Harmonising the Fringes of National Insurance and Income Tax

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Introduction

Fringe benefits have played an increasing role in the remuneration of employees in the United Kingdom. A 1988 report by the Organization of Economic Co-operation and Development (OECD)[1] indicated that there was evidence to suggest that fringe benefits have provided higher-income level employees with an increasingly greater proportion of their total remuneration package.[2] The term "fringe benefits" is not defined as such. In the OECD report refered to above, three slightly varying definitions are provided. The simplest definition of fringe benefits, used by the British Institute of Management, is "items over and above basic remuneration which increase the well-being or wealth of employees at some cost to the employer."[3] The UK Low Pay Unit, in their study of fringe benefits in 1984, adopted the BIM definition, and then provided a number of examples including: "paid holidays, sickness pay, other time-off work with pay, occupational pension schemes, private use of company car, meal vouchers or subsidised meals, free or cheap goods, tied accommodation, social, medical and sports facilities, travel and removal allowances, private health insurance, cheap loans, insurance cover and payment of educational fees".[4] Fringe benefits include not only the direct provision by the employer to the employee of goods and services, but also the indirect provision, through the employer paying the personal expenses of the employee.

The purpose of this paper is to review the differing treatment of fringe benefits for income tax and National Insurance purposes, to determine whether there should be different bases for the treatment of fringe benefits in these two areas.[5] This paper is obviously fairly

[1] Organization of Economic Co-operation and Development *The Taxation of Fringe Benefits* (Paris: OECD, 1988).

[2] *Ibid.*, pp. 21–2. The report refers to a study by the Royal Commission on the Distribution of Income and Wealth, *Report No. 8, Fifth Report of the Standing Reference* (London: HMSO, 1979). The Commission's report presented statistics which indicated that the cost to the employer of fringe benefits in 1978 for employees, as a percentage of annual salary before tax varied: 18 per cent (for a factory superintendent with an average pre-tax salary of £7600); 29 per cent (work's manager, £13400); 33 per cent (manufacturing manager, £19,100); 37 per cent (general manager, £23,500); and 36 per cent (managing director, £30,000). The most recent statistics available are from Inland Revenue's 1989–90 *Expenses and Benefits Survey*, which indicates that both the incidence and average value of benefits increases as earnings increase, especially for those earning £25,000 or more.

[3] British Institute of Management, *Management Survey Reports* (London: BIM).

[4] Smail, Green and Hadjimatheou, *Unequal Fringes*, produced in conjunction with the Low Pay Unit (UK), February, 1984.

[5] It should be noted at the outset that the concern is not necessarily all one-way (i.e. fringe benefits included in income for Schedule E purposes and not included in earnings for NIC purposes). There are certain fringe benefits (under a broad definition of that term), such as all of profit-related pay up to certain limits (for profit periods beginning after 31 March 1991) and late night office to home travel, which are exempt or deductible under Schedule E (or by virtue of certain extra-statutory concessions) but are included in earnings for NICs.

limited in scope. There are a number of other factors that must be considered in the larger context of modifying the financing of social insurance.

The OECD report sets out a number of motivating factors for the provision and receipt of fringe benefits, from both the employer and employee point of view. One factor common to both is the possible reduction of social security contributions. From the government's point of view, there are a number of factors to consider in deciding whether to tax fringe benefits on an equivalent basis to cash remuneration. The report sets out a number of reasons why governments may provide a more favourable tax treatment for fringe benefits. These include:

(a) the provision of certain fringe benefits may fulfil a policy objective (e.g. employee share schemes to promote private ownership of companies; private pension, insurance or sickness schemes to reduce the burden on public insurance schemes);

(b) certain fringe benefits may not be considered as forming part of the taxable capacity (e.g. "social benefits", such as better working conditions, expensive office furniture, etc.);

(c) impracticability of valuing (and therefore taxing) certain fringe benefits, where the taxation of the benefit would give rise to large administrative costs or where it could only be done in an arbitrary manner (e.g. the provision of car parking is now exempt because it could not be taxed on a fair basis, since the measure of the benefit depended entirely on the manner in which the benefit was provided);

(d) to tax a particular fringe benefit may be detrimental to certain industries (this was one of the major concerns expressed in Parliamentary debate at the time Class 1A contributions were introduced).

Insofar as fringe benefits are subject to more favourable tax treatment, the government is faced with a number of concerns. These include a reduction in tax revenue, a greater opportunity to avoid tax, and the effect on the "fairness" of the tax system, including both horizontal equity and vertical equity. In these circumstances, horizontal equity suggests that taxpayers rceiving equivalent economic remuneration should pay similar amounts of tax no matter what the "mix" of the remuneration, and favourable taxation of fringe benefits may be seen as unfair by those taxpayers who cannot take advantage of such benefits. In this respect, we may also consider fairness between different employers. For

example, larger employers may provide a free or subsidised canteen for all employees, while for a smaller employer the provision of such benefit is not feasible.

A similar issue is that of workplace nurseries. Such differences might not be considered "fair", but underlying them is the basic reality of an uneven labour market as between large and small employers. At issue (although not considered in this paper) is whether the tax system should compound those differences by giving more favourable treatment to benefits that cannot be offered by all. Vertical equity implies that taxpayers' average rates of tax increase as their income increases. The fact that highly-paid employees are more likely to receive a greater share of their remuneration in the form of fringe benefits[6] reduces the progressivity of the tax system, assuming that such benefits are not taxed in the same manner as monetary remuneration. Even if fringe benefits were evenly distributed over the income range, the value of any favourable treatment for taxpayers increases with the marginal rate to which they are subject.

Differences between the treatment of fringe benefits for income tax and National Insurance purposes can lead to distortions in the methods of remuneration of many workers. For income tax purposes, the legislative history reflects a consistent effort by government to increase the value of fringe benefits included in the tax base, subject to the introduction of special rules in limited circumstances to fulfil certain policy objectives.[7] These measures include: FA 1948, Part IV, which first valued for tax purposes those fringe benefits not convertible to cash and applicable to directors and employees earning more than £2000 per annum; the introduction of an increased scope for assessment of such benefits in 1976;[8] and the fact that the £8500 threshold (originally the £2000 threshold) for "higher-paid employees" (which generally increases the variety of fringe benefits included in an employee's income) has not been changed since 1978.[9]

With respect to National Insurance contributions (NICs), there has likewise been an effort in recent years to include more fringe benefits within the determination of earnings. However, NICs still begin with the premise that benefits in kind are excluded from the

[6] See fn 2 above.

[7] These include, for example, employer contributions to approved pension schemes (to promote saving for retirement), employee share schemes (to promote extended private ownership of companies) and workplace day-care facilities (to allow married women with children to return to work, although it is not a condition of the exemption that the employee be a woman).

[8] FA 1976, Part III, Ch. II, which introduced, in particular, provisions dealing with the measure of benefit derived from the non-business use of company cars and provisions to bring into tax the benefit derived from low or no-interest loans, which were previously untaxed.

[9] FA 197, applicable to the 1979–80 year. It should be noted that the phrase "higher-paid" was dropped by FA 1989 and replaced by the expression "employment to which this chapter applies". For ease, however, "higher-paid" will be used to distinguish such employees throughout this paper.

computation of "earnings", unless they are specifically included. Until the same fringe benefits are subject to NICs as they are for income tax, a substantial incentive continues for their provision, leading to both inefficiency and inequity in the tax system. Table 1 provides a summary of the treatment of some of the major fringe benefits for income tax and NIC purposes.

Background

Income Tax [10]

Under section 131(1) of the Income and Corporation Taxes Act 1988, as amended (TA 1988), tax under Schedule E (emoluments from office or employment) is chargeable on the full amount of emoluments ..., subject to such deductions only as may be authorised ..., and the expression 'emoluments' shall include all salaries, fees, wages, perquisites and profits whatsoever". With respect to perquisites (fringe benefits) the general principle is that employees are taxed on the "second-hand value" of the benefit provided, with the result that if the benefit cannot be converted into money or turned to pecuniary account, it is not taxable.[11] This general principle has largely become the exception rather than the rule, due to statutory modification for directors and "higher-paid employees", as well as for all employees if the benefit is provided by means of a voucher or credit token. Special rules also apply for the provision of living accommodation, share option and other incentive schemes (e.g. profit-related pay), medical insurance and sick pay schemes, certain training schemes, scholarship and apprentice schemes, cars, petrol and mobile phones, and low- or no-interest loans.

Taxation of those fringe benefits that were not convertible to cash was first introduced in FA 1948, Pt. IV, applicable to directors and employees earning more than £2000 per annum.[12] This legislation essentially provided that all benefits in kind, whether convertible or not, were chargeable to tax as part of remuneration, except for certain limited services specified in the Act. In addition, the 1948 legislation changed the position on the payment of expenses by an employer, so that all amounts paid to an employee in respect of expenses were treated as taxable emoluments, with the employee entitled to a deduction if such expenses fell within s. 198. Prior to this enactment, the employee could

[10] See generally, *Butterworths UK Tax Guide 1992–93* (London: Butterworths, 1992), pp. 157–207. See also below under "Administration and Collection Procedures".

[11] *Tennant* v. *Smith* [1892] AC 150, 3 TC 158 (HL).

[12] The original limit of £2000, introduced in the narrower 1948 legislation was increased to £5000 by FA 1974, s. 18, amending TA 1970, s. 198(3). The limit was raised to £7500 by FA 1977, s. 35(3) for 1978–79 and raised to its current limit of £8500 by FA 1978, s. 23, applying from 1979–80.

Table 1

Treatment of Major Fringe Benefits for Income Tax and NIC Purposes

Nature of Fringe Benefit	Treatment under Schedule E for an Employee whose Gross Salary and Benefits Exceed £8500	Treatment for NIC Purposes
Gilts	Fair market value included in emoluments	Fair market value included in earnings
Debentures and other debt instruments	Fair market value included in emoluments	Fair market value included in earnings
Shares of the employer corporation	Fair market value included in emoluments, unless issued pursuant to qualified employee stock option plan	Fair market value included in earnings, unless part of the ordinary share capital (shares other than those carrying a right to a fixed dividend), or an option to acquire such shares
Beneficial loan arrangements made by employer	Interest benefit, calculated at difference between official rate and loan rate included in emoluments, unless loan for a qualifying purpose (e.g. cheap house loan up to £30,000) or subject to a concession	No benefit included in earnings
Profit-related pay	Exempt from emoluments, up to certain limits [13]	Whole amount included in earnings
Provision of goods or services created by employer (either at discount or free), which cannot be exchanged for cash, including, e.g., education expenses of employee's dependants	Value equal to cost to employer of providing the benefit included in emoluments	Not included in earnings
Payment for provision of goods or services made by third party, including club membership, private telephone, education expenses	Value equal to cost to employer of providing the benefit included in emoluments	Included in earnings where contract made by employee with third party (unless specific and distinct payments actually incurred by the employee for the purposes of carrying out his employment), but not included in earnings where employer contracts with third party

Car and petrol	Value included in income based on special scale charge	Employer contribution based on scale charge, but no employee contribution unless payment is to satisfy a liability of the employee, to the extent not used for business purposes
Mobile telephones	Scale charge (currently £200) plus cost of calls, unless no private use of phone or if employee makes good full cost of benefit	Similar to contracts for provision of goods or services made by third party
Living accommodation [14]	Subject to certain exceptions for "non-beneficial" accommodation, the value of the benefit to the employee (reasonable rent, and where the accommodation costs more than £75,000, an additional charge) is included in emoluments	Not included in earnings
Canteen facilities	Not included in emoluments so long as available to all employees generally	Not included in earnings
Meal vouchers	Value equal to cost to employer of providing voucher included in emoluments, subject to concession on first 15p	Not included in earnings so long as non-encashable
Other non-encashable vouchers	Value equal to cost to employer of providing voucher and any exchange products included in emoluments	Not included in earnings
Gold, silver or other bullion	Value included in emoluments	Not included in earnings
Private medical insurance	Value equal to cost to employer of providing the benefit included in emoluments	Not included in earnings so long as employer arranges health cover and pays premiums

[13] A payment may not qualify as profit-related pay if Class 1 NICs are not paid on it (although it will qualify if the only reason for the absence of NIC liability is that the earnings are below the NIC earnings limit).

[14] The provision of living accommodation to a person or for his or her family or household is chargeable to income tax whatever the level of his or her income and whether or not he or she is a director. Living accommodation does not include ancillary services, and the payment by the employer for such services will give rise to income tax liability only where the employee earns more than £8500 p.a. or is a director. The treatment of ancillary services for Schedule E and NIC purposes would be the same as payments for goods or services made by a third party.

escape liability where such payments contained no element of profit. The measure of liability for benefits was based on the expense to which the employer was put in providing the benefit. The provisions dealing with directors and higher-paid employees were broadened in 1976[15] to deal with low and no-interest loans (since the value of the benefit under the normal rules, being the cost to the employer of providing such loans, would be nil), and the introduction of scale charges for personal use of automobiles. In both cases, it was felt that the rules measuring the amount of the benefit (in the former case, giving a nil value) did not in any way reflect the real value of such benefits to the employee.[16] It is interesting to note that in the Chancellor's Budget Statement, he indicated that it was his intention "that the provision of car and loan benefits at least should be taxable in the hands of all employees whatever their salary" once staffing at Inland Revenue permits.[17]

The provisions dealing with directors and higher-paid employees are largely codified in TA 1988, Pt. V, Ch. II and Scheds. 6 and 7. The general charging provision is section 154, which provides that where a director or higher-paid employee, or any member of his or her family or household is provided with a benefit, there is to be treated as emoluments an amount equal to the "cash equivalent" of the benefit. The benefits to which the section applies are accommodation (other than living accommodation), entertainment, domestic or other services, and other benefits and facilities of whatsoever nature, whether or not similar to any of those previously mentioned. The section does not apply if the cost of the benefit is otherwise chargeable to tax as income or if it is subject to other specified charging provisions. The "cash equivalent" is defined in s. 156 as the cost of the benefit (being the amount of any expense incurred in connection with its provision), less so much (if any) of it as is made good by the employee. The OECD report on fringe benefits[18] provides some interesting statistics concerning taxable fringe benefits received by higher-paid employees in 1983–84. Tables 16 and 17 of the OECD study (taken or derived from Inland Revenue, Expenses and Benefits Survey) appear as Appendix 1 to this paper. At the time of the OECD study, the upper earnings limit for NICs was £12,219.96. Appendix 2 contains the most recent figures available, taken from Inland Revenue's 1989–90 *Expenses and Benefits Survey*. At that time, the upper earnings limit was £16,900.

[15] See fn 8 above.

[16] See the Budget Statement by the Chancellor of the Exchequer, Dennis Healy, 6 April 1976 (Hansard H.C. Debates, Vol. 909, Col. 262). The previous measure of the charge for automobiles would probably have been more accurate than the current scale, but administratively much more difficult. The Inland Revenue has recently issued a consultative document suggesting reforms to the current scale charge, largely changing the basis for valuing the benefit to the cost of the automobile rather than the engine size.

[17] Budget Statement, *Ibid.*, Col. 263.

[18] See fn 1 above.

There was much debate over the meaning of the cost of the benefit where the employer provided its own goods or services, with a relatively low marginal cost.[19] The decision of the House of Lords settled the matter for the time being, in deciding that the cost of such a benefit is the marginal cost to the employer. The outcome of this debate has no effect on the calculation of NICs under the existing regime due to the nature of the fringe benefits involved. Any impact will depend on the extent to which the basis for calculating NICs is extended to the type of fringe benefits in dispute.

As indicated previously, the statutory provisions covering "higher-paid employees" and directors apply to the majority of employees today, since the £8500 threshold has remained unchanged since 1979 and is currently well below the average national earnings.[20] It is questionable whether this threshold should be maintained at all. [21]

National Insurance [22]

It is not necessary for the purposes of this paper to set out a detailed history of the social insurance scheme in the UK. However, a few points should be highlighted. As originally conceived, the British National Insurance scheme was to be wholly different from a tax regime. Beveridge sharply distinguished taxation from insurance in his 1942 Report,[23] which formed the basis for the National Insurance Act 1946. In his view, taxation should be related to the capacity to pay rather than the value of what the payer may expect to receive, while insurance contributions should be related to the value of benefits and not the capacity to pay. Beveridge "envisioned a cradle-to-grave provision of flat-rate, non-means-tested, subsistence-level sickness, medical, unemployment, widows', orphans',

[19] See, in particular, *Pepper* v. *Hart* [1990] STC 6 (Ch. D.), 786 (C.A.) and [1992] STC 898. The issue arises with, for example, the provision by a school of reduced school fees, and the provision of free transport by public transport utilities such as airline companies. The House of Lords decision in this case is expected shortly.

[20] The average annual earnings in 1979 of all adults (men and women over 18 years old) in all industries was £4482.40, based on average weekly earnings in April of that year: *Annual Abstract of Statistics* ,1984 Edition (London: HMSO, 1984). In 1990, the comparable figure was £13,681.20. For men employed in non-manual employment, the figures were £5829.2 in 1979 and £18,454.80 in 1990.

[21] It was estimated that the tax revenue forgone in 1983–84 as a result of the exception from tax of employees, other than company directors, earning less than £8500 per year was approximately £80 million (0.17 per cent of income tax revenues) (see fn 1 above, p. 22). An Inland Revenue press release issued on 13 April 1989, the date of publication of the 1989 Finance Bill, states that the "threshold has applied since 1979 and the Government at no time sought to increase it, since in principle all employees should pay income tax on the whole of their earnings, whether received in cash or in kind". The expression "higher-paid" was dropped as it was "inappropriate, and can be misleading, since £8500 is well below the national average for full time earnings and the benefits rules now apply to a great majority of employees". These remarks almost beg the question. Evidently, the Inland Revenue is content to let the anomaly die through attrition, rather than remove it.

[22] For a summary of the treatment for NIC purposes of a number of fringe benefits, see Booth, *Tolley's National Insurance Contributions 1992–93* (London: Tolley Publishing, 1991). See also below under "Administration and Collection Procedures".

[23] Report on Social Insurances and Allied Services (Cmd. 6404 (1942)).

old-age, maternity, industrial injury and funeral benefits in return for a single flat-rate contribution; the whole scheme to be uniformly administered by a Ministry of Social Security".[24] Of course, the National Insurance system in existence today has departed greatly from Beveridge's ideals. The introduction of graduated contributions (in 1959, and modified in 1975), the removal of the upper limit on employer contributions (in 1985), the introduction of Class 4 contributions and the continuous growth of non-contributory as well as means-tested benefits, have all made National Insurance progressively more like a tax. Next to income tax and VAT, National Insurance is the largest source of government revenue, likely to be over £38 billion in 1992-93, of which more than half represents employer contributions based on the earnings of their employees.[25]

Since the National Insurance system was originally founded on the concept that the members of the community provide against risks on a community-wide basis, an essential feature of the system was that contributions be paid into a separate fund, and benefits met out of that fund. This separate fund, the National Insurance Fund, was first established in 1948 when the original National Insurance Act 1946 came into effect. Today, even the manner in which this fund is treated more closely reflects a tax system. It is not run on insurance principles, but rather on a "pay as you go" principle; receipts are required to cover outgoings by a reasonable margin year by year. Because of this, the Government Actuary is required every five years to review the state of the fund having regard to current and expected contribution yields, and such other matters that he considers relevant to the present and future level of the fund.[26] In addition, the Government Actuary must make an annual report on the changes that the Secretary of State makes to the contribution rates and the earnings brackets on which they depend. The changes result from an annual review that the Secretary of State is required to make, on movements in general earnings levels and other relevant matters.[27] The fact that NICs are paid into a separate fund from general government revenue may be one of the last vestiges of the insurance scheme envisioned by Beveridge.[28]

[24] Booth, *Social Security Contributions* (London: Butterworths, 1982), p. 5.

[25] Government Actuary's Report presented in December 1991 (Cmnd 1779). The NIC figure may be overstated given the current unemployment levels.

[26] Social Security Administration Act 1992 (SSAA 1992), s. 166.

[27] *Ibid.*, s. 141.

[28] In the Parliamentary debates dealing with the 1991 Social Security (Contributions) Bill (which added Class 1A contributions), the then Minister of Social Security, Nicholas Scott, readily acknowledged that "there is no essential link between the benefits that are paid and the contributions that are received. From year to year, a judgement is made as to contributions and payments. There is no automaticity." 9 May 1991 (Hansard H.C. Debates, Vol. 190, Col. 850).

The primary legislation dealing with contribution liability has been consolidated in the Social Security Contributions and Benefits Act 1992 (SSCBA 1992).[29] In addition, there is a substantial body of secondary legislation.

This paper is concerned with Class 1 contributions, that is, those made by employed earners (primary contributors) and their employers (secondary contributors). The amount of these contributions is determined by the "earnings" of the employed earner, as defined in SSCBA 1992,[30] and as calculated in the manner prescribed by regulation.[31] Such regulations can also provide that certain payments be disregarded or deducted in performing such calculation.[32]

The starting point for the calculation of an employed earner's earnings is stated in SI 1979/591, reg. 18, which provides that "the amount of a person's earnings shall . . . be calculated on the basis of that person's gross earnings from the employment . . . concerned." Reg. 19 excludes certain items from a person's earnings. As originally passed, reg. 19(1)(d) excluded "any payment in kind or by way of the provision of board or lodging or of services or other facilities".[33] There was apparently no discussion at that time of the policy reasons behind this exclusion.[34] At the time these regulations were passed, there was a ceiling on both employee and employer contributions. The taxation of virtually all fringe benefits applied only to directors and higher-paid employees (those earning more than £8,500). The upper earnings limit (UEL) for employee and employer contributions was

[29] The former primary legislation, the Social Security Act 1975 was repealed as a consequence of the enactment of SSCBA 1992: Social Security (Consequential Provisions) Act 1992, s. 3(1), Sch. 1. The provisions of the SSPA 1975 dealing with the contracted-out rebate remain in force, as they were not consolidated into the SSCBA 1992.

[30] SSCBA 1992, s. 3(1) includes in "earnings", "any remuneration or profit derived from an employment". It is generally accepted that remuneration covers wages, salaries, fees, etc. and "profit" covers other items of gain or benefit arising out of the employment, e.g. fringe benefits, insofar as they have not been removed by specific exclusion. However, it has been suggested by a number of practitioners that fringe benefits are not within the definition of "earnings". See, in particular, Venables, *National Insurance Contribution Planning* (London: Key Haven Publications, 1990) para. 2.2.3; Oliver and Prosser, "The Exclusion of Benefits in Kind", *Tax Journal*, 28 June 1990 p. 8. Their argument is essentially that for NICs to be chargeable, earnings must be "paid", and that the provision of most fringe benefits could not be considered as a "payment". If this argument were correct, SI 1979/591 Reg. 19(1)(d), discussed below, would be otiose.

[31] SSCBA 1992, s. 3(2).

[32] *Ibid.*, s. 3(3).

[33] SI 1973/1264, reg. 17(1)(d) provided an identical exclusion from earnings for the purposes of determining contributions under the Social Security Act 1973 (the previous consolidating statute to the Social Security Act 1975). Prior to 1973, contributions were based on an employee's remuneration (National Insurance Act 1965, Sched. 1) and accordingly fringe benefits, by definition, were excluded from the calculation (Accordingly, in SI 1960/921, which set out certain exclusions in determining an employee's remuneration, payments in kind were not listed.) The National Insurance Act 1965 did contain a definition of "earnings", similar to the current definition, but NICs at that time were not based on earnings.

[34] In the Parliamentary debate at the Second Reading of the 1991 Social Security (Contributions) Bill (see supra fn. 27), Mr. Scott stated that the exclusion "dates from a time when such payments represented only a very small proportion of people's earnings." 9 May 1991. Hansard H.C. Debates, Vol. 190, Col. 849.

set at £135 per week, or £7020 per annum. Accordingly, the only fringe benefits that would have been included in earnings, assuming the same definition was used as for Schedule E purposes, would have been those benefits that could have been converted into money or turned to pecuniary account, and the value of the benefit for earnings purposes would have been its "second-hand" value. It may have been decided, for ease of administration, simply to exclude fringe benefits from the calculation of earnings, as most fringe benefits subject to income tax were received by individuals earning above the upper earnings limit. Since fringe benefits did not affect the calculation of PAYE,[35] and since NICs were collected using the same machinery, it may have been decided to forgo the administrative headache, since the amount of extra contributions may not have been worth the extra administrative cost.[36]

However, with the ever-increasing rise in the upper earnings limit, as well as increases in the NIC rates in the early 1980s and the removal of the ceiling on employer contributions in 1985, a great incentive developed to remunerate higher-paid employees with fringe benefits, in order that both employees and employers avoid paying Class 1 contributions. Note that in order for the provision of an asset to be a payment-in-kind, the DSS requires that the asset cannot be surrendered and exchanged for cash. If it can be surrendered and exchanged for cash, the DSS considers that the employee has in effect been provided with cash. To be a payment-in-kind, the asset provided can only be turned to cash if sold.

In most current cases, the provision of fringe benefits to an employee will not affect the amount of his or her contributions, as he or she is probably over the upper earnings limit for which primary contributions are due.[37] With the removal of the ceiling for employer contributions, however, a substantial industry developed in NIC avoidance planning.[38] One of the first techniques used was discretionary bonus trusts, falling within the exemption in reg. 19(1)(e). This technique was effectively curtailed by SI 1987/1560,

[35] See below, under "Administration and Collection Procedures".

[36] In addition, as discussed below, under "Administration and Collection Procedures", the NIC payment for each pay period is final (unlike income tax, which is an annual tax). Accordingly, there would have been administrative problems for employers and the DSS in valuing benefits in kind in order to account for NICs in the correct earnings period.

[37] Although see below under "Economic Impact".

[38] Interestingly, this concern was raised in the debates surrounding the 1985 Social Security Bill, which removed the UEL for employer contributions. Archy Kirkwood, Lib. Dem. MP for Roxburgh and Berwickshire, although supporting the Bill, warned:

> There is a danger and a suspicion that high earners and their employers will get around the change and try to mitigate the impact of it by shifting the emphasis from salaries to perquisites. The Minister has an opportunity to say that, if companies and employers do that, the Government will seriously consider tightening the tax regime that applies to perquisites. (18 April 1985, Hansard H.C. Debates, Vol. 77, Col. 430)

which deleted reg. 19(1)(e) and added reg. 19A (which contains certain grandfathering provisions for payments made before 5 April 1990 in respect of pre-1985 trusts and certain post-1985 trusts). Thereafter, the use of short-dated gilts in remuneration packages came into vogue.

In 1988, steps were taken to block the use of gilt-edged securities.[39] SI 1988/860, effective 12 May 1988, introduced reg. 19C to SI 1979/591, a remarkably limited "claw-back" of certain securities from the general exclusion of payments in kind. It simply provided that certain securities (as defined) and derivative instruments (also defined) were not to be treated as payments in kind. The listed securities were debenture stock, bonds, loan stock (including convertible loan stock), certificates of deposit, derivative instruments such as warrants, options and futures relating to debt instruments, units in unauthorised unit trusts which hold debt instruments or their derivatives. Two specific exceptions to its scope were contained in the regulations: shares in a company and units in an authorised unit trust. At the time of its introduction, the Secretary of State, Michael Portillo, advised, in a written answer to a parliamentary question, that "[f]urther action will be taken if it appears that other securities are being used to avoid national insurance contribution liability".[40]

Not surprisingly, considerable attention was given to methods of payment falling outside the ambit of reg. 19C, and further action was indeed taken in 1991. Major changes were made to the scope of the exclusions from reg. 19(1)(d); obviously, it was felt that the changes made in 1988 were not sufficient! SI 1991/2505, reg. 3(5), made 4 November 1991 and coming into force 7 November 1991, deleted reg. 19C and added reg. 19(5) to SI 1979/591. Among other things, reg. 19(5) excludes from reg. 19(1)(d) (thus bringing back into the ambit of NIC), all items falling within Schedule 1A. Schedule 1A is very broad, and is set out in full in Appendix 3 of this paper. The obvious intention of these regulations was to block the use of all types of financial instruments, subject to specific exclusion (namely, ordinary shares in the capital of the company by which the employee is employed or in its parent or a consortium holding company).[41]

1991 also saw the addition of Class 1A contributions to SSA 1975, added by Social Security (Contributions) Act 1991, ss. 1(1), (5), and 6(5). Class 1A contributions, applicable from

[39] Anecdotal evidence suggests that the blocking regulation was instigated by the Inland Revenue, due to a massive deferral of Schedule E collection, given that use of such benefits fell outside PAYE and required P11D returns and assessments. Whether or not the IR, in fact, prompted the reform is open to question.

[40] 11 May 1988 (Hansard H.C. Debates, Vol. 133, Col. 182w).

[41] SI 1991/2505, reg. 3(4), which added reg. 19(1)(l) to SI 1979/591.

1991–92, are employer contributions based on scale charges for the personal use of automobiles and fuel for private motoring. These scale charge rules are almost exactly the same as those used for income tax purposes under TA 1988, ss. 157, 158 and Sched. 6. The legislation even contains regulation-making power, the explicit purpose of which [42] is to ensure that the provisions follow the income tax provisions as closely as possible. The intention is that the regulations would (and, except necessarily for certain liability aspects, do) mirror extra-statutory concessions made by Inland Revenue in this area. The policy behind its enactment can be gleaned from the Minister of Social Security's introductory remarks made at the time of Second Reading of the 1991 Social Security (Contributions) Bill. [43] It was estimated at the time that over two million employees received, as part of their remuneration package, the benefit of having a company car, double the number receiving such benefits in 1985-86. It was estimated that Class 1A contributions would, in 1992-93, raise an additional £550 million in respect of company cars and £60 million in respect of fuel. [44] As indicated, Class 1A contributions apply only to the secondary contributor and not to the employee. The reasons behind the exclusion were set out in the Minister's speech introducing the legislation:

> As the House will know, there is a liability on both employers and employees to pay class 1 contributions. Nevertheless, we have decided – hope that I can carry the House with me on this – that employees will not be liable to pay contributions in respect of company cars and free fuel. They already pay tax on that use.
>
> There is a variety of practical reasons why we have decided not to impose national insurance contributions on those people. First, more than half all employees who have a company car are above the upper earnings limit for contributions. Secondly, employees are already required to pay tax and the imbalance in the tax and contributions rules for them is not so manifest as it is for employers. Finally, the rules for assessing primary contributions make it very difficult to integrate the new system with the existing national insurance contributions arrangements so as to produce a workable system for collecting the new contributions from the employees. We believe that the additional complications for employers would be out of all proportion to the extra revenue raised and we therefore intend that employees should be excluded from any new liability.[45]

These arguments are not very persuasive. Obviously, a significant number (although less than half) of employees whose car and fuel benefits are taxable, are below the UEL. The fact that they already have to pay tax on these benefits is frankly irrelevant; had the

[42] See the speech by the Minister for Social Security, Nicholas Scott, introducing the 1991 Social Security (Contributions) Bill, 9 May 1991 (Hansard H.C. Debates, Vol. 190, Col. 855).

[43] *Ibid.*, Cols. 849–56.

[44] *Ibid.*, Col. 856.

[45] *Ibid.*, Col. 852.

employer paid extra salary to fund the individual acquisition of the car and fuel, the employee would have had to pay tax on such additional salary and would have had to pay additional NICs.[46] Lastly, the "additional complications" for employers could be alleviated with the introduction of "K" codes, discussed below, and the introduction of year-end adjustments for NIC purposes.

There is still, however, a gap between the fringe benefits that are included for Schedule E purposes and those included for NIC purposes. One recent technique being used is "allocated bullion" as part of the remuneration package. It appears possible to structure the transaction so that the employer (and the employee, for that matter) need not take actual possession of the bullion. Allocated bullion can be acquired outside the UK, and never actually be brought within the UK (thus avoiding VAT on its supply).[47] The employee can then instruct the dealer to sell the bullion and remit to him the proceeds. The omission of bullion from Sched. 1A was a conscious decision.[48] Apparently, the DSS were given legal advice to the effect that gold sovereigns, krugerrands and other coins, being legal tender, were not payments in kind, and it was thought that this was a sufficient exclusion. The pure metal itself, though, is not legal tender.

Apart from bullion, there are still many types of fringe benefits that slip between the cracks for NIC purposes. These include, for example, most ordinary goods and services. One method of providing such benefits, which is explicitly sanctioned by the DSS, is for the employer to enter into a contract with the supplier for the provision of goods or services personal to the employee. NI 269, a manual published by the DSS for employers, specifically provides a number of examples.[49] In addition, employers can provide their employees with non-encashable vouchers for goods or services. The practical drawback in using such vouchers – the inability to precisely match branded vouchers to intended spending habits or intentions of employees – may be overcome through the use of "intermediate vouchers" (vouchers provided by certain organisations that are exchangeable for branded vouchers). One such scheme which has been widely publicised is the

[46] It was estimated that the additional revenue yield for 1991-92 from extending Class 1A contributions to employees would be approximately £200 million for cars and £20 million for fuel, 9 December 1991 (Hansard H.C. Debates, Vol. 200, Cols. 301w-302w).

[47] The scheme operates on the basis of symbolic delivery, in that specific numbered bars are allocated in the vault's stock record to the employer, which he then allocates to the employees. The dealer need not be offshore, so long as the gold itself never enters a jurisdiction which imposes VAT or a similar duty.

[48] Note that options to acquire gold, silver, palladium and platinum are included in Sched. 1A (para. 7(c)).

[49] NI 269 (April 1991 ed.), pp. 55-61, particularly paras. 27 (medical cover), 28 (membership in a club), 35 (payment of bills) and 69 (telephone charges). In all cases, the manual indicates that if the employee enters into the contract with the third-party supplier, then amounts paid by the employer are part of gross pay. However, if the employer enters into the contract, then payments made by the employer are not part of gross pay. The distinction seems a very fine line to draw. No such line is drawn for higher-paid employees under Schedule E.

"Nightingale Voucher Scheme", managed by the Motivation Marketing Board. Under this scheme, the employer provides the manager with a list of employees with each reward value (amount to be provided to the employee through the scheme vouchers). The manager prepares "reward claim wallets", which each employee receives, and personally chooses the vouchers (and values) he or she wants. The employer provides the manager with the necessary funds to cover the vouchers, as well as the manager's fees (ranging from 2.6 per cent to 5.2 per cent). The employer returns the completed reward claim wallets to the manager, who provides the vouchers to the employees. The employees have the choice of over 150 different branded vouchers, covering goods and services such as groceries, clothes, holidays, household goods, appliances, jewellery, entertainment, travel, accommodation, etc. As indicated previously, the employees are subject to tax on the cost to the employer of providing the vouchers (i.e. the manager's commission and the amount of each voucher), but such amounts are not subject to NICs by either the employee or the employer.

So long as a gap continues to exist between the treatment of fringe benefits for income tax and NIC purposes, "chipping away at the edges will simply concentrate avoidance in the remaining excluded benefits in kind".[50] This review of the legislative history confirms this statement.

Economic Impact

The exclusion of benefits in kind, generally, from the calculation of earnings for NIC purposes has remained a topic of interest in government, at least in the pre-election campaign period. On 9 December 1991 written answers were given in the House of Commons to two questions in this area.[51] The first dealt with the cost to basic rate and higher rate employees of extending NICs to all employee benefits in kind for employees earning over £8500. It is estimated that such a change would raise an additional £280 million from basic rate taxpayers and £57 million from higher-rate taxpayers. In answer to the following question, it was estimated that such a change would raise an additional £300 million from secondary contributions.[52] On 24 January 1992, in answer to a similar question,[53] it was estimated that the addition of all fringe benefits to the NIC base would raise an additional £230 million in employee contributions. Evidently the more recent figures are more accurate; neither apparently take into account the additional adminis-

[50] Dilnot and Webb, "The IFS Project on National Insurance Contributions", Chartered Association of Certified Accountants, Occasional Research Paper No. 5, p. 34.

[51] Hansard H.C. Debates, Vol. 200, Cols. 301w-302w.

[52] As indicated in the answer to that question, certain benefits in kind, namely cars and car fuel, are already subject to secondary contributions.

[53] Hansard H.C. Debates, Vol. 202, Cols. 372w–373w.

trative costs of the DSS. However, the addition of fringe benefits to the calculation of earnings, even while retaining the ceiling on employee contributions, would add a significant sum to the National Insurance Fund. The 24 January 1992 answer also provides revenue projections where the ceiling on NICs is abolished for employee contributions.[54]

Global Trends

The International Labour Organization (ILO) prepared an extensive study of the financing aspects of social security in 1984.[55] As the study indicates, there have been in the past three basic sources for financing social security: "The costs of benefits, including the cost of administration should be distributed among insured persons, employers and taxpayers in such a way as to be equitable to insured persons and to avoid hardship to insured persons of small means or any disturbance in production."[56] This original premise was the basis of most social security schemes, including that of the UK, which were inspired largely by the system of social security well established in Germany by the end of the nineteenth century. However, since the 1950s, there has been a progressive evolution of social security financing as the costs of social security grew. These growing costs were due to "better" coverage of social risks by extending the scope of the schemes and improving benefits. The report goes on to suggest a number of options in financing social security. One of these options is recourse to taxation:

> The real justification for the use of taxation is above all a matter of principle. The arguments involved concern the countries whose systems were initially based on the German legislation of Bismarck, and have since evolved towards the broadening and generalization of their objectives.
>
> With the extension of systems initially designed to protect only wage earners to include persons who are not wage earners and to persons who do not exercise an economic activity, the systems have in effect ceased to be essentially commutative based on work and the notion of insurance, and have acquired a more distributive character in which greater emphasis is placed on the duty of society towards the satisfaction of the basic needs of its members. There is therefore no longer any reason to continue to levy contributions only on income from employment, when the benefits they finance are extended to social categories which do not receive any such income. The proposal to use taxation therefore concerns those branches where

[54] Although beyond the scope of this paper, the abolition of the ceiling on NICs may be desirable in its own right. See, for example, the ILO study, fn. 55 below, p. 70.

[55] *Financing Social Security: The Options (An International Analysis)* (Geneva: International Labour Organization, 1984).

[56] Income Security Regulation (No. 67) adopted by the International Labour Conference, 1944.

benefits are in fact an expression of national solidarity and in which there appears to be no logical relationship between contributions based on income from employment and the benefits which such contributions are used to finance. [57]

In the UK now, for example, certain social security benefits are paid out of or reimbursed from general taxation. These include the whole branch of family benefits, as well as Statutory Sick Pay and Statutory Maternity Pay.[58] The reasons behind these payments are largely twofold: first, most of these benefits reflect minimum social standards, rather than compensation for "insurance-based" risks; second, serious and unanticipated funding problems in 1989-90,[59] which were resolved by removing the expenses of sick pay and maternity pay from the National Insurance Fund.

The purpose of the foregoing is to illustrate that, as it is, the social security scheme in the UK and in most industrialised countries is becoming progressively more like a tax. At least insofar as fringe benefits are concerned, the UK is one of the few countries that treats such items differently for income tax and social security contribution purposes. In Austria, Belgium, Canada, Denmark, Finland, France, Germany, Japan, the Netherlands, Switzerland and the United States the benefits taken into account are the same as for the income tax and their valuation is also the same.[60] Since the (1988) OECD study, the UK has certainly decreased the ambit of excluded benefits. The question must, however, be asked, "Why does any difference remain at all?"

Administration and Collection Procedures

The collection of primary (employee) Class 1 NICs is normally carried out through the PAYE system. As indicated previously, one possible reason for the exclusion of fringe benefits from NICs may have been the administrative difficulties involved in administering their collection. This has not, however, been considered a problem for income tax purposes. As a general rule, most fringe benefits are outside the scope of PAYE because

[57] See fn. 55 above, pp. 71–2.

[58] See in particular, SSAA 1992, s. 163(2).

[59] The DSS made a serious miscalculation in the number of people who would contract out of SERPS under the 1988 reforms. The DSS estimated that between 500,000 and 750,000 employees would contract out. In the event there are now approximately 4.5 million in appropriate personal pensions and 1 million in new contracted-out schemes. With the NI Fund income cut by the contracted-out rebate of 5.8 per cent and the 2 per cent incentive, the fund was in deficit in 1989–90 by approximately £3 billion (with the miscalculation amounting to approximately £5.8 billion). In effect, the Treasury Supplement (the previous third base (government) of funding the tripartite system), which was progressively reduced from 18 per cent in 1979–89 until its abolition in April 1989, was "reintroduced" in the guise of a transfer of the cost of sick pay and maternity pay from the NI Fund to the Consolidated Fund.

[60] See fn. 1 above, p. 38.

their provision does not involve "payment". However, it has been held that the value of fringe benefits can have an impact in determining an employee's PAYE code.[61] Of course, under the present PAYE system, where taxable fringe benefits are considered in determining an employee's PAYE code, they can, at best, reduce the effect of an individual's personal allowances by the value of the benefits. Where the value of the fringe benefits exceed the personal allowances, their use still results in a tax deferral until the year end, when an accounting will be required through a taxpayer's return. The deductions made by the employer under PAYE are merely provisional payments on account of the employee's final liability for the year.

On the other hand, the NIC paid and deducted from the employee's earnings in a particular pay period is the actual final liability for that period. Accordingly, the employer must include in his calculation for each pay period every payment which is liable to NIC. Because of the pay period basis for NIC, employers must inevitably bring to account for NIC purposes payments which do not currently figure in their PAYE calculations. It is unclear why a similar annual accounting should not be made for NICs by both employees and employers. For income tax purposes, employers are required to provide a form, P11D, annually, which sets out the benefits in kind provided to employees. A year-end adjustment could be made for both primary and secondary Class 1 contributions based on this form. Since this form has to be prepared in any event, there should be no significant additional administrative costs to employers or the DSS.

On 12 December 1990, the Inland Revenue issued a consultative paper to improve the effectiveness of PAYE in collecting tax. This acknowledges that where benefits in kind exceed tax allowances and reliefs given in the PAYE code, the full amount of tax cannot be collected until year end. Accordingly, from April 1993 (i.e. for the 1993–94 tax year), K codes will be introduced to the PAYE system. These codes will indicate an amount to be added to cash pay –reflecting, for example, the amount of benefits on which tax needs to be paid – to arrive at taxable pay, where such other taxable items exceed the taxpayer's personal allowances. A similar procedure could be introduced for the purposes of determining NICs. There are certain matters which will have to be ironed out, due to the

[61] SI 1973/334, reg. 7 provides that:

> 7. The appropriate code shall be determined by the Inspector, who for that purpose may have regard to any of the following matters:
>
> . . .
>
> (e) such other adjustments as may be necessary to secure that, so far as possible the tax in respect of the employee's emoluments for the year for which the code is to have effect shall be deducted from the emoluments paid during that year.

In *R.* v. *Walton General Commissioners, ex parte Wilson* [1983] STC 464 (CA), the Court confirmed that benefits in kind can be factored into coding for PAYE.

differing assessment periods for NIC and income tax, discussed above. K codes, as with other PAYE codes, will normally act on a cumulative basis. In certain circumstances (e.g. very low pay in a particular pay period before adding the Additional Pay–K code element) a proportionately high tax deduction could result. Accordingly, there will be certain overriding limits specified by regulation on the amount of tax to be deducted. Currently, the intention is that the limit will be 50 per cent of "pay", being the amount of emoluments on which PAYE is to operate (before adding the K code element). For subsequent pay periods the employer will continue to operate on a cumulative basis.[62] Any necessary adjustments would continue to be made at the end of the year through the tax return. A K code type adjustment and year-end adjustments could be introduced for NIC purposes. Since a calculation of the value of fringe benefits, at least for higher-paid employees, must be made in any event, there appears to be no additional administrative cost (from the employer's point of view) in harmonising at least this aspect of income tax and National Insurance.[63]

Conclusion

The last few years have seen a conscious effort on the part of government to bring into the scope of income tax all fringe benefits, subject to specific benefits that have been excluded, largely for policy reasons. Similar efforts have also been made in the realm of National Insurance, although to a lesser degree. The calculation of earnings for NIC purposes still begins with the premise that payments in kind are excluded, unless specifically included. The reasons for a differing basis are not clear, especially given the compliance costs (of both the government and employers) in operating two separate systems which have an increasingly single base.[64]

Insofar as there is a difference in the bases, remuneration of employees with certain fringe benefits can avoid NICs. This avoidance can lead to both inefficiency and inequity. The

[62] This provision is a change from the original proposal, where in subsequent pay periods the K code would operate on a non-cumulative basis (see IR Press Release, 24 October 1991, para. 8).

[63] Full integration of NICs and income tax was rejected by the government in the Green Paper on Personal Taxation (Cmnd 9756), largely due to the distributional consequences of making such a change (see in particular Ch. 7 of the Green Paper). This argument may be a good reason for not making the change immediate, although not for rejecting it altogether.

[64] Obviously, fringe benefits are not the only area where harmonisation should be considered. Another area of administrative and compliance difficulty, largely due to differing rules adopted by the two systems, is the treatment of refunded expenses (as the refund can sometimes contain a profit element, intentionally or unintentionally). One principle area of concern are those items which are outside the charge to income tax (i.e. due to extra-statutory concessions or agreed dispensations) which are not matched by a corresponding practice in the DSS. In addition, in some cases emoluments (for Schedule E purposes) and earnings (for NIC purposes) are arrived at on different principles, for example because under the NIC contribution rules there is nothing which allows a deduction for employment expenses.

inefficiency results from payments made in a form that would not otherwise be utilised in the absence of distortions, and the increased compliance costs discussed above; inequity arises if such advantages are available only to certain groups. Practice over the past few years readily confirms that the piecemeal approach taken by the government to date only serves to concentrate avoidance in the remaining excluded fringe benefits.

It appears, both from the international experience and from the UK reforms to date, that the administrative problems involved in harmonising the treatment of fringe benefits for income tax and NIC purposes are not insurmountable. There does not appear to be any reason in principle for continuing to make the distinction. Equal treatment of fringe benefits would better reflect a neutral tax system.

The proposals for reform put forward in this paper are not without their critics. Certainly the move from a pay period contribution to an annual contribution would involve a major restructuring of DSS operations. In addition, if an increased employee contribution is not matched with a corresponding increase in benefit entitlement, the notion of a contributory system is further weakened (if indeed, it exists at all today!). However, there is very little dispute that the current system is in need of reform. It is hoped that this paper will provide some food for thought, at the very least, and hopefully some constructive suggestions in the necessary reform of the National Insurance scheme in existence today.

Appendix 1

Taxable Fringe Benefits Received by Higher-Paid Employees[a] and Company Directors, by Gross Annual Earnings 1983-84, UK (000s and £m)

	Company Car		Free Fuel		Private Medical Insurance		Total Taxable Fringe Benefits[d]	
	Recipients (000s)	Scale[b] Charge (£m)	Recipients (000s)	Scale[b] Charge (£m)	Recipients (000s)	Value[c] (£m)	Recipients[e] (000s)	Taxable Value[c] (£m)
Gross annual earnings (£)								
Higher paid employees								
8500 but under 15000	273	98	143	53	226	27	628	239
15000 but under 20000	130	52	65	27	102	13	212	119
20000 but under 25000	66	34	28	13	47	8	94	66
25000 but under 35000	33	18	16	10	28	6	42	47
35000 but under 50000	11	6	3	2	6	1	12	19
50000 and above	6	4	3	2	4	1	8	27
Total higher paid employees	518	213	258	107	414	56	995	517
Directors								
0 but under 15000	171	79	114	56	42	5	190	148
15000 but under 20000	50	26	37	18	15	3	53	59
20000 but under 25000	38	21	29	18	17	4	39	51
25000 but under 35000	42	25	35	20	25	6	45	76
35000 but under 50000	17	13	12	8	11	3	17	34
50000 and above	13	12	10	7	7	2	14	48
Total directors	330	177	237	126	117	22	357	416
Total – higher paid employees and directors	848	390	495	233	531	78	1352	934

Number of Recipients, Taxable Amount and Tax Yield for each Expense/Benefit in 1983-84, UK

	Expense/Benefit	Number of Recipients (000s)	Amount £m	Amount As % of Total Amount	Tax Yield £m	Tax Yield As % of Total Yield
Main benefits:	Car	848	390	41.8	150	40.9
	Fuel	495	233	25.0	91	24.8
	Private medical insurance	531	78	8.4	31	8.3
Expenses:	Entertainment	12	14	1.5	6	1.7
	General	55	21	2.3	10	2.7
	Travelling and subsistence	121	34	3.6	13	3.7
Other benefits:	Educational assistance	2	2	0.2	1	0.3
	Vouchers	71	11	1.2	4	1.1
	Beneficial loans	37	26	2.8	13	3.6
	Others	381	125	13.4	52	14.2
Totals		1352	934	100.0	367	100.0

[1] "Higher- paid" employees are those employees, other than directors, earning at a rate of £8500 per annum or above, including the value of scale charge of the employer-paid benefit and expenses received.
[2] The scale charge for company cars and free fuel are standard amounts used for the purpose of taxing the benefit to directors and higher-paid employees of the availability for private use of a company car and free fuel. The appropriate amount on each scale depends, for example, upon the car engine size.
[3] The value of an expense or benefit (except for company cars and free fuel) is taken as the cost to the employer of providing it. Further details are described in "Notes on Expenses Payments and Benefits for Directors and Certain Employees" available from Inland Revenue.
[4] Total taxable fringe benefits cover all taxable benefits and expenses including those not separately identified in the table, e.g. beneficial loans, educational assistance, general expenses.
[5] The total number of recipients with expenses and benefits is less than the sum of the numbers with the three benefits identified in the tables. This is because many recipients have more than one benefit. Column totals may not sum because of rounding.

Source: Inland Revenue, *Expenses and Benefits Survey.*

Appendix 2

Taxable Benefits and Expenses Payments
Recipients, Taxable Amount and Tax Liability by Each Main Category of Benefit, 1989–90 (000s, £m)

Type of Benefit	Recipients		Benefit			Tax Liability		
	Number	% of Total[a]	Amount	Average	% of Total	Amount	Average	% of Total
Car	1850	65	2960	1600	57	930	500	55
Fuel	1030	36	520	500	10	160	160	10
Private medical insurance	1160	40	300	260	6	90	80	6
Beneficial loans	160	6	220	1360	4	70	450	4
General expenses	50	2	10	250		70		
Travelling and subsistence	70	2	60	920	1	20	290	1
Entertainment	30	1	30	1110	1	10	370	1
Home telephone	400	14	70	170	1	20	60	1
Car allowances	200	7	120	570	2	30	160	2
Subscriptions	50	2	10	160			60	
Goods and services etc. supplied less than market value	100	4	30	260	1	10	70	
Vouchers	130	5	30	210	1	10	60	
Cars, property, etc. transferred	10		100	15450	2	40	5860	2
Living accommodation	20	1	100	4500	2	40	1750	2
Educational assistance			10	3230		10	1260	
Other expenses and benefits	250	9	640	2550	12	230	930	14
Total	2870	100	5210	1810	100	1680	590	100

[a] As recipients may receive more than one type of benefit, the percentages are not additive.
Columns may not sum due to rounding.

Appendix 3

SCHEDULE Regulation 5

To be inserted after Schedule 1 to the principal Regulations –

"SCHEDULE 1A Regulation 18(2) and 19(5)

PART I

ASSETS NOT TO BE DISREGARDED AS PAYMENTS UNDER REGULATION 19(1)(d)

1. Shares and stock in the share capital of a company.

2. Debentures, including debenture stock, loan stock, bonds, certificates of deposits and other instruments creating or acknowledging indebtedness, not being instruments falling within paragraph 3 of this Schedule.

3. Loan stock, bonds and other instruments creating or acknowledging indebtedness issued by or on behalf of a government, local authority or public authority.

4. Warrants or other instruments entitling the holder to subscribe for assets falling within paragraph 1, 2 or 3 of this Schedule.

5. Certificates or other instruments which confer –
   (a) property rights in respect of any asset falling within paragraph 1, 2, 3 or 4 of this Schedule;
   (b) any right to acquire, dispose of, underwrite or convert an asset, being a right to which the holder would be entitled if he held any such asset to which the certificate or instrument relates; or
   (c) a contractual right (other than an option) to acquire any such asset otherwise than by subscription.

6. Units in a collective investment scheme, including shares in or securities of an open-ended investment company.

7. Options to acquire or dispose of –
   (a) an asset falling within any other paragraph of this Schedule;
   (b) currency of the United Kingdom or of any other country or territory;
   (c) gold, silver, palladium or platinum; or
   (d) an option to acquire or dispose of an asset falling within this paragraph by virtue of sub-paragraph (a), (b) or (c) of this paragraph.

8. A contract for the sale of a commodity or property of any other description under which delivery is to be made at a future date and at a price agreed upon when the contract is made.

9. A contract for differences or any other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in the value or price of property of any description or in an index of other factor designated for that purpose in the contract.

PART II

INTERPRETATION OF PART I OF THIS SCHEDULE

10. In paragraph 1 of this Schedule "company" includes –

    (a) any body corporate whether constituted under the law of, or of any part of, the United Kingdom or of any other country or territory and also any unincorporated body constituted under the law of a country or territory outside the United Kingdom; and
    (b) anybody incorporated under the law of, or of any part of, the United Kingdom relating to a building society within the meaning of section 119(1) of the Building Societies Act 1986 [a] or an industrial and provident registered or deemed to be registered under the Industrial and Provident Societies Act 1965 [b] or under the Industrial and Provident Societies Act (Northern Ireland) 1969 [c].

11. In paragraph 3 of this Schedule –

    (a) "government" means the government of the United Kingdom, of Northern Ireland, or of any country or territory outside the United Kingdom;
    (b) "local authority" means a local authority in the United Kingdom or elsewhere and in respect of a local authority in the United Kingdom it has the meaning assigned to it in section 842A of the Income and Corporation Taxes Act 1988; [d]
    (c) "public authority" means any international organisation the members of which include the United Kingdom or another Member State.

12. For the purposes of paragraph 4 of this Schedule it is immaterial whether the assets are for the time being in existence or identifiable.

13. In paragraph 6 of this Schedule –

    (a) "collective investment scheme" has the meaning assigned to it in section 75(1) of the Financial Services Act 1986; [e]
    (b) "open-ended investment company" has the meaning assigned to it in section 75(8) of that Act.

14. For the purposes of paragraph 8 of this Schedule, a price shall be taken to have been agreed upon when a contract is made –

    (a) notwithstanding that it is left to be determined by reference to the price at which a contract is to be entered into on a market or exchange or could be entered into at a time and place specified in the contract; or
    (b) in a case where the contract is expressed to be by reference to a standard lot and quality, notwithstanding that provision is made for a variation in the price to take account of any variation in quantity or quality in delivery."

(a) 1986 c. 53.
(b) 1965 c. 12.
(c) 1969 c. 24 (N.I.).
(d) 1988 c.1. Section 842A was inserted by the Finance Act 1990 (c. 29), section 127 (1).
(e) 1986 c. 60.

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