

Employee Benefits & Expenses

Compliance and Tax Planning

2018-19 Edition

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D6 Dirty money

According to HMRC, “dirty money is the term given to payments made in some industries to employees who work in exceptionally dirty or unpleasant conditions or in confined spaces, for example in the ship repairing industry”.

Such payments are taxable as ordinary earnings.

Law: ITEPA 2003, s. 62

Guidance: EIM 01080

D7 Disabled employees – cars

See also: **Cars and vans (definitions and overview); Disabled employees – equipment and services; Disabled employees – travel; Chapter 8**

D7.1 Introduction

Several special measures exist in relation to cars driven by disabled employees. These measures do not seek to give a special advantage to disabled drivers, but are designed to ensure that such drivers are not penalised by the tax system as an indirect result of their disability.

D7.2 Automatic cars: overview

A person with a disability may be unable to drive a manual car but able to drive an automatic. From the tax point of view, being forced to drive an automatic may have two disadvantages:

- the CO₂ emissions figure may be higher; and
- the list price may likewise be somewhat higher.

The tax rules seek to avoid penalising a disabled person who, if he or she wishes to drive a car at all, is forced to drive a car with automatic transmission.

The statutory definition is that a car is said to have 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–
 - a clutch pedal, or
 - a lever which the driver may operate manually.”

For cases of doubt, HMRC have given the following guidance:

“HMRC accepts that most cars which the layman would consider to be an automatic are included within this definition. These have gearboxes which have the normal automatic functions

(Drive, Park, Reverse, Neutral and the facility to prevent the gearbox changing up above a specified gear, usually achieved using additional numbered positions).

However, we do not accept that a gearbox which also has a facility for the driver to upshift or downshift one gear at a time is within this definition. The lever may be in the normal place for a gear lever or may take the form of paddles behind the steering wheel. Such gearboxes are often known as “tiptronic” gearboxes, but the word tiptronic is actually a Porsche trademark; other manufacturers produce gearboxes which have similar features but different names. The determining factor is the lever-controlled upshift or downshift ability, not the name.”

Law: ITEPA 2003, s. 124A, 138

Guidance: EIM 24905

D7.3 Automatic cars: CO₂ adjustment

An adjustment may be made to the CO₂ emissions figure that would otherwise apply where the following conditions are met:

- the car is an automatic;
- at some time in the year when the car is made available to a particular employee, that employee holds a disabled person’s badge (but see below);
- that employee can drive an automatic car but, because of the disability, is unable to drive a manual one; and
- the car is provided for use by the employee (whether or not it is also provided for use by a member of his family or household).

The last condition is achieved by the wording of s. 138(5) (which may be contrasted with the wording in s. 116(1)) and the intention was confirmed in para. 520 when the *Explanatory Notes* to ITEPA 2003 were published.

In such a case, the CO₂ figure for the equivalent manual car is, if lower, used instead of that for the automatic. For these purposes, an equivalent manual car is one registered around the same time as the automatic vehicle and which, apart from being manual rather than automatic, is the closest available variant of the make and model of the automatic car.

Law: ITEPA 2003, s. 138

Guidance: EIM 24900

Drivers with a significant disability but no disabled person’s badge

There may be individuals who have a disability which genuinely means that they cannot drive a manual car but who do not have a disabled

person's badge. HMRC are in practice prepared to give a concessionary treatment in certain circumstances, as their guidance explains:

“The disabled person's badge is based on ability to walk, so any lower body disability sufficient to prevent a person driving a car with manual transmission will qualify them for the badge. A person with a lower body disability which is not sufficient to qualify them for a badge will not therefore qualify as an exceptional case within the meaning of these paragraphs.

However, a person with an upper body disability (e.g. a back or arm disability) may be within these paragraphs. Such a person may be able to walk sufficiently well that they do not qualify for a badge, but still be physically unable to drive a car with manual transmission.

If you receive representations that a person with an upper body disability ought to be allowed to take advantage of the reduced CO₂ emissions figure allowed by this section, you can allow them ... to take advantage of this section as though they had a disabled person's badge if you are certain that all the other conditions are met.”

Law: ITEPA 2003, s. 138

Guidance: EIM 24900

D7.4 *Automatic cars: list price*

The taxable benefit of a company car is based in part on the list price of the vehicle. An automatic car will sometimes have a higher list price than an equivalent manual vehicle. As a result, the tax charge for the automatic car will be somewhat higher.

A modest relaxation of the tax rules applies where the person to whom the car is made available holds a disabled person's badge (see below) and where the individual can drive an automatic car but would be unable to drive a manual one.

Where these conditions are met, the price of the “equivalent manual car” (if lower) is used in lieu of the price of the actual automatic vehicle. There is (of course) no question of imposing a higher charge if, exceptionally, the list price of the equivalent manual car is higher. An equivalent manual car is defined as one that is registered at or about the same time as the automatic car and that, apart from the issue of automatic transmission, is the closest variant available of the make and model of the automatic car.

In relation to higher emissions (see **D7.3**), the requirement to have a disabled person's badge is in certain circumstances relaxed. This relaxation is apparently *not* applied, however, for the rules concerning the list price of the car. HMRC specifically state that “drivers without a

blue badge are not entitled to use the price of an equivalent manual car”.

Law: ITEPA 2003, s. 124A

Guidance: EIM 24180, 24900

D7.5 Cars used for commuting

An exemption applies where a company car is made available to a disabled employee, and where certain conditions are met. The exemption applies to the company car benefit itself, to any fuel benefit charge and to the payment or reimbursement of any expenses incurred in connection with the car.

For these purposes, a disabled employee is one who has a physical or mental impairment with a substantial and long-term adverse effect on his or her ability to carry out normal day to day activities.

The first condition is that the car must have been adapted for the employee’s special needs, or else it is an automatic car that is provided to an employee who is unable to drive a car other than an automatic.

The second condition is that the car is made available on the basis that it must only be used for (broadly) business travel or ordinary commuting. More specifically, it may be used for the employee’s own business travel or for transport for the employee that is for the purpose of:

- ordinary commuting or travel between any two places that is for practical purposes substantially ordinary commuting, or
- travel to a place the expenses of travelling to which would be within one of the training exemption provisions if the employer paid them.

The final condition is that the car must in fact be used in accordance with those terms.

Law: ITEPA 2003, s. 246(4), 247, 266(1), 267(2)

Guidance: EIM 23660

Related exemption for other transport

The exemption above is extended to cover vehicles that are not company cars, where a disabled employee only uses the vehicle for ordinary commuting or for a journey that is substantially ordinary commuting. This exemption applies both to the direct provision of transport and to the reimbursement or payment of qualifying transport costs.

Law: ITEPA 2003, s. 246

Guidance: EIM 23655

D7.6 *Equipment added to enable a disabled person to use a car*

Certain equipment, designed solely for use by a chronically sick or disabled person, is ignored when considering the value of a company car's accessories. This is considered in greater depth at **8.7.5** below.

Law: ITEPA 2003, s. 125, 172

Guidance: EIM 24275

D8 *Disabled employees – equipment and services*

See also: **Accommodation, supplies and services; Disabled employees – cars; Disabled employees – travel; Guide dogs**

Certain benefits, in the form of equipment or services, may be provided to disabled employees without triggering a tax liability.

Many of these relate to cars, and are considered separately at **D7** immediately above.

See also the rules allowing a tax deduction for **Guide dogs**.

Accommodation, supplies and services

The provision of accommodation, supplies and services for carrying out employment duties is exempt – for all employees – where particular conditions are met (see **A1**). A key condition, however, is that any private use must be insignificant.

A statutory relaxation is given in relation to disabled employees, such that no liability arises where the following five conditions are met:

1. The benefit is provided to a disabled employee.
2. The main purpose of providing the benefit is to enable the employee to perform the duties of his employment.
3. The benefit consists in the provision of a hearing aid or other equipment, services or facilities, excepting any excluded benefit (see below).
4. The benefit is provided under, or within the terms of the provisions of, the *Disability Discrimination Act 1995*, the *Access to Work* programme, or any other statutory provision or arrangements, whether or not the employer has any legal duty to provide the benefit.
5. The benefit is made available to the employer's employees generally on similar terms (which include terms identical to Conditions 1 to 4).

Certain benefits are excluded (including major works to living accommodation – see, more generally, under **Accommodation, supplies and services** above). HMRC guidance in relation to the exemption reads as follows:

“Normally if an employee also used the equipment or services for significant private use this would represent a taxable benefit but these Regulations ensure that no tax charge arises on this benefit when provided to an employee with a disability, even if the employee uses the equipment both in work and outside work (for example, a wheelchair or a hearing aid), and private use is significant.”

Law: ITEPA 2003, s. 316; SI 2002/1596

Guidance: EIM 21846

D9 Disabled employees – travel

See also: **Accommodation, supplies and services; Disabled employees – cars; Disabled employees – equipment and services; Guide dogs**

A statutory exemption prevents a tax charge where an employer funds or provides transport for a disabled employee. The exemption includes cases where the employer reimburses costs incurred by the employee.

The transport must be “for the purpose of ordinary commuting or travel between any two places that is for practical purposes substantially ordinary commuting”. These terms are considered in depth in **Chapter 13 (Travel and subsistence)**. However, if a car is made available to a disabled employee then the exemption does not apply as the special rules for cars must instead be considered (see **Disabled employees – cars**).

For the purposes of the more general travel exemption, there is a statutory definition of “disabled employee”, the term referring to “an employee who has a physical or mental impairment with a substantial and long-term adverse effect on the employee’s ability to carry out normal day to day activities”. According to HMRC:

“An employee who is able to carry out normal day-to-day activities at the time an employer is providing the employee with the means of travelling between home and work, or is reimbursing the cost of their home to work travel, will not meet the terms of the section 246 definition.”

(See EIM 10080 for a fuller HMRC explanation of when the employee will, or will not, be treated as disabled for these purposes.)

Where the exemption applies, there will be no NIC charge either. As the HMRC guidance puts it, the effect of the NIC rules is to retain “full tax and NICs alignment on the treatment of travel payments (including vouchers) to disabled employees”.

Law: ITEPA 2003, s. 246; SI 2001/1004, Sch. 3, Pt. 5, para. 5(a), Pt. 10, para. 8(c)

Guidance: EIM 10080; NIM 06390

Travel buddies

A disabled employee may need to be accompanied if going on holiday. No tax charge will arise if an employee of a specialist support company accompanies the disabled employee. HMRC have explained this as follows:

“If a disabled person needs help to go on holiday and an employee of a company which provides support and/or care in these circumstances accompanies the disabled person on holiday to help with everyday needs, no benefit arises to the employee in respect of the costs of travel and/or accommodation.

The employee is not on holiday but is working to support the disabled person on holiday. This person is performing the duties of employment in a caring capacity. The carer is sometimes referred to as a ‘travel buddy’.”

Guidance: EIM 21842

D10 Disclosure and barring service

See also: Criminal record checks

Various fees relating to disclosure and barring (“DBS”) checks, paid under specified provisions of the *Police Act 1997*, are disregarded in the calculation of earnings for NIC purposes.

In a Tax Information and Impact Note issued in May 2013, *Tax relief for fees paid to the Disclosure and Barring Service*, HMRC advised that new secondary legislation:

“will provide relief from income tax where an employer pays or reimburses the fee for subscribing to the DBS update service, or fees for criminal records certificates when the subscription to the update service is active.”

In reality, the relevant legislation appears to be at s. 326A, the scope of which was expanded from 10 June 2013.

Law: ITEPA 2003, s. 326A; SI 2001/1004, Sch. 3, Pt. 10, para. 23

Guidance: NIM 05681

D11 Discounts

See also: In-house benefits

An employer may allow an employee to buy goods from the employer at a discount.

If the employee pays less than the second hand value of the goods then the difference will be earnings. For example, an employer may manufacture widgets and sell them for £50. If the employee can buy them for just £10, and can sell them on eBay for £22, then the £12 will

be taxable as earnings (albeit subject to a possible discussion about selling costs).

As long as the employee pays at least the second hand value, however, there will be no tax charge as earnings.

It is unlikely that there will be any tax charge under the benefits legislation, as long as the amount paid by the employee covers the cost incurred by the employer. This is considered more fully under **In-house benefits** but HMRC have given the following advice:

“The expense of provision of the benefit includes the cost to the employer of the production or acquisition of the goods or services concerned, together with a proportion of any overhead expenses directly related to that production or acquisition. The expense also includes any taxes or duties paid by the employer in respect of the goods or services.”

See EIM 64630 for the particular issues that arise for discounted premiums for employed insurance agents.

Guidance: EIM 01090, 21704

Case: *Pepper v Hart* [1992] UKHL 3

D12 Dispensations

See also: PAYE settlement agreements

Dispensations were withdrawn from April 2016, and replaced by a statutory exemption for reimbursed expenses. The details of dispensations are considered in depth at **17.7** below, and the new regime for reimbursed expenses is covered at **4.3**. All references in this book to dispensations should now be read in the context of those changes.

Dispensations did not normally save any tax or NIC, but they did cut down the employer’s reporting requirements and they eliminated the need for employees to submit expenses claims to HMRC.

According to HMRC guidance, the “main expenses routinely covered by a dispensation” were as follows:

- travel, including subsistence costs associated with business travel;
- fuel for company cars;
- hire car costs;
- telephones;
- business entertainment expenses;
- credit cards used for business; and
- fees and subscriptions.

Guidance: EIM 30050ff.; EIM 30200ff. (new guidance re reimbursed expenses);

D13 Domestic staff

See also: Chauffeurs and drivers; In-house benefits; Security expenditure; Chapter 10 (Living accommodation)

A taxable benefit in kind will normally arise if an employer provides staff for the private purposes of a director or employee. This could cover a chauffeur, a cleaner, a gardener or any other type of staff.

If an external worker is engaged, then the benefit will be the full cost (including VAT) that is charged by the worker or his or her employer.

If an in-house employee provides services for the director, then the *Pepper v Hart* principle discussed under **In-house benefits** should ensure that the amount of the taxable benefit is restricted to the additional cost to the employer, which may be negligible or indeed nothing at all.

E1 Emergency call-out

See also: Emergency vehicles; Chapter 13 (Travel and subsistence)

An employee may be called to a permanent workplace because of an emergency or other irregular or occasional event. The fact that the attendance is not at normal hours has no bearing on the nature of the journey for tax purposes.

The only exception is, according to HMRC guidelines, where the emergency call-out meets all of the following conditions:

- the employee has to give advice on handling the emergency before starting the journey;
- responsibility for those aspects appropriate to the employee's duties must be accepted from that time; and
- the employee must have a continuing responsibility for the emergency while travelling to the workplace.

HMRC give the following simple example:

“An employee is required to be a keyholder for her permanent workplace. One night she is called out by the police responding to a burglar alarm. No deduction is due for the cost of travel between her home and her permanent workplace.

The travel is ordinary commuting. It does not cease to be ordinary commuting because it is not made during her ordinary working hours.”

The NIC treatment broadly mirrors the tax treatment. See NIM 05610 for detailed commentary on how the NIC rules operate.

Law: ITEPA 2003, s. 337

Guidance: EIM 32240, 32386; NIM 05610

E2 Emergency vehicles

See also: Emergency call-out; Chapter 8 (Company cars)

There is no company car (or company van) tax charge where all of the following conditions are met:

- an emergency vehicle is made available to a person who is employed in an emergency service;
- although it is available for private use, the individual may only use the vehicle for private use when he or she is on call or “engaged in on-call commuting”;
- the individual does not in fact make private use of the vehicle in any other circumstances.

Law: ITEPA 2003, s. 248A

Definition of “emergency vehicle”

An emergency vehicle is defined as a vehicle that is used to respond to emergencies, and that meets one or other of the following conditions:

- it has a fixed lamp that is designed to emit a flashing light for use in emergencies; or
- it would have such a lamp but does not in fact have one because “a special threat to the personal physical security of those using it would arise by reason of it being apparent that they were employed in an emergency service”.

The legislation does not define the type of vehicle, but it will typically be either a car or a van.

According to HMRC:

“ ‘fixed’ indicates that the light must be a permanent fitting to vehicle. It need not be permanently fixed to the exterior of the vehicle, but a vehicle with only a light which can be removed from the vehicle is not an ‘emergency vehicle’ for the purposes of this exemption.”

Law: ITEPA 2003, s. 248A(3)

Guidance: EIM 23600

Definition of “employed in an emergency service”

This concept is defined to include only the following:

- constables and others employed for police purposes;
- individuals employed for the purposes of a fire or fire and rescue service;
- those employed in the provision of ambulance or paramedic services.

In relation to the second of these categories, HMRC comment that:

“ ‘fire and rescue’ services is a composite term which cannot be separated into ‘fire services’ and ‘rescue services’. It follows that vehicle breakdown services and the like are excluded.”

Law: ITEPA 2003, s. 248A(4)

Guidance: EIM 23600

Definition of “on call” and “engaged in on-call commuting”

A person is said to be on-call “when liable, as part of normal duties, to be called on to use the emergency vehicle to respond to emergencies”.

A person to whom an emergency vehicle is made available is said to be “engaged in on-call commuting” when he or she:

- is using the vehicle for ordinary commuting (or for travel between two places that is for practical purposes substantially ordinary commuting), and
- is required to use the vehicle at that time so that it is available for his or her use, as part of normal duties, for responding to emergencies.

Law: ITEPA 2003, s. 248A(7), (8)

Guidance: EIM 23605

E3 Employee car ownership schemes

See also: Chapter 8 (Company cars)

E3.1 Introduction

The “employee car ownership scheme” (or “ECOS”) is not a statutory concept. The HMRC guidance on the topic is introduced with the statement that:

“no single body of legislation deals with ECOS. Instead, the relevant law when considering ECOS is drawn from various parts of the employment income and NICs legislation.”

Indeed, the guidance goes on to say that “the same principles apply to ECOS vehicles as to any privately-owned vehicles used for business travel”. As such, there is a sense in which no special commentary is needed on this topic. Nevertheless, the HMRC manuals cover it in detail and it can be helpful to use the ECOS badge to cover a number of particular issues.

Guidance: EIM 31501

E3.2 Definition

HMRC define the term “employee car ownership scheme” (or “employee car ownership plan”) as:

“a set of arrangements whereby employees acquire cars

- from a specified, often single source and
- within a specified financing framework.”

The HMRC guidance goes on to say the following:

“An ECOS is something more organised than the employer simply ceasing to provide a company car and (normally) increasing taxable pay to compensate. In such cases, the employer leaves the employee to get a car from any reputable source without becoming involved in the purchasing or financing arrangements in any way.

An ECOS may be designed and administered by the employer, by a company within the same group as the employer, or by a third party that specialises in provision of alternative packages to the company car.

In essence an ECOS is designed to give employees similar benefits to a company car (for example a new car on a regular basis, central organisation of insurance and servicing) in a way that means the car benefit provisions do not apply.”

It will usually be clear that the cars are provided by reason of the employment. The company car benefit that would normally apply will therefore only be circumvented if ownership of the car is transferred to the employee.

Guidance: EIM 31501

E3.3 Tax considerations

For company cars, the only taxable benefits are the car itself, car fuel and (occasionally) the cost of a chauffeur. If the car is not a company car, that simplicity is removed. The following list identifies some of the key issues that may need to be considered if the car is not in fact a company car:

- the price at which the car is transferred to the employee;
- the guaranteed future value at which the employee may sell the car back to the employer at the end of a defined period;
- costs met by the employer in connection with the car, including insurance, repairs and servicing costs, and vehicle excise duty;
- any payments that are made in connection with the car (and it will be necessary to consider whether or not these are approved **Mileage allowance payments** and whether they are relevant motoring expenditure for NIC purposes;
- loans made to the employee to finance the cost of the car;