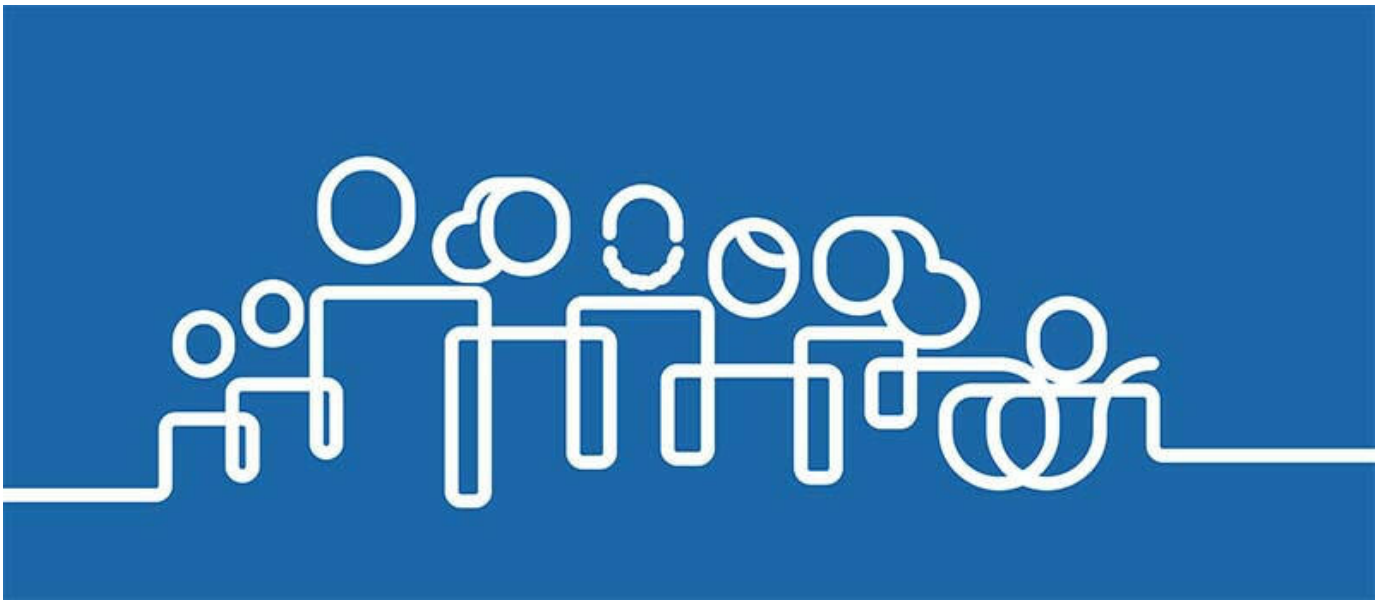
Employees with disabilities: providing support

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This article highlights tax reliefs available to workers on account of their disability. How can the tax system assist employers in providing support to staff?

Key Points

What is the issue?

For people with disabilities, there can be extra costs of getting into, and staying in, work. The tax system offers some help.

What does it mean for me?

Find out what tax reliefs are available; e.g. for employers making reasonable adjustments for employees with disabilities.

What can I take away?

Ensure you are aware of what support is available, such as the Access to Work scheme, which might help your employer clients and their employees.

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This article is largely based on an unfinished work by the late Robin Williamson. Robin was Technical Director of the CIOT's Low Incomes Tax Reform Group (LITRG) until his retirement from full-time work in 2018. He subsequently became an active volunteer with the LITRG advisory panel, alongside his wife Jane Moore. Robin was passionate about making the tax system work better for people with disabilities and wanted to help raise awareness in this area.

There is no general tax exemption available for work-related costs that employees incur because of a disability. However, the social objective of removing the barriers facing people with disabilities entering the workplace is satisfied to a limited extent by certain specific exceptions from the tax charge on earnings.

We look at what help the tax system offers in the following areas:

- the treatment of travel costs where an employee has a disability;
- the provision of equipment, services and facilities;
- the Access to Work scheme; and
- compensation for loss of office, re-assignment of duties or a drop in earnings resulting solely from an injury or disability.

Getting to and from work

Expenses incurred in travelling to and from home and the workplace are generally not tax deductible. However, where an employer provides transport for an employee with disabilities, reimburses such an employee's expenses or meets their costs (including the provision of a voucher), no income tax liability arises if the transport or expenses are for ordinary commuting between home and work. This applies for both income tax (Income Tax (Earnings and Pensions) Act (ITEPA) 2003 s 246) and National Insurance contributions (Social Security (Contributions) Regulations

2001 reg 25; Sch 3 Pt V para 5(a); and Pt X para 8(b)). See also the National Insurance Manual (NIM06390).

This does not, however, apply where an employee pays their own costs in getting to and from work and those costs are not ultimately borne by the employer; i.e. the employee cannot claim a deduction in this situation.

For these purposes, an employee is disabled if they have a ‘physical or mental impairment with a substantial and long-term adverse effect on the employee’s ability to carry out normal day-to-day activities’ (Income Tax (Earnings and Pensions) Act (ITEPA) 2003 s 246(4)).

HMRC guidance (Employment Income Manual EIM10080) qualifies that its interpretation of the exemption is that the following circumstances do **not** qualify, even though the employee may still qualify for protection against discrimination by virtue of the Equality Act 2010 definition on which s 246 is modelled:

- where the individual has a recurring disability but is in a period of remission during which the impairment ceases to have a substantial adverse effect;
- where the individual has recovered from a previous disability; and
- where the individual is being treated for the effects of an impairment so that the effects of it are alleviated or removed.

In short, if the employee is able to carry out normal day-to-day activities at the time the employer meets the cost of their commuting, HMRC may not allow the tax exemption. It should be remembered, however, that this interpretation is non-statutory and circumstances might be identified in which it could still be appropriate to argue that the exemption applies, given that s 246 itself gives no qualification of the Equality Act 2010 definition.

Travelling on work assignments: accompanying carer

If an employer pays or reimburses the travel expenses of an employee, that amount is treated as the employee’s general earnings and assessed to tax accordingly, unless the expenses are attributable to necessary attendance at a place in the performance of employment duties (ITEPA 2003 s 338). HMRC guidance (EIM31985) confirms that a deduction can also be given if the employer covers the travel expenses of an accompanying spouse or other carer in cases where:

- the employee’s health is so poor that it would be unreasonable for him or her to travel alone; and
- the attendance of a spouse or other carer is necessary for the proper performance of the employee’s duties.

Company car: benefit in kind exemption

Normally, if an employer makes a car available to an employee, there is a charge to tax on the benefit. But ITEPA 2003 s 247 provides that no car benefit charge arises where:

- the car has been adapted for the employee’s special needs, or has automatic transmission in a case where the employee cannot drive any other sort of car because of their disability; and
- the car is made available on terms that it can only be used for business travel, ordinary commuting (or travel between any two places that is for practical purposes substantially ordinary commuting) or travel to a place of training where the expenses of such travel would be exempt if the employer paid them.

Accordingly, any private use of the car, or any use of it which does not conform strictly with those terms, puts the employee beyond the scope of the exemption and a chargeable benefit arises.

For the purposes of this exemption, the definition of disability follows ITEPA 2003 s 246 as discussed above.

Other reliefs for provision of company cars, fuel and accessories

Employees with disabilities who do not qualify for the total exemption from car benefit charge (for example, because they use the adapted or automatic car for private as well as business purposes) may nevertheless claim certain reliefs in calculating the taxable benefit where they are provided with a car, fuel or accessories.

Where an employee with disabilities who holds a Blue Badge is provided with an automatic car because their disability means they can only drive an automatic, ITEPA 2003 s 124A provides that they may use the list price of the equivalent manual car to calculate their taxable car benefit, if lower. A manual car is equivalent to an automatic if it is first registered at about the same time and is the closest

variant available of the make and model of the automatic car.

Similarly, where an employee who holds a Blue Badge is provided with an automatic car because their disability does not allow them to drive a manual, they may use the CO2 emissions figure for the equivalent manual car, if lower, to calculate any fuel benefit.

Also, by virtue of ITEPA 2003 ss 125(2)(c) and 172, accessories are disregarded for calculating any benefit charge if they are either:

- designed solely for the use of a chronically sick person or person with disabilities; or
- made available in cases where the person with disabilities holds a Blue Badge to enable the person to use the car despite their disability.

HMRC guidance on these reliefs can be found at EIM23650 and associated pages.

Provision of equipment, services and facilities

If an employer provides certain equipment (such as a hearing aid or wheelchair), services or other facilities to an employee with disabilities, no taxable benefit arises if the main purpose of providing the benefit is to enable the employee to perform the duties of their employment (SI 2002/1596). This applies even if there is significant private use, as long as the main purpose is to enable the employee to perform their duties (EIM21846).

The benefit must be provided under the terms of the Access to Work programme (see below), the Equality Act 2010 or any similar statutory provision or arrangements, whether or not the employer has any legal duty to provide it; and it must be available to all of the employer's employees with disabilities on the same terms.

The benefit must not include any 'excluded benefits' within ITEPA 2003 s 316(5), which are:

- a motor vehicle, boat or aircraft;
- the extension, conversion or alteration of living accommodation; or
- the construction, extension, conversion or alteration of a building or other structure on land adjacent to and enjoyed with such living accommodation.

While the employee can claim an exemption from the charge on benefits in kind where the benefit is provided by the employer, if the employee acquires the equipment, services or facilities themselves without reimbursement by the employer, they cannot deduct the cost for tax purposes. The employee can, however, apply for a grant from the Access to Work programme to cover the cost, in which case they are not liable for tax on any such payment that is applied entirely to cover the cost.

The Access to Work scheme

Access to Work is a programme run by the Department for Work and Pensions (DWP) in England, Wales and Scotland which makes grants to individuals or their employers to enable the individual to go to, or remain in, work despite their disability. The purpose is to cover the extra costs incurred by the individual when working, because of their disability. These may include (for example) extra transport costs if the employee is unable to use public transport to get to work, or practical support in the workplace. There is a Northern Ireland equivalent, Access to Work (NI), run by the Department for Communities. Any grant made directly to an individual is tax exempt to the extent that it is spent on the equipment, services or facilities for which the grant was intended.

It is worth noting that an employee with disabilities who needs a support worker or personal assistant to help them in their work would normally be the support worker's employer. They would therefore incur the usual obligations of an employer such as payroll, pensions auto-enrolment and statutory payments. However, if the employer takes on the support worker to assist the employee, then the employment relationship will be between the employer and the support worker so that the employer, not the employee, will incur those obligations towards the support worker.

The Low Incomes Tax Reform Group website discusses further the tax and accounting aspects of Access to Work (see tinyurl.com/5ynnfsav).

Termination payment on account of disability

A termination payment made in connection with the termination of an employment in connection with the employee's death, or on account of injury to, or disability of an employee, is not taxable under the provisions in ITEPA 2003 Pt 6 Chapter 3 (see s 406 and EIM13610). This exception also applies if the employee is transferred to

different duties, or if there is a change in their earnings, because of the disability or injury (ITEPA 2003 s 401).

‘Disability’ includes psychiatric injury, but not injured feelings (such as in cases where the employee alleges discrimination) (ITEPA 2003 s 406(2). There must be an identifiable medical condition giving rise to the disability or injury, and the payment must be made solely on account of the disability or injury (*Horner v Hasted* [1995] STC 766). HMRC will generally require medical evidence and documentation before agreeing to apply the exception (EIM13630).

Note that if the payment is in fact a payment of earnings made at termination of the employment, rather than a payment ‘in consideration or in consequence of, or otherwise in connection with’ the termination, etc., this exception does not apply.

Consider this example of payment of earnings made on the termination of employment, as compared to compensation for the loss of office due to injury. Jack was injured at work while driving a defective forklift truck. As he could no longer do the same job, Jack’s employer agreed on termination of his employment to a payment of £100,000 by way of damages for his injuries. Jack was also due £10,000 arrears of earnings and pension contributions, a total payment of £110,000. The £100,000 is tax exempt in its entirety under ITEPA 2003 s 406(1)(b), but the £10,000 is taxable as earnings.