

EXPLANATORY NOTE

CLAUSE 70: TAXABLE BENEFIT OF LIVING ACCOMMODATION:
LEASE PREMIUMS

AMENDMENTS 213 - 216

SUMMARY

1. Clause 70 changes the rules for taxing the benefit in kind charge where employees are provided with living accommodation by reason of their employment. This is to stop attempts to avoid tax through the payment of a lease premium rather than a full market rent for the use of the accommodation. The clause introduces a rule which means that the value of the lease premium will be taken into account when working out the benefit in kind charge. Amendments 1 to 4 correct a technical deficiency in the clause which means that in certain circumstances where a lease contains a break clause which is not exercised, the amount of lease premium payable will not be spread across the term of the lease and in certain cases will mean that an amount or amounts of lease premium payable in respect of the lease will not be brought into charge at all.

DETAILS OF THE AMENDMENTS

2. Amendment 213 amends new subsection (4B)(b) of section 105 Income Tax (Earnings and Pensions) Act 2003 (ITEPA), as inserted by subsection (2) of the clause, to include a reference to new section 105B as inserted by Amendment 3.
3. Amendment 214 replaces sub-paragraph (d) of new section 105A(1) ITEPA, as introduced by subsection (3) of the clause, with a new sub-paragraph (d) so that one of the conditions of new section 105A(1) for attributing a lease premium to a relevant period is that the net amount of lease premium payable is greater than zero.
4. Amendment 215 amends new section 105A(2) by redefining the value of “C” as the net amount of lease premium payable and replaces subsections (3) to (6) of new section 105A ITEPA with four new subsections (3) to (6) and inserts new section 105B ITEPA.
5. New subsection (3) of new section 105A refers to new section 105B for provision about the application of new section 105A to certain leases with break clauses.
6. New subsection (4) of new section 105A defines the “net amount payable in relation to lease by way of a lease premium” for the purposes of new section 105A.

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7. New subsection (5) of new section 105A defines the term “lease premium” for the purposes of this section and new section 105B.
8. New subsection (6) of new section 105A further defines “premium” as including a “grassum” in relation to the application of this section to leases in Scotland.
9. Subsection (1) of new section 105B provides that the section applies to a lease which contains one or more relevant break clauses. The subsection also introduces the term “original lease” in respect of such leases.
10. Subsection (2) of new section 105B defines the meaning of the terms “break clause” and “relevant break clause” for the purposes of the section.
11. Subsection (3) of new section 105B provides that the term of the lease and the net amount payable by way of a lease premium for the purposes of new section 105A are to be determined on the assumption that any relevant break clause is exercised in such a way that the term of the lease is as short as possible.
12. Subsection (4) of new section 105B deems, for the purposes of new section 105A the parties to a lease to be parties to another lease if a relevant break clause is not exercised in such a way that the term of the original lease is as short as possible and introduces the term “notional lease” in respect of such leases. Paragraphs (a) and (b) of the subsection set out how the term of a notional lease is to be determined.
13. Subsection (5) of new section 105B determines the end of the term of a notional lease.
14. Subsection (6) of new section 105B determines the net amount payable for the purposes of new section 105A in relation to a notional lease by way of a lease premium where the term of the notional lease ends in accordance with paragraph (a) of subsection (5) of new section 105B.
15. Subsection (7) of new section 105B determines the net amount payable for the purposes of new section 105A in relation to a notional lease by way of a lease premium where the term of the notional lease ends in accordance with paragraph (b) of subsection (5) of new section 105B.
16. Subsection (8) of new section 105B defines the meaning of “relevant proportion” for the purposes of subsection (7) of new section 105B.
17. Amendment 216 amends section (6) of the clause to include a reference to new section 105B as inserted by Amendment 3.

BACKGROUND NOTE

18. These amendments ensure that the full amount of lease premium payable in respect of a lease is brought into charge and spreads the lease premium across the actual term of the lease (up to a maximum of 10 years) in cases where the lease contains one or more break clauses which are not exercised.

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Mr Stephen Timms

213

Clause 70, page 34, line 24, leave out –

‘section 105A’ and insert ‘sections 105A and 105B’.

Mr Stephen Timms

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Clause 70, page 34, leave out lines 35 to 37 and insert —

‘(d) the net amount payable by P in relation to the lease by way of lease premium is greater than zero.’.

Mr Stephen Timms

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Clause 70, page 34, line 43, leave out –

from ‘the’ to end of line 21 on page 35 and insert ‘net amount payable by P in relation to the lease by way of lease premium.

- (3) For provision about the application of this section in relation to certain leases with break clauses, see section 105B.
- (4) For the purposes of this section the net amount payable by P in relation to a lease by way of lease premium is—
 - (a) the total amount (if any) that has been paid, or is or will become payable, by P in relation to the lease by way of lease premium, less
 - (b) any amount within paragraph (a) that has been repaid or is or will become repayable.
- (5) In this section and section 105B “lease premium” means any premium payable—
 - (a) under a lease, or
 - (b) otherwise under the terms on which a lease is granted.
- (6) In the application of this section to Scotland, “premium” includes a grassum.

105B Lease premiums in the case of leases with break clauses

- (1) This section applies to a lease (“the original lease”) that contains one or more relevant break clauses.
- (2) For the purposes of this section—
- (3) For the purposes of section 105A—
 - (a) the term of the original lease, and
 - (b) the net amount payable by P in relation to the lease by way of lease premium, are to be determined on the assumption that any relevant break clause is exercised in such a way that the term of the lease is as short as possible.
- (4) If a relevant break clause is not in fact exercised in such a way that the term of the original lease is as short as possible, the parties to the lease are treated for the purposes of section 105A as if they were parties to another lease (a “notional lease”) the term of which—
 - (a) begins immediately after the time at which the term of the original lease would have ended, if that break clause had been so exercised, and
 - (b) ends at the time mentioned in subsection (5).
- (5) The term of a notional lease ends—
 - (a) at the time the term of the original lease would end, on the assumption that any relevant break clause that is exercisable only after the beginning of the term of the notional lease is exercised in such a way that the term of the original lease is as short as possible, or
 - (b) if earlier, the tenth anniversary of the beginning of the term of the original lease.
- (6) For the purposes of section 105A, the net amount payable by P in relation to a notional lease by way of lease premium is, in the case of a notional lease the term of which ends under paragraph (a) of subsection (5)—
 - (a) the net amount that would be payable by P in relation to the original lease by way of lease premium on the assumption mentioned in that paragraph, less

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- (b) any part of that amount that has already been attributed to a period in respect of a lease premium under section 105(4B)(b).
- (7) For the purposes of section 105A, the net amount payable by P in relation to a notional lease by way of lease premium is, in the case of notional lease the term of which ends under paragraph (b) of subsection (5), the relevant proportion of—
- (a) the net amount that would be payable by P in relation to the original lease by way of lease premium, on the assumption that no break clause is exercised, less
- (b) any part of that amount that has already been attributed to a period in respect of a lease premium under section 105(4B)(b).
- (8) In subsection (7) “the relevant proportion” means—
where—D is the term of the notional lease (in days);E is the sum of—
- (a) the term of the notional lease (in days), and
- (b) the number of days by which the term of the original lease would exceed 10 years, on the assumption that no break clause is exercised.”.

Mr Stephen Timms

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Clause 70, page 35, line 32, leave out -

‘section 105A’ and insert ‘sections 105A and 105B’.