 69B(5).

121B Meaning of “modified cash equivalent”

- (1) The “modified cash equivalent” of the benefit of a car for a tax year is calculated in accordance with the following steps (which must be read with subsections (2) to (4))—

Step 1 Find the price of the car in accordance with sections 122 to 124A.

Step 2 Add the price of any accessories which fall to be taken into account in accordance with sections 125 to 131.

The resulting amount is the interim sum.

Step 3 Find the appropriate percentage for the car for the year in accordance with sections 133 to 142.

Step 4 Multiply the interim sum by the appropriate percentage for the car for the year.

Step 5 Make any deduction under section 143 for any periods when the car was unavailable.

The resulting amount is the modified cash equivalent of the benefit of the car for the year.

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- (2) Where the car is shared the modified cash equivalent is calculated under this section in accordance with section 148.
 - (3) The modified cash equivalent of the benefit of a car for a tax year is to be taken to be zero if the condition in subsection (4) is met.
 - (4) The condition is that the benefit of the car for the tax year would be exempt from income tax but for section 228A (exclusion of certain exemptions).
 - (5) The method of calculation set out in subsection (1) is modified in the special cases dealt with in—
 - (a) section 146 (cars that run on road fuel gas), and
 - (b) section 147A (classic cars: optional remuneration arrangements).”
- 24 In section 126 (amounts taken into account in respect of accessories), in subsection (1), in the words before paragraph (a), after “121(1)” insert “ and step 2 of section 121B(1) ”.
- 25 (1) Section 131 (replacement accessories) is amended as follows.
- (2) In subsection (1), in the words before paragraph (a), after “applies” insert “ for the purposes of sections 121(1) and 121B(1) ”.
 - (3) After subsection (1) insert—
 - “(1A) In the application of this section for the purposes of section 121B(1)—
 - (a) references to the cash equivalent of the benefit of the car for the tax year are to be read as references to the modified cash equivalent of the benefit of the car for the tax year, and
 - (b) references to step 2 of section 121(1) are to be read as references to step 2 of section 121B(1).”
- 26 In section 132 (capital contributions by employee), in subsection (1), in the words before paragraph (a), after “applies” insert “ for the purposes of section 121(1) ”.
- 27 After section 132 insert—

“132A Capital contributions by employee: optional remuneration arrangements

- (1) This section applies for the purposes of section 121A(1) 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 under section 121B the modified cash equivalent of the benefit of the car.
- (2) A deduction is to be made from the amount carried forward from step 1 of section 121A(1)—
 - (a) for the tax year in which the contribution is made, and
 - (b) for all subsequent tax years in which the employee is chargeable to tax in respect of the car by virtue of section 120A.
- (3) The amount of the deduction allowed in any tax year is found by multiplying the capped amount by the appropriate percentage.

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- (4) In subsection (3) the reference to “the appropriate percentage” is to the appropriate percentage for the car for the tax year (determined in accordance with sections 133 to 142).
- (5) In this section “the capped amount” means 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 under section 121B the modified cash equivalent of the benefit of the car for the tax year in question, and
 - (b) £5,000.
- (6) This section is modified by section 147A (classic cars: optional remuneration arrangements).”
- 28 (1) Section 143 (deduction for periods when car unavailable) is amended as follows.
- (2) Before subsection (1) insert—
- “(A1) This section has effect for the purposes of—
- (a) section 121(1) (method of calculating the cash equivalent of the benefit of a car), and
 - (b) section 121B(1) (optional remuneration arrangements: meaning of “modified cash equivalent”).”
- (3) In subsection (1), after “121(1)” insert “ or (as the case may be) step 4 of section 121B(1) ”.
- (4) In subsection (3), in the definition of “A”, at the end insert “ of section 121(1) or (as the case may be) step 4 of section 121B(1) ”.
- 29 (1) Section 144 (deduction for payments for private use) is amended as follows.
- (2) In subsection (1), for “calculated under step 7 of section 121(1)” substitute “ (see subsection (1A)) ”.
- (3) After subsection (1) insert
- “(1A) In this section “the provisional sum” means the provisional sum calculated under—
- (a) step 7 of section 121(1) (method of calculating the cash equivalent of the benefit of a car), or
 - (b) step 2 of section 121A(1) (optional remuneration arrangements: method of calculating relevant amount).”
- (4) In subsection (2), for the words from “so that” to the end substitute “so that—
- (a) in a case within subsection (1A)(a), the cash equivalent of the benefit of the car for the year is nil, or
 - (b) in a case within subsection (1A)(b), the relevant amount for the purposes of section 120A is nil.”
- (5) In subsection (3)—

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- (a) for “In any other case” substitute “ Where subsection (2) does not apply,” and
 - (b) for the words from “give” to the end substitute “give—
 - (a) in a case within subsection (1A)(a), the cash equivalent of the benefit of the car for the year, or
 - (b) in a case within subsection (1A)(b), the relevant amount for the purposes of section 120A.”
- 30 (1) Section 145 (modification of provisions where car temporarily replaced) is amended as follows.
- (2) In subsection (1), for paragraph (c) substitute—
- “(c) the employee is chargeable to tax—
 - (i) in respect of both the normal car and the replacement car by virtue of section 120, or
 - (ii) in respect of both the normal car and the replacement car by virtue of section 120A, and”.
- (3) After subsection (5) insert—
- “(6) Where this section applies by virtue of subsection (1)(c)(ii), the condition in subsection (5)(b) is to be taken to be met if it would be met on the assumption that the cash equivalent of the benefit of the cars in question is to be calculated under section 121(1).”
- 31 (1) Section 146 (cars that run on road fuel gas) is amended as follows.
- (2) In subsection (1), in the words before paragraph (a), after “applies” insert “ for the purposes of sections 121 and 121B ”.
- (3) In subsection (2), after “121(1)” insert “ or (as the case may be) step 1 of section 121B(1) ”.
- 32 After section 147 insert—

“147A Classic cars: optional remuneration arrangements

- (1) This section applies in calculating the relevant amount in respect of a car for a tax year for the purposes of section 120A (benefit of car treated as earnings: optional remuneration arrangements) 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 specified amount (see subsection (4)).
- (2) In calculating the modified cash equivalent of the benefit of the car, for the interim sum calculated under step 2 of section 121B(1) substitute the market value of the car for the tax year in question.
- (3) Section 132A (capital contributions by employee: optional remuneration arrangements) has effect as if—
 - (a) in subsection (1)(b) the reference to calculating under section 121B the modified cash equivalent of the benefit of the car were to determining the market value of the car, and

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- (b) in subsection (5)(a)(ii) the reference to calculating under section 121B the modified cash equivalent of the benefit of the car for the tax year in question were to determining the market value of the car for the tax year in question.

- (4) The “specified amount” is found as follows.

Step 1 Find what would be the interim sum under step 2 of section 121B(1) (if subsection (2) of this section did not have effect).

Step 2 (Assuming for this purpose that the reference in section 132(2) to step 2 of section 121(1) includes a reference to step 1 of this subsection) make any deduction under section 132 for capital contributions made by the employee to the cost of the car or accessories.

The resulting amount is the specified amount.

- (5) The market value of a car for a tax year is to be determined in accordance with section 147(3) and (4).”

- 33 (1) Section 148 (reduction of cash equivalent where car is shared) is amended as follows.

- (2) In subsection (1)—

- (a) in the words before paragraph (a), after “applies” insert “ for the purposes of sections 121 and 121B ”;
- (b) in the words after paragraph (c), for “section 120” substitute “ sections 120 and 120A ”.

- (3) For subsection (2) substitute—

“(2) The amount to be treated as earnings in respect of the benefit of the car is to be calculated separately for each of those employees for that tax year (whether under section 120 or section 120A).”

- (4) In subsection (2A), at the beginning insert “ In the case of an employee chargeable to tax in respect of the car by virtue of section 120 ”.

- (5) After subsection (2A) insert—

“(2B) In the case of an employee chargeable to tax in respect of the car by virtue of section 120A, the modified cash equivalent (as determined under section 121B(1)) is to be reduced on a just and reasonable basis.”

- 34 In section 149 (benefit of car fuel treated as earnings), in subsection (1)(b), at the end insert “ or 120A ”.

- 35 After section 149 insert—

“149A Benefit of car fuel treated as earnings: optional remuneration arrangements

- (1) This section applies if—

- (a) fuel is provided for a car in a tax year by reason of an employee's employment,
- (b) the employee is chargeable to tax in respect of the car in the tax year by virtue of section 120 or 120A, and
- (c) the fuel is provided pursuant to optional remuneration arrangements.

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- (2) If the condition in subsection (3) is met—
- (a) the amount foregone with respect to the benefit of the fuel (see section 69B) is to be treated as earnings from the employment for the tax year, and
 - (b) section 149(1) does not apply.
- (3) The condition mentioned in subsection (2) is that the amount foregone with respect to the benefit of the fuel is greater than the cash equivalent of the benefit of the fuel.
- (4) For the purposes of subsection (3), assume that the cash equivalent of the benefit of the fuel is zero if the condition in subsection (5) is met.
- (5) The condition mentioned in subsection (4) is that the benefit of the fuel would be exempt from income tax but for section 228A (exclusion of certain exemptions).
- (6) References in this section to fuel do not include any facility or means for supplying electrical energy or any energy for a car which cannot in any circumstances emit CO₂ by being driven.
- (7) Where it is necessary for the purposes of subsections (2)(a) and (3) to apportion an amount of earnings to the benefit of the fuel in the tax year, the apportionment is to be made on a just and reasonable basis.

In this subsection “earnings” is to be interpreted in accordance with section 69B(5).”

36 In section 154 (benefit of van treated as earnings), after subsection (3) insert—

“(4) This section is subject to section 154A.”

37 After section 154 insert—

“154A Benefit of van treated as earnings: optional remuneration arrangements

- (1) Where this Chapter applies to a van in relation to a particular tax year and the conditions in subsection (2) are met—
- (a) the relevant amount is to be treated as earnings from the employment for that tax year, and
 - (b) section 154(1) does not apply.

In such a case (including a case where the relevant amount is nil) the employee is referred to in this Chapter as being chargeable to tax in respect of the van in the tax year.

- (2) The conditions are that—
- (a) the van is made available to the employee or member of the employee's household pursuant to optional remuneration arrangements, and
 - (b) the amount foregone with respect to the benefit of the van (see section 69B) is greater than the modified cash equivalent of the benefit of the van.

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- (3) To find the relevant amount for the purposes of this section take the following steps—

Step 1 Take the amount foregone with respect to the benefit of the van for the tax year.

Step 2 Make any deduction under section 158A in respect of payments by the employee for the private use of the van.

The result is the “relevant amount”.

- (4) In subsection (2) the reference to the “modified cash equivalent” is to the amount which would be the cash equivalent of the benefit of the van (after any reductions under section 156 or 157) if this Chapter had effect the following modifications—

- (a) omit paragraph (c) of section 155(8);
- (b) omit section 158;
- (c) in section 159(2)(b), for “155, 157 and 158” substitute “ 155 and 157 ”.

- (5) For the purposes of subsection (2) assume that the modified cash equivalent of the benefit of the van is zero if the condition in subsection (6) is met.

- (6) The condition is that the benefit of the van would be exempt from income tax but for section 228A (exclusion of certain exemptions).

- (7) Where it is necessary for the purposes of subsection (2)(b) and step 1 of subsection (3) to apportion an amount of earnings to the benefit of the van in the tax year, the apportionment is to be made on a just and reasonable basis.

In this subsection “earnings” is to be interpreted in accordance with section 69B(5).”

38 After section 158 insert—

“158A Van provided pursuant to optional remuneration arrangements: private use

- (1) In calculating the relevant amount under section 154A in relation to a van and a tax year, a deduction is to be made under step 2 of subsection (3) of that section if, as a condition of the van being available for the employee's private use, the employee—

- (a) is required in that year to pay (whether by way of deduction from earnings or otherwise) an amount of money for that use, and
- (b) pays that amount on or before 6 July following that year.

- (2) The amount of the deduction is—

- (a) the amount paid as mentioned in subsection (1)(b) by the employee in respect of the year, or
- (b) if less, the amount that would reduce the relevant amount to nil.

- (3) In this section the 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.”

39 (1) Section 160 (benefit of van fuel treated as earnings) is amended as follows.

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- (2) In subsection (1)(b), after “154” insert “ or 154A ”.
- (3) At the end insert—
- “(5) This section is subject to section 160A.”
- 40 After section 160 insert—
- “160A Benefit of van fuel treated as earnings: optional remuneration arrangements**
- (1) This section applies if—
- (a) fuel is provided for a van in a tax year by reason of an employee's employment,
 - (b) the benefit of the fuel is provided pursuant to optional remuneration arrangements, and
 - (c) the employee is chargeable to tax in respect of the van in the tax year by virtue of section 154 or 154A.
- (2) If the condition in subsection (3) is met—
- (a) the amount foregone with respect to the benefit of the fuel (see section 69B) is to be treated as earnings from the employment for that year, and
 - (b) section 160(1) does not apply.
- (3) The condition mentioned in subsection (2) is that the amount foregone with respect to the benefit of the fuel is greater than the cash equivalent of the benefit of the fuel.
- (4) For the purposes of subsection (3), assume that the cash equivalent of the benefit of the fuel is zero if the condition mentioned in subsection (5) is met.
- (5) The condition mentioned in subsection (4) is that the benefit of the fuel would be exempt from income tax but for section 228A (exclusion of certain exemptions).
- (6) Where it is necessary for the purposes of subsections (2)(a) and (3) to apportion an amount of earnings to the benefit of the fuel in the tax year, the apportionment is to be made on a just and reasonable basis.
- In this subsection “earnings” is to be interpreted in accordance with section 69B(5).”
- 41 In section 170 (orders etc relating to Chapter 6 of Part 3), in subsection (1)—
- (a) after paragraph (c) insert—
 - “(ca) section 132A(5)(b) (corresponding provision with respect to optional remuneration arrangements),”;
 - (b) omit “or” at the end of paragraph (d);
 - (c) after paragraph (e) insert “, or
 - (f) section 147A(1)(b) (classic car: minimum value: optional remuneration arrangements).”
- 42 In section 173 (loans to which Chapter 7 applies), in subsection (1A)(b), for the words from “provide” to the end substitute “ make provision about amounts

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which, in the case of a taxable cheap loan, are to be treated as earnings in certain circumstances”.

43 In section 175 (benefit of taxable cheap loan treated as earnings), for subsection (1) substitute—

“(A1) This section applies where an employment-related loan is a taxable cheap loan in relation to a tax year.

(1) The cash equivalent of the benefit of the loan is to be treated as earnings from the employee's employment for the tax year.

(1A) If the benefit of the loan is provided pursuant to optional remuneration arrangements and the condition in subsection (1B) is met—

- (a) subsection (1) does not apply, and
- (b) the relevant amount (see section 175A) is to be treated as earnings from the employee's employment for the tax year.

(1B) The condition is that the amount foregone with respect to the benefit of the loan for the tax year (see section 69B) is greater than the modified cash equivalent of the benefit of the loan for the tax year (see section 175A).”

44 (1) After section 175 insert—

“175A Optional remuneration arrangements: “relevant amount” and “modified cash equivalent”

(1) In section 175(1A) “the relevant amount”, in relation to a loan the benefit of which is provided pursuant to optional remuneration arrangements, means the difference between—

- (a) the amount foregone (see section 69B) with respect to the benefit of the loan, and
- (b) the amount of interest (if any) actually paid on the loan for the tax year.

(2) For the purposes of section 175 the “modified cash equivalent” of the benefit of an employment-related loan for a tax year is the amount which would be the cash equivalent if section 175(3) had effect with the following modifications—

- (a) in the opening words, omit “the difference between”;
- (b) omit paragraph (b) and the “and” before it.

(3) But the modified cash equivalent of the benefit of the loan is to be taken to be zero if the condition in subsection (4) is met.

(4) The condition is that the benefit of the loan for the tax year would be exempt from income tax but for section 228A (exclusion of certain exemptions).

(5) For the purpose of calculating the modified cash equivalent of the benefit of an employment-related loan, assume that section 186(2) (replacement loans: aggregation) and section 187(3) (aggregation of loans by close company to a director) do not have effect.

(6) Where it is necessary for the purposes of section 175(1B) and subsection (1) of this section to apportion an amount of earnings to the benefit of the loan

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for the tax year, the apportionment is to be made on a just and reasonable basis.

In this subsection “earnings” is to be interpreted in accordance with section 69B(5).”

45 In section 180 (threshold for benefit of loan to be treated as earnings), in subsection (1), for the words before paragraph (a) substitute “ Section 175 does not have effect in relation to an employee and a tax year— ”.

46 In section 184 (interest treated as paid), in subsection (1), for the words from “the cash equivalent” to the end substitute “—

(a) 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), or

(b) the relevant amount in respect of the benefit of a taxable cheap loan is treated as earnings from an employee's employment for a tax year under section 175(1A).”

47 In section 202 (excluded benefits), after subsection (1) insert—

“(1A) But a benefit provided to an employee or member of an employee's family or household is to be taken not to be an excluded benefit by virtue of subsection (1)(c) so far as it is provided under optional remuneration arrangements.”

48 After section 203 insert—

“203A Employment-related benefit provided under optional remuneration arrangements

(1) Where an employment-related benefit is provided pursuant to optional remuneration arrangements—

(a) the relevant amount is to be treated as earnings from the employment for the tax year in which the benefit is provided, and

(b) section 203(1) does not apply.

(2) To find the relevant amount, first determine which (if any) is the greater of—

(a) the cost of the employment-related benefit, and

(b) the amount foregone with respect to the benefit (see section 69B).

(3) If the cost of the employment-related benefit is greater than or equal to the amount foregone, the “relevant amount” is the cash equivalent (see section 203(2)).

(4) Otherwise, the “relevant amount” is—

(a) the amount foregone with respect to the employment-related benefit, less

(b) any part of the cost of the benefit made good by the employee, to the persons providing the benefit, on or before 6 July following the tax year in which it is provided.

(5) For the purposes of subsections (2) and (3), assume that the cost of the employment-related benefit is zero if the condition in subsection (6) is met.

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- (6) The condition is that the employment-related benefit would be exempt from income tax but for section 228A (exclusion of certain exemptions).
- (7) Where it is necessary for the purposes of subsections (2)(b) and (4) to apportion an amount of earnings to the benefit provided in the tax year, the apportionment is to be made on a just and reasonable basis.

In this subsection “earnings” is to be interpreted in accordance with section 69B(5).”

Exemptions

49 In Part 4 of ITEPA 2003 (employment income: exemptions), after section 228 insert

—

“228A General exclusion from exemptions: optional remuneration arrangements

- (1) A relevant exemption does not apply (whether to prevent liability to income tax from arising or to reduce liability to income tax) in respect of a benefit or facility so far as the benefit or facility is provided pursuant to optional remuneration arrangements.
- (2) For the purposes of subsection (1) it does not matter whether the relevant exemption would (apart from that subsection) have effect as an employment income exemption or an earnings-only exemption.
- (3) For the purposes of this section an exemption conferred by this Part is a “relevant exemption” unless it is—
 - (a) a special case exemption (see subsection (4)), or
 - (b) an excluded exemption (see subsection (5)).
- (4) “Special case exemption” means an exemption conferred by any of the following provisions—
 - (a) section 289A (exemption for paid or reimbursed expenses);
 - (b) section 289D (exemption for other benefits);
 - (c) section 308B (independent advice in respect of conversions and transfers of pension scheme benefits);
 - (d) section 312A (limited exemption for qualifying bonus payments);
 - (e) section 317 (subsidised meals);
 - (f) section 320C (recommended medical treatment);
 - (g) section 323A (trivial benefits provided by employers).
- (5) “Excluded exemption” means an exemption conferred by any of the following provisions—
 - (a) section 239 (payments and benefits connected with taxable cars and vans and exempt heavy goods vehicles);
 - (b) section 244 (cycles and cyclist's safety equipment);
 - (c) section 266(2)(c) (non-cash voucher regarding entitlement to exemption within section 244);
 - (d) section 270A (limited exemption for qualifying childcare vouchers);

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- (e) section 307 (death or retirement provision), so far as relating to provision made for retirement benefits;
 - (f) section 308 (exemption of contribution to registered pension scheme);
 - (g) section 308A (exemption of contributions to overseas pension scheme);
 - (h) section 308C (provision of pensions advice);
 - (i) section 309 (limited exemptions for statutory redundancy payments);
 - (j) section 310 (counselling and other outplacement services);
 - (k) section 311 (retraining courses);
 - (l) section 318 (childcare: exemption for employer-provided care);
 - (m) section 318A (childcare: limited exemption for other care).
- (6) In subsection (5) “retirement benefit” has the meaning that would be given by subsection (2) of section 307 if “or death” were omitted in both places where it occurs in that subsection.
- (7) In this section “benefit or facility” includes anything which constitutes employment income or in respect of which employment income is treated as arising to the employee (regardless of its form and the manner of providing it).
- (8) In this section “optional remuneration arrangements” has the same meaning as in the benefits code (see section 69A).
- (9) The Treasury may by order amend subsections (4) and (5) by adding or removing an exemption conferred by Part 4.”

Other amendments

- 50 (1) Section 19 of ITEPA 2003 (receipt of non-money earnings) is amended as follows.
- (2) In subsection (2), after “94” insert “ or 94A ”.
- (3) In subsection (3), after “87” insert “ or 87A ”.
- 51 In section 95 of ITEPA 2003 (disregard for money, goods or services obtained), in subsection (1), in the words before paragraph (a), after “credit-token” insert “ or the relevant amount in respect of a cash voucher, a non-cash voucher or a credit-token ”.
- 52 (1) In section 236 of ITEPA 2003 (interpretation of Chapter 2 of Part 4: exemptions for mileage allowance relief etc), in subsection (2)(b)—
- (a) in the words before sub-paragraph (i), for “the cash equivalent of” substitute “ an amount in respect of ”;
 - (b) in sub-paragraph (i), after “120” insert “ or 120A ”;
 - (c) in sub-paragraph (ii), after “154” insert “ or 154A ”;
 - (d) in sub-paragraph (iii), after “203” insert “ or 203A ”.
- (2) In section 236 of ITEPA 2003 (interpretation of Chapter 2 of Part 4), in subsection (2) (c), for “the cash equivalent of” substitute “ an amount in respect of ”.
- 53 (1) Section 239 of ITEPA 2003 (payments and benefits connected with taxable cars and vans etc) is amended as follows.

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- (2) In subsection (3)—
- (a) after “149” insert “ or 149A ”;
 - (b) after “160” insert “ or 160A ”.
- (3) In subsection (6), for “the cash equivalent of” substitute “ an amount (whether the cash equivalent or the relevant amount) in respect of ”.
- 54 In section 362 of ITEPA 2003 (deductions where non-cash voucher provided), in subsection (1)(a), for “87(1) (cash equivalent)” substitute “ 87(1) or 87A(1) (amount in respect ”.
- 55 In section 318A of ITEPA 2003 (childcare: limited exemption for other care), in subsection (1)(b), for “cash equivalent of the benefit” substitute “ amount treated as earnings in respect of the benefit by virtue of section 203(1) or 203A(1) (as the case may be) ”.
- 56 In section 363 of ITEPA 2003 (deductions where credit-token provided), in subsection (1)(a), for “94(1) (cash equivalent)” substitute “ 94(1) or 94A(1) (amount in respect ”.
- 57 In section 693 of ITEPA 2003 (cash vouchers), in subsection (1), for “section 81(2)” substitute “ subsection (2) of, or (as the case may be) referred to in subsection (1A) (b) of, section 81 ”.
- 58 In section 694 of ITEPA 2003 (non-cash vouchers), in subsection (1), after “87(2)” insert “ or 87A(4) ”.
- 59 In section 695 of ITEPA 2003 (benefit of credit-token treated as earnings), after subsection (1) insert—
- “(1A) If the credit-token is provided pursuant to optional remuneration arrangements, the reference in subsection (1) to the amount ascertained under section 94(2) is to be read as a reference to what that amount would be were the credit-token provided otherwise than pursuant to optional remuneration arrangements.
- In this subsection “optional remuneration arrangements” is to be interpreted in accordance with section 69A.”
- 60 In Part 2 of Schedule 1 to ITEPA 2003 (index of defined expressions), at the appropriate places insert—
-
- “amount foregone (in relation to a benefit) (in the benefits section 69B” code)
-
- “optional remuneration arrangements (in the benefits code) section 69A”
-
- 61 In Part 2 of Schedule 1 to ITEPA 2003 (index of defined expressions), in the entry relating to “the taxable period”, for “102(2)” substitute “ 102(1) ”.

Commencement and transitional provision

- 62 (1) The amendments made by paragraphs 1, 52(1)(a) and (2) and 60 of this Schedule have effect for the tax year 2017-18 and subsequent tax years.

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- (2) The amendments made by paragraphs 2 to 51, 52(1)(b) to (d), 53 to 59 and 61 of this Schedule have effect for the tax year 2017-18 and subsequent tax years.
- (3) In relation to a benefit provided pursuant to pre-6 April 2017 arrangements, the amendment made by paragraph 49 has effect for the tax year 2018-19 and subsequent tax years.
- (4) In relation to a benefit provided pursuant to pre-6 April 2017 arrangements, the amendments made by paragraphs 7 to 41, 52(1)(b) and (c), 53 and 61 (and paragraph 2, so far as relating to those paragraphs) have effect for the tax year 2021-22 and subsequent tax years.
- (5) In relation to a benefit provided pursuant to pre-6 April 2017 arrangements, the amendments made by paragraphs 3 to 6, 42 to 48, 50, 51, 52(1)(d) and 54 to 59 (and paragraph 2, so far as relating to those paragraphs) have effect for the tax year 2018-19 and subsequent tax years (but see sub-paragraph (10)).
- (6) If any terms of a pre-6 April 2017 arrangement which relate to the provision of a particular benefit are varied on or after 6 April 2017, that benefit is treated, with effect from the beginning of the day on which the variation takes effect, as not being provided pursuant to pre-6 April 2017 arrangements for the purposes of this paragraph.
- (7) If pre-6 April 2017 arrangements are renewed on or after 6 April 2017, this paragraph has effect as if those arrangements were entered into at the beginning of the day on which the renewal takes effect (and are distinct from the arrangements existing immediately before that day).
- (8) In sub-paragraph (6) the reference to variation does not include any variation which is required in connection with accidental damage to a benefit provided under the arrangements, or otherwise for reasons beyond the control of the parties to the arrangements.
- (9) In sub-paragraph (6) the reference to variation does not include any variation which occurs in connection with a person's entitlement to statutory sick pay, statutory maternity pay, statutory adoption pay, statutory paternity pay or statutory shared parental pay.
- (10) In relation to relevant school fee arrangements which were entered into before 6 April 2017—
 - (a) sub-paragraph (5) is to be read as if it did not include a reference to paragraph 48;
 - (b) the amendment made by paragraph 48 has effect for the tax year 2021-22 and subsequent tax years.
- (11) Relevant school fee arrangements to which an employee is a party (“the continuing arrangements”) are to be regarded for the purposes of this paragraph as the same arrangements as any relevant school fee arrangements to which the employee was previously a party (“the previous arrangements”) if the continuing arrangements and the previous arrangements relate—
 - (a) to employment with the same employer,
 - (b) to the same school, and
 - (c) to school fees in respect of the same child.

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- (12) Sub-paragraphs (6) and (7) do not have effect in relation to relevant school fee arrangements.
- (13) If a non-cash voucher is provided under pre-6 April 2017 arrangements and is used to obtain anything (whether money, goods or services) that is provided on or after 6 April 2018 (“delayed benefits”), so much of the benefit of the voucher as it is reasonable to regard as being applied to obtain the delayed benefits is to be treated for the purposes of this paragraph as not having been provided pursuant to pre-6 April 2017 arrangements.
- (14) For the purposes of this paragraph arrangements are “relevant school fee arrangements” if the benefit mentioned in section 69A(1) of ITEPA 2003 consists in the payment or reimbursement (in whole or in part) of, or a waiver or reduction of, school fees.
- (15) In this paragraph—
- “arrangements” means optional remuneration arrangements (as defined in section 69A of ITEPA 2003);
 - “benefit” includes any benefit or facility, regardless of the manner of providing it;
 - “non-cash voucher” has the same meaning as in Chapter 4 of Part 3 of ITEPA 2003;
 - “pre-6 April 2017 arrangements” means arrangements which are entered into before 6 April 2017.

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