TC02753

Appeal number: TC/2010/06146

INCOME TAX and NICs – benefits to employees – whether car leases to employees of group of companies constituted taxable benefits – no – whether taxable as earnings under s.62 ITEPA – yes – whether tax payable where employees paid sums agreed with employers considered to be full market value – no –whether liability to NICs in those circumstances – no – appeal allowed

FIRST-TIER TRIBUNAL
TAX CHAMBER

APOLLO FUELS LTD AND OTHERS	**First Appellants**
- and -	
BRIAN EDWARDS AND OTHERS	**Second Appellants**
- and -	
THE COMMISSIONERS FOR HER MAJESTY'S REVENUE & CUSTOMS	**Respondents**

TRIBUNAL: JUDGE DAVID DEMACK
ANN CHRISTIAN

Sitting in public at Manchester on 24 September 2012

Mr Rory Mullan and Mr Oliver Marre both of counsel for the Appellant

Mr Alan Hall, an Inspector of Taxes, for the Respondents

DECISION

Introduction

1. In these appeals we as the tribunal are required to determine the taxation implications of arrangements made by companies in the Newell & Wright group of companies ("the Group") whereby they leased cars to their employees for what they claim to have been full consideration, and credited the employees with mileage allowances in respect of the business use of such cars against car rents owed by employees.

2. The names of the six Group companies concerned, the First Appellants, are set out in the first part of the First Schedule to our decision, and the names of the employees, the Second Appellants, in the second part of the same Schedule. The tribunal directed that the appeals of the First Appellants and the Second Appellants be heard together.

3. The First Appellants appeal against (1) notices of determination given under reg.80 of the Income Tax (Pay As You Earn) Regulations 2003 in respect of the tax years 2003-04 to 2009-10 inclusive under which the Commissioners determined that they were liable to account for PAYE on certain payments to their employees made in respect of mileage allowances; and (2) notices of decision issued under s.8 of the Social Security Contributions (Transfer of Functions etc) Act 1999 in which the Commissioners asserted that they were liable to pay:

   (a) primary and secondary Class 1 National Insurance Contributions ("NICs") on payments made to their employees in respect of mileage allowances;

   (b) Class A1 NICs in respect of the use of motor cars leased to their employees.

4. The Second Appellants appeal against notices of assessment raised under s.29 of the Taxes Management Act 1970 in respect of the years 2007-08 to 2009-10 inclusive in which they have been assessed to income tax on the use of cars leased to them by the First Appellants.

5. We should mention that certain penalty assessments originally raised by the Commissioners, and dealt with in the statement of case, have been settled between the parties, and thus play no part in the appeal.

6. The Commissioners assessed the appellants on the basis that:

   (a) notwithstanding the terms of the car leases and the consideration, claimed to be market value, paid for the use of the cars, such use was a benefit taxable under Part 3 Chapter 6 Income Tax (Earnings and Pensions) Act

2003 ("ITEPA") *TAXABLE BENEFITS: CARS, VANS AND RELATED BENEFITS* ("the car benefit charge"); and

(b) sums paid or credited to employees in respect of mileage allowances were earnings subject to tax because the exemption contained in Part 4 Chapter 2 ITEPA *EXEMPTIONS*: *MILEAGE ALLOWANCES AND PASSENGER PAYMENTS* ("the mileage allowance exemption") was not available where the car benefit charge applied.

7. The Commissioners claimed income tax and class 1A NICs on the car benefit at 6(a) above, and income tax and class 1 NICs on the mileage allowance exemption payments at 6(b) above.

8. The appellants dispute the sums assessed on the following grounds:

(a) A benefit in the form of a lease of a car is earnings within s.62 ITEPA so the car benefit charge cannot apply

(b) In any event, the car benefit charge applies only to charge the provision of a benefit

(c) The conditions for the car benefit charge to apply are not met if there is a transfer of property in a car in a manner the effect of which is that the employee has an exclusive right to the use of the car

(d) Unless the car benefit charge applies or that for which Part 3 Chapter 10 ITEPA provides *TAXABLE BENEFITS; RESIDUAL LIABILITY TO CHARGE* ("the residual benefit charge"), the mileage allowance exemption is available

(e) Where the car benefit charge would not apply because it is reduced to zero, the mileage allowance exemption will not apply in any event.

9. The appeal is mainly concerned with the benefits code contained in the ITEPA, and we have included the relevant provisions of that Act in the Second Schedule to our decision. We have also included the relevant NIC provisions found in the Social Security Contributions and Benefits Act 1992 ("the 1992 Act"), and those in the Social Security (Contributions) Regulations 2001 ("the Regulations").

10. Before us, all the appellants were represented by Mr Rory Mullan and Mr Oliver Marre, both of counsel, and the Commissioners by Mr Alan Hall, an Inspector of Taxes based at the Commissioners local compliance appeals and reviews office in Leeds. We were provided with a number of bundles of copy documents, a bundle of legislation and one of authorities. Additionally oral

evidence was given to us by Mr Simon James Lawtey, who, although employed by Newell & Wright Transport Contractors (Sheffield) Ltd, is the accountant for the Group, Mr Francis Ronald Newell, a director and major shareholder in the Group holding company, Newell &Wright (Holdings) Ltd ("Holdings"), and Mr Paul Richard Barker, the general manager of Newell & Wright Transport Contractors (Sheffield) Ltd, and one of the Second Appellants. Mr Lawtey explained that he gave his evidence on the basis that he referred to Group companies collectively and did not distinguish between individual companies within it. Our findings of fact are recorded on the same basis. It is from the oral and documentary evidence so provided that we make the following findings of fact.

The Facts

11. Companies within the Group carry on a variety of trades and businesses including the distribution of fuel oils, transport contracting, tanker manufacturing fabrication and sales, freight forwarding and haulage, and vehicle hire and sales.

12. The Group historically provided cars to salesmen and managers employed by its subsidiaries both as a perquisite of their employment and to enable them to carry out their duties. The cars were mainly second-hand, and purchased at auction. The duties of the employees concerned included visiting new and existing customers and suppliers, delivering freight to customers, travelling between various company sites, and visiting the companies' banks, accountants, etc. The annual business mileage of each of the employees concerned varied between 5,000 and 25,000 miles.

13. Mr Lawtey was amongst those employees provided with a car. He received one on entering into the Group's employment in 1997 and continued to have the benefit of it until 2002 or 2003.

14. From 6 April 2002 there was a change in the taxation of the provision of company cars to employees. Before that date employees were charged to income tax as if a sum equal to 35% of the value of the car when new was their income, but the charge was reduced to 25% for employees who travelled more than 2,000 business miles in the year, and to 15% for those who travelled more than 18,000 business miles. Further, if the car were 4 or more years old, the tax charge was reduced by one quarter.

15. Following the change there was no longer any reduction in the charge to tax based on the extent of an employee's business travel, or for the age of the car. Instead employees were charged to tax in the sum of 15% (since reduced to 10%) of the list price of the car if its CO2 emissions were below a specified

figure, with an addition of 1% of the value charged for each 5g/km above that figure.

16. Perhaps not surprisingly, since the change resulted in employees facing an increase in tax without any change in the use of their cars, they were unhappy and raised the matter with Mr Lawtey. Further, the change imposed additional NICs on the Group, so that it was not without interest to it. Mr Lawtey in turn raised the matter with the directors of Holdings, and suggested that replacing the provision of cars to employees with a hiring arrangement might satisfy their concerns.

17. Having recognised that if company cars were to be withdrawn from use by its employees, the Group would have to dispose of the cars in some way, Mr Lawtey considered the "least disruptive option", and one which provided such of them as wished to lease cars on arm's length terms, would be to hire to the employees the very cars with which they had previously been provided. His proposal in that behalf was accepted by Holding's directors and the Group's employees were initially offered the continued use of their cars. Alternatively, they were offered the hire of a vehicle of their choice. If an employee chose to exercise the alternative option, since the car was probably not a model currently owned by the Group and thus not immediately available, Mr Newell explained that the Group would attempt to accommodate him by purchasing the model in question second-hand at a motor auction.

18. He also recognised that to ensure the Group's employees were not provided with benefits on which they would be liable to tax, any hire arrangements would have to be at full market rental.

19. Mr Lawtey explained how he then went about calculating a suitable market value rent for each car, saying:

> "… I considered the cost to the group of providing the vehicles and added what I considered to be a reasonable profit of 10%. To calculate the likely cost of each vehicle over a three year period I first calculated the loss in value of the car. For each vehicle I established the current value using the CAP car value guide and Glass's car value guide. I also used these guides to establish the likely value in three years by looking how much each individual vehicle's value changed over a three year period. For example if the vehicle in question was registered in 1999 I looked at what a vehicle registered in 1996 was now worth and compared this to the value of the 1999 vehicle to calculate the expected drop in value over 3 years. I divided this figure by 36 to give a monthly loss in value figure. I then added a further 10% to give what I considered to be a commercial return on the hire of these vehicles for the group. This established the annual hire charge excluding VAT for

the vehicles. VAT was subsequently charged and accounted for on hire charges. I then compared the rental charges to information from advertising flyers sent to the company by vehicle leasing companies and magazine and newspaper advertisements for the hire of similar types of vehicles. The hire charges calculated as above were compared to those charged by other hire companies for similar model cars to see how the figures compared.

To make the comparisons I found examples of similar vehicles and looked at how much they were hired for and on what terms. The cars hired by third parties were brand new or nearly new, i.e. under 12 months old vehicles (as opposed to the group's which were older vehicles) and often models of a higher specification. The group hire figures as calculated above were usually lower than the third party hire but I thought this was reasonable and to be expected because we were hiring older vehicles. The main reason for this comparison was carried out (sic) was to ensure the hire charges calculated were reasonable given the age and type of vehicles to be hired."

20. Mr Newell confirmed that the Group accepted Mr Lawtey's recommended hire charges and adopted them for the purpose of its car leasing scheme.

21. The Group also offered to maintain the cars hired to employees, that offer including insurance, car tax, tyres servicing and repairs. The offer involved them paying a standard monthly charge of £85, plus VAT.

22. The original car provision scheme was ended in or about April 2003, and the new car leasing scheme implemented on its termination. All 26 employees who had previously been provided with a company car agreed to the new arrangements, and entered into car leases. Mr Lawtey added that under the new arrangements employees were informed that they would be paid for business mileage at the same rate as other Group employees who used their own cars for business purposes; sums due to them for mileage allowance claims would be set off against amounts owed to the Group under the car leases.

23. Mr Lawtey personally prepared a standard Group car lease to deal with the new arrangements. It was used as the basis of all 26 employees' contracts. Mr Lawtey's own lease is included in the Third Schedule to our decision. We should record that the form of lease set out the full terms and conditions of hire, provided for termination of the lease at the option of the employee on seven days' notice, the lease continued after the employment ceased, and made no provision for the Group to terminate it.

Submissions for the appellants

The car benefit charge and earnings

24. It was against that factual background that Mr Mullan questioned the Commissioners' claim that the 'core issue' before the tribunal was whether the Group provided a 'company car' which was caught by s.120 ITEPA. He maintained that that was a 'gross oversimplification' of the issues involved; there was no reference to a 'company car' in s.120, but the term 'company vehicle' was defined in s.236 ITEPA.

25. He observed that by s.9 ITEPA income tax is charged on the general earnings of an employee, and that such earnings include amounts which are earnings within Part 3 Chapter 1 ITEPA and amounts treated as earnings under the benefits code in Part 3 Chapters 2 to 11 ITEPA. The car benefit charge forms part of the benefits code, and is intended to bring within the charge to income tax the advantage an employee obtains when provided with a car by his employer in circumstances where that benefit would not fall within the general charge on earnings. The charge applies by deeming the benefit enjoyed by the employee as an amount of income, known as the 'cash equivalent' of the benefit.

26. The car benefit charge cannot apply unless the conditions contained in section 114(1) ITEPA are satisfied. The conditions are three in number. First, it is requisite that the car be "made available (without any transfer of the property in it) to an employee". Secondly, the car must be made available by reason of the employment and, thirdly, it must be available for the employee's private use. In the instant case, Mr Mullan observed that only the first of those conditions was in dispute. It was common ground that the vehicles concerned were cars for the purposes of s.114, that the cars were made available by reason of the employee's employment, and that they were available for the employee's private use.

27. He added that s.114 also required, first, that there was no amount which constituted earnings from the employment in respect of the benefit of the car by virtue of any other provision other than in circumstances within s.119 ITEPA and, secondly, there was no transfer of the property in the car. It was common ground that the circumstances within s.119 were not in point.

Does "*an amount constitute[-] earnings from the employment in respect of the benefit of the car… by virtue of any other provision*"?

28. On the assumption that a car lease did constitute a benefit provided by the Group, Mr Mullan developed the point that s.114 ITEPA provided that the benefit had not to be taxable by virtue of any other provision in ITEPA for the car benefit charge to come into play. He contended that any benefit provided under a car lease to an employee of the Group was taxable as earnings under s. 62 ITEPA, and therefore the car benefit charge could not apply. By s. 62

earnings extends to "any incidental benefit of any kind obtained by the employee if it is money or money's worth", and for that purpose by s.62(3) "money's worth" means "something that was-

(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."

29. Mr Mullan also noted that s.62(3) reflected earlier authorities on the meaning of perquisites including *Tennant v Smith* 3 TC 158 and *Abbott v Philbin* 39 TC 82 (discussed in *Heaton v Bell* 46 TC 211). The terms on which the Group leased cars to employees did not restrict their use; it was open to them to let third parties use them for a consideration. He submitted that the rights conferred by the leases were money's worth for the purposes of s.62 ITEPA with the consequence that, on entering into a car lease, an employee would have been in receipt of earnings within that section.

30. In *Heaton v Bell*, which involved the hire of a car to an employee on terms that only he could use it, it was recognised that the hirer might have raised money by hiring out the car, and the benefit would in that case have "possess[ed] the characteristics of a taxable perquisite". Mr Mullan added that it was, however, settled law that the money's worth charge would be reduced by any amount paid by the employee for the rights he had so that, in the instant case, if the rental consideration payable by an employee was equal to the money's worth value of the rights conferred on him by an agreement, he submitted that the charge would be reduced to nil. If it were not, a charge under s.62 would apply, and there would be no question of the car benefit charge applying.

31. Mr Mullan further submitted that it would, however, be an absurdity if the car benefit charge did not apply where an employee was in receipt of a benefit, but did so where he was not in receipt of one, i.e. that an employee of the Group was in a worse position by reason of his giving full value for the rights he acquired. He suggested that the legislation should be interpreted to avoid such absurdity.

32. In the instant case, the Commissioners had assessed on the basis that, even where the cash equivalent of the car benefit was reduced to nil under s.144 ITEPA (Deduction for payment for private use), there was nevertheless an amount which was the cash equivalent of the benefit for the purposes of s. 121 (Method of calculating the cash equivalent of the benefit of a car) and s.236 (The interpretation section for Part 3) ITEPA. Mr Mullan contended that, if that were correct, it must follow that there must be an amount which represented earnings (albeit reduced to nil by the payments made by the employees) within

s.114(3) ITEPA, with the consequence that the car benefit charge could not apply.

Potential charge under s.203 ITEPA

33. Section 203 ITEPA charges the cash equivalent of the benefit to tax and defines this as the cost of the benefit less any part of that cost made good by the employee to the person providing the benefit. In relation to the potential charge to tax under that section, Mr Mullan submitted that where a benefit came within both the charge to earnings under s.62 ITEPA and also within the benefits code, s.64 ITEPA provided that the charge under s.62 took precedence, and the charge under the benefits code applied only to the extent that the amount chargeable under that code exceeded the amount chargeable as earnings. Since, in the instant case, the charge under the benefits code did not apply, there might be a potential to the residual benefit charge; that would be an issue to be determined by reference to each car and the rentals charged (s.205 ITEPA).

Can the car benefit charge apply in the absence of a benefit?

34. Mr Mullan next dealt with the question of whether the car benefit charge could apply in the absence of a benefit, submitting that it was clear from all of the headings and context of Part 3 Chapter 6 ITEPA that it could not; the purpose of that Chapter was to tax benefits. The Commissioners relied on the absence of a provision expressly stating that unless a benefit was provided no charge applied. He maintained that the reason for the absence of such a provision was that it was obvious from the context of the tax, the terms of the charge and the nature of the headings. No charge was intended in circumstances where there was no benefit: the context in which the car benefit charge appeared made that plain.

35. As Oliver LJ said at [84] of *Wicks v Firth [*1982] STC 76, a case concerned with benefits accruing to employees of ICI from an educational trust, "…the obvious intention of this legislation…is to impose tax on the value of those otherwise untaxed advantages which the employee enjoys because he is employed, advantages which …benefit him by relieving him of an expense which he might otherwise expect to bear out of his own resources. These are, in many cases, by definition, benefits which could not in any ordinary sense be attributed to a reward for the employee's services…"

36. And, as Lord Hutton LCJ confirmed in the Court of Appeal of Northern Ireland in *Mairs v Haughey* 66 TC 273, the benefits code is not intended to apply to matters which are not benefits:

> "The consequences of adopting the Crown's approach are, to my mind, so appalling that something must be wrong… All kinds of benefits are

covered: but whatever they are, they must still be capable of being described as 'benefits'. The legislation is aimed at profits (in a broad sense) which escape taxation under the mainstream Sch E provisions for one reason or another. It is not aimed at receipts resulting from fair bargains.

That decision was approved by the Court of Appeal of England and Wales in *Wilson v Clayton* [2005] STC 157.

37. Mr Mullan also submitted that it was not the case, as the Commissioners suggested, that the residual benefits charge under consideration in *Wilson v Clayton* applied in a different manner, or that on the express wording of that benefit there must be a benefit. It caught "facilities of any kind". Mr Mullan accepted that that wording did not require a benefit, but maintained that one must be present. Furthermore, he said, it was clear from s.236(2) ITEPA that the two charges were intended to apply in a similar way.

Parliamentary intention

38. Mr Marre dealt with the subject of parliamentary intention, observing that the Commissioners' approach to construction of the relevant legislation led to a taxpayer being potentially worse off for receiving no benefit, and in the idea that a charge should be applied where there was no benefit. He maintained that since the Commissioners' approach led to absurdity, we should, if necessary, make reference to Parliamentary material, see *Pepper v Hart* [1993] AC 993 per Lord Browne-Wilkinson at 634. Mr Marre, having taken us to the relevant passages in Hansard for 3 May 1976, which showed the intention of what is now s.114 ITEPA to be to tax "the benefit derived from a company car" – described by the Chancellor of the Exchequer as one of a number of "fringe benefits" - submitted that we should find the intention of Parliament with regard to s.114 to be to tax only that which was of benefit to an employee.

Is there a benefit?

39. On the authority of *Lord Vestey's Executors v CIR* 31 TC 1, Mr Mullan submitted that a taxable benefit was not received as a result of market value arrangements, such as those in point in the instant case. In the *Vestey* case, Lord Reid said at 121: "I find it impossible to hold that a sum of money lent at a commercial rate of interest is 'payable to or applicable for the benefit of' the borrower in the sense of this section". Similarly, as the Special Commissioners opined in *Sports Club plc v Inspector of Taxes* [2000] STC (SCD) 443: "In our view the expression 'benefit' in s.154(2) [of the Income and Corporation Taxes Act 1988, the predecessor to the present provisions in ITEPA where the key wording was the same] must exclude anything provided in return for good

consideration under a separate commercial contract." Since both the Group companies and their employees in the instant case were satisfied that a fair bargain had been struck, Mr Mullan contended that the employees received no benefit in connection with the cars.

Is there a transfer of property in the car?

40. Next Mr Mullan submitted that it was clear from ss.114(1)(a) and 116(1) ITEPA that the car benefit charge would not apply if there was any transfer of property in the car; and if an employee acquired a proprietary right in a car there was a transfer of the property in it. In the instant case he contended that it was clear that the agreement between the Group and an employee created a proprietary right which was transferred to and subsequently enjoyed by the employee. He observed that such a right had long existed in relation to real property, and claimed that it had been extended in recent years to personal property. Mr Mullan claimed a recent statement of the law to be found in *Bristol Airport plc v Powdrill* [1990] 2 All ER 493 where Browne-Wilkinson V-C confirmed that the law had developed such that a lease of chattels gave rise to a property right. In the years since the judgment of Browne-Wilkinson V-C, Mr Mullan maintained that the law had further developed and it was now clear that a lease of chattels gave rise to a proprietary right. As was explained in *Proprietary Rights and Insolvency* Richard Calnan (2009) at 2.34: "Although there is still controversy about the position, it is suggested that a lease of goods does, in fact, create a proprietary interest. The cases do establish that a lessee of goods has rights against third parties. If a lessee has a contractual right to continue in possession, the cases show that:

- The lessor cannot sue third parties for converting the goods (because although their owner, he does not have an immediate right to possess them) *Gordon v Harper* (1976) 7 TR 9;
- The lessee can sue third parties in conversion (which indicates that the lessee does have an immediate right to possess based on a proprietary interest) *Burton v Hughes* (1884) 2 Bing 173;
- The lessor cannot recover the goods from the lessee (because he has contracted to allow them to remain in the possession of the lessee) *North General Wagon & Finance Co v Graham* [1950] 2 KB 7, 11;
- If the lessor wrongfully recovers the goods from the lessee, the lessee can sue him in conversion, *Roberts v Wyatt* (1810) 2 Taunt 268; *Brierly v Kendall* (1852) 17 QB 397; *City Motors (1933) v Southern Aerial Super Service* (1961) 106 CLR 477."

41. Mr Mullan submitted that it must follow that the car leases granted by the Group to its employees created proprietary rights; and that, as a consequence of those proprietary rights, it could not be said that there was no transfer of the property in the cars. Thus the car benefit charge could not apply. However, if it could not do so for that reason, the residual benefit charge would be in point in any case where a benefit was provided.

Vasili v Christensen 76 TC 116

42. In *Vasili* Pumfrey J considered the application of the car benefit charge in circumstances where the employee had acquired a 5% interest in the car. The learned judge adopted a purposive approach to the legislation, and concluded that the charge was not excluded by the employee's acquisition of the 5% interest because the employer continued to make the car available to the employee and was not paid for doing so:

"In their [the words 'the property'] ordinary sense, the question 'who made the car available to Mr Vasili?' must be answered in the sense that his employer did so, and has not been paid for it."

43. Mr Mullan maintained that it was plain that that approach to construction would not have been acceptable had the employer been paid for making the car available: that would have been outside the intendment of the legislation. In the instant case, there had been a transfer of property in the car and, if the employer had made the car available, he most certainly had been paid for it: there was thus no scope for application of the car benefit charge.

44. Further, in *Vasili*, the transfer of property in the car was not such as to exclude the employer from the right to use the car. Mr Mullan contrasted that with the instant case, where the employer was excluded from use of the car.

45. Mr Mullan further submitted that the tribunal decision in *Whitby and Ball v HMRC* [2009] UKFTT 311 was wrong in concluding at [15] that what followed for a co-owner would equally follow for a lessor/lessee. He did, however, observe that the tribunal did not have the benefit of submissions on the point.

The mileage allowance exemption

46. Section 229 ITEPA provides for an exemption from tax of approved mileage allowance payments made to employees, but by sub-s (4) such payments are excluded if the vehicle concerned is a company vehicle as defined in s.236(2) ITEPA. That subsection provides that a car will be a company vehicle only if either the car benefit charge applies to it, or the residual benefit charge applies. In Mr Mullan's submission, the employees' vehicles in the instant case were not

company vehicles as either there was no chargeable benefit or the chargeable benefit was subject to tax as earnings within s.62 ITEPA.

What if the lease payments exceed the cash equivalent under the car benefit charge?

47. If, contrary to the submissions above, we were to determine the car benefit charge applicable in the instant case, Mr Mullan observed that we were required to give consideration to the effect of the lease payments, and that s.144 ITEPA provides for the deduction of payments for private use.

48. The cash equivalent of the benefit of a car is to be treated as earnings by reason of s.120 ITEPA, and that sum is to be calculated in accordance with s.121 ITEPA. However, where the sum deductible under s.144 exceeds the sum calculated under s.121, the cash equivalent of the benefit is nil, and there is nothing to be treated as earnings from employment for the purpose of s.120 or s.236(2)(b) ITEPA. In Mr Mullan's further submission, it could not be said that a nil amount should be treated as earnings.

49. He therefore claimed that it followed that those employees who could not have had any amount treated as earnings under the car benefit charge for a given tax year by reason of payments which fell within s.144 ITEPA (reducing the cash equivalent of the benefit to nil) were entitled to the mileage allowance exemption for that tax year. Even if it could be said that there was a nil cash equivalent of the benefit, it could not be said that that was to be treated as earnings. In any event, if it could be said that that a nil amount was to be treated as earnings, as in *Whitby and Ball*, there would have been money's worth of nil within s.62 of ITEPA which would have excluded the car benefit charge by reason of s.112(3) ITEPA. Mr Mullan maintained that any other approach would be illogical and inconsistent.

50. To the extent that the mileage allowance exemption was not in point, Mr Mullan claimed the employees were nevertheless entitled to an allowance in respect of sums actually expended by them on business travel, and the assessments must necessarily take account of that.

Whitby and Ball v HMRC [2009]UKFTT 311

51. As we mentioned above, Mr Mullan submitted that *Whitby and Ball*, a case involving facts somewhat similar to those of the instant case where the tribunal concluded that the car benefit charge applied and that the mileage allowance exemption was not available even in circumstances where there was in fact no car benefit charge by reason of s.144 ITEPA, was wrongly decided. He thus contended that it should not be followed. There the tribunal was not referred to

the potential application of s.62 ITEPA, there was no considered argument of *Vasili*, and no consideration of the legal effects of the lessor/lessee relationship.

52. Mr Mullan concluded his submissions on the income tax points at issue by submitting that the appeals should be allowed, and the notices of determination, decision and assessments to tax set aside.

The claim for NICs

53. Mr Mullan then went on to deal with the NICs claimed by the Commissioners, submitting that reg 22A(4) of the Regulations had the consequence that the "qualifying amount" exempt from a charge to NICs was the product of (i) the business miles travelled in respect of which payment was made, and (ii) the highest rate per mile allowed under s.230 ITEPA. There was nothing to restrict the relief by reference to company vehicles.

54. In that regard, he noted that, in their National Insurance Manual at NIM05903, the Commissioners accepted that there were differences between the income tax and NIC treatment as they relate to mileage allowances:

"The NICs motoring expenses scheme and the AMAPs system for tax are aligned as far as possible. However, there are differences in the two schemes. You should not assume that something that was true for one scheme was also true for the other."

55. Even if the tribunal were to conclude that the Group's cars were company vehicles, Mr Mullan further submitted that the expenses payments made to its employees were exempt from NICs under Part VIII of Schedule 3 to the Regulations: in so far as the appeals related to notices of decision that the First Appellants were liable to pay primary and secondary Class 1 NICs in respect of mileage allowances, the notices should be set aside.

Submissions for the Commissioners

56. Mr Hall submitted that a car benefit charge arose by virtue of the provisions contained in Part 3 Chapter 6 ITEPA. Consequently, the cars made available to the employees were "company vehicles", and s.229 ITEPA did not apply to the mileage payments made to them.

57. He contended that a car provided by the Group to an employee was taxable as general earnings by virtue of s.6 ITEPA because the car was caught by s.114 ITEPA; it was thus unnecessary to consider whether a charge arose under s.62 ITEPA.

58. The Group was providing cars to its employees, so that the Commissioners contended that Part 3 Chapter 6 ITEPA applied because the underlying the asset was a car. The alternative argument, that there was a charge under Part 3 Chapter 10 ITEPA, could not succeed for s.202(1)(a) defined an "excluded benefit" as one where "any of the Chapters 3 to 9 of the benefits code applies to the benefit", and Chapter 6 applied to the provision of a car. Therefore s.202 precluded Chapter 10 from applying.

59. Mr Hall further submitted that all the conditions in s.114 ITEPA had been met, and therefore a chargeable benefit arose on the individuals and a Class 1A NIC charge on the Group companies concerned.

60. As to an argument by Mr Mullan that the "made available" condition in s.114(1) ITEPA had not been met, Mr Hall observed that "available" was not defined in ITEPA, and submitted that it must take its normal meaning as "capable of being used, at one's disposal, within one's reach".

61. The method by which a car was made available to an employee was irrelevant to the condition; it was sufficient that a car was made available. An employee had the use of a car; therefore it was made available to him.

62. Next, Mr Hall contended that the *Bristol Airport* case turned on whether a leased aircraft was "property" for the purposes of the Insolvency Act 1986, and did not assist the appellants; the key to the finding of Browne-Wilkinson V-C that the aircraft was property was that the equitable remedy of specific performance would be granted to force the lessor to continue with the lease since there were unique features peculiar to an aircraft – a uniqueness that was absent in the instant case. The Commissioners did not consider that case to establish any general principle that all chattel lease contracts were specifically enforceable and gave rise to a property right in the leased chattel.

63. Mr Hall noted that the effect of leases of cars for tax purposes had been considered in several recent cases including that of *Vasili*, which had been followed by the tribunal in appeals by a number of taxpayers, including that of *Whitby and Ball*. In *Vasili*, Pumfrey J said at [12] and [13]:

> "12. …I consider that the words "made available (without any transfer of the property in it)" are not to be construed in a manner which has the result that the conferring of any interest upon the employee sufficient to give the employee an independent right to possess and use the asset is sufficient to prevent the car from being 'made available'. My reasons are these.

> 13. First, the words 'without any transfer of the property in it' are not apt to cover the conferring of a part interest only on the employee. There is some force in the submission that to construe them in any other sense involves the introduction of the words 'any of' before the words 'the property'. But that is not my principal reason. In their ordinary sense, the question 'who made the car available to Mr Vasili?' must be answered in the sense that his employer did so, and has not been paid for it. To the extent to which the purchase price is paid by Mr Vasili to the employer, this construction will only be acceptable if a proper allowance can be made so as to reduce the 'cash equivalent' under s.157."

64. Mr Hall accepted that a deduction could be made to reduce the cash equivalent in the circumstances outlined in s.144 ITEPA, where a payment was made as a condition of the car being made available for an employee's private use. Indeed, he explained that in the instant case the Commissioners had given relief for the lease rentals under s.144 by making a deduction from each car benefit they had calculated. They had done so by concession, even though the terms of the leases did not require the payments to be made as a condition of the vehicles being available for private use. (Mr Hall noted that that procedure had been approved by the tribunal in *Whitby and Ball*).

65. Mr Hall further claimed it to be implicit in s.114 that an employee could use the car privately where the conditions contained in s.118 were met. Nothing was said about what an employee might do with the car, other than that it was available for private use.

66. As we earlier mentioned, it was common ground the car was by s.117 ITEPA deemed to be made available to an employee by reason of his employment. Mr Hall added that the exception at s.117(a) could not apply as the employer was not an individual.

67. If an employee had, without reference to the employer, gone directly to a bona fide independent leasing company to lease a car of his own choice, whether for business or private use mattered not in the Commissioners' view, Mr Hall claimed that the situation would have been completely different. However, as in the instant case all 26 employees of the Group chose to continue "the arrangements, using the same vehicle as before, albeit through a leasing agreement", he maintained that the conditions contained in s.114 ITEPA were satisfied, and therefore a car benefit was chargeable on all the Second Appellants under s.120 ITEPA.

68. On the assumption that a car benefit was chargeable on each employee, Mr Hall then observed that quantification of the benefit was to be determined by

applying the method for which s.121 ITEPA provided. As the Group had provided information to the Commissioners to enable them to quantify the benefits assessable, they had allowed a deduction under s.144(1)(a) and (b) for private use of each car in the sums paid by each employee under the terms of his lease.

69. The Commissioners accepted that the Group had in some cases paid mileage allowances as if the cars had been privately owned at the official rate of 40p per mile for the first 10,000 miles and 25p per mile thereafter. Those sums were stipulated in s.230 ITEPA.

70. Section 229(1) ITEPA states that no liability to income tax arises on approved mileage allowance payments for a vehicle to which Chapter 2 applies, but by s.229(4) subsection (1) of that section does not apply to a 'company vehicle', as defined in s.236(2). Mr Hall contended that the cars were company-provided vehicles, and the cash equivalent of their benefit was to be treated as the employees' earnings by virtue of s.120 ITEPA. Thus the mileage rates paid – as if the vehicles were privately owned – were excessive. He did, however, accept that, by reason of the allowances given, there was no amount to be treated as earnings, but submitted that a nil charge was still a charge: it was the principle the Commissioners took into account.

71. Mr Hall then dealt with the question of the excessiveness of the mileage allowances and whether there was a charge to tax on the difference. He observed that business mileage travelled in a company/employer-provided car would not attract a charge to tax if the allowance paid, known the advisory fuel rate, covered only the cost of business fuel. The charge was calculated to cover the fuel costs of a range of vehicles using information obtained from manufacturers, vehicle associations, etc. If the amounts claimed/paid were less than the advisory rates, the employer need keep no record of them; if more, the parties had to demonstrate that the amounts in question covered only the actual cost of fuel for business use. Any excess fell to be assessed as general earnings as cash rather than a pre-determined benefit. In the instant case, the employees had been paid by the Group at the higher (AMAP) rates applicable to private vehicles. Mr Hall submitted that the correct rate which should have been paid for business mileage was the lower (advisory fuel rate) rate because the vehicle was company provided: the employees had benefited from the higher rates and the excess was therefore assessable to income tax as earnings. The appeal against the tax assessments should be dismissed.

72. Turning to consider the question of the related NICs payable by the Group, Mr Hall observed that as car and fuel benefits were assessable Class 1A NICs were

due under s. 10 of the 1992 Act; and the excess mileage allowances were assessable and Class 1 NICs were due under s. 6 of the 1992 Act.

73. In conclusion, Mr Hall observed that the car benefits assessed had been based on the Group's own records, and that the excess mileage allowances for years 2007-08 to 2009-10 had been calculated on actual figures, again taken from Group records. He asked that we issue a decision in principle and, assuming it were in favour of the Commissioners, give the parties leave to agree the figures.

Discussion and conclusion

74. Central to our conclusion is the decision of Browne-Wilkinson V-C in the *Bristol Airport* case. In dealing with the question whether aircraft were 'property' of Paramount Airways Ltd, a company in administration, the learned judge said at pp501 and 502:

> "Counsel for the airports [which had detained aircraft held by Paramount as a result of a failure to pay airport charges] submits that because the aircraft were only held under chattel leases they are not 'property'. The aircraft, he submits, were the property of the ultimate lessor; Paramount has only contractual rights.
>
> 'Property' is defined by s.436 of the [Insolvency Act 1986] as follows:
>
> '"property" includes money, goods, things in action, land and every description of property wherever situated and also obligations and every description of interest, whether present or future or vested or contingent, arising out of, or incidental to, property.'
>
> It is hard to think of wider definition of property.
>
> In my judgment, the interest of Paramount under a lease of the aircraft is plainly property within that definition. It is true that, to date, concepts of concurrent interests in personal property have not been developed in the same way as they have over the centuries in relation to real property. But modern commercial methods have introduced chattel leasing. The 1986 Act refers expressly to such leases: see s.10(4). Although a chattel lease is a contract, it does not follow that no property interest is created in the chattel. The basic equitable principle is that if, under a contract, A has certain rights over property as against the legal owner, which rights are specifically enforceable in equity, A has an equitable interest in such property. I have no doubt that a court would order specific performance of a contract to lease an aircraft, since each aircraft has unique features peculiar to itself. Accordingly in my judgment the 'lessee' has at least an

equitable right of some kind in that aircraft which falls within the statutory definition as being some 'description of interest…arising out of, or incidental to' that aircraft."

75. Mr Hall relied heavily on the observation of the Vice-Chancellor that he had "no doubt that a court would order specific performance of a contract to lease an aircraft" because each aircraft had "unique features peculiar to itself". He claimed that specific performance of a contract to lease one of the Group's cars would not have been ordered had it been sought: there was nothing about any of the Group's cars to bring it within the definition of "unique". We find the learned judge's use of the word "unique" in this context somewhat puzzling. We can accept that specific performance of a contract to lease a commercial aircraft would be ordered due to the aircraft's high value, but that is somewhat different from the uniqueness of an aircraft's features. Commercial aircraft these days do not possess unique features, nor did they when Browne-Wilkinson V-C gave his judgment. In our own judgment, the Commissioners cannot rely on the reasoning of Browne-Wilkinson V-C to claim that the Group's car leases did not give rise to property rights in the cars themselves. We consider the law of personalty to have moved on to the extent indicated by Richard Calnan in his recent book (see [40] above) so that lessees of goods have rights against third parties. We hold that the car leases did create proprietary rights, and that there was a transfer of property in the cars the effect of which was that an employee had an exclusive right to the use of a car. And since the condition in s.114(1)(a) that a car was "made available (without any transfer of the property in it)" was not satisfied, it follows that, again in our judgment, the car benefit charge could not apply to the Group's car leases.

76. We agree with Mr Mullan's submission that if an employee of the Group did obtain a benefit in the form of a lease of a car, that benefit was earnings within s.62 ITEPA: there was no restriction on the employees' use of their cars and, as such, the cars were "capable of being converted into money" for the purposes of that section. We adopt Mr Mullan's reasoning for so deciding.

77. Although it is unnecessary for us further to consider the car benefit charge, for completeness we record that it can apply only where there is a benefit and since, in our judgment, the car leases provided no benefits to the employees of the Group, the car benefit charge could not apply. We agree with Mr Mullan that the case law he advanced in support of his case in that behalf makes plain that the legislation with which we are concerned applies only to benefits.

78. We further agree with Mr Mullan that if the rental payments made by an employee were equal to the money's worth value of the rights conferred on him

by the lease, any charge to tax would in any event have been nil. And in our judgment, a nil charge is not a charge to tax.

79. As to Mr Mullan's submission that, in the absence of the car benefit charge, there might be a potential charge under Part 3 Chapter 10 ITEPA, we agree that that would be an issue to be determined by reference to each car and the rentals charged. Mr Hall invited us to deal with the appeal on the matter of principle and, as we propose to do so, this is a matter which we leave for the present.

80. Both the First Appellants and Second Appellants were satisfied that they had struck a fair bargain, so that they agreed that the former were charged market value for the hire of the cars. Again we agree with Mr Mullan that the appellants received no benefit in connection with the cars, so that the car benefit charge could not apply.

81. With regard to the *Vasili* judgment, once more we agree with Mr Mullan that the approach of Pumfrey J to construction of the relevant legislation would not have been acceptable had the employer in that case been paid for making the car available, and we distinguish the case from the present one on that basis. We might add in support of our so distinguishing it that the transfer of property in the car in that case did not exclude the employer from the right to use the car, whereas in the present case the employees had exclusive use of the cars. We are also satisfied that the tribunal in *Whitby and Ball* was wrong to conclude that what followed for a co-owner would equally follow for a lessor/lessee.

82. We then turn to consider whether the employees were entitled to mileage allowance payments on which there was no liability to income tax. As Mr Mullan submitted, a car is a company vehicle only if either (i) the car benefit applies, or (ii) the residual benefit charge applies, and is not a company vehicle if there is no chargeable benefit, or if such benefit is subject to tax as earnings within s.62 ITEPA. In the instant case, in our judgment, an employee's car was not a company vehicle as the chargeable benefit was subject to tax as earnings within s.62 ITEPA. Our reasons for so deciding are, once more, those offered by Mr Mullan. Consequently, we hold that the employees were not liable to income tax on mileage allowance payments they received.

83. Having carefully considered the tribunal decision in *Whitby and Ball* in the light of the submissions of both parties, we agree with Mr Mullan that we should not follow it. We observe that the tribunal in that case did not have the benefit of full legal argument, but rather dealt with the case on the basis of the accounting treatment presented to it, and the argument that substance should prevail over form.

84. That leaves the NICs in dispute. Mr Hall submitted that they were due under ss. 6 and 10 of the 1992 Act, the former section relating to excess mileage allowances and the latter to car and fuel benefits. He made no mention of the Regulations. As we have held that there was no taxable benefit by the employees under s. 120 ITEPA, that section being relied on by Mr Hall to claim that car benefits provided to employees were to be treated as earnings, it follows that there can be no corresponding liability to Class 1A NICs. Mr Mullan added that "company vehicle" is however defined in s.236 ITEPA; and that s.229 (4) ITEPA provides that the exemption from income tax for approved mileage allowance payments does not apply if a vehicle is a company vehicle. We earlier held that the employees' cars were not company vehicles in the instant case, but even had they been we agree with Mr Mullan it would have had no relevance for the purpose of the charge to NICs in so far as they relate to the mileage allowance payments, for there is no restriction equivalent to that for income tax on the exemption for mileage payments by reference to company vehicles for the purpose of NICs. As such, expenses payments made to the employees were exempt from NICs whether or not the cars were company vehicles as defined in s.236 ITEPA.

85. As for income tax, the scale charge on a car is reduced by any contribution made by the employee for private use, and as the employees made full payment for such use, we hold that there is no liability to Class 1A NICs under s. 10 of the 1992 Act.

86. In reaching our conclusion, we have given full consideration to the submissions of Mr Hall, but for the reasons we have provided we prefer those of Mr Mullan.

87. Having held that there is no liability to the tax claimed by the Commissioners and the NICs, it follows that we allow the appeal in its entirety.

88. 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.

DAVID DEMACK

TRIBUNAL JUDGE

RELEASE DATE: 12 December 2012

The First Schedule

The First Appellants

(1) Apollo Fuels Limited (TC/2010/06146 – TC/2011/02637)
(2) Lakeland Tankers Limited (TC/2010/06144 – TC/2011/02577)
(3) Newell & Wright Transport Contractors (Sheffield) Ltd (TC/2010/06143 – TC/2011/02581)
(4) NWT Freight Forwarding Ltd (TC/2010/06145 – TC/2011/02555)
(5) Road Tankers (Northern) Ltd (TC/2010/06177 – TC/2011/02556)
(6) NWT Freight Forwarding (Southern) Ltd (TC/2010/06522 – TC/2011/02573)

The Second Appellants

(7) Mr Brian Edwards 9TC/2011/05232)
(8) Mr M Copley (TC/2011/05234)
(9) Mr Roger Adams (TC/2011/05237
(10) Mr A Jest (TC/2011/05238)
(11) Mrs S Linathan (TC/2011/05240)
(12) Mr Paul Tomlinson (TC/2011/05242)
(13) Mr Nicholas Tangi (TC/2011/05244)
(14) Mr S Hackett (TC/2011/05248)
(15) Mr Simon Lawtey (TC/2011/05251)
(16) Mr David Ibbotson (TC/2011/05254)
(17) Mr P Barker (TC/2011/05256)
(18) Mr Peter Kirkham (TC/2011/05260)
(19) Mr John Felton (TC/2011/05263)
(20) Mr Anthony Grunnill (TC/2011/05265)
(21) Mr John Newton (TC/2011/05267
(22) Mrs Elizabeth Hull (TC/2011/05268)
(23) Mr Doug Watts (TC/2011/05576)
(24) Mr M Hingley (TC/2011/05577)
(25) Mr J Cook (TC/2011/05579)
(26) Mr Don McKelvie (TC/2011/06371)

The Second Schedule

Income Tax (Earnings and Pensions) Act 2003

Part 2 Chapter 2

TAX ON EMPLOYMENT INCOME

6 Nature of charge to tax on employment income

(1) The charge to tax on employment income under this Part is a charge to tax on—

(a) general earnings, and

(b) specific employment income.

The meaning of "employment income", "general earnings" and "specific employment income" is given in section 7.

(2) The amount of general earnings or specific employment income which is charged to tax in a particular tax year is set out in section 9.

7 Meaning of "employment income", "general earnings" and "specific employment income"

(1) This section gives the meaning for the purposes of the Tax Acts of "employment income", "general earnings" and "specific employment income".

(2) "Employment income" means—

(a) earnings within Chapter 1 of Part 3,

(b) any amount treated as earnings (see subsection (5)), or

(c) any amount which counts as employment income (see subsection (6)).

(3) "General earnings" means—

(a) earnings within Chapter 1 of Part 3, or

(b) any amount treated as earnings (see subsection (5)),

excluding in each case any exempt income.

(4) "Specific employment income" means any amount which counts as employment income (see subsection (6)), excluding any exempt income.

(5) Subsection (2)(b) or (3)(b) refers to any amount treated as earnings under—

(a) …

(b) Chapters 2 to 11 of Part 3 (the benefits code),

Part 3 Chapter 1

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.

Part 3 Chapter 2

63 The benefits code

(1) In the employment income Parts "the benefits code" means—

this Chapter,

Chapter 6 (cars, vans and related benefits),

Chapter 10 (residual liability to charge), and

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.

66 Meaning of "employment" and related expressions

(1) In the benefits code—

(a) "employment" means a taxable employment under Part 2, and

(b) "employed", "employee" and "employer" have corresponding meanings.

(2) Where a Chapter of the benefits code applies in relation to an employee—

(a) references in that Chapter to "the employment" are to the employment of that employee, and

(b) references in that Chapter to "the employer" are to the employer in respect of that employment.

(3) For the purposes of the benefits code an employment is a "taxable employment under Part 2" in a tax year if the earnings from the employment for that year are (or would be if there were any) general earnings to which the charging provisions of Chapter 4 or 5 of Part 2 apply.

(4) In subsection (3)—

(a) the reference to an employment includes employment as a director of a company, and

(b) "earnings" means earnings as defined in Chapter 1 of this Part.

Part 3 Chapter 6

114 Cars, vans and related benefits

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

(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 or van—

(a) sections 120 to 148 provide for the cash equivalent of the benefit of the car to be treated as earnings,

(b) sections 149 to 153 provide for the cash equivalent of the benefit of any fuel provided for the car to be treated as earnings, and

(c) sections 154 to 166 provide for the cash equivalent of the benefit of the van 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 or van by virtue of any other provision (see section 119).

115 Meaning of "car" and "van"

(1) In this Chapter—

"car" means a mechanically propelled road vehicle which is not—

(a) a goods vehicle,

(b) a motor cycle,

(c) an invalid carriage, or

(d) a vehicle of a type not commonly used as a private vehicle and unsuitable to be so used;

116 Meaning of when car or van is available to employee

(1) For the purposes of this Chapter a car or van 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.

117 Meaning of car or van made available by reason of employment

For the purposes of this Chapter a car or van 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 or van 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 or van 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).

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 124.

Step 2

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

Step 3

Make any deduction under section 132 for capital contributions made by the employee to the cost of the car or accessories.

Step 4

If the amount carried forward from step 3 exceeds £80,000, the interim sum is £80,000.

In any other case, the interim sum is the amount carried forward from step 3.

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.

144 Deduction for payments for private use

(1) A deduction is to be made from the provisional sum calculated under step 7 of section 121(1) if, as a condition of the car being available for the employee's private use, the employee—

(a) is required in the tax year in question to pay (whether by way of deduction from earnings or otherwise) an amount of money for that use, and

(b) makes such payment.

(2) If the amount paid by the employee in respect of that year is equal to or exceeds the provisional sum, the provisional sum is reduced so that the cash equivalent of the benefit of the car for that year is nil.

(3) In any other case the amount paid by the employee in respect of the year is deducted from the provisional sum in order to give the cash equivalent of the benefit of the car for that year.

Part 3 Chapter 10

201 Employment-related benefits

(1) This Chapter applies to employment-related benefits.

(2) In this Chapter—

"benefit" means a benefit or facility of any kind;

"employment-related benefit" means a benefit, other than an excluded benefit, which is provided in a tax year—

(a) for an employee, or

(b) for a member of an employee's family or household,

by reason of the employment. For the definition of "excluded benefit" see section 202.

(3) A benefit provided by an employer is to be regarded as provided by reason of the employment unless—

(a) the employer is an individual, and

(b) the provision is made in the normal course of the employer's domestic, family or personal relationships.

(4) For the purposes of this Chapter it does not matter whether the employment is held at the time when the benefit is provided so long as it is held at some point in the tax year in which the benefit is provided.

(5) References in this Chapter to an employee accordingly include a prospective or former employee.

202 Excluded benefits

(1) A benefit is an "excluded benefit" for the purposes of this Chapter if—

(a) any of Chapters 3 to 9 of the benefits code applies to the benefit,

(b) any of those Chapters would apply to the benefit but for an exception, or

(c) the benefit consists in the right to receive, or the prospect of receiving, sums treated as earnings under section 221 (payments where employee absent because of sickness or disability).

(2) In this section "exception", in relation to the application of a Chapter of the benefits code to a benefit, means any enactment in the Chapter which provides that the Chapter does not apply to the benefit.

But for this purpose section 86 (transport vouchers under pre-26th March 1982 arrangements) is not an exception.

203 Cash equivalent of benefit treated as earnings

(1) The cash equivalent of an employment-related benefit is to be treated as earnings from the employment for the tax year in which it is provided.

(2) The cash equivalent of an employment-related benefit is the cost of the benefit less any part of that cost made good by the employee to the persons providing the benefit.

(3) The cost of an employment-related benefit is determined in accordance with section 204 unless—

(a) section 205 provides that the cost is to be determined in accordance with that section, or

(b) section 206 provides that the cost is to be determined in accordance with that section.

204 Cost of the benefit: basic rule

The cost of an employment-related benefit is the expense incurred in or in connection with provision of the benefit (including a proper proportion of any expense relating partly to provision of the benefit and partly to other matters).

Part 4 Chapter 2

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—

(a) the employee is a passenger in the vehicle, or

(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 or van	40p for the first 10,000 miles
	25p after that
Motor cycle	24p
Cycle	20p

(3) The reference in subsection (2) to "the first 10,000 miles" is to the total number of miles of business travel in relation to the employment, or any associated employment, by car or van in the tax year in question.

(4) One employment is associated with another if—

(a) the employer is the same;

(b) the employers are partnerships or bodies and an individual or another partnership or body has control over both of them; or

(c) the employers are associated companies within the meaning of section 416 of ICTA.

(5) In subsection (4)(b)—

(a) "control", in relation to a body corporate or partnership, has the meaning given by section 840 of ICTA (in accordance with section 719 of this Act), and

(b) the definition of "control" in that section of that Act applies (with the necessary modifications) in relation to an unincorporated association as it applies in relation to a body corporate.

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

231 Mileage allowance relief

(1) An employee is entitled to mileage allowance relief for a tax year—

(a) if the employee uses a vehicle to which this Chapter applies for business travel, and

(b) the total amount of all mileage allowance payments, if any, made to the employee for the kind of vehicle in question for the tax year is less than the approved amount for such payments applicable to that kind of vehicle.

(2) The amount of mileage allowance relief to which an employee is entitled for a tax year is the difference between—

(a) the total amount of all mileage allowance payments, if any, made to the employee for the kind of vehicle in question, and

(b) the approved amount for such payments applicable to that kind of vehicle.

(3) Subsection (1) does not apply if—

(a) the employee is a passenger in the vehicle, or

(b) the vehicle is a company vehicle.

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);

"passenger payments" has the meaning given by section 233(3).

(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),

(ii) section 154 (benefit of van treated as earnings), or

(iii) section 203 (residual liability to charge: benefit treated as earnings), or

(c) in the case of a car or van, the cash equivalent of the benefit of the car or van would be required to be so treated if sections 167 and 168 (exceptions for pooled cars and vans) did not apply, or

(d) in the case of a cycle, the cash equivalent of the benefit of the cycle would be required to be treated as the employee's earnings for the tax year under Chapter 10 of Part 3 (taxable benefits: residual liability to charge) if section 244(1) (exception for cycles made available) did not apply.

(3) Sections 117 and 118 (when cars and vans are made available by reason of employment and are made available for private use) apply for the purposes of subsection (2).

Social Security Contributions and Benefits Act 1992

Part 1 Section 3

(1) In this Part of this Act and Parts II to V below—

(a) "earnings" includes any remuneration or profit derived from an employment; and

(b) "earner" shall be construed accordingly.

(2) For the purposes of this Part of this Act and of Parts II to V below other than those of Schedule 8—

(a) the amount of a person's earnings for any period; or

(b) the amount of his earnings to be treated as comprised in any payment made to him or for his benefit,

shall be calculated or estimated in such manner and on such basis as may be prescribed.

(3) Regulations made for the purposes of subsection (2) above may prescribe that payments of a particular class or description made or falling to be made to or by a person shall, to such extent as may be prescribed, be disregarded or, as the case may be, be deducted from the amount of that person's earnings.

Part 1 Section 6

Liability for Class 1 contributions

(1) Where in any tax week earnings are paid to or for the benefit of an earner in respect of any one employment of his which is employed earner's employment and—

(a) he is over the age of 16; and

(b) the amount paid is equal to or exceeds the current lower earnings limit for Class 1 contributions (or the prescribed equivalent in the case of earners paid otherwise than weekly),

a primary and a secondary Class 1 contribution shall be payable in accordance with this section and sections 8 and 9 below.

(2) …

(3) The primary and secondary Class 1 contributions referred to in subsection (1) above are payable as follows—

(a) the primary contribution shall be the liability of the earner; and

(b) the secondary contribution shall be the liability of the secondary contributor;

but nothing in this subsection shall prejudice the provisions of paragraph 3 of Schedule 1 to this Act relating to the manner in which the earner's liability falls to be discharged.

(4) Except as provided by this Act, the primary and secondary Class 1 contributions in respect of earnings paid to or for the benefit of an earner in respect of any one employment of his shall be payable without regard to any other such payment of earnings in respect of any other employment of his.

Part 1 Section 10

Class 1A contributions

(1) Where—

(a) for any tax year an amount in respect of a car is by virtue of section 157 of the [1988 c. 1.] Income and Corporation Taxes Act 1988 chargeable on an earner to income tax under Schedule E; and

(b) the employment by reason of which the car is made available is employed earner's employment,

a Class 1A contribution shall be payable for that tax year, in accordance with this section, in respect of the earner and car in question.

(2) The Class 1A contribution referred to in subsection (1) above is payable by—

(a) the person who is liable to pay the secondary Class 1 contribution relating to the last (or only) relevant payment of earnings in the tax year in relation to which there is a liability to pay such a contribution; or

(b) …

(3) A payment of earnings is a "relevant payment of earnings" for the purposes of subsection (2) above if it is made to or for the benefit of the earner in respect of the employment by reason of which the car is made available.

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(7) Regulations may make such amendments of this section as appear to the Secretary of State to be necessary or expedient in consequence of any alteration to section 157 or 158 of the [1988 c. 1.] Income and Corporation Taxes Act 1988 or Schedule 6 to that Act.

(9) Regulations may provide—

(a) for persons to be excepted in prescribed circumstances from liability to pay Class 1A contributions;

(b) for reducing Class 1A contributions in prescribed circumstances.

Social Security (Contributions) Regulations 2001

Part VIII Schedule 3

1. The travelling, relocation and other expenses and allowances mentioned in this Part are disregarded in the calculation of an employed earner's earnings.

Regulation 7A of the regulations lists one of these "expenses"

To the extent that it would otherwise be earnings, the qualifying amount calculated in accordance with regulation 22A(4)

Regulation 22A(4) of the Regulations provides:

The qualifying amount is the product of the formula –

M x R

Here –

M is the sum of

(a) The number of miles of business travel undertaken, at or before the time when the payment is made –

(i) In respect of which the payment is made ; and

(ii) In respect of which no other payment has been made; and

(b) The number of miles of business travel undertaken –

(i) Since the last payment of relevant motoring expenditure was made, or, of there has been no such payment, since the employment began, and

(ii) For which no payment has been made, or is to be made; and

R is the rate applicable to the vehicle in question, at the time when the payment is made in accordance with section 230(2) if ITEPA 2003 and, if more than one rate is applicable to the class of vehicle in question, is the higher of those rates.

The Third Schedule

RENTAL AGREEMENT

NAME: Simon Lawtey

ADDRESS: 18 Charles Avenue
Wakefield
WF1 5DG

Newell and Wright Transport Contractors (Sheffield) Limited agree to hire you a car, please check the car details below and the rest of the hire agreement and then sign below if all the details are to your satisfaction.

CAR	AUDI A4
REGISTRATION	X876NON

Monthly Rental	£188.00
Option Full Maintained (£85 per month)	85.00
Total	£268.00
VAT @ 17.5%	46.90
Total Rental Per Month (Including VAT)	£314.90

Any amounts due to you in respect of mileage claims can be set off against the rental or the rental deducted should the mileage be greater. The balance may be carried forward but any outstanding balances must be settled at the end of each tax year (5th April).

Should you give notice to leave the company you will have to
A) Complete a standing order mandate for future rentals should you wish to continue hiring the vehicle, or
B) Return the vehicle and any money owing will be settled on your last day.

You may cancel the agreement at any time, subject to 7 days notice or mutual agreement.

Signed on Behalf of the Company	S J Lawtey
Signed By	S J Lawtey
Date	01/05/2003