

Part 8 – Terms used in this guide

This part explains some of the main terms used in this guide.

43 Business use

The expression 'business use by the employee' means necessary use by the employee wholly and exclusively in the performance of the employee's duties or, as the context requires, in qualifying business travel of the employee: see booklet 490 *Employee travel – A tax and NICs guide for employers*.

44 Child

The term 'child' as used in this guide means a child not exceeding the age of 16 for whom the employee has parental responsibility.

45 Director

ITEPA 2003 S67(1) and (2)

The term 'director' includes all company directors and any person, other than a person who is merely a professional adviser (for example, a solicitor who gives advice) in accordance with whose instructions the directors are accustomed to act.

It also includes the members of a company whose affairs are managed by those members themselves and a member of a committee which manages an unincorporated association.

46 Director's earnings

SSCBA 92, S10(1)(a) and (b), ITEPA 2003, S216(2) and (3)

The £8,500 minimum earnings rule does not apply to most directors. Most directors attract liability for Class 1A NICs even if their earnings are at a rate of less than £8,500 a year.

Even if a director receives no earnings in the relevant tax year, a Class 1A NICs liability will still arise on any benefit provided to the director if:

- the benefit is chargeable to tax under ITEPA 2003 on an amount of general earnings as defined at Section 7(3) ITEPA 2003, and
- the employment is 'employed earner's employment'.

47 Directors and employees with no earnings

SSCBA 92, S10(2)(b)

Where a director or employee is provided with a benefit but no other earnings, Class 1A NICs are payable by the person who would have been liable to pay employer Class 1 NICs had the benefit been earnings on which Class 1 NICs are due.

Where employees who are not directors are provided with benefits but no other earnings, they will still need to earn at a rate of £8,500 or more a year, including taxable benefits and expenses, before Class 1A NICs become due. See paragraph 50.

48 Dispensations

A dispensation is a notice we send to you, authorising you not to report on forms P11D the expenses and benefits specifically covered by the dispensation. Dispensations avoid the need to submit details of routine expense payments and benefits that would clearly involve no payment of tax or NICs.

More information on the types of benefits that can be included in a dispensation and how you can apply for one are included in booklet CWG2(2011) *Employer Further Guide to PAYE and NICs*.

49 Employees and employed earner

ITEPA 2003, S216(1) to (4)

SSCBA 92, S2(1)(a)

The term 'employee' as used in this guide means an employed earner and includes:

- all directors
- employees, including employee directors, paid at a rate of £8,500 or more a year including taxable benefits and taxable expenses.

The term 'employed earner' used in this guide means a person who is gainfully employed in the United Kingdom, either under a contract of service, or in an office (including elective office) with general earnings chargeable to Income Tax under ITEPA 2003.

'Employee director' means a director who has no material interest in the company. For information about what is meant by material interest go to our website at www.hmrc.gov.uk/manuals/eimanual/EIM20212.htm or phone the Employer Helpline.

50 Employee earning at a rate of less than £8,500 a year

ITEPA 2003, Part 3, Chapter 11

If an employee is earning at a rate of less than £8,500 a year but is provided with a benefit, Class 1A NICs will be due if the employee's salary plus the value of the benefit and any taxable expenses he or she receives exceeds £8,499.

Example

An employee is provided with a company car for private use during the whole of the 2010-11 tax year.

The employee's earnings excluding taxable benefits and expenses is £8,000.

The taxable benefit of the car is £1,800.

To determine if there is a Class 1A NICs liability, add the car benefit to the basic earnings.

If the total is less than £8,500 for the year, no Class 1A NICs are payable.

Calculation of total earnings

Earnings	£8,000
Car benefit	£1,800
Total earnings	£9,800

Class 1A NICs are payable as the total inclusive earnings exceed £8,499.

If the employee received other taxable benefits or expenses these should also be added to the basic earnings and the car benefit to determine the total earnings.

51 Extra-statutory concessions

Extra-statutory concessions are minor relaxations in the law which ordinarily deal with minor or transitory anomalies where a statutory remedy would be difficult or costly to introduce.

A full list of our extra-statutory concessions can be found at www.hmrc.gov.uk/thelibrary/esc.htm and those relating specifically to benefits are included in booklet 480(2011) *Expenses and benefits - A tax guide*.

52 Family or household

The term 'family or household' covers the director's or employee's:

- spouse or civil partner
- children and their spouses or civil partners
- parents
- servants, dependants and guests.

53 PAYE Settlement Agreements

A PAYE Settlement Agreement (PSA) is an agreement between you and HMRC under which you agree to pay the tax due on certain payments and benefits which you give to your employees.

PSAs normally apply to certain payments and benefits which are:

- minor, or
- given on an irregular basis, or
- provided in circumstances where it is impracticable to apply PAYE or report benefits on forms P11D or P9D, or to apportion the benefits shared by a number of employees.

Where you enter into a PSA, Class 1B NICs will be payable by you on the total value of:

- the payments and benefits covered by the PSA which would normally give rise to a Class 1 NICs or Class 1A NICs liability, and
- the tax payable by you under the PSA.

More information on the types of benefits that can be included in a PSA and how you can apply for one are included in booklet CWG2(2011) *Employer Further Guide to PAYE and NICs*.