[2016] UKFTT 0338 (TC)

TC05095

Appeal number: TC/2015/05481

INCOME TAX – Car made available to employee – whether benefit in light of Apollo Fuels Ltd: yes – whether capital contribution made: no – whether mileage allowance at 40p per mile due: no – disposition of appeal where repayment due reduced.

FIRST-TIER TRIBUNAL
TAX CHAMBER

NICOLE FOWLER **Appellant**

- and -

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE & CUSTOMS **Respondents**

TRIBUNAL: JUDGE RICHARD THOMAS
DAVID EARLE

Sitting in public at Fox Court, London EC1 on 14 March 2016

The appellant in person

Mrs Catherine Douglas, Presenting Officer for the Respondents

DECISION

1. This was an appeal against the conclusions of an enquiry by HMRC into the appellant's income tax return for the tax year 2011-12 and against the resulting amendment made to her self-assessment.

2. We have decided that Ms Fowler's appeal fails for the reasons we set out in this decision. But as we also set out below the consequences of our decision on the merits of the appeal are not straightforward.

Evidence

3. HMRC had prepared a respondent's bundle of documents which included their Statement of Case. Mrs Douglas' speaking notes, a copy of which she gave us and for which we are grateful, contained what is in effect an agreed statement of facts which we have mostly adopted in setting out our findings of undisputed facts.

4. HMRC also prepared, as is normal in cases of this sort, an appellant's bundle. The appellant was not satisfied with this and prepared her own, and she also forwarded further documents to the tribunal shortly before the hearing. HMRC took no objection to those documents being admitted. HMRC also produced at short notice a helpful key to the differences, mostly in pagination, between the appellant's "appellant's bundle" and HMRC's version.

5. Ms Fowler in the course of her remarks to the Tribunal was in part giving evidence of fact. We were not always able to accept that Ms Fowler's evidence was reliable and we indicate below our reasons for saying this.

Facts

6. The facts which the parties told us were agreed are as follows. There is independent evidence for some of them from Mondelēz International, the group that acquired Cadbury. We find them as fact.

(1) The appellant was employed by Cadbury Holdings Ltd ("Cadbury") on a fixed term contract for the period 31 May 2011 to 30 November 2011, subsequently extended to 30 June 2012.

(2) The appellant's employment contract was terminated on 21 March 2012.

(3) Her job was to ensure the delivery of accounts of 36 Cadbury operations in connection with the then impending acquisition of Cadbury by Kraft Foods.

(4) Under the terms of her contract with Cadbury she was entitled to a salary and a "car allowance". The car allowance could be paid in cash or alternatively a car would be provided for which the employer paid a leasing company.

(5) The appellant chose the car option, and was provided by Arval, Cadbury's leasing provider, with a 2007 registered Jaguar XF previously used by another Cadbury employee.

(6) In Ms Fowler's case the value of the car was £5,880 and the car allowance £6,808. The difference (£928 pa or £71.38 per month) was paid to her in cash subject to PAYE deductions. (This difference is called a trade down payment by the employer).

(7) Following the takeover of Cadbury by Kraft the appellant's contract was varied so as slightly to reduce the car allowance. This had the effect of reducing the trade down payments.

(8) Kraft Foods UK Production Ltd, as her employer had become, sent a Form P11D to both HMRC and the appellant showing the amount of a car benefit in relation to the Jaguar XF (there is no dispute about the employer's calculation of the cash equivalent of the benefit of the Jaguar).

(9) Following the termination of her employment the appellant had to either pay for the car or return it. She returned it.

(10) The appellant's tax return for 2011-12 was prepared by a firm of accountants. They included the amount of the car benefit as shown on the P11D but no other amounts in respect of the car.

(11) Before signing the return the appellant entered further figures on it, showing £4,750 in Box 17 of page E1 under "Business travel and expenses" and £4,000 in Box 20 on that page under "other expenses and capital allowances". She also made a "white space" entry on the return which said:

> "Deductions made from car allowance of £400 per month included in Box 20."

(12) When HMRC captured the return a repayment of £3,646.80 was generated and paid to the appellant. Because the appellant had not amended the accountant's figure of the amount of tax due or repayable in the self-assessment part of the return, HMRC had "repaired" (ie corrected) the return to show the repayment due that arose from the deductions that the appellant had herself entered on the return.

(13) HMRC opened an enquiry into the return and in particular into the entries that the appellant had made herself.

The issues for decision

7. Following the enquiry and HMRC's conclusions on the enquiry, the following issues remained in dispute between the parties and are for us to decide:

(1) Was the amount of payments made by the appellant's employers to their leasing provider either a deduction in arriving at the amount of the cash equivalent that was charged as a benefit from the use of the car or was that amount otherwise deductible in arriving at the figure of employment income?

(2) Were the mileage payments of £4,000 (included in the "Box 17" figure of £4,750 and based on a rate of 40p per mile) deductible as expenses in arriving at the figure of employment income?

Law

8. The law on the taxation of benefits from cars and on mileage payments is complex and extensive. We set out in an appendix all the relevant law, and here set out merely the relevant parts of the two main provisions relating to each of the issues we have to decide. The first is s 114 Income Tax (Earnings and Pensions) Act 2003 ("ITEPA"):

> "**114 Cars, vans and related benefits**
>
> (1)i This Chapter applies to a car ... in relation to a particular tax year if in that year the car ...—
>
> (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 ...--
>
> (a) sections 120 to 148 provide for the cash equivalent of the benefit of the car 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 ... by virtue of any other provision (see section 119)."

9. The second provision is s 229 ITEPA:

> "**229 Mileage allowance payments**
>
> (1) No liability to income tax arises in respect of approved mileage allowance payments for a vehicle to which this Chapter applies (see section 235).
>
> (2) Mileage allowance payments are amounts … paid to an employee for expenses related to the employee's use of such a vehicle for business travel (see section 236(1)).
>
> (3) Mileage allowance payments are approved if, or to the extent that, for a tax year, the total amount of all such payments made to the employee for the kind of vehicle in question does not exceed the approved amount for such payments applicable to that kind of vehicle (see section 230).
>
> (4) Subsection (1) does not apply if--
>
> …
>
> (b) the vehicle is a company vehicle (see section 236(2))."

Submissions

10. The appellant maintains that because she was entitled to a car allowance of £6,808 pa, reduced to £6,000 pa after the takeover, but only received £883.20 of that allowance by way of cash payments, she had incurred as expenditure the balance representing the lease payments on the car and was entitled to deduct those amounts from her income. Nor, she argued, had the car been made available to her by her employer.

11. Accordingly because she had paid for the car out of the car allowance to which she was entitled the car was not a "company vehicle" and she was therefore entitled to the 40p per mile payments for fuel etc which she had incurred.

12. The appellant cited the Upper Tribunal case of *Apollo Fuels Ltd v HMRC* ("*Apollo*") where the facts were, she said, the same as in her case and which was decided against HMRC. This case showed that she had a proprietary interest in the car and so it could not be a company car, or alternatively that she had paid a market leasing payment for the car so as to cancel any benefit charge.

13. For HMRC Mrs Douglas argued that the appellant had not paid anything towards the car from her own resources. There was therefore no capital contribution to the employer that would reduce the cash equivalent, nor were the payments otherwise deductible.

14. The appellant was not entitled to the mileage allowance as the car was a company vehicle and she had been taxed on the benefit.

15. HMRC's authorities bundle included *Whitby & Ball v HMRC* [2009] UKFTT 311 (TC) and *Southern Aerial (Communications) Ltd v HMRC* [2015] UKFTT 538 (TC) ("*Southern Aerial*") apparently to show that the car was made available for the appellant's use, though that does not seem to be in dispute.

16. HMRC did not consider that the facts in *Apollo* were the same as in this case. In that case the employees leased the cars from the employer and made direct payments of cash equal to a market rental, which was not the case here. Mrs Douglas did not comment on the "proprietary interest" point.

Discussion (including further finding of facts) on the car benefit and mileage payment issues

Car benefit – further findings of fact

17. We did not have Ms Fowler's contract of employment with Cadbury, although we note that in a letter from Ms Fowler's accountants to HMRC dated 28 February 2014 the contract was supposedly attached. We did however have a copy of a variation of the Cadbury contract made by the new owners Kraft following the takeover. From that variation letter and from information given to Ms Fowler by the HR Department at Mondelēz UK (what Kraft became after a reorganisation in

October 2012) we find as fact that, figures apart, the operation of the car allowance under the Cadbury contract would have been as it was under Kraft.

18. We also find that under Cadbury, as under Kraft, Ms Fowler was paid a salary which was wholly separate from the car allowance.

19. We find that the car allowance worked this way. An employee entitled to it could opt to receive cash of the amount of the allowance, paid monthly and paid under PAYE (through payroll). An employee who opted for the car alternative would be entitled to choose a car whose "value" would be equal to their car allowance and if they did so, payments would be made by Cadbury to its leasing company. The payments would not be subject to PAYE, but the cash equivalent of the benefit from use by the employee would be entered on the Form P11D sent by the employer to HMRC and copied to the employee after the year end.

20. The employee was entitled to choose a car where the "value" would be more or less than the car allowance. If more, then the employee had to make up the difference to the employer. Form P11D would be issued but no PAYE operated.

21. If less, and this is the case with Ms Fowler, the employee was entitled to be paid the difference between the "value" and the car allowance, that excess to be paid under PAYE. Nothing representing the "value" amount would be paid under PAYE and a P11D would be issued. We find as a fact that this is what happened with Ms Fowler.

22. We add here that we have used the word "value" in the last three paragraphs because in the documents from Mondelēz of 21 August 2014 it was stated that the car allotted to the appellant had a "value" of £5,880, a figure used to calculate the cash element of the car allowance. Another letter from Mondelēz of 9 July 2014 said that the lease payments for the car were £411.67 per month. £411.67 times 12 is £4,940 not £5,880. We are not sure then how the "value" was calculated. We also note here in this connection that Ms Fowler's claim is for £400 per month but her accountants mentioned on one occasion that she could have claimed more.

23. The P11D issued by Kraft Foods UK Production Ltd copied to Ms Fowler shows the car that she used was a Jaguar XF registered in 2007. We find from a Mondelēz document sent to Ms Fowler that this car had previously been used by another employee who had left Cadbury and was then offered to Ms Fowler. The name of the leasing company was Arval. Ms Fowler said that Arval was a "creature" of Cadbury, but from HMRC documents we see that Arval is said to be a well known leasing company of cars. Which is so (and they could conceivably both be) does not seem to us to matter and we make no findings about the question.

24. What does matter however is that Ms Fowler gave to HMRC and to the Tribunal what she said was the leasing agreement for the Jaguar XF. It was an agreement in the name of Enterprise Rent-A-Car and had been signed by Ms Fowler. The agreement said that it was for the account of Arval, and the car shown had a registration number with '11' in it so it could not be the leased Jaguar. The agreement was dated 8 November 2011 and required the car to be returned on 15 November

2011. We find that this agreement was not the agreement under which Ms Fowler was entitled to use the Jaguar XF for which Cadbury were paying Arval. Ms Fowler was not able to throw any light on the matter, saying that she had this agreement and had supplied it to HMRC when asked for what she had. She had nothing else about the Jaguar.

25. We can only speculate that the Enterprise agreement was for a short term substitute car hire, perhaps while the Jaguar was off the road. There is no evidence that Ms Fowler paid the charges of Enterprise and since the agreement was for the account of Arval we find that it was they who settled the bill, not Ms Fowler.

26. Nor did we have any evidence that Ms Fowler paid anything out of her own resources for the Jaguar other than for the fuel she used, and she did not suggest otherwise (leaving aside her contention that the full car allowance was her own money).

Car benefit & mileage payments issues – further findings of fact on "private use"

27. Ms Fowler maintained that she did not use the car privately, and that Cadbury had prohibited her from using it privately, though she had no paperwork to that effect. She said she had owned no car before Cadbury offered her one. Although the only evidence we had about Ms Fowler's use of the car was her own assertion, we are unable to accept that Ms Fowler was prohibited by her employer from using the car for private purposes. We say this for three reasons.

28. One, from the documentary evidence, particularly the correspondence between her and HMRC and from what she said to us, we consider that Ms Fowler genuinely believed that she had paid for the use of the Jaguar, and will not countenance any suggestion that she might be mistaken, as we have found that she was. We offer as example her insistence that the lease of the car was with Enterprise. This is contrary to previous statements she had made to HMRC that it was Arval, and was also contradicted by the agreement with Enterprise that she produced. A further example is the question of her entitlement to use of the "Expenses Portal" as to which see §33. Because of this we do not regard any of her evidence which is unsupported by other independent evidence as wholly reliable.

29. Two, if she was in fact the person who paid for the car we do not understand what interest Cadbury would have in limiting the use she made of it. But even on the basis which we have found that Cadbury did in fact pay for the car under their car allowance scheme, it is not consistent with such a scheme to limit the use of the vehicle. Cadbury were, as they thought, providing either a taxed cash sum or a taxable benefit.

30. Three, there is nothing in the documentary evidence we had about the car allowance to suggest any prohibition on private use.

31. We therefore find as a fact there was no prohibition on private use of the car. We should make it clear that we find that in referring to private use Ms Fowler was

not including journeys from her home to any of the Cadbury offices she was required to attend, and it is to that "normal" meaning of "private use" that our remarks refer. We stress this because in the tax law applying to the use of cars, certain journeys from home to an office are not counted as business use if they are "ordinary commuting".

32. So far as those journeys are concerned, under questioning from Mrs Douglas Ms Fowler admitted that she had driven from her home to Cadbury offices in Uxbridge (the nearest of the offices she visited from her home) as well as other offices, but she also said that she did a substantial amount of work at home.

33. As to fuel, Ms Fowler's evidence was that she paid for it and was not reimbursed by Cadbury or Kraft. In cross-examination she said that she was not entitled to use their "Expenses Portal" as she was on a short-term contract and was more in the nature of a contractor than an employee. Mondelēz had stated in a letter to her accountant that she was entitled to use the Portal but had not claimed reimbursement through it. On this question we find that Ms Fowler did pay for the fuel and was not reimbursed by her employer.

Discussion: car benefits - general

34. Anyone who was tempted to think that the taxation of cars used by employees was a simple matter, even before the days of taxation by reference to CO^2 emissions, would be disabused of that notion by a reading of all three *Apollo* decisions. (We need to mention that after the hearing the Court of Appeal gave its decision in *HMRC v Apollo Fuels Ltd & anor* [2016] EWCA Civ 157 ("*Apollo CA*"). We have considered that case which is of course binding on us and where it differs from Rose J's decision in the Upper Tribunal we must follow the Court of Appeal rather than the Upper Tribunal).

35. The appellant's main case on car benefits stands or falls on whether it can correctly be said that she either paid an arm's length amount for the car, or made a capital contribution to it or can otherwise claim as an expense amounts she spent on the car in arriving at her self-assessment.

36. Ms Fowler's submissions to us were that since her employers had deducted £490 per month from her car allowance and thus were only directly paying her the small balance of the total allowance to which she was entitled under her contract of employment, she had borne the cost of those monthly payments. HMRC argued that in line with all other employee car schemes they knew of, it was the employer's resources which were used to make the monthly payments and that Ms Fowler had the option of a cash payment which was taxable under PAYE or the use of a car which gave rise to a benefit taxed in accordance with the P11D figures.

37. We unhesitatingly agree with HMRC that Ms Fowler did not contribute from her own resources anything towards the acquisition of the car. The car allowance was a way of either paying her cash or giving her a payment in kind, the use of a car without payment. Both amounts are on the surface taxable, the first as a cash payment through PAYE and the second as a benefit in kind whether collected through self-assessment or a PAYE coding adjustment or both. We do not think that the so-

called trade up or trade down payment (where the payments for the car are more, or less, than the car allowance) makes any difference. Where there is a trade up, then the employee may be making a payment out of their own resources, but that is not the case here and we are not called upon to decide the tax consequences (if any) of a trade up payment by the employee. And it goes almost without saying that if Ms Fowler were right, an employee would always opt for the car, and not the cash.

Discussion: car benefits – are there s 62 earnings?

38. We would normally now proceed to examine if the rules in Chapter 6 Part 3 ITEPA ("the car benefits code") have properly applied to Ms Fowler, before continuing to look at the question of the mileage payment allowance for the cost of the fuel which she did pay for. But it is necessary first, in the light of the discussion in *Apollo* by the Upper Tribunal ("*Apollo UT*") of the possible effect of s 114(3) ITEPA to consider whether under this car allowance "an amount constitutes earnings from the benefit in respect of any other provision …".

39. In *Apollo UT*, Rose J held that the obvious other provision to which s 114(3) referred was s 62 ITEPA. Section 62 applies if there is a receipt by the employee of money or money's worth. Rose J held that as the employees were not forbidden from sub-leasing the cars there was money's worth. In the Court of Appeal ("*Apollo CA*") David Richards LJ, giving the only reasoned judgement, agreed with Rose J that s 62 could in theory apply but he disagreed with her that it did apply in the circumstances where, as in that case, the employees had paid a market value hire charge. In this case Ms Fowler did not pay any such hire charge and so the application of s 62 cannot be ruled out at this point.

40. But we note that s 62 cannot apply to oust the benefits code in a case where s 119 ITEPA applies (see the words in parenthesis in s 114(3)). The reason why the existence of an alternative might constitute such earnings apart from s 119 is that in a case such as is mentioned in that section an employee may be able to turn the offer of a car to account as money by surrendering the car and starting to take the cash.

41. Section 119 says that the mere fact that an alternative to the making available of a car is offered to the employee does not result in amount being earnings under s 62. In this case there was an alternative to the car being made available, namely the full car allowance in cash. We therefore hold that, in accordance with s 114(3), the offer of the option to choose in this case does not turn the making available into s 62 earnings.

42. But there may be another way that the situation here could lead to s 62 earnings which does not depend on their being an alternative on offer. We have considered the case law on "pecuniary liabilities". Where an employer satisfies a debt due from the employee by making a payment directly to the employee's creditor then that amounts to a payment of earnings (or, as it used to be called, emoluments) to the employee (see in this connection *Hartland v Diggines (HM Inspector of Taxes)* 10 TC 247). If the contract of leasing entered into by Cadbury with Arval for the Jaguar XF required the employee to make the monthly payment, but the employer agreed to meet those payments instead, then that would be the meeting of Ms Fowler's pecuniary

liabilities. However we have no evidence that she was personally liable to Arval, whether from Ms Fowler or HMRC. Even the Enterprise agreement does not show that, or even that she was liable to Enterprise for the week's hire of the 11 reg vehicle.

43. As a result our holding on the s 62 ITEPA issue is that there were no general earnings within s 62 in this case, and so nothing to prevent the operation of the benefits code.

Discussion: car benefits – the car benefits code

44. We therefore proceed to the car benefits code. For the special car benefits regime to apply, the three conditions in s 114 ITEPA must be met: there has to be the making available of a car to Ms Fowler without any transfer of property in it to her, the car has to be available for her private use and the making available has to be by reason of her employment. She queried at one time or another whether each of the three conditions were met, while HMRC submitted that all three were present.

45. *Apollo CA* has upheld the decision of Rose J in *Apollo UT* that the car benefit code is subject to an overriding principle that there must in fact be a benefit to the employee and if the employee has paid a market rate for the asset made available, there is no charge irrespective of whether there is a cash equivalent under Chapter 6[1]. We therefore need to consider that question.

46. We have held (see §37) that the appellant has paid nothing from her own resources towards the purchase or hire of the car, so there is no question of our needing to consider whether a market rate has been paid. Thus there is a benefit in the sense contemplated by *Apollo UT* and *Apollo CA*. So we go on to the terms of s 114.

47. We find that the car was made available to Ms Fowler, but this is not a matter she queried. But she considered that it had not been made available to her by her employer. Section 114(1)(a) is silent about who has to make it available, and from s 116 it can be seen that the question of whether the employer or someone else made it available is only relevant in relation to the "by reason of employment test". Because that is also a relevant test here, then we do need to consider who it was that made it available. There can only be two candidates, the employer or Arval, but in the absence of the contract between the employer and Arval we cannot say with any degree of certainty which it was.

48. In the absence of a clear cut answer we consider that we cannot rely on the so-called definition in s 116 ITEPA. Section 116 ITEPA, as the judge in this case, Judge Thomas, pointed out in *Southern Aerial*, is not really, despite its sidenote, a definition of the phrase "by reason of the employment". It is a statutory presumption

[1] We note that in the Finance Bill currently before Parliament as it stands before amendment by Committee or on Report, clause 7(3) inserts a subsection (1A) into s 114 ITEPA: "In determining for the purposes of this Chapter whether this Chapter applies by virtue of subsection (1) to a car ... made available to an individual it is immaterial whether or not the terms on which the car ... is made available constitute a fair bargain." This will, if and when enacted, overturn this aspect of *Apollo CA* and *Apollo UT*, but is not retrospective so will not apply to this case (see clause 7(6)) .

that if a car is made available by an employer then the "by reason of employment" test is met, unless the employer is an individual which is not the case here.

49. We then look at the question whether the car was made available by reason of Ms Fowler's employment. It clearly was – there is no other candidate as there was in *Southern Aerial* or the cases cited there. Thus we consider that the Jaguar was made available to Ms Fowler and was so made available by reason of her employment.

50. But there was another aspect of the Upper Tribunal decision in *Apollo*. Did any property in the car pass to Ms Fowler by virtue of the agreement making it available to her? *Apollo CA* has now determined that no property passes in goods to a lessee, so clearly no property would pass if Ms Fowler merely had a permission to use the car.

51. So far every aspect of the conditions in s 114 ITEPA is against Ms Fowler. This leaves the "private use" condition. Section 118 ITEPA gives more detail about what is "private use". For there not to be private use two conditions must be met. The first is that there must be a prohibition on such use in the terms of making it available. The second condition is that it is actually not used privately.

52. In relation to both conditions there is a substantial widening of the meaning of "private use" to encompass use which, although not for the private purposes of the employee, is not "business travel" as defined in s 171 ITEPA.

53. Section 171 simply points one to the travel expenses rules in Part 5 ITEPA. There we can see that home to business premises travel is not deductible if it amounts to "private travel" (s 337(5) ITEPA). That means travel between "the employee's home and a permanent workplace". "Permanent workplace" is defined in s 339(4) ITEPA to mean:

> "A place which the employee regularly attends in the performance of the duties of the employment … [*so long as*] …—
>
> (a) it forms the base from which those duties are performed, or
>
> (b) the tasks to be carried out in the performance of those duties are allocated there."

54. On the question of a prohibition, the first condition mentioned in §51, it was held in *Gilbert (HM Inspector of Taxes) v Hemsley* 55 TC 419 ("*Gilbert*") that a formal condition in, for example, a contract of employment or an employee's handbook is not necessary. *Gilbert* was a case of a family owned company and Mr Hemsley was a director. Matters were dealt with informally as would be expected. Cadbury and Kraft are not small employers and it is to be expected that if there were a rule about private use, it would have been provided in written form to the employee.

55. In Ms Fowler's case we have found that there was no prohibition on private use. This is enough to mean that there is no escape for her from the charge to tax under the benefits code. We therefore have no need to consider whether any of Ms Fowler's journeys in the car from her home to various Cadbury offices were "private travel".

56. Finally we need to consider whether, as Ms Fowler suggested, the payments made by Cadbury to Arval amounted to capital contributions by her so as to reduce the cash equivalent in accordance with Step 3 in s 121(1) ITEPA. On the basis of our finding in §37 that Ms Fowler paid nothing from her own resources towards the car, we also hold that she made no capital contribution that would reduce the cash equivalent.

57. In the light of the evidence and based on the facts we have found, we hold that there is a car benefit chargeable on Ms Fowler under s 114, and that the cash equivalent is properly calculated without regard to any capital contribution, as there was none.

Discussion: mileage allowance

58. As to mileage costs Ms Fowler claimed an allowance of 40 pence per mile for her use of the Jaguar. HMRC disagreed that she was so entitled to claim and allowed her the 15 pence a mile allowance available where an employee has to pay for fuel for a company provided vehicle. (HMRC did, to its credit, point out to the appellant that in 2011-12 the rate was in fact *45p* per mile.)

59. The issue for us is whether Ms Fowler meets the conditions for the 40p per mile mileage allowance relief in s 232 ITEPA. That relief is available if the employee uses a vehicle for business travel and does not get a mileage payment allowance from the employer. But the relief is not available if the vehicle is a "company vehicle". Section 236(1) ITEPA contains two important definitions for s 232.

60. "Business travel" has, at least in Ms Fowler's case, the same meaning as in determining whether private use is made of the vehicle. In this case Ms Fowler undoubtedly made some journeys which count as business travel.

61. A "company vehicle" is one where (among other things) a cash equivalent is treated as earnings. In Ms Fowler's case there is, we have held, such a cash equivalent.

62. Accordingly, Ms Fowler is, we hold, not entitled to mileage allowance relief under s 232 ITEPA.

Disposition

63. In its Statement of Case HMRC requested that the appeal against the closure notice should be dismissed and the tax due of £2,748.40 confirmed. The £2,748.40 was, Mrs Douglas showed us, the difference between the amount of tax repayable to the appellant as made following the "repair" to her self-assessment and the amount of tax repayable as a result of HMRC's amendments to that self-assessment as repaired. Those amendments disallowed the £400 per month payments Ms Fowler says she met and the excess of the claimed 40p per mile allowance over the amount HMRC were prepared to allow.

64. We indicated at the end of the hearing that we did not think that our powers were sufficient to enable us to do what HMRC were asking for. We referred Mrs

Douglas to the decision of the tribunal in *Eric Walker v HMRC* [2016] UKFTT 0123 (TC) (Judge Thomas, the judge in this case, and Leslie Howard), and gave her the opportunity to make submissions on the issues discussed in *Walker*. This she did, and we consider them below.

65. The powers given to the First-tier Tribunal in a case where the tax concerned is income tax (and capital gains tax and corporation tax) are in s 50 Taxes Management Act 1970 ("TMA") and nowhere else.

66. That section provides relevantly:

> "(6) If, on an appeal notified to the tribunal, the tribunal decides—
>
> (a) that, ... the appellant is overcharged by a self-assessment;
>
> (b) ... ; or
>
> (c) that the appellant is overcharged by an assessment other than a self-assessment,
>
> the assessment … shall be reduced accordingly, but otherwise the assessment or statement shall stand good.
>
> (7) If, on an appeal notified to the tribunal, the tribunal decides
>
> (a) that the appellant is undercharged to tax by a self-assessment
>
> (b) ...; or
>
> (c) that the appellant is undercharged by an assessment other than a self-assessment,
>
> the assessment … shall be increased accordingly.
>
> …
>
> (8) Where, on an appeal notified to the tribunal against an assessment (other than a self-assessment) which—
>
> (a) assesses an amount which is chargeable to tax, and
>
> (b) charges tax on the amount assessed,
>
> the tribunal decides as mentioned in subsection (6) or (7) above, the tribunal may, unless the circumstances of the case otherwise require, reduce or, as the case may be, increase only the amount assessed; and where any appeal notified to the tribunal is so determined the tax charged by the assessment shall be taken to have been reduced or increased accordingly.
>
> ..."

67. Section 50(6) and (7) TMA had been amended by FA 1994 so as to apply to the self-assessment provisions introduced by that Act. In *D'Arcy v HMRC* [2006] SPC00549 ("*D'Arcy*") the Special Commissioner, Dr John Avery Jones, considered the issues arising on an appeal against an amendment to a self-assessment and remarked at [10] that:

> "Sections 31(1)(b) (that an appeal may be brought against the conclusion or amendment in a closure notice) and s 50(6) and (7) (that the appeal Commissioners' jurisdiction is to determine whether the appellant is over- or undercharged by the self-assessment) [*TMA*] do not appear to fit together well. What, for example, is the procedure for an appeal against a conclusion that does not lead to an amendment?
>
> And if there is an appeal against both the conclusion and the amendment the appeal Commissioners are apparently not required to adjudicate on the reasons for the amendment; they must either reduce or increase the assessment or allow it to stand good." [Abbreviation in italics is the tribunal's addition]

and later in that paragraph:

> "Accordingly, I consider that s 50(6) (and similarly with (7)) should be read in the context of s 31(1)(b) in this way:
>
> > If, on an appeal [against a conclusion or amendment to a self-assessment stated in a closure notice], it appears to the majority of the Commissioners present at the hearing, by examination of the appellant on oath or affirmation, or by other ...evidence,—
> >
> > (a) that, ...the appellant is overcharged by a[n amended] self-assessment [so far as concerns matters appealed against];...
> >
> > the assessment... shall be reduced accordingly, but otherwise the assessment ...shall stand good." [Words in [ ] added by the Special Commissioner]

68. Because of changes made in 2009 by paragraph 31(2) of Schedule 1 to the Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (SI 2009/56) Dr Avery Jones's recasting of s 50(6) should now read:

> "If, on an appeal [against a conclusion or amendment to a self-assessment stated in a closure notice] notified to the tribunal, the tribunal decides——
>
> > (a) that ... the appellant is overcharged by a[n amended] self-assessment [so far as concerns matters appealed against];...
> >
> > the assessment... shall be reduced accordingly, but otherwise the assessment ...shall stand good."

69. In this case we have decided that the calculations in the amended self-assessment are correct. It follows that the amount which was properly repayable to the appellant is less than the amount that she was apparently repaid on the basis of her "repaired" (ie corrected) return and self-assessment. But in terms of s 50(6) TMA we merely have to decide whether the appellant is overcharged by the amended self-assessment. Whatever "charged" means in this context, the appellant is clearly not *over*charged by the amended self-assessment on the basis of our decision (nor of course is she *under*charged), and so the consequence of that is that the amended self-assessment stands good.

70. Since the amended self-assessment stands good there seems on the face of things to be no need for us to consider whether the revised amount of any net income, whether greater or less than the amendment, and the revised amounts of tax are required to be stated by us. In this respect this case differs from *Walker* where both the amounts of income and the amounts of tax shown in the amended self-assessment were not the ones that the Tribunal's decision endorsed or upheld.

71. Because the situation here is not the same as in *Walker* the submissions made to us seem to largely fall away as being irrelevant. They might have been relevant had we accepted one or both of the appellant's contentions, but HMRC were not to know that we would uphold their amendment to the return and self-assessment when at the conclusion of the hearing we gave them the opportunity to comment on s 50 TMA and *Walker*. But as their submissions are lengthy and cogently argued, out of respect we consider some of them while emphasising that for the reasons stated in the last paragraph of this decision, what we say is not necessary for our decision (ie it is *obiter*). We also make the point that in *Walker* HMRC were given the opportunity of making submissions but chose not to, or to make none that were at all relevant, so the decision in *Walker* was not based on arguments from the parties.

72. In relation to s 50(6) and (7) TMA HMRC argue that:

> "33. … [In *D'Arcy*] Dr John Avery Jones then went on to state at [13]:
>
> > **'**These provisions seem to me to indicate that the jurisdiction of appeal Commissioners is not merely to decide whether the stated conclusion on a point of law in the closure notice is right or wrong and, if wrong, to allow the appeal and reduce the amendment to nil. I agree with Mr Furness that such a result is inconsistent with the tribunal's duty to decide whether the appellant is over– or undercharged by the self-assessment and accordingly to determine the figure for the amendment to the self-assessment,…'
>
> 34. HMRC infer that this demonstrates the Tribunal does not just confirm the amount of tax in the appellants self-assessment as nil before the amendment and at nil after the amendment but that the figure of the amendment to the self-assessment has to be determined i.e. the results that flow from the determination of whether the figure for expenses included in the appellants original self-assessment is correct or whether the figure as amended by HMRC is correct. In the appellants case the amendment to her self-assessment following the enquiry resulted in a reduction of the amount of repayment she was entitled to receive; the outcome of the enquiry was that there was additional tax to pay amounting to £2,748.40
>
> 35. [*sets out s 50(6) and (7)*]
>
> 36. S50(6) and (7) TMA 1970 refer to an overcharge or undercharge in a self-assessment. The self-assessment is in 2 parts and based on the entries contained on the appellants 2011/12 SAITR the self-assessment was that she had overpaid tax amounting to £3,646.80; following the enquiry HMRC concluded that this figure was incorrect and should have shown overpaid tax amounting to £898.40. HMRC were satisfied

> the appellant had over claimed expenses and there had therefore been an undercharge. The amount of the undercharge at S9(1)(a) TMA 1970 is £2,748.40. HMRC consider the expenses deducted from employment income were too high but once the correct amount of expenses has been taken into account, and there has been a deduction of tax suffered at source, as required by S9(1)(b), this undercharge becomes an over-repayment of the same amount.
>
> 37. HMRC contend that S50 (6) and (7) TMA 1970 both provide for the assessment or amounts to be reduced/increased accordingly therefore whether the under or overcharge occurs at S9(1)(a), or, (1)(b) the legislation allows for the amount to be determined whether it is extra tax due or an over-repayment to be recovered."

73. The argument here is that because a self-assessment has to show the tax that is due on the basis of the figures of income less any reliefs ("tax on net income") *and* the amounts of tax or other sums deducted at source etc which may be set off against the tax on net income, s 50 requires, as Dr Avery Jones says in *D'Arcy*, that the Tribunal's decision must show the detailed figures for the amendment to the self-assessment.

74. HMRC go on to point out (correctly) that a self-assessment may show an amount repayable where the amounts deducted at source etc exceed the tax on net income and the amounts so deducted are in law repayable.

75. It follows, they say, that what the Tribunal's determination under s 50(6) or (7) must do, in circumstances where the original self-assessment shows a repayment and the Tribunal's decision is to support an amendment that reduces that repayable amount, is to show the new amount repayable *and* to state the additional amount which the appellant must now pay.

76. We agree with the first sentence of [34] of the submission in the context of a case where the Tribunal's conclusion is that the correct amount of net income and the tax chargeable on that net income is either greater or less than what is shown in the amended return and self-assessment. So much is said in the passage from [13] of *D'Arcy* which they quote at [33] of the submissions, though we emphasise that the Special Commissioner refers to the "figure" (in the singular) for the amendment. We do not know of that was a slip or whether he intended to refer only to the revised net income (perhaps being subconsciously influenced by s 50(8)).

77. But *D'Arcy* does not mention a "standing good" case in this context, for, it seems to us, the obvious reason that since nothing has changed nothing needs to be specified. We draw support for this conclusion from the terms of s 50(8) TMA. That subsection does not apply where there is a self-assessment, but only where there is an assessment under s 29 TMA (a discovery assessment).

78. Section 50(8) was introduced in 1975 and was intended to quash an argument that was being advanced by a company in proceedings in the Chancery Division to the effect that because the Special Commissioners had, in purporting to determine appeals, merely given the amounts of income which were to be charged and did not

carry out what was in that case a simple mathematical calculation to determine the tax payable, the appeal had not been determined and in accordance with the law at that time they were not liable to pay the tax.

79. As it happened, by its decision in the case, *Hallamshire Industrial Finance Ltd v Commissioners of Inland Revenue* 53 TC 631 ("*Hallamshire*"), in 1978 the High Court (Browne-Wilkinson J, as he then was) held that there was no obligation on the appeal commissioners to state the amount of tax, so the legislation was arguably unnecessary. But what s 50(8) specifically provides is that the tribunal concerned does not need to state the tax that arises as a result of the exercise by the tribunal of s 50(6) or (7) *in either increasing or decreasing the assessment.* It does not purport to relieve the Tribunal of any obligation to state the tax in a case where the assessment stands good, and we suggest that is because there is none.

80. But even if we were to accept that we are in fact required to set out the figures of tax in a "standing good" case and if we accept where the result of the s 9(1)(b) figures is an amount repayable that we are required to show that repayable amount rather than nil tax payable (a point we discuss below), in this case we would simply say that the amount of net income that stands good is £48,094 and the tax repayable is £898.40.

81. However, in [37] of their submissions HMRC argue that s 50 goes further than simply requiring us to state the net income and tax payable or repayable and requires the tribunal to determine the increase or decrease in tax payable or the reduction or increase in tax repayable, or in appropriate cases, both the increase in tax payable (from nil) and the decrease in tax repayable (to nil).

82. We do not agree. But before we set out our reasons for so saying we consider the point mentioned in §80. That point is whether the tribunal is required, whether in a "stand good" case involving a repayment or in a case where there is a repayment still due after the tribunal's variation of the return figures, to set out the figure of the amount now repayable or simply state that the tax is nil. If the answer is that the tribunal is not obliged to state the amount of the repayment becoming due as a result of their decision, then there can be no question of the tribunal being obliged to calculate the difference between two amounts of repayments.

83. HMRC set out their views as follows:

> "10. HMRC contend that a self-assessment under S9(1) TMA 1970 is the figure arrived at by following a 2 step process. Firstly the income tax charge is established from the entries contained in a return after deducting the claim for allowances and reliefs, and secondly there is an assessment of the amount payable, which is the difference between what is assessed as due and what has been deducted at source. The result can be a positive figure meaning there is tax to pay, a negative figure meaning there is tax to be repaid, or, it can be nil meaning there is nothing to pay or to be repaid.
>
> …

14. HMRC contend the legislation is clear. A self-assessment is the figure produced having ascertained what tax is due and deducting from this the tax that has been deducted at source, however the legislation prevents notional tax treated as paid on certain types of income but which is not repayable to the taxpayer, from being treated as tax deducted at source for the purposes of S9(1)(b).

15. HMRC consider the legislation at S9(1) TMA 1970 can be [*sic*-produce?] a repayable amount and the final clause of S9(1) suggests that amounts can be repayable and this is why there is the restriction on repayment of notional amounts of tax. If no item could be repayable under subsection (1)(b) it would not be necessary to include these words and it would not be necessary to specify certain items that cannot be repaid.

16. HMRC also consider the use of the word "repayable" within S9 TMA 1970 indicates the calculation required to establish the figure payable at S9 (1)(b) is not intended to arrive at nil but rather either a positive or negative figure

17. S121 FA 1996 amended S8, S8A and S12AA TMA 1970 with effect from 1996/97 and subsequent years and a Special Self-Assessment edition of the Tax Bulletin was published in 1997 which clarified the purpose of a return under the new self-assessment regime. It said the changes made clear that the purpose of a return and self-assessment was not only to establish the amounts chargeable on the person by way of Income Tax and Capital Gains tax but also to establish the amount payable [or repayable] for the year. The two amounts are different in that tax credits, and other IT deducted at source, are deducted from chargeable amounts to arrive at the payable amount. [*The square brackets and the words in them are HMRC's*]

18. HMRC's publication SAT2 Self-Assessment – The Legal Framework (SALF) whilst not legislation clearly sets out the policy intention as to how Self-Assessment was intended to operate from its introduction. HMRC refer to SALF 204 which says that a self-assessment is required even when a taxpayer is entitled to a net repayment of tax (e.g. a repayment of tax deducted at source).

19. HMRC consider that the legislation at S8(1AA) (b) or S9(1) (b) TMA 1970 does not say what the figure in a self-assessment must be. Although the legislation refers to amounts payable by a person, this can be a positive amount, nil or a negative amount, as it is the difference between two figures i.e. the amount chargeable to income tax and the aggregate amount of income tax deducted at source etc. It will be either a positive or negative figure as although it may be possible, it would be unusual that this figure will ever be nil. Whilst the amount of tax due may be nil this does not mean the payable figure (S9(1)(b)) has to be nil. S9(1) is worded in such a way to make it clear that both the figures at S9(1)(a) and (1)(b) are the self-assessment."

84. There is nothing much in this with which we would disagree. But we note that in [17] where HMRC purport to be reporting in indirect speech what the Tax Bulletin says, they put the words "or repayable" in square brackets. They do not say why, but

we have checked the text of the Bulletin and have found that it does not refer to repayments at all in the passage about s 121 FA 1996. Thus the bulletin did *not* say what HMRC say it said. If HMRC are to use a published document to make a point, they should not put words that are not in it into the reporting even in indirect speech of the extract they wish to stress or draw the tribunal's attention to. Putting the words in square brackets does not improve the situation, unless HMRC explain that the words are their addition and why they did that.

85. But turning back to the issue, we go again to *D'Arcy* where at [13] the Special Commissioner said:

> "These provisions [*ss 50(6) and (7) and 56A TMA*] seem to me to indicate that the jurisdiction of appeal Commissioners is not merely to decide whether the stated conclusion on a point of law in the closure notice is right or wrong and, if wrong, to allow the appeal and reduce the amendment to nil. I agree with Mr Furness that such a result is inconsistent with the tribunal's duty to decide whether the appellant is over- or undercharged by the self-assessment *and accordingly to determine the figure for the amendment to the self-assessment, …*" [the tribunal's emphasis]

86. We have already noted that the word used is "figure" in the singular, and we do not read this passage as necessarily saying that the tribunal's duty is to state a figure of the tax payable, nor *a fortiori*, that where, unusually, there was a repayment still due after the amendment, that the figure of repayment was to be stated. The tribunal's duty is to decide firstly whether there is an overcharge or undercharge, and if there is, to "accordingly" determine a figure. The question that arises is what is covered by the term "charged".

87. Terms such as "charge" and "assess" in the Tax Acts are notoriously chameleon like. But we can see from the sections that relate to returns and self-assessments that a distinction is clearly drawn between the amount "in which a person is chargeable to income tax" and the "amount payable by way of income tax" in eg s 8(1) and (1AA) TMA: the latter subsection provides a way of calculating each of those amounts which make it clear that the charge to tax in the context of a return is the figure of tax that is found as a result of applying the relevant rates of tax to the amount of a person's net income, ie their total income after making deductions for all allowances and reliefs. It is at the stage of determining the tax payable that the tax deducted at source and tax credits are taken into account.

88. What s 50(6) and (7) seems to require then is for there to be a finding whether a person is overcharged by an amendment to a return in the sense that the tax calculated on the net income is too high or undercharged in the sense that the tax calculated on the net income is too low, and to state what the correct figure of tax charged is, leaving HMRC to put into effect the consequences of the amendment of that figure.

89. Applying that to this case gives us a figure of tax on net income of £11,962.60. The figure of tax deducted at source (PAYE in this case) is not changed: it was not in

issue in the appeal. From that HMRC can readily calculate that there is no tax payable. They can also calculate that there is a repayment due of £898.40.

90. We draw support for this approach from *Hallamshire*. In that case, Browne-Wilkinson J said that the then tribunals did not have to made the reduction or increase in the assessment themselves. The wording then in s 50(6) and (7) is in the passive mood and does not give an agent, so that in an appropriate case it was acceptable for the tribunal to leave it to HMRC to physically make the changes to the assessment. The use of an agentless passive is still there, so it seems that the tribunal does not have to spell out all the consequences of its decision in terms of tax, and, indeed it may of course not have the materials or the knowhow to do that.

91. We accept however that because "charged" is such a chameleon-like term and needs to be applied to in s 50(6) and (7) to discovery and other assessments it cannot be said with complete certainty that tax deducted at source should not be taken into account in arriving at the "figure" referred to in D'Arcy at [13]. We can see that in some perhaps uncommon cases, where the amount of tax deducted at source that may be taken into account is an issue in the enquiry and is amended on appeal, the approach we have suggested of merely stating the revised tax charged on the net income (which may be nil) may be too simplistic.

92. But "charged" has to have some meaningful content and cannot in our view refer to a repayment or repayable amount. It refers to the tax that a person is liable to pay whether before or after taking into account tax already suffered, and where that tax exceeds the tax on net income, the tax charged is nil.

93. In a case like *Walker* where the quantum of the amounts deducted under the Construction Industry Scheme was in issue or in a case where the correct amount of PAYE to be credited to the appellant is in issue we can see a case for saying that the tribunal should at least say enough to enable the resulting calculation to be carried out by HMRC with confidence that it will get it right. And of course where those amounts are in issue and are resolved by the tribunal, its decision will set out what it considers the right amount to be, or at least will decide in principle how it should be calculated. But we do not see that its formal decision can be other than in accordance with s 50 to spell out the amount of the overcharge or undercharge to tax.

94. And we stress again that, whatever our duties are under s 50, nothing in what we have said applies to the "standing good" case where neither party needs any help in seeing what the figure is. Nor does anything in what we have said go anywhere near to allowing us to calculate the difference between the original and the amended self-assessment and to determine that such a difference is payable to HMRC either as additional tax or as an amount of an excessive repayment.

95. Going back to HMRC's contentions on this point at [37] referred to in §72, we consider that once we have stated what the self-assessment ought to have disclosed (whether is terms of tax payable or of amounts repayable) then our job is finished. The responsibility then passes to HMRC to give effect to the amended self-assessment, whether the amendment is only the original amendment to the return

made by HMRC under s 28A TMA or is the amended self-assessment as increased or decreased by the tribunal's decision.

96. Once HMRC have a tribunal's decision under s 50 they can then check whether the resulting calculations show that a repayment shown on the newly to be amended self-assessment is less than the amount actually repaid and take such action as the law allows them to collect any excessive repayment. We accept that in this appeal, a standing good case, we can ourselves see that the effect of our decision is that the amount of the repayment due is less than the amount of the repayment shown on the tax calculation sent to the appellant as due on the original but corrected self-assessment and we can see also that the difference between the two figures is probably what the appellant has been over-repaid by.

97. We say "probably" because we do not have the actual calculations sent to the appellant with the conclusion of the enquiry, but a precursor. This is just one of the reasons why we think that any statement by us as to the amount which is now repayable to HMRC, the statement HMRC want us to make, would be dangerous, even if we had the power to make it. Another is that to carry out the exercise HMRC want us to perform would require us to examine not only what was sought by way of repayment on the original self-assessment or on a correction, as in this case, but what repayment of that amount has actually been made, whether for example it might have been set-off or withheld or whether payments on account or other credits have affected the issue. In many cases we simply would not have the materials to carry out such calculations. As we do not have, in our opinion, any duty to carry out these calculations we would not and do not do so.

Decision

98. In accordance with s 50(6) TMA the self-assessment as amended by HMRC stands good.

99. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

RICHARD THOMAS
TRIBUNAL JUDGE

RELEASE DATE: 13 APRIL 2016

APPENDIX

LEGISLATION APPLYING TO CAR BENEFITS & MILEAGE PAYMENTS IN TAX YEAR 2011-12

ITEPA 2003

Employment income: earnings and benefits etc. treated as earnings

Part 3

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.

…

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 6 (cars, vans and related benefits),

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.

…

…

Chapter 6

Taxable Benefits: cars, vans and related benefits

General

114 Cars, vans and related benefits

(1) This Chapter applies to a car ... in relation to a particular tax year if in that year the car ... —

(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 ... —

(a) sections 120 to 148 provide for the cash equivalent of the benefit of the car 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 ... by virtue of any other provision (see section 119).

116 Meaning of when car ... is available to employee

(1) For the purposes of this Chapter 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 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).

117 Meaning of car … made available by reason of employment

For the purposes of this Chapter a car … 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 ... 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 ... 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).

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 124A.

…

Step 3

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 interim sum.

…

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.

Part 4

Employment income: exemptions

Chapter 2

Exemptions: mileage allowances and passenger payments

Mileage allowances

229 Mileage allowance payments

(1) No liability to income tax arises in respect of approved mileage allowance payments for a vehicle to which this Chapter applies (see section 235).

(2) Mileage allowance payments are amounts, other than passenger payments (see section 233), paid to an employee for expenses related to the employee's use of such a vehicle for business travel (see section 236(1)).

(3) Mileage allowance payments are approved if, or to the extent that, for a tax year, the total amount of all such payments made to the employee for the kind of vehicle in question does not exceed the approved amount for such payments applicable to that kind of vehicle (see section 230).

(4) Subsection (1) does not apply if—

...

(b) the vehicle is a company vehicle (see section 236(2)).

230 The approved amount for mileage allowance payments

(1) The approved amount for mileage allowance payments that is applicable to a kind of vehicle is—

M x R

where--

M is the number of miles of business travel by the employee (other than as a passenger) using that kind of vehicle in the tax year in question;

R is the rate applicable to that kind of vehicle.

(2) The rates applicable are as follows—

Table	
Kind of vehicle	**Rate per mile**
Car ...	45p for the first 10,000 miles
	25p after that

(6) The Treasury may by regulations amend subsection (2) so as to alter the rates or rate bands.

232 Giving effect to mileage allowance relief

(1) A deduction is allowed for mileage allowance relief to which an employee is entitled for a tax year.

…

…

Supplementary

236 Interpretation of this Chapter

(1) In this Chapter—

"business travel" means travelling the expenses of which, if incurred and paid by the employee in question, would (if this Chapter did not apply) be deductible under sections 337 to 342;

"mileage allowance payments" has the meaning given by section 229(2);

...

(2) For the purposes of this Chapter a vehicle is a "company vehicle" in a tax year if in that year—

(a) the vehicle is made available to the employee by reason of the employment and is not available for the employee's private use, or

(b) the cash equivalent of the benefit of the vehicle is to be treated as the employee's earnings for the tax year by virtue of—

(i) section 120 (benefit of car treated as earnings),

…

…

(3) Section[ ] 117 … (when cars … are made available by reason of employment and are made available for private use) appl[ies] for the purposes of subsection (2).