



# Income Tax (Earnings and Pensions) Act 2003

## 2003 CHAPTER 1

### PART 1

#### OVERVIEW

#### 1 Overview of contents of this Act

- (1) This Act imposes charges to income tax on—
- (a) employment income (see Parts 2 to [F17A] ),
  - (b) pension income (see Part 9), and
  - (c) social security income (see [F2] Chapters 1 to 7 of] Part 10).

<sup>F3</sup>(2) .....

- (3) This Act also—
- (a) confers certain reliefs in respect of liabilities of former employees (see Part 8),
  - [F4(aa) makes provision for the high income child benefit charge (see Chapter 8 of Part 10),]
  - (b) provides for the assessment, collection and recovery of income tax in respect of employment, pension or social security income that is PAYE income (see Part 11), <sup>F5</sup> ...
  - [F6(ba) allows deductions to be made from such income in respect of certain debts payable to the Commissioners for Her Majesty's Revenue and Customs (see Part 11), and]
  - (c) allows deductions to be made from such income in respect of payroll giving (see Part 12).

#### Textual Amendments

- F1** Word in s. 1(1)(a) substituted (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 3](#)

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- F2** Words in s. 1(1)(c) inserted (with effect in accordance with Sch. 1 para. 7 of the amending Act) by [Finance Act 2012 \(c. 14\), Sch. 1 para. 5\(2\)\(a\)](#)
- F3** S. 1(2) repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 426, Sch. 3 Pt. 1](#) (with [Sch. 2](#))
- F4** S. 1(3)(aa) inserted (with effect in accordance with Sch. 1 para. 7 of the amending Act) by [Finance Act 2012 \(c. 14\), Sch. 1 para. 5\(2\)\(b\)](#)
- F5** Word in s. 1(3)(b) omitted (20.7.2011) by virtue of [The Finance Act 2009 \(Consequential Amendments\) Order 2011 \(S.I. 2011/1583\), arts. 1, 2\(2\)](#)
- F6** S. 1(3)(ba) inserted (20.7.2011) by [The Finance Act 2009 \(Consequential Amendments\) Order 2011 \(S.I. 2011/1583\), arts. 1, 2\(2\)](#)

## 2 Abbreviations and general index in Schedule 1

- (1) Schedule 1 (abbreviations and defined expressions) applies for the purposes of this Act.
- (2) In Schedule 1—
  - (a) Part 1 gives the meaning of the abbreviated references to Acts and instruments used in this Act, and
  - (b) Part 2 lists the places where expressions used in this Act are defined or otherwise explained.
- (3) Part 2 of Schedule 1 does not apply to expressions used in Chapters 6 to 9 of Part 7 (share incentive plans and other arrangements for acquiring shares): separate indexes relating to these Chapters appear at the end of Schedules 2 to 5.

## PART 2

### EMPLOYMENT INCOME: CHARGE TO TAX

#### **Modifications etc. (not altering text)**

- C1** [Pt. 2](#) applied (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), ss. 969\(4\)\(a\), 1329\(1\)](#) (with [Sch. 2 Pts. 1, 2](#))

## CHAPTER 1

### INTRODUCTION

## 3 Structure of employment income Parts

- (1) The structure of the employment income Parts is as follows—
  - this Part imposes the charge to tax on employment income, and sets out—
    - (a) how the amount charged to tax for a tax year is to be calculated, and
    - (b) who is liable for the tax charged;
  - Part 3 sets out what are earnings and provides for amounts to be treated as earnings;
  - Part 4 deals with exemptions from the charge to tax under this Part (and, in some cases, from other charges to tax);

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Part 5 deals with deductions from taxable earnings;

Part 6 deals with employment income other than earnings or share-related income; and

Part 7 deals with [<sup>F7</sup>income and exemptions relating to securities and securities options acquired in connection with an employment].

[<sup>F8</sup>Part 7A deals with employment income provided through third parties.]

(2) In this Act “the employment income Parts” means this Part and Parts 3 to [<sup>F9</sup>7A] .

#### Textual Amendments

- F7** Words in s. 3(1) substituted (16.4.2003 with effect in accordance with Sch. 22 para. 16(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 16\(1\)](#)
- F8** Words in s. 3(1) inserted (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 4\(2\)](#)
- F9** Word in s. 3(2) substituted (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 4\(3\)](#)

#### 4 “Employment” for the purposes of the employment income Parts

- (1) In the employment income Parts “employment” includes in particular—
- any employment under a contract of service,
  - any employment under a contract of apprenticeship, and
  - any employment in the service of the Crown.
- (2) In those Parts “employed”, “employee” and “employer” have corresponding meanings.

#### 5 Application to offices and office-holders

- (1) The provisions of the employment income Parts that are expressed to apply to employments apply equally to offices, unless otherwise indicated.
- (2) In those provisions as they apply to an office—
- references to being employed are to being the holder of the office;
  - “employee” means the office-holder;
  - “employer” means the person under whom the office-holder holds office.
- (3) In the employment income Parts “office” includes in particular any position which has an existence independent of the person who holds it and may be filled by successive holders.

## CHAPTER 2

### TAX ON EMPLOYMENT INCOME

#### 6 Nature of charge to tax on employment income

- (1) The charge to tax on employment income under this Part is a charge to tax on—
- general earnings, and

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- (b) specific employment income.

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

- (2) The amount of general earnings or specific employment income which is charged to tax in a particular tax year is set out in section 9.
- (3) The rules in Chapters 4 and 5 of this Part, which are concerned with—
- (a) the residence and domicile of an employee in a tax year,<sup>F10</sup> ...
  - [<sup>F11</sup>(aa) whether section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to an employee for a tax year, and]
  - (b) the tax year in which amounts are received or remitted to the United Kingdom, apply for the purposes of the charge to tax on general earnings but not that on specific employment income.
- [<sup>F12</sup>(3A) The rules in Chapter 5A, which are concerned with the matters mentioned in subsection (3)(a) to (b), apply for the purposes of the charge to tax on certain specific employment income arising under Part 7 (securities etc).]
- (4) The person who is liable for any tax charged on employment income is set out in section 13.
- (5) Employment income is not charged to tax under this Part if it is within the charge to tax under [<sup>F13</sup>Part 2 of ITTOIA 2005 (trading income) by virtue of section 15 of that Act] (divers and diving supervisors).

#### Textual Amendments

- F10** Word in s. 6(3)(a) omitted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 3\(2\)](#)
- F11** S. 6(3)(aa) inserted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 3\(2\)](#)
- F12** S. 6(3A) inserted (with effect in accordance with Sch. 7 para. 80 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 3\(3\)](#)
- F13** Words in s. 6(5) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 585](#) (with Sch. 2)

## 7 Meaning of “employment income”, “general earnings” and “specific employment income”

- (1) This section gives the meaning for the purposes of the Tax Acts of “employment income”, “general earnings” and “specific employment income”.
- (2) “Employment income” means—
- (a) earnings within Chapter 1 of Part 3,
  - (b) any amount treated as earnings (see subsection (5)), or
  - (c) any amount which counts as employment income (see subsection (6)).
- (3) “General earnings” means—
- (a) earnings within Chapter 1 of Part 3, or
  - (b) any amount treated as earnings (see subsection (5)),

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excluding in each case any exempt income.

- (4) “Specific employment income” means any amount which counts as employment income (see subsection (6)), excluding any exempt income.
- (5) Subsection (2)(b) or (3)(b) refers to any amount treated as earnings under—
- [<sup>F14</sup>(a) Chapters 7 to 9 of this Part (agency workers, workers under arrangements made by intermediaries, and workers providing services through managed service companies),]
  - (b) Chapters 2 to 11 of Part 3 (the benefits code),
  - (c) Chapter 12 of Part 3 (payments treated as earnings), or
  - (d) section 262 of CAA 2001 (balancing charges to be given effect by treating them as earnings).
- (6) Subsection (2)(c) or (4) refers to any amount which counts as employment income by virtue of—
- (a) Part 6 (income which is not earnings or share-related),
  - (b) Part 7 [<sup>F15</sup>(income and exemptions relating to securities and securities options)]
  - [<sup>F16</sup>(ba) Part 7A (employment income provided through third parties), or]
  - (c) any other enactment.

#### Textual Amendments

- F14** S. 7(5)(a) substituted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\), s. 25\(2\), Sch. 3 para. 2](#)
- F15** Words in s. 7(6)(b) substituted (16.4.2003 with effect in accordance with Sch. 22 para. 17(2) of the amending Act) by [Finance Act 2003 \(c. 14\), Sch. 22 para. 17\(1\)](#)
- F16** S. 7(6)(ba) substituted for word (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by [Finance Act 2011 \(c. 11\), Sch. 2 para. 5](#)

## 8 Meaning of “exempt income”

For the purposes of the employment income Parts, an amount of employment income within paragraph (a), (b) or (c) of section 7(2) is “exempt income” if, as a result of any exemption in Part 4 or elsewhere, no liability to income tax arises in respect of it as such an amount.

## CHAPTER 3

### OPERATION OF TAX CHARGE

## 9 Amount of employment income charged to tax

- (1) The amount of employment income which is charged to tax under this Part for a particular tax year is as follows.
- (2) In the case of general earnings, the amount charged is the net taxable earnings from an employment in the year.
- (3) That amount is calculated under section 11 by reference to any taxable earnings from the employment in the year (see section 10(2)).

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- (4) In the case of specific employment income, the amount charged is the net taxable specific income from an employment for the year.
- (5) That amount is calculated under section 12 by reference to any taxable specific income from the employment for the year (see section 10(3)).
- (6) Accordingly, no amount of employment income is charged to tax under this Part for a particular tax year unless—
  - (a) in the case of general earnings, they are taxable earnings from an employment in that year, or
  - (b) in the case of specific employment income, it is taxable specific income from an employment for that year.

## 10 Meaning of “taxable earnings” and “taxable specific income”

- (1) This section explains what is meant by “taxable earnings” and “taxable specific income” in the employment income Parts.
- (2) “Taxable earnings from an employment in a tax year are to be determined in accordance with [<sup>F17</sup>Chapters 4 and 5 of this Part].
- (3) “Taxable specific income from an employment for a tax year means the full amount of any specific employment income which, by virtue of Part 6 [<sup>F18</sup>, 7 or 7A] or any other enactment, counts as employment income for that year in respect of the employment.
- [<sup>F19</sup>(4) Subsection (3) is subject to Chapter 5A of this Part (certain specific employment income under Part 7: individuals to whom to remittance basis applies).]
- [<sup>F20</sup>(5) Subsection (3) is also subject to sections 554Z9 to 554Z11 (employment income under Part 7A: remittance basis).]

### Textual Amendments

- F17** Words in s. 10(2) substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 4\(2\)](#)
- F18** Words in s. 10(3) substituted (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 6\(2\)](#)
- F19** S. 10(4) inserted (with effect in accordance with Sch. 7 para. 80 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 4\(3\)](#)
- F20** S. 10(5) inserted (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 6\(3\)](#)

## 11 Calculation of “net taxable earnings”

- (1) For the purposes of this Part the “net taxable earnings” from an employment in a tax year are given by the formula—

**TE - DE**

where—

TE means the total amount of any taxable earnings from the employment in the tax year, and

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DE means the total amount of any deductions allowed from those earnings under provisions listed in section 327(3) to (5) (deductions from earnings: general).

- (2) If the amount calculated under subsection (1) is negative, the net taxable earnings from the employment in the year are to be taken to be nil instead.
- (3) Relief may be available under [<sup>F21</sup>section 128 of ITA 2007] (set-off against general income)—
  - (a) where TE is negative, or
  - (b) in certain exceptional cases where the amount calculated under subsection (1) is negative.
- (4) If a person has more than one employment in a tax year, the calculation under subsection (1) must be carried out in relation to each of the employments.

#### Textual Amendments

**F21** Words in s. 11(3) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 427](#) (with [Sch. 2](#))

## 12 Calculation of “net taxable specific income”

- (1) For the purposes of this Part the “net taxable specific income” from an employment for a tax year is given by the formula—

### TSI- DSI

where—

TSI means the amount of any taxable specific income from the employment for the tax year, and

DSI means the total amount of any deductions allowed from that income under provisions of the Tax Acts not included in the lists in section 327 (3) and (4) (deductions from earnings: general).

- (2) If the amount calculated under subsection (1) is negative, the net taxable specific income from the employment for the year is to be taken to be nil instead.
- (3) If a person has more than one kind of specific employment income from an employment for a tax year, the calculation under subsection (1) must be carried out in relation to each of those kinds of specific employment income; and in such a case the “net taxable specific income” from the employment for that year is the total of all the amounts so calculated.

## 13 Person liable for tax

- (1) The person liable for any tax on employment income under this Part is the taxable person mentioned in subsection (2) or (3).

This is subject to subsection (4).

- (2) If the tax is on general earnings, “the taxable person” is the person to whose employment the earnings relate.

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- (3) If the tax is on specific employment income, “the taxable person” is the person in relation to whom the income is, by virtue of Part 6 [<sup>F22</sup>, 7 or 7A] or any other enactment, to count as employment income.
- (4) If the tax is on general earnings received, or remitted to the United Kingdom, after the death of the person to whose employment the earnings relate, the person’s personal representatives are liable for the tax.
- [<sup>F23</sup>(4A) If the tax is on specific employment income received, or remitted to the United Kingdom, after the death of the person in relation to whom the income is, by virtue of Part 7, to count as employment income, the person's personal representatives are liable for the tax.]
- [<sup>F24</sup>(4B) Subject to section 554Z12, if—
- (a) the tax is on specific employment income under Chapter 2 of Part 7A, and
  - (b) the relevant step is taken, or (if relevant) the income is remitted to the United Kingdom, after the death of A,
- A's personal representatives are liable for the tax.
- (4C) Terms used in subsection (4B) have the same meaning as in Part 7A.]
- (5) [<sup>F25</sup>If subsection (4) [<sup>F26</sup>, (4A) or (4B) or section 554Z12(3)] applies,] the tax is accordingly to be assessed on the personal representatives and is a debt due from and payable out of the estate.

#### Textual Amendments

- F22** Words in s. 13(3) substituted (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 7\(2\)](#)
- F23** S. 13(4A) inserted (with effect in accordance with Sch. 7 para. 80 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 5\(2\)](#)
- F24** S. 13(4B)(4C) inserted (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 7\(3\)](#)
- F25** Words in s. 13(5) substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 5\(3\)](#)
- F26** Words in s. 13(5) substituted (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 7\(4\)](#)

## CHAPTER 4

### [<sup>F27</sup>TAXABLE EARNINGS: UK RESIDENT EMPLOYEES]

#### Textual Amendments

- F27** Pt. 2 Ch. 4 heading substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 6](#)



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## Taxable earnings

### 14 Taxable earnings under this Chapter: introduction

- (1) This Chapter sets out for the purposes of this Part what are taxable earnings from an employment in a tax year in cases where section 15 (earnings for year when employee [<sup>F28</sup>UK resident]) applies to general earnings for a tax year.
- (2) In this Chapter—
  - (a) sections 16 and 17 deal with the year for which general earnings are earned, and
  - (b) sections 18 and 19 deal with the time when general earnings are received.
- (3) In the employment income Parts any reference to the charging provisions of this Chapter is a reference to section 15.

#### Textual Amendments

**F28** Words in s. 14(1) substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 7](#)

## [<sup>F29</sup>UK resident employees ]

#### Textual Amendments

**F29** S. 15 cross-heading substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 8](#)

### 15 Earnings for year when employee [<sup>F30</sup>UK resident]

- [<sup>F31</sup>(1) This section applies to general earnings for a tax year for which the employee is UK resident except that, in the case of a split year, it does not apply to any part of those earnings that is excluded.
- (1A) General earnings are “excluded” if they—
  - (a) are attributable to the overseas part of the split year, and
  - (b) are neither—
    - (i) general earnings in respect of duties performed in the United Kingdom, nor
    - (ii) general earnings from overseas Crown employment subject to United Kingdom tax.]
- (2) The full amount of any general earnings within subsection (1) which are received in a tax year is an amount of “taxable earnings” from the employment in that year.
- [<sup>F32</sup>(3) Subsection (2) applies whether or not the employment is held when the earnings are received.]
- [<sup>F33</sup>(4) Any attribution required for the purposes of subsection (1A)(a) is to be done on a just and reasonable basis.

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- (5) The following provisions of Chapter 5 of this Part apply for the purposes of subsection (1A)(b) as for the purposes of section 27(2)—
- (a) section 28 (which defines “general earnings from overseas Crown employment subject to United Kingdom tax”),<sup>F34</sup>...
  - (b) sections 38 to 41 (which contain rules for determining the place of performance of duties of employment) [<sup>F35</sup>, and
  - (c) section 41ZA (which is about determining the extent to which general earnings are in respect of United Kingdom duties).]
- (6) Subject to any provision made in an order under section 28(5) for the purposes of subsection (1A)(b), provisions made in an order under that section for the purposes of section 27(2) apply for the purposes of subsection (1A)(b) too.]

#### Textual Amendments

- F30** Words in s. 15 heading substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 9\(4\)](#)
- F31** S. 15(1)(1A) substituted for s. 15(1) (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 58\(1\)](#)
- F32** S. 15(3) substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 9\(3\)](#)
- F33** S. 15(4)-(6) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 58\(2\)](#)
- F34** Word in s. 15(5) omitted (with effect in accordance with Sch. 6 para. 7 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 6 para. 2\(a\)](#)
- F35** S. 15(5)(c) and word inserted (with effect in accordance with Sch. 6 para. 7 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 6 para. 2\(b\)](#)

*Year for which general earnings are earned*

## 16 Meaning of earnings “for” a tax year

- (1) This section applies for determining whether general earnings are general earnings “for” a particular tax year for the purposes of this Chapter.
- (2) General earnings that are earned in, or otherwise in respect of, a particular period are to be regarded as general earnings for that period.
- (3) If that period consists of the whole or part of a single tax year, the earnings are to be regarded as general earnings “for” that tax year.
- (4) If that period consists of the whole or parts of two or more tax years, the part of the earnings that is to be regarded as general earnings “for” each of those tax years is to be determined on a just and reasonable apportionment.
- (5) This section does not apply to any amount which is required by a provision of Part 3 to be treated as earnings for a particular tax year.

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## **17 Treatment of earnings for year in which employment not held**

- (1) This section applies for the purposes of this Chapter in a case where general earnings from an employment would otherwise fall to be regarded as general earnings for a tax year in which the employee does not hold the employment.
- (2) If that year falls before the first tax year in which the employment is held, the earnings are to be treated as general earnings for that first tax year.
- (3) If that year falls after the last tax year in which the employment was held, the earnings are to be treated as general earnings for that last tax year.
- (4) This section does not apply in connection with determining the year for which amounts are to be treated as earnings under Chapters 2 to 11 of Part 3 (the benefits code).

*When general earnings are received*

## **18 Receipt of money earnings**

- (1) General earnings consisting of money are to be treated for the purposes of this Chapter as received at the earliest of the following times—

### *Rule 1*

The time when payment is made of or on account of the earnings.

### *Rule 2*

The time when a person becomes entitled to payment of or on account of the earnings.

### *Rule 3*

If the employee is a director of a company and the earnings are from employment with the company (whether or not as director), whichever is the earliest of—

- (a) the time when sums on account of the earnings are credited in the company's accounts or records (whether or not there is any restriction on the right to draw the sums);
  - (b) if the amount of the earnings for a period is determined by the end of the period, the time when the period ends;
  - (c) if the amount of the earnings for a period is not determined until after the period has ended, the time when the amount is determined.
- (2) Rule 3 applies if the employee is a director of the company at any time in the tax year in which the time mentioned falls.
  - (3) In this section “director” means—

- (a) in relation to a company whose affairs are managed by a board of directors or similar body, a member of that body,
- (b) in relation to a company whose affairs are managed by a single director or similar person, that director or person, and
- (c) in relation to a company whose affairs are managed by the members themselves, a member of the company,

and includes any person in accordance with whose directions or instructions the directors of the company (as defined above) are accustomed to act.

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- (4) For the purposes of subsection (3) a person is not to be regarded as a person in accordance with whose directions or instructions the directors of the company are accustomed to act merely because the directors act on advice given by that person in a professional capacity.
- (5) Where this section applies—
- (a) to a payment on account of general earnings, or
  - (b) to sums on account of general earnings,
- it so applies for the purpose of determining the time when an amount of general earnings corresponding to the amount of that payment or those sums is to be treated as received for the purposes of this Chapter.

## 19 Receipt of non-money earnings

- (1) General earnings not consisting of money are to be treated for the purposes of this Chapter as received at the following times.
- (2) If an amount is treated as earnings for a particular tax year under any of the following provisions, the earnings are to be treated as received in that year—
- section 81 (taxable benefits: cash vouchers),
  - section 94 (taxable benefits: credit-tokens),
  - Chapter 5 of Part 3 (taxable benefits: living accommodation),
  - Chapter 6 of Part 3 (taxable benefits: cars, vans and related benefits),
  - Chapter 7 of Part 3 (taxable benefits: loans),
  - <sup>F36</sup> ...
  - <sup>F36</sup> ...
  - Chapter 10 of Part 3 (taxable benefits: residual liability to charge),
  - section 222 (payments treated as earnings: payments on account of tax where deduction not possible),
  - section 223 (payments treated as earnings: payments on account of director's tax).
  - [<sup>F37</sup>section 226A (amount treated as earnings: employee shareholder shares). ] ,
- (3) If an amount is treated as earnings under section 87 (taxable benefits: non-cash vouchers), the earnings are to be treated as received in the tax year mentioned in section 88.
- (4) If subsection (2) or (3) does not apply, the earnings are to be treated as received at the time when the benefit is provided.

### Textual Amendments

**F36** S. 19(2) entries repealed (with effect in accordance with Sch. 22 para. 18(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 18\(1\)](#), [Sch. 43 Pt. 3\(4\)](#)

**F37** Words in s. 19(2) inserted (1.9.2013) by [Finance Act 2013 \(c. 29\)](#), [Sch. 23 paras. 2, 38](#); [S.I. 2013/1755](#), art. 2

*Status: Point in time view as at 01/09/2013.*

*Changes to legislation: Income Tax (Earnings and Pensions) Act 2003 is up to date with all changes known to be in force on or before 10 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## CHAPTER 5

### [<sup>F38</sup>TAXABLE EARNINGS: REMITTANCE BASIS RULES AND RULES FOR NON-UK RESIDENT EMPLOYEES]

#### Textual Amendments

- F38** Pt. 2 Ch. 5 title substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 10](#)

#### *Taxable earnings*

### 20 Taxable earnings under this Chapter: introduction

[<sup>F39</sup>(1) This Chapter—

- (a) contains provision for calculating what are taxable earnings from certain kinds of employment in a tax year for which section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the employee, and
- (b) sets out what are taxable earnings from an employment in a tax year in which the employee is non-UK resident.]

(2) In this Chapter—

- (a) sections 29 and 30 deal with the year for which general earnings are earned,
- <sup>F40</sup>(b) . . . . .
- <sup>F41</sup>(c) . . . . .
- (d) sections 38 to 41 deal with the place where the duties of an employment are performed.

(3) In the employment income Parts any reference to the charging provisions of this Chapter is a reference to any of [<sup>F42</sup>sections 22, 26 and 27].

#### Textual Amendments

- F39** S. 20(1) substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 11\(2\)](#)
- F40** S. 20(2)(b) omitted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 11\(3\)](#)
- F41** S. 20(2)(c) omitted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 11\(3\)](#)
- F42** Words in s. 20(3) substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 11\(4\)](#)

[<sup>F43</sup>Remittance basis rules for [<sup>F44</sup>employees outside section 26]]

#### Textual Amendments

- F43** S. 21 cross-heading substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 12](#)

*Status: Point in time view as at 01/09/2013.*

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**F44** Words in cross-heading substituted (with effect in accordance with Sch. 46 para. 25 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 7\(2\)\(b\)](#) (with [Sch. 46 para. 26](#))

## **21 Earnings for year when employee resident and ordinarily resident, but not domiciled, in UK, except chargeable overseas earnings**

- (1) This section applies to general earnings for a tax year in which the employee is resident and ordinarily resident, but not domiciled, in the United Kingdom except to the extent that they are chargeable overseas earnings for that year.
- (2) The full amount of any general earnings within subsection (1) which are received in a tax year is an amount of “taxable earnings” from the employment in that year.
- (3) Subsection (2) applies—
  - (a) whether the earnings are for that year or for some other tax year, and
  - (b) whether or not the employment is held at the time when the earnings are received.
- (4) Section 23 applies for calculating how much of an employee’s general earnings are “chargeable overseas earnings” for a tax year, and are therefore within section 22(1) rather than subsection (1) above.

## **22 Chargeable overseas earnings for year when [<sup>F45</sup>remittance basis applies and employee [<sup>F46</sup>outside section 26]]**

- (1) This section applies to general earnings for a tax year [<sup>F47</sup>, to the extent that they are chargeable overseas earnings for that year, if—
  - (a) section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the employee for that year, and
  - [<sup>F48</sup>(b) the employee does not meet the requirement of section 26A for that year.]]
- (2) The full amount of any general earnings within subsection (1) which are remitted to the United Kingdom in a tax year is an amount of “taxable earnings” from the employment in that year.
- [<sup>F49</sup>(3) Subsection (2) applies whether or not the employment is held when the earnings are remitted.]
- (4) Section 23 applies for calculating how much of an employee’s general earnings are “chargeable overseas earnings” for a tax year <sup>F50</sup>....
- (5) Where any chargeable overseas earnings are taxable earnings under subsection (2), any deduction taken into account under section 23(3) in calculating the amount of the chargeable overseas earnings—
  - (a) cannot then be deducted under section 11 from those taxable earnings, but
  - (b) may be deducted under that section from any taxable earnings under [<sup>F51</sup>section 15].
- [<sup>F52</sup>(6) See Chapter A1 of Part 14 of ITA 2007 for the meaning of “remitted to the United Kingdom” etc.
- [<sup>F53</sup>(7) Section 15(1) does not apply to general earnings within subsection (1).]]

*Status: Point in time view as at 01/09/2013.*

*Changes to legislation: Income Tax (Earnings and Pensions) Act 2003 is up to date with all changes known to be in force on or before 10 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### Textual Amendments

- F45** Words in s. 22 heading substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 14\(7\)](#) (with [Sch. 7 para. 82](#))
- F46** Words in s. 22 heading substituted (with effect in accordance with Sch. 46 para. 25 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 7\(2\)\(a\)](#) (with [Sch. 46 para. 26](#))
- F47** Words in s. 22(1) substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 14\(2\)](#) (with [Sch. 7 para. 82](#))
- F48** S. 22(1)(b) substituted (with effect in accordance with Sch. 46 para. 25 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 7\(1\)](#) (with [Sch. 46 para. 26](#))
- F49** S. 22(3) substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 14\(3\)](#) (with [Sch. 7 para. 82](#))
- F50** Words in s. 22(4) omitted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 14\(4\)](#) (with [Sch. 7 para. 82](#))
- F51** Words in s. 22(5)(b) substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 14\(5\)](#) (with [Sch. 7 para. 82](#))
- F52** S. 22(6)(7) inserted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 14\(6\)](#) (with [Sch. 7 para. 82](#))
- F53** S. 22(7) substituted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 59](#)

### Modifications etc. (not altering text)

- C2** S. 22 applied by 2007 c. 3, s. 809F(2) (as inserted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 1](#) (with s. 809F(6)))

## 23 Calculation of “chargeable overseas earnings”

- (1) This section applies for calculating how much of an employee’s general earnings for a tax year are “chargeable overseas earnings” for the purposes of <sup>F54</sup>section 22.
- (2) General earnings for a tax year are “overseas earnings” for that year if—
- <sup>F55</sup>(a) section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the employee for that year,
  - <sup>F56</sup>(aa) the employee does not meet the requirement of section 26A for that year,]]
  - (b) the employment is with a foreign employer, and
  - (c) the duties of the employment are performed wholly outside the United Kingdom.
- (3) To calculate the amount of “chargeable overseas earnings” for a tax year—

### <sup>F57</sup>Step 1

Identify—

- (a) in the case of a tax year that is not a split year, the full amount of the overseas earnings for that year, and
- (b) in the case of a split year, so much of the full amount of the overseas earnings for that year as is attributable to the UK part of the year.]

### Step 2

Subtract any amounts that would (assuming they were taxable earnings) be allowed to be deducted from <sup>F58</sup>the earnings identified under step 1] under—

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- (a) section 232 or Part 5 (deductions allowed from earnings),
- [<sup>F59</sup>(b) sections 188 to 194 of FA 2004 (contributions to registered pension schemes),  
or]
- (d) section 262 of CAA 2001 (capital allowances to be given effect by treating them as deductions from earnings).

### *Step 3*

Apply any limit imposed by section 24 (limit where duties of associated employment performed in UK).

The result is the chargeable overseas earnings for the tax year.

- [<sup>F60</sup>(4) Any attribution required for the purposes of step 1 or step 2 in subsection (3) is to be done on a just and reasonable basis.]

#### **Textual Amendments**

- F54** Word in s. 23(1) substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 15\(2\)](#)
- F55** S. 23(2)(a)(aa) substituted for s. 23(2)(a) (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 15\(3\)](#)
- F56** S. 23(2)(aa) substituted (with effect in accordance with Sch. 46 para. 25 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 8](#) (with [Sch. 46 para. 26](#))
- F57** Words in s. 23(3) substituted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 60\(2\)](#)
- F58** Words in s. 23(3) substituted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 60\(3\)](#)
- F59** Words in s. 23(3) substituted (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), s. 284(1), [Sch. 35 para. 55](#) (with [Sch. 36](#))
- F60** S. 23(4) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 60\(4\)](#)

## **24 Limit on chargeable overseas earnings where duties of associated employment performed in UK**

- (1) This section imposes a limit on how much of an employee's general earnings are chargeable overseas earnings for a tax year under section 23 if—
- (a) in that year the employee holds associated employments as well as the employment to which subsection (2) of that section applies (“the relevant employment”), and
  - (b) the duties of the associated employments are not performed wholly outside the United Kingdom.
- (2) The limit is the proportion of the aggregate earnings for that year from all the employments concerned that is reasonable having regard to—
- (a) the nature of and time devoted to each of the following—
    - (i) the duties performed outside the United Kingdom, and
    - (ii) those performed in the United Kingdom, and
  - (b) all other relevant circumstances.



*Status: Point in time view as at 01/09/2013.*

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[<sup>F61</sup>(2A) If the tax year is a split year as respects the employee, subsection (2) has effect as if for “the aggregate earnings for that year from all the employments concerned” there were substituted “so much of the aggregate earnings for that year from all the employments concerned as is attributable to the UK part of that year”.]

(3) For the purposes of subsection (2) “the aggregate earnings for a year from all the employments concerned” means the amount produced by aggregating the full amount of earnings from each of those employments for the year mentioned in subsection (1) so far as remaining after subtracting any amounts of the kind mentioned in step 2 in section 23(3).

[<sup>F62</sup>(3A) Any attribution required for the purposes of subsection (2A) is to be done on a just and reasonable basis.]

(4) In this section—

- (a) “the employments concerned” means the relevant employment and the associated employments;
- (b) “associated employments” means employments with the same employer or with associated employers.

(5) The following rules apply to determine whether employers are associated—

*Rule A*

An individual is associated with a partnership or company if that individual has control of the partnership or company.

*Rule B*

A partnership is associated with another partnership or with a company if one has control of the other or both are under the control of the same person or persons.

*Rule C*

A company is associated with another company if one has control of the other or both are under the control of the same person or persons.

(6) In subsection (5)—

- (a) in rules A and B “control” has the meaning given by [<sup>F63</sup>section 995 of ITA 2007] (in accordance with section 719 of this Act), and
- (b) in rule C “control” means control within the meaning [<sup>F64</sup>given by sections 450 and 451 of CTA 2010] (meaning of expressions relating to close companies).

(7) If an amount of chargeable overseas earnings is reduced under step 3 in section 23(3) as a result of applying any limit imposed by this section, the amount of general earnings corresponding to the reduction remains an amount of general earnings within [<sup>F65</sup>section 15(1)].

#### Textual Amendments

**F61** S. 24(2A) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 61\(2\)](#)

**F62** S. 24(3A) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 61\(3\)](#)

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- F63** Words in s. 24(6)(a) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 428](#) (with [Sch. 2](#))
- F64** Words in s. 24(6)(b) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 379](#) (with [Sch. 2](#))
- F65** Words in s. 24(7) substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\), Sch. 7 para. 16](#)

*[<sup>F66</sup>Remittance basis rules: employees [<sup>F67</sup>who meet section 26A requirement]]*

#### Textual Amendments

- F66** S. 25 cross-heading substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\), Sch. 7 para. 17](#)
- F67** Words in cross-heading substituted (with effect in accordance with Sch. 46 para. 25 of the amending Act) by [Finance Act 2013 \(c. 29\), Sch. 46 para. 9\(2\)\(b\)](#) (with [Sch. 46 para. 26](#))

### <sup>F68</sup>25 **UK-based earnings for year when employee resident, but not ordinarily resident, in UK**

.....

#### Textual Amendments

- F68** S. 25 omitted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\), Sch. 7 para. 18](#)

### 26 **Foreign earnings for year when [<sup>F69</sup>remittance basis applies and employee [<sup>F70</sup>meets section 26A requirement]]**

- (1) This section applies to general earnings for a tax year [<sup>F71</sup>where section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the employee for that year and the employee [<sup>F72</sup>meets the requirement of section 26A for] that year, ] [<sup>F73</sup>if the general earnings meet all of the following conditions—
- (a) they are neither—
    - (i) general earnings in respect of duties performed in the United Kingdom, nor
    - (ii) general earnings from overseas Crown employment subject to United Kingdom tax, and
  - (b) if the tax year is a split year as respects the employee, they are attributable to the UK part of the year.]
- (2) The full amount of any general earnings within subsection (1) which are remitted to the United Kingdom in a tax year is an amount of “taxable earnings” from the employment in that year.
- [<sup>F74</sup>(3) Subsection (2) applies whether or not the employment is held when the earnings are remitted.]
- (4) Section 28 explains what is meant by “general earnings from overseas Crown employment subject to United Kingdom tax”.

*Status: Point in time view as at 01/09/2013.*

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[<sup>F75</sup>(5) See Chapter A1 of Part 14 of ITA 2007 for the meaning of “remitted to the United Kingdom” etc.

[ Any attribution required for the purposes of subsection (1)(b) is to be done on a just  
<sup>F76</sup>(5A) and reasonable basis.]

[<sup>F77</sup>(6) Section 15(1) does not apply to general earnings within subsection (1).]

#### Textual Amendments

- F69** Words in s. 26 heading substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 19\(5\)](#) (with [Sch. 7 para. 82](#))
- F70** Words in s. 26 heading substituted (with effect in accordance with Sch. 46 para. 25 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 9\(2\)\(a\)](#) (with [Sch. 46 para. 26](#))
- F71** Words in s. 26(1) substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 19\(2\)](#) (with [Sch. 7 para. 82](#))
- F72** Words in s. 26(1) substituted (with effect in accordance with Sch. 46 para. 25 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 9\(1\)](#) (with [Sch. 46 para. 26](#))
- F73** Words in s. 26(1) substituted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 62\(2\)](#)
- F74** S. 26(3) substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 19\(3\)](#) (with [Sch. 7 para. 82](#))
- F75** S. 26(5)(6) inserted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 19\(4\)](#) (with [Sch. 7 para. 82](#))
- F76** S. 26(5A) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 62\(3\)](#)
- F77** S. 26(6) substituted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 62\(4\)](#)

#### Modifications etc. (not altering text)

- C3** S. 26 applied by 2007 c. 3, s. 809F(2) (as inserted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 1](#) (with s. 809F(6)))

### [<sup>F78</sup>26A Section 26: requirement for 3-year period of non-residence

- (1) An employee meets the requirement of this section for a tax year if the employee was—
- non-UK resident for the previous 3 tax years, or
  - UK resident for the previous tax year but non-UK resident for the 3 tax years before that, or
  - UK resident for the previous 2 tax years but non-UK resident for the 3 tax years before that, or
  - non-UK resident for the previous tax year, UK resident for the tax year before that and non-UK resident for the 3 tax years before that.
- (2) The residence status of the employee before the 3 years of non-UK residence is not relevant for these purposes.]

#### Textual Amendments

- F78** S. 26A inserted (with effect in accordance with Sch. 46 para. 25 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 10](#) (with [Sch. 46 para. 26](#))

*Status: Point in time view as at 01/09/2013.*

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### *Employees not resident in UK*

#### **27 UK-based earnings for year when employee not resident in UK**

- (1) This section applies to general earnings for a tax year [<sup>F79</sup>for which] the employee is not resident in the United Kingdom if they are—
  - (a) general earnings in respect of duties performed in the United Kingdom, or
  - (b) general earnings from overseas Crown employment subject to United Kingdom tax.
- (2) The full amount of any general earnings within subsection (1) which are received in a tax year is an amount of “taxable earnings” from the employment in that year.
- [<sup>F80</sup>(3) Subsection (2) applies whether or not the employment is held when the earnings are received.]
- (4) Section 28 explains what is meant by “general earnings from overseas Crown employment subject to United Kingdom tax”.
- [<sup>F81</sup>(5) Sections 18 and 19 (time when earnings are received) apply for the purposes of this section.]

#### **Textual Amendments**

- F79** Words in s. 27(1) substituted (17.7.2013) by [Finance Act 2013 \(c. 29\), Sch. 45 para. 149](#)
- F80** S. 27(3) substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\), Sch. 7 para. 20\(2\)](#)
- F81** S. 27(5) inserted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\), Sch. 7 para. 20\(3\)](#)

### *Special class of earnings for purposes of sections 25 to 27*

#### **28 Meaning of “general earnings from overseas Crown employment subject to UK tax”**

- (1) This section explains for the purposes of sections 25 to 27 what is meant by “general earnings from overseas Crown employment subject to United Kingdom tax”.
- (2) “Crown employment” means employment under the Crown—
  - (a) which is of a public nature, and
  - (b) the earnings from which are payable out of the public revenue of the United Kingdom or of Northern Ireland.
- (3) “General earnings from overseas Crown employment” means general earnings from such employment in respect of duties performed outside the United Kingdom.
- (4) Such earnings are to be taken as being “subject to United Kingdom tax” unless they fall within any exception contained in an order under subsection (5).
- (5) [<sup>F82</sup>the Commissioners for Her Majesty’s Revenue and Customs] may make an order excepting from the operation of sections 25(2) and 27(2)—
  - (a) general earnings of any description of employee specified in the order;
  - (b) general earnings from any description of employment so specified.

*Status: Point in time view as at 01/09/2013.*

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- (6) The <sup>F83</sup>Commissioners] may make the order if they consider that such earnings should not be subject to those provisions having regard to the international obligations of Her Majesty's Government and such other matters as appear to them to be relevant.
- (7) An order may make provision by reference to all or any of the following—
- (a) the residence or nationality of the employee;
  - (b) whether the employee was engaged in or outside the United Kingdom;
  - (c) the nature of the post, the rate of remuneration and any other terms and conditions applying to it.
- (8) Subsection (7) does not affect the generality of the power to make provision by reference to such factors as the Board consider appropriate.

#### Textual Amendments

**F82** Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 102\(2\)](#); S.I. 2005/1126, art. 2(2)(h)

**F83** Words in s. 28(6) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 102\(3\)\(a\)](#); S.I. 2005/1126, art. 2(2)(h)

### *Year for which general earnings are earned*

#### **29 Meaning of earnings “for” a tax year**

- (1) This section applies for determining whether general earnings are general earnings “for” a particular tax year for the purposes of this Chapter.
- (2) General earnings that are earned in, or otherwise in respect of, a particular period are to be regarded as general earnings for that period.
- (3) If that period consists of the whole or part of a single tax year, the earnings are to be regarded as general earnings “for” that tax year.
- (4) If that period consists of the whole or parts of two or more tax years, the part of the earnings that is to be regarded as general earnings “for” each of those tax years is to be determined on a just and reasonable apportionment.
- (5) This section does not apply to any amount which is required by a provision of Part 3 to be treated as earnings for a particular tax year.

#### **30 Treatment of earnings for year in which employment not held**

- (1) This section applies for the purposes of this Chapter in a case where general earnings from an employment would otherwise fall to be regarded as general earnings for a tax year in which the employee does not hold the employment.
- (2) If that year falls before the first tax year in which the employment is held, the earnings are to be treated as general earnings for that first tax year.
- (3) If that year falls after the last tax year in which the employment was held, the earnings are to be treated as general earnings for that last tax year.

*Status: Point in time view as at 01/09/2013.*

*Changes to legislation: Income Tax (Earnings and Pensions) Act 2003 is up to date with all changes known to be in force on or before 10 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (4) This section does not apply in connection with determining the year for which amounts are to be treated as earnings under Chapters 2 to 11 of Part 3 (the benefits code).

F84 ...

**Textual Amendments**

- F84** S. 31 cross-heading omitted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 21](#)

*Relief for delayed remittances*

**F85 35 Relief for delayed remittances**

**Textual Amendments**

- F85** Ss. 31-37 omitted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 21](#)

**F85 36 Election in respect of delayed remittances**

**Textual Amendments**

- F85** Ss. 31-37 omitted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 21](#)

**F85 37 Claims for relief on delayed remittances**

**Textual Amendments**

- F85** Ss. 31-37 omitted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 21](#)

*Place of performance of duties of employment*

**38 Earnings for period of absence from employment**

- (1) This section applies if a person ordinarily performs the whole or part of the duties of an employment in the United Kingdom.

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- (2) General earnings for a period of absence from the employment are to be treated for the purposes of this Chapter as general earnings for duties performed in the United Kingdom except in so far as they would, but for that absence, have been general earnings for duties performed outside the United Kingdom.

### **39 Duties in UK merely incidental to duties outside UK**

- (1) This section applies if in a tax year an employment is in substance one whose duties fall to be performed outside the United Kingdom.
- (2) Duties of the employment performed in the United Kingdom whose performance is merely incidental to the performance of duties outside the United Kingdom are to be treated for the purposes of this Chapter as performed outside the United Kingdom.
- (3) This section does not affect any question as to—
- (a) where any duties are performed, or
  - (b) whether a person is absent from the United Kingdom,
- for the purposes of section 378 (deduction from seafarers' earnings: eligibility), and section 383 (place of performance of incidental duties) applies instead.

### **40 Duties on board vessel or aircraft**

- (1) Duties which a person performs on a vessel engaged on a voyage not extending to a port outside the United Kingdom are to be treated for the purposes of this Chapter as performed in the United Kingdom.
- (2) Duties which a person resident in the United Kingdom performs on a vessel or aircraft engaged—
- (a) on a voyage or journey beginning or ending in the United Kingdom, or
  - (b) on a part beginning or ending in the United Kingdom of any other voyage or journey,
- are to be treated as performed in the United Kingdom for the purposes of this Chapter.
- (3) Subsection (2) does not, however, apply for the purposes of section 24(1)(b) (limit on chargeable overseas earnings under section 23 where duties of associated employment performed in UK) in relation to any duties of a person's employment if—
- (a) the employment is as a seafarer, and
  - (b) the duties are performed on a ship.
- (4) Instead, any duties of the employment which are performed on a ship engaged—
- (a) on a voyage beginning or ending outside the United Kingdom (but excluding any part of it beginning and ending there), or
  - (b) on a part beginning or ending outside the United Kingdom of any other voyage,
- are to be treated as performed outside the United Kingdom for the purposes of section 24(1)(b).
- (5) For the purposes of subsections (3) and (4)—
- (a) employment “as a seafarer” means an employment consisting of the performance of duties on a ship or of such duties and others incidental to them;
  - [<sup>F86</sup>(b) “ship” does not include an offshore installation;]

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- (c) the areas designated under section 1(7) of the Continental Shelf Act 1964 (c. 29) are treated as part of the United Kingdom.

#### Textual Amendments

**F86** S. 40(5)(b) substituted (with effect in accordance with Sch. 27 para. 16 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), **Sch. 27 para. 12**

### 41 Employment in UK sector of continental shelf

- (1) General earnings in respect of duties performed in the UK sector of the continental shelf in connection with exploration or exploitation activities are to be treated for the purposes of this Chapter as general earnings in respect of duties performed in the United Kingdom.
- (2) In this section—
- “the UK sector of the continental shelf” means the areas designated under section 1(7) of the Continental Shelf Act 1964, and
- “exploration or exploitation activities” means activities carried on in connection with the exploration or exploitation of so much of the seabed and subsoil and their natural resources as is situated in the United Kingdom or the UK sector of the continental shelf.

#### *[<sup>F87</sup>Apportionment of earnings*

#### Textual Amendments

**F87** [S. 41ZA](#) and cross-heading inserted (with effect in accordance with Sch. 6 para. 7 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), **Sch. 6 para. 3**

### 41ZA Basis of apportionment

The extent to which general earnings are in respect of duties performed in the United Kingdom is to be determined under this Chapter on a just and reasonable basis.]

## [<sup>F88</sup>CHAPTER 5A

### TAXABLE SPECIFIC INCOME: EFFECT OF REMITTANCE BASIS

#### Textual Amendments

**F88** Pt. 2 Ch. 5A inserted (with effect in accordance with Sch. 7 para. 80 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), **Sch. 7 para. 22**

### 41A Taxable specific income from employment-related securities: effect of remittance basis

- (1) This section applies if—



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- (a) an amount within subsection (2) counts as employment income of an individual for a tax year in respect of an employment (“the securities income”), and
  - (b) any part of the relevant period (see section 41B) is within a tax year for which section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the individual.
- (2) An amount is within this subsection if it counts as employment income under any provision of any of Chapters 2, 3 and 3C to 5 of Part 7 (employment-related securities etc) except section 446UA.
- (3) The reference in subsection (2) to an amount that counts as employment income under any of the provisions mentioned there does not include an amount which counts as employment income by virtue of any provision of Chapter 3A or 3B of Part 7.
- (4) An amount equal to—

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is an amount of “taxable specific income” from the employment for the tax year mentioned in subsection (1)(a).
- (5) In subsection (4)—
  - (a) SI is the amount of the securities income, and
  - (b) FSI is the amount of the securities income that is “foreign” (see sections 41C to 41E).
- (6) The full amount of any of the foreign securities income which is remitted to the United Kingdom in a tax year is an amount of “taxable specific income” from the employment for that year.
- (7) Subsection (6) applies whether or not the employment is held when the foreign securities income is remitted.
- (8) For the purposes of Chapter A1 of Part 14 of ITA 2007 (remittance basis), treat the relevant securities or securities option as deriving from the foreign securities income.
- (9) But where—
  - (a) the chargeable event is the disposal of the relevant securities or the assignment or release of the relevant securities option, and
  - (b) the individual receives consideration for the disposal, assignment or release of an amount equal to or exceeding the market value of the relevant securities or securities option,for the purposes of that Chapter treat the consideration (and not the relevant securities or securities option) as deriving from the foreign securities income.
- (10) In this section and section 41B—

“the chargeable event” means the event giving rise to the securities income, and

“the relevant securities” or “the relevant securities option” means the employment-related securities or employment-related securities option by virtue of which the amount mentioned in subsection (1)(a) counts as employment income.

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- (11) See Chapter A1 of Part 14 of ITA 2007 for the meaning of “remitted to the United Kingdom” etc.

#### **41B Section 41A: the relevant period**

- (1) “The relevant period” is to be determined as follows.
- (2) In the case of an amount that counts as employment income by virtue of Chapter 2 (restricted securities) or Chapter 3 (convertible securities), the relevant period—
  - (a) begins with the day of the acquisition, and
  - (b) ends with the day of the chargeable event.
- (3) In the case of an amount that counts as employment income by virtue of section 446U (securities acquired for less than market value: discharge of notional loan)—
  - (a) if the relevant securities were acquired by virtue of the exercise of a securities option (“the option”), the relevant period—
    - (i) begins with the day of the acquisition of the option, and
    - (ii) ends with the day the option vests, and
  - (b) otherwise, the relevant period is—
    - (i) the tax year in which the notional loan (within the meaning of Chapter 3C) is treated as made, or
    - (ii) if the chargeable event occurs in that year, the period beginning at the beginning of that year and ending with the day of that event.
- (4) In the case of an amount that counts as employment income by virtue of—
  - (a) Chapter 3D (securities disposed of for more than market value), or
  - (b) Chapter 4 (post-acquisition benefits from securities),
 the relevant period is the tax year in which the chargeable event occurs.
- (5) In the case of an amount that counts as employment income by virtue of Chapter 5 (employment-related securities options), the relevant period—
  - (a) begins with the day of the acquisition, and
  - (b) ends with the day of the chargeable event or, if earlier, the day the relevant securities option vests.
- (6) In this section “the acquisition” has the same meaning as in Chapters 2 to 4 or Chapter 5 (see section 421B or 471).
- (7) For the purposes of this section an option “vests” when it is first capable of being exercised.
- (8) References in this section to a Chapter are to a Chapter of Part 7.

#### **41C Section 41A: foreign securities income**

- (1) The extent to which the securities income is “foreign” is to be determined as follows.
- (2) Treat an equal amount of the securities income as accruing on each day of the relevant period.
- (3) If any part of the relevant period is within a tax year to which subsection (4) applies, the securities income treated as accruing in that part of the relevant period is “foreign”.

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This is subject to section 41D (limit where duties of associated employment performed in UK).

- (4) This subsection applies to a tax year if—
- (a) section 809B, 809D or 809E of ITA 2007 applies to the individual for the year,
  - [<sup>F89</sup>(b) the individual does not meet the requirement of section 26A for the year (reading references there to the employee as references to the individual),]
  - (c) the employment is with a foreign employer, and
  - (d) the duties of the employment are performed wholly outside the United Kingdom.
- (5) If any part of the relevant period is within a tax year to which subsection (6) applies—
- (a) if the duties of the employment are performed wholly outside the United Kingdom, the securities income treated as accruing in that part of the relevant period is “foreign”, and
  - (b) if some but not all of those duties are performed outside the United Kingdom—
    - (i) the securities income mentioned in paragraph (a) is to be apportioned (on a just and reasonable basis) between duties performed in the United Kingdom and duties performed outside the United Kingdom, and
    - (ii) the income apportioned in respect of duties performed outside the United Kingdom is “foreign”.
- (6) This subsection applies to a tax year if—
- (a) section 809B, 809D or 809E of ITA 2007 applies to the individual for the year,
  - [<sup>F90</sup>(b) the individual meets the requirement of section 26A for the year (reading references there to the employee as references to the individual), and]
  - (c) some or all of the duties of the employment are performed outside the United Kingdom.
- (7) If the individual is not resident in the United Kingdom in a tax year, for the purposes of this section treat section 809B of ITA 2007 as applying to the individual for that year.
- (8) This section is subject to section 41E (foreign securities income: just and reasonable apportionment).

#### Textual Amendments

**F89** S. 41C(4)(b) substituted (with effect in accordance with Sch. 46 para. 25 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 46 para. 11(2)** (with Sch. 46 para. 26)

**F90** S. 41C(6)(b) substituted (with effect in accordance with Sch. 46 para. 25 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 46 para. 11(3)** (with Sch. 46 para. 26)

#### 41D Limit on foreign securities income where duties of associated employment performed in UK

- (1) This section imposes a limit on the extent to which section 41C(3) applies in relation to a period when—
- (a) the individual holds associated employments as well as the employment in relation to which section 41C(4) applies, and

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- (b) the duties of the associated employments are not performed wholly outside the United Kingdom.
- (2) The amount of the securities income for the period that is to be regarded as “foreign” is limited to such amount as is just and reasonable, having regard to—
- (a) the employment income for the period from all the employments mentioned in subsection (1)(a),
  - (b) the proportion of that income that is general earnings to which section 22 applies (chargeable overseas earnings),
  - (c) the nature of and time devoted to the duties performed outside the United Kingdom, and those performed in the United Kingdom, in the period, and
  - (d) all other relevant circumstances.
- (3) In this section “associated employments” means employments with the same employer or with associated employers.
- (4) Section 24(5) and (6) (meaning of “associated employer”) apply for the purposes of this section.

#### **41E Foreign securities income: just and reasonable apportionment**

- (1) This section applies if the proportion of the securities income that would otherwise be regarded as “foreign” is not, having regard to all the circumstances, one that is just and reasonable.
- (2) The amount of the securities income that is “foreign” is such amount as is just and reasonable (rather than the amount calculated in accordance with section 41C).]

## <sup>F91</sup>CHAPTER 6

### DISPUTES AS TO DOMICILE OR ORDINARY RESIDENCE

#### **Textual Amendments**

- F91** Pt. 2 Ch. 6 omitted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 23](#)

#### **42 Commissioners to determine dispute as to domicile or ordinary residence**

.....

#### <sup>F91</sup>**43 Appeal against Commissioners' decision on domicile or ordinary residence**

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#### **Modifications etc. (not altering text)**

- C4** [S. 43](#) modified (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), [Sch. 1 para. 335](#)

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## CHAPTER 7

### APPLICATION OF PROVISIONS TO AGENCY WORKERS

#### *Agency workers*

#### **44 Treatment of workers supplied by agencies**

- (1) This section applies if—
- (a) an individual (“the worker”) personally provides, or is under an obligation personally to provide, services (which are not excluded services) to another person (“the client”),
  - (b) the services are supplied by or through a third person (“the agency”) under the terms of an agency contract,
  - (c) the worker is subject to (or to the right of) supervision, direction or control as to the manner in which the services are provided, and
  - (d) remuneration receivable under or in consequence of the agency contract does not constitute employment income of the worker apart from this Chapter.
- (2) If this section applies—
- (a) the services which the worker provides, or is obliged to provide, to the client under the agency contract are to be treated for income tax purposes as duties of an employment held by the worker with the agency, and
  - (b) all remuneration receivable under or in consequence of the agency contract (including remuneration which the client pays or provides in relation to the services) is to be treated for income tax purposes as earnings from that employment.

#### **45 Arrangements with agencies**

If—

- (a) an individual (“the worker”), with a view to personally providing services (which are not excluded services) to another person (“the client”), enters into arrangements with a third person (“the agency”), and
- (b) the arrangements are such that the services (if and when they are provided) will be treated for income tax purposes under section 44 as duties of an employment held by the worker with the agency,

any remuneration receivable under or in consequence of the arrangements is to be treated for income tax purposes as earnings from that employment.

#### **46 Cases involving unincorporated bodies etc.**

- (1) Section 44 also applies—
- (a) if the worker personally provides, or is under an obligation to personally provide, the services in question as a partner in a firm or a member of an unincorporated body;
  - (b) if the agency in question is an unincorporated body of which the worker is a member.

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- (2) In a case within subsection (1)(a), remuneration receivable under or in consequence of the agency contract is to be treated for income tax purposes as income of the worker and not as income of the firm or body.

### *Supplementary*

#### **47 Interpretation of this Chapter**

- (1) In this Chapter “agency contract” means a contract made between the worker and the agency under the terms of which the worker is obliged to personally provide services to the client.
- (2) In this Chapter “excluded services” means—
- (a) services as an actor, singer, musician or other entertainer or as a fashion, photographic or artist’s model, or
  - (b) services provided wholly—
    - (i) in the worker’s own home, or
    - (ii) at other premises which are neither controlled or managed by the client nor prescribed by the nature of the services.
- (3) For the purposes of this Chapter “remuneration”—
- (a) does not include anything that would not have constituted employment income of the worker if it had been receivable in connection with an employment apart from this Chapter, but
  - (b) subject to paragraph (a), includes every form of payment, gratuity, profit and benefit.

## **CHAPTER 8**

### APPLICATION OF PROVISIONS TO WORKERS UNDER ARRANGEMENTS MADE BY INTERMEDIARIES

#### *Application of this Chapter*

#### **48 Scope of this Chapter**

- (1) This Chapter has effect with respect to the provision of services through an intermediary.
- (2) Nothing in this Chapter—
- (a) affects the operation of Chapter 7 of this Part,
  - [<sup>F92</sup>(aa) applies to services provided by a managed service company (within the meaning of Chapter 9 of this Part), or]
  - (b) applies to payments [<sup>F93</sup>or transfers to which section 966(3) or (4) of ITA 2007 applies (visiting performers: duty to deduct and account for sums representing income tax)] .

*Status: Point in time view as at 01/09/2013.*

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### Textual Amendments

- F92** S. 48(2)(aa) substituted for word (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), s. 25(2), [Sch. 3 para. 3](#)
- F93** Words in s. 48(2) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 429](#) (with [Sch. 2](#))

## 49 Engagements to which this Chapter applies

(1) This Chapter applies where—

- (a) an individual (“the worker”) personally performs, or is under an obligation personally to perform, services [<sup>F94</sup>for another person] (“the client”),
- (b) the services are provided not under a contract directly between the client and the worker but under arrangements involving a third party (“the intermediary”), and

[<sup>F95</sup>(c) the circumstances are such that—

- (i) if the services were provided under a contract directly between the client and the worker, the worker would be regarded for income tax purposes as an employee of the client or the holder of an office under the client, or
- (ii) the worker is an office-holder who holds that office under the client and the services relate to the office.]

<sup>F96</sup>(2) . . . . .

- (3) The reference in subsection (1)(b) to a “third party” includes a partnership or unincorporated body of which the worker is a member.
- (4) The circumstances referred to in subsection (1)(c) include the terms on which the services are provided, having regard to the terms of the contracts forming part of the arrangements under which the services are provided.
- (5) In this Chapter “engagement to which this Chapter applies” means any such provision of services as is mentioned in subsection (1).

### Textual Amendments

- F94** Words in s. 49(1)(a) substituted (with effect in accordance with s. 136(4) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), s. [136\(2\)](#)
- F95** S. 49(1)(c) substituted (with effect in accordance with s. 22(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), s. [22\(1\)](#)
- F96** S. 49(2) repealed (with effect in accordance with s. 136(4) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), s. 136(3)(a), [Sch. 43 Pt. 3\(1\)](#)

## 50 Worker treated as receiving earnings from employment

(1) If, in the case of an engagement to which this Chapter applies, in any tax year—

- (a) the conditions specified in section 51, 52 or 53 are met in relation to the intermediary, and
- (b) the worker, or an associate of the worker—

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- (i) receives from the intermediary, directly or indirectly, a payment or benefit that is not employment income, or
  - (ii) has rights which entitle, or which in any circumstances would entitle, the worker or associate to receive from the intermediary, directly or indirectly, any such payment or benefit,
- the intermediary is treated as making to the worker, and the worker is treated as receiving, in that year a payment which is to be treated as earnings from an employment (“the deemed employment payment”).
- (2) A single payment is treated as made in respect of all engagements in relation to which the intermediary is treated as making a payment to the worker in the tax year.
  - (3) The deemed employment payment is treated as made at the end of the tax year, unless section 57 applies (earlier date of deemed payment in certain cases).
  - (4) In this Chapter “the relevant engagements”, in relation to a deemed employment payment, means the engagements mentioned in subsection (2).

## **51 Conditions of liability where intermediary is a company**

- (1) Where the intermediary is a company the conditions are that the intermediary is not an associated company of the client that falls within subsection (2) and either—
  - (a) the worker has a material interest in the intermediary, or
  - (b) the payment or benefit mentioned in section 50(1)(b)—
    - (i) is received or receivable by the worker directly from the intermediary, and
    - (ii) can reasonably be taken to represent remuneration for services provided by the worker to the client.
- (2) An associated company of the client falls within this subsection if it is such a company by reason of the intermediary and the client being under the control—
  - (a) of the worker, or
  - (b) of the worker and other persons.
- (3) A worker is treated as having a material interest in a company if—
  - (a) the worker, alone or with one or more associates of the worker, or
  - (b) an associate of the worker, with or without other such associates, has a material interest in the company.
- (4) For this purpose a material interest means—
  - (a) beneficial ownership of, or the ability to control, directly or through the medium of other companies or by any other indirect means, more than 5% of the ordinary share capital of the company; or
  - (b) possession of, or entitlement to acquire, rights entitling the holder to receive more than 5% of any distributions that may be made by the company; or
  - (c) where the company is a close company, possession of, or entitlement to acquire, rights that would in the event of the winding up of the company, or in any other circumstances, entitle the holder to receive more than 5% of the assets that would then be available for distribution among the participators.
- (5) In subsection (4)(c) “participator” has the meaning given by [F97 section 454 of CTA 2010].



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### Textual Amendments

**F97** Words in s. 51(5) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 380](#) (with [Sch. 2](#))

## 52 Conditions of liability where intermediary is a partnership

- (1) Where the intermediary is a partnership the conditions are as follows.
- (2) In relation to any payment or benefit received or receivable by the worker as a member of the partnership the conditions are—
  - (a) that the worker, alone or with one or more relatives, is entitled to 60% or more of the profits of the partnership; or
  - (b) that most of the profits of the partnership concerned derive from the provision of services under engagements to which this Chapter applies—
    - (i) to a single client, or
    - (ii) to a single client together with associates of that client; or
  - (c) that under the profit sharing arrangements the income of any of the partners is based on the amount of income generated by that partner by the provision of services under engagements to which this Chapter applies.

In paragraph (a) “relative” means [<sup>F98</sup>spouse or civil partner], parent or child or remoter relation in the direct line, or brother or sister.
- (3) In relation to any payment or benefit received or receivable by the worker otherwise than as a member of the partnership, the conditions are that the payment or benefit—
  - (a) is received or receivable by the worker directly from the intermediary, and
  - (b) can reasonably be taken to represent remuneration for services provided by the worker to the client.

### Textual Amendments

**F98** Words in s. 52(2) substituted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\), regs. 1\(1\), 138](#)

## 53 Conditions of liability where intermediary is an individual

Where the intermediary is an individual the conditions are that the payment or benefit—

- (a) is received or receivable by the worker directly from the intermediary, and
- (b) can reasonably be taken to represent remuneration for services provided by the worker to the client.

### *The deemed employment payment*

## 54 Calculation of deemed employment payment

- (1) The amount of the deemed employment payment for a tax year (“the year”) is the amount resulting from the following steps—

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*Status: Point in time view as at 01/09/2013.*

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### *Step 1*

Find (applying section 55) the total amount of all payments and benefits received by the intermediary in the year in respect of the relevant engagements, and reduce that amount by 5%.

### *Step 2*

Add (applying that section) the amount of any payments and benefits received by the worker in the year in respect of the relevant engagements, otherwise than from the intermediary, that—

- (a) are not chargeable to income tax as employment income, and
- (b) would be so chargeable if the worker were employed by the client.

### *Step 3*

Deduct (applying Chapters 1 to 5 of Part 5) the amount of any expenses met in the year by the intermediary that would have been deductible from the taxable earnings from the employment if—

- (a) the worker had been employed by the client, and
- (b) the expenses had been met by the worker out of those earnings.

If the result at this or any later point is nil or a negative amount, there is no deemed employment payment.

### *Step 4*

Deduct the amount of any capital allowances in respect of expenditure incurred by the intermediary that could have been deducted from employment income under section 262 of CAA 2001 (employments and offices) if the worker had been employed by the client and had incurred the expenditure.

### *Step 5*

Deduct any contributions made in the year for the benefit of the worker by the intermediary to a [<sup>F99</sup>registered pension scheme] that if made by an employer for the benefit of an employee would not be chargeable to income tax as income of the employee.

This does not apply to excess contributions made and later repaid.

### *Step 6*

Deduct the amount of any employer's national insurance contributions paid by the intermediary for the year in respect of the worker.

### *Step 7*

Deduct the amount of any payments and benefits received in the year by the worker from the intermediary—

- (a) in respect of which the worker is chargeable to income tax as employment income, and
- (b) which do not represent items in respect of which a deduction was made under step 3.

### *Step 8*

*Status: Point in time view as at 01/09/2013.*

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Assume that the result of step 7 represents an amount together with employer's national insurance contributions on it, and deduct what (on that assumption) would be the amount of those contributions.

The result is the deemed employment payment.

- (2) If [<sup>F100</sup>section 61 of the Finance Act 2004] applies (sub-contractors in the construction industry: payments to be made under deduction), the intermediary is treated for the purposes of step 1 of subsection (1) as receiving the amount that would have been received had no deduction been made under that section.
- (3) In step 3 of subsection (1), the reference to expenses met by the intermediary includes—
  - (a) expenses met by the worker and reimbursed by the intermediary, and
  - (b) where the intermediary is a partnership and the worker is a member of the partnership, expenses met by the worker for and on behalf of the partnership.
- (4) In step 3 of subsection (1), the expenses deductible include the amount of any mileage allowance relief for the year which the worker would have been entitled to in respect of the use of a vehicle falling within subsection (5) if—
  - (a) the worker had been employed by the client, and
  - (b) the vehicle had not been a company vehicle (within the meaning of Chapter 2 of Part 4).
- (5) A vehicle falls within this subsection if—
  - (a) it is provided by the intermediary for the worker, or
  - (b) where the intermediary is a partnership and the worker is a member of the partnership, it is provided by the worker for the purposes of the business of the partnership.
- (6) Where, on the assumptions mentioned in paragraphs (a) and (b) of step 3 of subsection (1), the deductibility of the expenses is determined under sections 337 to 342 (travel expenses), the duties performed under the relevant engagements are treated as duties of a continuous employment with the intermediary.
- (7) In step 7 of subsection (1), the amounts deductible include any payments received in the year from the intermediary that—
  - (a) are exempt from income tax by virtue of section 229 or 233 (mileage allowance payments and passenger payments), and
  - (b) do not represent items in respect of which a deduction was made under step 3.
- (8) For the purposes of subsection (1) any necessary apportionment is to be made on a just and reasonable basis of amounts received by the intermediary that are referable—
  - (a) to the services of more than one worker, or
  - (b) partly to the services of the worker and partly to other matters.

#### Textual Amendments

**F99** Words in s. 54(1) substituted (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), s. 284(1), [Sch. 35 para. 56](#) (with [Sch. 36](#))

**F100** Words in s. 54(2) substituted (with effect in accordance with s. 77 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 12 para. 17\(2\)](#)

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#### **Modifications etc. (not altering text)**

- C5** S. 54(1) applied in part (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Pension Protection Fund \(Tax\) \(2005-06\) Regulations 2005 \(S.I. 2005/1907\)](#), regs. 1(1), **13**
- C6** S. 54(1) applied in part (6.4.2006) by [The Pension Protection Fund \(Tax\) Regulations 2006 \(S.I. 2006/575\)](#), regs. 1, **39**

### **55 Application of rules relating to earnings from employment**

- (1) The following provisions apply in relation to the calculation of the deemed employment payment.
- (2) A “payment or benefit” means anything that, if received by an employee for performing the duties of an employment, would be earnings from the employment.
- (3) The amount of a payment or benefit is taken to be—
  - (a) in the case of a payment or cash benefit, the amount received, and
  - (b) in the case of a non-cash benefit, the cash equivalent of the benefit.
- (4) The cash equivalent of a non-cash benefit is taken to be—
  - (a) the amount that would be earnings if the benefit were earnings from an employment, or
  - (b) in the case of living accommodation, whichever is the greater of that amount and the cash equivalent determined in accordance with section 398(2).
- (5) A payment or benefit is treated as received—
  - (a) in the case of a payment or cash benefit, when payment is made of or on account of the payment or benefit;
  - (b) in the case of a non-cash benefit that is calculated by reference to a period within the tax year, at the end of that period;
  - (c) in the case of a non-cash benefit that is not so calculated, when it would have been treated as received for the purposes of Chapter 4 or 5 of this Part (see section 19 or 32) if—
    - (i) the worker had been an employee, and
    - (ii) the benefit had been provided by reason of the employment.

### **56 Application of Income Tax Acts in relation to deemed employment**

- (1) The Income Tax Acts (in particular, the PAYE provisions) apply in relation to the deemed employment payment as follows.
- (2) They apply as if—
  - (a) the worker were employed by the intermediary, and
  - (b) the relevant engagements were undertaken by the worker in the course of performing the duties of that employment.
- (3) The deemed employment payment is treated in particular—
  - (a) as taxable earnings from the employment for the purpose of securing that any deductions under Chapters 2 to 6 of Part 5 do not exceed the deemed employment payment; and
  - (b) as taxable earnings from the employment for the purposes of section 232.

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- (4) The worker is not chargeable to tax in respect of the deemed employment payment if, or to the extent that, by reason of any combination of the factors mentioned in subsection (5), the worker would not be chargeable to tax if—
- (a) the client employed the worker,
  - (b) the worker performed the services in the course of that employment, and
  - (c) the deemed employment payment were a payment by the client of earnings from that employment.
- (5) The factors are—
- <sup>F101</sup>(a) the worker being resident or domiciled outside the United Kingdom or meeting the requirement of section 26A,
  - (b) the client being resident <sup>F102</sup>... outside the United Kingdom, and
  - (c) the services in question being provided outside the United Kingdom.
- (6) Where the intermediary is a partnership or unincorporated association, the deemed employment payment is treated as received by the worker in the worker's personal capacity and not as income of the partnership or association.
- (7) Where—
- (a) the worker is resident in the United Kingdom, [<sup>F103</sup> and]
  - (b) the services in question are provided in the United Kingdom, <sup>F104</sup>...
  - <sup>F104</sup>(c) .....
- the intermediary is treated as having a place of business in the United Kingdom, whether or not it in fact does so.
- <sup>F105</sup>(8) .....

#### Textual Amendments

- F101** S. 56(5)(a) substituted (with effect in accordance with Sch. 46 para. 72 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 46 para. 30(a)**
- F102** Words in s. 56(5)(b) omitted (with effect in accordance with Sch. 46 para. 72 of the amending Act) by virtue of Finance Act 2013 (c. 29), **Sch. 46 para. 30(b)**
- F103** Words in s. 56(7)(a) inserted (with effect in accordance with s. 136(4) of the amending Act) by Finance Act 2003 (c. 14), **s. 136(3)(b)(i)**
- F104** S. 56(7)(c) and word repealed (with effect in accordance with s. 136(4) of the amending Act) by Finance Act 2003 (c. 14), s. 136(3)(b)(ii), **Sch. 43 Pt. 3(1)**
- F105** S. 56(8) repealed (6.4.2006) by Finance Act 2004 (c. 12), **Sch. 42 Pt. 3** (with Sch. 35 para. 57, Sch. 36)

#### Supplementary provisions

### 57 Earlier date of deemed employment payment in certain cases

- (1) If in any tax year—
- (a) a deemed employment payment is treated as made, and
  - (b) before the date on which the payment would be treated as made under section 50(2) any relevant event (as defined below) occurs in relation to the intermediary,

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the deemed employment payment for that year is treated as having been made immediately before that event or, if there is more than one, immediately before the first of them.

- (2) Where the intermediary is a company the following are relevant events—
  - (a) the company ceasing to trade;
  - (b) where the worker is a member of the company, the worker ceasing to be such a member;
  - (c) where the worker holds an office with the company, the worker ceasing to hold such an office;
  - (d) where the worker is employed by the company, the worker ceasing to be so employed.
- (3) Where the intermediary is a partnership the following are relevant events—
  - (a) the dissolution of the partnership or the partnership ceasing to trade or a partner ceasing to act as such;
  - (b) where the worker is employed by the partnership, the worker ceasing to be so employed.
- (4) Where the intermediary is an individual and the worker is employed by the intermediary, it is a relevant event if the worker ceases to be so employed.
- (5) The fact that the deemed employment payment is treated as made before the end of the tax year does not affect what receipts and other matters are taken into account in calculating its amount.

## **58 Relief in case of distributions by intermediary**

- (1) A claim for relief may be made under this section where the intermediary—
  - (a) is a company,
  - (b) is treated as making a deemed employment payment in any tax year, and
  - (c) either in that tax year (whether before or after that payment is treated as made), or in a subsequent tax year, makes a distribution (a “relevant distribution”).
- (2) A claim for relief under this section must be made—
  - (a) by the intermediary by notice to [<sup>F106</sup>an officer of Revenue and Customs] , and
  - (b) within 5 years after the 31st January following the tax year in which the distribution is made.
- (3) If on a claim being made [<sup>F106</sup>an officer of Revenue and Customs][<sup>F107</sup>is] satisfied that relief should be given in order to avoid a double charge to tax, [<sup>F108</sup>the officer] must direct the giving of such relief by way of amending any assessment, by discharge or repayment of tax, or otherwise, as appears to [<sup>F108</sup>the officer] appropriate.
- (4) Relief under this section is given by setting the amount of the deemed employment payment against the relevant distribution so as to reduce the distribution.
- (5) In the case of more than one relevant distribution, [<sup>F106</sup>an officer of Revenue and Customs] must exercise the power conferred by this section so as to secure that so far as practicable relief is given by setting the amount of a deemed employment payment—
  - (a) against relevant distributions of the same tax year before those of other years,
  - (b) against relevant distributions received by the worker before those received by another person, and

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- (c) against relevant distributions of earlier years before those of later years.
- (6) Where the amount of a relevant distribution is reduced under this section, the amount of any associated tax credit is reduced accordingly.

#### Textual Amendments

- F106** Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 102\(1\)](#); S.I. 2005/1126, art. 2(2)(h)
- F107** Word in s. 58(3) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 105](#); S.I. 2005/1126, art. 2(2)(h)
- F108** Words in s. 58(3) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 103\(1\)\(a\)](#); S.I. 2005/1126, art. 2(2)(h)

## 59 Provisions applicable to multiple intermediaries

- (1) The provisions of this section apply where in the case of an engagement to which this Chapter applies the arrangements involve more than one relevant intermediary.
- (2) All relevant intermediaries in relation to the engagement are jointly and severally liable, subject to subsection (3), to account for any amount required under the PAYE provisions to be deducted from a deemed employment payment treated as made by any of them—
- in respect of that engagement, or
  - in respect of that engagement together with other engagements.
- (3) An intermediary is not so liable if it has not received any payment or benefit in respect of that engagement or any such other engagement as is mentioned in subsection (2)(b).
- (4) Subsection (5) applies where a payment or benefit has been made or provided, directly or indirectly, from one relevant intermediary to another in respect of the engagement.
- (5) In that case, the amount taken into account in relation to any intermediary in step 1 or step 2 of section 54(1) is reduced to such extent as is necessary to avoid double-counting having regard to the amount so taken into account in relation to any other intermediary.
- (6) Except as provided by subsections (2) to (5), the provisions of this Chapter apply separately in relation to each relevant intermediary.
- (7) In this section “relevant intermediary” means an intermediary in relation to which the conditions specified in section 51, 52 or 53 are met.

## 60 Meaning of “associate”

- (1) In this Chapter “associate”—
- in relation to an individual, has the meaning given by <sup>F109</sup>section 448 of CTA 2010], subject to the following provisions of this section;
  - in relation to a company, means a person connected with the company; and
  - in relation to a partnership, means any associate of a member of the partnership.

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- (2) Where an individual has an interest in shares or obligations of the company as a beneficiary of an employee benefit trust, the trustees are not regarded as associates of the individual by reason only of that interest except in the following circumstances.
- (3) The exception is where—
  - (a) the individual, either alone or with any one or more associates of the individual, or
  - (b) any associate of the individual, with or without other such associates, has at any time on or after 14th March 1989 been the beneficial owner of, or able (directly or through the medium of other companies or by any other indirect means) to control more than 5% of the ordinary share capital of the company.
- (4) In subsection (3) “associate” does not include the trustees of an employee benefit trust as a result only of the individual’s having an interest in shares or obligations of the trust.
- (5) Sections 549 to 554 (attribution of interests in companies to beneficiaries of employee benefit trusts) apply for the purposes of subsection (3) as they apply for the purposes of the provisions listed in section 549(2).
- (6) In this section “employee benefit trust” has the meaning given by sections 550 and 551.

#### Textual Amendments

**F109** Words in s. 60(1)(a) substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 381** (with **Sch. 2**)

## 61 Interpretation

- (1) In this Chapter—
  - “associate” has the meaning given by section 60;
  - “associated company” has the meaning given by [<sup>F110</sup>section 449 of CTA 2010];
  - “business” means any trade, profession or vocation and includes a [<sup>F111</sup>UK property business][<sup>F112</sup>within the meaning of Chapter 2 of Part 3 of ITTOIA 2005 or Chapter 2 of Part 4 of CTA 2009];
  - “company” means a body corporate or unincorporated association, and does not include a partnership;
  - “employer’s national insurance contributions” means secondary Class 1 or Class 1A national insurance contributions;
  - “engagement to which this Chapter applies” has the meaning given by section 49(5);
  - “national insurance contributions” means contributions under Part 1 of SSCBA 1992 or Part 1 of SSCB(NI)A 1992;
  - “PAYE provisions” means the provisions of Part 11 or PAYE regulations;
  - “the relevant engagements” has the meaning given by section 50(4).
- (2) References in this Chapter to payments or benefits received or receivable from a partnership or unincorporated association include payments or benefits to which a person is or may be entitled in the person’s capacity as a member of the partnership or association.



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- (3) For the purposes of this Chapter—
- (a) anything done by or in relation to an associate of an intermediary is treated as done by or in relation to the intermediary, and
  - (b) a payment or other benefit provided to a member of an individual's family or household is treated as provided to the individual.
- (4) For the purposes of this Chapter a man and a woman living together as husband and wife are treated as if they were married to each other.
- [<sup>F113</sup>(5) For the purposes of this Chapter two people of the same sex living together as if they were civil partners of each other are treated as if they were civil partners of each other.

For the purposes of this Chapter, two people of the same sex are to be regarded as living together as if they were civil partners if, but only if, they would be regarded as living together as husband and wife were they instead two people of the opposite sex.]

#### Textual Amendments

- F110** Words in s. 61(1) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 1 para. 382** (with [Sch. 2](#))
- F111** Words in s. 61(1) inserted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), **Sch. 1 para. 586** (with [Sch. 2](#))
- F112** Words in s. 61(1) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), **Sch. 1 para. 549** (with [Sch. 2 Pts. 1, 2](#))
- F113** S. 61(5) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **139**

## [<sup>F114</sup>CHAPTER 9

### MANAGED SERVICE COMPANIES

#### Textual Amendments

- F114** Pt. 2 Ch. 9 inserted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), s. 25(2), **Sch. 3 para. 4**

#### *Application of this Chapter*

#### **61A Scope of this Chapter**

- (1) This Chapter has effect with respect to the provision of services by a managed service company.
- (2) Nothing in this Chapter—
- (a) affects the operation of Chapter 7 of this Part (agency workers), or
  - (b) applies to payments or transfers to which section 966(3) or (4) of ITA 2007 applies (visiting performers: duty to deduct and account for sums representing income tax).

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## **61B Meaning of “managed service company”**

- (1) A company is a “managed service company” if—
  - (a) its business consists wholly or mainly of providing (directly or indirectly) the services of an individual to other persons,
  - (b) payments are made (directly or indirectly) to the individual (or associates of the individual) of an amount equal to the greater part or all of the consideration for the provision of the services,
  - (c) the way in which those payments are made would result in the individual (or associates) receiving payments of an amount (net of tax and national insurance) exceeding that which would be received (net of tax and national insurance) if every payment in respect of the services were employment income of the individual, and
  - (d) a person who carries on a business of promoting or facilitating the use of companies to provide the services of individuals (“an MSC provider”) is involved with the company.
- (2) An MSC provider is “involved with the company” if the MSC provider or an associate of the MSC provider—
  - (a) benefits financially on an ongoing basis from the provision of the services of the individual,
  - (b) influences or controls the provision of those services,
  - (c) influences or controls the way in which payments to the individual (or associates of the individual) are made,
  - (d) influences or controls the company's finances or any of its activities, or
  - (e) gives or promotes an undertaking to make good any tax loss.
- (3) A person does not fall within subsection (1)(d) merely by virtue of providing legal or accountancy services in a professional capacity.
- (4) A person does not fall within subsection (1)(d) merely by virtue of carrying on a business consisting only of placing individuals with persons who wish to obtain their services (including by contracting with companies which provide their services).
- (5) Subsection (4) does not apply if the person or an associate of the person—
  - (a) does anything within subsection (2)(c) or (e), or
  - (b) does anything within subsection (2)(d) other than influencing the company's finances or activities by doing anything within subsection (2)(b).

## **61C Section 61B: supplementary**

- (1) The Treasury may by order provide that persons of a prescribed description do not fall within section 61B(1)(d).
- (2) An order under subsection (1) may be made so as to have effect in relation to the whole of the tax year in which it is made.
- (3) In section 61B and this section, “company” means a body corporate or partnership.
- (4) References in section 61B to an associate of a person (“P”) include a person who, for the purpose of securing that the individual's services are provided by a company, acts in concert with P (or with P and other persons).

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- (5) In section 61B(2)(e), “undertaking to make good any tax loss” means an undertaking (in any terms) to make good (in whole or in part, and by any means) any cost to the individual or an associate of the individual resulting from a relevant provision, or a particular kind of relevant provision, applying in relation to payments made to the individual or associate.
- (6) In subsection (5) “relevant provision” means—
- (a) a provision of the Tax Acts,
  - (b) an enactment relating to national insurance, or
  - (c) a provision of subordinate legislation made under any such provision or enactment.

### *The deemed employment payment*

## **61D Worker treated as receiving earnings from employment**

- (1) This section applies if—
- (a) the services of an individual (“the worker”) are provided (directly or indirectly) by a managed service company (“the MSC”),
  - (b) the worker, or an associate of the worker, receives (from any person) a payment or benefit which can reasonably be taken to be in respect of the services, and
  - (c) the payment or benefit is not earnings (within Chapter 1 of Part 3) received by the worker directly from the MSC.
- (2) The MSC is treated as making to the worker, and the worker is treated as receiving, a payment which is to be treated as earnings from an employment (“the deemed employment payment”).
- (3) The deemed employment payment is treated as made at the time the payment or benefit mentioned in subsection (1)(b) is received.
- (4) In this Chapter—
- “the worker” has the meaning given by subsection (1),
  - “the relevant services” means the services mentioned in that subsection, and
  - “the client” means the person to whom the relevant services are provided.
- (5) Section 61F supplements this section.

## **61E Calculation of deemed employment payment**

- (1) The amount of the deemed employment payment is the amount resulting from the following steps—

### *Step 1*

Find (applying section 61F) the amount of the payment or benefit mentioned in section 61D(1)(b).

### *Step 2*

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Deduct (applying Chapters 1 to 5 of Part 5) the amount of any expenses met by the worker that would have been deductible from the taxable earnings from the employment if—

- (a) the worker had been employed by the client to provide the relevant services, and
- (b) the expenses had been met by the worker out of those earnings.

If the result at this point is nil or a negative amount, there is no deemed employment payment.

*Step 3*

Assume that the result of step 2 represents an amount together with employer's national insurance contributions on it, and deduct what (on that assumption) would be the amount of those contributions.

The result is the deemed employment payment.

- (2) In step 2 of subsection (1), the reference to expenses met by the worker includes, where the MSC is a partnership and the worker is a member of the partnership, expenses met by the worker for and on behalf of the partnership.
- (3) In step 2 of subsection (1), the expenses deductible include the amount of any mileage allowance relief which the worker would have been entitled to in respect of the use of a vehicle falling within subsection (4) if—
  - (a) the worker had been employed by the client to provide the relevant services, and
  - (b) the vehicle had not been a company vehicle (within the meaning of Chapter 2 of Part 4).
- (4) A vehicle falls within this subsection if—
  - (a) it is provided by the MSC for the worker, or
  - (b) where the MSC is a partnership and the worker is a member of the partnership, it is provided by the worker for the purposes of the business of the partnership.
- (5) For the purposes of subsection (1) any necessary apportionment of payments or benefits that are referable partly to the provision of the relevant services and partly to other matters is to be made on a just and reasonable basis.

**61F Sections 61D and 61E: application of rules relating to earnings from employment**

- (1) The following provisions apply for the purposes of sections 61D and 61E.
- (2) A “payment or benefit” means anything that, if received by an employee for performing the duties of an employment, would be general earnings from the employment.
- (3) The amount of a payment or benefit is taken to be—
  - (a) in the case of a payment or cash benefit, the amount received, and
  - (b) in the case of a non-cash benefit, the cash equivalent of the benefit.
- (4) The cash equivalent of a non-cash benefit is taken to be—
  - (a) the amount that would be general earnings if the benefit were general earnings from an employment, or

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- (b) in the case of living accommodation, whichever is the greater of that amount and the cash equivalent determined in accordance with section 398(2).
- (5) A payment or benefit is treated as received—
  - (a) in the case of a payment or cash benefit, when payment is made of or on account of the payment or benefit;
  - (b) in the case of a non-cash benefit, when it would have been treated as received for the purposes of Chapter 4 or 5 of this Part (see section 19 or 32) if—
    - (i) the worker had been an employee, and
    - (ii) the benefit had been provided by reason of the employment.

### **61G Application of Income Tax Acts in relation to deemed employment**

- (1) The Income Tax Acts (in particular, the PAYE provisions) apply in relation to the deemed employment payment as follows.
- (2) They apply as if—
  - (a) the worker were employed by the MSC to provide the relevant services, and
  - (b) the deemed employment payment were a payment by the MSC of earnings from that employment;but this is subject to subsection (3).
- (3) No deduction under Part 5 (deductions allowed from employment income) or section 232 (mileage allowance relief) may be made from the deemed employment payment.
- (4) The worker is not chargeable to tax in respect of the deemed employment payment if, or to the extent that, by reason of any combination of the factors mentioned in subsection (5), the worker would not be chargeable to tax if—
  - (a) the worker were employed by the client to perform the relevant services, and
  - (b) the deemed employment payment were a payment by the client of earnings from that employment.
- (5) The factors are—
  - [<sup>F115</sup>(a) the worker being resident or domiciled outside the United Kingdom or meeting the requirement of section 26A,]
  - (b) the client being resident <sup>F116</sup>... outside the United Kingdom, and
  - (c) the relevant services being provided outside the United Kingdom.
- (6) Where the MSC is a partnership and the worker is a member of the partnership, the deemed employment payment is treated as received by the worker in the worker's personal capacity and not as income of the partnership.
- (7) Where—
  - (a) the worker is resident in the United Kingdom, and
  - (b) the relevant services are provided in the United Kingdom,the MSC is treated as having a place of business in the United Kingdom, whether or not it in fact does so.

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### Textual Amendments

- F115** S. 61G(5)(a) substituted (with effect in accordance with Sch. 46 para. 72 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 46 para. 31(a)**
- F116** Words in s. 61G(5)(b) omitted (with effect in accordance with Sch. 46 para. 72 of the amending Act) by virtue of Finance Act 2013 (c. 29), **Sch. 46 para. 31(b)**

### *Supplementary provisions*

#### **61H Relief in case of distributions by managed service company**

- (1) A claim for relief may be made under this section where the MSC—
  - (a) is a body corporate,
  - (b) is treated as making a deemed employment payment in any tax year, and
  - (c) either in that tax year (whether before or after that payment is treated as made), or in a subsequent tax year, makes a distribution (a “relevant distribution”).
- (2) A claim for relief under this section must be made—
  - (a) by the MSC by notice to an officer of Revenue and Customs, and
  - (b) within 5 years after 31st January following the tax year in which the distribution is made.
- (3) If on a claim being made an officer of Revenue and Customs is satisfied that relief should be given in order to avoid a double charge to tax, the officer must direct the giving of such relief by way of amending any assessment, by discharge or repayment of tax, or otherwise, as appears to the officer appropriate.
- (4) Relief under this section is given by setting the amount of the deemed employment payment against the relevant distribution so as to reduce the distribution.
- (5) In the case of more than one relevant distribution, an officer of Revenue and Customs must exercise the power conferred by this section so as to secure that so far as practicable relief is given by setting the amount of a deemed employment payment—
  - (a) against relevant distributions of the same tax year before those of other years,
  - (b) against relevant distributions received by the worker before those received by another person, and
  - (c) against relevant distributions of earlier years before those of later years.
- (6) Where the amount of a relevant distribution is reduced under this section, the amount of any associated tax credit is reduced accordingly.

#### **61I Meaning of “associate”**

- (1) Subsections (2) to (4) apply for the purposes of this Chapter.
- (2) “Associate”, in relation to an individual, means—
  - (a) a member of the individual's family or household,
  - (b) a relative of the individual,
  - (c) a partner of the individual, or

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- (d) the trustee of any settlement in relation to which the individual, or a relative of the individual or member of the individual's family (living or dead), is or was a settlor.
- (3) “Associate”, in relation to a company, means a person connected with the company.
- (4) “Associate”, in relation to a partnership, means any associate of a member of the partnership.
- (5) If—
  - (a) a managed service company (“the MSC”) is a partnership, and
  - (b) a person is an associate of another person by virtue only of being a member of the partnership,the person is to be treated, for the purposes of this Chapter as it applies in relation to the MSC, as if the person were not an associate of that other person.
- (6) In subsection (2), “relative” means ancestor, lineal descendant, brother or sister.
- (7) For the purposes of subsection (2)—
  - (a) a man and woman living together as husband and wife are treated as if they were married to each other, and
  - (b) two persons of the same sex living together as if they were civil partners of each other are treated as if they were civil partners of each other.

## **61J Interpretation of Chapter**

- (1) In this Chapter—
  - “associate” has the meaning given by section 61I,
  - “business” means any trade, profession or vocation,
  - “the client” has the meaning given by section 61D(4),
  - “employer's national insurance contributions” means secondary Class 1 or Class 1A national insurance contributions,
  - “managed service company” has the meaning given by section 61B,
  - “national insurance contributions” means contributions under Part 1 of SSCBA 1992 or Part 1 of SSCB(NI)A 1992,
  - “PAYE provisions” means the provisions of Part 11 or PAYE regulations,
  - “the relevant services” has the meaning given by section 61D(4), and
  - “the worker” has the meaning given by section 61D(4).
- (2) Nothing in section 995 of ITA 2007 (meaning of control) applies for the purposes of this Chapter.]

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## PART 3

### EMPLOYMENT INCOME: EARNINGS AND BENEFITS ETC. TREATED AS EARNINGS

#### CHAPTER 1

##### EARNINGS

### 62 Earnings

- (1) This section explains what is meant by “earnings” in the employment income Parts.
- (2) In those Parts “earnings”, in relation to an employment, means—
  - (a) any salary, wages or fee,
  - (b) any gratuity or other profit or incidental benefit of any kind obtained by the employee if it is money or money’s worth, or
  - (c) anything else that constitutes an emolument of the employment.
- (3) For the purposes of subsection (2) “money’s worth” means something that is—
  - (a) of direct monetary value to the employee, or
  - (b) capable of being converted into money or something of direct monetary value to the employee.
- (4) Subsection (1) does not affect the operation of statutory provisions that provide for amounts to be treated as earnings (and see section 721(7)).

#### CHAPTER 2

### TAXABLE BENEFITS: THE BENEFITS CODE

#### *The benefits code*

### 63 The benefits code

- (1) In the employment income Parts “the benefits code” means—
  - this Chapter,
  - Chapter 3 (expenses payments),
  - Chapter 4 (vouchers and credit-tokens),
  - Chapter 5 (living accommodation),
  - Chapter 6 (cars, vans and related benefits),
  - Chapter 7 (loans),
  - F117
  - ...
  - F117
  - ...
  - Chapter 10 (residual liability to charge), and
  - Chapter 11 (exclusion of lower-paid employments from parts of benefits code).
- (2) If an employment is an excluded employment, the general effect of section 216(1) (provisions not applicable to lower-paid employments) is that only the following Chapters apply to the employment—



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this Chapter,  
Chapter 4 (vouchers and credit-tokens),  
Chapter 5 (living accommodation), and  
Chapter 11 (exclusion of lower-paid employments from parts of benefits code).

(3) Section 216(5) and (6) explain and restrict the effect of section 216(1).

(4) In the benefits code “excluded employment” means an employment to which the exclusion in section 216(1) applies.

[<sup>F118</sup>(5) The benefits code has effect subject to section 554Z2(2).]

#### Textual Amendments

**F117** S. 63(1) entries repealed (with effect in accordance with Sch. 22 para. 20(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 20\(1\)](#), [Sch. 43 Pt. 3\(4\)](#)

**F118** S. 63(5) inserted (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 8](#)

## 64 Relationship between earnings and benefits code

(1) This section applies if, apart from this section, the same benefit would give rise to two amounts (“A” and “B”)—

- (a) A being an amount of earnings as defined in Chapter 1 of this Part, and
- (b) B being an amount to be treated as earnings under the benefits code.

(2) In such a case—

- (a) A constitutes earnings as defined in Chapter 1 of this Part, and
- (b) the amount (if any) by which B exceeds A is to be treated as earnings under the benefits code.

(3) This section does not apply in connection with living accommodation to which Chapter 5 of this Part applies.

(4) In that case section 109 applies to determine the relationship between that Chapter and Chapter 1 of this Part.

<sup>F119</sup>(5) .....

<sup>F119</sup>(6) .....

#### Textual Amendments

**F119** S. 64(5)(6) repealed (with effect in accordance with Sch. 22 para. 21(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 21\(1\)](#), [Sch. 43 Pt. 3\(4\)](#)

## 65 Dispensations relating to benefits within provisions not applicable to lower-paid employment

(1) This section applies for the purposes of the listed provisions where a person (“P”) supplies [<sup>F106</sup>an officer of Revenue and Customs] with a statement of the cases and circumstances in which—

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- (a) payments of a particular character are made to or for any employees, or
- (b) benefits or facilities of a particular kind are provided for any employees, whether they are employees of P or some other person.
- (2) The listed provisions” are the provisions listed in section 216(4) (provisions of the benefits code which do not apply to lower-paid employments).
- (3) If [<sup>F106</sup>an officer of Revenue and Customs][<sup>F120</sup>is] satisfied that no additional tax is payable by virtue of the listed provisions by reference to the payments, benefits or facilities mentioned in the statement, [<sup>F121</sup>the officer] must give P a dispensation under this section.
- (4) A “dispensation” is a notice stating that [<sup>F106</sup>an officer of Revenue and Customs][<sup>F122</sup>agrees] that no additional tax is payable by virtue of the listed provisions by reference to the payments, benefits or facilities mentioned in the statement supplied by P.
- (5) If a dispensation is given under this section, nothing in the listed provisions applies to the payments, or the provision of the benefits or facilities, covered by the dispensation or otherwise has the effect of imposing any additional liability to tax in respect of them.
- (6) If in their opinion there is reason to do so, [<sup>F106</sup>an officer of Revenue and Customs] may revoke a dispensation by giving a further notice to P.
- (7) That notice may revoke the dispensation from—
- (a) the date when the dispensation was given, or
- (b) a later date specified in the notice.
- (8) If the notice revokes the dispensation from the date when the dispensation was given—
- (a) any liability to tax that would have arisen if the dispensation had never been given is to be treated as having arisen, and
- (b) P and the employees in question must make all the returns which they would have had to make if the dispensation had never been given.
- (9) If the notice revokes the dispensation from a later date—
- (a) any liability to tax that would have arisen if the dispensation had ceased to have effect on that date is to be treated as having arisen, and
- (b) P and the employees in question must make all the returns which they would have had to make if the dispensation had ceased to have effect on that date.

#### **Textual Amendments**

**F106** Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 102\(1\)](#); S.I. 2005/1126, art. 2(2)(h)

**F120** Word in s. 65(3) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 106\(a\)](#); S.I. 2005/1126, art. 2(2)(h)

**F121** Words in s. 65(3) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 103\(1\)\(b\)](#); S.I. 2005/1126, art. 2(2)(h)

**F122** Word in s. 65(4) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 106\(b\)](#); S.I. 2005/1126, art. 2(2)(h)

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### *General definitions for benefits code*

#### **66 Meaning of “employment” and related expressions**

- (1) In the benefits code—
  - (a) “employment” means a taxable employment under Part 2, and
  - (b) “employed”, “employee” and “employer” have corresponding meanings.
- (2) Where a Chapter of the benefits code applies in relation to an employee—
  - (a) references in that Chapter to “the employment” are to the employment of that employee, and
  - (b) references in that Chapter to “the employer” are to the employer in respect of that employment.
- (3) For the purposes of the benefits code an employment is a “taxable employment under Part 2” in a tax year if the earnings from the employment for that year are (or would be if there were any) general earnings to which the charging provisions of Chapter 4 or 5 of Part 2 apply.
- (4) In subsection (3)—
  - (a) the reference to an employment includes employment as a director of a company, and
  - (b) “earnings” means earnings as defined in Chapter 1 of this Part.

#### **67 Meaning of “director” and “full-time working director”**

- (1) In the benefits code “director” means—
  - (a) in relation to a company whose affairs are managed by a board of directors or similar body, a member of that body,
  - (b) in relation to a company whose affairs are managed by a single director or similar person, that director or person, and
  - (c) in relation to a company whose affairs are managed by the members themselves, a member of the company,and includes any person in accordance with whose directions or instructions the directors of the company (as defined above) are accustomed to act.
- (2) For the purposes of subsection (1) a person is not to be regarded as a person in accordance with whose directions or instructions the directors of the company are accustomed to act merely because the directors act on advice given by that person in a professional capacity.
- (3) In the benefits code “full-time working director” means a director who is required to devote substantially the whole of his time to the service of the company in a managerial or technical capacity.

#### **68 Meaning of “material interest” in a company**

- (1) For the purposes of the benefits code a person has a material interest in a company if condition A or B is met.
- (2) Condition A is that the person (with or without one or more associates) or any associate of that person (with or without one or more <sup>F123</sup>other such associates) is—

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- (a) the beneficial owner of, or
  - (b) able to control, directly or through the medium of other companies or by any other indirect means,
- more than 5% of the ordinary share capital of the company.
- (3) Condition B is that, in the case of a close company, the person (with or without one or more associates) or any associate of that person (with or without one or more <sup>F124</sup>other such associates]), possesses or is entitled to acquire, such rights as would—
- (a) in the event of the winding-up of the company, or
  - (b) in any other circumstances,
- give an entitlement to receive more than 5% of the assets which would then be available for distribution among the participators.
- (4) In this section—
- “associate” has the meaning given by <sup>F125</sup>section 448 of CTA 2010] except that, for this purpose, “relative” in <sup>F126</sup>section 448(1)] has the meaning given by subsection (5) below, and
  - “participator” has the meaning given by <sup>F127</sup>section 454 of CTA 2010].
- (5) For the purposes of this section a person (“A”) is a relative of another (“B”) if A is—
- (a) B’s spouse <sup>F128</sup>or civil partner],
  - (b) a parent, child or remoter relation in the direct line either of B or of B’s spouse <sup>F128</sup>or civil partner],
  - (c) a brother or sister of B or of B’s spouse <sup>F128</sup>or civil partner], or
  - (d) the spouse <sup>F128</sup>or civil partner] of a person falling within paragraph (b) or (c).

#### Textual Amendments

- F123** Words in s. 68(2) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 383\(2\)](#) (with [Sch. 2](#))
- F124** Words in s. 68(3) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 383\(3\)](#) (with [Sch. 2](#))
- F125** Words in s. 68(4) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 383\(4\)\(a\)\(i\)](#) (with [Sch. 2](#))
- F126** Words in s. 68(4) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 383\(4\)\(a\)\(ii\)](#) (with [Sch. 2](#))
- F127** Words in s. 68(4) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 383\(4\)\(b\)](#) (with [Sch. 2](#))
- F128** Words in s. 68(5) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), [140](#)

## 69 Extended meaning of “control”

- (1) The definition of “control” in <sup>F129</sup>section 995 of ITA 2007] (which is applied for the purposes of this Act by section 719) is extended as follows.
- (2) For the purposes of the benefits code that definition applies (with the necessary modifications) in relation to an unincorporated association as it applies in relation to a body corporate.

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### Textual Amendments

**F129** Words in s. 69(1) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 430](#) (with [Sch. 2](#))

## CHAPTER 3

### TAXABLE BENEFITS: EXPENSES PAYMENTS

#### 70 Sums in respect of expenses

- (1) This Chapter applies to a sum paid to an employee in a tax year if the sum—
  - (a) is paid to the employee in respect of expenses, and
  - (b) is so paid by reason of the employment.
- (2) This Chapter applies to a sum paid away by an employee in a tax year if the sum—
  - (a) was put at the employee's disposal in respect of expenses,
  - (b) was so put by reason of the employment, and
  - (c) is paid away by the employee in respect of expenses.
- (3) For the purposes of this Chapter it does not matter whether the employment is held at the time when the sum is paid or paid away so long as it is held at some point in the tax year in which the sum is paid or paid away.
- (4) References in this Chapter to an employee accordingly include a prospective or former employee.
- (5) This Chapter does not apply to the extent that the sum constitutes earnings from the employment by virtue of any other provision.

#### 71 Meaning of paid or put at disposal by reason of the employment

- (1) If an employer pays a sum in respect of expenses to an employee it is to be treated as paid by reason of the employment unless—
  - (a) the employer is an individual, and
  - (b) the payment is made in the normal course of the employer's domestic, family or personal relationships.
- (2) If an employer puts a sum at an employee's disposal in respect of expenses it is to be treated as put at the employee's disposal by reason of the employment unless—
  - (a) the employer is an individual, and
  - (b) the sum is put at the employee's disposal in the normal course of the employer's domestic, family or personal relationships.

#### 72 Sums in respect of expenses treated as earnings

- (1) If this Chapter applies to a sum, the sum is to be treated as earnings from the employment for the tax year in which it is paid or paid away.
- (2) Subsection (1) does not prevent the making of a deduction allowed under any of the provisions listed in subsection (3).

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- (3) The provisions are—
- section 336 (deductions for expenses: the general rule);
  - section 337 (travel in performance of duties);
  - section 338 (travel for necessary attendance);
  - section 340 (travel between group employments);
  - section 341 (travel at start or finish of overseas employment);
  - section 342 (travel between employments where duties performed abroad);
  - section 343 (deduction for professional membership fees);
  - section 344 (deduction for annual subscriptions);
  - section 346 (deduction for employee liabilities);
  - section 351 (expenses of ministers of religion);
  - section 353 (deductions from earnings charged on remittance).

## CHAPTER 4

### TAXABLE BENEFITS: VOUCHERS AND CREDIT-TOKENS

#### *Cash vouchers: introduction*

#### **73 Cash vouchers to which this Chapter applies**

- (1) This Chapter applies to a cash voucher provided for an employee by reason of the employment which is received by the employee.
- (2) A cash voucher provided for an employee by the employer is to be regarded as provided by reason of the employment unless—
  - (a) the employer is an individual, and
  - (b) the provision is made in the normal course of the employer’s domestic, family or personal relationships.
- (3) A cash voucher provided for an employee and appropriated to the employee—
  - (a) by attaching it to a card held for the employee, or
  - (b) in any other way,
 is to be treated for the purposes of this Chapter as having been received by the employee at the time when it is appropriated.

#### **74 Provision for, or receipt by, member of employee’s family**

For the purposes of this Chapter any reference to a cash voucher being provided for or received by an employee includes a reference to it being provided for or received by a member of the employee’s family.

#### *Meaning of “cash voucher”*

#### **75 Meaning of “cash voucher”**

- (1) In this Chapter “cash voucher” means a voucher, stamp or similar document capable of being exchanged for a sum of money which is—

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- (a) greater than,
  - (b) equal to, or
  - (c) not substantially less than,
- the expense incurred by the person at whose cost the voucher, stamp or similar document is provided.
- (2) For the purposes of subsection (1) it does not matter whether the document—
- (a) is also capable of being exchanged for goods or services;
  - (b) is capable of being exchanged singly or together with other vouchers, stamps, or documents;
  - (c) is capable of being exchanged immediately or only after a time.
- (3) Subsection (1) is subject to section 76 (sickness benefits-related voucher).

## 76 Sickness benefits-related voucher

- (1) This section applies where—
- (a) the expense incurred by the person at whose cost a voucher, stamp or similar document is provided (“the provision expense”) includes costs to that person of providing sickness benefits (“sickness benefits costs”),
  - (b) the voucher, stamp or document would be a cash voucher (apart from this section) but for the fact that the sum of money for which it is capable of being exchanged (“the exchange sum”) is substantially less than the provision expense, and
  - (c) the whole or part of the difference between the exchange sum and the provision expense represents the sickness benefits costs.
- (2) The voucher, stamp or document is a cash voucher within the meaning of this Chapter if—

$$E = PE - D$$

or

$$E \text{ is not substantially less than } PE - D$$

where—

E is the exchange sum,

PE is the provision expense, and

D is the amount of the difference between E and PE which represents the sickness benefits costs.

- (3) In this section “sickness benefits” mean benefits in connection with sickness, personal injury or death.

## 77 Apportionment of cost of provision of voucher

If a person incurs expense in or in connection with the provision of vouchers, stamps or similar documents for two or more employees as members of a group or class, the

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expense incurred in respect of one of them is to be such part of that expense as is just and reasonable.

### *Cash vouchers: exceptions*

#### **78 Voucher made available to public generally**

This Chapter does not apply to a cash voucher if—

- (a) it is of a kind made available to the public generally, and
- (b) it is provided to the employee or a member of the employee's family on no more favourable terms than to the public generally.

#### **79 Voucher issued under approved scheme**

- (1) This Chapter does not apply to a cash voucher received by an employee if—
  - (a) it is issued under a scheme, and
  - (b) at the time when it is received the scheme is a scheme approved by [<sup>F106</sup>an officer of Revenue and Customs] for the purposes of this section.
- (2) [<sup>F106</sup>An officer of Revenue and Customs] must not approve a scheme for the purposes of this section unless [<sup>F130</sup>the officer][<sup>F131</sup>is] satisfied that it is practicable for income tax in respect of all payments made in exchange for vouchers issued under the scheme to be deducted in accordance with PAYE regulations.

#### **Textual Amendments**

- F106** Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 102\(1\)](#); S.I. 2005/1126, art. 2(2)(h)
- F130** Words in s. 79(2) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 103\(1\)\(c\)](#); S.I. 2005/1126, art. 2(2)(h)
- F131** Word in s. 79(2) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 107](#); S.I. 2005/1126, art. 2(2)(h)

#### **80 Vouchers where payment of sums exempt from tax**

This Chapter does not apply to a cash voucher if it is—

- (a) a document intended to enable a person to obtain payment of a sum which would not have constituted employment income if paid to the person directly, or
- (b) a savings certificate where the accumulated interest payable in respect of it is exempt from tax (or would be so exempt if certain conditions were met).

### *Benefit of cash voucher treated as earnings*

#### **81 Benefit of cash voucher treated as earnings**

- (1) The cash equivalent of the benefit of a cash voucher to which this Chapter applies is to be treated as earnings from the employment for the tax year in which the voucher is received by the employee.



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- (2) The cash equivalent is the sum of money for which the voucher is capable of being exchanged.

*Non-cash vouchers: introduction*

**82 Non-cash vouchers to which this Chapter applies**

- (1) This Chapter applies to a non-cash voucher provided for an employee by reason of the employment which is received by the employee.
- (2) A non-cash voucher provided for an employee by the employer is to be regarded as provided by reason of the employment unless—
- (a) the employer is an individual, and
  - (b) the provision is made in the normal course of the employer’s domestic, family or personal relationships.
- (3) A non-cash voucher provided for an employee and appropriated to the employee—
- (a) by attaching it to a card held for the employee, or
  - (b) in any other way,
- is to be treated for the purposes of this Chapter as having been received by the employee at the time when it is appropriated.

**83 Provision for, or receipt by, member of employee’s family**

For the purposes of this Chapter any reference to a non-cash voucher being provided for or received by an employee includes a reference to it being provided for or received by a member of the employee’s family.

*Meaning of “non-cash voucher”*

**84 Meaning of “non-cash voucher”**

- (1) In this Chapter “non-cash voucher” means—
- (a) a voucher, stamp or similar document or token which is capable of being exchanged for money, goods or services,
  - <sup>[F132]</sup>(ab) a childcare voucher,
  - (b) a transport voucher, or
  - (c) a cheque voucher,
- but does not include a cash voucher.
- (2) For the purposes of subsection (1)(a) it does not matter whether the document or token is capable of being exchanged—
- (a) singly or together with other vouchers, stamps, documents or tokens;
  - (b) immediately or only after a time.

<sup>[F133]</sup>(2A) In this Chapter “childcare voucher” means a voucher, stamp or similar document or token intended to enable a person to obtain the provision of care for a child (whether or not in exchange for it).]

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- (3) In this Chapter “transport voucher” means a ticket, pass or other document or token intended to enable a person to obtain passenger transport services (whether or not in exchange for it).
- (4) In this Chapter “cheque voucher” means a cheque—
- (a) provided for an employee, and
  - (b) intended for use by the employee wholly or mainly for payment for—
    - (i) particular goods or services, or
    - (ii) goods or services of one or more particular classes;
 and, in relation to a cheque voucher, references to a voucher being exchanged for goods or services are to be read accordingly.

#### Textual Amendments

**F132** S. 84(1)(ab) inserted (with effect in accordance with s. 78(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 13 para. 2\(2\)\(a\)](#)

**F133** S. 84(2A) inserted (with effect in accordance with s. 78(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 13 para. 2\(2\)\(b\)](#)

#### *Non-cash voucher: exceptions*

#### **85 Non-cash voucher made available to public generally**

This Chapter does not apply to a non-cash voucher if—

- (a) it is of a kind made available to the public generally, and
- (b) it is provided to the employee or a member of the employee’s family on no more favourable terms than to the public generally.

#### **86 Transport vouchers under pre-26th March 1982 arrangements**

- (1) This Chapter does not apply to a transport voucher provided for an employee of a passenger transport undertaking under arrangements in operation on 25th March 1982 which meet the condition in subsection (2).
- (2) The condition is that the arrangements are intended to enable the employee or a member of the employee’s family to obtain passenger transport services provided by—
  - (a) the employer,
  - (b) a subsidiary of the employer,
  - (c) a body corporate of which the employer is a subsidiary, or
  - (d) another passenger transport undertaking.
- (3) In this section—
 

“passenger transport undertaking” means an undertaking whose business consists wholly or mainly in the carriage of passengers or a subsidiary of such an undertaking, and

“subsidiary” means a wholly-owned subsidiary within the meaning of section <sup>F134</sup>1159 of and Schedule 6 to] the Companies Act <sup>F135</sup>2006].

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#### Textual Amendments

- F134** Words in s. 86(3) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments\) \(Taxes and National Insurance\) Order 2009 \(S.I. 2009/1890\)](#), arts. 1(1), **4(1)(g)**
- F135** Word in s. 86(3) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments\) \(Taxes and National Insurance\) Order 2009 \(S.I. 2009/1890\)](#), arts. 1(1), **4(1)(g)**

### *Benefit of non-cash voucher treated as earnings*

#### **87 Benefit of non-cash voucher treated as earnings**

- (1) The cash equivalent of the benefit of a non-cash voucher to which this Chapter applies is to be treated as earnings from the employment for the tax year in which the voucher is received by the employee.
- (2) The cash equivalent is the difference between—
  - (a) the cost of provision, and
  - (b) any part of that cost made good by the employee to the person incurring it.
- (3) In this Chapter the “cost of provision” means, in relation to a non-cash voucher, the expense incurred in or in connection with the provision of—
  - (a) the voucher, and
  - (b) the money, goods or services for which it is capable of being exchanged, by the person at whose cost they are provided.
- [<sup>F136</sup>(3A) In the case of a childcare voucher, the reference in subsection (3)(b) to the services for which the voucher is capable of being exchanged is to the provision of care for a child which may be obtained by using it.]
- (4) In the case of a transport voucher, the reference in subsection (3)(b) to the services for which the voucher is capable of being exchanged is to the passenger transport services which may be obtained by using it.
- (5) If a person incurs expense in or in connection with the provision of non-cash vouchers for two or more employees as members of a group or class, the expense incurred in respect of one of them is to be such part of that expense as is just and reasonable.
- <sup>F137</sup>(6) .....

#### Textual Amendments

- F136** S. 87(3A) inserted (with effect in accordance with s. 78(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), **Sch. 13 para. 2(3)**
- F137** S. 87(6) omitted (with effect in accordance with Sch. 39 para. 50(3) of the amending Act) by virtue of [Finance Act 2012 \(c. 14\)](#), **Sch. 39 para. 50(2)**

#### **88 Year in which earnings treated as received**

- (1) In the case of a non-cash voucher other than a cheque voucher, the amount treated as earnings under section 87 is to be treated as received—
  - (a) in the tax year in which the cost of provision is incurred, or

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- (b) if later, in the tax year in which the voucher is received by the employee.
- (2) In the case of a cheque voucher, the amount treated as earnings under section 87 is to be treated as received in the tax year in which the voucher is handed over in exchange for money, goods or services.
- (3) Where a cheque voucher is posted it is to be treated as handed over at the time of posting.

### **F138 89 Reduction for meal vouchers**

.....

#### **Textual Amendments**

**F138** S. 89 repealed (with effect in accordance with Sch. 39 para. 50(3) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 39 para. 50\(1\)](#)

#### *Credit-tokens: introduction*

### **90 Credit-tokens to which this Chapter applies**

- (1) This Chapter applies to a credit-token provided for an employee by reason of the employment which is used by the employee to obtain money, goods or services.
- (2) A credit-token provided for an employee by the employer is to be regarded as provided by reason of the employment unless—
  - (a) the employer is an individual, and
  - (b) the provision is made in the normal course of the employer’s domestic, family or personal relationships.

### **91 Provision for, or use by, member of employee’s family**

For the purposes of this Chapter—

- (a) any reference to a credit-token being provided for an employee includes a reference to it being provided for a member of the employee’s family, and
- (b) use of a credit-token by a member of an employee’s family is to be treated as use of the token by the employee.

#### *Meaning of “credit-token”*

### **92 Meaning of “credit-token”**

- (1) In this Chapter “credit-token” means a credit card, debit card or other card, a token, a document or other object given to a person by another person (“X”) who undertakes—
  - (a) on the production of it, to supply money, goods or services on credit, or
  - (b) if a third party (“Y”) supplies money, goods or services on its production, to pay Y for what is supplied.
- (2) A card, token, document or other object can be a credit-token even if—

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- (a) some other action is required in addition to its production in order for the money, goods or services to be supplied;
  - (b) X in paying Y may take a discount or commission.
- (3) For the purposes of this section—
- (a) the use of an object given by X to operate a machine provided by X is to be treated as its production to X, and
  - (b) the use of an object given by X to operate a machine provided by Y is to be treated as its production to Y.
- (4) A “credit-token” does not include a cash voucher or a non-cash voucher.

*Credit-tokens: exception*

**93 Credit-token made available to public generally**

This Chapter does not apply to a credit-token if—

- (a) it is of a kind made available to the public generally, and
- (b) it is provided to the employee or a member of the employee’s family on no more favourable terms than to the public generally.

*Benefit of credit-token treated as earnings*

**94 Benefit of credit-token treated as earnings**

- (1) On each occasion on which a credit-token to which this Chapter applies is used by the employee in a tax year to obtain money, goods or services, the cash equivalent of the benefit of the token is to be treated as earnings from the employment for that year.
- (2) The cash equivalent is the difference between—
- (a) the cost of provision, and
  - (b) any part of that cost made good by the employee to the person incurring it.
- (3) In this section the “cost of provision” means the expense incurred—
- (a) in or in connection with the provision of the money, goods or services obtained on the occasion in question, and
  - (b) by the person at whose cost they are provided.
- (4) If a person incurs expense in or in connection with the provision of credit-tokens for two or more employees as members of a group or class, the expense incurred in respect of one of them is to be such part of that expense as is just and reasonable.

*General supplementary provisions*

**95 Disregard for money, goods or services obtained**

- (1) This section applies if the cash equivalent of the benefit of a cash voucher, a non-cash voucher or a credit-token—
- (a) is to be treated as earnings from an employee’s employment under this Chapter, or

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- (b) would be so treated but for a dispensation given under section 96.
- (2) Money, goods or services obtained—
- (a) by the employee or another person in exchange for the cash voucher or non-cash voucher, or
  - (b) by the employee or a member of the employee’s family by use of the credit-token,
- are to be disregarded for the purposes of the Income Tax Acts.
- (3) But the goods or services are not to be disregarded for the purposes of applying sections 362 and 363 (deductions where non-cash voucher or credit-token provided).
- [<sup>F139</sup>(3A) In the case of a childcare voucher, the reference in subsection (2)(a) to the services obtained in exchange for the voucher is to the provision of care for a child obtained by using it.]
- (4) In the case of a transport voucher, the reference in subsection (2)(a) to the services obtained in exchange for the voucher is to the passenger transport services obtained by using it.

#### Textual Amendments

**F139** S. 95(3A) inserted (with effect in accordance with s. 78(2) of the amending Act) by [Finance Act 2004](#) (c. 12), [Sch. 13 para. 2\(4\)](#)

## 96 Dispensations relating to vouchers or credit-tokens

- (1) This section applies where a person (“P”) supplies [<sup>F106</sup>an officer of Revenue and Customs] with a statement of the cases and circumstances in which—
  - (a) cash vouchers,
  - (b) non-cash vouchers, or
  - (c) credit-tokens,
 are provided for employees whether they are the employees of P or some other person.
- (2) If [<sup>F106</sup>an officer of Revenue and Customs][<sup>F140</sup>is] satisfied that no additional tax is payable by virtue of this Chapter by reference to the vouchers or credit-tokens mentioned in the statement, [<sup>F141</sup>the officer] must give P a dispensation under this section.
- (3) A “dispensation” is a notice stating that [<sup>F106</sup>an officer of Revenue and Customs][<sup>F142</sup>agrees] that no additional tax is payable by virtue of this Chapter by reference to the vouchers or credit-tokens mentioned in the statement supplied by P.
- (4) If a dispensation is given under this section, nothing in this Chapter applies to the provision or use of the vouchers or credit-tokens covered by the dispensation.
- (5) If in their opinion there is reason to do so, [<sup>F106</sup>an officer of Revenue and Customs] may revoke a dispensation by giving a further notice to P.
- (6) That notice may revoke the dispensation from—
  - (a) the date when the dispensation was given, or
  - (b) a later date specified in the notice.

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- (7) If the notice revokes the dispensation from the date when the dispensation was given—
- (a) any liability to tax that would have arisen if the dispensation had never been given is to be treated as having arisen, and
  - (b) P and the employees in question must make all the returns which they would have had to make if the dispensation had never been given.
- (8) If the notice revokes the dispensation from a later date—
- (a) any liability to tax that would have arisen if the dispensation had ceased to have effect on that date is to be treated as having arisen, and
  - (b) P and the employees in question must make all the returns which they would have had to make if the dispensation had ceased to have effect on that date.

#### Textual Amendments

- F106** Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 102\(1\)](#); S.I. 2005/1126, art. 2(2)(h)
- F140** Word in s. 96(2) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 108\(a\)](#); S.I. 2005/1126, art. 2(2)(h)
- F141** Words in s. 96(2) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 103\(1\)\(d\)](#); S.I. 2005/1126, art. 2(2)(h)
- F142** Word in s. 96(3) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 108\(b\)](#); S.I. 2005/1126, art. 2(2)(h)

#### [<sup>F143</sup>96A Power to exempt use of non-cash vouchers or credit-tokens to obtain exempt benefits

- (1) The Treasury may by regulations provide for exemption from any liability that would otherwise arise by virtue of this Chapter in respect of—
- (a) non-cash vouchers which are or can be used to obtain specified exempt benefits, or which evidence an employee's entitlement to specified exempt benefits;
  - (b) credit-tokens which are used to obtain specified exempt benefits.
- (2) In this section—
- “exempt benefit” means a benefit the direct provision of which is exempted from liability to income tax by a provision of Part 4 (employment income: exemptions), and
- “specified” means specified in the regulations.
- (3) Regulations under this section may operate by amending section 266 (exemption of non-cash vouchers for exempt benefits) or section 267 (exemption of credit-tokens used for exempt benefits).]

#### Textual Amendments

- F143** S. 96A inserted (19.7.2006) by [Finance Act 2006 \(c. 25\)](#), s. 63

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## CHAPTER 5

### TAXABLE BENEFITS: LIVING ACCOMMODATION

#### *Living accommodation*

#### **97 Living accommodation to which this Chapter applies**

- (1) This Chapter applies to living accommodation provided for—
  - (a) an employee, or
  - (b) a member of an employee’s family or household,
 by reason of the employment.
- (2) Living accommodation provided for any of those persons by the employer is to be regarded as provided by reason of the employment unless—
  - (a) the employer is an individual, and
  - (b) the provision is made in the normal course of the employer’s domestic, family or personal relationships.

#### *Exceptions*

#### **98 Accommodation provided by local authority**

- This Chapter does not apply to living accommodation provided for an employee if—
- (a) the employer is a local authority,
  - (b) it is provided for the employee by the authority, and
  - (c) the terms on which it is provided are no more favourable than those on which similar accommodation is provided by the authority for persons who are not their employees but whose circumstances are otherwise similar to those of the employee.

#### **99 Accommodation provided for performance of duties**

- (1) This Chapter does not apply to living accommodation provided for an employee if it is necessary for the proper performance of the employee’s duties that the employee should reside in it.
- (2) This Chapter does not apply to living accommodation provided for an employee if—
  - (a) it is provided for the better performance of the duties of the employment, and
  - (b) the employment is one of the kinds of employment in the case of which it is customary for employers to provide living accommodation for employees.
- (3) But if the accommodation is provided by a company and the employee (“E”) is a director of the company or of an associated company, the exception in subsection (1) or (2) only applies if, in the case of each company of which E is a director—
  - (a) E has no material interest in the company, and
  - (b) either—
    - (i) E’s employment is as a full-time working director, or
    - (ii) the company is non-profit-making or is [<sup>F144</sup>a charitable company].



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- (4) “Non-profit-making” means that the company does not carry on a trade and its functions do not consist wholly or mainly in the holding of investments or other property.
- (5) A company is “associated” with another if—
  - (a) one has control of the other, or
  - (b) both are under the control of the same person.

#### Textual Amendments

**F144** Words in s. 99(3)(b)(ii) substituted (coming into force for the tax year 2012-13 and subsequent tax years) by [Finance Act 2010 \(c. 13\)](#), [Sch. 6 paras. 17\(2\), 34\(2\)](#); [S.I. 2012/736](#), art. 13

### 100 Accommodation provided as result of security threat

This Chapter does not apply to living accommodation provided for an employee if—

- (a) there is a special threat to the security of the employee,
- (b) special security arrangements are in force, and
- (c) the employee resides in the accommodation as part of those arrangements.

### [<sup>F145</sup>100A] Homes outside UK owned through company etc

- (1) This Chapter does not apply to living accommodation outside the United Kingdom provided by a company for a director or other officer of the company (“D”) or a member of D’s family or household if—
  - (a) the company is wholly owned by D or D and other individuals (and no interest in the company is partnership property), and
  - (b) the company has been the holding company of the property at all times after the relevant time.
- (2) The company is “the holding company of the property” when—
  - (a) it owns a relevant interest in the property,
  - (b) its main or only asset is that interest, and
  - (c) the only activities undertaken by it are ones that are incidental to its ownership of that interest.
- (3) The company is also “the holding company of the property” when—
  - (a) a company (“the subsidiary”) which is wholly owned by the company meets the conditions in paragraphs (a) to (c) of subsection (2),
  - (b) the company’s main or only asset is its interest in the subsidiary, and
  - (c) the only activities undertaken by the company are ones that are incidental to its ownership of that interest.
- (4) “Relevant interest in the property” means an interest under the law of any territory that confers (or would but for any inferior interest confer) a right to exclusive possession of the property at all times or at certain times.
- (5) “The relevant time” is the time the company first owned a relevant interest in the property; but this is subject to subsection (6).
- (6) If—

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- (a) none of D's interest in the company was acquired directly or indirectly from a person connected with D, and
  - (b) the company owned a relevant interest in the property at the time D first acquired an interest in the company,
- “the relevant time” is the time D first acquired such an interest.

#### **Textual Amendments**

**F145** Ss. 100A, 100B inserted (retrospectively) by [Finance Act 2008 \(c. 9\), s. 45](#)

### **100B Section 100A(1): exceptions**

- (1) Section 100A(1) does not apply if subsection (2), (3) or (4) applies.
- (2) This subsection applies if—
  - (a) the company's interest in the property was acquired directly or indirectly from a connected company at an undervalue, or
  - (b) the company's interest in the property derives from an interest that was so acquired.
- (3) This subsection applies if, at any time after the relevant time—
  - (a) expenditure in respect of the property has been incurred directly or indirectly by a connected company, or
  - (b) any borrowing of the company directly or indirectly from a connected company has been outstanding (but see subsection (7)).
- (4) This subsection applies if the living accommodation is provided in pursuance of an arrangement the main purpose, or one of the main purposes, of which is the avoidance of tax or national insurance contributions.
- (5) In subsection (2) references to the acquisition of an interest include the grant of an interest.
- (6) For the purposes of that subsection, an interest is acquired at an undervalue if the total consideration for it is less than that which might reasonably have been expected to be obtained on a disposal of the interest on the open market; and “consideration” here means consideration provided at any time (and, for example, includes payments by way of rent).
- (7) For the purposes of subsection (3)(b), no account is to be taken of—
  - (a) any borrowing at a commercial rate, or
  - (b) any borrowing which results in D being treated under Chapter 7 (taxable benefits: loans) as receiving earnings.
- (8) In subsection (4) “arrangement” includes any scheme, agreement or understanding, whether or not enforceable.
- (9) In this section “connected company” means—
  - (a) a company connected with D, with a member of D's family or with an employer of D, or
  - (b) a company connected with such a company.]

*Status: Point in time view as at 01/09/2013.*

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### Textual Amendments

F145 Ss. 100A,100B inserted (retrospectively) by [Finance Act 2008 \(c. 9\), s. 45](#)

## 101 Chevening House

This Chapter does not apply to living accommodation provided for an employee if the accommodation is—

- (a) Chevening House, or
- (b) any other premises held on the trusts of the trust instrument set out in the Schedule to the Chevening Estate Act 1959 (c. 49),

and the employee is a person nominated in accordance with those trusts.

*Benefit of living accommodation treated as earnings*

## 102 Benefit of living accommodation treated as earnings

- (1) If living accommodation to which this Chapter applies is provided in any period—
  - (a) which consists of the whole or part of a tax year, and
  - (b) throughout which the employee holds the employment,the cash equivalent of the benefit of the accommodation is to be treated as earnings from the employment for that year.
- (2) In this Chapter that period is referred to as “the taxable period”.
- (3) Section 103 indicates how the cash equivalent is calculated.

*Calculation of cash equivalent*

## 103 Method of calculating cash equivalent

- (1) The cash equivalent is calculated—
  - (a) under section 105 if the cost of providing the living accommodation does not exceed £75,000; and
  - (b) under section 106 if the cost of providing the living accommodation exceeds £75,000.
- (2) Section 104 (general rule) sets out how to calculate the cost of providing living accommodation for the purpose of determining whether or not it exceeds £75,000.
- (3) In this Chapter—
  - “annual value”,
  - “person involved in providing accommodation”, and
  - “the property”,have the meaning given by sections 110 to 113, and “the taxable period” has the meaning given by section 102(2).

*Status: Point in time view as at 01/09/2013.*

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## 104 General rule for calculating cost of providing accommodation

For any tax year the cost of providing living accommodation is given by the formula—

$$A + I - P$$

where—

A is any expenditure incurred in acquiring the estate or interest in the property held by a person involved in providing the accommodation,

I is any expenditure incurred on improvements to the property which has been incurred before the tax year in question by a person involved in providing the accommodation, and

P is so much of any payment or payments made by the employee to a person involved in providing the accommodation as represents—

- (a) reimbursement of A or I, or
- (b) consideration for the grant to the employee of a tenancy or sub-tenancy of the property.

*Accommodation costing £75,000 or less*

## 105 Cash equivalent: cost of accommodation not over £75,000

- (1) The cash equivalent is to be calculated under this section if the cost of providing the living accommodation does not exceed £75,000.
  - (2) The cash equivalent is the difference between—
    - (a) the rental value of the accommodation for the taxable period, and
    - (b) any sum made good by the employee to the person at whose cost the accommodation is provided that is properly attributable to its provision.
  - (3) The “rental value of the accommodation” for the taxable period is [<sup>F146</sup>(subject to subsections (4) and (4A))] the rent which would have been payable for that period if the property had been let to the employee at an annual rent equal to the annual value.
- [<sup>F147</sup>(4) Subsection (4A) applies where—
- (a) a rental amount is payable by the person (“P”) at whose cost the accommodation is provided in respect of the whole or part of the taxable period (“the relevant period”), and
  - (b) the amount so payable is payable at an annual rate greater than the annual value.
- (4A) Where this subsection applies—
- (a) subsection (3) does not apply to the relevant period, and
  - (b) instead the “rental value of the accommodation” for the relevant period is the rental amount payable by P in respect of the relevant period.
- (4B) A reference in subsection (4) or (4A) to a rental amount payable by P in respect of the relevant period is to the sum of—
- (a) any rent for the period payable by P, and
  - (b) any amount attributed to the period in respect of a lease premium (see sections 105A and 105B).]

*Status: Point in time view as at 01/09/2013.*

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- (5) If the rental value of the accommodation for the taxable period does not exceed any sum made good by the employee as mentioned in subsection (2)(b), the cash equivalent is nil.

#### Textual Amendments

- F146** Words in s. 105(3) inserted (with effect in accordance with s. 71(4)-(6) of the amending Act) by [Finance Act 2009 \(c. 10\), s. 71\(2\)\(a\)](#)
- F147** S. 105(4)-(4B) substituted for s. 105(4) (with effect in accordance with s. 71(4)-(6) of the amending Act) by [Finance Act 2009 \(c. 10\), s. 71\(2\)\(b\)](#)

### [<sup>F148</sup>105A] Lease premiums

- (1) For the purposes of section 105(4B)(b) an amount is attributed to the relevant period “in respect of a lease premium” if—
- the property consists of premises, or a part of premises, that are subject to a lease,
  - the premises are not mainly used by P for a purpose other than the provision of living accommodation to which this Chapter applies,
  - the lease is for a term of 10 years or less, and
  - the net amount payable by P in relation to the lease by way of lease premium is greater than zero.
- (2) The amount so attributed is—
- $$AC \times C$$
- where—
- A is the relevant period (in days),  
B is the term of the lease (in days), and  
C is the 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—
- 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
  - 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—
- under a lease, or
  - otherwise under the terms on which a lease is granted.
- (6) In the application of this section to Scotland “premium” includes a grassum.

*Status: Point in time view as at 01/09/2013.*

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### Textual Amendments

**F148** Ss. 105A, 105B inserted (with effect in accordance with s. 71(4)-(6) of the amending Act) by [Finance Act 2009 \(c. 10\), s. 71\(3\)](#)

## **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—
  - (a) “break clause” means a provision of a lease that gives a person a right to terminate it so that its term is shorter than it otherwise would be, and
  - (b) a break clause contained in the original lease is “relevant” if the right to terminate the lease that it confers is capable of being exercised in such a way that the term of the original lease is 10 years or less.
- (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
  - (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 a notional lease the term of which ends under paragraph (b) of subsection (5), the relevant proportion of—

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- (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—

DE

where—

D is the term of the notional lease (in days), and

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.]

#### Textual Amendments

**F148** Ss. 105A, 105B inserted (with effect in accordance with s. 71(4)-(6) of the amending Act) by [Finance Act 2009 \(c. 10\), s. 71\(3\)](#)

*Accommodation costing more than £75,000*

### 106 Cash equivalent: cost of accommodation over £75,000

- (1) The cash equivalent is calculated under this section if the cost of providing the living accommodation exceeds £75,000.
- (2) To calculate the cash equivalent—

*Step 1*

Calculate the amount that would be the cash equivalent if section 105 applied (cash equivalent: cost of accommodation not over £75,000).

*Step 2*

Calculate the following amount (“the additional yearly rent”)—

$$\text{ORI} \times (C - £75,000)$$

where—

ORI is the official rate of interest in force for the purposes of Chapter 7 of this Part (taxable benefits: loans) on 6th April in the tax year, and

C is the cost of providing the accommodation calculated—

- (a) in accordance with section 104 (general rule for calculating cost of accommodation), or
- (b) in a case where section 107 applies (special rule for calculating cost of providing accommodation), in accordance with that section instead.

*Status: Point in time view as at 01/09/2013.*

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### Step 3

Calculate the rent which would have been payable for the taxable period if the property had been let to the employee at the additional yearly rent calculated under step 2.

### Step 4

Calculate the cash equivalent by—

- (a) adding together the amounts calculated under steps 1 and 3, and
  - (b) (if allowed by subsection (3)) subtracting from that total the excess rent paid by the employee.
- (3) In step 4—
- (a) paragraph (b) only applies if, in respect of the taxable period, the rent paid by the employee in respect of the accommodation to the person providing it exceeds the rental value of the accommodation for that period as set out in section 105(3) or (4)(b), as applicable, and
  - (b) “the excess rent” means the total amount of that excess.

## 107 Special rule for calculating cost of providing accommodation

- (1) This section contains a special rule for calculating the cost of providing living accommodation which—
- (a) operates for the purposes of step 2 of section 106(2) (calculating the additional yearly rent), and
  - (b) accordingly only operates where the cost of provision for the purposes of section 106(1) (as calculated under section 104) exceeds £75,000.
- (2) This section applies if, throughout the period of 6 years ending with the date when the employee first occupied the accommodation (“the initial date”), an estate or interest in the property was held by a person involved in providing the accommodation.

It does not matter whether it was the same estate, interest or person throughout.

- (3) For any tax year the cost of providing the living accommodation for the purposes mentioned in subsection (1)(a) is given by the formula—

$$MV + I - P$$

where—

MV is the price which the property might reasonably be expected to have fetched on a sale in the open market with vacant possession as at the initial date,

I is any expenditure incurred on improvements to the property which has been incurred during the period—

- (a) beginning with the initial date, and
- (b) ending with the day before the beginning of the tax year,

by a person involved in providing the accommodation, and

P is so much of any payment or payments made by the employee to a person involved in providing the accommodation as represents—



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- (a) reimbursement (up to an amount not exceeding MV) of any expenditure incurred in acquiring the estate or interest in the property held on the initial date,
  - (b) reimbursement of I, or
  - (c) consideration for the grant to the employee of a tenancy or sub-tenancy of the property.
- (4) In estimating MV no reduction is to be made for an option in respect of the property held by—
- (a) the employee,
  - (b) a person connected with the employee, or
  - (c) a person involved in providing the accommodation.

#### *Apportionment of cash equivalent*

### **108 Cash equivalent: accommodation provided for more than one employee**

- (1) If, for the whole or part of a tax year, the same living accommodation is provided for more than one employee at the same time, the total of the cash equivalents for all of the employees is to be limited to the amount that would be the cash equivalent if the accommodation was provided for one employee.
- (2) The cash equivalent for each of the employees is to be such part of that amount as is just and reasonable.

#### *Other tax implications*

### **109 Priority of this Chapter over Chapter 1 of this Part**

- (1) This section applies if—
  - (a) under this Chapter the cash equivalent of the benefit of living accommodation is to be treated as earnings from an employee's employment for a tax year, and
  - (b) under Chapter 1 of this Part an amount would, apart from this section, constitute earnings from the employment for the year in respect of the provision of the accommodation.
- (2) The full amount of the cash equivalent is to be treated as earnings from the employment for that year under this Chapter.
- (3) The amount mentioned in subsection (1)(b) is to constitute earnings from the employment for the year under Chapter 1 of this Part only to the extent that it exceeds the amount mentioned in subsection (2).

#### *Supplementary*

### **110 Meaning of “annual value”**

- (1) For the purposes of this Chapter the “annual value” of living accommodation is the rent which might reasonably be expected to be obtained on a letting from year to year if—
  - (a) the tenant undertook to pay all taxes, rates and charges usually paid by a tenant, and

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- (b) the landlord undertook to bear the costs of the repairs and insurance and the other expenses (if any) necessary for maintaining the property in a state to command that rent.
- (2) For the purposes of subsection (1) that rent—
  - (a) is to be taken to be the amount that might reasonably be expected to be so obtained in respect of the letting of the accommodation, and
  - (b) is to be calculated on the basis that the only amounts that may be deducted in respect of services provided by the landlord are amounts in respect of the cost to the landlord of providing any relevant services.
- (3) If living accommodation is of a kind that might reasonably be expected to be let on terms under which—
  - (a) the landlord is to provide any services which are either—
    - (i) relevant services, or
    - (ii) the repair, insurance or maintenance of any premises which do not form part of the accommodation but belong to or are occupied by the landlord, and
  - (b) amounts are payable in respect of the services in addition to the rent, the rent to be established under subsection (1) in respect of the accommodation is to be increased under subsection (4).
- (4) That rent is to include—
  - (a) where the services are relevant services, so much of the additional amounts as exceeds the cost to the landlord of providing the services;
  - (b) where the services are within subsection (3)(a)(ii), the whole of the additional amounts.
- (5) In this section “relevant service” means a service other than the repair, insurance or maintenance of the accommodation or of any other premises.

## 111 Disputes as to annual value

- (1) This section applies if there is a dispute as to the amount of the annual value of living accommodation for the purposes of this Chapter.
- <sup>F149</sup>(2) .....
- [<sup>F150</sup>(3) An application for the tribunal to determine the question is to be subject to the relevant provisions of Part 5 of TMA 1970 (see, in particular, section 48(2)(b) of that Act), and each of the persons concerned is entitled to be a party to the proceedings on the application.]

### Textual Amendments

**F149** S. 111(2) omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 336(2)**

**F150** S. 111(3) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 336(3)**

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## 112 Meaning of “person involved in providing the accommodation”

For the purposes of this Chapter “person involved in providing the accommodation” means any of the following—

- (a) the person providing the accommodation;
- (b) the employee’s employer (if not within paragraph (a));
- (c) any person, other than the employee, who is connected with a person within paragraph (a) or (b).

## 113 Meaning of “the property”

For the purposes of this Chapter “the property”, in relation to living accommodation, means the property consisting of that accommodation.

# CHAPTER 6

## TAXABLE BENEFITS: CARS, VANS AND RELATED BENEFITS

### *General*

## 114 Cars, vans and related benefits

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

- (a) is made available (without any transfer of the property in it) to an employee or a member of the employee’s family or household,
- (b) is so made available by reason of the employment (see section 117), and
- (c) is available for the employee’s or member’s private use (see section 118).

(2) Where this Chapter applies to a car or van—

- (a) sections 120 to 148 provide for the cash equivalent of the benefit of the car to be treated as earnings,
- (b) sections 149 to 153 provide for the cash equivalent of the benefit of any fuel provided for the car to be treated as earnings,<sup>F151</sup> ...
- (c) sections 154 to [F152 159] provide for the cash equivalent of the benefit of the van to be treated as earnings<sup>F153</sup>; and
- (d) sections 160 to 164 provide for the cash equivalent of the benefit of any fuel provided for the van to be treated as earnings in certain circumstances.]

(3) This Chapter does not apply if an amount constitutes earnings from the employment in respect of the benefit of the car or van by virtue of any other provision (see section 119).

[F154(3A) This Chapter does not apply to a van in relation to a tax year if the private use of the van during the tax year by the employee or member of the employee’s family or household is insignificant.]

(4) The following provisions of this Chapter provide for further exceptions—

- section 167 (pooled cars);
- section 168 (pooled vans);

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section 169 (car available to more than one member of family or household employed by same employer).

[<sup>F155</sup>section 169A (van available to more than one member of family or household employed by same employer).]

#### Textual Amendments

**F151** Word in s. 114(2)(b) repealed (22.7.2004) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 2\(9\)](#)

**F152** Word in s. 114(2)(c) substituted (with effect in accordance with s. 80(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 14 para. 2\(2\)](#)

**F153** S. 114(2)(d) and preceding word inserted (with effect in accordance with s. 80(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 14 para. 2\(2\)](#)

**F154** S. 114(3A) inserted (with effect in accordance with s. 80(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 14 para. 2\(3\)](#)

**F155** Words in s. 114(4) inserted (with effect in accordance with s. 80(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 14 para. 2\(4\)](#)

## 115 Meaning of “car” and “van”

(1) In this Chapter—

“car” means a mechanically propelled road vehicle which is not—

- (a) a goods vehicle,
- (b) a motor cycle,
- (c) an invalid carriage, or
- (d) a vehicle of a type not commonly used as a private vehicle and unsuitable to be so used;

“van” means a mechanically propelled road vehicle which—

- (a) is a goods vehicle, and
- (b) has a design weight not exceeding 3,500 kilograms,

and which is not a motor cycle.

(2) For the purposes of subsection (1)—

“design weight” means the weight which a vehicle is designed or adapted not to exceed when in normal use and travelling on a road laden;

“goods vehicle” means a vehicle of a construction primarily suited for the conveyance of goods or burden of any description;

“invalid carriage” has the meaning given by section 185(1) of the Road Traffic Act 1988 (c. 52);

“motor cycle” has the meaning given by section 185(1) of the Road Traffic Act 1988.

## 116 Meaning of when car or van is available to employee

(1) For the purposes of this Chapter a car or van is available to an employee at a particular time if it is then made available, by reason of the employment and without any transfer of the property in it, to the employee or a member of the employee’s family or household.

(2) References in this Chapter to—

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- (a) the time when a car [<sup>F156</sup>or van] is first made available to an employee are to the earliest time when the car [<sup>F156</sup>or van] is made available as mentioned in subsection (1), and
  - (b) the last day in a year on which a car [<sup>F156</sup>or van] is available to an employee are to the last day in the year on which the car [<sup>F156</sup>or van] is made available as mentioned in subsection (1).
- (3) This section does not apply to section [<sup>F157</sup>124A or] 138 (automatic car [<sup>F156</sup>or van] for a disabled employee).

#### Textual Amendments

**F156** Words in s. 116(2) inserted (22.7.2004) by [Finance Act 2004 \(c. 12\)](#), [Sch. 14 para. 3](#)

**F157** Words in s. 116(3) inserted (with effect in accordance with s. 54(6) of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [s. 54\(2\)](#)

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

For the purposes of this Chapter a car or van made available by an employer to an employee or a member of the employee's family or household is to be regarded as made available by reason of the employment unless—

- (a) the employer is an individual, and
- (b) it is so made available in the normal course of the employer's domestic, family or personal relationships.

### 118 Availability for private use

- (1) For the purposes of this Chapter a car or van made available in a tax year to an employee or a member of the employee's family or household is to be treated as available for the employee's or member's private use unless in that year—
- (a) the terms on which it is made available prohibit such use, and
  - (b) it is not so used.
- (2) In this Chapter “private use”, in relation to a car or van made available to an employee or a member of the employee's family or household, means any use other than for the employee's business travel (see section 171(1)).

### 119 Where alternative to benefit of car [<sup>F158</sup>or van] offered

- (1) This section applies where in a tax year—
- (a) a car [<sup>F158</sup>or van] is made available as mentioned in section 114(1), and
  - (b) an alternative to the benefit of the car [<sup>F158</sup>or van] is offered.
- (2) The mere fact that the alternative is offered does not result in an amount in respect of the benefit constituting earnings by virtue of Chapter 1 of this Part (earnings).

#### Textual Amendments

**F158** Words in s. 119 inserted (22.7.2004) by [Finance Act 2004 \(c. 12\)](#), [Sch. 14 para. 4](#)

*Status: Point in time view as at 01/09/2013.*

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### *Cars: benefit treated as earnings*

#### **120 Benefit of car treated as earnings**

- (1) If this Chapter applies to a car in relation to a particular tax year, the cash equivalent of the benefit of the car is to be treated as earnings from the employment for that year.
- (2) In such a case the employee is referred to in this Chapter as being chargeable to tax in respect of the car in that year.

#### **121 Method of calculating the cash equivalent of the benefit of a car**

- (1) The cash equivalent of the benefit of a car for a tax year is calculated as follows—

*Step 1*

Find the price of the car in accordance with sections 122 to [F159 124A].

*Step 2*

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

*Step 3*

Make any deduction under section 132 for capital contributions made by the employee to the cost of the car or accessories. [F160 The resulting amount is the interim sum.]

*Step 4*

F161 ...

*Step 5*

Find the appropriate percentage for the car for the year in accordance with sections 133 to 142.

*Step 6*

Multiply the interim sum by the appropriate percentage for the car for the year.

*Step 7*

Make any deduction under section 143 for any periods when the car was unavailable.

The resulting amount is the provisional sum.

*Step 8*

Make any deduction from the provisional sum under section 144 in respect of payments by the employee for the private use of the car.

The result is the cash equivalent of the benefit of the car for the year.

- (2) The method of calculation set out in subsection (1) is modified in the special cases dealt with in—
  - section 146 (cars that run on road fuel gas), and
  - section 147 (classic cars: 15 years of age or more).

*Status: Point in time view as at 01/09/2013.*

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[<sup>F162</sup>(3) Where the car is shared the cash equivalent is calculated under this section in accordance with section 148.]

#### Textual Amendments

**F159** Word in s. 121(1) substituted (with effect in accordance with s. 54(6) of the amending Act) by [Finance Act 2009 \(c. 10\), s. 54\(3\)](#)

**F160** Words in s. 121(1) inserted (with effect in accordance with Sch. 28 para. 10(2) of the amending Act) by [Finance Act 2009 \(c. 10\), Sch. 28 para. 2\(2\)](#)

**F161** Words in s. 121(1) omitted (with effect in accordance with Sch. 28 para. 10(2) of the amending Act) by virtue of [Finance Act 2009 \(c. 10\), Sch. 28 para. 2\(3\)](#)

**F162** S. 121(3) substituted (1.3.2012) by [The Enactment of Extra-Statutory Concessions Order 2012 \(S.I. 2012/266\), arts. 1, 3\(2\)](#)

### *Cars: the price of a car*

## 122 The price of the car

[<sup>F163</sup>(1) For the purposes of this Chapter the price of a car means—  
This is subject to section 124A (automatic car for a disabled employee).  
(a) its list price, if it has one, or  
(b) its notional price, if it has no list price.]

[<sup>F164</sup>(2) This is subject to section 124A (automatic car for a disabled employee).]

#### Textual Amendments

**F163** S. 122 renumbered as s. 122(1) (with effect in accordance with s. 54(6) of the amending Act) by [Finance Act 2009 \(c. 10\), s. 54\(4\)](#)

**F164** S. 122(2) inserted (with effect in accordance with s. 54(6) of the amending Act) by [Finance Act 2009 \(c. 10\), s. 54\(4\)](#)

## 123 The list price of a car

- (1) In this Chapter a car's "list price" means the price published by the car's manufacturer, importer or distributor (as the case may be) as the inclusive price appropriate for a car of that kind if sold—
- in the United Kingdom,
  - singly,
  - in a retail sale,
  - in the open market, and
  - on the day immediately before the date of the car's first registration.
- (2) The "inclusive price" means the price inclusive of—
- any charge for delivery by the manufacturer, importer or distributor to the seller's place of business, and
  - any relevant taxes (see section 171(1)).

*Status: Point in time view as at 01/09/2013.*

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## 124 The notional price of a car with no list price

- (1) In this Chapter a car’s “notional price” means the price which might reasonably have been expected to be its list price if its manufacturer, importer or distributor (as the case may be) had published a price as the inclusive price appropriate for a sale of a car of the same kind sold—
- (a) in the United Kingdom,
  - (b) singly,
  - (c) in a retail sale,
  - (d) in the open market,
  - (e) on the day immediately before the date of the car’s first registration, and
  - (f) with accessories equivalent to the qualifying accessories (see section 125) available with the car at the time when it was first made available to the employee.
- (2) In this section “inclusive price” has the same meaning as in section 123.

### [<sup>F165</sup>124A Automatic car for a disabled employee

- (1) This section applies where—
- (a) a car has automatic transmission (“the automatic car”),
  - (b) at any time in the year when the automatic car is available to the employee (“E”), E holds a disabled person's badge, and
  - (c) by reason of E's disability, E must, in the event of wanting to drive a car, drive a car which has automatic transmission.
- (2) If, under section 122 to 124, the price of the automatic car is more than it would have been if the automatic car had been an equivalent manual car, the price of the automatic car is to be the price of an equivalent manual car.
- (3) In subsection (2) “an equivalent manual car” means a car which—
- (a) is first registered at or about the same time as the automatic car, and
  - (b) does not have automatic transmission, but otherwise is the closest variant available of the make and model of the automatic car.
- (4) For the purposes of this section a car has automatic transmission if—
- (a) the driver of the car is not provided with any means by which the driver may vary the gear ratio between the engine and the road wheels independently of the accelerator and the brakes, or
  - (b) the driver is provided with such means, but they do not include—
    - (i) a clutch pedal, or
    - (ii) a lever which the driver may operate manually.
- (5) For the purposes of this section a car is available to an employee at a particular time if it is then made available, by reason of the employment and without any transfer of the property in it, to the employee.]

#### Textual Amendments

**F165** S. 124A inserted (with effect in accordance with s. 54(6) of the amending Act) by [Finance Act 2009 \(c. 10\), s. 54\(5\)](#)



*Status: Point in time view as at 01/09/2013.*

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### *Cars: treatment of accessories*

## **125 Meaning of “accessory” and related terms**

- (1) In this Chapter “qualifying accessory” means an accessory which—
    - (a) is made available for use with the car without any transfer of the property in the accessory,
    - (b) is made available by reason of the employment, and
    - (c) is attached to the car (whether permanently or not).
  - (2) For the purposes of this Chapter “accessory” includes any kind of equipment but does not include—
    - (a) equipment necessarily provided for use in the performance of the duties of the employment;
    - (b) equipment by means of which a car is capable of running on road fuel gas;
    - (c) equipment to enable a disabled person to use a car (see section 172);
    - (d) a mobile telephone (within the meaning given in section 319(2)).
  - (3) But subsection (2)(b) does not apply in relation to a car to which section 137 (different CO<sub>2</sub> emissions figure for bi-fuel cars) applies.
- [<sup>F166</sup>(3A) Subsection (2) needs to be read with section 125A (security features not to be regarded as accessories).]
- (4) In this Chapter—

“standard accessory” means an accessory equivalent to an accessory assumed to be available with cars of the same kind as the car in question in arriving at the list price, and

“non-standard accessory” means any other accessory.

#### **Textual Amendments**

**F166** S. 125(3A) inserted (with effect in accordance with s. 14(5) of the amending Act) by [Finance Act 2012 \(c. 14\), s. 14\(2\)](#)

## **[<sup>F167</sup>125A Security features not to be regarded as accessories**

- (1) This section applies where a car made available to an employee has a relevant security feature.
- (2) The relevant security feature is not an accessory for the purposes of this Chapter if it is provided in order to meet a threat to the employee's personal physical security which arises wholly or mainly because of the nature of the employee's employment.
- (3) In this section “relevant security feature” means—
  - (a) armour designed to protect the car's occupants from explosions or gunfire,
  - (b) bullet-resistant glass,
  - (c) any modification to the car's fuel tank designed to protect the tank's contents from explosions or gunfire (including by making the tank self-sealing), and
  - (d) any modification made to the car in consequence of anything which is a relevant security feature by virtue of paragraph (a), (b) or (c).

*Status: Point in time view as at 01/09/2013.*

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- (4) The Treasury may by regulations amend the definition of “relevant security feature” in subsection (3).]

#### Textual Amendments

**F167** S. 125A inserted (with effect in accordance with s. 14(5) of the amending Act) by [Finance Act 2012 \(c. 14\), s. 14\(3\)](#)

### 126 Amounts taken into account in respect of accessories

- (1) The price of the following accessories is to be taken into account under step 2 of section 121(1)—
- (a) in the case of a car with a list price, the price of any initial extra accessory, and
  - (b) in the case of any car, the price of any later accessory.
- (2) In this Chapter an “initial extra accessory” means a qualifying accessory which—
- (a) is a non-standard accessory,
  - (b) is available with the car at the time when it is first made available to the employee, and
  - (c) if it is an accessory in relation to which there is no published price of the manufacturer, importer or distributor of the car (see section 128), is available with the car in the tax year in question.
- (3) In this Chapter a “later accessory” means a qualifying accessory which—
- (a) is available with the car in the tax year in question,
  - (b) was not available with the car at the time when it was first made available to the employee,
  - (c) was not made available with the car before 1st August 1993, and
  - (d) has a price of at least £100.
- (4) In this section references to the price of an accessory are to—
- (a) its list price, if it has one, or
  - (b) its notional price, if it has no list price.
- (5) This section is subject to section 131 (replacement accessories).

### 127 The list price of an accessory

- (1) For the purposes of this Chapter the list price of an initial extra accessory is—
- (a) the published price of the manufacturer, importer or distributor of the car (see section 128), or
  - (b) if there is no such price, the published price of the manufacturer, importer or distributor of the accessory (see section 129).
- (2) For the purposes of this Chapter the list price of a later accessory is the published price of the manufacturer, importer or distributor of the accessory (see section 129).

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## **128 Accessory: published price of the car manufacturer etc.**

- (1) In this Chapter the “published price of the manufacturer, importer or distributor of the car” in relation to an accessory means the price published by the car’s manufacturer, importer or distributor (as the case may be) as the inclusive price appropriate for an equivalent accessory if sold with a car of the same kind—
  - (a) in the United Kingdom,
  - (b) singly,
  - (c) in a retail sale,
  - (d) in the open market, and
  - (e) on the day immediately before the date of the car’s first registration.
- (2) The “inclusive price” means the price inclusive of—
  - (a) any charge for delivery by the manufacturer, importer or distributor to the seller’s place of business,
  - (b) any relevant taxes other than car tax (see section 171(1)), and
  - (c) any charge for fitting the accessory.

## **129 Accessory: published price of the accessory manufacturer etc.**

- (1) In this Chapter the “published price of the manufacturer, importer or distributor of the accessory” in relation to an accessory means the price published by or on behalf of the manufacturer, importer or distributor of the accessory (as the case may be) as the inclusive price appropriate for such an accessory if sold—
  - (a) in the United Kingdom,
  - (b) singly,
  - (c) in a retail sale,
  - (d) in the open market, and
  - (e) at the time immediately before the accessory concerned is first made available for use with the car.
- (2) The “inclusive price” means the price inclusive of—
  - (a) any charge for delivery by the manufacturer, importer or distributor to the seller’s place of business,
  - (b) any relevant taxes other than car tax (see section 171(1)), and
  - (c) in the case of an accessory permanently attached to the car, the price which the seller would charge for attaching it.
- (3) In the case of an initial extra accessory, the time referred to in subsection (1)(e) may be a time before the car is first made available to the employee.

## **130 The notional price of an accessory**

- (1) In this Chapter the “notional price” of an accessory means the inclusive price which it might reasonably have been expected to fetch if sold—
  - (a) in the United Kingdom,
  - (b) singly,
  - (c) in a retail sale,
  - (d) in the open market, and

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- (e) at the time immediately before the accessory concerned is first made available for use with the car.
- (2) The “inclusive price” means the price inclusive of—
- (a) any charge for delivery by the manufacturer, importer or distributor to the seller’s place of business,
  - (b) any relevant taxes other than car tax (see section 171(1)), and
  - (c) in the case of an accessory permanently attached to the car, the price which the seller would charge for attaching it.
- (3) In the case of an initial extra accessory, the time referred to in subsection (1)(e) may be a time before the car is first made available to the employee.

### **131 Replacement accessories**

- (1) This section applies where—
- (a) a later accessory is available with the car in the tax year in question,
  - (b) that accessory (“the new accessory”) replaced another qualifying accessory (“the old accessory”) in that year or an earlier tax year, and
  - (c) the new accessory is of the same kind as the old accessory.
- (2) If the new accessory is not superior to the old accessory, the cash equivalent of the benefit of the car for the tax year is to be calculated under step 2 of section 121(1) as if—
- (a) the replacement has not been made, and
  - (b) the new accessory is a continuation of the old accessory.
- (3) If the new accessory is superior to the old accessory and the conditions in subsection (4) are met, the cash equivalent of the benefit of the car for the tax year is to be calculated under step 2 of section 121(1)—
- (a) as if the old accessory was not available with the car in that tax year, or
  - (b) where the price of the old accessory would (apart from this section) be added to the price of the car under step 2 of section 121(1) as an initial extra accessory, as if it was not available with the car at the time when the car was first made available to the employee.
- (4) The conditions mentioned in subsection (3) are that—
- (a) the old accessory was a non-standard accessory, and
  - (b) both the old and the new accessory would (apart from this section) be taken into account under step 2 of section 121(1) in calculating the cash equivalent of the benefit of the car for the year.
- (5) For the purposes of this section a new accessory is superior to an old accessory if the price of the new accessory exceeds whichever is the greater of—
- (a) the price of the old accessory, and
  - (b) the price of an accessory equivalent to the old accessory at the time immediately before the new accessory is first made available for use with the car.
- (6) In this section references to the price of an accessory are to—
- (a) its list price, if it has one, or
  - (b) its notional price, if it has no list price.

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### *Cars: capital contributions by employee*

#### **132 Capital contributions by employee**

- (1) This section applies if the employee contributes a capital sum to expenditure on the provision of—
  - (a) the car, or
  - (b) any qualifying accessory which is taken into account in calculating the cash equivalent of the benefit of the car.
- (2) A deduction is to be made from the amount carried forward from step 2 of section 121(1)—
  - (a) for the tax year in which the contribution is made, and
  - (b) for all subsequent years in which the employee is chargeable to tax in respect of the car by virtue of section 120.
- (3) The amount of the deduction allowed in any tax year is the lesser of—
  - (a) the total of the capital sums contributed by the employee in that year and any earlier years to expenditure on the provision of—
    - (i) the car, or
    - (ii) any qualifying accessory which is taken into account in calculating the cash equivalent of the benefit of the car for the tax year in question, and
  - (b) £5,000.

### *Cars: the appropriate percentage*

#### **133 How to determine the “appropriate percentage”**

- (1) The “appropriate percentage” for a car for a year depends upon when the car was first registered.
- (2) If the car was first registered on or after 1st January 1998, the “appropriate percentage” depends upon whether the car—
  - (a) is a car with a CO<sub>2</sub> emissions figure (see section 134(1)),
  - (b) is a car without a CO<sub>2</sub> emissions figure (see section 134(2)), or
  - (c) is a diesel car to which section 141 applies,and is determined under sections 139 to 141.
- (3) If the car was first registered before 1st January 1998, the “appropriate percentage” is determined under section 142.

#### **Modifications etc. (not altering text)**

- C7** Ss. 133-142 applied by S.I. 2001/1123, reg. 2 (as amended (6.4.2008) by [The Income Tax \(Car Benefits\) \(Reduction of Value of Appropriate Percentage\) \(Amendment\) Regulations 2007 \(S.I. 2007/3068\)](#), [regs. 1, 3](#))

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### 134 Meaning of car with or without a CO<sub>2</sub> emissions figure

- (1) In this Chapter a “car with a CO<sub>2</sub> emissions figure” means—
- (a) a car first registered on or after 1st January 1998 but before 1st October 1999 to which section 135 applies,
  - (b) a car first registered on or after 1st October 1999 to which section 136 applies, or
  - (c) a car first registered on or after 1st January 2000 which is a car to which section 137 (bi-fuel cars) applies.
- (2) In this Chapter a “car without a CO<sub>2</sub> emissions figure” means any other car first registered on or after 1st January 1998.

#### **Modifications etc. (not altering text)**

**C7** Ss. 133-142 applied by S.I. 2001/1123, reg. 2 (as amended (6.4.2008) by [The Income Tax \(Car Benefits\) \(Reduction of Value of Appropriate Percentage\) \(Amendment\) Regulations 2007 \(S.I. 2007/3068\)](#), **regs. 1, 3**)

*Cars: appropriate percentage: first registered on or after 1st January 1998*

### 135 Car with a CO<sub>2</sub> emissions figure: pre-October 1999 registration

- (1) This section applies to a car first registered on or after 1st January 1998 but before 1st October 1999 if when it was so registered—
- (a) it conformed to a vehicle type with an EC type-approval certificate (see section 171(1)), or
  - (b) it had a UK approval certificate (see section 171(1)),
- which specifies a CO<sub>2</sub> emissions figure in terms of grams per kilometre driven.
- (2) The car’s CO<sub>2</sub> emissions figure is that specified figure.
- (3) This is subject to section 138 (automatic car for a disabled employee).

#### **Modifications etc. (not altering text)**

**C7** Ss. 133-142 applied by S.I. 2001/1123, reg. 2 (as amended (6.4.2008) by [The Income Tax \(Car Benefits\) \(Reduction of Value of Appropriate Percentage\) \(Amendment\) Regulations 2007 \(S.I. 2007/3068\)](#), **regs. 1, 3**)

### 136 Car with a CO<sub>2</sub> emissions figure: post-September 1999 registration

- (1) This section applies to a car first registered on or after 1st October 1999 if it is so registered on the basis of—
- (a) an EC certificate of conformity (see section 171(1)), or
  - (b) a UK approval certificate (see section 171(1)),
- which specifies a CO<sub>2</sub> emissions figure in terms of grams per kilometre driven.

*Status: Point in time view as at 01/09/2013.*

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- (2) The car's CO<sub>2</sub> emissions figure is that specified figure unless more than one figure is specified, in which case the car's CO<sub>2</sub> emissions figure is the figure specified as the CO<sub>2</sub> emissions (combined) figure.
- (3) This is subject to—
  - (a) section 137 (bi-fuel cars), and
  - (b) section 138 (automatic car for a disabled employee).

**Modifications etc. (not altering text)**

C7 Ss. 133-142 applied by S.I. 2001/1123, reg. 2 (as amended (6.4.2008) by [The Income Tax \(Car Benefits\) \(Reduction of Value of Appropriate Percentage\) \(Amendment\) Regulations 2007](#) (S.I. 2007/3068), [regs. 1, 3](#))

**137 Car with a CO<sub>2</sub> emissions figure: bi-fuel cars**

- (1) This section applies to a car first registered on or after 1st January 2000 if it is so registered on the basis of—
  - (a) an EC certificate of conformity (see section 171(1)), or
  - (b) a UK approval certificate (see section 171(1)),which specifies separate CO<sub>2</sub> emissions figures in terms of grams per kilometre driven for different fuels.
- (2) The car's CO<sub>2</sub> emissions figure is—
  - (a) the lowest figure specified, or
  - (b) if there is more than one figure specified in relation to each fuel, the lowest CO<sub>2</sub> emissions (combined) figure specified.
- (3) This is subject to section 138 (automatic car for a disabled employee).

**Modifications etc. (not altering text)**

C7 Ss. 133-142 applied by S.I. 2001/1123, reg. 2 (as amended (6.4.2008) by [The Income Tax \(Car Benefits\) \(Reduction of Value of Appropriate Percentage\) \(Amendment\) Regulations 2007](#) (S.I. 2007/3068), [regs. 1, 3](#))

**138 Car with a CO<sub>2</sub> emissions figure: automatic car for a disabled employee**

- (1) This section applies where—
  - (a) a car with a CO<sub>2</sub> emissions figure has automatic transmission (“the automatic car”),
  - (b) at any time in the year when the automatic car is available to the employee (“E”), E holds a disabled person's badge, and
  - (c) by reason of E's disability, E must, in the event of wanting to drive a car, drive a car which has automatic transmission.
- (2) If, under sections 135 to 137, the automatic car's CO<sub>2</sub> emissions figure is more than it would have been if the automatic car had been an equivalent manual car, the CO<sub>2</sub> emissions figure for the automatic car is to be the CO<sub>2</sub> emissions figure for an equivalent manual car.

*Status: Point in time view as at 01/09/2013.*

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- (3) In subsection (2) “an equivalent manual car” means a car which—
- (a) is first registered at or about the same time as the automatic car, and
  - (b) does not have automatic transmission, but otherwise is the closest variant available of the make and model of the automatic car.
- (4) For the purposes of this section a car has automatic transmission if—
- (a) the driver of the car is not provided with any means by which the driver may vary the gear ratio between the engine and the road wheels independently of the accelerator and the brakes, or
  - (b) the driver is provided with such means, but they do not include—
    - (i) a clutch pedal, or
    - (ii) a lever which the driver may operate manually.
- (5) For the purposes of this section a car is available to an employee at a particular time if it is then made available, by reason of the employment and without any transfer of the property in it, to the employee.

**Modifications etc. (not altering text)**

**C7** Ss. 133-142 applied by S.I. 2001/1123, reg. 2 (as amended (6.4.2008) by [The Income Tax \(Car Benefits\) \(Reduction of Value of Appropriate Percentage\) \(Amendment\) Regulations 2007 \(S.I. 2007/3068\)](#), [regs. 1, 3](#))

**[<sup>F168</sup>139 Cars with a CO<sub>2</sub> emissions figure: the appropriate percentage**

- (1) The appropriate percentage for a year for a car with a CO<sub>2</sub> emissions figure depends on the car's CO<sub>2</sub> emissions figure.
- [<sup>F169</sup>2) If the car's CO<sub>2</sub> emissions figure is less than the relevant threshold <sup>F170</sup>..., the appropriate percentage for the year is—
- [<sup>F171</sup>(a) if the car's CO<sub>2</sub> emissions figure does not exceed 50 grams per kilometre driven, 5%,
  - (aa) if the car's CO<sub>2</sub> emissions figure exceeds 50 grams per kilometre driven but does not exceed 75 grams per kilometre driven, 9%, and]
  - (b) otherwise, [<sup>F172</sup>13%.]
- (3) If the car's CO<sub>2</sub> emissions figure is equal to the relevant threshold <sup>F173</sup>..., the appropriate percentage for the year is [<sup>F174</sup>14%] (“the threshold percentage”).]
- (4) If the car's CO<sub>2</sub> emissions figure exceeds the relevant threshold <sup>F175</sup>..., the appropriate percentage for the year is whichever is the lesser of—
- (a) the threshold percentage increased by one percentage point for each 5 grams per kilometre driven by which the CO<sub>2</sub> emissions figure exceeds the relevant threshold <sup>F175</sup>..., and
  - (b) [<sup>F176</sup>37%.]
- (5) The relevant threshold is [<sup>F177</sup>95 grams] per kilometre driven.
- (6) If the car's CO<sub>2</sub> emissions figure is not a multiple of 5, it is to be rounded down to the nearest multiple of 5 for the purposes of subsections (3) and (4)(a).



**Status:** Point in time view as at 01/09/2013.

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- (7) This section is subject to—
- (a) section 141 (diesel cars), and
  - (b) any regulations made by the Treasury under section 170(4) (power to reduce the appropriate percentage).]

#### Textual Amendments

- F168** S. 139 substituted (with effect in accordance with s. 59(5) of the amending Act) by [Finance Act 2010 \(c. 13\), s. 59\(2\)](#)
- F169** S. 139(2)(3) substituted (with effect in accordance with s. 17(2) of the amending Act) by [Finance Act 2012 \(c. 14\), s. 17\(1\)](#)
- F170** Words in s. 139(2) omitted (with effect in accordance with s. 23(12) of the amending Act) by virtue of [Finance Act 2013 \(c. 29\), s. 23\(2\)](#)
- F171** S. 139(2)(a)(aa) substituted for s. 139(2)(a) (with effect in accordance with s. 23(12) of the amending Act) by [Finance Act 2013 \(c. 29\), s. 23\(3\)](#)
- F172** Word in s. 139(2)(b) substituted (with effect in accordance with s. 23(12) of the amending Act) by [Finance Act 2013 \(c. 29\), s. 23\(4\)](#)
- F173** Words in s. 139(3) omitted (with effect in accordance with s. 23(12) of the amending Act) by virtue of [Finance Act 2013 \(c. 29\), s. 23\(5\)\(a\)](#)
- F174** Word in s. 139(3) substituted (with effect in accordance with s. 23(12) of the amending Act) by [Finance Act 2013 \(c. 29\), s. 23\(5\)\(b\)](#)
- F175** Words in s. 139(4) omitted (with effect in accordance with s. 23(12) of the amending Act) by virtue of [Finance Act 2013 \(c. 29\), s. 23\(6\)\(a\)](#)
- F176** Word in s. 139(4)(b) substituted (with effect in accordance with s. 23(12) of the amending Act) by [Finance Act 2013 \(c. 29\), s. 23\(6\)\(b\)](#)
- F177** Words in s. 139(5) substituted (with effect in accordance with s. 51(2) of the amending Act) by [Finance Act 2011 c. 11, s. 51\(1\)](#)

#### Modifications etc. (not altering text)

- C7** Ss. 133-142 applied by S.I. 2001/1123, reg. 2 (as amended (6.4.2008) by [The Income Tax \(Car Benefits\) \(Reduction of Value of Appropriate Percentage\) \(Amendment\) Regulations 2007 \(S.I. 2007/3068\)](#), [regs. 1, 3](#))

### 140 Car without a CO<sub>2</sub> emissions figure: the appropriate percentage

- (1) The appropriate percentage for a year for a car without a CO<sub>2</sub> emissions figure is determined under this section.
- (2) If the car has an internal combustion engine with one or more reciprocating pistons, the appropriate percentage for the year is—

TABLE

| <i>Cylinder capacity of car in cubic centimetres</i> | <i>Appropriate percentage</i> |
|------------------------------------------------------|-------------------------------|
| 1,400 or less                                        | 15%                           |
| More than 1,400 but not more than 2,000              | 25%                           |
| More than 2,000                                      | [ <sup>F178</sup> 37%]        |

**Status:** Point in time view as at 01/09/2013.

**Changes to legislation:** *Income Tax (Earnings and Pensions) Act 2003 is up to date with all changes known to be in force on or before 10 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

For this purpose a car's cylinder capacity is the capacity of its engine as calculated for the purposes of VERA 1994.

- (3) If subsection (2) does not apply, the appropriate percentage for the year is—
- [<sup>F179</sup>[<sup>F180</sup>(a) 5% if the car cannot in any circumstances emit CO<sub>2</sub> by being driven, and]  
 (b) [<sup>F181</sup>37%] in any other case.]

<sup>F182</sup>(3A) . . . . .

<sup>F183</sup>(4) . . . . .

- (5) This section is subject to—
- (a) section 141 (diesel cars), and
- (b) any regulations made by the Treasury under section 170(4) (power to reduce the appropriate percentage).

#### Textual Amendments

- F178** Word in s. 140(2) Table substituted (with effect in accordance with s. 23(12) of the amending Act) by [Finance Act 2013 \(c. 29\), s. 23\(8\)](#)
- F179** S. 140(3)(a)(b) substituted for words (with effect for the tax year 2010-11 and subsequent tax years in accordance with s. 58(18) of the amending Act) by [Finance Act 2010 \(c. 13\), s. 58\(8\)](#)
- F180** S. 140(3)(a) substituted (with effect in accordance with s. 23(12) of the amending Act) by [Finance Act 2013 \(c. 29\), s. 23\(9\)\(a\)](#)
- F181** Word in s. 140(3)(b) substituted (with effect in accordance with s. 23(12) of the amending Act) by [Finance Act 2013 \(c. 29\), s. 23\(10\)](#)
- F182** S. 140(3A) omitted (with effect in accordance with s. 23(12) of the amending Act) by virtue of [Finance Act 2013 \(c. 29\), s. 23\(10\)](#)
- F183** S. 140(4) omitted (with effect for the tax year 2010-11 and subsequent tax years in accordance with s. 58(18) of the amending Act) by virtue of [Finance Act 2010 \(c. 13\), s. 58\(10\)](#)

#### Modifications etc. (not altering text)

- C7** Ss. 133-142 applied by S.I. 2001/1123, reg. 2 (as amended (6.4.2008) by [The Income Tax \(Car Benefits\) \(Reduction of Value of Appropriate Percentage\) \(Amendment\) Regulations 2007 \(S.I. 2007/3068\)](#), [regs. 1, 3](#))

### 141 Diesel cars: the appropriate percentage

- (1) This section applies to a diesel car first registered on or after 1st January 1998.
- (2) To determine the appropriate percentage for such a car for a year—

#### *Step 1*

Determine whether the car is a car with a CO<sub>2</sub> emissions figure or a car without a CO<sub>2</sub> emissions figure (see section 134).

#### *Step 2*

Take what would be the appropriate percentage for the car for the year under section 139 or 140 as appropriate.

#### *Step 3*

*Status: Point in time view as at 01/09/2013.*

*Changes to legislation: Income Tax (Earnings and Pensions) Act 2003 is up to date with all changes known to be in force on or before 10 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

The appropriate percentage for the car for the year is whichever is the smaller of—

- (a) the figure resulting from the addition of 3 percentage points to the figure found under step 2, and
  - (b) 35%.
- (3) In this section “diesel car” means a car which is propelled solely by diesel.
- (4) This section is subject to any regulations made by the Treasury under section 170(4) (power to reduce the appropriate percentage).

**Modifications etc. (not altering text)**

- C7** Ss. 133-142 applied by S.I. 2001/1123, reg. 2 (as amended (6.4.2008) by [The Income Tax \(Car Benefits\) \(Reduction of Value of Appropriate Percentage\) \(Amendment\) Regulations 2007 \(S.I. 2007/3068\)](#), [regs. 1, 3](#))

*Cars: appropriate percentage: first registered before 1st January 1998*

**142 Car first registered before 1st January 1998: the appropriate percentage**

- (1) The appropriate percentage for a car first registered before 1st January 1998 is determined under this section.
- (2) If the car has an internal combustion engine with one or more reciprocating pistons, the appropriate percentage for the year is—

TABLE

| <i>Cylinder capacity of car in cubic centimetres</i> | <i>Appropriate percentage</i> |
|------------------------------------------------------|-------------------------------|
| 1,400 or less                                        | 15%                           |
| More than 1,400 but not more than 2,000              | 22%                           |
| More than 2,000                                      | 32%                           |

For this purpose a car’s cylinder capacity is the capacity of its engine as calculated for the purposes of VERA 1994.

- (3) If subsection (2) does not apply, the appropriate percentage for the year is [<sup>F184</sup>32%].

<sup>F185</sup>(4) .....

**Textual Amendments**

- F184** Word in s. 142(3) substituted (with effect in accordance with Sch. 28 para. 10(2) of the amending Act and with [Finance Act 2010 \(c. 13\)](#), [s. 58\(20\)](#)) by [Finance Act 2009 \(c. 10\)](#), [Sch. 28 para. 8\(a\)](#)
- F185** S. 142(4) omitted (with effect in accordance with Sch. 28 para. 10(2) of the amending Act and with [Finance Act 2010 \(c. 13\)](#), [s. 58\(20\)](#)) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 28 para. 8\(b\)](#)

*Status: Point in time view as at 01/09/2013.*

*Changes to legislation: Income Tax (Earnings and Pensions) Act 2003 is up to date with all changes known to be in force on or before 10 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

**Modifications etc. (not altering text)**

- C7 Ss. 133-142 applied by S.I. 2001/1123, reg. 2 (as amended (6.4.2008) by [The Income Tax \(Car Benefits\) \(Reduction of Value of Appropriate Percentage\) \(Amendment\) Regulations 2007 \(S.I. 2007/3068\)](#), **regs. 1, 3**)

*Cars: unavailability or payments for private use*

**143 Deduction for periods when car unavailable**

- (1) A deduction is to be made from the amount carried forward from step 6 of section 121(1) if the car has been unavailable on any day during the tax year in question.
- (2) For the purposes of this section a car is unavailable on any day if the day—
  - (a) falls before the first day on which the car is available to the employee,
  - (b) falls after the last day on which the car is available to the employee, or
  - (c) falls within a period of 30 days or more throughout which the car is not available to the employee.
- (3) The amount of the deduction is given by the formula—

$$\frac{U}{Y} \times A$$

where—

U is the number of days in the year on which the car is unavailable,

Y is the number of days in that year, and

A is the amount carried forward from step 6.

- (4) This section is subject to section 145 (modification where car temporarily replaced).

**144 Deduction for payments for private use**

- (1) A deduction is to be made from the provisional sum calculated under step 7 of section 121(1) if, as a condition of the car being available for the employee's private use, the employee—
  - (a) is required in the tax year in question to pay (whether by way of deduction from earnings or otherwise) an amount of money for that use, and
  - (b) makes such payment.
- (2) If the amount paid by the employee in respect of that year is equal to or exceeds the provisional sum, the provisional sum is reduced so that the cash equivalent of the benefit of the car for that year is nil.
- (3) In any other case the amount paid by the employee in respect of the year is deducted from the provisional sum in order to give the cash equivalent of the benefit of the car for that year.

*Status: Point in time view as at 01/09/2013.*

*Changes to legislation: Income Tax (Earnings and Pensions) Act 2003 is up to date with all changes known to be in force on or before 10 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (4) In this section the reference to the car being available for the employee's private use includes a reference to the car being available for the private use of a member of the employee's family or household.
- (5) This section is subject to section 145 (modification where car temporarily replaced).

#### **145 Modification of provisions where car temporarily replaced**

- (1) This section applies if—
  - (a) the car normally available to an employee (“the normal car”) is not available to the employee for a period of less than 30 days,
  - (b) another car (“the replacement car”) is made available to the employee in order to replace the normal car for the whole or part of that period,
  - (c) the employee is chargeable to tax in respect of both the normal car and the replacement car by virtue of section 120, and
  - (d) the replacement car meets condition A or B.
- (2) Condition A is met if the replacement car is not materially better than the normal car.
- (3) Condition B is met if the replacement car is not made available to the employee under an arrangement of which the main purpose, or one of the main purposes, is to provide the employee with the benefit of a car which is materially better than the normal car.
- (4) If this section applies—
  - (a) section 143 (deduction for periods when car unavailable) applies so that the replacement car is to be treated as unavailable on the days of the period during which it replaces the normal car, and
  - (b) section 144 (deduction for payments for private use) applies as if the replacement had not been made and the replacement car were a continuation of the normal car.
- (5) A replacement car is regarded as materially better than the normal car if—
  - (a) it is materially better in quality, or
  - (b) when calculating the cash equivalent of the benefit of the replacement car, the interim sum calculated under [<sup>F186</sup>step 3] of section 121(1) is materially higher than the interim sum calculated in relation to the normal car.

#### **Textual Amendments**

**F186** Words in s. 145(5) substituted (with effect in accordance with Sch. 28 para. 10(2) of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 28 para. 3](#)

#### *Cars: special cases*

#### **146 Cars that run on road fuel gas**

- (1) This section applies if the car—
  - (a) has been manufactured so as to be capable of running on road fuel gas, and
  - (b) is not a car to which section 137 (different CO<sub>2</sub> emissions figure for bi-fuel cars) applies.

*Status: Point in time view as at 01/09/2013.*

*Changes to legislation: Income Tax (Earnings and Pensions) Act 2003 is up to date with all changes known to be in force on or before 10 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (2) The price of the car found under step 1 of section 121(1) is to be reduced by so much of that price as it is reasonable to attribute to the car being manufactured in such a way as to be capable of running on road fuel gas rather than in such a way as to be capable of running only on petrol.

#### 147 Classic cars: 15 years of age or more

- (1) This section applies in calculating the cash equivalent of the benefit of a car for a tax year if—
- (a) the age of the car at the end of the year is 15 years or more,
  - (b) the market value of the car for the year is £15,000 or more, and
  - (c) that market value exceeds the [<sup>F187</sup>interim sum calculated under] step 3 of section 121(1).
- (2) For the [<sup>F188</sup>interim sum calculated under] step 3 substitute the market value of the car for the tax year in question less any deductions under subsection (6).
- (3) The market value of a car for a tax year is the price which the car might reasonably have been expected to fetch on a sale in the open market on—
- (a) the last day of that year, or
  - (b) the last day in that year on which the car is available to the employee if that is earlier.
- (4) It is assumed that any qualifying accessories available with the car on that day are included in the sale.
- (5) Subsection (6) applies if the employee contributes a capital sum to expenditure on the provision of—
- (a) the car, or
  - (b) any qualifying accessory which is taken into account in determining the market value of the car.
- (6) A deduction is to be made from the market value of the car—
- (a) for the tax year in which the contribution is made, and
  - (b) for all subsequent years in which the employee is chargeable to tax in respect of the car by virtue of section 120.
- (7) The amount of the deduction allowed in any tax year is the lesser of—
- (a) the total of the capital sums contributed by the employee in that year and any earlier years to expenditure on the provision of—
    - (i) the car, or
    - (ii) any qualifying accessory which is taken into account in determining the market value of the car for the tax year in question, and
  - (b) £5,000.

#### Textual Amendments

**F187** Words in s. 147(1) substituted (with effect in accordance with Sch. 28 para. 10(2) of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 28 para. 4](#)

**F188** Words in s. 147(2) substituted (with effect in accordance with Sch. 28 para. 10(2) of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 28 para. 4](#)

*Status:* Point in time view as at 01/09/2013.

*Changes to legislation:* Income Tax (Earnings and Pensions) Act 2003 is up to date with all changes known to be in force on or before 10 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

*Cars: reduction where shared car*

**148 Reduction of cash equivalent where car is shared**

- (1) This section applies if in a tax year a car—
  - (a) is available to more than one employee concurrently,
  - (b) is so made available by the same employer, and
  - (c) is available concurrently for each employee’s private use,and two or more of those employees are chargeable to tax in respect of the car in that year by virtue of section 120.
- (2) The cash equivalent of the benefit of the car to each of those employees for that year—
  - (a) is to be calculated separately under section 121, <sup>F189</sup> ...
  - <sup>F189</sup>(b) .....
- <sup>F190</sup>(2A) The provisional sum calculated under step 7 in section 121(1) is to be reduced on a just and reasonable basis before making any deduction under step 8.]
- (3) If the employment of any of the employees mentioned in subsection (1)(a) is an excluded employment, the availability of the car to that employee is to be disregarded for the purposes of subsection <sup>F191</sup>(2A) .
- (4) In this section the reference to the car being available for each employee’s private use includes a reference to the car being available for the private use of a member of the employee’s family or household.

**Textual Amendments**

**F189** S. 148(2)(b) and word omitted (1.3.2012) by virtue of [The Enactment of Extra-Statutory Concessions Order 2012 \(S.I. 2012/266\)](#), arts. 1, **3(3)(a)**

**F190** S. 148(2A) inserted (1.3.2012) by [The Enactment of Extra-Statutory Concessions Order 2012 \(S.I. 2012/266\)](#), arts. 1, **3(3)(b)**

**F191** Word in s. 148(3) substituted (1.3.2012) by [The Enactment of Extra-Statutory Concessions Order 2012 \(S.I. 2012/266\)](#), arts. 1, **3(3)(c)**

*Car fuel: benefit treated as earnings*

**149 Benefit of car fuel treated as earnings**

- (1) If in a tax year—
  - (a) fuel is provided for a car by reason of an employee’s employment, and
  - (b) that person is chargeable to tax in respect of the car by virtue of section 120,the cash equivalent of the benefit of the fuel is to be treated as earnings from the employment for that year.
- (2) The cash equivalent of the benefit of the fuel is calculated in accordance with sections 150 to 153.
- (3) Fuel is to be treated as provided for a car, in addition to any other way in which it may be provided, if—
  - (a) any liability in respect of the provision of fuel for the car is discharged,

*Status: Point in time view as at 01/09/2013.*

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- (b) a non-cash voucher or a credit-token is used to obtain fuel for the car,
  - (c) a non-cash voucher or a credit-token is used to obtain money which is spent on fuel for the car, or
  - (d) any sum is paid in respect of expenses incurred in providing fuel for the car.
- (4) References in this section to fuel do not include any facility or means for supplying electrical energy [<sup>F192</sup>or any energy for a car which cannot in any circumstances emit CO<sub>2</sub> by being driven].

#### Textual Amendments

**F192** Words in s. 149(4) substituted (with effect for the tax year 2010-11 and subsequent tax years in accordance with s. 58(18) of the amending Act) by [Finance Act 2010 \(c. 13\), s. 58\(11\)](#)

### 150 Car fuel: calculating the cash equivalent

- (1) The cash equivalent of the benefit of the fuel is the appropriate percentage of [<sup>F193</sup>£21,100 ].
- (2) The “appropriate percentage” means the appropriate percentage determined in accordance with sections 133 to 142 for the purpose of calculating the cash equivalent of the benefit of the car for which the fuel is provided.
- (3) But the cash equivalent may be—
- (a) nil where either of the conditions in section 151 is met;
  - (b) proportionately reduced under section 152;
  - (c) reduced under section 153.

#### Textual Amendments

**F193** Sum in s. 150(1) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Car and Van Fuel Benefit Order 2012 \(S.I. 2012/3037\), arts. 1\(2\), 2](#)

### 151 Car fuel: nil cash equivalent

- (1) The cash equivalent of the benefit of the fuel is nil if condition A or B is met.
- (2) Condition A is met if in the tax year in question—
- (a) the employee is required to make good to the person providing the fuel the whole of the expense incurred by that person in connection with the provision of the fuel for the employee’s private use, and
  - (b) the employee does make good that expense.
- (3) Condition B is met if in the tax year in question the fuel is made available only for business travel (see section 171(1)).

### 152 Car fuel: proportionate reduction of cash equivalent

- (1) The cash equivalent of the benefit of the fuel is to be proportionately reduced if for any part of the tax year in question the car for which the fuel is provided is unavailable (within the meaning of section 143 (deduction for periods when car unavailable)).



*Status: Point in time view as at 01/09/2013.*

*Changes to legislation: Income Tax (Earnings and Pensions) Act 2003 is up to date with all changes known to be in force on or before 10 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (2) The cash equivalent of the benefit of the fuel is also to be proportionately reduced if for any part of the tax year in question—
- (a) the facility for the provision of fuel as mentioned in section 149(1) is not available,
  - (b) the fuel is made available only for business travel (see section 171(1)), or
  - (c) the employee is required to make good to the person providing the fuel the whole of the expense incurred by that person in connection with the provision of the fuel for the employee's private use and the employee does make good that expense.
- (3) The fact that any of the conditions specified in subsection (2) is met for part of a tax year is to be disregarded if there is a time later in that year when none of those conditions is met.
- (4) Where the cash equivalent is to be proportionately reduced under subsection (1) or (2) (or under both those subsections), the reduced amount is given by the formula—

$$CE \times \frac{Y-D}{Y}$$

where—

CE is the amount of the cash equivalent before any reduction,

Y is the number of days in the tax year in question, and

D is the total number of days in that year on which either the car is unavailable or one or more of the conditions in subsection (2) is met.

### 153 Car fuel: reduction of cash equivalent

If a reduction of the cash equivalent of the benefit of the car for which the fuel is provided is made under section 148 (reduction of cash equivalent where car is shared), a corresponding reduction is to be made in relation to the cash equivalent of the benefit of the fuel.

*Vans: benefit treated as earnings*

### 154 Benefit of van treated as earnings

If this Chapter applies to a van in relation to a particular tax year, the cash equivalent of the benefit of the van is to be treated as earnings from the employment for that year.

### <sup>F194</sup>155 Cash equivalent of the benefit of a van

<sup>F195</sup>(1) The cash equivalent of the benefit of a van for a tax year is—

- (a) nil in a case to which subsection (2) applies, and
- (b) £3,000 in any other case.

(2) This subsection applies if—

- (a) the restricted private use condition is met in relation to the van for the tax year, or

*Status: Point in time view as at 01/09/2013.*

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- (b) the van cannot in any circumstances emit CO<sub>2</sub> by being driven and the tax year is any of the tax years 2010-11 to 2014-15.]
- (4) The restricted private use condition is met in relation to a van for a tax year if—
  - (a) the commuter use requirement is satisfied throughout the year (or the part of the year on which it is available to the employee) or the extent to which it is not satisfied during that period is insignificant, and
  - (b) the business travel requirement is satisfied throughout the year (or the part of the year on which it is available to the employee).
- (5) The commuter use requirement is satisfied at any time if—
  - (a) the terms on which the van is available to the employee at the time prohibit its private use otherwise than for the purposes of ordinary commuting or travel between two places that is for practical purposes substantially ordinary commuting, and
  - (b) neither the employee nor a member of the employee’s family or household makes private use of the van at the time otherwise than for those purposes.
- (6) In subsection (5) “ordinary commuting” has the same meaning as in section 338 (travel for necessary attendance) (see subsection (3) of that section).
- (7) The business travel requirement is satisfied at a time if the van is available to the employee at the time mainly for use for the purposes of the employee’s business travel (see section 171(1)).
- (8) The cash equivalent of the van may be reduced—
  - (a) under section 156 for any periods when the van is unavailable,
  - (b) under section 157 where the van is shared, and
  - (c) under section 158 in respect of payments by the employee for the private use of the van.]

#### Textual Amendments

**F194** Ss. 155-164 substituted for ss. 155-166 (with effect in accordance with s. 80(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 14 para. 5](#)

**F195** S. 155(1)(2) substituted for s. 155(1)-(3) (with effect for the tax year 2010-11 and subsequent tax years in accordance with s. 58(18) of the amending Act) by [Finance Act 2010 \(c. 13\)](#), [s. 58\(12\)](#)

*[<sup>F194</sup>Vans: reductions of cash equivalent*

#### 156 Meaning of “shared van”

- (1) The cash equivalent of the benefit of a van for a tax year under section [<sup>F196</sup>155(1)] is to be reduced if the van has been unavailable on any day during the year.
- (2) For the purposes of this section a van is unavailable on any day if the day—
  - (a) falls before the first day on which the van is available to the employee,
  - (b) falls after the last day on which the van is available to the employee, or
  - (c) falls within a period of 30 days or more throughout which the van is not available to the employee.
- (3) The amount of the reduction is given by the formula—

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$UY \times CE$

where—

U is the number of days in the year on which the van is unavailable,

Y is the number of days in the year, and

CE is the amount of the cash equivalent before any reduction.]

#### Textual Amendments

**F196** Words in s. 156(1) substituted (with effect for the tax year 2010-11 and subsequent tax years in accordance with s. 58(18) of the amending Act) by [Finance Act 2010 \(c. 13\), s. 58\(13\)\(a\)](#)

*[<sup>F194</sup>Reduction of cash equivalent where van is shared*

### 157 Reduction of cash equivalent where van is shared

- (1) This section applies if in a tax year a van—
  - (a) is available to more than one employee concurrently,
  - (b) is so made available by the same employer, and
  - (c) is available concurrently for each employee's private use.
- (2) The cash equivalent of the benefit of the van to each of those employees for that year—
  - (a) is to be calculated separately under sections 155 and 156, and
  - (b) is then to be reduced on a just and reasonable basis.
- (3) If —
  - (a) any of the employees mentioned in subsection (1)(a) ("E") is a member of the family or household of another of them ("M"), and
  - (b) E's employment is an excluded employment,the availability of the van to E is to be disregarded when applying subsection (2)(b) in respect of M.
- (4) In this section the reference to the van being available for each employee's private use includes a reference to the van being available for the private use of a member of the employee's family or household.]

*[<sup>F194</sup>Reduction for payments for private use*

### 158 Reduction for payments for private use

- (1) The cash equivalent of the benefit of a van for a tax year under section [<sup>F197</sup>155(1)] (after any reduction under sections 156 and 157) is to be reduced if, as a condition of the van being available for the employee's private use, the employee—
  - (a) is required in that year to pay (whether by way of deduction from earnings or otherwise) an amount of money for that use, and
  - (b) makes such payment.

*Status: Point in time view as at 01/09/2013.*

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- (2) If the amount paid by the employee in respect of that year is equal to or exceeds that cash equivalent, it is reduced to nil.
- (3) In any other case that cash equivalent is reduced by the amount paid by the employee.
- (4) In this section the reference to the van being available for the employee's private use includes a reference to the van being available for the private use of a member of the employee's family or household.]

#### **Textual Amendments**

**F197** Word in s. 158(1) substituted (with effect for the tax year 2010-11 and subsequent tax years in accordance with s. 58(18) of the amending Act) by [Finance Act 2010 \(c. 13\), s. 58\(13\)\(b\)](#)

*[<sup>F194</sup> Modification of provisions where van temporarily replaced*

#### **159 Modification of provisions where van temporarily replaced**

- (1) This section applies if—
  - (a) the van normally available to an employee (“the normal van”) is not available to the employee for a period of less than 30 days,
  - (b) another van (“the replacement van”) is made available to the employee in order to replace the normal van for the whole or part of that period, and
  - (c) the employee is chargeable to tax in respect of both the normal van and the replacement van by virtue of section 154.
- (2) If this section applies—
  - (a) section 156 applies so that the replacement van is to be treated as unavailable on the days during the period on which it replaces the normal van, and
  - (b) sections 155, 157 and 158 apply as if the replacement van were the normal van.]

*[<sup>F194</sup> Van fuel: benefit treated as earnings*

#### **160 Benefit of van fuel treated as earnings**

- (1) If in a tax year—
  - (a) fuel is provided for a van by reason of an employee's employment,
  - (b) that person is chargeable to tax in respect of the van by virtue of section 154, and
  - (c) the cash equivalent of the van for that year is that under section [<sup>F198</sup>155(1)(b)], the cash equivalent of the benefit of the fuel is to be treated as earnings from the employment for that year.
- (2) The cash equivalent of the benefit of the fuel is calculated in accordance with sections 161 to 164.
- (3) Fuel is to be treated as provided for a van, in addition to any other way in which it may be provided, if—
  - (a) any liability in respect of the provision of fuel for the van is discharged,

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- (b) a non-cash voucher or a credit-token is used to obtain fuel for the van,
- (c) a non-cash voucher or a credit-token is used to obtain money which is spent on fuel for the van, or
- (d) any sum is paid in respect of expenses incurred in providing fuel for the van.

<sup>F199</sup>(4) . . . . .]

#### Textual Amendments

**F198** Word in s. 160(1) substituted (with effect for the tax year 2010-11 and subsequent tax years in accordance with s. 58(18) of the amending Act) by [Finance Act 2010 \(c. 13\), s. 58\(14\)\(a\)](#)

**F199** S. 160(4) omitted (with effect for the tax year 2010-11 and subsequent tax years in accordance with s. 58(18) of the amending Act) by virtue of [Finance Act 2010 \(c. 13\), s. 58\(14\)\(b\)](#)

#### <sup>F194</sup>161 Van fuel: the cash equivalent

The cash equivalent of the benefit of the fuel is—

- (a) where the tax year is the tax year 2005-06 or 2006-07, nil, and
- (b) where the tax year is a later tax year, [<sup>F200</sup>£564].]

#### Textual Amendments

**F200** Sum in s. 161(b) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Car and Van Fuel Benefit Order 2012 \(S.I. 2012/3037\), arts. 1\(2\), 3](#)

#### <sup>F194</sup>162 Van fuel: nil cash equivalent

- (1) The cash equivalent of the benefit of the fuel is nil if condition A or B is met.
- (2) Condition A is met if in the tax year in question—
  - (a) the employee is required to make good to the person providing the fuel the whole of the expense incurred by that person in connection with the provision of the fuel for the employee's private use, and
  - (b) the employee does make good that expense.
- (3) Condition B is met if in the tax year in question the fuel is made available only for business travel (see section 171(1)).]

#### <sup>F194</sup>163 Van fuel: proportionate reduction of cash equivalent

- (1) The cash equivalent of the benefit of the fuel is to be proportionately reduced if for any part of the tax year in question the van for which the fuel is provided is unavailable (within the meaning of section 156 (reduction for periods when van unavailable)).
- (2) But if section 159 (van temporarily replaced) applies—
  - (a) section 160 applies as if the replacement van were the normal van, and
  - (b) for the purposes of subsection (1) the replacement van is to be treated as unavailable on the days during the period on which it replaces the normal van.
- (3) The cash equivalent of the benefit of the fuel is also to be proportionately reduced if for any part of the tax year in question—

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- (a) the facility for the provision of fuel as mentioned in section 160 (1) is not available,
  - (b) the fuel is made available only for business travel (see section 171(1)), or
  - (c) the employee is required to make good to the person providing the fuel the whole of the expense incurred by that person in connection with the provision of the fuel for the employee's private use and the employee does make good that expense.
- (4) The fact that any of the conditions specified in subsection (3) is met for part of a tax year is to be disregarded if there is a time later in that year when none of those conditions is met.
- (5) Where the cash equivalent is to be proportionately reduced under subsection (1) or (3) (or under both those subsections), the reduced amount is given by the formula—

$$CE \times YDY$$

where—

CE is the amount of the cash equivalent before any reduction,

Y is the number of days in the tax year in question, and

D is the total number of days in the tax year on which either the van is unavailable or one or more of the conditions in subsection (3) is met.]

#### [<sup>F194</sup>164 Van fuel: reduction of cash equivalent

If a reduction of the cash equivalent of the benefit of the van for which the fuel is provided is made under section 157 (reduction of cash equivalent where van is shared), a corresponding reduction is to be made in relation to the cash equivalent of the benefit of the fuel.]

#### *Cars and vans: exceptions*

#### 167 Pooled cars

- (1) This section applies to a car in relation to a particular tax year if for that year the car has been included in a car pool for the use of the employees of one or more employers.
- (2) For that tax year the car—
  - (a) is to be treated under section 114(1) (cars to which this Chapter applies) as not having been available for the private use of any of the employees concerned, and
  - (b) is not to be treated in relation to the employees concerned as an employment-related benefit within the meaning of Chapter 10 of this Part (taxable benefits: residual liability to charge) (see section 201).
- (3) In relation to a particular tax year, a car is included in a car pool for the use of the employees of one or more employers if in that year—
  - (a) the car was made available to, and actually used by, more than one of those employees,
  - (b) the car was made available, in the case of each of those employees, by reason of the employee's employment,

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- (c) the car was not ordinarily used by one of those employees to the exclusion of the others,
- (d) in the case of each of those employees, any private use of the car made by the employee was merely incidental to the employee's other use of the car in that year, and
- (e) the car was not normally kept overnight on or in the vicinity of any residential premises where any of the employees was residing, except while being kept overnight on premises occupied by the person making the car available to them.

### **168 Pooled vans**

- (1) This section applies to a van in relation to a particular tax year if for that year the van has been included in a van pool for the use of the employees of one or more employers.
- (2) For that tax year the van—
  - (a) is to be treated under section 114(1) (vans to which this Chapter applies) as not having been available for the private use of any of the employees concerned, and
  - (b) is not to be treated in relation to the employees concerned as an employment-related benefit within the meaning of Chapter 10 of this Part (taxable benefits: residual liability to charge) (see section 201).
- (3) In relation to a particular tax year, a van is included in a van pool for the use of the employees of one or more employers if in that year—
  - (a) the van was made available to, and actually used by, more than one of those employees,
  - (b) the van was made available, in the case of each of those employees, by reason of the employee's employment,
  - (c) the van was not ordinarily used by one of those employees to the exclusion of the others,
  - (d) in the case of each of those employees, any private use of the van made by the employee was merely incidental to the employee's other use of the van in that year, and
  - (e) the van was not normally kept overnight on or in the vicinity of any residential premises where any of the employees was residing, except while being kept overnight on premises occupied by the person making the van available to them.

### **169 Car available to more than one member of family or household employed by same employer**

- (1) This section applies where—
  - (a) an employee ("E") and a member of the employee's family or household ("M") are employed by the same employer, and
  - (b) as a result of a car being made available to M in a tax year, E would (apart from this section) be chargeable to tax in respect of the car in that year by virtue of section 120.
- (2) The cash equivalent of the benefit of the car and of any fuel provided for the car by reason of E's employment is not to be treated as E's earnings for that year if—

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- (a) M is chargeable to tax in respect of the car in that year by virtue of section 120, or
  - (b) where M's employment is an excluded employment, M had the benefit of the car in M's own right as an employee and condition A or B is met.
- (3) Condition A is met if equivalent cars are made available on the same terms to employees who—
- (a) are in similar employment to M with the same employer, and
  - (b) are not members of the family or household of employees of that employer who are employed in employment which is not an excluded employment.
- (4) Condition B is met if the making available of an equivalent car is in accordance with the normal commercial practice for an employment of the kind held by M.

**[<sup>F201</sup>169A] Van available to more than one member of family or household employed by same employer**

- (1) This section applies where—
- (a) an employee ("E") and a member of the employee's family or household ("M") are employed by the same employer, and
  - (b) as a result of a van being made available to M in a tax year, E would (apart from this section) be chargeable to tax in respect of the van in that year by virtue of section 154.
- (2) The cash equivalent of the benefit of the van and of any fuel provided for the van by reason of E's employment is not to be treated as E's earnings for that year if—
- (a) M is chargeable to tax in respect of the van in that year by virtue of section 154, or
  - (b) where M's employment is an excluded employment, M had the benefit of the van in M's own right as an employee and condition A or B is met.
- (3) Condition A is met if equivalent vans are made available on the same terms to employees who—
- (a) are in similar employment to M with the same employer, and
  - (b) are not members of the family or household of employees of that employer who are employed in employment which is not an excluded employment.
- (4) Condition B is met if the making available of an equivalent van is in accordance with the normal commercial practice for an employment of the kind held by M.]

**Textual Amendments**

**F201** S. 169A inserted (with effect in accordance with s. 80(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 14 para. 6](#)

*Orders*

**170 Orders etc. relating to this Chapter**

- (1) The Treasury may by order substitute a greater amount for that for the time being specified in—



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- <sup>F202</sup>(a) .....
- (b) section 126(3)(d) (car: minimum price of later accessory),
  - (c) section 132(3)(b) (car: maximum contributions deduction),
  - (d) section 147(1)(b) (classic car: minimum value), or
  - (e) section 147(7)(b) (classic car: maximum contributions deduction).

<sup>F203</sup>(1A) The Treasury may by order substitute a different amount for that for the time being specified in—

- (a) section <sup>F204</sup>155(1)(a) (cash equivalent where van subject only to restricted private use by employee <sup>F205</sup>or a zero-emission van)), and
- (b) section <sup>F206</sup>155(1)(b) (cash equivalent in other cases).]

(2) An order under subsection (1) <sup>F207</sup>or (1A)] must specify the tax years to which it applies.

<sup>F208</sup>(2A) .....

(3) The Treasury may by order provide for a “<sup>F209</sup>relevant] threshold” different from that specified in <sup>F210</sup>section 139(5)] (car with a CO<sub>2</sub> emissions figure) to apply for tax years beginning on or after <sup>F211</sup>6th April <sup>F212</sup>2013]] or such later date as may be specified in the order.

(4) The Treasury may by regulations provide for the value of the appropriate percentage as determined under sections 139 to 141 to be reduced—

- (a) by such amount,
- (b) in such circumstances, and
- (c) subject to such conditions,

as may be prescribed in the regulations.

(5) The Treasury may by order substitute a different amount for that specified in section 150(1) (car fuel: cash equivalent) <sup>F213</sup>or section 161(b) (van fuel: cash equivalent)].

(6) An order under subsection (5) must specify the tax years to which it applies, being tax years beginning after that in which it is made.

#### Textual Amendments

**F202** S. 170(1)(a) omitted (with effect in accordance with Sch. 28 para. 10(2) of the amending Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 28 para. 5](#)

**F203** S. 170(1A) inserted (with effect in accordance with s. 80(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 14 para. 7\(2\)](#)

**F204** Word in s. 170(1A)(a) substituted (with effect for the tax year 2010-11 and subsequent tax years in accordance with s. 58(18) of the amending Act) by [Finance Act 2010 \(c. 13\)](#), s. 58(15)(a)

**F205** Words in s. 170(1A)(a) inserted (with effect for the tax year 2010-11 and subsequent tax years in accordance with s. 58(18) of the amending Act) by [Finance Act 2010 \(c. 13\)](#), [s. 58\(15\)\(a\)](#)

**F206** Word in s. 170(1A)(b) substituted (with effect for the tax year 2010-11 and subsequent tax years in accordance with s. 58(18) of the amending Act) by [Finance Act 2010 \(c. 13\)](#), [s. 58\(15\)\(b\)](#)

**F207** Words in s. 170(2) inserted (with effect in accordance with s. 80(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 14 para. 7\(3\)](#)

**F208** S. 170(2A) omitted (with effect in accordance with s. 59(5) of the amending Act) by virtue of [Finance Act 2010 \(c. 13\)](#), [s. 59\(3\)\(a\)](#)

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- F209** Word in s. 170(3) substituted (with effect in accordance with s. 59(5) of the amending Act) by [Finance Act 2010 \(c. 13\), s. 59\(3\)\(b\)\(i\)](#)
- F210** Words in s. 170(3) substituted (with effect in accordance with s. 59(5) of the amending Act) by [Finance Act 2010 \(c. 13\), s. 59\(3\)\(b\)\(ii\)](#)
- F211** Words in s. 170(3) substituted (10.7.2003) by [Finance Act 2003 \(c. 14\), s. 138\(4\)](#)
- F212** Word in s. 170(3) substituted (with effect in accordance with s. 59(5) of the amending Act) by [Finance Act 2010 \(c. 13\), s. 59\(3\)\(b\)\(iii\)](#)
- F213** Words in s. 170(5) inserted (with effect in accordance with s. 80(2) of the amending Act) by [Finance Act 2004 \(c. 12\), Sch. 14 para. 7\(4\)](#)

### *Supplementary*

#### **171 Minor definitions: general**

(1) In this Chapter—

“business travel”, in relation to any employee, means travelling the expenses of which, if incurred and paid by the employee, would (if Chapter 2 of Part 4 did not apply) be deductible under sections 337 to 342, section 353 or under Chapter 5 of Part 5 (other than section 377);

“diesel” means any diesel fuel within the definition in Article 2 of Directive [98/70/EC](#) of the European Parliament and of the Council;

“EC certificate of conformity” means a certificate of conformity issued by a manufacturer under any provision of the law of a Member State implementing Article 6 of Council Directive [70/156/EEC](#), as amended;

“EC type-approval certificate” means a type-approval certificate issued under any provision of the law of a Member State implementing Council Directive [70/156/EEC](#), as amended;

“relevant taxes” means any car tax, any value added tax, any customs or excise duty and any tax chargeable as if it were a customs duty;

“road fuel gas” means any substance which is gaseous at a temperature of 15°C and under a pressure of 1013.25 millibars, and which is for use as fuel in road vehicles;

“UK approval certificate” means a certificate issued under—

- (a) section 58(1) or (4) of the Road Traffic Act 1988 (c. 52), or
- (b) Article 31A(4) or (5) of the Road Traffic (Northern Ireland) Order 1981 (S.I. 1981/154 (N.I. 1)).

(2) In this Chapter references to the date of first registration in relation to a car <sup>F214</sup>... are to the date on which the vehicle was first registered under VERA 1994 or under corresponding legislation of any country or territory.

(3) In this Chapter references to the age of a car <sup>F215</sup>... at any time are to the interval between the date of first registration of the vehicle and that time.

(4) In this Chapter “disabled person’s badge” means a badge—

- (a) which is issued to a disabled person under section 21 of the Chronically Sick and Disabled Persons Act 1970 (c. 44) or section 14 of the Chronically Sick and Disabled Persons (Northern Ireland) Act 1978 (c. 53), or has effect as if it had been issued under one of those provisions, and
- (b) which is not required to be returned to the issuing authority under or by virtue of the provision referred to in paragraph (a).

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### Textual Amendments

- F214** Words in s. 171(2) repealed (with effect in accordance with Sch. 42 Pt. 2(9) of the repealing Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 2\(9\)](#)
- F215** Words in s. 171(3) repealed (with effect in accordance with Sch. 42 Pt. 2(9) of the repealing Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 2\(9\)](#)

## 172 Minor definitions: equipment to enable a disabled person to use a car

- (1) In section 125(2)(c) “equipment to enable a disabled person to use a car” means equipment—
- which is designed solely for use by a chronically sick or disabled person, or
  - which is made available for use with the car because it enables a disabled employee to use the car in spite of the disability.
- (2) In this section—
- “disabled employee” means an employee who, at the time when the car is first made available to the employee, holds a disabled person’s badge, and
- “the disability” means the disability entitling the disabled employee to hold the disabled person’s badge.

## CHAPTER 7

### TAXABLE BENEFITS: LOANS

### Modifications etc. (not altering text)

- C8** Pt. 3 Ch. 7 extended (with modifications) (with effect in accordance with s. 97(3) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [s. 97\(1\)\(2\)](#)

### Introduction

## 173 Loans to which this Chapter applies

- (1) This Chapter applies to a loan if it is an employment-related loan.
- (2) In this Chapter—
- “loan” includes any form of credit, and
  - references to making a loan (and related expressions) include arranging, guaranteeing or in any way facilitating a loan.
- (3) Sections 288 and 289 make provision for exemption and relief for certain bridging loans connected with employment moves.

## [<sup>F216</sup>173A] Alternative finance arrangements

- (1) For the purposes of this Chapter a reference to a loan includes a reference to arrangements—

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- (a) to which section 564C of ITA 2007 or section 503 of CTA 2009 (purchase and resale arrangements) applies (or would apply assuming one of the parties were a financial institution), or
  - (b) to which section 564D of ITA 2007 or section 504 of CTA 2009 (diminishing shared ownership arrangements) applies (or would apply on that assumption).
- (2) In the application of this Chapter as a result of this section, a reference to interest is to be treated as including alternative finance return (or anything that would be such return on that assumption).
- (3) In the application of this Chapter as a result of this section, a reference to the amount outstanding is to be taken—
- (a) in the case of arrangements within subsection (1)(a), as a reference to the purchase price minus such part of the aggregate payments made as does not represent alternative finance return (or anything that would be such return on that assumption),
  - (b) in the case of arrangements to which section 564D of ITA 2007 or section 504 of CTA 2009 applies, as a reference to the amount of the financial institution's original beneficial interest minus such part of the aggregate payments made as does not represent alternative finance return, and
  - (c) in the case of arrangements to which section 564D of ITA 2007 or section 504 of CTA 2009 would apply assuming one of the parties were a financial institution, as a reference to the amount of that party's original beneficial interest minus such part of the aggregate payments made as does not represent anything that would be alternative finance return on that assumption.
- (4) In this section—
- “alternative finance return” has the meaning given in sections 564I to 564L of ITA 2007 or sections 511 to 513 of CTA 2009, and
  - “financial institution” has the meaning given in section 564B of ITA 2007 or section 502 of CTA 2009.
- (5) This section does not apply to arrangements entered into before 22 March 2006.]

#### Textual Amendments

**F216** S. 173A inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 2 para. 49](#) (with [Sch. 9 paras. 1-9, 22](#))

## 174 Employment-related loans

- (1) For the purposes of this Chapter an employment-related loan is a loan—
- (a) made to an employee or a relative of an employee, and
  - (b) of a class described in subsection (2).
- (2) For the purposes of this Chapter the classes of employment-related loan are—
- A*
- A loan made by the employee's employer.
- B*

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A loan made by a company or partnership over which the employee's employer had control.

C

A loan made by a company or partnership by which the employer (being a company or partnership) was controlled.

D

A loan made by a company or partnership which was controlled by a person by whom the employer (being a company or partnership) was controlled.

E

A loan made by a person having a material interest in—

- (a) a close company which was the employer, had control over the employer or was controlled by the employer, or
- (b) a company or partnership controlling that close company.

(3) In this section—

“employee” includes a prospective employee, and  
“employer” includes a prospective employer.

(4) References in this section to a loan being made by a person extend to a person who—

- (a) assumes the rights and liabilities of the person who originally made the loan, or
- (b) arranges, guarantees or in any way facilitates the continuation of a loan already in existence.

(5) A loan is not an employment-related loan if—

- (a) it is made by an individual in the normal course of the individual's domestic, family or personal relationships, or
- (b) it is made to a relative of the employee and the employee derives no benefit from it.

(6) For the purposes of this section a person (“X”) is a relative of another (“Y”) if X is—

- (a) Y's spouse [<sup>F217</sup>or civil partner] ,
- (b) a parent, child or remoter relation in the direct line either of Y or of Y's spouse [<sup>F217</sup>or civil partner] ,
- (c) a brother or sister of Y or of Y's spouse [<sup>F217</sup>or civil partner] , or
- (d) the spouse [<sup>F217</sup>or civil partner] of a person falling within paragraph (b) or (c).

#### Textual Amendments

**F217** Words in s. 174(6) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **141**

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### *Benefit of taxable cheap loan treated as earnings*

#### **175 Benefit of taxable cheap loan treated as earnings**

- (1) The cash equivalent of the benefit of an employment-related loan is to be treated as earnings from the employee's employment for a tax year if the loan is a taxable cheap loan in relation to that year.
- (2) For the purposes of this Chapter an employment-related loan is a "taxable cheap loan" in relation to a particular tax year if—
  - (a) there is a period consisting of the whole or part of that year during which the loan is outstanding and the employee holds the employment,
  - (b) no interest is paid on it for that year, or the amount of interest paid on it for that year is less than the interest that would have been payable at the official rate, and
  - (c) none of the exceptions in sections 176 to 179 apply.
- (3) The cash equivalent of the benefit of an employment-related loan for a tax year is the difference between—
  - (a) the amount of interest that would have been payable on the loan for that year at the official rate, and
  - (b) the amount of interest (if any) actually paid on the loan for that year.
- (4) If there are two or more employment-related loans, this section applies to each separately.
- (5) This section is subject to—
  - section 180 (threshold for benefit of loan to be treated as earnings);
  - section 186 (replacement loans).

#### **176 Exception for loans on ordinary commercial terms**

- (1) A loan on ordinary commercial terms is not a taxable cheap loan.
- (2) In this section a "loan on ordinary commercial terms" means a loan—
  - (a) made by a person ("the lender") in the ordinary course of a business carried on by the lender which includes—
    - (i) the lending of money, or
    - (ii) the supplying of goods or services on credit, and
  - (b) in relation to which condition A, B or C is met.
- (3) Condition A is met if—
  - (a) at the time the loan was made comparable loans were available to all those who might be expected to avail themselves of the services provided by the lender in the course of the lender's business,
  - (b) a substantial proportion of the loans (consisting of the loan in question and the comparable loans) made by the lender at or about the time the loan in question was made were made to members of the public,
  - (c) the loan in question is held on the same terms as comparable loans generally made by the lender to members of the public at or about the time the loan in question was made, and

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- (d) where those terms differ from the terms applicable immediately after the loan in question was first made, they were imposed in the ordinary course of the lender's business.
- (4) For the purposes of condition A a loan is comparable to another loan if it is made for the same or similar purposes and on the same terms and conditions.
- (5) Condition B is met if—
- (a) the loan has been varied before 6th April 2000,
  - (b) a substantial proportion of the relevant loans were made to members of the public,
  - (c) the loan in question is held on the same terms as relevant loans generally made by the lender to members of the public at or about the relevant time, and
  - (d) where those terms differ from the terms applicable immediately after the relevant time, they were imposed in the ordinary course of the lender's business.
- (6) Condition C is met if—
- (a) the loan has been varied on or after 6th April 2000,
  - (b) a substantial proportion of the relevant loans were made to members of the public,
  - (c) at the relevant time members of the public who had loans from the lender for similar purposes had a right to vary their loans on the same terms and conditions as applied in relation to the variation of the loan in question,
  - (d) the loan in question as varied is held on the same terms as any existing loans so varied, and
  - (e) where those terms differ from the terms applicable immediately after the relevant time, they were imposed in the ordinary course of the lender's business.
- (7) For the purposes of condition B and C—
- (a) the “relevant time” is the time of the variation of the loan in question, and
  - (b) the “relevant loans” are—
    - (i) the loan in question,
    - (ii) any existing loans which were varied at or about the relevant time so as to be held on the same terms as the loan in question after it was varied, and
    - (iii) any new loans which were made by the lender at or about that time and are held on those terms.
- (8) No account is to be taken of amounts which are incurred on fees, commission or other incidental expenses by the person to whom a loan is made for the purpose of obtaining the loan—
- (a) in determining for the purposes of condition A whether loans made by a lender before 1st June 1994 are made or held on the same terms or conditions, or
  - (b) in determining for the purposes of condition B or C whether rights to vary loans are exercisable on the same terms and conditions or loans are held on the same terms.
- (9) No account is to be taken of amounts which are incurred on penalties, interest or similar amounts by the person to whom a loan is made as a result of varying the loan in

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determining for the purposes of condition B or C whether rights to vary loans are exercisable on the same terms and conditions or loans are held on the same terms.

- (10) For the purposes of this section a “member of the public” means a member of the public at large with whom the lender deals at arm’s length.

### 177 Exceptions for loans at fixed rate of interest

- (1) A fixed rate loan made on or after 6th April 1978 is not a taxable cheap loan by reason only of an increase in the official rate of interest since the year in which the loan was made if the condition in subsection (2) is met.
- (2) The condition in this subsection is met if the amount of interest paid on the loan for the tax year in which it was made was equal to or greater than the interest that would have been payable at the official rate for that year.
- (3) A fixed rate loan made before 6th April 1978 is not a taxable cheap loan if the condition in subsection (4) is met.
- (4) The condition in this subsection is met if the rate of interest for the loan is equal to or greater than the rate which could have been expected to apply to a loan made—
  - (a) at the same time as the loan in question,
  - (b) on the same terms (other than as to the rate of interest), and
  - (c) between persons not connected with each other dealing at arm’s length.
- (5) In this section a “fixed rate loan” means a loan—
  - (a) made for a fixed period which cannot be changed, and
  - (b) made at a fixed rate of interest which cannot be changed during that period.

### 178 Exception for loans where interest qualifies for tax relief

A loan is not a taxable cheap loan in relation to a particular tax year if, assuming interest is paid on the loan for that year (whether or not it is in fact paid), the whole of that interest—

- (a) is eligible for relief under section 353 of ICTA<sup>[F218]</sup> or section 383 of ITA 2007 (relief for interest payments)],
- (b) would be eligible for relief under <sup>[F219]</sup>section 353 of ICTA] but for the fact that it is a payment of relevant loan interest to which section 369 of ICTA applies (mortgage interest payable under deduction of tax),
- (c) is deductible in computing the amount of the profits to be charged <sup>[F220]</sup>to tax] in respect of a trade, profession or vocation carried on <sup>[F221]</sup>wholly or partly in the United Kingdom] by the person to whom the loan is made, or
- (d) is deductible in computing the amount of the profits to be charged <sup>[F222]</sup>to tax in respect of a UK property business <sup>[F223]</sup>(within the meaning of Chapter 2 of Part 3 of ITTOIA 2005 or Chapter 2 of Part 4 of CTA 2009)] carried on by that person.

#### Textual Amendments

**F218** Words in s. 178(a) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 431\(a\)](#) (with [Sch. 2](#))



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- F219** Words in s. 178(b) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 1 para. 431(b)** (with [Sch. 2](#))
- F220** Words in s. 178(c) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), **Sch. 1 para. 587(a)(i)** (with [Sch. 2](#))
- F221** Words in s. 178(c) inserted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), **Sch. 1 para. 587(a)(ii)** (with [Sch. 2](#))
- F222** Words in s. 178(d) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), **Sch. 1 para. 587(b)** (with [Sch. 2](#))
- F223** Words in s. 178(d) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), **Sch. 1 para. 550** (with [Sch. 2 Pts. 1, 2](#))

## 179 Exception for certain advances for necessary expenses

- (1) An advance by an employer to an employee for the purpose of paying for—
- necessary expenses, or
  - incidental overnight expenses,
- is not a taxable cheap loan in relation to a particular tax year if the following conditions are met.
- (2) The conditions are—
- that at all times in the tax year in question the amount outstanding on such advances made by the employer to the employee does not exceed £1,000,
  - that the advance is spent within 6 months after the date on which it is made, and
  - that the employee accounts to the employer at regular intervals for the expenditure of the amount advanced.
- (3) If, on an application made by the employer, [<sup>F224</sup>an officer of Revenue and Customs is] satisfied that there is good reason to do so in the case of a particular advance, [<sup>F225</sup>the officer] may authorise that either or both of the following limits are increased in relation to that advance—
- the sum of money specified in subsection (2)(a);
  - the time limit specified in subsection (2)(b).
- (4) An application under subsection (3)—
- must be in writing, and
  - must contain such particulars and be supported by such evidence as [<sup>F106</sup>an officer of Revenue and Customs] may require.
- (5) In this section “necessary expenses” are expenses (including travel expenses) which—
- the employee is obliged to incur and pay as holder of the employment, and
  - are necessarily incurred in the performance of the duties of the employment.
- (6) In this section “incidental overnight expenses” are expenses which—
- are incidental to the employee’s absence from the place where the employee normally lives,
  - relate to a continuous period of such absence in relation to which the overnight stay conditions are met, and
  - would not be deductible under Part 5 if the employee incurred and paid them and Chapter 2 of Part 4 (mileage allowances and passenger payments) did not apply.

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- (7) In subsection (6)(b) “the overnight stay conditions” has the same meaning as in section 240 (exemption for incidental overnight expenses) (see section 240(4)).

#### Textual Amendments

- F106** Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 102\(1\)](#); S.I. 2005/1126, art. 2(2)(h)
- F224** Words in s. 179(3) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 109](#); S.I. 2005/1126, art. 2(2)(h)
- F225** Words in s. 179(3) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 103\(1\)\(e\)](#); S.I. 2005/1126, art. 2(2)(h)

### 180 Threshold for benefit of loan to be treated as earnings

- (1) The cash equivalent of the benefit of an employment-related loan is not to be treated as earnings of the employment for a tax year under section 175(1)—
- (a) if the normal £5,000 threshold is not exceeded, or
  - (b) where the loan is a non-qualifying loan and that threshold is exceeded, if the £5,000 threshold for non-qualifying loans is not exceeded.
- (2) The normal £5,000 threshold is not exceeded if at all times in the year the amount outstanding on the loan (or, if two or more employment-related loans which are taxable cheap loans are outstanding in the year, the aggregate of the amount outstanding on them) does not exceed £5,000.
- (3) The £5,000 threshold for non-qualifying loans is not exceeded if at all times in the year the amount outstanding on the loan (or if two or more employment-related loans which are non-qualifying loans are outstanding in the year, the aggregate of the amounts outstanding on them) does not exceed £5,000.
- (4) In this section a “non-qualifying loan” means a taxable cheap loan which is not a qualifying loan.
- (5) For the purposes of this section a loan is a “qualifying loan” in relation to a particular tax year if, assuming interest is paid on the loan for that year (whether or not it is in fact paid), the whole or part of that interest—
- (a) is eligible for relief under section 353 of ICTA [<sup>F226</sup>or section 383 of ITA 2007 (relief for interest payments)],
  - (b) would be eligible for relief under [<sup>F227</sup>section 353 of ICTA] but for the fact that it is a payment of relevant loan interest to which section 369 of ICTA applies (mortgage interest payable under deduction of tax),
  - (c) is deductible in computing the amount of the profits to be charged [<sup>F228</sup>to tax] in respect of a trade, profession or vocation carried on [<sup>F229</sup>wholly or partly in the United Kingdom] by the person to whom the loan is made, or
  - (d) is deductible in computing the amount of the profits to be charged [<sup>F230</sup>to tax in respect of a UK property business [<sup>F231</sup>(within the meaning of Chapter 2 of Part 3 of ITTOIA 2005 or Chapter 2 of Part 4 of CTA 2009)]] carried on by that person.

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### Textual Amendments

- F226** Words in s. 180(5)(a) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 432\(a\)](#) (with [Sch. 2](#))
- F227** Words in s. 180(5)(b) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 432\(b\)](#) (with [Sch. 2](#))
- F228** Words in s. 180(5)(c) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 588\(a\)\(i\)](#) (with [Sch. 2](#))
- F229** Words in s. 180(5)(c) inserted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 588\(a\)\(ii\)](#) (with [Sch. 2](#))
- F230** Words in s. 180(5)(d) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 588\(b\)](#) (with [Sch. 2](#))
- F231** Words in s. 180(5)(d) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 551](#) (with [Sch. 2 Pts. 1, 2](#))

### *Calculation of amount of interest at official rate*

#### **181 The official rate of interest**

- (1) “The official rate of interest” for the purposes of this Chapter means the rate applicable under section 178 of FA 1989 (general power of Treasury to specify rates of interest).
- (2) Regulations under that section may make different provision in relation to a loan if—
  - (a) it was made in the currency of a country or territory outside the United Kingdom, and
  - (b) the employee normally lives in that country or territory, and has actually lived there at some time in the period of 6 years ending with the tax year in question.
- (3) Subsection (2) does not affect the general power under section 178(3) of FA 1989 to make different provision for different purposes.

#### **182 Normal method of calculation: averaging**

The normal method of calculating for the purposes of this Chapter the amount of interest that would be payable on a loan for a tax year at the official rate is as follows.

##### *Step 1*

Calculate the average amount of the loan outstanding during the tax year—

1. Find the maximum amount of the loan outstanding on 5th April preceding the tax year or, if the loan was made in the tax year, on the date it was made.
2. Find the maximum amount outstanding on 5th April of the tax year or, if the loan was discharged in the tax year, on the date of discharge.
3. Add these amounts together and divide the result by 2.

##### *Step 2*

If the official rate of interest changed during the period in the tax year when the loan was outstanding, calculate the average official rate of interest for that period as follows—

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1. Multiply each official rate of interest in force during the period by the number of days when it is in force.
2. Add these products together.
3. Divide the result by the number of days in the period.

*Step 3*

Calculate the amount of interest that would be payable on the loan for the tax year at the official rate as follows—

$$A \times I \times \frac{M}{12}$$

where—

A is the average amount of the loan outstanding during the tax year obtained from step 1,

I is the official rate of interest in force during the period in the tax year when the loan was outstanding or, if the official rate changed, the average official rate of interest obtained from step 2, and

M is the number of whole months during which the loan was outstanding in the year.

For this purpose a month begins on the sixth day of the calendar month.

### 183 **Alternative method of calculation**

- (1) The alternative method of calculating for the purposes of this Chapter the amount of interest that would be payable on a loan for a tax year at the official rate applies for a tax year—
  - (a) if [<sup>F106</sup>an officer of Revenue and Customs] so [<sup>F232</sup>requires] , by notice to the employee, or
  - (b) if the employee so elects, by notice to [<sup>F106</sup>an officer of Revenue and Customs]
- (2) Notice may be given on or before the first anniversary of the normal self-assessment filing date for the tax year in relation to which the question arises whether the loan is a taxable cheap loan.
- (3) The alternative method is as follows—

*Step 1*

Find for each day in the tax year in question the maximum amount of the loan outstanding on that day and multiply it by the official rate of interest in force on that day.

*Step 2*

Add together each of the amounts obtained under step 1.

*Step 3*

Divide the result by the number of days in the tax year.

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- (4) Where in any tax year the cash equivalent of the benefit of the same taxable cheap loan is to be treated as earnings of two or more employees then, for the purposes of determining the cash equivalent of the benefit of the loan, the alternative method applies if—
- (a) the notice under subsection (1)(a) is given to all those employees, or
  - (b) the notice under subsection (1)(b) is given by all those employees.

#### Textual Amendments

- F106** Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 102\(1\)](#); S.I. 2005/1126, art. 2(2)(h)
- F232** Word in s. 183(1)(a) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 110](#); S.I. 2005/1126, art. 2(2)(h)

#### *Supplementary provisions relating to taxable cheap loans*

### **184 Interest treated as paid**

- (1) This section applies where the cash equivalent of the benefit of a taxable cheap loan is treated as earnings from an employee's employment for a tax year under section 175(1).
- (2) The employee is to be treated for the purposes of the Tax Acts as having paid interest on the loan in that year equal to the cash equivalent.
- (3) But the employee is not to be treated as having paid that interest for the purposes of this Chapter or of any of the other Chapters of this Part listed in section 216(4) (provisions of the benefits code which do not apply to lower-paid employment).
- (4) The interest is to be treated—
- (a) as accruing during the period in the tax year during which the employee holds the employment and the loan is outstanding, and
  - (b) as paid by the employee at the end of the period.
- (5) The interest is not to be treated—
- (a) as income of the person making the loan, or
  - (b) as relevant loan interest to which section 369 of ICTA applies (mortgage interest payable under deduction of tax).

### **185 Apportionment of cash equivalent in case of joint loan etc.**

Where in any tax year the cash equivalent of the benefit of the same taxable cheap loan is to be treated as earnings of two or more employees—

- (a) the cash equivalent of the benefit of the loan (determined in accordance with the provisions of this Chapter) is to be apportioned between them in a just and reasonable manner, and
- (b) the portion allocated to each employee is to be treated as the cash equivalent of the benefit of the loan so far as that employee is concerned.

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## 186 Replacement loans

- (1) This section applies where an employment-related loan (“the original loan”) is replaced, directly or indirectly, by—
  - (a) a further employment-related loan, or
  - (b) a loan which is not an employment-related loan but which in turn is, in the same tax year or within 40 days after the end of the tax year, replaced, directly or indirectly, by a further employment-related loan.
- (2) In such a case, for the purposes of calculating the cash equivalent of the benefit of the original loan under section 175(3), section 182 (normal method of calculating interest at the official rate) applies as if the replacement loan, or each of the replacement loans, were the same loan as the original loan.
- (3) Where section 182 is applied as modified by subsection (2) then for the purposes of section 175(3)(b) the amount of interest actually paid on the loan for the tax year in question is the total of—
  - (a) the amount of interest actually paid on the original loan for that year, and
  - (b) the amount of interest actually paid on the replacement loan or on each of the replacement loans for that year.
- (4) In this section a “further employment-related loan” means a loan which is an employment-related loan made in relation to—
  - (a) the same or other employment with the person who is the employer in relation to the original loan, or
  - (b) employment with a person who is connected with that employer.

## 187 Aggregation of loans by close company to director

- (1) This section applies where, in relation to any tax year, there are employment-related loans between the same lender and borrower which are aggregable with each other.
- (2) The lender may elect for aggregation to apply for that tax year in the case of the borrower.
- (3) The effect of the election is that all the aggregable loans are to be treated as a single loan for the purposes of—
  - section 175 (benefit of taxable cheap loan treated as earnings),
  - the provisions of this Chapter relating to the calculation of the cash equivalent of the benefit of a taxable cheap loan, and
  - section 184 (interest treated as paid).
- (4) For this purpose loans are aggregable for any tax year if they are made in the same currency and all the following conditions are met in relation to each of them—
  - (a) there is a time in the tax year when—
    - (i) the loan is outstanding,
    - (ii) the lender is a close company, and
    - (iii) the borrower is a director of that company;
  - (b) at all times in the tax year the rate of interest on the loan is less than the official rate applying at that time;
  - (c) the loan is not a qualifying loan within the meaning of section 180 (see section 180(5)).

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- (5) An election under this section must be made by the lender in a notice given—
- (a) to <sup>F106</sup>[an officer of Revenue and Customs] , and
  - (b) before 7th July after the end of the tax year to which the election relates.

#### Textual Amendments

**F106** Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 102\(1\)](#); S.I. 2005/1126, art. 2(2)(h)

### *Loan released or written off*

#### **188 Loan released or written off: amount treated as earnings**

- (1) If—
- (a) the whole or part of an employment-related loan is released or written off in a tax year, and
  - (b) at the time when it is released or written off the employee holds the employment in relation to which the loan is an employment-related loan (“employment E”),
- the amount released or written off is to be treated as earnings from the employment for that year.
- (2) But if the employment has terminated or become an excluded employment and there was a time when—
- (a) the whole or part of the loan was outstanding,
  - (b) the employee held the employment, and
  - (c) it was not an excluded employment,
- subsection (1) applies as if the employment had not terminated or become an excluded employment.
- (3) Where subsection (2) applies, any loan which replaces directly or indirectly the employment-related loan is to be treated as an employment-related loan in relation to employment E if—
- (a) it would, if employment E had not terminated or become excluded employment, have been an employment-related loan in relation to employment E, and
  - (b) it is not an employment-related loan in relation to other employment.
- (4) This section is subject to section 189 (exception where double charge).

#### **189 Exception where double charge**

- (1) Section 188 (loan released or written off: amount treated as earnings) does not apply if, by virtue of any other provision of the Income Tax Acts, the amount released or written off—
- (a) is employment income of the employee, or
  - (b) is or is treated as income of the employee (or of the employee as a borrower) which is not employment income and upon which that person is liable to pay income tax.

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This is subject to subsections (2) and (3).

- (2) If, as a result of subsection (1), Chapter 3 of Part 6 (payments and benefits on termination of employment etc.) would be the only provision by virtue of which the amount released or written off would be income of the employee—
- (a) section 188 does apply, and
  - (b) accordingly Chapter 3 of Part 6 does not apply.
- (3) If—
- (a) an amount is treated as the employee's income under [<sup>F233</sup>section 633 of ITTOIA 2005 (capital sums paid to settlor by trustees of settlement)] in respect of a capital sum paid in relation to the release or writing-off of the loan, and
  - (b) the amount released or written off exceeds the amount so treated as income, section 188 does apply but only the amount of the excess is to be treated as earnings from the employment for the tax year in question under that section.

#### **Textual Amendments**

**F233** Words in s. 189(3)(a) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 589](#) (with Sch. 2)

### *General supplementary provisions*

#### **190 Exclusion of charge after death of employee**

- (1) On the employee's death a taxable cheap loan is to be treated—
- (a) for the purposes of this Chapter as ceasing to be outstanding, and
  - (b) for the purposes of section 182 (normal method of calculating interest at the official rate) as being discharged on the date of death.
- (2) Section 188 (loan released or written off: amount treated as earnings) does not apply in relation to a release or writing off which takes effect on or after the death of the employee.

#### **191 Claim for relief to take account of event after assessment**

- (1) A claim may be made for relief in the following cases.
- (2) The first case is where—
- (a) the tax payable by an employee for a tax year in respect of a loan has been decided on the basis that, for the purposes of section 175 (benefit of taxable cheap loan treated as earnings), the whole or part of the interest payable on the loan for that year was not paid, and
  - (b) it is subsequently paid.
- (3) The second case is where—
- (a) the tax payable by an employee for a tax year in respect of a loan has been decided on that basis that, for the purposes of section 188 (loan released or written off: amount treated as earnings), the loan has been released or written off in that year, and



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- (b) the whole or part of the loan is subsequently repaid.
- (4) The third case is where—
  - (a) the tax payable by an employee for a tax year in respect of a loan has been decided on the basis that—
    - (i) section 288 (limited exemption of certain bridging loans connected with employment moves), and
    - (ii) section 289 (relief for certain bridging loans not qualifying for exemption under section 288),will not apply because the condition in section 288(1)(b) (which requires that the limit on the exemption under section 287(1) has not been reached) will not be met, and
  - (b) that condition is met.
- (5) Where a claim is made under this section the tax payable is to be adjusted accordingly.

## <sup>F234</sup>CHAPTER 8

### TAXABLE BENEFITS: NOTIONAL LOANS IN RESPECT OF ACQUISITIONS OF SHARES

#### Textual Amendments

**F234** Pt. 3 Ch. 8 repealed (with effect in accordance with Sch. 22 para. 22(2) of the amending Act) by Finance Act 2003 (c. 14), Sch. 22 para. 22(1), Sch. 43 Pt. 3(4)

#### *Introduction*

#### *Acquisition of shares for less than market value*

#### *Supplementary provisions*

## <sup>F235</sup>CHAPTER 9

### TAXABLE BENEFITS: DISPOSALS OF SHARES FOR MORE THAN MARKET VALUE

#### Textual Amendments

**F235** Pt. 3 Ch. 9 repealed (with effect in accordance with Sch. 22 para. 23(2) of the amending Act) by Finance Act 2003 (c. 14), Sch. 22 para. 23(1), Sch. 43 Pt. 3(4)

## 198 Shares to which this Chapter applies

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**199 Disposal for more than market value: amount treated as earnings**

.....

**200 Minor definitions**

.....

**CHAPTER 10**

TAXABLE BENEFITS: RESIDUAL LIABILITY TO CHARGE

*Introduction*

**201 Employment-related benefits**

- (1) This Chapter applies to employment-related benefits.
- (2) In this Chapter—
  - “benefit” means a benefit or facility of any kind;
  - “employment-related benefit” means a benefit, other than an excluded benefit, which is provided in a tax year—
    - (a) for an employee, or
    - (b) for a member of an employee’s family or household,

by reason of the employment. For the definition of “excluded benefit” see section 202.
- (3) A benefit provided by an employer is to be regarded as provided by reason of the employment unless—
  - (a) the employer is an individual, and
  - (b) the provision is made in the normal course of the employer’s domestic, family or personal relationships.
- (4) For the purposes of this Chapter it does not matter whether the employment is held at the time when the benefit is provided so long as it is held at some point in the tax year in which the benefit is provided.
- (5) References in this Chapter to an employee accordingly include a prospective or former employee.

**202 Excluded benefits**

- (1) A benefit is an “excluded benefit” for the purposes of this Chapter if—
  - (a) any of Chapters 3 to 9 of the benefits code applies to the benefit,
  - (b) any of those Chapters would apply to the benefit but for an exception, or
  - (c) the benefit consists in the right to receive, or the prospect of receiving, sums treated as earnings under section 221 (payments where employee absent because of sickness or disability).

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

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

#### *Cash equivalent of benefit treated as earnings*

### **203 Cash equivalent of benefit treated as earnings**

- (1) The cash equivalent of an employment-related benefit is to be treated as earnings from the employment for the tax year in which it is provided.
- (2) The cash equivalent of an employment-related benefit is the cost of the benefit less any part of that cost made good by the employee to the persons providing the benefit.
- (3) The cost of an employment-related benefit is determined in accordance with section 204 unless—
- (a) section 205 provides that the cost is to be determined in accordance with that section, or
  - (b) section 206 provides that the cost is to be determined in accordance with that section.

#### *Determination of the cost of the benefit*

### **204 Cost of the benefit: basic rule**

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

### **205 Cost of the benefit: asset made available without transfer**

- (1) The cost of an employment-related benefit (“the taxable benefit”) is determined in accordance with this section if—
- (a) the benefit consists in—
    - (i) an asset being placed at the disposal of the employee, or at the disposal of a member of the employee’s family or household, for the employee’s or member’s use, or
    - (ii) an asset being used wholly or partly for the purposes of the employee or a member of the employee’s family or household, and
  - (b) there is no transfer of the property in the asset.
- (2) The cost of the taxable benefit is the higher of—
- (a) the annual value of the use of the asset, and
  - (b) the annual amount of the sums, if any, paid by those providing the benefit by way of rent or hire charge for the asset, together with the amount of any additional expense.
- (3) For the purposes of subsection (2), the annual value of the use of an asset is—

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- (a) in the case of land, its annual rental value;
- (b) in any other case, 20% of the market value of the asset at the time when those providing the taxable benefit first applied the asset in the provision of an employment-related benefit (whether or not the person provided with that benefit is also the person provided with the taxable benefit).

If those providing the taxable benefit first applied the asset in the provision of an employment-related benefit before 6th April 1980, paragraph (b) is to be read as if the reference to 20% were a reference to 10%.

- (4) In this section “additional expense” means the expense incurred in or in connection with provision of the taxable benefit (including a proper proportion of any expense relating partly to provision of the benefit and partly to other matters), other than—
- (a) the expense of acquiring or producing the asset incurred by the person to whom the asset belongs, and
  - (b) any rent or hire charge payable for the asset by those providing the asset.

## **206 Cost of the benefit: transfer of used or depreciated asset**

- (1) The cost of an employment-related benefit is determined in accordance with this section if—
- (a) the benefit consists in the transfer of an asset, and
  - (b) the asset has been used, or has depreciated, since the person transferring the asset (“the transferor”) acquired or produced it.
- (2) The cost of the benefit is the market value of the asset at the time of the transfer.
- (3) But the cost of the benefit (“the current benefit”) is the higher of the market value of the asset at the time of the transfer and the amount calculated in accordance with subsection (5) if—
- (a) the asset is not [F236an excluded asset (see subsection (6))],
  - (b) the asset has previously been applied in the provision of a relevant employment-related benefit (whether or not the person provided with that benefit is also the transferee), and
  - (c) the transferor first applied the asset in the provision of an employment-related benefit after 5th April 1980.
- (4) In this section “relevant employment-related benefit” means an employment-related benefit the cost of which was to be determined in accordance with section 205.
- (5) The amount referred to in subsection (3) is calculated in accordance with the following steps—

### *Step 1*

Determine the tax years in which the asset was applied in the provision of a relevant employment-related benefit (including, if appropriate, the current tax year).

### *Step 2*

Determine the cost of the benefit for each of those tax years in accordance with section 205.

### *Step 3*

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Calculate the total of the amounts determined under step 2.

*Step 4*

Calculate the market value of the asset at the time when the transferor first applied it in the provision of an employment-related benefit.

*Step 5*

Deduct the total calculated under step 3 from the market value calculated under step 4.

The result is the amount referred to in subsection (3).

[<sup>F237</sup>(6) An excluded asset is—

- (a) a car (within the meaning of Chapter 6),
- (b) computer equipment that has previously been applied as mentioned in subsection (3)(b) in circumstances in which the conditions set out in section 320 were met, or
- (c) a cycle or cyclist's safety equipment that has previously been so applied in circumstances in which the conditions set out in section 244 were met.]

**Textual Amendments**

**F236** Words in s. 206(3)(a) substituted (with effect in accordance with s. 17(4) of the amending Act) by [Finance Act 2005 \(c. 7\), s. 17\(2\)](#)

**F237** S. 206(6) inserted (with effect in accordance with s. 17(4) of the amending Act) by [Finance Act 2005 \(c. 7\), s. 17\(3\)](#)

*Supplementary provisions*

**207 Meaning of “annual rental value”**

- (1) For the purposes of this Chapter the “annual rental value” of land is the rent which might reasonably be expected to be obtained on a letting from year to year if—
  - (a) the tenant undertook to pay all taxes, rates and charges usually paid by a tenant, and
  - (b) the landlord undertook to bear the costs of the repairs and insurance and other expenses (if any) necessary for maintaining the land in a state to command the rent.
- (2) For the purposes of subsection (1) that rent—
  - (a) is to be taken to be the amount that might reasonably be expected to be so obtained in respect of the letting, and
  - (b) is to be calculated on the basis that the only amounts that may be deducted in respect of services provided by the landlord are amounts in respect of the cost to the landlord of providing any relevant services.
- (3) If the land is of a kind that might reasonably be expected to be let on terms under which—
  - (a) the landlord is to provide any services which are either—
    - (i) relevant services, or

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- (ii) the repair, insurance or maintenance of any premises which do not form part of the land but belong to or are occupied by the landlord, and
- (b) amounts are payable in respect of the services in addition to the rent, the rent to be established under subsection (1) in respect of the land is to be increased under subsection (4).
- (4) That rent is to include—
  - (a) where the services are relevant services, so much of the additional amounts as exceeds the cost to the landlord of providing the services;
  - (b) where the services are within subsection (3)(a)(ii), the whole of the additional amounts.
- (5) In this section “relevant service” means a service other than the repair, insurance or maintenance of the land or of any other land.

## **208 Meaning of “market value”**

For the purposes of this Chapter the market value of an asset at any time is the price which the asset might reasonably be expected to fetch on a sale in the open market at that time.

## **209 Meaning of “persons providing benefit”**

For the purposes of this Chapter the persons providing a benefit are the person or persons at whose cost the benefit is provided.

## **210 Power to exempt minor benefits**

- (1) The Treasury may make provision by regulations for exempting from the application of this Chapter such minor benefits as may be specified in the regulations.
- (2) An exemption conferred by such regulations is conditional on the benefit being made available to the employer’s employees generally on similar terms.

### *Special rules for scholarships*

## **211 Special rules for scholarships: introduction**

- (1) Sections 212 to 214 supplement the preceding provisions of this Chapter in the following ways—
  - section 212 provides for certain scholarships provided under arrangements entered into by an employer or a connected person to be regarded as provided by reason of an employment;
  - section 213 provides that this Chapter does not apply to certain scholarships provided under a trust fund or a scheme;
  - section 214 provides a different method of determining the cost of an employment-related benefit if it consists in the provision of a scholarship from a trust fund.
- (2) Section 215 limits the extent to which [F238section 776(1) of ITTOIA 2005] (exemption for scholarship income) applies to a scholarship whose provision constitutes an employment-related benefit.

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- (3) In this section and sections 212 to 215 “scholarship” includes a bursary, exhibition or other similar educational endowment.

#### Textual Amendments

**F238** Words in s. 211(2) substituted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 8 para. 298](#) (with [Sch. 9 paras. 1-9, 22](#))

### **212 Scholarships provided under arrangements entered into by employer or connected person**

- (1) A scholarship which is provided for a member of an employee’s family or household is to be regarded for the purposes of this Chapter as provided by reason of the employment if it is provided under arrangements entered into by—
- (a) the employer, or
  - (b) a person connected with the employer.
- (2) Subsection (1) applies whether or not the arrangements require the employer or the connected person to contribute directly or indirectly to the cost of providing the scholarship.
- (3) A scholarship is not to be regarded as provided by reason of an employment by virtue of subsection (1) if—
- (a) the employer is an individual, and
  - (b) the arrangements are made in the normal course of the employer’s domestic, family or personal relationships.
- (4) This section is without prejudice to section 201(3).

### **213 Exception for certain scholarships under trusts or schemes**

- (1) This Chapter does not apply to an employment-related benefit consisting in the provision of a scholarship if conditions A, B, C and D are met.
- (2) Condition A is that the scholarship would not be regarded as provided by reason of the employment if section 201(3) and section 212 were disregarded.
- (3) Condition B is that the holder of the scholarship is a full-time student.
- (4) Condition C is that the scholarship is provided from a trust fund or under a scheme.
- (5) Condition D is that, in the tax year in which the scholarship is provided, not more than 25% of the total amount of relevant payments is attributable to scholarships provided by reason of a person’s employment.
- (6) For the purposes of conditions B and D “full-time student” means a person who is in full-time education at a university, college, school or other educational establishment.
- (7) For the purposes of condition D—
- “employment” includes any employment within the meaning of the employment income Parts (see section 4), whether or not it is a taxable employment under Part 2;

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“relevant payments” means the payments made from the fund or scheme mentioned in condition C in respect of scholarships held by full-time students.

#### 214 Scholarships: cost of the benefit

If an employment-related benefit consists in the provision of a scholarship from a trust fund—

- (a) section 204 does not apply, and
- (b) the cost of the benefit is the total of the payments made from the fund to the person holding the scholarship.

#### 215 Limitation of exemption for scholarship income in [<sup>F239</sup>section 776(1) of ITTOIA 2005]

If an employment-related benefit consists in the provision of a scholarship, [<sup>F240</sup>section 776(1) of ITTOIA 2005] (exemption for scholarship income) applies only in relation to the holder of the scholarship.

#### Textual Amendments

**F239** Words in s. 215 heading substituted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 8 para. 299](#) (with [Sch. 9 paras. 1-9, 22](#))

**F240** Words in s. 215 substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 590](#) (with [Sch. 2](#))

## CHAPTER 11

### TAXABLE BENEFITS: EXCLUSION OF LOWER-PAID EMPLOYMENTS FROM PARTS OF BENEFITS CODE

#### *Introduction*

#### 216 Provisions not applicable to lower-paid employments

- (1) The Chapters of the benefits code listed in subsection (4) do not apply to an employment in relation to a tax year if—
  - (a) it is lower-paid employment in relation to that year (see section 217), and
  - (b) condition A or B is met.
- (2) Condition A is that the employee is not employed as a director of a company.
- (3) Condition B is that the employee is employed as a director of a company but has no material interest in the company and either—
  - (a) the employment is as a full-time working director, or
  - (b) the company is non-profit-making or is [<sup>F241</sup>a charitable company] .

“Non-profit-making” means that the company does not carry on a trade and its functions do not consist wholly or mainly in the holding of investments or other property.



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- (4) The Chapters referred to in subsection (1) are—
- Chapter 3 (taxable benefits: expenses payments);
  - Chapter 6 (taxable benefits: cars, vans and related benefits);
  - Chapter 7 (taxable benefits: loans);
  - F242 ...
  - F242 ...
  - Chapter 10 (taxable benefits: residual liability to charge).
- (5) Subsection (1)—
- (a) means that in any of those Chapters a reference to an employee does not include an employee whose employment is within the exclusion in that subsection, if the context is such that the reference is to an employee in relation to whom the Chapter applies, but
  - (b) does not restrict the meaning of references to employees in other contexts.
- (6) Subsection (1) has effect subject to—
- section 188(2) (discharge of loan: where employment becomes lower-paid),
  - F243 ...
  - F243 ...
  - section 220 (employment in two or more related employments).

#### Textual Amendments

- F241** Words in s. 216(3)(b) substituted (coming into force for the tax year 2012-13 and subsequent tax years) by [Finance Act 2010 \(c. 13\)](#), [Sch. 6 paras. 17\(3\)](#), 34(2); [S.I. 2012/736, art. 13](#)
- F242** S. 216(4) entries repealed (with effect in accordance with Sch. 22 para. 24(4) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 24\(2\)](#), [Sch. 43 Pt. 3\(4\)](#)
- F243** S. 216(6) entries repealed (with effect in accordance with Sch. 22 para. 24(4) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 24\(3\)](#), [Sch. 43 Pt. 3\(4\)](#)

### *What is lower-paid employment*

#### **217 Meaning of “lower-paid employment”**

- (1) For the purposes of this Chapter an employment is “lower-paid employment” in relation to a tax year if the earnings rate for the employment for the year (calculated under section 218) is less than £8,500.
- (2) Subsection (1) is subject to section 220 (employment in two or more related employments).

#### **218 Calculation of earnings rate for a tax year**

- (1) For any tax year the earnings rate for an employment is to be calculated as follows—

##### *Step 1*

Find the total of the following amounts—

- (a) the total amount of the earnings from the employment for the year within Chapter 1 of this Part,

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- (b) the total of any amounts that are treated as earnings from the employment for the year under the benefits code (see subsections (2) and (3)),
- (c) the total of any amounts that are treated as earnings from the employment for the year under Chapter 12 of this Part (payments treated as earnings),<sup>F244</sup> ...
- (d) in the case of an employment within section 56(2) (deemed employment of worker by intermediary), the amount of the deemed employment payment for the year (see section 54),<sup>F244</sup> ...
- [<sup>F245</sup>(e) in the case of an employment within section 61G(2) (deemed employment payment by managed service company), the total amount of deemed employment payments for the year][<sup>F246</sup>, and
- (f) the total amount which counts as employment income in respect of the employment for the year under Chapter 2 of Part 7A.]

excluding any exempt income<sup>F247</sup>, other than any attributable to section 290A or 290B (accommodation outgoings of ministers of religion).]

#### *Step 2*

Add to that total any extra amount required to be added for the year by section 219 (extra amounts to be added in connection with a car).

#### *Step 3*

Subtract the total amount of any authorised deductions (see subsection (4)) from the result of step 2.

#### *Step 4*

The earnings rate for the employment for the year is given by the formula—

$$R \times \frac{Y}{E}$$

where—

R is the result of step 3,

Y is the number of days in the year, and

E is the number of days in the year when the employment is held.

- (2) Section 216(1) (provisions not applicable to lower-paid employment) is to be disregarded for the purpose of determining any amount under step 1.
- (3) If the benefit of living accommodation is to be taken into account under step 1, the cash equivalent is to be calculated in accordance with section 105 (even if the cost of providing the accommodation exceeds £75,000).
- (4) For the purposes of step 3 “authorised deduction” means any deduction that would (assuming it was an amount of taxable earnings) be allowed from any amount within step 1 under—
  - section 346 (employee liabilities),
  - section 352 (agency fees paid by entertainers),
  - section 355 (corresponding payments by non-domiciled employees with foreign employers),
  - section 368 (fixed sum deductions from earnings payable out of public revenue),

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section 370 (travel costs and expenses where duties performed abroad: employee’s travel),  
 section 371 (travel costs and expenses where duties performed abroad: visiting spouse’s<sup>F248</sup>, civil partner’s] or child’s travel),  
 section 373 (non-domiciled employee’s travel costs and expenses where duties performed in UK),  
 section 374 (non-domiciled employee’s spouse’s<sup>F248</sup>, civil partner’s] or child’s travel costs and expenses where duties performed in UK),  
 section 376 (foreign accommodation and subsistence costs and expenses (overseas employments)),  
 section 377 (costs and expenses in respect of personal security assets and services),  
 section 713 (payroll giving to charities),  
 [<sup>F249</sup>sections 188 to 194 of FA 2004 (contributions to registered pension schemes), or]  
 section 262 of CAA 2001 (capital allowances to be given effect by treating them as deductions).

#### Textual Amendments

- F244** Word in s. 218(1) omitted (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by virtue of [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 9\(a\)](#)
- F245** Words in s. 218(1) inserted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), s. 25(2), [Sch. 3 para. 5](#)
- F246** Words in s. 218(1) inserted (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 9\(b\)](#)
- F247** Words in s. 218(1) inserted (with effect in accordance with art. 2(4) of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2010 \(S.I. 2010/157\)](#), arts. 1, [2\(2\)](#)
- F248** Words in s. 218(4) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), [142](#)
- F249** Words in s. 218(4) substituted (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), s. 284(1), [Sch. 35 para. 58](#) (with [Sch. 36](#))

#### 219 Extra amounts to be added in connection with a car

- (1) The provisions of this section apply for the purposes of section 218(1) in the case of a tax year in which a car is made available as mentioned in section 114(1) (cars, vans and related benefits) by reason of the employment.
- (2) Subsection (3) applies if in the tax year—
  - (a) an alternative to the benefit of the car is offered, and
  - (b) the amount that would be earnings within Chapter 1 of this Part if the benefit of the car were to be determined by reference to the alternative offered exceeds the benefit code earnings (see subsection (4)).
- (3) The amount of the excess is an extra amount to be added under step 2 in section 218(1).
- (4) For the purposes of subsection (2) “the benefit code earnings” is the total for the year of—
  - (a) the cash equivalent of the benefit of the car (calculated in accordance with Chapter 6 of this Part), and

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- (b) the cash equivalent (calculated in accordance with that Chapter) of the benefit of any fuel provided for the car by reason of the employment.

<sup>F250</sup>(5) .....

<sup>F250</sup>(6) .....

- (7) Section 216(1) (provisions not applicable to lower-paid employment) is to be disregarded for the purpose of determining any amount under this section.

#### **Textual Amendments**

**F250** S. 219(5)(6) repealed (with effect in accordance with s. 62(2) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), s. 62(1), [Sch. 27 Pt. 2\(19\)](#)

### *Treatment of related employments*

#### **220 Related employments**

- (1) This section applies if a person is employed in two or more related employments.
- (2) None of the employments is to be regarded as lower-paid employment in relation to a tax year if—
- (a) the total of the earnings rates for the employments for the year (calculated in each case under section 218) is £8,500 or more, or
  - (b) any of them is an employment falling outside the exclusion contained in section 216(1) (provisions not applicable to lower-paid employment).
- (3) For the purposes of this section two employments are “related” if—
- (a) both are with the same employer, or
  - (b) one is with a body or partnership (“A”) and the other is either—
    - (i) with an individual, partnership or body that controls A (“B”), or
    - (ii) with another partnership or body also controlled by B.

## CHAPTER 12

### [<sup>F251</sup>OTHER AMOUNTS] TREATED AS EARNINGS

#### **Textual Amendments**

**F251** Words in Pt. 3 Ch. 12 heading substituted (1.9.2013) by [Finance Act 2013 \(c. 29\)](#), [Sch. 23 paras. 4\(a\)](#), 38; [S.I. 2013/1755](#), art. 2

### [<sup>F252</sup>Payments]

#### **Textual Amendments**

**F252** S. 221 cross-heading inserted (1.9.2013) by [Finance Act 2013 \(c. 29\)](#), [Sch. 23 paras. 4\(b\)](#), 38; [S.I. 2013/1755](#), art. 2

*Status: Point in time view as at 01/09/2013.*

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## **221 Payments where employee absent because of sickness or disability**

- (1) This section applies if—
  - (a) an employee is absent from work because of sickness or disability, and
  - (b) a qualifying sickness payment is made in respect of the employee's absence from work.
- (2) But this section does not apply if the qualifying sickness payment constitutes earnings from the employment by virtue of any other provision.
- (3) The qualifying sickness payment is to be treated as earnings from the employment in respect of the period of absence.
- (4) If the qualifying sickness payment is made from funds to which the employer and the employer's employees have made contributions, only the amount of the payment which it is just and reasonable to attribute to the employer's contributions is treated as earnings under this section.
- (5) In this section "qualifying sickness payment" means a payment which meets conditions A and B.
- (6) Condition A is that the payment is made—
  - (a) to the employee or to a member of the employee's family,
  - (b) to the order of such a person, or
  - (c) to the benefit of such a person.
- (7) Condition B is that the payment is made—
  - (a) by reason of the employment, and
  - (b) as a result of arrangements entered into by the employer.

## **222 Payments by employer on account of tax where deduction not possible**

- (1) This section applies if—
  - (a) an employer is treated by virtue of sections 687, [<sup>F253</sup>687A,] 689 and 693 to 700 as having made a payment of income of an employee ("the notional payment"),
  - (b) the employer is required by virtue of section 710(4) to account to [<sup>F106</sup>an officer of Revenue and Customs] for an amount of income tax ("the due amount") in respect of the notional payment, and
  - (c) the employee does not, before the end of the period of [<sup>F254</sup>90 days] beginning with the [<sup>F255</sup>relevant date], make good the due amount to the employer.
- (2) The due amount is to be treated as earnings from the employment for the tax year in which the [<sup>F256</sup>relevant date] falls.
- (3) In this section "employer", in relation to any provision of sections 687, [<sup>F257</sup>687A,] 689, 693 to 700 or 710, means the person taken to be the employer for the purposes of that provision.

It also includes a person who is treated as making a payment of PAYE income by virtue of section 689(2) (payments by person for whom employee works but who is not the employer).

[<sup>F258</sup>(4) In this section "the relevant date" means—

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- (a) if the employer is treated by virtue of any Act as making the notional payment before the date on which the Act is passed, that date, and
- (b) in any other case, the date on which the employer is treated as making the notional payment.]

#### Textual Amendments

- F106** Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 102\(1\)](#); S.I. 2005/1126, art. 2(2)(h)
- F253** Word in s. 222(1)(a) inserted (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 10](#)
- F254** Words in s. 222(1)(c) substituted (with effect in accordance with s. 144(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), s. 144(1)
- F255** Words in s. 222(1)(c) substituted (with effect in accordance with s. 94(5) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), s. 94(2)(a); S.I. 2007/1081, art. 2
- F256** Words in s. 222(2) substituted (with effect in accordance with s. 94(5) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), s. 94(2)(b); S.I. 2007/1081, art. 2
- F257** Word in s. 222(3) inserted (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 10](#)
- F258** S. 222(4) inserted (with effect in accordance with s. 94(5) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), s. 94(2)(c); S.I. 2007/1081, art. 2

#### Modifications etc. (not altering text)

- C9** S. 222 modified (6.4.2007) by [The Finance Act 2006 \(Section 94\(5\)\) \(PAYE: Retrospective Notional Payments — Appointment of Substituted Date\) Order 2007 \(S.I. 2007/1081\)](#), art. 2; as provided for by 2006 c. 25, s. 94(5)

## 223 Payments on account of director's tax other than by the director

- (1) This section applies if in a tax year—
- (a) a person (“P”) makes a payment to another person who is employed as the director of a company,
  - (b) the payment is of, or on account of, earnings from the director's employment,
  - (c) PAYE regulations require P to deduct an amount of income tax (“the deductible tax”),
  - (d) P deducts none, or only some, of the deductible tax, and
  - (e) either or both of the following occur—
    - (i) P accounts to <sup>F82</sup>the Commissioners for Her Majesty's Revenue and Customs] for some or all of the deductible tax (whether or not P has actually deducted the amount accounted for);
    - (ii) one or more persons other than P (apart from the director) account to <sup>F82</sup>the Commissioners for Her Majesty's Revenue and Customs] for some or all of the deductible tax.
- (2) For the purposes of this section it does not matter whether the director's employment is held at the time when P makes the payment mentioned in subsection (1)(a) so long as it is held at some point in the tax year in which the payment is made.
- (3) References in this section to employment as a director accordingly include prospective or past employment as a director.

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- (4) The deductible tax accounted for to [<sup>F82</sup>the Commissioners for Her Majesty’s Revenue and Customs] is to be treated as earnings of the director from the director’s employment for the tax year in which it is accounted for.
- (5) But if—
- (a) the deductible tax is accounted for after the director’s employment has ceased, and
  - (b) the employment ceased in a tax year before the one in which the deductible tax is accounted for,
- the deductible tax is treated as earnings for the tax year in which the director’s employment ceased.
- (6) The following rules apply to the calculation of the amount to be treated as earnings under this section—
- (a) any amount accounted for after the death of the director is to be disregarded;
  - (b) if P deducts some of the deductible tax, the amount treated as earnings is reduced by the amount deducted;
  - (c) if the director makes good to P or to another person some or all of the deductible tax which P or the other person accounts for, the amount treated as earnings is reduced by the amount made good.
- (7) This section does not apply if the director has no material interest in the company and either—
- (a) the director is employed as a full-time working director of the company, or
  - (b) the company is—
    - (i) non-profit-making, or
    - (ii) [<sup>F259</sup>a charitable company] .
- (8) In this section—
- “director” has the same meaning as in the benefits code (see section 67);
  - “director’s employment”, in relation to a person who is employed as a director, means that employment;
  - “full-time working director” has the same meaning as in the benefits code (see section 67);
  - “material interest” has the same meaning as in the benefits code (see section 68);
  - “non-profit-making”, in relation to a company, means that—
    - (a) the company does not carry on a trade, and
    - (b) its functions do not consist wholly or mainly in the holding of investments or other property.

#### Textual Amendments

**F82** Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 102\(2\)](#); S.I. 2005/1126, art. 2(2)(h)

**F259** Words in s. 223(7)(b)(ii) substituted (coming into force for the tax year 2012-13 and subsequent tax years) by [Finance Act 2010 \(c. 13\)](#), [Sch. 6 paras. 17\(4\), 34\(2\)](#); S.I. 2012/736, art. 13

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## <sup>F260</sup> 224 Payments to non-approved personal pension arrangements

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### Textual Amendments

**F260** S. 224 repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 3](#) (with [Sch. 36](#))

## 225 Payments for restrictive undertakings

- (1) This section applies where—
  - (a) an individual gives a restrictive undertaking in connection with the individual’s current, future or past employment, and
  - (b) a payment is made in respect of—
    - (i) the giving of the undertaking, or
    - (ii) the total or partial fulfilment of the undertaking.
- (2) It does not matter to whom the payment is made.
- (3) The payment is to be treated as earnings from the employment for the tax year in which it is made.
- (4) Subsection (3) does not apply if the payment constitutes earnings from the employment by virtue of any other provision.
- (5) A payment made after the death of the individual who gave the undertaking is treated for the purposes of this section as having been made immediately before the death.
- <sup>F261</sup>(6) This section applies only if—
  - (a) section 15 applies to any general earnings from the employment, and would apply even if the individual made a claim under section 809B of ITA 2007 (claim for remittance basis) for the tax year mentioned in subsection (3), or
  - (b) section 27 (UK-based earnings of non-UK resident employee) applies to any general earnings from the employment.]
- (8) In this section “restrictive undertaking” means an undertaking which restricts the individual’s conduct or activities.

For this purpose it does not matter whether or not the undertaking is legally enforceable or is qualified.

### Textual Amendments

**F261** S. 225(6) substituted for s. 225(6)(7) (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 24](#)

## 226 Valuable consideration given for restrictive undertakings

- (1) In a case where—
  - (a) an individual gives a restrictive undertaking in connection with the individual’s current, future or past employment, and



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- (b) valuable consideration that is not in the form of money is provided in respect of—
- (i) the giving of the undertaking, or
  - (ii) the total or partial fulfilment of the undertaking,
- section 225 applies as it would if a payment of an amount equal to the value of the consideration had been made instead.
- (2) For this purpose—
- (a) merely assuming an obligation to make over or provide valuable property, rights or advantages is not valuable consideration, but
  - (b) wholly or partially discharging such an obligation is.

*[<sup>F262</sup>Shares of employee shareholders*

**Textual Amendments**

**F262** Ss. 226A-226D and cross-heading inserted (1.9.2013) by Finance Act 2013 (c. 29), Sch. 23 paras. 3, 38; S.I. 2013/1755, art. 2

**226A Amount treated as earnings**

- (1) This section applies if shares having a market value of no less than £2000 are acquired by an employee in consideration of an employee shareholder agreement.
- (2) An amount calculated in accordance with subsection (3) is to be treated as earnings from the employment, in respect of the acquisition of the shares, for the tax year in which they are acquired.

But this is subject to subsection (4).

- (3) The amount is—

$$MV - P$$

where—

- a MV is an amount equal to the market value of the shares;
- b P is any payment the employee is treated as making for the shares under section 226B.

But if P exceeds MV, the amount is nil.

- (4) If the shares are acquired pursuant to an employment-related securities option, subsection (2) does not apply.
- (5) If subsection (2) applies, nothing else constitutes earnings under this Part from the employment in respect of the acquisition of the shares.
- (6) For the purposes of this section and sections 226B to 226D—  
shares are “acquired” by an employee if the employee becomes beneficially entitled to them (and they are acquired at the time when the employee becomes so entitled);

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“employee shareholder agreement” means an agreement by virtue of which an employee is an employee shareholder (see section 205A(1)(a) to (d) of the Employment Rights Act 1996);

“employee shareholder share” means a share acquired by an employee in consideration of an employee shareholder agreement;

“employee” and “employer company”, in relation to an employee shareholder agreement, mean the individual and the company which enter into the agreement;

“employment-related securities option” has the same meaning as in Chapter 5 of Part 7 (see section 471(5));

“market value” has the same meaning as it has for the purposes of TCGA 1992 by virtue of Part 8 of that Act; and the market value of shares is their market value on the day on which they are acquired (but see also subsection (7)).

- (7) For the purposes of subsection (1), the market value of the shares is to be determined ignoring—
- (a) any election under section 431 (election for market value of restricted shares to be calculated as if not restricted), and
  - (b) section 437 (market value of convertible securities to be determined as if not convertible).

## **226B Deemed payment for employee shareholder shares**

- (1) This section applies if shares having a market value of no less than £2000 are acquired by an employee in consideration of an employee shareholder agreement.
- (2) Where all the shares acquired in consideration of the agreement are acquired on the same day, the employee is to be treated, for the purposes of this Act, as having made on that day a payment of £2000 for those shares.
- (3) Where—
  - (a) shares are acquired by the employee in consideration of the agreement on more than one day, and
  - (b) of those shares, shares having a market value of not less than £2000 are acquired on the first of those days,
 the employee is to be treated for the purposes of this Act as having made, on the first of those days, a payment of £2000 for the shares acquired on that day.
- (4) If the market value of the shares acquired by the employee on the day mentioned in subsection (2) or (3)(b) exceeds £2000, the amount of the payment under subsection (2) or (3) which the employee is to be treated as having made for each of the shares is an amount equal to the appropriate proportion of the market value of that share.
- (5) The “appropriate proportion” is the following—
 
$$2000 \div V$$
 where V is the total market value of the shares acquired by the employee on the day.
- (6) This section is subject to—
  - (a) section 226C (only one payment deemed to be made under agreements with associated companies), and

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- (b) section 226D (no deemed payment if shareholder or a connected person has a material interest in the company).
- (7) Except as provided by this section, for the purposes of this Act the employee is to be treated as having given no consideration for shares acquired in consideration of the agreement.
- (8) Section 226A(7) applies for the purposes of this section as it applies for the purposes of section 226A(1).

### **226C Only one payment deemed to be made under associated agreements**

- (1) An employee who is treated as having made a payment under section 226B for shares acquired in consideration of an employee shareholder agreement (“the relevant agreement”) is not to be treated as having made a payment for any other qualifying shares.
- (2) “Qualifying shares” means employee shareholder shares in—
  - (a) the employer company in relation to the relevant agreement, or
  - (b) an associated company of that company,which are acquired by the employee in consideration of an agreement within subsection (3).
- (3) An agreement is within this subsection if it is—
  - (a) another employee shareholder agreement with the same employer company, or
  - (b) an employee shareholder agreement with an associated company of that company.
- (4) For the purposes of this section—
  - (a) a company is an “associated company” of another if—
    - (i) one of the two has control of the other, or
    - (ii) both are under the control of the same person or persons, and
  - (b) if a company controls another when an employee shareholder agreement is entered into with the employee, paragraph (a) applies as if that continued to be the case (in addition to any other circumstances) when any subsequent employee shareholder agreement is entered into with that employee.
- (5) But subsection (4)(b) does not apply as between two companies if—
  - (a) one of the companies has been dissolved,
  - (b) the period of two years beginning with the date of the dissolution has passed, and
  - (c) the employee has not, at any time in that period, been engaged in any office or employment (including engagement under a contract for services) with any company which is an associated company of the dissolved company.
- (6) In this section “control” is to be read in accordance with sections 450 and 451 of CTA 2010.

### **226D Shareholder or connected person having material interest in company**

- (1) No payment is treated as made under section 226B in respect of any shares if, on the date on which the shares are acquired—

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- (a) the employee has a material interest in the employer company or a relevant parent undertaking, or
  - (b) the employee is connected with an individual who has a material interest in the employer company or a relevant parent undertaking.
- (2) No payment is treated as made under section 226B in respect of any shares if—
- (a) at any time in the period of one year ending with the date on which the shares are acquired, the employee had a material interest in the employer company or a relevant parent undertaking, or
  - (b) on the date on which the shares are acquired, the employee is connected with an individual who, at any time in the period of one year ending with that date, had a material interest in the employer company or a relevant parent undertaking.
- (3) Subsections (4) and (5) define “material interest” for the purposes of this section.
- Those subsections must be read together with subsections (6) to (8).
- (4) An individual (“A”) has a material interest in a company if at least 25% of the voting rights in the company are exercisable—
- (a) by A,
  - (b) by persons connected with A, or
  - (c) by A and persons connected with A together.
- (5) If a company is a close company, an individual (“A”) has a material interest in it if—
- (a) A,
  - (b) persons connected with A, or
  - (c) A and persons connected with A together,
- possess such rights as would, in the event of the winding up of the company or in any other circumstances, give an entitlement to receive at least 25% of the assets that would then be available for distribution among the participators.
- (6) For the purposes of subsection (1), A is to be treated as having a material interest in a company at any time if either of the following conditions is met.
- (7) The first condition is that—
- (a) A,
  - (b) persons connected with A, or
  - (c) A and persons connected with A together,
- have an entitlement to acquire such rights as would (together with any existing rights) give A a material interest in the company.
- (8) The second condition is that there are arrangements in place between—
- (a) the employer company or a relevant parent undertaking, and
  - (b) A, or persons connected with A, or A and persons connected with A together,
- which enable A or those persons to acquire such rights as would (together with any existing rights) give A a material interest in the company.
- (9) In this section—
- “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable);

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“close company” includes a company that would be a close company but for—

- (a) section 442(a) of CTA 2010 (exclusion of companies not resident in the United Kingdom), or
- (b) sections 446 and 447 of CTA 2010 (exclusion of certain quoted companies);

“relevant parent undertaking” means any parent undertaking of the employer company and for this purpose “parent undertaking” is to be read in accordance with section 1162 of the Companies Act 2006.]

## PART 4

### EMPLOYMENT INCOME: EXEMPTIONS

#### CHAPTER 1

##### EXEMPTIONS: GENERAL

### 227 Scope of Part 4

- (1) This Part contains—
  - (a) earnings-only exemptions, and
  - (b) employment income exemptions.
- (2) In this Act “earnings-only exemption” means an exemption from income tax which—
  - (a) prevents liability to tax arising in respect of earnings, either by virtue of one or more particular provisions (such as a Chapter of the benefits code) or at all, and
  - (b) does not prevent liability to tax arising in respect of other employment income.
- (3) In this Act “employment income exemption” means an exemption from income tax which prevents liability to tax arising in respect of employment income of any kind at all.
- (4) The following provisions in Part 7 also confer exemption from liability to income tax in respect of earnings—
  - [<sup>F263</sup>(a) section 425 (restricted securities: no charge in respect of acquisition in certain circumstances),
  - (b) section 475 (no charge in respect of acquisition of securities option),]
  - (c) sections 489 to 493 and sections 496 to 499 (approved share incentive plans),
  - <sup>F264</sup>(d) .....
  - (e) section 519 (approved SAYE option schemes: no charge in respect of exercise of option),
  - <sup>F265</sup>(f) .....
  - (g) section 524 (approved CSOP schemes: no charge in respect of exercise of option),
  - <sup>F266</sup>(h) .....
  - (i) section 542 (priority share allocations: exemption where offer made to public and employees), and

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- (j) section 544 (priority share allocations: exemption where different offers made to public and employees).

[<sup>F267</sup>(5) In relation to the interaction between this Part and Part 7A, see section 554P(1).]

#### Textual Amendments

- F263** S. 227(4)(a)(b) substituted (with effect in accordance with Sch. 22 para. 25(4) of the amending Act, and otherwise 1.9.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 25\(2\)](#); S.I. 2003/1997, art. 2
- F264** S. 227(4)(d) repealed (with effect in accordance with Sch. 22 para. 25(4) of the amending Act, and otherwise 1.9.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 25\(3\)](#), [Sch. 43 Pt. 3\(4\)](#); S.I. 2003/1997, art. 2
- F265** S. 227(4)(f) repealed (with effect in accordance with Sch. 22 para. 25(4) of the amending Act, and otherwise 1.9.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 25\(3\)](#), [Sch. 43 Pt. 3\(4\)](#); S.I. 2003/1997, art. 2
- F266** S. 227(4)(h) repealed (with effect in accordance with Sch. 22 para. 25(4) of the amending Act, and otherwise 1.9.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 25\(3\)](#), [Sch. 43 Pt. 3\(4\)](#); S.I. 2003/1997, art. 2
- F267** S. 227(5) inserted (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 11](#)

## 228 Effect of exemptions on liability under provisions outside Part 2

- (1) The exemptions conferred by the provisions specified in subsection (2) prevent liability to income tax arising under any enactment, but the other exemptions in this Part only affect liability to income tax under Part 2 of this Act.
- (2) The provisions referred to in subsection (1) are—
- (a) section 245 (travelling and subsistence during public transport strikes),
  - (b) section 248 (transport home: late night working and failure of car-sharing arrangements),
  - (c) section 264 (annual parties and functions),
  - (d) Chapter 8 of this Part (exemptions for special kinds of employees) except for sections 290 and 291,
  - (e) section 323 (long service awards),
  - (f) section 324 (small gifts from third parties), and
  - (g) section 326 (expenses incidental to transfer of a kind not normally met by transferor).

## CHAPTER 2

### EXEMPTIONS: MILEAGE ALLOWANCES AND PASSENGER PAYMENTS

#### *Mileage allowances*

## 229 Mileage allowance payments

- (1) No liability to income tax arises in respect of approved mileage allowance payments for a vehicle to which this Chapter applies (see section 235).

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- (2) Mileage allowance payments are amounts, other than passenger payments (see section 233), paid to an employee for expenses related to the employee's use of such a vehicle for business travel (see section 236(1)).
- (3) Mileage allowance payments are approved if, or to the extent that, for a tax year, the total amount of all such payments made to the employee for the kind of vehicle in question does not exceed the approved amount for such payments applicable to that kind of vehicle (see section 230).
- (4) Subsection (1) does not apply if—
  - (a) the employee is a passenger in the vehicle, or
  - (b) the vehicle is a company vehicle (see section 236(2)).

### 230 The approved amount for mileage allowance payments

- (1) The approved amount for mileage allowance payments that is applicable to a kind of vehicle is—

$$M \times R$$

where—

M is the number of miles of business travel by the employee (other than as a passenger) using that kind of vehicle in the tax year in question;

R is the rate applicable to that kind of vehicle.

- (2) The rates applicable are as follows—

TABLE

| <i>Kind of vehicle</i> | <i>Rate per mile</i>                                                |
|------------------------|---------------------------------------------------------------------|
| Car or van             | [ <sup>F268</sup> 45p] for the first 10,000 miles<br>25p after that |
| Motor cycle            | 24p                                                                 |
| Cycle                  | 20p                                                                 |

- (3) The reference in subsection (2) to “the first 10,000 miles” is to the total number of miles of business travel in relation to the employment, or any associated employment, by car or van in the tax year in question.
- (4) One employment is associated with another if—
  - (a) the employer is the same;
  - (b) the employers are partnerships or bodies and an individual or another partnership or body has control over both of them; or
  - (c) the employers are associated companies within the meaning [<sup>F269</sup>given by section 449 of CTA 2010].
- (5) In subsection (4)(b)—

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- (a) “control”, in relation to a body corporate or partnership, has the meaning given by [F270 section 995 of ITA 2007] (in accordance with section 719 of this Act), and
  - (b) the definition of “control” in that section of that Act applies (with the necessary modifications) in relation to an unincorporated association as it applies in relation to a body corporate.
- (6) The Treasury may by regulations amend subsection (2) so as to alter the rates or rate bands.

#### Textual Amendments

- F268** Sum in s. 230(2) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Approved Mileage Allowance Payments \(Rates\) Regulations 2011 \(S.I. 2011/896\)](#), regs. 1(2), 2
- F269** Words in s. 230(4)(c) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 384](#) (with [Sch. 2](#))
- F270** Words in s. 230(5)(a) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 433](#) (with [Sch. 2](#))

### 231 Mileage allowance relief

- (1) An employee is entitled to mileage allowance relief for a tax year—
- (a) if the employee uses a vehicle to which this Chapter applies for business travel, and
  - (b) the total amount of all mileage allowance payments, if any, made to the employee for the kind of vehicle in question for the tax year is less than the approved amount for such payments applicable to that kind of vehicle.
- (2) The amount of mileage allowance relief to which an employee is entitled for a tax year is the difference between—
- (a) the total amount of all mileage allowance payments, if any, made to the employee for the kind of vehicle in question, and
  - (b) the approved amount for such payments applicable to that kind of vehicle.
- (3) Subsection (1) does not apply if—
- (a) the employee is a passenger in the vehicle, or
  - (b) the vehicle is a company vehicle.

### 232 Giving effect to mileage allowance relief

- (1) A deduction is allowed for mileage allowance relief to which an employee is entitled for a tax year.
- (2) If any of the employee’s earnings—
- (a) are taxable earnings in the tax year in which the employee receives them, and
  - (b) are not also taxable earnings in that year that fall within subsection (3),
- the relief is allowed as a deduction from those earnings in calculating net taxable earnings in the year.



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- (3) If any of the employee's earnings are taxable earnings in the tax year in which the employee remits them to the United Kingdom, there may be deducted from those earnings the amount of any mileage allowance relief—
- (a) for that tax year, and
  - (b) for any earlier tax year in which the employee was resident in the United Kingdom,
- which, on the assumptions mentioned in subsection (4), would have been deductible under subsection (2).
- (4) The assumptions are—
- (a) that subsection (2)(b) does not apply, and
  - (b) where applicable, that the earnings constitute taxable earnings in the tax year in which the employee receives them.
- (5) Subsection (3) applies only to the extent that the mileage allowance relief cannot be deducted under subsection (2).
- (6) A deduction shall not be made twice, whether under subsection (2) or (3), in respect of the same mileage allowance relief.
- [<sup>F271</sup>(6A) If the earnings from which a deduction allowed under this section is deductible include earnings that are “excluded” within the meaning of section 15(1A)—
- (a) the amount of the deduction allowed is a proportion of the amount that would be allowed under this section if the tax year were not a split year, and
  - (b) that proportion is equal to the proportion that the part of the earnings that is not “excluded” bears to the total earnings.]
- (7) In this section “taxable earnings” or “net taxable earnings” means taxable earnings or net taxable earnings from the employment for the purposes of Part 2.

#### Textual Amendments

- F271** S. 232(6A) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 63](#)

### *Passenger payments*

#### **233 Passenger payments**

- (1) No liability to income tax arises in respect of approved passenger payments made to an employee for the use of a car or van (whether or not it is a company vehicle) if—
- (a) the employee receives mileage allowance payments for the use of the car or van, and
  - (b) the cash equivalent of the benefit of the car or van is treated as earnings from the employment by virtue of section 120 or 154 (cars and vans as benefits).
- This is subject to subsection (2).
- (2) The condition in subsection (1)(b) needs to be met only if the car or van is made available to the employee by reason of the employment.

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- (3) Passenger payments are amounts paid to an employee because, while using a car or van for business travel, the employee carries in it one or more passengers who are also employees for whom the travel is business travel.
- (4) Passenger payments are approved if, or to the extent that, for a tax year, the total amount of all such payments made to the employee does not exceed the approved amount for such payments (see section 234).
- (5) Section 117 (when cars and vans are made available by reason of employment) applies for the purposes of subsection (2).

### **234 The approved amount for passenger payments**

- (1) The approved amount for passenger payments is—

$$M \times R$$

where—

M is the number of miles of business travel by the employee by car or van—

- (a) for which the employee carries in the tax year in question one or more passengers who are also employees for whom the travel is business travel, and
- (b) in respect of which passenger payments are made;

R is a rate of 5p per mile.

- (2) If the employee carries for all or part of the tax year two or more passengers who are also employees for whom the travel is business travel, the approved amount for passenger payments is the total of the amounts calculated separately under subsection (1) in respect of each of those passengers.
- (3) The Treasury may by regulations amend subsection (1) so as to alter the rate.

### *Supplementary*

### **235 Vehicles to which this Chapter applies**

- (1) This Chapter applies to cars, vans, motor cycles and cycles.
- (2) “Car” means a mechanically propelled road vehicle which is not—
  - (a) a goods vehicle,
  - (b) a motor cycle, or
  - (c) a vehicle of a type not commonly used as a private vehicle and unsuitable to be so used.
- (3) “Van” means a mechanically propelled road vehicle which—
  - (a) is a goods vehicle, and
  - (b) has a design weight not exceeding 3,500 kilograms,
 and which is not a motor cycle.
- (4) “Motor cycle” has the meaning given by section 185(1) of the Road Traffic Act 1988 (c. 52).

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- (5) “Cycle” has the meaning given by section 192(1) of that Act.
- (6) In this section—
- “design weight” means the weight which a vehicle is designed or adapted not to exceed when in normal use and travelling on a road laden;
  - “goods vehicle” means a vehicle of a construction primarily suited for the conveyance of goods or burden of any description.

## 236 Interpretation of this Chapter

- (1) In this Chapter—
- “business travel” means travelling the expenses of which, if incurred and paid by the employee in question, would (if this Chapter did not apply) be deductible under sections 337 to 342;
  - “mileage allowance payments” has the meaning given by section 229(2);
  - “passenger payments” has the meaning given by section 233(3).
- (2) For the purposes of this Chapter a vehicle is a “company vehicle” in a tax year if in that year—
- (a) the vehicle is made available to the employee by reason of the employment and is not available for the employee’s private use, or
  - (b) the cash equivalent of the benefit of the vehicle is to be treated as the employee’s earnings for the tax year by virtue of—
    - (i) section 120 (benefit of car treated as earnings),
    - (ii) section 154 (benefit of van treated as earnings), or
    - (iii) section 203 (residual liability to charge: benefit treated as earnings),or
  - (c) in the case of a car or van, the cash equivalent of the benefit of the car or van would be required to be so treated if sections 167 and 168 (exceptions for pooled cars and vans) [<sup>F272</sup>and section 248A (emergency vehicles)] did not apply, or
  - (d) in the case of a cycle, the cash equivalent of the benefit of the cycle would be required to be treated as the employee’s earnings for the tax year under Chapter 10 of Part 3 (taxable benefits: residual liability to charge) if section 244(1) (exception for cycles made available) did not apply.
- (3) Sections 117 and 118 (when cars and vans are made available by reason of employment and are made available for private use) apply for the purposes of subsection (2).

### Textual Amendments

**F272** Words in s. 236(2)(c) inserted (with effect in accordance with s. 81(3) of the amending Act) by Finance Act 2004 (c. 12), s. 81(2)

*Status: Point in time view as at 01/09/2013.*

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## CHAPTER 3

### EXEMPTIONS: OTHER TRANSPORT, TRAVEL AND SUBSISTENCE

#### 237 Parking provision and expenses

- (1) [<sup>F273</sup>No liability to income tax arises] in respect of the provision of workplace parking for an employee.
- (2) No liability to income tax arises by virtue of the payment or reimbursement of expenses incurred in connection with the provision for or the use by an employee of workplace parking.
- (3) In this section “workplace parking” means—
  - (a) a [<sup>F274</sup>parking space for a car or van],
  - (b) a motor cycle parking space, or
  - (c) facilities for parking a cycle other than a motor cycle, at or near the employee’s workplace.

#### Textual Amendments

**F273** Words in s. 237(1) substituted (with effect in accordance with s. 16(7) of the amending Act) by [Finance Act 2005 \(c. 7\), s. 16\(2\)](#)

**F274** Words in s. 237(3)(a) substituted (with effect in accordance with s. 80(2) of the amending Act) by [Finance Act 2004 \(c. 12\), Sch. 14 para. 8](#)

#### 238 Modest private use of heavy goods vehicles

- (1) No liability to income tax arises where a heavy goods vehicle is made available to an employee for the employee’s private use if conditions A and B are met.
- (2) Condition A is that there is no transfer of the property in the vehicle to the employee.
- (3) Condition B is that the employee’s use of the vehicle in the tax year is not wholly or mainly private use.
- (4) In this section—
 

“heavy goods vehicle” means a mechanically propelled road vehicle which—

  - (a) is of a construction primarily suited for the conveyance of goods or burden of any kind, and
  - (b) is designed or adapted to have a maximum weight exceeding 3,500 kilograms when in normal use and travelling on a road laden, and

“private use” means use other than for travel which the employee is necessarily obliged to do in the performance of the duties of the employment.

#### 239 Payments and benefits connected with taxable cars and vans and exempt heavy goods vehicles

- (1) No liability to income tax arises in respect of the discharge of any liability of an employee in connection with a taxable car or van or an exempt heavy goods vehicle.

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- (2) No liability to income tax arises in respect of a payment to an employee in respect of expenses incurred by the employee in connection with a taxable car or van or an exempt heavy goods vehicle.
- (3) Subsections (1) and (2) do not apply to liability arising by virtue of section 149 (benefit of car fuel treated as earnings) [<sup>F275</sup> or section 160 (benefit of van fuel treated as earnings).]
- (4) No liability to income tax arises by virtue of Chapter 10 of Part 3 (taxable benefits: residual liability to charge) in respect of a benefit connected with a taxable car or van or an exempt heavy goods vehicle.
- (5) Subsection (4) does not apply to the provision of a driver.
- (6) For the purposes of this section a car or van is “taxable” if under Chapter 6 of Part 3 the cash equivalent of the benefit of it is to be treated as the employee’s earnings for the tax year.
- (7) For the purposes of this section—
  - (a) “heavy goods vehicle” has the same meaning as in section 238(4) (modest private use of heavy goods vehicles), and
  - (b) a heavy goods vehicle is “exempt” if it is made available in the tax year to the employee in such circumstances that section 238 applies.
- (8) For the purposes of subsections (1) and (2), a heavy goods vehicle is also “exempt” if it is so made available in such circumstances that section 238 would apply if the employee were not in excluded employment.
- (9) In this Part “excluded employment” means an excluded employment within the meaning of the benefits code (see section 63(4)).

#### **Textual Amendments**

**F275** Words in s. 239(3) inserted (21.7.2008) by [Finance Act 2008 \(c. 9\)](#), s. 48(1)

## **240 Incidental overnight expenses and benefits**

- (1) No liability to income tax arises in respect of a sum if or to the extent that it is paid wholly and exclusively for the purpose of paying or reimbursing expenses which—
  - (a) are incidental to the employee’s absence from the place where the employee normally lives,
  - (b) relate to a continuous period of such absence in relation to which the overnight stay conditions are met (a “qualifying period”), and
  - (c) would not be deductible under Part 5 if the employee incurred and paid them and Chapter 2 of this Part (mileage allowances and passenger payments) did not apply.
- (2) No liability to income tax arises by virtue of Chapter 10 of Part 3 (taxable benefits: residual liability to charge) in respect of a benefit provided for an employee if—
  - (a) its provision is incidental to such an absence during a qualifying period, and
  - (b) no amount would be deductible in respect of it under Part 5.

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- (3) Subsections (1) and (2) are subject to section 241 (incidental overnight expenses and benefits: overall exemption limit).
- (4) The overnight stay conditions are that—
- (a) the employee is obliged to stay away from the place where the employee normally lives throughout the period,
  - (b) the period includes at least one overnight stay away from that place, and
  - (c) each such overnight stay during the period is at a place the expenses of travelling to which meet condition A or B.
- (5) Condition A is that the expenses are deductible under Part 5 (otherwise than under any of the excepted foreign travel provisions) or would be if the employee incurred and paid them and Chapter 2 of this Part did not apply.
- (6) Condition B is that the expenses are within section 250 or 255 (exemption of work-related and individual learning account training provision) or would be if the employer paid or reimbursed them.
- (7) In this section “excepted foreign travel provisions” means—
- (a) section 371 (travel costs and expenses where duties performed abroad: visiting spouse’s [<sup>F276</sup>civil partner’s] or child’s travel),
  - (b) section 374 (non-domiciled employee’s spouse’s [<sup>F277</sup>civil partner’s] or child’s travel costs and expenses where duties performed in UK), and
  - (c) section 376 (foreign accommodation and subsistence costs and expenses (overseas employments)).

#### Textual Amendments

**F276** Words in s. 240(7)(a) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **143**

**F277** Words in s. 240(7)(b) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **143**

### **241 Incidental overnight expenses and benefits: overall exemption limit**

- (1) Section 240(1) and (2) do not apply if the exemption provisions total in respect of the qualifying period in question exceeds the permitted amount.
- (2) In this section “the exemption provisions total”, in respect of a period, means the aggregate of—
- (a) the amounts that would be exempted under section 240(1) and (2) in respect of the period, apart from this section, and
  - (b) the amounts that would be exempted under section 268 (exemption of vouchers and tokens for incidental overnight expenses) in respect of the period, apart from the condition in section 268(5).
- (3) In this section “the permitted amount”, in respect of a period, means the aggregate of the following amounts—
- (a) £5 for each night during the period spent wholly in the United Kingdom, and
  - (b) £10 for each night during the period spent wholly or partly outside the United Kingdom.

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## 242 Works transport services

- (1) No liability to income tax arises in respect of the provision for employees of a works transport service if—
  - (a) the service is available generally to employees of the employer (or each employer) concerned,
  - (b) the main use of the service is for qualifying journeys by those employees, and
  - (c) the service—
    - (i) is used only by the employees for whom it is provided or their children, or
    - (ii) is substantially used only by those employees or children.
- (2) In this section—

“children” includes stepchildren and illegitimate children but does not include children aged 18 or over, and

“works transport service” means a service which is provided by means of a bus or a minibus for conveying employees of one or more employers on qualifying journeys.
- (3) For the purposes of this section—
  - (a) “bus” means a road passenger vehicle which has a seating capacity of 12 or more, and
  - (b) “minibus” means a vehicle constructed or adapted for the carriage of passengers which has a seating capacity of 9, 10 or 11.
- (4) But a vehicle which falls within the definition in subsection (3)(b) is not a minibus for the purposes of this section if—
  - (a) it has one or more disqualified seats, and
  - (b) excluding the disqualified seats, it has a seating capacity of 8 or less.
- (5) For the purposes of subsections (3) and (4) the seating capacity of a vehicle is determined in the same way as for the purposes of Part 3 of Schedule 1 to VERA 1994 (vehicle excise duty on buses).

This applies whether or not the vehicle is a bus within the meaning of that Part of that Schedule.

- (6) For the purposes of subsection (4) a seat is disqualified if relevant construction and use requirements are not met in relation to it.

In this subsection “construction and use requirements” has the same meaning as in Part 2 of the Road Traffic Act 1988 (c. 52) or, in Northern Ireland, Part III of the Road Traffic (Northern Ireland) Order 1995 (S.I. 1995/2994 (N.I. 18)).

## 243 Support for public bus services

- (1) No liability to income tax arises in respect of the provision of financial or other support for a public transport road service if—
  - (a) in the case of a local bus service, conditions A and B are met, or
  - (b) in any other case, conditions A to C are met.
- (2) Condition A is that the service is used by employees of one or more employers for qualifying journeys.

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- (3) Condition B is that the service is available generally to employees of the employer (or each employer) concerned.
- (4) Condition C is that the terms on which the service is available to the employees of the employer (or each employer) concerned are not more favourable than those available to other passengers.
- (5) In this section—
  - “local bus service” means a local service (as defined in section 2 of the Transport Act 1985 (c. 67)), and
  - “public transport road service” means a public passenger transport service provided by means of a road vehicle.

#### 244 Cycles and cyclist’s safety equipment

- (1) [<sup>F278</sup>No liability to income tax arises] in respect of the provision for an employee of a cycle or cyclist’s safety equipment if conditions A to C are met.
- (2) Condition A is that there is no transfer of the property in the cycle or equipment in question.
- (3) Condition B is that the employee uses the cycle or equipment in question mainly for qualifying journeys.
- (4) Condition C is that cycles are available generally to employees of the employer concerned or, as the case may be, cyclist’s safety equipment is so available to them.
- (5) In this section “cycle” has the meaning given by section 192(1) of the Road Traffic Act 1988 (c. 52), and “cyclist” has a corresponding meaning.

#### Textual Amendments

**F278** Words in s. 244(1) substituted (with effect in accordance with s. 16(7) of the amending Act) by [Finance Act 2005 \(c. 7\), s. 16\(3\)](#)

#### 245 Travelling and subsistence during public transport strikes

- (1) No liability to income tax arises in respect of the following benefits and payments where a strike or other industrial action disrupts a public transport service normally used by an employee.
- (2) They are—
  - (a) the provision for the employee of overnight accommodation at or near the employee’s permanent workplace,
  - (b) a payment to the employee in respect of expenses incurred by the employee in connection with such accommodation,
  - (c) the provision for the employee of transport for the purpose of ordinary commuting or travel between any two places that is for practical purposes substantially ordinary commuting, and
  - (d) a payment to the employee in respect of expenses incurred on such transport.



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## **246 Transport between work and home for disabled employees: general**

- (1) No liability to income tax arises in respect of—
  - (a) the provision of transport for a disabled employee, or
  - (b) the payment or reimbursement of expenses incurred on such transport,if the condition in subsection (2) is met.
- (2) The condition is that the transport is provided or the expenses are incurred for the purpose of ordinary commuting or travel between any two places that is for practical purposes substantially ordinary commuting.
- (3) Subsection (1) does not apply in a case where a car is made available to a disabled employee (but see section 247).
- (4) In this section “disabled employee” means an employee who has 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.

## **247 Provision of cars for disabled employees**

- (1) This section applies where a car is made available to a disabled employee without any transfer of the property in it.
- (2) No liability to income tax arises by virtue of Chapter 6 or 10 of Part 3 (taxable benefits: cars, vans etc. and residual liability to charge) in respect of the benefit if conditions A to C are met.
- (3) No liability to income tax arises in respect of—
  - (a) the provision of fuel for the car, or
  - (b) the payment or reimbursement of expenses incurred in connection with it,if conditions A to C are met.
- (4) Condition A is that the car has been adapted for the employee’s special needs or, in the case of an employee who because of disability can only drive a car that has automatic transmission, it is such a car.
- (5) Condition B is that the car is made available on terms prohibiting its use otherwise than for—
  - (a) the employee’s business travel, or
  - (b) transport for the employee for the purpose of—
    - (i) ordinary commuting or travel between any two places that is for practical purposes substantially ordinary commuting, or
    - (ii) travel to a place the expenses of travelling to which would be within one of the training exemption provisions if the employer paid them.
- (6) Condition C is that in the tax year the car is only used in accordance with those terms.
- (7) In this section—

“business travel” has the same meaning as in Chapter 6 of Part 3 (taxable benefits: cars, vans and related benefits) (see section 171(1)),

“disabled employee” has the same meaning as in section 246 (see subsection (4)), and

“the training exemption provisions” means—

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section 250 (exemption of work-related training provision),  
 section 255 (exemption for contributions to individual learning account training), and  
 section 311 (retraining courses).

- (8) Section 138(4) (when a car has automatic transmission) applies for the purposes of this section as it applies for the purposes of section 138.

## **248 Transport home: late night working and failure of car-sharing arrangements**

- (1) No liability to income tax arises in respect of the provision of transport or the payment or reimbursement of expenses incurred on transport if—
- (a) the transport is for a journey from the employee’s workplace to the employee’s home,
  - (b) the late working conditions or the car-sharing failure conditions are met, and
  - (c) the number of previous occasions in the tax year on which the provision of transport within this section or the payment or reimbursement of expenses within this section has occurred is lower than 60.
- (2) The late working conditions are that—
- (a) the journey is made on an occasion when the employee is required to work later than usual and until at least 9 p.m.,
  - (b) such occasions occur irregularly,
  - (c) by the time when the employee ceases work—
    - (i) public transport has ceased to be available for the journey, or
    - (ii) it would not be reasonable to expect the employee to use it, and
  - (d) the transport is by taxi or similar private road transport.
- (3) The car-sharing failure conditions are that—
- (a) the employee regularly travels to work in a car with one or more other employees of the employee’s employer under arrangements for the sharing of the car with them, and
  - (b) the journey is made on an occasion when the employee is unable to use the car because of unforeseen and exceptional circumstances.

## **[<sup>F279</sup>248A] Emergency vehicles**

- (1) This section applies where—
- (a) an emergency vehicle is made available to a person employed in an emergency service for the person’s private use,
  - (b) the terms on which it is made available prohibit its private use otherwise than when the person is on call or engaged in on-call commuting, and
  - (c) the person does not make private use of it otherwise than in such circumstances.
- (2) No liability to income tax arises by virtue of Chapter 6 or 10 of Part 3 (taxable benefits: cars, vans etc. and residual liability to charge) in respect of the benefit.
- (3) “Emergency vehicle” means a vehicle which is used to respond to emergencies and which either—

*Status: Point in time view as at 01/09/2013.*

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- (a) has fixed to it a lamp designed to emit a flashing light for use in emergencies, or
  - (b) would have such a lamp fixed to it but for the fact that (if it did) a special threat to the personal physical security of those using it would arise by reason of it being apparent that they were employed in an emergency service.
- (4) The following are “employed in an emergency service”—
- (a) constables and other persons employed for police purposes,
  - (b) persons employed for the purposes of a fire, or fire and rescue, service, and
  - (c) persons employed in the provision of ambulance or paramedic services.
- (5) The Treasury may by order amend subsection (4).
- (6) “Private use”, in relation to a person, means any use other than for the person’s business travel; and “business travel” has the same meaning as in Chapter 6 of Part 3 (see section 171(1)).
- (7) A person to whom an emergency vehicle is made available is on call when liable, as part of normal duties, to be called on to use the emergency vehicle to respond to emergencies.
- (8) A person to whom an emergency vehicle is made available is engaged in on-call commuting when the person—
- (a) is using it for ordinary commuting or for travel between two places that is for practical purposes substantially ordinary commuting, and
  - (b) is required to do so in order that it is available for use by the person, as part of normal duties, for responding to emergencies.]

#### Textual Amendments

**F279** S. 248A inserted (with effect in accordance with s. 81(3) of the amending Act) by [Finance Act 2004](#) (c. 12), s. 81(1)

## 249 Interpretation of this Chapter

In this Chapter—

“car” and “van” have the same meaning as in Chapter 6 of Part 3 (taxable benefits: cars, vans and related benefits) (see section 115), except that for the purposes of sections 246 and 247 (transport for the disabled) any adaptation of a car for the employee’s special needs is to be disregarded,

“ordinary commuting” has the same meaning as in section 338 (travel for necessary attendance) (see subsection (3)),

“qualifying journey”, in relation to an employee, means the whole or part of a journey—

- (a) between the employee’s home and workplace,
- (b) between one workplace and another,

in connection with the performance of the duties of the employment, and

“workplace” and “permanent workplace” have the meaning given by section 339.

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## CHAPTER 4

### EXEMPTIONS: EDUCATION AND TRAINING

#### *Work-related training*

#### **250 Exemption of work-related training provision**

- (1) No liability to income tax arises by virtue of—
- (a) the provision for an employee of work-related training or any benefit incidental to such training, or
  - (b) the payment or reimbursement to or in respect of an employee of—
    - (i) the cost of work-related training or of any benefit incidental to such training, or
    - (ii) any costs of a kind specified in subsection (2) in respect of such training.
- (2) The costs are—
- (a) costs which are incidental to the employee undertaking the training,
  - (b) expenses incurred in connection with an examination or other assessment of what the employee has gained from the training, and
  - (c) the cost of obtaining any qualification, registration or award to which the employee becomes or may become entitled as a result of the training or such an examination or other assessment.

#### **251 Meaning of “work-related training”**

- (1) In this Chapter “work-related training”, in relation to an employee, means a training course or other activity designed to impart, instil, improve or reinforce any knowledge, skills or personal qualities which—
- (a) are likely to prove useful to the employee when performing the duties of the employment or a related employment, or
  - (b) will qualify or better qualify the employee—
    - (i) to perform those duties, or
    - (ii) to participate in any charitable or voluntary activities that are available to be performed in association with the employment or a related employment.
- (2) For this purpose “related employment”, in relation to an employee, means another employment with the same employer, or with a person connected with the employer, which the employee—
- (a) is to hold,
  - (b) has a serious opportunity of holding, or
  - (c) can realistically expect to have a serious opportunity of holding in due course.

#### **252 Exception for non-deductible travel expenses**

- (1) Where travel or subsistence is provided or the costs of travel or subsistence are paid or reimbursed, section 250 does not apply except to the extent that the travel meets condition A or B or the subsistence meets condition B.

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- (2) Condition A is that, on the assumptions in subsection (4), mileage allowance relief under Chapter 2 of this Part would be available for the travel if no mileage allowance payments had been made.
- (3) Condition B is that, on those assumptions, the expenses of the travel or subsistence would be deductible under Part 5.
- (4) The assumptions are—
  - (a) that the employee undertook the training as one of the duties of the employment, and
  - (b) that the employee incurred and paid the expenses.
- (5) In this section—

“mileage allowance payments” has the meaning given by section 229(2), and  
“subsistence” includes food, drink and temporary living accommodation.

### **253 Exception where provision for excluded purposes**

- (1) Section 250 does not apply if or to the extent that the facilities or other benefits that are provided or the costs of which are paid or reimbursed are provided to the employee for one or more of the following purposes.
- (2) They are—
  - (a) enabling the employee to enjoy the facilities or benefits for entertainment or recreational purposes which are unconnected,
  - (b) providing the employee with an unconnected inducement to remain in or accept an employment with the employer or a person connected with the employer, and
  - (c) rewarding the employee for performing duties of the employment or performing them in a particular way.
- (3) In subsection (2)(a) the reference to enjoying facilities or benefits for entertainment or recreational purposes includes a reference to enjoying them in the course of a leisure activity.
- (4) In subsection (2)(a) and (b) “unconnected” means unconnected with imparting, instilling, improving or reinforcing knowledge, skills or personal qualities within section 251(1).

### **254 Exception where unrelated assets are provided**

- (1) Section 250 does not apply if the benefit that is provided or the cost of which is paid or reimbursed is, or is the use of, an asset that is not a training-related asset.
- (2) “Training-related asset”, in relation to work-related training provided to an employee, means—
  - (a) an asset provided for use only—
    - (i) in the course of the training, or
    - (ii) in the course of the training and in the performance of the duties of the employee’s employment,
  - (b) training materials provided in the course of the training, or

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- (c) something made by the employee in the course of the training or incorporated into something so made.
- (3) For this purpose, “training materials” includes stationery, books or other written material, audio or video tapes, compact disks or floppy disks.

#### *Individual learning account training*

### **255 Exemption for contributions to individual learning account training**

- (1) No liability to income tax in respect of income from a current or former employment arises by virtue of—
- (a) the provision to a person within subsection (2) (“the employee”) of individual learning account training that is given by a person who is not the employee’s employer or former employer,
  - (b) any payment to the person giving the training in respect of the cost of that provision,
  - (c) the provision to the employee of any benefit incidental to such training, or
  - (d) the payment or reimbursement of any costs in respect of such training of a kind specified in subsection (3).
- (2) A person is within this subsection if the person either—
- (a) holds an account that qualifies under section 104 of the Learning and Skills Act 2000 (c. 21), or
  - (b) is a party to arrangements that qualify under section 105 or 106 of that Act or section 2 of the Education and Training (Scotland) Act 2000 (asp. 8).
- (3) The costs are—
- (a) costs which are incidental to the employee undertaking the training,
  - (b) expenses incurred in connection with an examination or other assessment of what the employee has gained from the training, and
  - (c) the cost of obtaining any qualification, registration or award to which the employee becomes or may become entitled as a result of the training or such an examination or other assessment.

### **256 Meaning of “individual learning account training”**

In this Chapter “individual learning account training” means training or education of a kind that qualifies for grants authorised by—

- (a) regulations under section 108 or 109 of the Learning and Skills Act 2000 (c. 21), or
- (b) regulations under section 1 of the Education and Training (Scotland) Act 2000.

### **257 Exception for non-deductible travel expenses**

- (1) Where travel or subsistence is provided or the costs of travel or subsistence are paid or reimbursed, section 255 does not apply except to the extent that the travel meets condition A or B or the subsistence meets condition B.

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- (2) Condition A is that, on the assumptions in subsection (4), mileage allowance relief under Chapter 2 of this Part would be available for the travel if no mileage allowance payments had been made.
- (3) Condition B is that, on those assumptions, the expenses of the travel or subsistence would be deductible under Part 5.
- (4) The assumptions are—
  - (a) that the employee undertook the training as one of the duties of the employment, and
  - (b) that the employee incurred and paid the expenses.
- (5) In this section—

“mileage allowance payments” has the meaning given by section 229(2), and  
“subsistence” includes food, drink and temporary living accommodation.

#### **258 Exception where provision for excluded purposes**

- (1) Section 255 does not apply if or to the extent that the facilities or other benefits that are provided or made available, or the costs of which are paid or reimbursed, are provided or made available for either or both of the following purposes.
- (2) They are—
  - (a) enabling the employee or former employee to enjoy the facilities or benefits for entertainment or recreational purposes, and
  - (b) rewarding the employee or former employee for performing duties of the employment or former employment or performing them in a particular way.
- (3) In subsection (2)(a) the reference to enjoying facilities or benefits for entertainment or recreational purposes includes a reference to enjoying them in the course of a leisure activity.

#### **259 Exception where unrelated assets are provided**

- (1) Section 255 does not apply if the benefit that is provided, or the use of which is provided, or the cost of which is paid or reimbursed is an asset that is not a training-related asset.
- (2) “Training-related asset”, in relation to individual learning account training provided to an employee or former employee, means—
  - (a) an asset provided—
    - (i) for use only in the course of the training, or
    - (ii) for use in the course of the training and in the performance of the duties of the employee’s employment, but not to any significant extent for any other use, or
  - (b) training materials provided in the course of the training, or
  - (c) something made by the employee or former employee in the course of the training or incorporated into something so made.
- (3) For this purpose “training materials” includes stationery, books or other written material, audio or video tapes, compact disks or floppy disks.

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## **260 Exception where training not generally available to staff**

- (1) Section 255(1) only applies if any expenditure involved in making the provision, the payment or the reimbursement is incurred in giving effect to existing arrangements providing—
  - (a) for the person incurring it to contribute to costs arising from the undertaking of individual learning account training by the employer’s employees or former employees, and
  - (b) for such contributions to be generally available, on similar terms, to the employer’s employees at that time.
- (2) In subsection (1) “existing arrangements” means arrangements in place when the agreement to incur the expenditure was made.
- (3) The Treasury may by regulations make provision specifying the persons or other entities under whom Crown servants are to be treated for the purposes of this section as holding employment.
- (4) Such regulations may—
  - (a) treat a description of Crown servants (or two or more such descriptions taken together) as an entity for the purposes of the regulations, and
  - (b) make different provision for different descriptions of Crown servants.
- (5) In this section “Crown servant” means a person holding an employment under the Crown.

## **CHAPTER 5**

### EXEMPTIONS: RECREATIONAL BENEFITS

#### *Recreational facilities*

## **261 Exemption of recreational benefits**

- (1) No liability to income tax arises in respect of the provision to an employee or a member of an employee’s family or household of benefits within subsection (2).
- (2) The benefits are—
  - (a) sporting or other recreational facilities which meet conditions A to C, and
  - (b) a right or opportunity to make use of such facilities.

This is subject to section 262.

- (3) Condition A is that the facilities are available generally to the employees of the employer in question.
- (4) Condition B is that they are not available to members of the public generally.
- (5) Condition C is that they are used wholly or mainly by persons whose right or opportunity to use them is employment-related (whether or not by reference to the same employer).
- (6) A person’s right or opportunity to use facilities is “employment-related” if and only if—



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- (a) it derives from the person being—
  - (i) an employee or former employee, or
  - (ii) a member or former member of the family or household of an employee or former employee,of a particular employer, and
- (b) the facilities are provided so as to be available generally to that employer's employees.

## **262 Benefits not exempted by section 261**

(1) Section 261 (exemption of recreational benefits) does not apply to the following benefits—

- (a) an interest in or the use of any of the following—
  - (i) a mechanically propelled vehicle,
  - (ii) holiday or other overnight accommodation, or
  - (iii) facilities which include, or are provided in association with, a right or opportunity to make use of holiday or overnight accommodation,
- (b) facilities provided on domestic premises, or
- (c) a right or opportunity to make use of facilities within paragraph (a) or (b).

(2) In this section—

“domestic premises” means—

- (a) premises used wholly or mainly as a private dwelling, or
  - (b) land or other premises belonging to, or enjoyed with, premises so used,
- and

“vehicle” includes a ship, boat or other vessel, an aircraft and a hovercraft.

## **263 Power to alter benefits to which section 261 applies**

The Treasury may by regulations provide that section 261—

- (a) does not apply to a benefit specified in the regulations,
- (b) applies to a benefit so specified only where such conditions as the regulations specify are met in relation to the terms on which, and the persons to whom, it is provided, or
- (c) applies in such cases as are so specified to—
  - (i) facilities that do not meet the conditions in section 261(3) to (5), or
  - (ii) a benefit within section 262.

### *Annual parties and functions*

## **264 Annual parties and functions**

- (1) This section applies to an annual party or similar annual function provided for an employer's employees and available to them generally or available generally to those at a particular location.
- (2) Where in the tax year only one annual party or similar annual function to which this section applies is provided for the employer's employees, or the employees in

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question, no liability to income tax arises in respect of its provision if the cost per head of the party or function does not exceed [<sup>F280</sup>£150].

- (3) Where in the tax year two or more such parties or functions are so provided, no liability to income tax arises in respect of the provision of one or more of them (“the exempt party or parties”) if the cost per head of the exempt party or parties does not exceed [<sup>F281</sup>£150] or [<sup>F281</sup>£150] in aggregate.
- (4) For the purposes of this section, the cost per head of a party or function is the total cost of providing—
  - (a) the party or function, and
  - (b) any transport or accommodation incidentally provided for persons attending it (whether or not they are the employer’s employees),
 divided by the number of those persons.
- (5) That total cost includes any value added tax on the expenses incurred in providing the party, function, transport or accommodation.

#### **Textual Amendments**

**F280** Word in s. 264(2) substituted (13.6.2003) by [The Income Tax \(Exemption of Minor Benefits\) \(Increase in Sums of Money\) Order 2003 \(S.I. 2003/1361\)](#), arts. 1(1), 2

**F281** Word in s. 264(3) substituted (13.6.2003) by [The Income Tax \(Exemption of Minor Benefits\) \(Increase in Sums of Money\) Order 2003 \(S.I. 2003/1361\)](#), arts. 1(1), 2

### *Entertainment*

#### **265 Third party entertainment**

- (1) No liability to income tax arises in respect of the provision of entertainment for an employee or a member of the employee’s family or household if conditions A to C are met.
- (2) Condition A is that the person providing the entertainment is not the employer or a person connected with the employer.
- (3) Condition B is that neither the employer nor a person connected with the employer has directly or indirectly procured its provision.
- (4) Condition C is that it is not provided—
  - (a) in recognition of particular services performed by the employee in the course of the employment, or
  - (b) in anticipation of particular services to be so performed.
- (5) In this section “entertainment” includes hospitality of any kind.

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## CHAPTER 6

### EXEMPTIONS: NON-CASH VOUCHERS AND CREDIT-TOKENS

*General exemptions: use for exempt benefits*

#### 266 Exemption of non-cash vouchers for exempt benefits

- (1) No liability to income tax arises by virtue of Chapter 4 of Part 3 (taxable benefits: vouchers and credit-tokens) in respect of a non-cash voucher if or to the extent that the voucher is used to obtain anything the direct provision of which would fall within—
  - (a) section 237(1) (parking provision),
  - (b) section 246 (transport between home and work for disabled employees: general),
  - (c) section 247 (provision of cars for disabled employees),
  - (d) section 248 (transport home: late night working and failure of car-sharing arrangements), or
  - (e) section 265 (third party entertainment).
- (2) No liability to income tax arises by virtue of Chapter 4 of Part 3 (taxable benefits: vouchers and credit-tokens) in respect of a non-cash voucher if the voucher evidences the employee's entitlement to use anything the direct provision of which would fall within—
  - (a) section 242 (works transport services),
  - (b) section 243 (support for public bus services), <sup>F282</sup> ...
  - (c) section 244 (cycles and cyclist's safety equipment), [<sup>F283</sup> or
  - (d) section 319 (mobile telephones).]
- (3) No liability to income tax arises by virtue of Chapter 4 of Part 3 (taxable benefits: vouchers and credit-tokens) in respect of a non-cash voucher if the voucher can only be used to obtain anything the direct provision of which would fall within—
  - (a) section 245 (travelling and subsistence during public transport strikes),
  - (b) section 261 (exemption of recreational benefits),
  - (c) section 264 (annual parties and functions),
  - (d) section 296 (armed forces' leave travel facilities), <sup>F284</sup> ...
  - (e) section 317 (subsidised meals) [<sup>F285</sup>, <sup>F286</sup> ...
  - (f) section 320A (eye tests and special corrective appliances)] [<sup>F287</sup> or
  - (g) section 320B (health screening and medical check-ups).]
- (4) No liability to income tax arises by virtue of Chapter 4 of Part 3 (taxable benefits: vouchers and credit-tokens) in respect of a non-cash voucher if the voucher evidences the employee's entitlement to a benefit in respect of which no charge arises by virtue of Chapter 10 of Part 3 (taxable benefits: residual liability to charge) because of regulations under section 210 (power to exempt minor benefits).
- (5) For the purposes of this section direct provision is taken to fall within a section if it would do so if the employee were not in excluded employment.

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### Textual Amendments

- F282** Word in s. 266(2)(b) repealed (with effect for the year 2006-07 and subsequent years of assessment in accordance with s. 60(4)(5) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 26 Pt. 3\(6\)](#)
- F283** S. 266(2)(d) and word inserted (with effect for the year 2006-07 and subsequent years of assessment in accordance with s. 60(4) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [s. 60\(1\)](#)
- F284** Word in s. 266(3)(d) repealed (with effect for the year 2006-07 and subsequent years of assessment in accordance with Sch. 26 Pt. 3(8) Note of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 26 Pt. 3\(8\)](#)
- F285** S. 266(3)(f) and word inserted (with effect for the year 2006-07 and subsequent years of assessment in accordance with s. 62(5) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [s. 62\(3\)](#)
- F286** Word in s. 266(3)(e) omitted (with effect in accordance with s. 55(5) of the amending Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [s. 55\(2\)](#)
- F287** S. 266(3)(g) and word inserted (with effect in accordance with s. 55(5) of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [s. 55\(2\)](#)

## 267 Exemption of credit-tokens used for exempt benefits

- (1) No liability to income tax arises by virtue of Chapter 4 of Part 3 (taxable benefits: vouchers and credit-tokens) in respect of a credit-token if or to the extent that the token is used to obtain anything the direct provision of which—
- (a) would fall within one of the provisions specified in subsection (2), or
  - (b) would do so if the employee were not in excluded employment.
- (2) Those provisions are—
- (a) section 237(1) (parking provision),
  - (b) section 245 (travelling and subsistence during public transport strikes),
  - (c) section 246 (transport between home and work for disabled employees: general),
  - (d) section 247 (provision of cars for disabled employees),
  - (e) section 248 (transport home: late night working and failure of car-sharing arrangements), <sup>F288</sup> ...
  - (f) section 265 (third party entertainment).
  - <sup>F289</sup>(g) section 319 (mobile telephones).] , <sup>F290</sup> ...
  - <sup>F291</sup>(h) section 320A (eye tests and special corrective appliances)] [<sup>F292</sup>and
  - (i) section 320B (health screening and medical check-ups).]

### Textual Amendments

- F288** Word in s. 267(2)(e) repealed (with effect for the year 2006-07 and subsequent years of assessment in accordance with s. 60(4)(5) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 26 Pt. 3\(6\)](#)
- F289** S. 267(2)(g) inserted (with effect for the year 2006-07 and subsequent years of assessment in accordance with s. 60(4) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [s. 60\(2\)](#)
- F290** Word in s. 267(2)(g) omitted (with effect in accordance with s. 55(5) of the amending Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [s. 55\(3\)](#)
- F291** S. 267(2)(h) and word inserted (with effect for the year 2006-07 and subsequent years of assessment in accordance with s. 62(5) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [s. 62\(4\)](#)
- F292** S. 267(2)(i) and word inserted (with effect in accordance with s. 55(5) of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [s. 55\(3\)](#)

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### *Exemptions for particular non-cash vouchers and credit-tokens*

#### **268 Exemption of vouchers and tokens for incidental overnight expenses**

- (1) No liability to income tax arises by virtue of Chapter 4 of Part 3 (taxable benefits: vouchers and credit-tokens) in respect of a non-cash voucher or a credit-token if or to the extent that the voucher or token is used by an employee to obtain goods, services or money if conditions A to C are met.
- (2) In the case of goods or services, condition A is that—
  - (a) obtaining them is incidental to the employee’s absence from the place where the employee normally lives, and
  - (b) that absence is for a continuous period in relation to which the overnight stay conditions are met (“the qualifying period”).
- (3) In the case of money, condition A is that—
  - (a) it is obtained for the purpose of obtaining goods or services, and
  - (b) obtaining them is incidental to such an absence during such a period.
- (4) Condition B is that an amount would not be deductible under section 362 or 363 (deductions where non-cash voucher or credit-token provided) in respect of the cost of obtaining the goods or services.
- (5) Condition C is that the exemption provisions total in respect of the qualifying period does not exceed the permitted amount.
- (6) In this section—

“the overnight stay conditions” has the same meaning as in section 240 (exemption of incidental overnight expenses and benefits) (see section 240(4)), and

“the exemption provisions total” and “the permitted amount” have the same meaning as in section 241 (incidental overnight expenses and benefits: overall exemption limit) (see section 241(2) and (3)).

#### **269 Exemption where benefits or money obtained in connection with taxable car or van or exempt heavy goods vehicle**

- (1) No liability to income tax arises by virtue of Chapter 4 of Part 3 (taxable benefits: vouchers and credit-tokens) in respect of a non-cash voucher or a credit-token if or to the extent that the voucher or token is used by the employee or a member of the employee’s family for obtaining—
  - (a) goods or services in connection with a taxable car or van or an exempt heavy goods vehicle, or
  - (b) money which is spent on such goods or services.
- (2) Subsection (1) applies where the goods in question are fuel for a car, [F293 or van, but see section 149(3) or section 160(3)] (by virtue of which such use of a voucher or token is treated as the provision of the fuel for the purposes of section 149 (benefit of car fuel treated as earnings) [F294 or section 160 (benefit of van fuel treated as earnings)] ).
- (3) For the purposes of this section—
  - (a) “car” and “van” have the meaning given by section 115, and

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- (b) a car or van is “taxable” if the cash equivalent of the benefit of it is treated as the employee’s earnings for the tax year in which the voucher or token is used under Chapter 6 of Part 3 (taxable benefits: cars, vans and related benefits).
- (4) For the purposes of this section—
- (a) “heavy goods vehicle” has the same meaning as in section 238 (modest private use of heavy goods vehicles), and
  - (b) a heavy goods vehicle is “exempt” if it is made available in the tax year to the employee in such circumstances that section 238 applies or would apply if the employee were not in excluded employment.

#### **Textual Amendments**

**F293** Words in s. 269(2) substituted (21.7.2008) by [Finance Act 2008 \(c. 9\), s. 48\(2\)\(a\)](#)

**F294** Words in s. 269(2) inserted (21.7.2008) by [Finance Act 2008 \(c. 9\), s. 48\(2\)\(b\)](#)

### **270 Exemption for small gifts of vouchers and tokens from third parties**

- (1) No liability to income tax arises by virtue of Chapter 4 of Part 3 (taxable benefits: vouchers and credit-tokens) in respect of a non-cash voucher or a credit-token if conditions A to C are met.
- (2) Condition A is that the voucher or token is provided as a gift.
- (3) Condition B is that it is only capable of being used to obtain goods.
- (4) Condition C is that it meets conditions A to C and E in section 324 (general exemption of small gifts from third parties).

### **[<sup>F295</sup>270A] Limited exemption for qualifying childcare vouchers**

- (1) If qualifying childcare vouchers are provided for an [<sup>F296</sup>employee—
  - (a) no liability to income tax arises by virtue of section 62 (general definition of earnings), and
  - (b) liability to income tax by virtue of Chapter 4 of Part 3 (taxable benefits: vouchers and credit tokens) arises only in respect of so much of the cash equivalent of the benefit as exceeds the exempt amount.]
- (2) A “qualifying childcare voucher” means a non-cash voucher in relation to which Conditions A to [<sup>F297</sup>D] are met.
- (3) Condition A is that the voucher is provided to enable an employee to obtain care for a child who—
  - (a) is a child or stepchild of the employee and is maintained (wholly or partly) at the employee’s expense, or
  - (b) is resident with the employee and is a person in respect of whom the employee has parental responsibility.
- (4) Condition B is that the voucher can only be used to obtain qualifying child care.
- (5) Condition C is that the vouchers are provided under a scheme that is open—
  - (a) to the employer’s employees generally, or
  - (b) generally to those at a particular location.

*Status: Point in time view as at 01/09/2013.*

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[ Where the scheme under which the vouchers are provided involves—  
F298(5A) (a) relevant salary sacrifice arrangements, or

(b) relevant flexible remuneration arrangements,

Condition C is not prevented from being met by reason only that the scheme is not open to relevant low-paid employees.

(5B) In subsection (5A)—

“relevant salary sacrifice arrangements” means arrangements (whenever made) under which the employees for whom the vouchers are provided give up the right to receive an amount of general earnings or specific employment income in return for the provision of the vouchers;

“relevant flexible remuneration arrangements” means arrangements (whenever made) under which the employees for whom the vouchers are provided agree with the employer that they are to be provided with the vouchers rather than receive some other description of employment income;

“relevant low-paid employees” means any of the employer's employees who are remunerated by the employer at a rate such that, if the relevant salary sacrifice arrangements or relevant flexible remuneration arrangements applied to them, the rate at which they would then be so remunerated would be likely to be lower than the national minimum wage.]

[ Condition D is that the employer has, at the required time, made an estimate of the  
F299(5C) employee's relevant earnings amount for the tax year in respect of which the voucher is provided (see section 270B).]

(6) For the purposes of this section the “exempt amount”, in any tax year, is [F300the sum of—

(a) [F301the appropriate amount] for each qualifying week in that year, and

(b) the voucher administration costs for that year.]

[ In subsection (6)(a) “the appropriate amount”, in the case of an employee, means—  
F302(6ZA)

(a) if the relevant earnings amount in the case of the employee for the tax year, as estimated in accordance with subsection (5C), exceeds the higher rate limit for the tax year, [F303£25] ,

(b) if the relevant earnings amount in the case of the employee for the tax year, as so estimated, exceeds the basic rate limit for the tax year but does not exceed the higher rate limit for the tax year, £28, and

(c) otherwise, £55.]

[ The “voucher administration costs” for any tax year in respect of which qualifying  
F304(6A) childcare vouchers are provided for an employee means the difference between the cost of provision of the vouchers and their face value.

The face value of a voucher is the amount stated on or recorded in the voucher as the value of the provision of care for a child that may be obtained by using it.]

(7) A “qualifying week” means a tax week in respect of which a qualifying childcare voucher is received.

A “tax week” means one of the successive periods in a tax year beginning with the first day of that year and every seventh day after that (so that the last day of a tax year or, in the case of a tax year ending in a leap year, the last two days is treated as a separate week).

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- (8) An employee is only entitled to one exempt amount even if care is provided for more than one child.
- But it does not matter that another person may also be entitled to an exempt amount in respect of the same child.
- (9) An employee is not entitled to an exempt amount under this section and under section 318A (limited exemption for employer-contracted childcare) in respect of the same tax week.
- (10) In this section “care”, “child”, “parental responsibility” and “qualifying child care” have the same meaning as in section 318A (see sections 318B and 318C).
- [ In this section “ cost of provision”, in relation to a childcare voucher, has the meaning <sup>F305</sup>(10A) given in section 87(3) and (3A).]
- (11) The powers conferred by section 318D (childcare: power to vary [<sup>F306</sup>amounts] and qualifying conditions) are exercisable—
- (a) in relation to the [<sup>F306</sup>amounts] specified in subsection [<sup>F307</sup>(6ZA) above] as in relation to the [<sup>F306</sup>amounts] specified in section [<sup>F308</sup>318A(6A)] , and
  - (b) in relation to the qualifying conditions for the exemption conferred by this section as in relation to the qualifying conditions for the exemption conferred by section 318A.]

#### Textual Amendments

- F295** S. 270A inserted (with effect in accordance with s. 78(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 13 para. 3](#)
- F296** Words in s. 270A(1) substituted (with effect in accordance with s. 16(7) of the amending Act) by [Finance Act 2005 \(c. 7\)](#), [s. 16\(4\)](#)
- F297** Word in s. 270A(2) substituted (with effect in accordance with Sch. 8 paras. 7-10 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 8 para. 2\(2\)](#)
- F298** S. 270A(5A)(5B) inserted (with effect in accordance with s. 36(3) of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [s. 36\(1\)](#)
- F299** S. 270A(5C) inserted (with effect in accordance with Sch. 8 paras. 7-10 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 8 para. 2\(3\)](#)
- F300** Words in s. 270A(6) substituted (with effect in accordance with s. 15(5) of the amending Act) by [Finance Act 2005 \(c. 7\)](#), [s. 15\(2\)](#)
- F301** Words in s. 270A(6)(a) substituted (with effect in accordance with Sch. 8 paras. 7-10 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 8 para. 2\(4\)](#)
- F302** S. 270A(6ZA) inserted (with effect in accordance with Sch. 8 paras. 7-10 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 8 para. 2\(5\)](#)
- F303** Word in s. 270A(6ZA)(a) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Income Tax \(Exempt Amount for Childcare Vouchers and for Employer Contracted Childcare\) Order 2013 \(S.I. 2013/513\)](#), [arts. 1\(2\), 2\(2\)](#)
- F304** S. 270A(6A) inserted (with effect in accordance with s. 15(5) of the amending Act) by [Finance Act 2005 \(c. 7\)](#), [s. 15\(3\)](#)
- F305** S. 270A(10A) inserted (with effect in accordance with s. 15(5) of the amending Act) by [Finance Act 2005 \(c. 7\)](#), [s. 15\(4\)](#)
- F306** Word in s. 270A(11) substituted (with effect in accordance with Sch. 8 paras. 7-10 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 8 para. 2\(6\)\(a\)](#)
- F307** Words in s. 270A(11) substituted (with effect in accordance with Sch. 8 paras. 7-10 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 8 para. 2\(6\)\(b\)](#)



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**F308** Word in s. 270A(11) substituted (with effect in accordance with Sch. 8 paras. 7-10 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 8 para. 2\(6\)\(c\)](#)

[<sup>F309</sup>**270B** Meaning of “relevant earnings amount” and “required time”

(1) For the purposes of section 270A, the “relevant earnings amount”, in the case of an employee provided with vouchers by an employer for any qualifying week in a tax year, means—

(a) the aggregate of—

(i) the amount of any relevant earnings for the tax year from employment by the employer, and

(ii) any amounts treated under Chapters 2 to 12 of Part 3 as earnings from such employment, less

(b) the aggregate of any excluded amounts.

(2) But if the employee becomes employed by the employer during the tax year, what would otherwise be the amount of the aggregate mentioned in subsection (1)(a) is the relevant multiple of that amount; and the relevant multiple is—

365 RD

where RD is the number of days in the period beginning with the day on which the employee becomes employed by the employer and ending with the tax year.

(3) In subsection (1)(a) “relevant earnings” means—

(a) salary, wages or fees, and

(b) any other earnings specified in regulations made by the Treasury under this paragraph.

(4) In subsection (1)(b) “excluded amounts” means amounts specified in regulations made by the Treasury under this subsection.

(5) In section 270A “the required time”, in the case of an employee, means—

(a) if the employee joins the scheme under which the vouchers are provided at a time during the tax year, that time, and

(b) otherwise, the beginning of the tax year.

(6) For the purposes of subsection (5)(a) the employee is taken to join the scheme as soon as—

(a) the employer has agreed that vouchers will be provided under the scheme for the employee, and

(b) there is a child falling within section 270A(3)(a) or (b) in relation to the employee.

(7) The Treasury may by order amend this section.]

**Textual Amendments**

**F309** S. 270B inserted (with effect in accordance with Sch. 8 paras. 7-10 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 8 para. 3](#)

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## CHAPTER 7

### EXEMPTIONS: REMOVAL BENEFITS AND EXPENSES

#### *Exemption of removal benefits and expenses: general*

#### **271 Limited exemption of removal benefits and expenses: general**

- (1) No liability to income tax in respect of earnings [<sup>F310</sup>or by virtue of Part 7A] arises by virtue of—
- (a) the provision of removal benefits to which this section applies, or
  - (b) the payment or reimbursement of removal expenses to which this section applies.
- (2) [<sup>F311</sup>In relation to earnings, subsection] (1) does not apply if (disregarding this section) the earnings are general earnings to which either of the following sections applies—
- (a) section 22 (chargeable overseas earnings for year when [<sup>F312</sup>remittance basis applies and employee [<sup>F313</sup>outside section 26]] ), or
  - (b) section 26 (foreign earnings for year when [<sup>F314</sup>remittance basis applies and employee [<sup>F315</sup>meets section 26A requirement]] ).
- [<sup>F316</sup>(2A) In relation to Part 7A, subsection (1) does not apply to any amount so far as the amount (disregarding this section and section 554P) would count as employment income to which section 554Z9 or 554Z10 would apply.]
- (3) Subsection (1) is subject to section 287 (limit on exemption).

#### **Textual Amendments**

- F310** Words in s. 271(1) inserted (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 12\(2\)](#)
- F311** Words in s. 271(2) substituted (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 12\(3\)](#)
- F312** Words in s. 271(2)(a) substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 25\(a\)](#)
- F313** Words in s. 271(2)(a) substituted (with effect in accordance with Sch. 46 para. 25 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 12\(a\)](#) (with [Sch. 46 para. 26](#))
- F314** Words in s. 271(2)(b) substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 25\(b\)](#)
- F315** Words in s. 271(2)(b) substituted (with effect in accordance with Sch. 46 para. 25 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 12\(b\)](#) (with [Sch. 46 para. 26](#))
- F316** S. 271(2A) inserted (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 12\(4\)](#)

#### **272 Removal benefits and expenses to which section 271 applies**

- (1) Benefits are removal benefits to which section 271 applies if—
- (a) they are reasonably provided in connection with a change of the employee's residence which meets the conditions in section 273,
  - (b) they are provided on or before the limitation day (see section 274), and
  - (c) they are within subsection (2) or one of the following provisions—

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- (i) section 277 (acquisition benefits and expenses),
  - (ii) section 278 (abortive acquisition benefits and expenses),
  - (iii) section 279 (disposal benefits and expenses),
  - (iv) section 280 (transporting belongings),
  - (v) section 281 (travelling and subsistence),
  - (vi) section 285 (replacement of domestic goods).
- (2) A benefit is within this subsection if it is a non-cash voucher, cash voucher or credit-token used—
- (a) to obtain goods or services the direct provision of which would be a benefit within one of the provisions specified in subsection (1)(c)(i) to (vi), or
  - (b) to obtain money for the purpose of obtaining such goods or services or meeting expenses within one of those provisions or section 284 (bridging loan expenses).
- (3) Expenses are removal expenses to which section 271 applies if—
- (a) they are reasonably incurred by the employee in connection with a change of the employee’s residence which meets the conditions in section 273,
  - (b) they are incurred on or before the limitation day, and
  - (c) they are within one of the provisions referred to in subsection (1)(c)(i) to (vi) or within section 284 (bridging loan expenses).

### **273 Conditions applicable to change of residence**

- (1) The conditions referred to in section 272(1)(a) and (3)(a) which apply to the change of the employee’s residence are conditions A to C.
- (2) Condition A is that the change of residence results from one of the following changes—
- (a) the employee becoming employed,
  - (b) an alteration of the duties of the employment, or
  - (c) an alteration of the place where the employee is normally to perform those duties.
- (3) Condition B is that the change of residence is made wholly or mainly to allow the employee to reside within a reasonable daily travelling distance of the place where the employee normally performs or is normally to perform the duties of the employment after the employment change (see section 275).
- (4) Condition C is that the employee’s former residence is not within a reasonable daily travelling distance of that place.

### **274 Meaning of “the limitation day”**

- (1) In this Chapter “the limitation day”, in relation to an employee’s change of residence, means the last day of the tax year after that in which the employee begins to perform the duties of the employment after the employment change, but this is subject to any direction under subsection (2).
- (2) [<sup>F106</sup>An officer of Revenue and Customs] may direct that the last day of a later tax year is the limitation day in relation to any particular change of residence if it appears to them reasonable to do so having regard to all the circumstances of that change.

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### Textual Amendments

**F106** Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 102\(1\)](#); S.I. 2005/1126, art. 2(2)(h)

## 275 Meaning of “the employment change”

In this Chapter “the employment change”, in relation to an employee’s change of residence, means whichever of the changes specified in section 273(2) results in the change of residence.

## 276 Meaning of “residence”, “former residence” and “new residence” etc.

- (1) If an employee has more than one residence, references in this Chapter to the employee’s residence are references to the employee’s main residence.
- (2) In this Chapter, in relation to a change of the employee’s residence—
  - (a) references to the former residence are references to the employee’s residence before the change, and
  - (b) references to the new residence are references to the employee’s residence after the change.
- (3) In this Chapter references to an interest in a residence are, in the case of a building, references to an estate or interest in the land concerned.

### *Benefits and expenses within this Chapter*

## 277 Acquisition benefits and expenses

- (1) This section applies if an interest in the employee’s new residence is acquired by—
  - (a) the employee,
  - (b) one or more members of the employee’s family or household, or
  - (c) the employee and one or more members of the employee’s family or household.
- (2) The following benefits are within this section—
  - (a) legal services connected with the acquisition of the interest, including legal services connected with any loan raised by the employee to acquire it,
  - (b) the waiving of any procurement fees connected with any such loan,
  - (c) the waiving of any amount payable in respect of insurance effected to cover risks incurred by the maker of any such loan because the loan equals the whole, or a substantial part, of the value of the interest,
  - (d) any survey or inspection of the residence undertaken in connection with the acquisition, and
  - (e) the connection of any utility serving the new residence for use by the employee or by the employee and one or more members of the employee’s family or household.
- (3) The following expenses are within this section—
  - (a) sums paid for any services within subsection (2)(a), (d) or (e),

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- (b) any procurement fees connected with any loan raised by the employee to acquire the interest,
  - (c) the costs of any insurance within subsection (2)(c),
  - (d) fees payable to an appropriate registry or appropriate register in connection with the acquisition, and
  - (e) stamp duty [<sup>F317</sup>or stamp duty land tax] charged on the acquisition.
- (4) In this section references to a loan raised by the employee include a loan raised by—
- (a) one or more members of the employee’s family or household, or
  - (b) the employee and one or more members of the employee’s family or household.
- (5) In this section—
- “appropriate registry” means—
    - (a) Her Majesty’s Land Registry,
    - (b) the Land Registry in Northern Ireland, or
    - (c) the Registry of Deeds for Northern Ireland, and
  - “appropriate register” means any register under the management and control of the Keeper of the Registers of Scotland.

#### **Textual Amendments**

**F317** Words in s. 277(3)(e) inserted (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 18 para. 6](#)

### **278 Abortive acquisition benefits and expenses**

Benefits or expenses are within this section if—

- (a) they are benefits provided or expenses incurred with a view to the acquisition of an interest in a residence,
- (b) the interest is not acquired—
  - (i) because of circumstances outside the control of the person seeking to acquire it, or
  - (ii) because that person reasonably declines to proceed, and
- (c) the benefits or expenses would have fallen within section 277 if the interest had been acquired.

### **279 Disposal benefits and expenses**

- (1) This section applies if the employee has an interest in the former residence and because of the change of residence it is disposed of or is intended to be disposed of.
- (2) The following benefits are within this section—
  - (a) legal services connected with the disposal or intended disposal, including legal services connected with the redemption of a related loan,
  - (b) the waiving of any penalty for redeeming a related loan for the purpose of the disposal or intended disposal,
  - (c) the services of an estate agent or auctioneer engaged in the disposal or intended disposal,
  - (d) services connected with the advertisement of the disposal or intended disposal,

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- (e) the disconnection, for the purpose of the disposal or intended disposal, of any utility serving the former residence, and
  - (f) services connected with maintaining, insuring, or preserving the security of, the former residence at any time when it is unoccupied pending the disposal or intended disposal.
- (3) The following expenses are within this section—
- (a) sums paid for any services within subsection (2)(a), (c), (d) or (e),
  - (b) any penalty for redeeming a related loan for the purpose of the disposal or intended disposal,
  - (c) rent paid in respect of the former residence at any time when it is unoccupied pending the disposal or intended disposal, and
  - (d) expenses of maintaining, insuring, or preserving the security of the former residence at any time when it is unoccupied pending the disposal or intended disposal.
- (4) In this section references to the employee having an interest in a residence include—
- (a) one or more members of the employee’s family or household having such an interest, or
  - (b) the employee and one or more members of the employee’s family or household having such an interest.
- (5) A loan is a “related loan” for this purpose if—
- (a) it was raised to obtain an interest in the former residence, or
  - (b) it is secured on such an interest, or
  - (c) part of it was so raised and the rest of it is so secured.

## **280 Transporting belongings**

- (1) The following benefits are within this section—
- (a) the transportation of domestic belongings from the employee’s former residence to the employee’s new residence, and
  - (b) the effecting of insurance to cover such transportation.
- (2) The following expenses are within this section—
- (a) expenses connected with such transportation, and
  - (b) the costs of any such insurance.
- (3) In this section—
- “domestic belongings” means belongings of the employee or of members of the employee’s family or household, and
- “transportation” includes—
- (a) packing and unpacking belongings,
  - (b) temporarily storing them, where there is not a direct move from the former to the new residence,
  - (c) detaching domestic fittings from the former residence, where they are to be taken to the new residence, and
  - (d) attaching domestic fittings to the new residence and adapting them, where they are brought from the former residence.

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## 281 Travelling and subsistence

- (1) The following benefits are within this section—
- (a) subsistence and facilities for travel provided for the employee and members of the employee’s family or household for temporary visits to the new area for purposes connected with the change of residence,
  - (b) any other subsistence provided for the employee,
  - (c) facilities provided for the employee for travel between the employee’s former residence and—
    - (i) the place where the employee’s new duties are normally performed, or
    - (ii) the new place where the duties of the employee’s employment are normally performed, or
    - (iii) temporary living accommodation of the employee,
  - (d) where the employment change is within section 273(2)(b) or (c) (change of duties or place of performance), facilities provided for the employee for travel before the change between the employee’s new residence and—
    - (i) the place where the employee normally performs the duties of the employment before the change, or
    - (ii) temporary living accommodation of the employee,
  - (e) facilities provided for the employee and members of the employee’s family or household for travel from the employee’s former residence to the employee’s new residence in connection with the change of residence,
  - (f) subsistence provided for a relevant child while the child stays in education-linked living accommodation,
  - (g) facilities provided for a relevant child for travel between education-linked living accommodation and the employee’s accommodation.
- (2) For the purposes of this section, “education-linked living accommodation”, in relation to a relevant child, means living accommodation where the child stays for the purpose of securing continuity in education, being—
- (a) accommodation in the new area where the child stays before the employee’s change of residence,
  - (b) accommodation in the former area where the child stays after that change,
  - (c) accommodation in the new area where the child stays while the employee is living in temporary living accommodation in the former area, or
  - (d) accommodation in the former area where the child stays while the employee is living in temporary living accommodation in the new area.
- (3) For the purposes of subsection (1)(g) “the employee’s accommodation”, in relation to travel to or from education-linked accommodation, means—
- (a) if that accommodation is within subsection (2)(a), the employee’s former residence,
  - (b) if that accommodation is within subsection (2)(b), the employee’s new residence, and
  - (c) if that accommodation is within subsection (2)(c) or (d), the employee’s temporary accommodation.
- (4) The cost of providing subsistence or travel of a kind described in subsection (1) is an expense within this section.

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(5) Subsections (1) and (4) are subject to section 282 (exclusion from this section of benefits and expenses where deduction allowed), and subsection (1) is also subject to section 283 (exclusion from this section of taxable car and van facilities).

(6) In this section—

“new duties” means—

- (a) if the employment change is within section 273(2)(a) (change of employer), the duties of the employee’s new employment, and
- (b) if the employment change is within section 273(2)(b) (change of duties), the new duties of the employment,

“former area” means the area round or near the former residence of the employee,

“new area” means—

- (a) if the employment change is within section 273(2)(a) or (b) (change of employer or duties), the area round or near the place where the employee’s new duties normally are or are to be performed, and
- (b) if the employment change is within section 273(2)(c) (change of place of performance), the area round or near the new place where the duties of the employee’s employment normally are or are to be performed,

“relevant child” means a person who is a member of the employee’s family or household and is aged under 19 at the beginning of the tax year in which the employment change occurs, and

“subsistence” means food, drink and temporary living accommodation.

## **282 Exclusion from section 281 of benefits and expenses where deduction allowed**

(1) Benefits and expenses are excluded from section 281 (travelling and subsistence) if or to the extent that an amount is deductible in respect of the cost of the benefits or of the expenses under any of the following provisions.

(2) They are—

- (a) section 341 (travel at start or finish of overseas employment),
- (b) section 342 (travel between employments where duties performed abroad), and
- (c) Chapter 5 of Part 5 except section 376 (deductions for earnings representing benefits or reimbursed expenses in respect of certain foreign travel).

(3) If an amount is so deductible in respect of part only of the cost of a benefit, the part of the benefit excluded by this section is to be determined on a just and reasonable basis.

## **283 Exclusion from section 281 of taxable car and van facilities**

(1) A car or van is not treated as a facility for the purposes of section 281(1) if in the tax year in which it is provided it is also made available—

- (a) to the employee or members of the employee’s family or household for private use not falling within section 281(1),
- (b) by reason of the employee’s employment, and
- (c) without any transfer of the property in it.

(2) The following sections apply for the purposes of this section as they apply for the purposes of Chapter 6 of Part 3 (taxable benefits: cars, vans and related benefits)—



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- (a) section 115 (meaning of “car” and “van”),
- (b) section 117 (meaning of car or van made available by reason of employment),  
and
- (c) section 118 (availability for private use).

## 284 Bridging loan expenses

- (1) Expenses are within this section if—
- (a) the employee has an interest in the former residence and disposes of it because of the change of residence,
  - (b) the employee acquires an interest in the new residence, and
  - (c) the expenses are interest payable by the employee in respect of a loan raised by the employee wholly or partly because expenditure is incurred in connection with that acquisition before the proceeds of that disposal become available.

This is subject to subsections (2) and (3).

- (2) Interest is only within this section if or to the extent that the loan is used—
- (a) for acquiring the employee’s interest in the new residence, or
  - (b) for redeeming a loan—
    - (i) which was raised by the employee to obtain an interest in the former residence,
    - (ii) which is secured on such an interest, or
    - (iii) which was partly so raised and the rest of which is so secured.
- (3) If the loan exceeds the market value of the employee’s interest in the former residence at the time of acquisition of the new residence, the interest on the excess is not within this section.
- (4) If subsection (3) applies in a case where the loan is used partly for purposes within subsection (2) and partly for other purposes, the amount of the interest within this section is the appropriate fraction of the total interest.

- (5) The appropriate fraction is—

$$\frac{MV}{L}$$

or, if it is smaller—

$$\frac{PL}{L}$$

where—

MV is the market value of the employee’s interest in the former residence at the time of acquisition of the new residence,

PL is the part of the loan used for purposes within subsection (2), and

L is the amount of the loan.

- (6) In this section—
- (a) references to a loan raised by the employee include a loan raised by—

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- (i) one or more members of the employee's family or household, or
- (ii) the employee and one or more members of the employee's family or household, and
- (b) references to the employee having, disposing of or acquiring an interest in a residence include—
  - (i) one or more members of the employee's family or household having, disposing of or acquiring such an interest, or
  - (ii) the employee and one or more members of the employee's family or household having, disposing of or acquiring such an interest.

## **285 Replacement of domestic goods**

- (1) Benefits and expenses are within this section if—
  - (a) the employee has an interest in the former residence and disposes of it because of the change of residence,
  - (b) the employee acquires an interest in the new residence,
  - (c) in the case of benefits, they are domestic goods provided to replace goods used at the former residence which are unsuitable for use at the new residence, and
  - (d) in the case of expenses, they are incurred on the purchase of domestic goods intended for such replacement.
- (2) In this section references to the employee having, disposing of or acquiring an interest in a residence include—
  - (a) one or more members of the employee's family or household having, disposing of or acquiring such an interest, or
  - (b) the employee and one or more members of the employee's family or household having, disposing of or acquiring such an interest.

## **286 Power to amend sections [F318277] to 285**

- (1) The Treasury may by regulations amend sections [F318277] to 285 so as to secure that benefits or expenses which would not otherwise fall within any of those sections do so.
- (2) The regulations may include such supplementary, incidental or consequential provisions as appear to the Treasury to be necessary or expedient.
- (3) Those provisions may be made by amending this Chapter or otherwise.
- (4) The regulations apply to a change of an employee's residence resulting from an employment change occurring on or after the day specified in the regulations for this purpose.

### **Textual Amendments**

**F318** Words in s. 286 substituted (22.7.2004) by [Finance Act 2004 \(c. 12\)](#), [Sch. 17 para. 9\(2\)](#)

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### *Limit on exemption*

#### **287 Limit on exemption**

- (1) If in the case of any change of residence the value of the exemption exceeds £8,000, section 271 (exemption of removal benefits and expenses) does not apply to the excess.
- (2) The value of the exemption is an amount equal to the sum of—
  - (a) the section 62 earnings,<sup>F319</sup>...
  - (b) the benefits code earnings (after taking account of section 64(2)(b) where otherwise an amount that falls within paragraph (a) would be included)<sup>F320</sup>, and
  - (c) the Part 7A employment income]
- (3) In this section “the section 62 earnings” means all earnings within section 62 (earnings) in respect of which section 271 would prevent liability to income tax from arising if this section were disregarded.
- (4) In this section “the benefits code earnings” means all earnings—
  - (a) which are treated as such under the benefits code (except earnings so treated under Chapter 7 of Part 3 (taxable benefits: loans)), and
  - (b) in respect of which section 271 would prevent liability to income tax from arising if this section were disregarded.
- (5) In the case of living accommodation, the amount that would be so treated is to be taken to be equal to—

### **CE- D**

where—

CE is the cash equivalent of the accommodation under Chapter 5 of Part 3 (taxable benefits: living accommodation) for the period in which the accommodation is provided (calculated as mentioned in section 103), and

D is any amount deductible under section 364 (deductions where living accommodation provided).

- <sup>F321</sup>(6) In this section “the Part 7A employment income” means the amount in respect of which section 271 (when read with section 554P) would prevent liability to income tax arising if this section were to be disregarded.]

#### **Textual Amendments**

**F319** Word in s. 287(2) omitted (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by virtue of [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 13\(2\)\(a\)](#)

**F320** S. 287(2)(c) and word inserted (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 13\(2\)\(b\)](#)

**F321** S. 287(6) inserted (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 13\(3\)](#)

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### *Special exemption and relief for bridging loans*

#### **288 Limited exemption of certain bridging loans connected with employment moves**

- (1) No liability to income tax arises by virtue of Chapter 7 of Part 3 (taxable benefits: loans) in respect of a loan if—
- (a) it is a removal benefit (see subsection (2)),
  - (b) the unused removal benefit exemption condition is met (see subsection (3)), and
  - (c) the loan is discharged before the end of the exempted loan discharge period (see subsection (4)).
- (2) For the purposes of this section and section 289, a loan is a removal benefit if—
- (a) it is raised by the employee in connection with a change of residence meeting the conditions in section 273 (conditions applicable to change of residence),
  - (b) the employee has an interest in the former residence and disposes of it in consequence of the change of residence,
  - (c) the employee acquires an interest in the new residence,
  - (d) the loan is raised wholly or partly because expenditure is incurred in connection with that acquisition before the proceeds of that disposal become available, and
  - (e) the loan is made before the limitation day.
- (3) For the purposes of this section and section 289 the unused removal benefit exemption condition is that, in the case of the particular change of residence—
- (a) the sum specified in section 287(1) (limit on exemption), exceeds
  - (b) the amount referred to in section 287(2) (the value of the exemption);
- and for those purposes that excess is “the unused exemption”.
- (4) In this section and section 289 “the exempted loan discharge period”, in relation to a loan, means the period of N days beginning with the day on which it is made, taking N as the number obtained by applying the following formula and, if that does not give a whole number, rounding up the result to the nearest whole number—

$$\frac{A}{B \times C} \times 365$$

where—

A is the unused exemption,

B is the maximum amount of the loan outstanding in the period beginning with the time when the loan is made and ending with the limitation day, and

C is the official rate of interest in force when the loan is made (expressed as a percentage).

- (5) In this section—
- (a) references to a loan raised by the employee include a loan raised by—
    - (i) one or more members of the employee’s family or household, or
    - (ii) the employee and one or more members of the employee’s family or household, and

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- (b) references to the employee having, disposing of or acquiring an interest in a residence include—
  - (i) one or more members of the employee’s family or household having, disposing of or acquiring such an interest, or
  - (ii) the employee and one or more members of the employee’s family or household having, disposing of or acquiring such an interest.
- (6) The tax payable in respect of a loan for a tax year ending before the limitation day may be decided on the basis that the unused removal benefit exemption condition will not be met.

## **289 Relief for certain bridging loans not qualifying for exemption under section 288**

- (1) This subsection applies to a loan if—
  - (a) it is a removal benefit (see section 288(2)),
  - (b) the unused removal benefit exemption condition is met (see section 288(3)), and
  - (c) the loan is not discharged before the end of the exempted loan discharge period (see section 288(4)).
- (2) A loan to which subsection (1) applies is to be treated for the purposes of Chapter 7 of Part 3 (taxable benefits: loans) as if it was made on the day after the last day of the exempted loan discharge period.
- (3) Subsection (2) does not apply for the purposes of sections 176, 177, 180, 189 and 190.
- (4) The tax payable in respect of a loan for a tax year ending before the limitation day may be decided on the basis that subsections (1) and (2) will not apply because the unused removal benefit exemption condition will not be met.

## **CHAPTER 8**

### **EXEMPTIONS: SPECIAL KINDS OF EMPLOYEES**

#### *Ministers of religion*

## **290 Accommodation benefits of ministers of religion**

- (1) No liability to income tax in respect of a person employed as a full-time minister arises by virtue of—
  - (a) the payment or reimbursement of a statutory amount payable in connection with qualifying premises, or
  - (b) the reimbursement of a statutory deduction made in connection with qualifying premises.
- (2) No liability to income tax in respect of a person employed as a full-time minister arises by virtue of the payment or reimbursement of expenses incurred in connection with providing living accommodation in qualifying premises if the employment is excluded employment.
- (3) Subsection (1) does not apply if or to the extent that the amount or deduction is properly attributable to a part of the premises for which the minister receives rent.

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- (4) Premises are qualifying premises in relation to a person employed as a minister if—
- (a) an interest in them belongs to a charity or an ecclesiastical corporation, and
  - (b) because of that interest and by reason of holding the employment, the minister has a residence in them from which to perform the duties of the employment.
- (5) In this section—
- F322  
...
- “full-time minister” means a person in full-time employment as a minister of a religious denomination,
- “statutory amount” means an amount paid in pursuance of a provision in, or having the force of, an Act, and
- “statutory deduction” means a deduction made in pursuance of such a provision.

#### Textual Amendments

**F322** Words in s. 290(5) omitted (coming into force for the tax year 2012-13 and subsequent tax years) by virtue of [Finance Act 2010 \(c. 13\)](#), [Sch. 6 paras. 17\(5\), 34\(2\)](#); [S.I. 2012/736](#), art. 13

### [<sup>F323</sup>290A Accommodation outgoings of ministers of religion

- (1) No liability to income tax arises in respect of a person in lower-paid employment as a minister of a religious denomination by virtue of the payment or reimbursement of accommodation outgoings.
- (2) Subsection (1) does not apply if the minister is paid an allowance intended to be used, wholly or in part, for paying accommodation outgoings (as to which see section 290B).
- (3) In this section—
- “accommodation outgoings” means amounts incurred by the minister in—
- (a) heating, lighting or cleaning qualifying premises; or
  - (b) maintaining a garden forming part of qualifying premises;
- “lower-paid employment” has the meaning given by section 217;
- “qualifying premises” has the same meaning as in section 290.

#### Textual Amendments

**F323** Ss. 290A, 290B inserted (with effect in accordance with art. 2(4) of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2010 \(S.I. 2010/157\)](#), arts. 1, 2(3)

### 290B Allowances paid to ministers of religion in respect of accommodation outgoings

- (1) This section applies where a person in lower-paid employment as a minister of a religious denomination is paid an allowance intended to be used, wholly or in part, for paying accommodation outgoings.
- (2) No liability to tax arises by virtue of the payment of the allowance to the extent that it is used for paying accommodation outgoings.
- (3) In this section—

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“accommodation outgoings” and “lower-paid employment” have the same meanings as in section 290A;

“qualifying premises” has the same meaning as in section 290.]

#### Textual Amendments

**F323** Ss. 290A, 290B inserted (with effect in accordance with art. 2(4) of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2010 \(S.I. 2010/157\)](#), arts. 1, **2(3)**

*MPs, government ministers etc.*

### 291 Termination payments to MPs and others ceasing to hold office

- (1) No liability to income tax in respect of earnings arises by virtue of any grant or payment to which this section applies (but see Chapter 3 of Part 6: payments and benefits on termination of employment etc.).
- (2) This section applies to grants and payments—
  - <sup>F324</sup>(a) made under section 5(1) of the Parliamentary Standards Act 2009 in connection with a person's ceasing to be a member of the House of Commons,]
  - (b) made under section 4 of the Ministerial and other Pensions and Salaries Act 1991 (c. 5) (grants to persons ceasing to hold certain ministerial and other offices),
  - (c) made under section 3 of the European Parliament (Pay and Pensions) Act 1979 (c. 50) (resettlement grants for persons ceasing to be Representatives), [<sup>F325</sup>or under Article 13 of the Statute for Members of the European Parliament (transitional allowances),]
  - (d) made under section 81(3) of the Scotland Act 1998 (c. 46) to a person—
    - (i) ceasing to be a member of the Scottish Parliament on its dissolution, or
    - (ii) ceasing to hold an office corresponding to a relevant office,
  - <sup>F326</sup>(e) made under section 20(3) of the Government of Wales Act 2006 to a person—
    - (i) ceasing to be a member of the National Assembly for Wales; or
    - (ii) ceasing to hold office as the Presiding Officer, Deputy Presiding Officer, or such other office in connection with the Assembly as the Assembly may determine, but continuing to be an Assembly Member,
  - (ea) made under section 53(3) of the Government of Wales Act 2006 to a person ceasing to be a member of the Welsh Assembly Government<sup>F327</sup> ...]
  - (f) made under section 48(1) of the Northern Ireland Act 1998 (c. 47) to a person—
    - (i) ceasing to be a member of the Northern Ireland Assembly on its dissolution, or
    - (ii) ceasing to hold an office corresponding to a relevant office<sup>F328</sup>, or
  - (g) made under section 26A of the Greater London Authority Act 1999 (payments on ceasing to hold office as Mayor of London or as a member of the London Assembly).]
- (3) In this section “a relevant office” has the same meaning as in section 4 of the Ministerial and other Pensions and Salaries Act 1991.

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#### Textual Amendments

- F324** S. 291(2)(a) substituted (with effect in accordance with s. 15(2) of the amending Act) by [Finance Act 2012 \(c. 14\), s. 15\(1\)](#)
- F325** Words in s. 291(2)(c) inserted (with effect in accordance with s. 56(3) of the amending Act) by [Finance Act 2009 \(c. 10\), s. 56\(2\)](#)
- F326** S. 291(2)(e)(ea) substituted for s. 291(2)(e) (25.5.2007) by [The Government of Wales Act 2006 \(Consequential Modifications and Transitional Provisions\) Order 2007 \(S.I. 2007/1388\), Sch. 1 para. 102](#)
- F327** Word in s. 291(2)(ea) omitted (with effect in accordance with s. 52(4) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\), s. 52\(2\)](#)
- F328** S. 291(2)(g) and word inserted (with effect in accordance with s. 52(4) of the amending Act) by [Finance Act 2008 \(c. 9\), s. 52\(3\)](#)

#### [<sup>F329</sup>292 Accommodation expenses of MPs

- (1) No liability to income tax arises in respect of a payment made to a member of the House of Commons under section 5(1) of the Parliamentary Standards Act 2009 if the payment is—
  - (a) expressed to be made in respect of accommodation expenses, or
  - (b) related to or in consequence of a payment expressed to be so made.
- (2) “Accommodation expenses” means expenses necessarily incurred on overnight accommodation that is required for the performance of the member's parliamentary duties in or about the Palace of Westminster or the member's constituency.
- (3) But the cost of an overnight stay in a hotel that was required only because, on that night, the member had been required to be at the House of Commons because the House was sitting late does not count as accommodation expenses for the purposes of this section, unless the member had been required to be at the House because it was sitting beyond 1 a.m.
- (4) Subsection (1) does not apply to a loan for a deposit payable at the commencement of a tenancy.
- [<sup>F330</sup>(5) The reference in subsection (1) to a payment made to a member of the House of Commons under section 5(1) of the Parliamentary Standards Act 2009 includes a payment made under that section to another person at the direction of a member (see section 6(7) of that Act).]

#### Textual Amendments

- F329** S. 292 substituted (with effect in accordance with Sch. 4 para. 1(4)(5) of the amending Act) by [Finance \(No. 2\) Act 2010 \(c. 31\), Sch. 4 para. 1\(2\)](#)
- F330** S. 292(5) inserted (with effect in accordance with s. 37(2) of the amending Act) by [Finance Act 2011 \(c. 11\), s. 37\(1\)](#)

#### 293 Overnight expenses of other elected representatives

- (1) No liability to income tax arises in respect of a payment to which this section applies if it is expressed to be made in respect of a member's necessary overnight expenses.



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- (2) This section applies to payments—
- (a) made to members of the Scottish Parliament under section 81(2) of the Scotland Act 1998 (c. 46),
  - (b) made to members of the National Assembly for Wales under [<sup>F331</sup>section 20(2) of the Government of Wales Act 2006 or to a member of the Welsh Assembly Government under section 53(2) of that Act], or
  - (c) made to members of the Northern Ireland Assembly under section 47(2) of the Northern Ireland Act 1998 (c. 47).
- (3) In this section “a member’s necessary overnight expenses” means additional expenses necessarily incurred by a member for the purpose of performing duties as a member in staying overnight away from the member’s only or main residence—
- (a) in the area in which the Parliament or Assembly to which the member belongs sits, or
  - (b) in the constituency or region which the member represents.

#### Textual Amendments

**F331** Words in s. 293(2)(b) substituted (25.5.2007) by [The Government of Wales Act 2006 \(Consequential Modifications and Transitional Provisions\) Order 2007 \(S.I. 2007/1388\)](#), **Sch. 1 para. 103**

#### [<sup>F332</sup>293AUK travel and subsistence expenses of MPs

- (1) No liability to income tax arises in respect of a payment made to a member of the House of Commons under section 5(1) of the Parliamentary Standards Act 2009 if the payment is expressed to be made—
- (a) in respect of relevant UK travel expenses, or
  - (b) in respect of relevant subsistence expenses.
- (2) “Relevant UK travel expenses” means expenses necessarily incurred on journeys of the following kinds within the United Kingdom—
- (a) journeys made by the member that are necessary for the performance of the member's parliamentary duties, and
  - (b) if the member shares caring responsibilities with a spouse or partner, journeys made by the spouse or partner between the member's London Area residence and the member's constituency residence.
- (3) “Relevant subsistence expenses” means expenses necessarily incurred on an evening meal (excluding alcoholic drinks) eaten on the Parliamentary Estate, where the member is required to be at the House of Commons because the House is sitting beyond 7.30 p.m.
- (4) “Caring responsibilities” and “London Area” have the same meaning in subsection (2) (b) as they have in the scheme in effect for the time being under section 5 of the Parliamentary Standards Act 2009.]

#### Textual Amendments

**F332** S. 293A inserted (with effect in accordance with Sch. 4 para. 2(2)(3) of the amending Act) by [Finance \(No. 2\) Act 2010 \(c. 31\)](#), **Sch. 4 para. 2(1)**

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### **[<sup>F333</sup>293] UK travel expenses of other elected representatives**

- (1) No liability to income tax arises in respect of a payment to which this section applies if it is expressed to be made in respect of relevant UK travel expenses.
- (2) This section applies to payments—
  - (a) made to members of the Scottish Parliament under section 81(2) of the Scotland Act 1998,
  - (b) made to members of the National Assembly for Wales under section 20(2) of the Government of Wales Act 2006 or to a member of the Welsh Assembly Government under section 53(2) of that Act, or
  - (c) made to members of the Northern Ireland Assembly under section 47(2) of the Northern Ireland Act 1998.
- (3) In this section “relevant UK travel expenses” means expenses necessarily incurred on journeys of the following kinds within the United Kingdom—
  - (a) journeys within subsection (4) made by the member that are necessary for the performance of his or her duties as a member;
  - (b) if the member shares caring responsibilities with a spouse or partner, journeys made by the spouse or partner between the constituency or region and the member's parliamentary home.
- (4) The journeys referred to in subsection (3)(a) are those—
  - (a) between the constituency or region and the Parliament or Assembly to which the member belongs,
  - (b) between the constituency or region and the member's parliamentary home, or
  - (c) within the constituency or region, but not excluded by subsection (5).
- (5) A journey is excluded if—
  - (a) in the case of a member who has only one local office, it is between the member's local home and that office, and
  - (b) in any other case, it is between the member's local home and the principal local office.
- (6) In this section—
 

“constituency or region”, in relation to a member, means the constituency or region which the member represents and the area within 20 miles of the boundary of that constituency or region;

“local office”, in relation to a member, means an office which is situated in the constituency or region and occupied by the member for the purposes of performing duties as a member;

“the member's local home” means a residence of the member situated in the constituency or region;

“the member's parliamentary home” means the member's only or main residence in the area comprising—

  - (a) the main site of the Parliament or Assembly to which the member belongs, and
  - (b) the area within 20 miles of that site;

“principal local office”, in relation to a member, means the local office most frequently occupied by the member for the purposes of performing duties as a member.

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- (7) A person has “caring responsibilities” if the person—
- (a) has parental responsibility for a dependent child aged under 17 or for a child aged 17 or 18 who is in full-time education, or
  - (b) is the primary carer for a family member in receipt of—
    - (i) attendance allowance,
    - (ii) disability living allowance at the middle or highest rate for personal care,
    - (iii) the daily living component of personal independence payment, or
    - (iv) constant attendance allowance at or above the maximum rate with an industrial injuries disablement benefit, or the basic (full day) rate with a war disablement pension.
- (8) The Treasury may by order amend the definition of “caring responsibilities” in subsection (7).]

#### Textual Amendments

**F333** S. 293B inserted (with effect in accordance with s. 10(2) of the amending Act) by [Finance Act 2013 \(c. 29\), s. 10\(1\)](#)

#### [<sup>F335</sup>294 [<sup>F334</sup>European] travel expenses of MPs and other representatives

- (1) No liability to income tax arises in respect of a sum that is paid to—
- (a) a member of the House of Commons under section 5(1) of the Parliamentary Standards Act 2009,
  - (b) a member of the Scottish Parliament under section 81(2) of the Scotland Act 1998,
  - (c) a member of the National Assembly for Wales under section 20(2) of the Government of Wales Act 2006 or a member of the Welsh Assembly Government under section 53(2) of that Act, or
  - (d) a member of the Northern Ireland Assembly under section 47(2) of the Northern Ireland Act 1998,

and expressed to be made in respect of European travel expenses.]

[<sup>F336</sup>(2) “European travel expenses” means the cost of, and any additional expenses incurred in, travelling between the United Kingdom and a relevant European location.

- (3) “Relevant European location” means—
- (a) a European Union institution or agency, or
  - (b) the national parliament of—
    - (i) another member State,
    - (ii) a candidate or applicant country, or
    - (iii) [<sup>F337</sup>any other country that is a member of the Council of Europe.]

- (4) The Treasury may by order amend subsection (3) by—
- (a) adding a European location,
  - (b) removing a European location, or
  - (c) varying the description of a European location.]

*Status: Point in time view as at 01/09/2013.*

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### Textual Amendments

- F334** Word in s. 294 heading substituted (with effect in accordance with s. 82(5) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 82\(4\)](#)
- F335** S. 294(1) substituted (with effect in accordance with Sch. 4 para. 1(4)(5) of the amending Act) by [Finance \(No. 2\) Act 2010 \(c. 31\), Sch. 4 para. 3\(2\)](#)
- F336** S. 294(2)-(4) substituted (with effect in accordance with s. 82(5) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 82\(3\)](#)
- F337** S. 294(3)(b)(iii) substituted (with effect in accordance with Sch. 4 para. 3(4)(5) of the amending Act) by [Finance \(No. 2\) Act 2010 \(c. 31\), Sch. 4 para. 3\(3\)](#)

## 295 Transport and subsistence for Government ministers etc.

- (1) No liability to income tax arises in respect of the provision of transport or subsistence provided or made available by or on behalf of the Crown to—
  - (a) the holder of a ministerial office, or
  - (b) a member of the family or household of the holder of a ministerial office.
- (2) No liability to income tax arises in respect of payments and reimbursements by or on behalf of the Crown of expenses incurred in connection with the provision of transport or subsistence to a person within subsection (1).
- (3) “Ministerial office” means—
  - (a) an office in Her Majesty’s Government in the United Kingdom,
  - (b) any other office which is one of the offices and positions in respect of which salaries are payable under section 1 of the Ministerial and other Salaries Act 1975 (c. 27), and
  - (c) an office under one of the following Acts which corresponds to an office within paragraph (a) or (b)—
    - (i) the Scotland Act 1998 (c. 46),
    - (ii) [<sup>F338</sup>the Government of Wales Act 2006], or
    - (iii) the Northern Ireland Act 1998 (c. 47).
- (4) In determining whether a particular person holds an office within subsection (3)(b), it is irrelevant whether or not a salary is paid or payable to that person under the Ministerial and other Salaries Act 1975.
- (5) In this section references to the provision of transport to a person include references to—
  - (a) the provision or making available to that person of a vehicle with or without a driver,
  - (b) the provision of fuel for a vehicle provided or made available to that person, and
  - (c) the provision of any other benefit in connection with such a vehicle.
- (6) In this section—
  - (a) “subsistence” includes food and drink and temporary living accommodation, and
  - (b) “vehicle” means a mechanically propelled road vehicle.

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#### Textual Amendments

- F338** Words in s. 295(3)(c)(ii) substituted (25.5.2007) by [The Government of Wales Act 2006 \(Consequential Modifications and Transitional Provisions\) Order 2007 \(S.I. 2007/1388\)](#), [Sch. 1 para. 105](#)

### *Armed forces*

#### **296 Armed forces' leave travel facilities**

- (1) No liability to income tax arises in respect of—
- (a) the provision of travel facilities for a member of the armed forces of the Crown going on or returning from leave, or
  - (b) a payment made in respect of such travel.
- (2) In subsection (1) “travel facilities” does not include a vehicle.

#### **297 Armed forces' food, drink and mess allowances**

- (1) No liability to income tax arises in respect of allowances if—
- (a) they are payable out of the public revenue to any description of members of the armed forces of the Crown, and
  - (b) the Treasury certifies that they are payable to them instead of food or drink normally supplied to members of the armed forces.
- (2) No liability to income tax arises in respect of allowances if—
- (a) they are payable out of the public revenue in respect of any description of members of the armed forces of the Crown, and
  - (b) the Treasury certifies that they are so payable as a contribution to the expenses of a mess.

#### **[<sup>F339</sup>297A] Armed forces: the Operational Allowance**

- (1) No liability to income tax arises in respect of payments to members of the armed forces of the Crown of the Operational Allowance.
- (2) The Operational Allowance is an allowance designated as such [<sup>F340</sup>under a Royal Warrant made under section 333 of the Armed Forces Act 2006] .]

#### Textual Amendments

- F339** S. 297A inserted (with effect in accordance with s. 64(2) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [s. 64\(1\)](#)
- F340** Words in s. 297A(2) substituted (with effect in accordance with s. 16(5) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [s. 16\(2\)](#)

#### **[<sup>F341</sup>297BA] Armed forces: the Council Tax Relief**

- (1) No liability to income tax arises in respect of payments of the Council Tax Relief to members of the armed forces of the Crown.

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- (2) Payments of the Council Tax Relief are payments designated as such [<sup>F342</sup>under a Royal Warrant made under section 333 of the Armed Forces Act 2006] .]

#### Textual Amendments

- F341** S. 297B inserted (with effect in accordance with s. 51(2) of the amending Act) by [Finance Act 2008 \(c. 9\), s. 51\(1\)](#)
- F342** Words in s. 297B(2) substituted (with effect in accordance with s. 16(5) of the amending Act) by [Finance Act 2012 \(c. 14\), s. 16\(3\)](#)

### [<sup>F343</sup>297C] **Armed forces: Continuity of Education Allowance**

- (1) No liability to income tax arises in respect of payments of the Continuity of Education Allowance to or in respect of members of the armed forces of the Crown during their employment under the Crown or after their deaths.
- (2) The Continuity of Education Allowance is an allowance designated as such under a Royal Warrant made under section 333 of the Armed Forces Act 2006.]

#### Textual Amendments

- F343** S. 297C inserted (with effect in accordance with s. 16(5) of the amending Act) by [Finance Act 2012 \(c. 14\), s. 16\(4\)](#)

### **298 Reserve and auxiliary forces' training allowances**

No liability to income tax arises in respect of the following sums if they are payable out of the public revenue to members of the reserve and auxiliary forces of the Crown—

- (a) training expenses allowances, and
- (b) bounties payable in consideration of the members undertaking certain training and attaining a particular standard of efficiency.

*Crown employees*

### **299 Crown employees' foreign service allowances**

- (1) No liability to income tax arises in respect of an allowance paid to a person in employment under the Crown if it is certified to represent compensation for the extra cost of being obliged to live outside the United Kingdom in order to perform the duties of the employment.
- (2) A certificate under subsection (1) may only be given by—
- (a) the Treasury,
  - (b) the Secretary of State,
  - (c) the Lord Chancellor,
  - (d) the Chancellor of the Exchequer,
  - (e) the Minister for the Civil Service,
  - (f) the Lord President of the Council,
  - (g) the Lord Privy Seal, or

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(h) the Attorney General.

*Consuls, foreign agents etc.*

### **300 Consuls**

- (1) No liability to income tax arises in respect of income arising from the office of a consul in the United Kingdom in the service of a foreign state.
- (2) Such income is also to be disregarded in estimating the amount of income for any income tax purposes.
- (3) In this section “consul” means a person recognised by Her Majesty as being a consul-general, consul, vice-consul or consular agent.

### **301 Official agents**

- (1) No liability to income tax arises in respect of income arising from employment as an official agent in the United Kingdom for a foreign state if conditions A and B are met.
- (2) Condition A is that the employee is neither—
  - (a) a Commonwealth citizen, nor
  - (b) a citizen of the Republic of Ireland.
- (3) Condition B is that the functions of the employment are not exercised in connection with a trade, business or other undertaking carried on for the purposes of profit.
- (4) Such income is also to be disregarded in estimating the amount of income for any income tax purposes.
- (5) In this section “official agent” means a person who is not a consul (as defined in section 300) but is employed on the staff of—
  - (a) a consulate, or
  - (b) an official department or agency of a foreign state.
- (6) Subsection (5)(b) does not apply to a department or agency which carries on a trade, business or other undertaking for the purposes of profit.

### **302 Consular employees**

- (1) No liability to income tax arises in respect of income arising from employment in the United Kingdom as a consular employee for a foreign state if—
  - (a) Her Majesty by Order in Council directs that this section applies to the foreign state for the purpose of giving effect to a reciprocal arrangement with that state, and
  - (b) condition A or B is met.
- (2) Condition A is that the employee is a national of the foreign state.
- (3) Condition B is that the employee is not a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen.
- (4) In this section—

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“consular employee” includes any person employed for the purposes of the official business of a consular officer at—

- (a) any consulate,
- (b) any consular establishment, or
- (c) any other premises used for those purposes, and

“reciprocal arrangement” means a consular convention or other arrangement with a foreign state, making similar provision to that made by this section [<sup>F344</sup>, sections 646A and 681A of this Act and section 771 of ITTOIA 2005 (relevant foreign income of consular officers and employees)] in the case of Her Majesty’s consular officers or employees in that state.

- (5) An Order in Council under subsection (1) may limit the operation of this section in relation to a state in any way appearing to Her Majesty necessary or expedient having regard to the arrangement with the state.
- (6) Such an Order—
  - (a) may be made so as to have effect from a date earlier than that on which it is made, but not earlier than the arrangement in question comes into force, and
  - (b) may contain such transitional provisions as appear to Her Majesty necessary or expedient.
- (7) A statutory instrument containing such an Order is subject to annulment in pursuance of a resolution of the House of Commons.
- (8) This section does not affect section 301 (official agents).

#### **Textual Amendments**

**F344** Words in s. 302(4) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 591](#) (with [Sch. 2](#))

#### *Visiting forces and staff of designated allied headquarters*

### **303 Visiting forces [<sup>F345</sup> etc]**

- (1) No liability to income tax arises in respect of earnings if—
  - (a) they are paid by the government of a designated country to a member of a visiting force of that country or of a civilian component of such a force, and
  - (b) that person is not a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen.
- (2) For the purposes of subsection (1)—
  - (a) members of the armed forces of a designated country who are attached to a designated [<sup>F346</sup>international military] headquarters are treated as a visiting force of that country, and
  - (b) whether a person is a member of a civilian component of such a force is to be determined accordingly.
- (3) No liability to income tax arises in respect of earnings if they are paid by a designated allied headquarters to an employee of a category for the time being agreed between



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Her Majesty's government in the United Kingdom and the other members of the North Atlantic Council.

(4) But where the employee is a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen, subsection (3) only applies if it is necessary for it to do so to give effect to an agreement between parties to the North Atlantic Treaty.

[<sup>F347</sup>(4A) No liability to income tax arises in respect of earnings if—

- (a) they are paid by the government of a designated country to a person belonging to the EU civilian staff, and
- (b) that person is not a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen.]

(5) Subsections (1) and (2) are to be interpreted as if—

- (a) they were in Part 1 of the Visiting Forces Act 1952 (c. 67), and
- (b) references in that Act to a country to which a provision of that Act applies were references to a designated country.

(6) In this section—

“allied headquarters” means an international military headquarters established under the North Atlantic Treaty,<sup>F348</sup> ...

“designated” means designated for the purpose in question by or under an Order in Council made for giving effect to an international agreement<sup>F349</sup>, and

“the EU civilian staff” means designated for the purpose in question by or under an Order in Council made for giving effect to an international agreement.

- (a) civilian personnel seconded by a member State to an EU institution for the purposes of activities (including exercises) relating to the preparation for, and execution of, tasks mentioned in Article 43(1) of the Treaty on European Union (tasks relating to a common security and defence policy), as amended from time to time, and
- (b) civilian personnel (other than locally hired personnel)—
  - (i) made available to the EU by a member State to work with designated international military headquarters or a force of a designated country, or
  - (ii) otherwise made available to the EU by a member State for the purposes of activities of the kind referred to in paragraph (a).]

#### Textual Amendments

**F345** Words in s. 303 heading substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 37 para. 4\(5\)](#)

**F346** Words in s. 303(2)(a) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 37 para. 4\(2\)](#)

**F347** S. 303(4A) inserted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 37 para. 4\(3\)](#)

**F348** Word in s. 303(6) omitted (17.7.2012) by virtue of [Finance Act 2012 \(c. 14\)](#), [Sch. 37 para. 4\(4\)\(a\)](#)

**F349** Words in s. 303(6) inserted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 37 para. 4\(4\)\(b\)](#)

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### *Detached national experts*

#### **304 Experts seconded to European Commission**

- (1) No liability to income tax arises in respect of daily subsistence allowances paid by the European Commission to persons whose services are made available to the Commission by their employers under the detached national experts scheme.
- (2) “The detached national experts scheme” means—
  - (a) the scheme relating to national experts seconded to the European Commission which was established by the Commission on 26th July 1988, as it has effect for the time being, or
  - (b) any scheme having effect for the time being which replaces that scheme.

#### **[<sup>F350</sup>304A] Experts seconded to other European Union bodies**

- (1) No liability to income tax arises in respect of any subsistence allowances paid by a relevant EU body to persons who, because of their expertise in matters relating to the subject matter of the functions of the relevant EU body, have been seconded to the body by their employers.
- (2) Each of the following is a “relevant EU body”—
  - (a) the European Medicines Agency, established as the European Agency for the Evaluation of Medicinal Products by Council Regulation (EEC) No 2309/93 of 22 July 1993,
  - (b) the European Police College, established by Council Decision of 20 September 2005 (2005/681/JHA),
  - (c) the European Banking Authority, established by Regulation (EU) No 1093/2010 of 24 November 2010, and
  - (d) any other body established by an EU instrument which is designated as a relevant EU body for the purposes of this section by an order made by the Treasury.]

#### **Textual Amendments**

**F350** S. 304A inserted (with effect in accordance with s. 38(2) of the amending Act) by [Finance Act 2011 \(c. 11\), s. 38\(1\)](#)

### *Offshore oil and gas workers*

#### **305 Offshore oil and gas workers: mainland transfers**

- (1) No liability to income tax arises in respect of—
  - (a) the provision for an employee who has a permanent workplace at an offshore installation of—
    - (i) transfer transport,
    - (ii) related accommodation and subsistence, or
    - (iii) local transport, or
  - (b) the payment or reimbursement of reasonable expenses incurred by such an employee on such transport or accommodation and subsistence.

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- (2) Subsection (1)(a)(ii) only applies if the related accommodation and subsistence is provided at reasonable cost.
- (3) In this section “transfer transport” means transport by sea or air between the mainland of Great Britain or Northern Ireland and the offshore installation, which meets conditions A and B.
- (4) Condition A is that the place of arrival or departure on the mainland is one to or from which transport between the mainland and the offshore installation is provided for employees generally.
- (5) Condition B is that the cost of the transport would not be deductible under Part 5 if the employee incurred and paid it.
- (6) In this section—
  - “related accommodation and subsistence” means overnight accommodation and subsistence in the vicinity of the place of departure or arrival on the mainland, which is necessary because of the time at which transfer transport is to be taken,
  - “local transport” means transport between a place where the employee is provided with related accommodation and subsistence and the place of departure or arrival on the mainland,  
F351 .....
  - “workplace” and “permanent workplace” have the meaning given by section 339.

**Textual Amendments**

**F351** Words in s. 305(6) repealed (with effect in accordance with Sch. 27 para. 16 of the amending Act) by Finance Act 2004 (c. 12), Sch. 27 para. 13, **Sch. 42 Pt. 2(19)**

*Miners etc.*

**306 Miners etc: coal and allowances in lieu of coal**

- (1) No liability to income tax arises in respect of the provision of coal or smokeless fuel or an allowance paid in lieu of such provision if the employee is a colliery worker and the condition in subsection (2) is met.
- (2) That condition is that the amount of coal or fuel provided or in respect of which the allowance is paid does not substantially exceed the amount reasonably required for personal use.
- (3) That condition is assumed to be met unless the contrary is shown.
- (4) In this section “colliery worker” means a coal miner or any other person employed at or about a colliery otherwise than in clerical, administrative or technical work.

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## CHAPTER 9

### EXEMPTIONS: PENSION PROVISION

#### 307 Death or retirement benefit provision

- (1) No liability to income tax arises by virtue of Chapter 10 of Part 3 (taxable benefits: residual liability to charge) in respect of provision made by an employee's employer [<sup>F352</sup>under a registered pension scheme or otherwise] for a retirement or death benefit.
- [<sup>F353</sup>(1A) Subsection (1) does not apply to provision made for insuring against the risk that a retirement or death benefit under an employer-financed retirement benefits scheme cannot be paid or given because of the employer's insolvency.
- (1B) In subsection (1A) "employer-financed retirement benefits scheme" has the same meaning as in Chapter 2 of Part 6 (see section 393A).]
- (2) In [<sup>F354</sup>this section] "retirement or death benefit" means a pension, annuity, lump sum, gratuity or other similar benefit which will be paid or given to the employee or a member of the employee's family or household in the event of the employee's retirement or death.

#### Textual Amendments

- F352** Words in s. 307(1) inserted (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), **ss. 201(1)**, 284(1) (with [Sch. 36](#))
- F353** S. 307(1A)(1B) inserted (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), **ss. 248(2)**, 284(1) (with [Sch. 36](#))
- F354** Words in s. 307(2) substituted (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), **ss. 248(3)**, 284(1) (with [Sch. 36](#))

#### Modifications etc. (not altering text)

- C10** S. 307 applied (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Pension Protection Fund \(Tax\) \(2005-06\) Regulations 2005 \(S.I. 2005/1907\)](#), regs. 1(1), **14**
- C11** S. 307 applied (6.4.2006) by [The Pension Protection Fund \(Tax\) Regulations 2006 \(S.I. 2006/575\)](#), regs. 1, **40**

#### [<sup>F355</sup>308 Exemption of contributions to registered pension scheme

No liability to income tax arises in respect of earnings where an employee's employer makes contributions under a registered pension scheme [<sup>F356</sup>in respect of the employee].]

#### Textual Amendments

- F355** S. 308 substituted (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), **ss. 201(2)**, 284(1) (with [Sch. 36](#))
- F356** Words in s. 308 inserted (with effect in accordance with s. 11(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), **s. 11(1)**

#### [<sup>F357</sup>308A Exemption of contributions to overseas pension scheme

- (1) No liability to income tax arises in respect of earnings where an employer makes contributions under a qualifying overseas pension scheme in respect of an employee who is a relevant migrant member of the pension scheme.

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- (2) In subsection (1)—
- “qualifying overseas pension scheme”, and
  - “relevant migrant member”,
- have the same meaning as in Schedule 33 to FA 2004 (overseas pension schemes: migrant member relief).]

#### Textual Amendments

**F357** S. 308A inserted (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), s. 284(1), [Sch. 33 para. 3](#) (with [Sch. 36](#))

#### Modifications etc. (not altering text)

**C12** S. 308A applied (6.4.2006) by [The Taxation of Pension Schemes \(Transitional Provisions\) Order 2006 \(S.I. 2006/572\)](#), arts. 1(1), [17\(4\)](#)

## CHAPTER 10

### EXEMPTIONS: TERMINATION OF EMPLOYMENT

#### *Redundancy payments*

#### **309 Limited exemptions for statutory redundancy payments**

- (1) No liability to income tax in respect of earnings arises by virtue of a redundancy payment or an approved contractual payment, except where subsection (2) applies.
- (2) Where an approved contractual payment exceeds the amount which would have been due if a redundancy payment had been payable, the excess is liable to income tax.
- (3) No liability to income tax in respect of employment income other than earnings arises by virtue of a redundancy payment or an approved contractual payment, except where it does so by virtue of Chapter 3 of Part 6 (payments and benefits on termination of employment etc.).
- (4) For the purposes of this section—
  - (a) a statutory payment in respect of a redundancy payment is to be treated as paid on account of the redundancy payment, and
  - (b) a statutory payment in respect of an approved contractual payment is to be treated as paid on account of the approved contractual payment.
- (5) In this section—
  - “approved contractual payment” means a payment to a person on the termination of the person’s employment under an agreement in respect of which an order is in force under section 157 of ERA 1996 or Article 192 of ER(NI)O 1996,
  - “redundancy payment” means a redundancy payment under Part 11 of ERA 1996 or Part 12 of ER(NI)O 1996, and
  - “statutory payment” means a payment under section 167(1) of ERA 1996 or Article 202(1) of ER(NI)O 1996.

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- (6) In subsection (5) “employment”, in relation to a person, has the meaning given in section 230(5) of ERA 1996 or Article 3(5) of ER(NI)O 1996.

### *Outplacement benefits*

#### **310 Counselling and other outplacement services**

- (1) No liability to income tax arises in respect of—
- (a) the provision of services to a person in connection with the cessation of the person’s employment, or
  - (b) the payment or reimbursement of—
    - (i) fees for such provision, or
    - (ii) travelling expenses incurred in connection with such provision, if conditions A to D and, in the case of travel expenses, condition E are met.
- (2) Condition A is that the only or main purpose of the provision of the services is to enable the person to do either or both of the following—
- (a) to adjust to the cessation of the employment, or
  - (b) to find other gainful employment (including self-employment).
- (3) Condition B is that the services consist wholly of any or all of the following—
- (a) giving advice and guidance,
  - (b) imparting or improving skills,
  - (c) providing or making available the use of office equipment or similar facilities.
- (4) Condition C is that the person has been employed <sup>F358</sup>... in the employment which is ceasing throughout the period of 2 years ending—
- (a) at the time when the services begin to be provided, or
  - (b) if earlier, at the time when the employment ceases.
- (5) Condition D is that the opportunity to receive the services, on similar terms as to payment or reimbursement of any expenses incurred in connection with their provision, is available—
- (a) generally to employees or former employees of the person’s employer in that employment, or
  - (b) to a particular class or classes of them.
- (6) Condition E is that the travel expenses are expenses—
- (a) in respect of which, on the assumptions in subsection (7), mileage allowance relief under Chapter 2 of this Part would be available if no mileage allowance payments had been made, or
  - (b) which, on those assumptions, would be deductible under Part 5.
- (7) The assumptions are—
- (a) that receiving the services is one of the duties of the employee’s employment,
  - (b) that the employee incurs and pays the expenses, and
  - (c) if the employment has in fact ceased, that it continues.
- (8) In this section “mileage allowance payments” has the meaning given by section 229(2).

*Status: Point in time view as at 01/09/2013.*

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### Textual Amendments

**F358** Word in s. 310(4) repealed (with effect in accordance with s. 18(5) of the amending Act) by [Finance Act 2005 \(c. 7\), s. 18\(2\), Sch. 11 Pt. 2\(1\)](#)

## 311 Retraining courses

- (1) No liability to income tax arises in respect of the payment or reimbursement of retraining course expenses by a person (“the employer”) if the course conditions, the employment conditions and, in the case of travel expenses, the conditions in subsection (5) are met.
- (2) In subsection (1) “retraining course expenses” means—
  - (a) fees for the attendance of another person (“the employee”) at a training course,
  - (b) travelling expenses incurred in connection with it,
  - (c) fees for an examination taken during or at the end of it, or
  - (d) the cost of any books which are essential for a person attending it.
- (3) The course conditions are that—
  - (a) the course provides training designed to impart or improve skills or knowledge relevant to, and intended to be used in the course of, gainful employment (including self-employment) of any description,
  - (b) it is entirely devoted to the teaching or practical application (or both) of the skills or knowledge, <sup>F359</sup>and]
  - (c) it lasts no more than <sup>F360</sup>two years]. <sup>F361</sup>...
  - (d) .....
- (4) The employment conditions are that—
  - (a) the employee begins the course while employed by the employer or within the period of one year after the employment ceases,
  - (b) the employee ceases to be employed by the employer before the end of the period of 2 years beginning at the end of the course and is not re-employed by the employer within the period of 2 years after so ceasing,
  - (c) the employee is employed <sup>F362</sup>... in the employment which is ceasing throughout the period of 2 years ending—
    - (i) when the employee begins the course, or
    - (ii) if earlier, when the employment ceases, and
  - (d) the opportunity to undertake the course, on similar terms as to payment or reimbursement of amounts within subsection (1), is available—
    - (i) generally to the employee’s fellow employees or former fellow employees in that employment, or
    - (ii) to a particular class or classes of them.
- (5) The travel expenses must be—
  - (a) expenses in respect of which, on the assumptions in subsection (6), mileage allowance relief under Chapter 2 of this Part would be available if no mileage allowance payments had been made, or
  - (b) expenses which, on those assumptions, would be deductible under Part 5.
- (6) The assumptions are—

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- (a) that attendance at the course is one of the duties of the employee's employment,
  - (b) that the employee incurs and pays the expenses, and
  - (c) if the employee has in fact ceased to be employed by the employer, that the employee continues to be employed by the employer.
- (7) In this section "mileage allowance payments" has the meaning given by section 229(2).

#### Textual Amendments

- F359** Word in s. 311(3)(b) inserted (with effect in accordance with s. 18(5) of the amending Act) by [Finance Act 2005 \(c. 7\), s. 18\(3\)\(a\)](#)
- F360** Words in s. 311(3)(c) substituted (with effect in accordance with s. 18(5) of the amending Act) by [Finance Act 2005 \(c. 7\), s. 18\(3\)\(b\)](#)
- F361** S. 311(3)(d) repealed (with effect in accordance with s. 18(5) of the amending Act) by [Finance Act 2005 \(c. 7\), s. 18\(3\)\(c\), Sch. 11 Pt. 2\(1\)](#)
- F362** Word in s. 311(4)(c) repealed (with effect in accordance with s. 18(5) of the amending Act) by [Finance Act 2005 \(c. 7\), s. 18\(4\), Sch. 11 Pt. 2\(1\)](#)

## 312 Recovery of tax

- (1) This section applies if—
- (a) a person's liability to tax for a tax year has been determined on the assumption that section 311(1) applies, and
  - (b) subsequently—
    - (i) the condition in section 311(4)(a) is not met because of the person's failure to begin the course within the period of one year after ceasing to be employed, or
    - (ii) the condition in section 311(4)(b) is not met because of the person's continued employment or re-employment.
- (2) An assessment of an amount or further amount of tax due as a result of the condition not being met may be made under section 29(1) of TMA 1970.
- (3) Such an assessment must be made before the end of the period of 6 years immediately following the end of the tax year in which subsection (1) first applies.
- (4) If subsection (1)(b)(i) or (ii) applies, the person's employer or former employer must give [<sup>F106</sup>an officer of Revenue and Customs] a notice containing particulars of the person's failure to begin the course or continued employment or re-employment within 60 days of coming to know of it.
- (5) If [<sup>F106</sup>an officer of Revenue and Customs][<sup>F363</sup>has] reason to believe that a person has failed to give such a notice, [<sup>F364</sup>the officer] may by notice require the person to provide such information as [<sup>F364</sup>the officer] may reasonably require for the purposes of this section about—
- (a) the failure to begin the course,
  - (b) the continued employment, or
  - (c) the re-employment.



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- (6) A notice under subsection (5) may specify a time (not less than 60 days) within which the required information must be provided.

#### Textual Amendments

- F106** Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 102\(1\)](#); S.I. 2005/1126, art. 2(2)(h)
- F363** Word in s. 312(5) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 111](#); S.I. 2005/1126, art. 2(2)(h)
- F364** Words in s. 312(5) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 103\(1\)\(f\)](#); S.I. 2005/1126, art. 2(2)(h)

## CHAPTER 11

### MISCELLANEOUS EXEMPTIONS

#### *Living accommodation*

#### **313 Repairs and alterations to living accommodation**

- (1) This section applies where living accommodation is provided by reason of a person's employment.
- (2) No liability to income tax arises by virtue of Chapter 10 of Part 3 (taxable benefits: residual liability to charge) in respect of—
- alterations and additions to the premises which are of a structural nature, or
  - landlord's repairs to the premises.
- (3) In this section "landlord's repairs" means repairs of a kind which are the obligation of the lessor under the covenants implied by section 11(1) of the Landlord and Tenant Act 1985 (c. 70) (lessor's repairing obligations in short leases) where premises are let under a lease to which that section applies.

#### **314 Council tax etc. paid for certain living accommodation**

- (1) This section applies if living accommodation provided for an employee falls within the exception in one of the following provisions—
- section 99(1) (accommodation necessary for proper performance of duties),
  - section 99(2) (accommodation provided for better performance of duties), or
  - section 100 (accommodation provided as a result of security threat).
- (2) No liability to income tax arises by virtue of—
- any payment to, for or on behalf of the employee, or
  - any reimbursement of any payment by the employee,
- in respect of council tax or rates, or water or sewerage charges, in respect of the accommodation.

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### **315 Limited exemption for expenses connected with certain living accommodation**

- (1) This section applies if—
- (a) living accommodation is provided for an employee in a tax year, and
  - (b) conditions A and B are met.
- (2) Condition A is that the accommodation falls within the exception in one of the following provisions—
- section 99(1) (accommodation necessary for proper performance of duties),
  - section 99(2) (accommodation provided for better performance of duties), or
  - section 100 (accommodation provided as a result of security threat).
- (3) Condition B is that there is an amount of earnings from the employment in the tax year by virtue of expenditure, or the reimbursement to the employee of expenditure, on—
- (a) heating, lighting or cleaning the premises,
  - (b) repairs to the premises, their maintenance or decoration, or
  - (c) the provision in the premises of furniture, equipment or other items which are normal for domestic occupation.
- (4) If this section applies, no liability to income tax arises in respect of the earnings mentioned in subsection (3) to the extent that they exceed—

$$\left(10\% \times NE \times \frac{DA}{DE}\right) - SMG$$

where—

DA is the number of reckonable days in the tax year (a “reckonable day” being a day on which—

- (a) the accommodation is provided, and
- (b) the employment is held by the employee),

DE is—

- (a) the number of days in that year, or
- (b) if the employment is held for only part of that year, the number of days in that part,

NE is the net amount of the earnings from the employment in the tax year (see subsection (5)),

SMG is, where the expenses are incurred by a person other than the employee, so much of any sum made good by the employee to that other person as is properly attributable to the expenses.

- (5) To calculate the net amount of the earnings from the employment—

*Step 1*

Take the earnings from the employment, leaving out of account the expenses in question.

*Step 2*

Add, in the case of employment by a company, the earnings from any employment by an associated company.

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A company is “associated” with another for this purpose if one has control of the other or both are under the control of the same person.

*Step 3*

Deduct any deductions allowable under—

- (a) section 232 (giving effect to mileage allowance relief) or Part 5 of this Act,
- [<sup>F365</sup>(b) sections 188 to 194 of FA 2004 (contributions to registered pension schemes), or]
- (c) section 262 of CAA 2001 (capital allowances to be given effect by treating them as deductions from earnings).

**Textual Amendments**

**F365** Words in s. 315(5) substituted (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), s. 284(1), [Sch. 35 para. 59](#) (with [Sch. 36](#))

*Work accommodation, supplies etc.*

**316 Accommodation, supplies and services used in employment duties**

- (1) No liability to income tax arises by virtue of Chapter 10 of Part 3 (taxable benefits: residual liability to charge) in respect of the provision for an employee of accommodation, supplies or services used by the employee in performing duties of the employment if conditions A and B are met.
- (2) Condition A is that any use of the accommodation, supplies or services for private purposes by the employee or members of the employee’s family or household is not significant.
- (3) For this purpose, use “for private purposes” means—
  - (a) use that is not use in performing the duties of the employee’s employment, and
  - (b) use that is at the same time both use in performing the duties of an employee’s employment and other use.
- (4) Condition B is that where the provision is otherwise than on premises occupied by the person making it—
  - (a) its sole purpose is to enable the employee to perform the duties of the employee’s employment, and
  - (b) what is provided is not an excluded benefit.
- (5) The following are excluded benefits unless regulations under subsection (6) provide otherwise—
  - (a) a motor vehicle, boat or aircraft, and
  - (b) a benefit that involves—
    - (i) the extension, conversion or alteration of living accommodation, or
    - (ii) the construction, extension, conversion or alteration of a building or other structure on land adjacent to and enjoyed with such accommodation.

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- (6) The Treasury may make provision by regulations as to what is an excluded benefit for the purposes of subsection (4)(b).
- (7) The regulations may provide that a benefit is an excluded benefit only if such conditions as may be prescribed are met as to the terms on which, and persons to whom, it is provided.

### **[<sup>F366</sup>316A] Homeworker’s additional household expenses**

- (1) This section applies where an employer makes a payment to an employee in respect of reasonable additional household expenses which the employee incurs in carrying out duties of the employment at home under homeworking arrangements.
- (2) No liability to income tax arises in respect of the payment.
- (3) In this section, in relation to an employee—
  - “homeworking arrangements” means arrangements between the employee and the employer under which the employee regularly performs some or all of the duties of the employment at home; and
  - “household expenses” means expenses connected with the day to day running of the employee’s home.]

#### **Textual Amendments**

**F366** S. 316A inserted (with effect in accordance with s. 137(2) of the amending Act) by [Finance Act 2003 \(c. 14\), s. 137\(1\)](#)

### *Workplace meals*

#### **317 Subsidised meals**

- [<sup>F367</sup>(1) No liability to income tax arises in respect of the provision for an employee by the employer of free or subsidised meals if they are provided—
- (a) in a canteen, or
  - (b) on the employer’s business premises,
- and conditions A to [<sup>F368</sup>D] are met.]
- (2) Condition A is that the meals are provided on a reasonable scale.
  - (3) Condition B is that all the employer’s employees or all of them at a particular location may obtain one or both of the following—
    - (a) a free or subsidised meal, or
    - (b) a free or subsidised meal voucher or token.
  - (4) Condition C is that if the meals are provided in the restaurant or dining room of a hotel or a catering or similar business at a time when meals are being served to the public—
    - (a) part of the restaurant or dining room is designated for the use of employees only, and
    - (b) the meals are taken in that part.
- [<sup>F369</sup>(4A) Condition D is that the provision is not pursuant to—

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- (a) relevant salary sacrifice arrangements, or
  - (b) relevant flexible remuneration arrangements.]
- (5) In this section “free or subsidised meal voucher or token” means a voucher, ticket, pass or other document or token which—
- (a) is intended to enable a person to obtain a meal, and
  - (b) is provided to the employee free of charge or for less than the cost of the meals to be obtained by it.
- [<sup>F370</sup>(5A) In this section—
- “relevant salary sacrifice arrangements” means arrangements (whenever made, whether before or after the employment began) under which the employee gives up the right to receive an amount of general earnings or specific employment income in return for the provision of free or subsidised meals;
- “relevant flexible remuneration arrangements” means arrangements (whenever made, whether before or after the employment began) under which the employee and employer agree that the employee is to be provided with free or subsidised meals rather than receive some other description of employment income.]
- (6) In this section “meals” includes light refreshments.

#### Textual Amendments

- F367** S. 317(1) substituted (with effect in accordance with Sch. 17 para. 1(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 17 para. 1\(1\)](#)
- F368** Word in s. 317(1) substituted (with effect for the tax year 2011-12 and subsequent tax years in accordance with s. 60(5) of the amending Act) by [Finance Act 2010 \(c. 13\)](#), [s. 60\(2\)](#)
- F369** S. 317(4A) inserted (with effect for the tax year 2011-12 and subsequent tax years in accordance with s. 60(5) of the amending Act) by [Finance Act 2010 \(c. 13\)](#), [s. 60\(3\)](#)
- F370** S. 317(5A) inserted (with effect for the tax year 2011-12 and subsequent tax years in accordance with s. 60(5) of the amending Act) by [Finance Act 2010 \(c. 13\)](#), [s. 60\(4\)](#)

### Childcare

#### [<sup>F371</sup>318 Childcare: exemption for employer-provided care

- (1) [<sup>F372</sup>No liability to income tax arises] in respect of the provision for an employee of care for a child if conditions A to D are met.

For the meaning of “care” and “child”, see section 318B.

- (2) If those conditions are met only as respects part of the provision, no such liability arises in respect of that part.
- (3) Condition A is that the child—
- (a) is a child or stepchild of the employee and is maintained (wholly or partly) at the employee’s expense,
  - (b) is resident with the employee, or
  - (c) is a person in respect of whom the employee has parental responsibility.

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For the meaning of “parental responsibility”, see section 318B.

- (4) Condition B is that—
- (a) the premises on which the care is provided are not used wholly or mainly as a private dwelling, and
  - (b) any applicable registration requirement is met.
- (5) The registration requirements are—
- [<sup>F373</sup>(za) in England, that under <sup>F374</sup>... Part 3 of the Childcare Act 2006;]
  - (a) in <sup>F375</sup>... Wales, that under [<sup>F376</sup>Part 2 of the Children and Families (Wales) Measure 2010];
  - (b) in Scotland, that under [<sup>F377</sup>Part 5 of the Public Services Reform (Scotland) Act 2010] ;
  - (c) in Northern Ireland, that under Part XI of the Children (Northern Ireland) Order 1995.
- (6) Condition C is that—
- (a) the premises on which the care is provided are made available by the scheme employer alone, or
  - (b) the partnership requirements are met.
- In this section “scheme employer” means the employer operating the scheme under which the care is provided (who need not be the employer of the employee).
- (7) The partnership requirements are—
- (a) that the care is provided under arrangements made by persons who include the scheme employer,
  - (b) that the premises on which it is provided are made available by one or more of those persons, and
  - (c) that under the arrangements the scheme employer is wholly or partly responsible for financing and managing the provision of the care.
- (8) Condition D is that the care is provided under a scheme that is open—
- (a) to the scheme employer’s employees generally, or
  - (b) generally to those of the scheme employer’s employees at a particular location,

and that the employee to whom it is provided is either an employee of the scheme employer or is an employee working at the same location as employees of the scheme employer to whom the scheme is open.]

#### **Textual Amendments**

- F371** Ss. 318-318D substituted for s. 318 (with effect in accordance with s. 78(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 13 para. 1](#)
- F372** Words in s. 318(1) substituted (with effect in accordance with s. 16(7) of the amending Act) by [Finance Act 2005 \(c. 7\)](#), [s. 16\(5\)](#)
- F373** S. 318(5)(za) inserted (1.9.2008) by [The Income Tax \(Qualifying Child Care\) Regulations 2008 \(S.I. 2008/2170\)](#), regs. 1, [2\(a\)](#)
- F374** Words in s. 318(5)(za) omitted (18.7.2009) by virtue of [The Income Tax \(Qualifying Child Care\) Regulations 2009 \(S.I. 2009/1544\)](#), regs. 1(2), [2](#)

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- F375** Words in s. 318(5)(a) omitted (1.9.2008) by virtue of [The Income Tax \(Qualifying Child Care\) Regulations 2008 \(S.I. 2008/2170\)](#), regs. 1, **2(b)**
- F376** Words in s. 318(5)(a) substituted (6.4.2011) by [The Income Tax \(Qualifying Child Care\) Regulations 2011 \(S.I. 2011/775\)](#), regs. 1, **2**
- F377** Words in s. 318(5)(b) substituted (28.10.2011) by [The Public Services Reform \(Scotland\) Act 2010 \(Consequential Modifications of Enactments\) Order 2011 \(S.I. 2011/2581\)](#), art. 1(2)(b), **Sch. 2 para. 6(a)**

### **[<sup>F371</sup>318A] Childcare: limited exemption for other care**

- (1) If conditions A to [<sup>F378</sup>D] are met in relation to the provision for an employee of care for a [<sup>F379</sup>child—
- (a) no liability to income tax arises by virtue of section 62 (general definition of earnings), and
  - (b) liability to income tax by virtue of Chapter 10 of Part 3 (taxable benefits: residual liability to charge) arises only in respect of so much of the cash equivalent of the benefit as exceeds the exempt amount.]

For the meaning of “care” and “child”, see section 318B.

- (2) If those conditions are met only as respects part of the provision, subsection (1) applies in respect of that part.

- (3) Condition A is that the child—

- (a) is a child or stepchild of the employee and is maintained (wholly or partly) at the employee’s expense, or
- (b) is resident with the employee and is a person in respect of whom the employee has parental responsibility.

For the meaning of “parental responsibility”, see section 318B.

- (4) Condition B is that the care is qualifying child care.

For the meaning of “qualifying child care”, see section 318C.

- (5) Condition C is that the care is provided under a scheme that is open—

- (a) to the employer’s employees generally, or
- (b) generally to those at a particular location.

[ Where the scheme under which the care is provided involves—

- <sup>F380</sup>(5A) (a) relevant salary sacrifice arrangements, or  
(b) relevant flexible remuneration arrangements,

Condition C is not prevented from being met by reason only that the scheme is not open to relevant low-paid employees.

- (5B) In subsection (5A)—

“relevant salary sacrifice arrangements” means arrangements (whenever made) under which the employees for whom the care is provided give up the right to receive an amount of general earnings or specific employment income in return for the provision of the care;

“relevant flexible remuneration arrangements” means arrangements (whenever made) under which the employees for whom the care is provided

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agree with the employer that they are to be provided with the care rather than receive some other description of employment income;

“relevant low-paid employees” means any of the employer's employees who are remunerated by the employer at a rate such that, if the relevant salary sacrifice arrangements or relevant flexible remuneration arrangements applied to them, the rate at which they would then be so remunerated would be likely to be lower than the national minimum wage.]

[ Condition D is that the employer has, at the required time, made an estimate of the <sup>F381</sup>(5C) employee's relevant earnings amount for the tax year in respect of which the care is provided (see section 318AA).]

(6) For the purposes of this section the “exempt amount”, in any tax year, is [<sup>F382</sup>the appropriate amount] for each qualifying week in that year.

[ In subsection (6) “the appropriate amount”, in the case of an employee, means—  
<sup>F383</sup>(6A) (a) if the relevant earnings amount in the case of the employee for the tax year, as estimated in accordance with subsection (5C), exceeds the higher rate limit for the tax year, [<sup>F384</sup>£25] ,  
 (b) if the relevant earnings amount in the case of the employee for the tax year, as so estimated, exceeds the basic rate limit for the tax year but does not exceed the higher rate limit for the tax year, £28, and  
 (c) otherwise, £55.]

(7) A “qualifying week” means a tax week in which care is provided for a child in circumstances in which conditions A to C are met.

A “tax week” means one of the successive periods in a tax year beginning with the first day of that year and every seventh day after that (so that the last day of a tax year or, in the case of a tax year ending in a leap year, the last two days is treated as a separate week).

(8) An employee is only entitled to one exempt amount even if care is provided for more than one child.

But it does not matter that another person may also be entitled to an exempt amount in respect of the same child.

(9) An employee is not entitled to an exempt amount under this section and under section 270A (limited exemption for childcare vouchers) in respect of the same tax week.]

#### **Textual Amendments**

**F371** Ss. 318-318D substituted for s. 318 (with effect in accordance with s. 78(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 13 para. 1](#)

**F378** Word in s. 318A(1) substituted (with effect in accordance with Sch. 8 paras. 7-10 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 8 para. 4\(2\)](#)

**F379** Words in s. 318A(1) substituted (with effect in accordance with s. 16(7) of the amending Act) by [Finance Act 2005 \(c. 7\)](#), [s. 16\(6\)](#)

**F380** S. 318A(5A)(5B) inserted (with effect in accordance with s. 36(3) of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [s. 36\(2\)](#)

**F381** S. 318A(5C) inserted (with effect in accordance with Sch. 8 paras. 7-10 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 8 para. 4\(3\)](#)



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- F382** Words in s. 318A(6) substituted (with effect in accordance with Sch. 8 paras. 7-10 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 8 para. 4\(4\)](#)
- F383** S. 318A(6A) inserted (with effect in accordance with Sch. 8 paras. 7-10 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 8 para. 4\(5\)](#)
- F384** Word in s. 318A(6A)(a) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Income Tax \(Exempt Amount for Childcare Vouchers and for Employer Contracted Childcare\) Order 2013 \(S.I. 2013/513\)](#), arts. 1(2), [2\(3\)](#)

### [<sup>F385</sup>318A Meaning of “relevant earnings amount” and “required time”

- (1) For the purposes of section 318A, “relevant earnings amount”, in the case of an employee provided with care by an employer for any qualifying week in a tax year, means—
- (a) the aggregate of—
    - (i) the amount of any relevant earnings for the tax year from employment by the employer, and
    - (ii) any amounts treated under Chapters 2 to 12 of Part 3 as earnings from such employment, less
  - (b) the aggregate of any excluded amounts.
- (2) But if the employee becomes employed by the employer during the tax year, what would otherwise be the amount of the aggregate mentioned in subsection (1)(a) is the relevant multiple of that amount; and the relevant multiple is—
- $$365 \text{ RD}$$
- where RD is the number of days in the period beginning with the day on which the employee becomes employed by the employer and ending with the tax year.
- (3) In subsection (1)—
- “relevant earnings” has the same meaning as in subsection (1)(a) of section 270B (see subsection (3) of that section), and
- “excluded amounts” has the same meaning as in subsection (1)(b) of section 270B (see subsection (4) of that section).
- (4) In section 318A “the required time”, in the case of an employee, means—
- (a) if the employee joins the scheme under which the care is provided at a time during the tax year, that time, and
  - (b) otherwise, the beginning of the tax year.
- (5) For the purposes of subsection (5)(a) the employee is taken to join the scheme as soon as—
- (a) the employer has agreed that care will be provided under the scheme for the employee, and
  - (b) there is a child falling within section 318A(3)(a) or (b) in relation to the employee.
- (6) The Treasury may by order amend this section.]

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### Textual Amendments

**F385** S. 318AA inserted (with effect in accordance with Sch. 8 paras. 7-10 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 8 para. 5](#)

### [<sup>F371</sup>318B] **Childcare: meaning of “care”, “child” and “parental responsibility”**

- (1) For the purposes of sections 318 and 318A (exemptions for employer-provided or employer-contracted childcare) “care” means any form of care or supervised activity that is not provided in the course of the child’s compulsory education.
- (2) For the purposes of those sections a person is a “child” until the last day of the week in which falls the 1st September following the child’s fifteenth birthday (or sixteenth birthday if the child is disabled).
- (3) For the purposes of subsection (2) a child is disabled if—
  - (a) a disability living allowance [<sup>F386</sup>or personal independence payment] is payable in respect of him, or has ceased to be payable solely because he is a patient,
  - (b) he—
    - (i) is registered as blind in a register compiled by a local authority under section 29 of the National Assistance Act 1948 (welfare services),
    - (ii) has been certified as blind in Scotland and in consequence is registered as blind in a register maintained by or on behalf of a local authority in Scotland, or
    - (iii) has been certified as blind in Northern Ireland and in consequence is registered as blind in a register maintained by or on behalf of a Health and Social Services Board, or
  - (c) he ceased to be so registered as blind within the previous 28 weeks.
- (4) In subsection (3)(a) “patient” means a person (other than a person who is serving a sentence imposed by a court in a prison or youth custody institution or, in Scotland, a young offenders' institution) who is regarded as receiving free in-patient treatment within the meaning of the Social Security (Hospital In-Patients) Regulations 1975 or the Social Security (Hospital In-Patients) Regulations (Northern Ireland) 1975.
- (5) For the purposes of sections 318 and 318A “parental responsibility” means all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and the child’s property.
- (6) In this section and section 318C “local authority” means—
  - (a) in relation to England, the council of a county or district, a metropolitan district, a London Borough, the Common Council of the City of London or the Council of the Isles of Scilly;
  - (b) in relation to Wales, the council of a county or county borough;
  - (c) in relation to Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994.]

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### Textual Amendments

- F371** Ss. 318-318D substituted for s. 318 (with effect in accordance with s. 78(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 13 para. 1](#)
- F386** Words in s. 318B(3)(a) inserted (with effect in accordance with s. 12(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [s. 12\(1\)](#)

### [<sup>F371</sup>318C] **Childcare: meaning of “qualifying child care”**

- (1) For the purposes of section 318A “qualifying child care” means registered or approved care within any of subsections (2) to (6) below that is not excluded by subsection (7) below.
- (2) Care provided for a child in England is registered or approved care if it is provided—
- <sup>F387</sup>(a) .....
  - <sup>F388</sup>(b) .....
  - [<sup>F389</sup>(ba) by a person registered under Part 3 of the Childcare Act 2006,]
  - [<sup>F390</sup>(c) by or under the direction of the proprietor of a school on the school premises (subject to subsection (2B)),][<sup>F391</sup>or]
  - <sup>F392</sup>(d) .....
  - <sup>F393</sup>(e) .....
  - <sup>F394</sup>...
  - <sup>F395</sup>(ea) .....
  - <sup>F396</sup>(eb) .....
  - (f) by a domiciliary care worker under the Domiciliary Care Agencies Regulations 2002, and
  - <sup>F397</sup>(g) .....
- [ In subsection (2)(c)—
- <sup>F398</sup>(2A) “proprietor”, in relation to a school, means—
- (a) the governing body incorporated under section 19 of the Education Act 2002, or
  - (b) if there is no such body, the person or body of persons responsible for the management of the school;
- “school” means a school that Her Majesty’s Chief Inspector of Education, Children’s Services and Skills (the “Chief Inspector”) is or may be required to inspect;
- “school premises” means premises that may be inspected as part of an inspection of the school by the Chief Inspector.
- (2B) Care provided for a child in England is not registered or approved care under subsection (2)(c) if—
- (a) it is provided during school hours for a child who has reached compulsory school age, or
  - (b) it is provided in breach of a requirement to register under Part 3 of the Childcare Act 2006.]
- (3) Care provided for a child in Wales is registered or approved care if it is provided—

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- (a) by a person registered under [F399]Part 2 of the Children and Families (Wales) Measure 2010],
  - [F400](b) by a person in circumstances where, but for article 11, 12 or 14 of the Child Minding and Day Care Exceptions (Wales) Order 2010, the care would be day care for the purposes of Part 2 of the Children and Families (Wales) Measure 2010,]
  - (c) in the case of care provided for a child out of school hours F401 ..., by a school on school premises or by a local authority, F402 ...
  - (d) by a child care provider approved by an organisation accredited under the Tax Credit (New Category of Child Care Provider) Regulations 1999 F402[F403 ...
  - (e) by a domiciliary care worker under the Domiciliary Care Agencies (Wales) Regulations 2004,]F404 ...
  - [F405](f) by a child care provider approved under the Tax Credits (Approval of Child Care Providers) (Wales) Scheme 2007.]
  - [F406](g) by a foster parent in relation to a child (other than one whom the foster parent is fostering) in circumstances where, but for the fact that the child is too old, the care would be—
    - (i) child minding, or day care, for the purposes of Part 2 of the Children and Families (Wales) Measure 2010, or
    - (ii) qualifying child care for the purposes of the Tax Credits (Approval of Child Care Providers) (Wales) Scheme 2007.]
- (4) Care provided for a child in Scotland is registered or approved care if it is provided—
- (a) by a person in circumstances where the care service provided by him—
    - (i) consists of child minding or of day care of children [F407]as defined by paragraphs 12 and 13 respectively of schedule 12 to the Public Services Reform (Scotland) Act 2010] , and
    - (ii) is registered under [F408]Chapter 3 of Part 5] of that Act F409 ... [F410]or]
  - (b) by a local authority in circumstances where the care service provided by the local authority—
    - (i) consists of child minding or of day care of children [F411]as defined by paragraphs 12 and 13 respectively of schedule 12 to the Public Services Reform (Scotland) Act 2010] , and
    - (ii) is registered under [F412]Chapter 4 of Part 5] of that Act, F413 ...
  - F413(c) .....
- (5) Care provided for a child in Northern Ireland is registered or approved care if it is provided—
- (a) by a person registered under Part XI of the Children (Northern Ireland) Order 1995, or
  - (b) by an institution or establishment that does not need to be registered under that Part to provide the care because of an exemption under Article 121 of that Order, F414 ...
  - (c) in the case of care provided for a child out of school hours F415 ..., by a school on school premises or by an education and library board or an HSS trust.
  - F416(d) .....
  - [F417](e) [ by a home child care provider approved in accordance with the Tax Credits (Approval of Home Child Care Providers) Scheme (Northern Ireland) 2006][F418], or

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- (f) by a foster parent in relation to a child (other than one whom the foster parent is fostering) in circumstances where, but for the fact that the child is too old, the care would be—
  - (i) child minding, or day care, for the purposes of Part XI of the Children (Northern Ireland) Order 1995, or
  - (ii) qualifying child care for the purposes of the Tax Credits (Approval of Home Child Care Providers) Scheme (Northern Ireland) 2006.]
- (6) Care provided for a child outside the United Kingdom is registered or approved child care if it is provided by a child care provider approved by an organisation accredited under the Tax Credit (New Category of Child Care Provider) Regulations 2002.
- (7) Child care is excluded from section 318A—
  - (a) if it is provided by the partner of the employee in question, <sup>F419</sup> ...
  - (b) if it is provided by a relative of the child wholly or mainly in the child’s home or (if different) the home of a person having parental responsibility for the child<sup>F420, F421</sup> ...
  - (c) in the case of care falling within subsection <sup>F422</sup> ... [<sup>F423</sup>(3)(f)], if—
    - (i) it is provided wholly or mainly in the home of a relative of the child, and
    - (ii) the provider usually provides care there solely in respect of one or more children to whom the provider is a relative<sup>F424</sup>, or
  - (d) if it is provided by a foster parent<sup>F425, F426</sup> ... in respect of a child whom that person is fostering <sup>F426</sup> ... ]].
- (8) In subsection (7)—
  - “partner” means one of a <sup>F427</sup>couple (within the meaning given by section 137(1) of SSCBA 1992 or section 133(1) of SSCB(NI)A 1992); and
  - “relative” means parent, grandparent, aunt, uncle, brother or sister, whether by blood, half blood or marriage [<sup>F428</sup>or civil partnership].
- [ In subsection (7)(c), “relative in relation to a child, also includes—
- <sup>F429</sup>(9) (a) a local authority foster parent in relation to the child,
- (b) a foster parent with whom the child has been placed by a voluntary organisation,
- (c) a person who fosters the child privately (within the meaning of section 66 of the Children Act 1989, or
- (d) a step-parent of the child.].
- [ In this section “foster parent” in relation to a child—
- <sup>F430</sup>(10) (a) in relation to England, means a person with whom the child is placed under the Fostering Services Regulations 2002;
- (b) in relation to Wales, means a person with whom the child is placed under the Fostering Services (Wales) Regulations 2003; and
- (c) in relation to Northern Ireland, means a person with whom the child is placed under the Foster Placement (Children) Regulations (Northern Ireland) 1996.
- <sup>F431</sup>(11) ..... ]]

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### Textual Amendments

- F371** Ss. 318-318D substituted for s. 318 (with effect in accordance with s. 78(2) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 13 para. 1**
- F387** S. 318C(2)(a) omitted (18.7.2009) by virtue of The Income Tax (Qualifying Child Care) Regulations 2009 (S.I. 2009/1544), regs. 1(2), **3(2)(a)**
- F388** S. 318C(2)(b) omitted (1.9.2008) by virtue of The Income Tax (Qualifying Child Care) Regulations 2008 (S.I. 2008/2170), regs. 1, **3(2)(a)**
- F389** S. 318C(2)(ba) inserted (1.9.2008) by The Income Tax (Qualifying Child Care) Regulations 2008 (S.I. 2008/2170), regs. 1, **3(2)(b)**
- F390** S. 318C(2)(c) substituted (1.9.2008) by The Income Tax (Qualifying Child Care) Regulations 2008 (S.I. 2008/2170), regs. 1, **3(2)(c)**
- F391** Word in s. 318C(2)(c) inserted (18.7.2009) by The Income Tax (Qualifying Child Care) Regulations 2009 (S.I. 2009/1544), regs. 1(2), **3(2)(b)**
- F392** S. 318C(2)(d) omitted (1.10.2007) by virtue of The Income Tax (Qualifying Child Care) (No. 2) Regulations 2007 (S.I. 2007/2478), regs. 1, **2**
- F393** S. 318C(2)(e) omitted (with effect in accordance with reg. 1(2) of the amending S.I.) by virtue of The Section 318C Income Tax (Earnings and Pensions) Act 2003 (Amendment) Regulations 2005 (S.I. 2005/770), regs. 1(1), **3(a)**
- F394** Word in s. 318C(2)(e) omitted (6.4.2007) by virtue of The Income Tax (Qualifying Child Care) Regulations 2007 (S.I. 2007/849), regs. 1, **2(2)(c)**
- F395** S. 318C(2)(ea) omitted (18.7.2009) by virtue of The Income Tax (Qualifying Child Care) Regulations 2009 (S.I. 2009/1544), regs. 1(2), **3(2)(a)**
- F396** S. 318C(2)(eb) and preceding word omitted (1.9.2008) by virtue of The Income Tax (Qualifying Child Care) Regulations 2008 (S.I. 2008/2170), regs. 1, **3(2)(d)**
- F397** S. 318C(2)(g) omitted (18.7.2009) by virtue of The Income Tax (Qualifying Child Care) Regulations 2009 (S.I. 2009/1544), regs. 1(2), **3(2)(a)**
- F398** S. 318C(2A)(2B) inserted (1.9.2008) by The Income Tax (Qualifying Child Care) Regulations 2008 (S.I. 2008/2170), regs. 1, **3(3)**
- F399** Words in s. 318C(3)(a) substituted (6.4.2011) by The Income Tax (Qualifying Child Care) Regulations 2011 (S.I. 2011/775), regs. 1, **3(2)(a)**
- F400** S. 318C(3)(b) substituted (6.4.2011) by The Income Tax (Qualifying Child Care) Regulations 2011 (S.I. 2011/775), regs. 1, **3(2)(b)**
- F401** Words in s. 318C(3)(c) omitted (6.4.2007) by virtue of The Income Tax (Qualifying Child Care) Regulations 2007 (S.I. 2007/849), regs. 1, **2(3)(a)**
- F402** Word in s. 318C(3)(c)(d) omitted (6.4.2007) by virtue of The Income Tax (Qualifying Child Care) Regulations 2007 (S.I. 2007/849), regs. 1, **2(3)(b)**
- F403** S. 318C(3)(e) and preceding word added (6.4.2005) by The Section 318C Income Tax (Earnings and Pensions) Act 2003 (Amendment) Regulations 2005 (S.I. 2005/770), regs. 1(1), **4**
- F404** Word in s. 318C(3) omitted (1.9.2008) by virtue of The Income Tax (Qualifying Child Care) Regulations 2008 (S.I. 2008/2170), regs. 1, **3(4)(a)**
- F405** S. 318C(3)(f) and preceding word inserted (6.4.2007) by The Income Tax (Qualifying Child Care) Regulations 2007 (S.I. 2007/849), regs. 1, **2(3)(c)**
- F406** S. 318C(3)(g) substituted (6.4.2011) by The Income Tax (Qualifying Child Care) Regulations 2011 (S.I. 2011/775), regs. 1, **3(2)(c)**
- F407** Words in s. 318C(4)(a)(i) substituted (28.10.2011) by The Public Services Reform (Scotland) Act 2010 (Consequential Modifications of Enactments) Order 2011 (S.I. 2011/2581), art. 1(2)(b), **Sch. 2 para. 6(b)(i)**
- F408** Words in s. 318C(4)(a)(ii) substituted (28.10.2011) by The Public Services Reform (Scotland) Act 2010 (Consequential Modifications of Enactments) Order 2011 (S.I. 2011/2581), art. 1(2)(b), **Sch. 2 para. 6(b)(ii)**

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- F409** Word in s. 318C(4)(a) omitted (21.11.2009) by virtue of The Income Tax (Qualifying Child Care) (No. 2) Regulations 2009 (S.I. 2009/2888), regs. 1(2), **2(3)**
- F410** Word in s. 318C(4)(a) inserted (6.4.2011) by The Income Tax (Qualifying Child Care) Regulations 2011 (S.I. 2011/775), regs. 1, **3(3)(a)**
- F411** Words in s. 318C(4)(b)(i) substituted (28.10.2011) by The Public Services Reform (Scotland) Act 2010 (Consequential Modifications of Enactments) Order 2011 (S.I. 2011/2581), art. 1(2)(b), **Sch. 2 para. 6(b)(iii)**
- F412** Words in s. 318C(4)(b)(ii) substituted (28.10.2011) by The Public Services Reform (Scotland) Act 2010 (Consequential Modifications of Enactments) Order 2011 (S.I. 2011/2581), art. 1(2)(b), **Sch. 2 para. 6(b)(iv)**
- F413** S. 318C(4)(c) and preceding word omitted (6.4.2011) by virtue of The Income Tax (Qualifying Child Care) Regulations 2011 (S.I. 2011/775), regs. 1, **3(3)(b)**
- F414** Word in s. 318C(5)(b) omitted (21.11.2009) by virtue of The Income Tax (Qualifying Child Care) (No. 2) Regulations 2009 (S.I. 2009/2888), regs. 1(2), **2(4)**
- F415** Words in s. 318C(5)(c) omitted (6.4.2007) by virtue of The Income Tax (Qualifying Child Care) Regulations 2007 (S.I. 2007/849), regs. 1, **2(4)**
- F416** S. 318C(5)(d) and following word omitted (6.4.2011) by virtue of The Income Tax (Qualifying Child Care) Regulations 2011 (S.I. 2011/775), regs. 1, **3(4)(a)**
- F417** S. 318C(5)(d)(e) inserted (21.11.2009) by The Income Tax (Qualifying Child Care) (No. 2) Regulations 2009 (S.I. 2009/2888), regs. 1(2), **2(4)**
- F418** S. 318C(5)(f) and preceding word inserted (6.4.2011) by The Income Tax (Qualifying Child Care) Regulations 2011 (S.I. 2011/775), regs. 1, **3(4)(b)**
- F419** Word in s. 318C(7)(a) omitted (6.4.2007) by virtue of The Income Tax (Qualifying Child Care) Regulations 2007 (S.I. 2007/849), regs. 1, **2(5)(a)**
- F420** S. 318C(7)(c) and preceding word added (6.4.2005) by The Section 318C Income Tax (Earnings and Pensions) Act 2003 (Amendment) Regulations 2005 (S.I. 2005/770), regs. 1(1), **5**
- F421** Word in s. 318C(7)(b) omitted (18.7.2009) by virtue of The Income Tax (Qualifying Child Care) Regulations 2009 (S.I. 2009/1544), regs. 1(2), **3(4)(a)**
- F422** Words in s. 318C(7)(c) omitted (18.7.2009) by virtue of The Income Tax (Qualifying Child Care) Regulations 2009 (S.I. 2009/1544), regs. 1(2), **3(4)(b)**
- F423** Words in s. 318C(7)(c) inserted (6.4.2007) by The Income Tax (Qualifying Child Care) Regulations 2007 (S.I. 2007/849), regs. 1, **2(5)(b)**
- F424** S. 318C(7)(d) and preceding word added (18.7.2009) by The Income Tax (Qualifying Child Care) Regulations 2009 (S.I. 2009/1544), regs. 1(2), **3(4)(c)**
- F425** Words in s. 318C(7)(d) substituted (21.11.2009) by The Income Tax (Qualifying Child Care) (No. 2) Regulations 2009 (S.I. 2009/2888), regs. 1(2), **2(5)**
- F426** Words in s. 318C(7)(d) omitted (6.4.2011) by virtue of The Income Tax (Qualifying Child Care) Regulations 2011 (S.I. 2011/775), regs. 1, **3(5)**
- F427** Words in s. 318C(8) substituted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), regs. 1(1), **144(a)**
- F428** Words in s. 318C(8) inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), regs. 1(1), **144(b)**
- F429** S. 318C(9) inserted (6.4.2005) by The Section 318C Income Tax (Earnings and Pensions) Act 2003 (Amendment) Regulations 2005 (S.I. 2005/770), regs. 1(1), **6**
- F430** S. 318C(10)(11) added (21.11.2009) by The Income Tax (Qualifying Child Care) (No. 2) Regulations 2009 (S.I. 2009/2888), regs. 1(2), **2(6)**
- F431** S. 318C(11) omitted (6.4.2011) by virtue of The Income Tax (Qualifying Child Care) Regulations 2011 (S.I. 2011/775), regs. 1, **3(6)**

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### <sup>F371</sup>**318D**Childcare: power to vary <sup>F432</sup>amounts which are the] exempt amount and qualifying conditions

- (1) The Treasury may by order amend section <sup>F433</sup>318A(6A)] (employer-contracted care: the <sup>F434</sup>amounts which are the exempt amount) so as to substitute different sums of money for those] for the time being specified.
- (2) The Treasury may by regulations make such amendments of the provisions of sections 318 to 318C relating to the qualifying conditions for the exemptions conferred by sections 318 and 318A as appear to them appropriate having regard to the corresponding provisions of regulations under section 12 of the Tax Credits Act 2002 relating to entitlement to the child care element of working tax credit <sup>F435</sup>or section 12 of the Welfare Reform Act 2012 relating to amounts in respect of childcare costs that may be included in the calculation of an award of universal credit] .]

#### **Textual Amendments**

- F371** Ss. 318-318D substituted for s. 318 (with effect in accordance with s. 78(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 13 para. 1](#)
- F432** Words in s. 318D heading inserted (with effect in accordance with Sch. 8 paras. 7-10 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 8 para. 6](#)
- F433** Word in s. 318D(1) substituted (with effect in accordance with Sch. 8 paras. 7-10 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 8 para. 6\(a\)](#)
- F434** Words in s. 318D(1) substituted (with effect in accordance with Sch. 8 paras. 7-10 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 8 para. 6\(b\)](#)
- F435** Words in s. 318D(2) inserted (29.4.2013) by [The Universal Credit \(Consequential, Supplementary, Incidental and Miscellaneous Provisions\) Regulations 2013 \(S.I. 2013/630\)](#), regs. 1(2), [16\(2\)](#)

### *Telephones and computer equipment*

### <sup>F436</sup>**319** Mobile telephones

- (1) No liability to income tax arises by virtue of section 62 (general definition of earnings) or Chapter 10 of Part 3 (taxable benefits: residual liability to charge) in respect of the provision of one mobile telephone for an employee without any transfer of property in it.
- (2) In this section “mobile telephone” means telephone apparatus which—
  - (a) is not physically connected to a land-line, and
  - (b) is not used only as a wireless extension to a telephone which is physically connected to a land-line,
 or any thing which may be used in such apparatus for the purpose of gaining access to, or using, a public electronic communications service.
- (3) In this section the reference to the provision of a mobile telephone includes a reference to the provision, together with the mobile telephone provided, of access to, or the use of, a public electronic communications service by means of one mobile telephone number.
- (4) For the purposes of subsection (2) “telephone apparatus” means wireless telegraphy apparatus designed or adapted for the primary purpose of transmitting and receiving



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spoken messages and used in connection with a public electronic communications service.]

**Textual Amendments**

**F436** S. 319 substituted (with effect for the year 2006-07 and subsequent years of assessment in accordance with s. 60(4) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), **s. 60(3)** (with s. 60(5))

**<sup>F437</sup>320 Limited exemption for computer equipment**

**Textual Amendments**

**F437** S. 320 repealed (with effect for the year 2006-07 and subsequent years of assessment in accordance with s. 61(2) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), s. 61(1), **Sch. 26 Pt. 3(7)** (with s. 61(3))

*<sup>F438</sup>Eye tests and special corrective appliances*

**Textual Amendments**

**F438** S. 320A and cross-heading inserted (with effect for the year 2006-07 and subsequent years of assessment in accordance with s. 62(5) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), **s. 62(2)**

**320A Eye tests and special corrective appliances**

- (1) No liability to income tax arises in respect of the provision for an employee of—
  - (a) an eye and eyesight test, or
  - (b) special corrective appliances that an eye and eyesight test shows are necessary, if conditions A and B are met.
- (2) Condition A is that the provision of the test or appliances is required by regulations made under the Health and Safety at Work etc. Act 1974.
- (3) Condition B is that tests and appliances of the kind mentioned in subsection (1) are made available generally to those employees of the employer in question for whom they are required to be provided by the regulations.]

*<sup>F439</sup>Health-screening and medical check-ups*

**Textual Amendments**

**F439** S. 320B and cross-heading inserted (with effect in accordance with s. 55(5) of the amending Act) by [Finance Act 2009 \(c. 10\)](#), **s. 55(4)**

*Status: Point in time view as at 01/09/2013.*

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### **320B Health-screening and medical check-ups**

- (1) No liability to income tax arises in respect of the provision for an employee, on behalf of an employer, of a health-screening assessment or a medical check-up.
- (2) Subsection (1) does not apply—
  - (a) to more than one health-screening assessment provided in a tax year by any one employer or by any of a number of persons who are employers of the employee at the same time, or
  - (b) to more than one medical check-up so provided.
- (3) In this section—
 

“health-screening assessment” means an assessment to identify employees who might be at particular risk of ill-health, and

“medical check-up” means a physical examination of the employee by a health professional for (and only for) determining the employee's state of health.]

### *Awards and gifts*

### **321 Suggestion awards**

- (1) This section applies where an employer establishes a scheme for the making of suggestions that is open on the same terms—
  - (a) to employees of the employer generally, or
  - (b) to a particular description of them.
- (2) No liability to income tax arises in respect of an encouragement award or financial benefit award made under the scheme for a suggestion which meets conditions A to C if, or to the extent that, it does not exceed the permitted maximum for the award under section 322.
- (3) Condition A is that the suggestion relates to the activities carried on by the employer.
- (4) Condition B is that the suggestion is made by an employee who could not reasonably be expected to make it in the course of the duties of the employment, having regard to the employee's experience.
- (5) Condition C is that the suggestion is not made at a meeting held for the purpose of proposing suggestions.
- (6) In this section and section 322—
 

“encouragement award” means an award, other than a financial benefit award, made for a suggestion with intrinsic merit or showing special effort, and

“financial benefit award” means an award for a suggestion relating to an improvement in efficiency or effectiveness which the employer has decided to adopt and reasonably expects will result in a financial benefit.

### **322 Suggestion awards: “the permitted maximum”**

- (1) The permitted maximum for an encouragement award for the purposes of section 321 (suggestion awards) is £25.

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- (2) The permitted maximum for a financial benefit award where no such award for the suggestion has been made before is—
  - (a) if only one such award is made for the suggestion, the suggestion maximum, and
  - (b) if two or more such awards are made on the same occasion to different persons for the suggestion, the appropriate proportion of the suggestion maximum.
- (3) If on a later occasion or occasions one or more further such awards are made for the same suggestion, the permitted maximum for each is—
  - (a) if only one such award is made for the suggestion on that occasion, the residue of the suggestion maximum, and
  - (b) if two or more such awards are made on the same occasion to different persons for the suggestion, the appropriate proportion of that residue.
- (4) The suggestion maximum for a financial benefit award is the financial benefit share or £5000 if that is less.
- (5) In subsection (4) “the financial benefit share” means the greater of—
  - (a) half the financial benefit reasonably expected to result from the adoption of the suggestion for the first year after its adoption, and
  - (b) one-tenth of the financial benefit reasonably expected to result from its adoption for the first 5 years after its adoption.
- (6) In this section—

“the appropriate proportion” means such proportion as the award bears to the total of the financial benefit awards made on the same occasion for the suggestion,

“the residue of the suggestion maximum” means the suggestion maximum less the total previous exemption, and

“the total previous exemption” means the total of the amounts exempted from income tax under section 321 in respect of financial benefit awards for the suggestion made on previous occasions.

### **323 Long service awards**

- (1) No liability to income tax arises in respect of a long service award which meets the condition in subsection (3) if or to the extent that the chargeable amount does not exceed the permitted maximum.
- (2) In subsection (1)—

“chargeable amount” means the amount of employment income which would be charged to tax in respect of the award apart from subsection (1),

“long service award” means an award made to an employee to mark not less than 20 years' service with the same employer, and

“permitted maximum” means [<sup>F440</sup>£50] for each year of service in respect of which the award is made.
- (3) The condition is that the award must take the form of—
  - (a) tangible moveable property,
  - (b) shares in a company which is, or belongs to the same group as, the employer, or

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- (c) the provision of any other benefit except—
  - (i) a payment,
  - (ii) a cash voucher,
  - (iii) a credit-token,
  - (iv) securities,
  - (v) shares not within paragraph (b), or
  - (vi) an interest in or rights over securities or shares.
- (4) Subsection (1) does not apply to an award (“the later award”) if another award to mark a particular period of service with the same employer has been made to the employee in the period of 10 years ending with the date on which the later award is made.
- (5) For the purposes of this section, service is treated as being with the same employer if it is with two or more employers—
  - (a) each of whom is a successor or predecessor of the others, or
  - (b) one of whom is a company which belongs or has belonged to the same group as the others or a predecessor or successor of the others.
- (6) In this section “group” means a body corporate and its 51% subsidiaries.

#### **Textual Amendments**

**F440** Word in s. 323(2) substituted (13.6.2003) by [The Income Tax \(Exemption of Minor Benefits\) \(Increase in Sums of Money\) Order 2003 \(S.I. 2003/1361\)](#), arts. 1(1), 3

### **324 Small gifts from third parties**

- (1) No liability to income tax arises in respect of a gift provided for an employee or a member of the employee’s family or household if conditions A to E are met.
- (2) Condition A is that the gift is not provided by the employer or a person connected with the employer.
- (3) Condition B is that neither the employer nor a person connected with the employer has directly or indirectly procured the gift.
- (4) Condition C is that the gift is not made in recognition of particular services performed by the employee in the course of the employment or in anticipation of such services.
- (5) Condition D is that the gift is not cash or securities or the use of a service.
- (6) Condition E is that the total cost to the donor of all the eligible gifts in respect of the employee in question during the tax year does not exceed [<sup>F441</sup>£250].
- (7) For the purposes of condition E, the total cost to the donor includes any value added tax payable on the supply of the gifts to the donor, whether or not the donor is entitled to a credit or repayment in respect of that tax.
- (8) In this section “eligible gifts” means all gifts which—
  - (a) meet conditions A to D, or
  - (b) are non-cash vouchers or credit-tokens and meet—
    - (i) conditions A to C, and

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(ii) conditions A and B in section 270 (exemption for small gifts of vouchers and tokens from third parties).

(9) Subsection (1) does not apply to non-cash vouchers and credit-tokens (but see section 270 which makes provision for a corresponding exemption for them).

#### Textual Amendments

**F441** Word in s. 324(6) substituted (13.6.2003) by [The Income Tax \(Exemption of Minor Benefits\) \(Increase in Sums of Money\) Order 2003 \(S.I. 2003/1361\)](#), arts. 1(1), 4

### *Overseas medical treatment*

#### **325 Overseas medical treatment**

(1) No liability to income tax arises by virtue of Chapter 10 of Part 3 (taxable benefits: residual liability to charge) in respect of—

- (a) providing an employee with medical treatment outside the United Kingdom where the need for it arises while the employee is outside the United Kingdom for the purpose of performing the duties of the employment, or
- (b) providing an employee with insurance against the cost of providing such treatment.

(2) For the purposes of this section—

- (a) “medical treatment” includes all procedures for diagnosing or treating any physical or mental illness, infirmity or defect, and
- (b) providing a person with medical treatment includes providing for the person to be an in-patient so that such treatment can be given.

#### **[<sup>F442</sup>325A Health and employment insurance payments**

(1) No liability to income tax in respect of employment income arises on any payment if or to the extent that—

- (a) were the payment an annual payment falling within Chapter 7 of Part 5 of ITTOIA 2005, it would be exempt from income tax under section 735 of that Act (health and employment insurance payments), and
- (b) it meets conditions A and B.

(2) Condition A is that the payments are made—

- (a) to a person (“the employee”) who made payments or contributions in respect of premiums under an insurance policy which another person took out wholly or partly for the employee's benefit, or
- (b) to the employee's [<sup>F443</sup>spouse or civil partner] .

(3) Condition B is that the payments are attributable on a just and reasonable basis to the payments or contributions in respect of premiums.]

#### Textual Amendments

**F442** S. 325A inserted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 592](#) (with [Sch. 2](#))

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**F443** Words in s. 325A(2)(b) substituted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **145**

*Expenses incidental to sale etc. of asset*

**326 Expenses incidental to transfer of a kind not normally met by transferor**

- (1) No liability to income tax arises by virtue of the payment or reimbursement of expenses which—
- (a) are incidental to, and incurred wholly and exclusively as a result of, an employment-related asset transfer, and
  - (b) are of a kind not normally met by the transferor.
- (2) There is an “employment-related asset transfer” if—
- (a) an asset or the beneficial interest in an asset is transferred to an employee’s employer or a person nominated by the employer, and
  - (b) the right or opportunity to make the transfer arose by reason of the employment.
- (3) In this section references to a transfer are to a sale or any other kind of disposal.

*<sup>F444</sup>Monitoring schemes*

**Textual Amendments**

**F444** S. 326A and cross-heading inserted (with effect in accordance with s. 39(2) of the amending Act) by [Finance Act 2011 \(c. 11\)](#), s. **39(1)**

**326A Fees relating to monitoring schemes relating to vulnerable persons**

- (1) No liability to income tax arises by virtue of the payment or reimbursement of a fee in respect of <sup>F445</sup>—
- <sup>F446</sup>(a) <sup>[</sup> an application to join the scheme administered under section 44 of the Protection of Vulnerable Groups (Scotland) Act 2007 (asp 14) (scheme to collate and disclose information about individuals working with vulnerable persons).
  - <sup>F447</sup>(b) <sup>[</sup> a fee paid by virtue of section 116A(4)(b) or (5)(b) of the Police Act 1997 (“the Police Act”) (fee for up-dating certificates);
  - (c) a fee paid under—
    - (i) section 113A(1)(b) of the Police Act (fee for criminal record certificates);
    - (ii) section 113B(1)(b) of the Police Act (fee for enhanced criminal record certificates);
    - (iii) section 114(1)(b) of the Police Act (fee for criminal record certificates: Crown employment); or
    - (iv) section 116(1)(b) of the Police Act (fee for enhanced criminal record certificates: judicial appointments and Crown employment);

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where the application is made at the same time as an application under section 116A(4) or (5) of the Police Act for the certificate to be subject to update arrangements.

- (2) The Treasury may by order amend subsection (1) so as—
- (a) to add to the fees covered by that subsection a fee of a specified kind payable in connection with a scheme for England and Wales or Northern Ireland which corresponds to the scheme administered under section 44 of the Protection of Vulnerable Groups (Scotland) Act 2007, or
  - (b) to amend or remove a reference to a fee added under paragraph (a).]]

#### Textual Amendments

**F445** Word in s. 326A(1) inserted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Income Tax \(Monitoring Schemes Relating to Vulnerable Persons\) Order 2013 \(S.I. 2013/1133\)](#), arts. 1(2), **2(a)**

**F446** Words in s. 326A(1) renumbered as s. 326A(1)(a) (with effect in accordance with art. 1(2) of the amending S.I.) by [The Income Tax \(Monitoring Schemes Relating to Vulnerable Persons\) Order 2013 \(S.I. 2013/1133\)](#), arts. 1(2), **2(b)**

**F447** S. 326A(1)(b)(c) inserted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Income Tax \(Monitoring Schemes Relating to Vulnerable Persons\) Order 2013 \(S.I. 2013/1133\)](#), arts. 1(2), **2(c)**

### *<sup>F448</sup>Employee shareholder agreements*

#### Textual Amendments

**F448** S. 326B and cross-heading inserted (1.9.2013) by [Finance Act 2013 \(c. 29\)](#), [Sch. 23 paras. 37, 38](#); [S.I. 2013/1755](#), art. 2

### **326B Advice relating to proposed employee shareholder agreements**

- (1) No liability to income tax arises by virtue of—
- (a) the provision of relevant advice by a relevant independent adviser, or
  - (b) the payment or reimbursement, in accordance with section 205A(7) of the Employment Rights Act 1996, of any reasonable costs incurred in obtaining relevant advice.
- (2) “Relevant advice” means—
- (a) advice, other than tax advice, which is provided for the purposes of section 205A(6)(a) of that Act (advice as to terms and effect of employee shareholder agreement), and
  - (b) tax advice which is so provided and consists only of an explanation of the tax effects of employee shareholder agreements generally.
- (3) In this section—
- “employee shareholder agreement” means an agreement by virtue of which an employee is an employee shareholder (see section 205A(1)(a) to (d) of that Act);
  - “relevant independent adviser” has the meaning that it has for the purposes of section 203(3)(c) of that Act.]

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## PART 5

### EMPLOYMENT INCOME: DEDUCTIONS ALLOWED FROM EARNINGS

#### CHAPTER 1

##### DEDUCTIONS ALLOWED FROM EARNINGS: GENERAL RULES

###### *Introduction*

### 327 Deductions from earnings: general

- (1) This Part provides for deductions that are allowed from the taxable earnings from an employment in a tax year in calculating the net taxable earnings from the employment in the tax year for the purposes of Part 2 (see section 11(1)).
- (2) In this Part, unless otherwise indicated by the context—
  - (a) references to the earnings from which deductions are allowed are references to the taxable earnings mentioned in subsection (1), and
  - (b) references to the tax year are references to the tax year mentioned there.
- (3) The deductions for which this Part provides are those allowed under—
  - Chapter 2 (deductions for employee's expenses),
  - Chapter 3 (deductions from benefits code earnings),
  - Chapter 4 (fixed allowances for employee's expenses),
  - Chapter 5 (deductions for earnings representing benefits or reimbursed expenses),
  - and
  - Chapter 6 (deductions from seafarers' earnings).
- (4) Further provision about deductions from earnings is made in—
  - section 232 (giving effect to mileage allowance relief),  
<sup>F449</sup> ... and
  - section 262 of CAA 2001 (capital allowances to be given effect by treating them as deductions from earnings).
- (5) Further provision about deductions from income including earnings is made in—
  - Part 12 (payroll giving), [<sup>F450</sup>and
  - sections 188 to 194 of FA 2004 (contributions to registered pension schemes).]

#### **Textual Amendments**

**F449** Words in s. 327(4) repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), s. 284(1), Sch. 35 para. 60(2), [Sch. 42 Pt. 3](#) (with [Sch. 36](#))

**F450** Words in s. 327(5) substituted (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), s. 284(1), [Sch. 35 para. 60\(3\)](#) (with [Sch. 36](#))



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### General rules

#### 328 The income from which deductions may be made

- (1) The general rule is that deductions under this Part are allowed—
  - (a) from any earnings from the employment in question, and
  - (b) not from earnings from any other employment.

This is subject to subsections (2) to (4).

- (2) Deductions under section 351 (expenses of ministers of religion) are allowed from earnings from any employment as a minister of a religious denomination.
- (3) Deductions under section 368 (fixed sum deductions from earnings payable out of public revenue) are allowed only from earnings payable out of the public revenue.
- (4) Deductions limited to specified earnings (see subsection (5)) are allowed—
  - (a) only from earnings from the employment that are taxable earnings under certain of the charging provisions of Chapters 4 and 5 of Part 2, and
  - (b) not from other earnings from it.
- (5) “Deductions limited to specified earnings” are deductions under—
  - sections 336 to 342 (deductions from earnings charged on receipt: see sections 335(2) and 354),
  - section 353 (deductions from earnings charged on remittance),
  - sections 370 to 374 (travel deductions from earnings charged on receipt),

<sup>F451</sup>  
...

#### Textual Amendments

<sup>F451</sup> Words in s. 328(5) omitted (with effect in accordance with Sch. 46 para. 72 of the amending Act) by virtue of Finance Act 2013 (c. 29), Sch. 46 para. 32

#### 329 Deductions from earnings not to exceed earnings

- (1) The amount of a deduction allowed under this Part may not exceed the earnings from which it is deductible.
- <sup>F452</sup>(1A) If the earnings from which a deduction allowed under this Part is deductible include earnings that are “excluded” within the meaning of section 15(1A)—
  - (a) the amount of the deduction allowed is a proportion of the amount that would be allowed under this Part if the tax year were not a split year, and
  - (b) that proportion is equal to the proportion that the part of the earnings that is not “excluded” bears to the total earnings.]
- (2) If two or more deductions allowed under this Part are deductible from the same earnings, the amounts deductible may not in aggregate exceed those earnings [<sup>F453</sup>(or, in a case within subsection (1A), the part of those earnings that is not “excluded”)] .
- (3) If deductions allowed otherwise than under this Part fall to be allowed from the same earnings as amounts deductible under this Part, the amounts deductible under this Part may not exceed the earnings [<sup>F454</sup>(or, in a case within subsection (1A), the part of the earnings that is not “excluded”)] remaining after the other deductions.

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- (4) Subsections (1) and (2) do not apply to a deduction under section 351 (expenses of ministers of religion), and subsection (3) applies as if such a deduction were allowed otherwise than under this Part.
- (5) This section is to be disregarded for the purposes of the deductibility provisions (see section 332).
- (6) See also [<sup>F455</sup>section 128 of ITA 2007] (which provides that where a loss in an employment is sustained, relief may be given against other income).

#### Textual Amendments

- F452** S. 329(1A) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by Finance Act 2013 (c. 29), **Sch. 45 para. 64(2)**
- F453** Words in s. 329(2) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by Finance Act 2013 (c. 29), **Sch. 45 para. 64(3)**
- F454** Words in s. 329(3) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by Finance Act 2013 (c. 29), **Sch. 45 para. 64(4)**
- F455** Words in s. 329(6) substituted (6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 1 para. 434** (with Sch. 2)

### 330 Prevention of double deductions

- (1) A deduction from earnings under this Part is not allowed more than once in respect of the same costs or expenses.
- (2) If apart from this subsection—
  - (a) a deduction would be allowed under Chapter 4 of this Part (fixed allowances for employee’s expenses) for a sum fixed by reference to any kind of expenses, and
  - (b) the employee would be entitled under another provision to a deduction for an amount paid in respect of the same kind of expenses,
 only one of those deductions is allowed.

### 331 Order for making deductions

- (1) This Part needs to be read with [<sup>F456</sup>section 25(1) to (3) of ITA 2007] (general rule that deductions are to be allowed in the order resulting in the greatest reduction of liability to income tax).
- (2) In the case of deductions under this Part, the general rule in that section is subject to—
  - (a) section 23(3) (which requires certain deductions to be made in order to establish “chargeable overseas earnings”), and
  - (b) section 381 (which requires deductions under other provisions to be taken into account before deductions under Chapter 6 of this Part (seafarers)).

#### Textual Amendments

- F456** Words in s. 331(1) substituted (with effect in accordance with s. 381(1) of the amending Act) by Taxation (International and Other Provisions) Act 2010 (c. 8), s. 381(1), **Sch. 8 para. 300** (with Sch. 9 paras. 1-9, 22)

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### 332 Meaning of “the deductibility provisions”

For the purposes of this Part, “the deductibility provisions” means the following provisions (which refer to amounts or expenses that would be deductible if they were incurred and paid by an employee)—

- the definition of “business travel” in section 171(1) (definitions for Chapter 6 of Part 3),
- section 179(6) (exception for certain advances for necessary expenses),
- the definition of “business travel” in section 236(1) (definitions for Chapter 2 of Part 4),
- section 240(1)(c) and (5) (exemption of incidental overnight expenses and benefits),
- section 252(3) (exception from exemption of work-related training provision for non-deductible travel expenses),
- section 257(3) (exception from exemption for individual learning account training provision for non-deductible travel expenses),
- section 305(5) (offshore oil and gas workers: mainland transfers),
- section 310(6)(b) (counselling and other outplacement services),
- section 311(5)(b) (retraining courses),
- section 361(b) (scope of Chapter 3 of this Part: cost of benefits deductible as if paid by employee),
- section 362(1)(c) and (2)(b) (deductions where non-cash voucher provided),
- section 363(1)(b) and (2)(b) (deductions where credit-token provided),
- section 364(1)(b) and (2) (deductions where living accommodation provided),
- section 365(1)(b) and (2) (deductions where employment-related benefit provided).

## CHAPTER 2

### DEDUCTIONS FOR EMPLOYEE’S EXPENSES

#### **Modifications etc. (not altering text)**

**C13** Pt. 5 Ch. 2 restricted (6.4.2006) by Finance Act 2004 (c. 12), s. 284(1), Sch. 33 para. 1(5) (with Sch. 36)

#### *Introduction*

### 333 Scope of this Chapter: expenses paid by the employee

- (1) A deduction from a person’s earnings for an amount is allowed under the following provisions of this Chapter only if the amount—
  - (a) is paid by the person, or
  - (b) is paid on the person’s behalf by someone else and is included in the earnings.
- (2) In the following provisions of this Chapter, in relation to a deduction from a person’s earnings, references to the person paying an amount include references to the amount

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being paid on the person's behalf by someone else if or to the extent that the amount is included in the earnings.

- (3) Subsection (1)(b) does not apply to the deductions under—
- (a) section 351(2) and (3) (expenses of ministers of religion), and
  - (b) section 355 (deductions for corresponding payments by non-domiciled employees with foreign employers),
- and subsection (2) does not apply in the case of those deductions.
- (4) Chapter 3 of this Part provides for deductions where—
- (a) a person's earnings include an amount treated as earnings under Chapter 4, 5 or 10 of Part 3 (taxable benefits: vouchers etc., living accommodation and residual liability to charge), and
  - (b) an amount in respect of the benefit in question would be deductible under this Chapter if the person had incurred and paid it.

### **334 Effect of reimbursement etc.**

- (1) For the purposes of this Chapter, a person may be regarded as paying an amount despite—
- (a) its reimbursement, or
  - (b) any other payment from another person in respect of the amount.
- (2) But where a reimbursement or such other payment is made in respect of an amount, a deduction for the amount is allowed under the following provisions of this Chapter only if or to the extent that—
- (a) the reimbursement, or
  - (b) so much of the other payment as relates to the amount,
- is included in the person's earnings.
- (3) This section does not apply to a deduction allowed under section 351 (expenses of ministers of religion).
- (4) This section is to be disregarded for the purposes of the deductibility provisions.

### **335 Application of deductions provisions: “earnings charged on receipt” and “earnings charged on remittance”**

- (1) The availability of certain deductions under this Chapter depends on whether the earnings are earnings charged on receipt or earnings charged on remittance.
- (2) Sections 336 to 342—
- (a) only apply if the earnings from which the deduction is to be made are earnings charged on receipt, and
  - (b) apply subject to section 354(1) if the earnings from the employment also include other earnings.
- (3) Section 353 (which provides for a deduction for expenses of the kind to which sections 336 to 342 apply)—
- (a) only applies if the earnings from which the deduction is to be made are earnings charged on remittance, and

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- (b) applies subject to section 354(2) if the earnings from the employment also include other earnings.
- (4) In this Part—
  - “earnings charged on receipt” means earnings which are taxable earnings under section 15<sup>F457</sup> ... or 27, and
  - “earnings charged on remittance” means earnings which are taxable earnings under section 22 or 26.

#### **Textual Amendments**

**F457** Words in s. 335(4) omitted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by virtue of Finance Act 2008 (c. 9), Sch. 7 para. 26

### *General rule for deduction of employee’s expenses*

#### **336 Deductions for expenses: the general rule**

- (1) The general rule is that a deduction from earnings is allowed for an amount if—
  - (a) the employee is obliged to incur and pay it as holder of the employment, and
  - (b) the amount is incurred wholly, exclusively and necessarily in the performance of the duties of the employment.
- (2) The following provisions of this Chapter contain additional rules allowing deductions for particular kinds of expenses and rules preventing particular kinds of deductions.
- (3) No deduction is allowed under this section for an amount that is deductible under sections 337 to 342 (travel expenses).

### *Travel expenses*

#### **337 Travel in performance of duties**

- (1) A deduction from earnings is allowed for travel expenses if—
  - (a) the employee is obliged to incur and pay them as holder of the employment, and
  - (b) the expenses are necessarily incurred on travelling in the performance of the duties of the employment.
- (2) This section needs to be read with section 359 (disallowance of travel expenses: mileage allowances and reliefs).

#### **338 Travel for necessary attendance**

- (1) A deduction from earnings is allowed for travel expenses if—
  - (a) the employee is obliged to incur and pay them as holder of the employment, and
  - (b) the expenses are attributable to the employee’s necessary attendance at any place in the performance of the duties of the employment.

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- (2) Subsection (1) does not apply to the expenses of ordinary commuting or travel between any two places that is for practical purposes substantially ordinary commuting.
- (3) In this section “ordinary commuting” means travel between—
  - (a) the employee’s home and a permanent workplace, or
  - (b) a place that is not a workplace and a permanent workplace.
- (4) Subsection (1) does not apply to the expenses of private travel or travel between any two places that is for practical purposes substantially private travel.
- (5) In subsection (4) “private travel” means travel between—
  - (a) the employee’s home and a place that is not a workplace, or
  - (b) two places neither of which is a workplace.
- (6) This section needs to be read with section 359 (disallowance of travel expenses: mileage allowances and reliefs).

### **339 Meaning of “workplace” and “permanent workplace”**

- (1) In this Part “workplace”, in relation to an employment, means a place at which the employee’s attendance is necessary in the performance of the duties of the employment.
- (2) In this Part “permanent workplace”, in relation to an employment, means a place which—
  - (a) the employee regularly attends in the performance of the duties of the employment, and
  - (b) is not a temporary workplace.

This is subject to subsections (4) and (8).
- (3) In subsection (2) “temporary workplace”, in relation to an employment, means a place which the employee attends in the performance of the duties of the employment—
  - (a) for the purpose of performing a task of limited duration, or
  - (b) for some other temporary purpose.

This is subject to subsections (4) and (5).
- (4) A place which the employee regularly attends in the performance of the duties of the employment is treated as a permanent workplace and not a temporary workplace if—
  - (a) it forms the base from which those duties are performed, or
  - (b) the tasks to be carried out in the performance of those duties are allocated there.
- (5) A place is not regarded as a temporary workplace if the employee’s attendance is—
  - (a) in the course of a period of continuous work at that place—
    - (i) lasting more than 24 months, or
    - (ii) comprising all or almost all of the period for which the employee is likely to hold the employment, or
  - (b) at a time when it is reasonable to assume that it will be in the course of such a period.

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- (6) For the purposes of subsection (5), a period is a period of continuous work at a place if over the period the duties of the employment are performed to a significant extent at the place.
- (7) An actual or contemplated modification of the place at which duties are performed is to be disregarded for the purposes of subsections (5) and (6) if it does not, or would not, have any substantial effect on the employee's journey, or expenses of travelling, to and from the place where they are performed.
- (8) An employee is treated as having a permanent workplace consisting of an area if—
  - (a) the duties of the employment are defined by reference to an area (whether or not they also require attendance at places outside it),
  - (b) in the performance of those duties the employee attends different places within the area,
  - (c) none of the places the employee attends in the performance of those duties is a permanent workplace, and
  - (d) the area would be a permanent workplace if subsections (2), (3), (5), (6) and (7) referred to the area where they refer to a place.

#### **340 Travel between group employments**

- (1) A deduction from earnings from an employment is allowed for travel expenses if conditions A to D are met.
- (2) Condition A is that the employee is obliged to incur and pay the expenses.
- (3) Condition B is that the travel is for the purpose of performing duties of the employment at the destination.
- (4) Condition C is that the employee has performed duties of another employment at the place of departure.
- (5) Condition D is that the employments are with companies in the same group.
- (6) In this section “group” means a company and its 51% subsidiaries.
- (7) For the purposes of sections 353 and 354 (special rules for earnings with a foreign element), the expenses are treated as incurred in the performance of the duties to be performed at the destination.
- (8) This section needs to be read with section 359 (disallowance of travel expenses: mileage allowances and reliefs).

#### **341 Travel at start or finish of overseas employment**

- (1) A deduction from earnings from an employment is allowed for starting travel expenses and finishing travel expenses if conditions A to C are met.
- (2) Condition A is that the duties of the employment are performed wholly outside the United Kingdom.
- (3) Condition B is that the employee is [<sup>F458</sup>UK resident].
- (4) Condition C is that in a case where the employer is a foreign employer, the employee is domiciled in the United Kingdom.

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- (5) If the travel is only partly attributable to the taking up or termination of the employment, this section applies only to the part of the expenses properly so attributable.
- (6) Subsection (7) applies if in the tax year the employment is in substance one whose duties fall to be performed outside the United Kingdom.
- (7) Duties of the employment performed in the United Kingdom, whose performance is merely incidental to the performance of duties outside the United Kingdom, are to be treated for the purposes of subsection (2) as performed outside the United Kingdom.
- (8) In this section—
  - “starting travel expenses” means expenses incurred by the employee in travelling from a place in the United Kingdom to take up the employment,
  - “finishing travel expenses” means expenses incurred by the employee in travelling to a place in the United Kingdom on the termination of the employment, and
  - “employee” includes a person who is to be, or has ceased to be, an employee.
- (9) This section needs to be read with section 359 (disallowance of travel expenses: mileage allowances and reliefs).

#### **Textual Amendments**

**F458** Words in s. 341(3) substituted (with effect in accordance with Sch. 46 para. 72 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 33](#)

### **342 Travel between employments where duties performed abroad**

- (1) A deduction from earnings from an employment is allowed for travel expenses incurred by the employee if conditions A to F are met.
- (2) Condition A is that the travel is for the purpose of performing duties of the employment at the destination.
- (3) Condition B is that the employee has performed duties of another employment at the place of departure.
- (4) Condition C is that the place of departure or the destination or both are outside the United Kingdom.
- (5) Condition D is that the duties of one or both of the employments are performed wholly or partly outside the United Kingdom.
- (6) Condition E is that the employee is [<sup>F459</sup>UK resident].
- (7) Condition F is that in a case where the employer is a foreign employer, the employee is domiciled in the United Kingdom.
- (8) If the travel is only partly attributable to the purpose of performing duties of the employment at the destination, this section applies only to the part of the expenses properly so attributable.
- (9) This section needs to be read with section 359 (disallowance of travel expenses: mileage allowances and reliefs).



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### Textual Amendments

**F459** Words in s. 342(6) substituted (with effect in accordance with Sch. 46 para. 72 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 34](#)

## *Fees and subscriptions*

### **343 Deduction for professional membership fees**

- (1) A deduction from earnings from an employment is allowed for an amount paid in respect of a professional fee if—
- (a) the duties of the employment involve the practice of the profession to which the fee relates, and
  - (b) the registration, certification, licensing or other matter in respect of which the fee is payable is a condition, or one of alternative conditions, which must be met if that profession is to be practised in the performance of those duties.
- (2) In this section “professional fee” means a fee mentioned in the following Table.

#### *Table*

##### *Health professionals*

- (1) Fee payable for entry or retention of a name in any of the following—
- <sup>F460</sup>(a) . . . . .
  - (b) the register maintained by the Registrar of Chiropractors,
  - <sup>F461</sup>(c) the dental care professionals register,]
  - (d) the dentists register,
  - (e) the register of dispensing opticians,
  - (f) the register maintained by <sup>F462</sup>the Health and Care Professions Council],
  - <sup>F463</sup>(g) . . . . .
  - (h) the register of medical practitioners,
  - (i) the register maintained by the Nursing and Midwifery Council,
  - (j) either of the registers of ophthalmic opticians,
  - (k) the register maintained by the Registrar of Osteopaths,
  - <sup>F464</sup>(l) the register maintained under article 19 of the Pharmacy Order 2010 so far as relating to pharmacists or pharmacy technicians,]
  - <sup>F465</sup>(n) the register of pharmaceutical chemists kept under Articles 6 and 9 of the Pharmacy (Northern Ireland) Order 1976.]
  - <sup>F466</sup><sup>F467</sup>(o) . . . . .
  - (p) the register maintained by the Care Council for Wales,
  - (q) the register maintained by the Scottish Social Services Council,
  - (r) the register maintained by the Northern Ireland Social Care Council.]
- <sup>F468</sup>(1A) Trainee registration fee payable by a specialty registrar to a body which recommends specialty registrars to the registrar of the General Medical Council for the award of a certificate of completion of training under section 34L of the Medical Act 1983.]

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- <sup>F460</sup>(2) .....
- (3) Fee payable for entry or retention of a name in any of the following—
- (a) the register maintained by the registrar appointed by the Farriers Registration Council,
  - (b) the supplementary veterinary register,
  - (c) the register of veterinary surgeons.
  - <sup>F469</sup>(d) the register maintained by the Animal Medicines Training Regulatory Authority pursuant to paragraph 13 of Schedule 3 to the Veterinary Medicines Regulations 2006.]

*Legal professionals*

- (4) Fee payable to the Council for Licensed Conveyancers on the issue of a licence to practise as a licensed conveyancer.
- (5) Fee and contribution to the compensation fund or Guarantee Fund payable on the issue of a solicitor's practising certificate.
- <sup>F470</sup>(5A) Fee payable to the Costs Lawyer Standards Board on applying for a costs lawyer practising certificate.]

*Architects*

- (6) Fee payable for entry or retention of a name in the Register of Architects.

*Teachers*

- (7) Fee payable for entry or retention of a name in any of the following—
  - <sup>F471</sup>(a) .....
  - (b) the register maintained by the General Teaching Council for Scotland,
  - (c) the register maintained by the General Teaching Council for Wales.
  - <sup>F472</sup>(d) the register maintained by the General Teaching Council for Northern Ireland.]

*<sup>F473</sup>Patent attorneys] and <sup>F474</sup>trade mark attorneys]*

- (8) Registration fee payable by—
  - (a) a registered <sup>F473</sup>patent attorney],
  - (b) a registered <sup>F474</sup>trade mark attorney].
- (9) Practising fee payable by—
  - (a) a registered <sup>F473</sup>patent attorney],
  - (b) a registered <sup>F474</sup>trade mark attorney].

*Occupations in the transport sector*

- (10) Fee payable by a driving instructor for entry or retention of a name in the register of approved instructors or on the issue or renewal of a licence authorising its holder to give paid instruction in the driving of a motor car.
- (11) Fee (including any related medical or technical examination fee) payable, on the issue or renewal of a licence by the Civil Aviation Authority, by—
  - (a) an aircraft maintenance engineer,
  - (b) an air traffic controller or student air traffic controller,

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- (c) a member of the flight crew of an aircraft registered in the United Kingdom,
- (d) a flight information service officer.
- (12) Fee (including any related medical examination fee) payable—
  - (a) on the issue or renewal of a licence authorising its holder to drive a large goods vehicle or a passenger-carrying vehicle,
  - (b) by an officer or other seaman on the issue, renewal or endorsement of a certificate, licence or other document which is required as evidence of his qualification or competence to serve in a ship.
- (13) Fee payable by a seafarer employed in a sea-going United Kingdom ship on the issue or renewal of a medical fitness certificate.
- [<sup>F475</sup>(14) Fee payable by a person employed or to be employed at a United Kingdom airport for a criminal records check required for the issue of a security pass authorising him to enter areas within the airport.]

*[<sup>F476</sup>Occupations in the private security industry*

- (15) Fee payable on applying for a licence from the Security Industry Authority under the Private Security Industry Act 2001.]

*[<sup>F477</sup>Occupations in the gambling industry*

- (16) Fee payable—
  - (a) on applying for a personal licence from the Gambling Commission under the Gambling Act 2005, or
  - (b) on applying to vary such a licence.
- (17) Any fee payable to the Gambling Commission under section 132 of that Act.]
- (3) The Board of Inland Revenue may make an order adding such fee as is specified in the order to the Table of fees mentioned in subsection (2).
- (4) The [<sup>F478</sup>Commissioners] may make an order if they consider that such fee is payable in respect of any registration, certification, licensing or other matter if it is required as a condition, or one of alternative conditions, of the practice of a profession.

#### Textual Amendments

- F460** Words in S. 343(2) Table omitted (6.4.2010) by virtue of [The Health Care and Associated Professions \(Miscellaneous Amendments and Practitioner Psychologists\) Order 2009](#) (S.I. 2009/1182), art. 1(9), [Sch. 5 para. 6](#) (with arts. 9, 10); S.I. 2009/1357, art. 2(3)
- F461** Words in s. 343(2) substituted (31.7.2006 - see the London Gazette, issue no. 58050 dated 21.7.2006) by [The Dentists Act 1984 \(Amendment\) Order 2005](#) (S.I. 2005/2011), art. 1(4)-(7), [Sch. 6 para. 5](#) (with [Sch. 7](#)) (with transitional provisions in S.I. 2006/1671)
- F462** Words in section 343(2) Table substituted (1.8.2012) by [Health and Social Care Act 2012](#) (c. 7), s. 306(4), [Sch. 15 para. 56\(d\)](#); S.I. 2012/1319, art. 2(4)
- F463** Words in s. 343(2) repealed (1.4.2010) by [Health and Social Care Act 2008](#) (c. 14), s. 170(3)(4), [Sch. 15 Pt. 2](#); S.I. 2010/708, art. 4(2)(d)
- F464** Words in s. 343(2) substituted (27.9.2010) by [The Pharmacy Order 2010](#) (S.I. 2010/231), art. 1(5), [Sch. 4 para. 11](#); S.I. 2010/1621, art. 2(1)
- F465** Words in s. 343(2) Table substituted (coming into force in accordance with art. 1(2)(3) of the amending S.I.) by [The Pharmacists and Pharmacy Technicians Order 2007](#) (S.I. 2007/289), art. 1(2)(3), [Sch. 1](#)

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- para. 9** (which substitution is, as respects para. (n), continued (11.2.2010) by **The Pharmacy Order 2010 (S.I. 2010/231)**, art. 1(2)(c), **Sch. 6 para. 2**)
- F466** Words in section 343(2) Table omitted (1.8.2012) by virtue of **Health and Social Care Act 2012 (c. 7)**, s. 306(4), **Sch. 15 para. 51**; S.I. 2012/1319, art. 2(4); S.I. 2012/1319, art. 2(4)
- F467** Words in s. 343(2) Table added (6.4.2008) by **The Income Tax (Professional Fees) Order 2008 (S.I. 2008/836)**, arts. 1, **2(2)**
- F468** Words in s. 343(2) inserted (10.5.2013) by **The Income Tax (Professional Fees) Order 2013 (S.I. 2013/1126)**, arts. 1, **2(2)**
- F469** Words in s. 343(2) Table added (6.4.2008) by **The Income Tax (Professional Fees) Order 2008 (S.I. 2008/836)**, arts. 1, **2(3)**
- F470** Words in s. 343(2) inserted (10.5.2013) by **The Income Tax (Professional Fees) Order 2013 (S.I. 2013/1126)**, arts. 1, **2(3)**
- F471** Words in s. 343(2) omitted (1.4.2012) by virtue of **Education Act 2011 (c. 21)**, s. 82(3), **Sch. 2 para. 26**; S.I. 2012/924, art. 2
- F472** Words in s. 343(2) added (6.4.2005) by **The Income Tax (Professional Fees) Order 2005 (S.I. 2005/1091)**, arts. 1, **2**
- F473** Words in s. 343(2) substituted (1.1.2010) by **Legal Services Act 2007 (c. 29)**, s. 211(2), **Sch. 21 para. 137(a)** (with ss. 29, 192, 193); S.I. 2009/3250, art. 2(h)
- F474** Words in s. 343(2) substituted (1.1.2010) by **Legal Services Act 2007 (c. 29)**, s. 211(2), **Sch. 21 para. 137(b)** (with ss. 29, 192, 193); S.I. 2009/3250, art. 2(h)
- F475** Words in s. 343(2) added (1.7.2003) by **The Income Tax (Professional Fees) Order 2003 (S.I. 2003/1652)**, arts. 1, **2**
- F476** Words in s. 343(2) added (17.5.2004) by **The Income Tax (Professional Fees) Order 2004 (S.I. 2004/1360)**, arts. 1, **2**
- F477** Words in s. 343(2) Table inserted (1.12.2012) by **The Income Tax (Professional Fees) Order 2012 (S.I. 2012/3004)**, arts. 1, **2**
- F478** Words in s. 343 substituted (18.4.2005) by **Commissioners for Revenue and Customs Act 2005 (c. 11)**, s. 53(1), **Sch. 4 para. 102(2)(3)(e)**; S.I. 2005/1126, art. 2(2)(h)

**Modifications etc. (not altering text)**

- C14** S. 343(2) amendment continued (11.2.2010) by **The Pharmacy Order 2010 (S.I. 2010/231)**, art. 1(2)(c), Sch. 6 para. 2

**344 Deduction for annual subscriptions**

- (1) A deduction from earnings from an employment is allowed for an amount paid in respect of an annual subscription if—
- (a) it is paid to a body of persons approved under this section, and
  - (b) the activities of the body which are directed to one or more of the objects within subsection (2) are of direct benefit to, or concern the profession practised in, the performance of the duties of the employment.
- (2) The objects are—
- (a) the advancement or dissemination of knowledge (whether generally or among persons belonging to the same or similar professions or occupying the same or similar positions),
  - (b) the maintenance or improvement of standards of conduct and competence among the members of a profession,
  - (c) the provision of indemnity or protection to members of a profession against claims in respect of liabilities incurred by them in the exercise of their profession.

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- (3) [<sup>F106</sup>An officer of Revenue and Customs] may approve a body of persons under this section if, on an application by the body, [<sup>F479</sup>the officer][<sup>F480</sup>is satisfied] that—
  - (a) the body is not of a mainly local character,
  - (b) its activities are carried on otherwise than for profit, and
  - (c) its activities are wholly or mainly directed to objects within subsection (2).
- (4) [<sup>F106</sup>An officer of Revenue and Customs] must give notice to the body of their decision on the application.
- (5) If the activities of the body are to a significant extent directed to objects other than objects within subsection (2), [<sup>F106</sup>an officer of Revenue and Customs] may—
  - (a) determine the proportion of the activities directed to objects within subsection (2), and
  - (b) determine that only such corresponding part of the subscription as is specified by [<sup>F106</sup>an officer of Revenue and Customs] is allowable under this section.
- (6) In determining that part, [<sup>F106</sup>an officer of Revenue and Customs] must have regard to the proportion of expenditure of the body attributable to objects other than objects within subsection (2) and all other relevant circumstances.
- (7) If a body applies for approval under this section and is approved, a subscription paid to it—
  - (a) before it has applied but in the same tax year as the application, or
  - (b) after it has applied but before it is approved,is treated for the purposes of this section as having been paid to an approved body.

#### Textual Amendments

- F106** Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 102\(1\)](#); S.I. 2005/1126, art. 2(2)(h)
- F479** Words in s. 344(3) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 103\(1\)\(g\)](#); S.I. 2005/1126, art. 2(2)(h)
- F480** Words in s. 344(3) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 112](#); S.I. 2005/1126, art. 2(2)(h)

### 345 Decisions of [<sup>F106</sup>an officer of Revenue and Customs] under section 344

- (1) [<sup>F106</sup>An officer of Revenue and Customs] may by notice to the body in question—
  - (a) withdraw an approval given under section 344, and
  - (b) withdraw or vary a determination made under that section,to take account of any change in circumstances.
- (2) A body aggrieved by a decision of [<sup>F106</sup>an officer of Revenue and Customs] under section 344 or subsection (1) may appeal <sup>F481</sup>....
- (3) The notice of appeal must be given to [<sup>F106</sup>an officer of Revenue and Customs] within 30 days after the date on which notice of their decision was given to the body.

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#### Textual Amendments

- F106** Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 102\(1\)](#); S.I. 2005/1126, art. 2(2)(h)
- F481** Words in s. 345(2) omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), [Sch. 1 para. 337](#)

### *Employee liabilities and indemnity insurance*

#### **346 Deduction for employee liabilities**

- (1) A deduction from earnings from an employment is allowed for any or all of the following—
- A. Payment in or towards the discharge of a liability related to the employment.
  - B. Payment of any costs or expenses incurred in connection with—
    - (a) a claim that the employee is subject to a liability related to the employment, or
    - (b) proceedings relating to or arising out of a claim that the employee is subject to a liability related to the employment.
  - C. Payment of a premium under a qualifying insurance contract, but only to the extent that the premium relates to—
    - (a) provision in the contract for the employee to be indemnified against a payment falling within paragraph A, or
    - (b) provision in the contract for the payment of any costs or expenses falling within paragraph B.
- (2) But a deduction is not allowed for a payment which falls within paragraph A or B if it would be unlawful for the employer to enter into a contract of insurance in respect of the liability, or costs or expenses, in question.
- [<sup>F482</sup>(2A) Nor is a deduction allowed for a payment which falls within paragraph A, B or C if the payment is made in pursuance of arrangements the main purpose, or one of the main purposes, of which is the avoidance of tax.]
- (3) In this Chapter—
- (a) “premium”, in relation to a qualifying insurance contract, means an amount payable to the insurer under the contract, and
  - (b) where a qualifying insurance contract relates to more than one person, employment or risk, the part of the premium to be treated as relating to each of them is to be determined by apportionment on a just and reasonable basis.

#### Textual Amendments

- F482** [S. 346\(2A\)](#) inserted (with effect in accordance with s. 67(4) of the amending Act) by [Finance Act 2009 \(c. 10\)](#), s. 67(2)

#### **347 Payments made after leaving the employment**

- (1) A deduction for a payment is not allowed under section 346 if—

*Status: Point in time view as at 01/09/2013.*

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- (a) the employee has ceased to hold the employment, and
  - (b) the payment is made after the day on which the employee ceased to hold the employment.
- (2) If subsection (1) applies, see section 555 (former employee entitled to deduction [<sup>F483</sup>in calculating net income]).

#### Textual Amendments

**F483** Words in s. 347(2) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 435](#) (with [Sch. 2](#))

### 348 Liabilities related to the employment

For the purposes of this Chapter each of the following kinds of liability is related to the employment—

A. Liability imposed upon the employee because he did an act, or failed to do an act—

- (a) in his capacity as holder of the employment, or
- (b) in any other capacity in which he acted in the performance of the duties of the employment.

B. Liability imposed upon the employee in connection with any proceedings relating to, or arising from, a claim that he is subject to a liability because he did an act, or failed to do an act—

- (a) in his capacity as holder of the employment, or
- (b) in any other capacity in which he acted in the performance of the duties of the employment.

### 349 Meaning of “qualifying insurance contract”

(1) In section 346 “qualifying insurance contract” means a contract of insurance which meets conditions A, B, C and D.

(2) Condition A is that, so far as the risks insured against are concerned, the contract only relates to one or more of the following—

- (a) the indemnification of an employee against a liability related to the employment,
- (b) the indemnification of a person against vicarious liability in respect of a liability related to another person’s employment,
- (c) the payment of costs or expenses incurred—
  - (i) in connection with a claim that a person is subject to a liability to which the insurance relates, or
  - (ii) in connection with any proceedings relating to or arising out of a claim that a person is subject to a liability to which the insurance relates,
- (d) the indemnification of an employer against loss from a payment made by the employer to an employee in respect of—
  - (i) a liability related to the employment, or
  - (ii) any costs or expenses incurred as mentioned in paragraph (c).

(3) Condition B is that—

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- (a) the period of insurance under the contract does not exceed 2 years or, if it does, it does so only because of one or more renewals, each for a period of 2 years or less, and
  - (b) the insured is not required to renew the contract for any period.
- (4) Condition C is—
- (a) that the insured is not entitled under the contract to receive any payment or other benefit in addition to—
    - (i) cover for the risks insured against, and
    - (ii) any right to renew the contract, or
  - (b) if the insured is so entitled, that the part of the premium reasonably attributable to the entitlement is not a significant part of the whole premium.
- (5) Condition D is that the contract is not connected with another contract.

### **350 Connected contracts**

- (1) An insurance contract is connected with another contract for the purposes of section 349 if conditions E and F are met—
- (a) at the time when both contracts are first in force, or
  - (b) at any time after that time.
- (2) Condition E is that one of the contracts was entered into—
- (a) by reference to the other, or
  - (b) with a view to enabling or facilitating entry into the other on particular terms.
- (3) Condition F is that the terms on which one of the contracts was entered into are significantly different from what they would have been if—
- (a) it had not been entered into in anticipation of the other being entered into, or
  - (b) the other had not also been entered into.
- (4) If—
- (a) there is only one such significant difference in terms, and
  - (b) the contracts meet conditions A, B and C specified in section 349,
- the difference may be disregarded in the following cases.
- (5) The first case is where the difference is a reduction in premiums under the contract that is reasonably attributable only to the contract—
- (a) containing a right to renew, or
  - (b) being entered into by way of renewal.
- (6) The second case is where—
- (a) two or more contracts have been entered into as part of a single transaction, and
  - (b) the difference is reductions in their premiums that are reasonably attributable only to the premium under each of them having been fixed by reference to the appropriate proportion of the combined premium.
- (7) In subsection (6) “the combined premium” means the amount that would have been the total premium under a single contract relating to all the risks covered by the contracts.



*Status:* Point in time view as at 01/09/2013.

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### *Expenses of ministers of religion*

#### **351 Expenses of ministers of religion**

- (1) A deduction is allowed from any earnings from any employment as a minister of a religious denomination for amounts incurred by the minister wholly, exclusively and necessarily in the performance of duties of such an employment.
- (2) If a minister of a religious denomination pays rent in respect of a dwelling-house, part of which is used mainly and substantially for the purposes of such duties, a deduction is allowed from the minister’s earnings from any employment as such a minister for—
  - (a) one quarter of the rent, or
  - (b) if less, the part of the rent that, on a just and reasonable apportionment, is attributable to that part of the dwelling-house.
- (3) If—
  - (a) an interest in premises belongs to a charity or an ecclesiastical corporation, and
  - (b) because of that interest and by reason of holding an employment as a minister of a religious denomination, the minister has a residence in the premises from which to perform the duties of the employment,a deduction is allowed from the minister’s earnings from any such employment for part of any expenses borne by the minister on the maintenance, repair, insurance or management of the premises.
- (4) The amount of the deduction is—

$$\frac{A}{4} - B$$

where—

A is the amount of the expenses borne by the minister on the maintenance, repair, insurance or management of the premises, and

B is the amount of those expenses that are allowed under subsection (1).

<sup>F484</sup>(5) .....

- (6) Subsection (1) needs to be read with section 359 (disallowance of travel expenses: mileage allowances and reliefs).

#### **Textual Amendments**

**F484** S. 351(5) omitted (coming into force for the tax year 2012-13 and subsequent tax years) by virtue of Finance Act 2010 (c. 13), Sch. 6 paras. 17(6), 34(2); S.I. 2012/736, art. 13

*Status: Point in time view as at 01/09/2013.*

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### *Agency fees paid by entertainers*

#### **352 Limited deduction for agency fees paid by entertainers**

- (1) A deduction is allowed from earnings from an employment as an entertainer for agency fees (and any value added tax on them) if the fees are calculated as a percentage of the whole or part of the earnings from the employment.

This is subject to the limit in subsection (2).

- (2) Amounts may be deducted under this section in calculating the net taxable earnings from an employment in a tax year only to the extent that, in aggregate, they do not exceed 17.5% of the taxable earnings from the employment in the tax year.

- (3) Subsections (4) and (5) apply for the purposes of this section.

- (4) “Entertainer” means an actor, dancer, musician, singer or theatrical artist.

- (5) “Agency fees”, in relation to an employment, means—

- (a) fees paid under a contract between the employee and another person, to whom the fees are paid, who—
  - (i) agrees under the contract to act as an agent of the employee in connection with the employment, and
  - (ii) at the time the fees are paid is carrying on an employment agency with a view to profit, and
- (b) fees paid under an arrangement under which a co-operative society or the members of such a society agree to act as the employee’s agent in connection with the employment.

- (6) For the purposes of subsection (5)—

“co-operative society” does not include a society which carries on or intends to carry on business with the object of making profits mainly for the payment of interest, dividends or bonuses on money invested or deposited with or lent to the society or any other person, and

“employment agency” has the meaning given by section 13(2) of the Employment Agencies Act 1973 (c. 35).

### *Special rules for earnings with a foreign element*

#### **353 Deductions from earnings charged on remittance**

- (1) A deduction is allowed from earnings charged on remittance for expenses within subsection (2) if the condition in subsection (3) is met.

- (2) The expenses are—

- (a) any expenses—
  - (i) paid by the employee out of the earnings, or
  - (ii) paid on the employee’s behalf by another person and included in the earnings, and
- (b) any other expenses paid in the United Kingdom in the tax year or an earlier tax year in which the employee has been resident in the United Kingdom.

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- (3) The condition is that the expenses would have been deductible under sections 336 to 342 if the earnings had been earnings charged on receipt in the tax year in which the expenses were incurred.
- (4) Where—
  - (a) any of the deductibility provisions refers to amounts or expenses that would be deductible from earnings if they were paid by a person, and
  - (b) the earnings in question are earnings charged on remittance,it is assumed for the purposes of those provisions that the person pays the amounts or expenses out of those earnings.

### **354 Disallowance of expenses relating to earnings taxed on different basis or untaxed**

- (1) If the earnings from an employment for a tax year include both earnings charged on receipt and other earnings (except earnings charged under section 22), no deduction is allowed under sections 336 to 342 from the earnings charged on receipt for an amount paid in respect of duties of the employment to which the other earnings relate.
- (2) If the earnings from an employment for a tax year include both earnings charged on remittance under section 26 and other earnings, no deduction is allowed under section 353 from the earnings charged on remittance for an amount paid in respect of duties of the employment to which the other earnings relate.
- (3) This section is to be disregarded for the purposes of the deductibility provisions.

### **355 Deductions for corresponding payments by non-domiciled employees with foreign employers**

- (1) An employee may make a claim to [<sup>F82</sup>the Commissioners for Her Majesty's Revenue and Customs] under this section if conditions A to D are met.
- (2) Condition A is that the employee is not domiciled in the United Kingdom.
- (3) Condition B is that the employment is with a foreign employer.
- (4) Condition C is that the employee has made a payment out of earnings from the employment.
- (5) Condition D is that the payment does not reduce the employee's liability to United Kingdom income tax, but was made in circumstances corresponding to those in which it would do so.
- (6) If the [<sup>F485</sup>Commissioners] are satisfied that conditions A to D are met, they may allow the payment as a deduction under this Chapter.

#### **Textual Amendments**

- F82** Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 102\(2\)](#); S.I. 2005/1126, art. 2(2)(h)
- F485** Word in s. 355 substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 102\(3\)\(f\)](#); S.I. 2005/1126, art. 2(2)(h)

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**Modifications etc. (not altering text)**

**C15** S. 355 restricted (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), s. 284(1), [Sch. 33 para. 1\(5\)](#) (with [Sch. 36](#))

*Disallowance of business entertainment and gifts expenses*

**356 Disallowance of business entertainment and gifts expenses**

- (1) No deduction from earnings is allowed under this Part for expenses incurred in providing entertainment or a gift in connection with the employer's trade, business, profession or vocation.
- (2) Subsection (1) is subject to the exceptions in—
  - (a) section 357 (exception where employer's expenses disallowed), and
  - (b) section 358 (other exceptions).
- (3) For the purposes of this section and those sections—
  - (a) "entertainment" includes hospitality of any kind, and
  - (b) expenses incurred in providing entertainment or a gift include expenses incurred in providing anything incidental to the provision of entertainment or a gift.

**357 Business entertainment and gifts: exception where employer's expenses disallowed**

- (1) The prohibition in section 356 on deducting expenses does not apply if—
  - (a) the earnings include an amount in respect of the expenses,
  - (b) the employer—
    - (i) paid the amount to, or on behalf of, the employee, or
    - (ii) put it at the employee's disposal,
 exclusively for meeting expenses incurred or to be incurred by the employee in providing the entertainment or gift, and
  - (c) condition A, B or C is met.
- (2) Condition A is that the deduction of the amount falls to be disallowed under [<sup>F486</sup>section 45 or 867 of ITTOIA 2005 or under][<sup>F487</sup>section 1298 of CTA 2009] in calculating the employer's profits from the trade, profession or vocation in question for the purposes of the Tax Acts (or it would do so apart from the exemption in <sup>F488</sup>... [<sup>F489</sup>section 524 of ITA 2007][<sup>F490</sup>or section 478 of CTA 2010] or any relief applying in respect of those profits).
- [<sup>F491</sup>(3) Condition B is that the inclusion of the amount falls to be disallowed (or would be disallowed apart from some other relief applying to the employer) under [<sup>F492</sup>section 1298 of CTA 2009] in calculating—
  - (a) the employer's expenses of management for the purposes of giving relief under the Tax Acts, or
  - [<sup>F493</sup>(b) the ordinary BLAGAB management expenses of the employer for the purposes of section 76 of FA 2012.]]
- (4) Condition C is that—

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- (a) the employer is a tonnage tax company during the whole or part of the tax year, and
  - (b) apart from the tonnage tax election, the deduction of the amount included in the employee’s earnings would fall to be disallowed in calculating the employer’s relevant shipping profits.
- (5) In subsection (4) “tonnage tax company”, “tonnage tax election” and “relevant shipping profits” have the same meaning as in Schedule 22 to FA 2000.

#### Textual Amendments

- F486** Words in s. 357(2) inserted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 593](#) (with [Sch. 2](#))
- F487** Words in s. 357(2) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 552\(2\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F488** Words in s. 357(2) repealed (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 385\(a\)](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))
- F489** Words in s. 357(2) inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 436](#) (with [Sch. 2](#))
- F490** Words in s. 357(2) inserted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 385\(b\)](#) (with [Sch. 2](#))
- F491** S. 357(3) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 \(Consequential Amendment of Enactments\) Order 2004 \(S.I. 2004/2310\)](#), art. 1(2), [Sch. para. 68\(2\)](#)
- F492** Words in s. 357(3) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 552\(3\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F493** S. 357(3)(b) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 111](#)

### 358 Business entertainment and gifts: other exceptions

- (1) The prohibition in section 356 on deducting expenses does not apply if the expenses are incurred in providing entertainment or gifts for the employer’s employees unless—
  - (a) they are also provided for others, and
  - (b) their provision for the employees is incidental to their provision for the others.
- (2) For this purpose directors and persons engaged in the management of a company are regarded as employed by it.
- (3) The prohibition in section 356 on deducting expenses does not apply if the expenses are incurred in providing a gift which incorporates a conspicuous advertisement for the employer or, if the employer is a company, another company which belongs to the same group as the employer, unless—
  - (a) the gift is food, drink, tobacco or a token or voucher exchangeable for goods, or
  - (b) the cost of the gift to the donor, together with any other gifts (except food, drink, tobacco or tokens or vouchers exchangeable for goods) given to the same person in the same tax year, is more than £50.
- (4) In subsection (3) “group” means a body corporate and its 51% subsidiaries.

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### *Other rules preventing deductions of particular kinds*

#### **359 Disallowance of travel expenses: mileage allowances and reliefs**

- (1) No deduction may be made under the travel deductions provisions in respect of travel expenses incurred in connection with the use by the employee of a vehicle that is not a company vehicle if condition A or B is met.
- (2) Condition A is that mileage allowance payments are made to the employee in respect of the use of the vehicle.
- (3) Condition B is that mileage allowance relief is available in respect of the use of the vehicle by the employee (see section 231).
- (4) In this section—
  - “company vehicle” has the meaning given by section 236(2),
  - “mileage allowance payments” has the meaning given by section 229(2), and
  - “the travel deductions provisions” means sections 337 to 342, 370, 371, 373 and 374 (travel expenses) and section 351 (expenses of ministers of religion).

#### **360 Disallowance of certain accommodation expenses of MPs and other representatives**

- (1) No deduction from earnings is allowed under this Chapter or section 373 (non-domiciled employee's travel costs and expenses where duties performed in UK) for accommodation expenses incurred by a member of—
  - (a) the House of Commons,
  - (b) the Scottish Parliament,
  - (c) the National Assembly for Wales, or
  - (d) the Northern Ireland Assembly.
- (2) In this section “accommodation expenses” means expenses incurred in, or in connection with, the provision or use of residential or overnight accommodation to enable the member to perform duties as a member of the Parliament or Assembly in or about—
  - (a) the place where it sits, or
  - (b) the constituency or region which the member represents.

[<sup>F494</sup>(3) In relation to a member of the House of Commons, subsection (3) of section 292 applies for the purposes of this section as it applies for the purposes of that section.]

#### **Textual Amendments**

**F494** S. 360(3) inserted (with effect in accordance with Sch. 4 para. 1(6) of the amending Act) by [Finance \(No. 2\) Act 2010 \(c. 31\)](#), [Sch. 4 para. 1\(3\)](#)

#### [<sup>F495</sup>**360A** Social security contributions]

- (1) No deduction from earnings is allowed under this Chapter for any contribution paid by any person under Part 1 of SSCBA 1992 or Part 1 of SSCB(NI)A 1992.

*Status: Point in time view as at 01/09/2013.*

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- (2) But this prohibition does not apply to an employer's contribution (see subsection (3)) which is allowable as a deduction—
- (a) under section 336 (the general rule),
  - (b) under any of sections 337 to 342 (travel expenses), or
  - (c) under section 351(1) (expenses of ministers of religion).
- (3) For this purpose “an employer's contribution” means—
- (a) a secondary Class 1 contribution,
  - (b) a Class 1A contribution, or
  - (c) a Class 1B contribution,
- within the meaning of Part 1 of SSCBA 1992 or Part 1 of SSCB(NI)A 1992.]

#### Textual Amendments

**F495** S. 360A inserted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 594](#) (with [Sch. 2](#))

## CHAPTER 3

### DEDUCTIONS FROM BENEFITS CODE EARNINGS

#### *Introduction*

#### **361 Scope of this Chapter: cost of benefits deductible as if paid by employee**

A deduction from a person's earnings is allowed under the following provisions of this Chapter where—

- (a) the earnings include an amount treated as earnings under—
  - (i) Chapter 4 of Part 3 (taxable benefits: vouchers and credit-tokens),
  - (ii) Chapter 5 of Part 3 (taxable benefits: living accommodation), or
  - (iii) Chapter 10 of Part 3 (taxable benefits: residual liability to charge), and
- (b) an amount in respect of the benefit in question would be deductible under Chapter 2 or 5 of this Part if the person had incurred and paid it.

*Deductions where amounts treated as earnings under the benefits code*

#### **362 Deductions where non-cash voucher provided**

- (1) A deduction from earnings is allowed if—
- (a) the earnings include an amount treated as earnings under section 87(1) (cash equivalent of benefit of non-cash voucher treated as earnings),
  - (b) the voucher is exchanged for goods or services (whether in the tax year or a later year), and
  - (c) had the employee incurred and paid the cost of the goods or services in the tax year, the whole or part of the amount paid would have been deductible from the earnings under Chapter 2 or 5 of this Part.

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- (2) The deduction is equal to the lesser of—
- (a) the amount treated as earnings, and
  - (b) the amount that would have been so deductible.

### **363 Deductions where credit-token provided**

- (1) A deduction from earnings is allowed if—
- (a) the earnings include an amount treated as earnings under section 94(1) (cash equivalent of benefit of credit-token treated as earnings), and
  - (b) had the employee incurred and paid the cost of the goods or services obtained by using the token, the whole or part of the amount paid would have been deductible from the earnings under Chapter 2 or 5 of this Part.
- (2) The deduction is equal to the lesser of—
- (a) the amount treated as earnings, and
  - (b) the amount that would have been so deductible.

### **364 Deductions where living accommodation provided**

- (1) A deduction from earnings is allowed if—
- (a) the earnings include an amount treated as earnings under Chapter 5 of Part 3 (taxable benefits: living accommodation), and
  - (b) had the employee incurred and paid an amount equal to that amount for the accommodation in the tax year, the whole or part of the amount paid would have been deductible under Chapter 2 or 5 of this Part.
- (2) The deduction is equal to the amount that would have been so deductible.

### **365 Deductions where employment-related benefit provided**

- (1) A deduction from earnings is allowed if—
- (a) the earnings include an amount treated as earnings under Chapter 10 of Part 3 (taxable benefits: residual liability to charge) in respect of a benefit, and
  - (b) had the employee incurred and paid the cost of the benefit, the whole or part of the amount paid would have been deductible under Chapter 2 or 5 of this Part.
- (2) The deduction is equal to the amount that would have been so deductible.
- (3) For the purposes of this section, the cost of the benefit is determined in accordance with sections 204 to 206.



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## CHAPTER 4

### FIXED ALLOWANCES FOR EMPLOYEE'S EXPENSES

#### *Introduction*

#### **366 Scope of this Chapter: amounts fixed by Treasury**

A deduction from an employee's earnings for an amount is allowed under this Chapter where the amount has been fixed by the Treasury by reference to the employee's employment.

#### *Fixed sum deductions*

#### **367 Fixed sum deductions for repairing and maintaining work equipment**

- (1) A deduction is allowed for the sum, if any, fixed by the Treasury as in their opinion representing the average annual expenses incurred by employees of the class to which the employee belongs in respect of the repair and maintenance of work equipment.
- (2) The Treasury may only fix such a sum for a class of employees if they are satisfied that—
  - (a) the employees are generally responsible for the whole or part of the expense of repairing and maintaining the work equipment, and
  - (b) the expenses for which they are generally responsible would be deductible from the employees' earnings under section 336 if paid by them.
- (3) No deduction is allowed under this section if the employer pays or reimburses the expenses in respect of which the sum is fixed or would do so if requested.
- (4) If the employer pays or reimburses part of those expenses or would do so if requested, the amount of the deduction is reduced by the amount which is or would be paid or reimbursed.
- (5) In this section “work equipment” means tools or special clothing.
- (6) This section needs to be read with section 330(2) (prevention of double deductions).

#### **368 Fixed sum deductions from earnings payable out of public revenue**

- (1) A deduction is allowed from earnings payable out of the public revenue for the employee's fixed sum expenses in respect of the duties to which the earnings relate.
- (2) “Fixed sum expenses” means the sum, if any, fixed by the Treasury as in their opinion representing the average annual expenses which employees of the employee's description are obliged to pay wholly, exclusively and necessarily in the performance of duties to which such earnings relate.
- (3) This section needs to be read with section 330(2) (prevention of double deductions).

*Status: Point in time view as at 01/09/2013.*

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## CHAPTER 5

### DEDUCTIONS FOR EARNINGS REPRESENTING BENEFITS OR REIMBURSED EXPENSES

#### *Introduction*

#### **369 Scope of this Chapter: earnings representing benefits or reimbursed expenses**

- (1) A deduction from a person's earnings for an amount is allowed under the following provisions of this Chapter where the amount is included in the earnings in respect of—
  - (a) provision made for the person, or
  - (b) expenses reimbursed by another person.
- (2) In this Chapter references to “the included amount” are references to the amount so included.
- (3) If the included amount is an amount treated as earnings under—
  - (a) Chapter 4 of Part 3 (taxable benefits: vouchers and credit-tokens),
  - (b) Chapter 5 of Part 3 (taxable benefits: living accommodation), or
  - (c) Chapter 10 of Part 3 (taxable benefits: residual liability to charge),
 a deduction may be allowed instead in respect of the benefit in question under Chapter 3 of this Part (deductions from benefits code earnings).

#### *Travel costs and expenses where duties performed abroad*

#### **370 Travel costs and expenses where duties performed abroad: employee's travel**

- (1) A deduction is allowed from earnings which are [<sup>F496</sup>relevant taxable earnings] if—
  - (a) the earnings include an amount in respect of—
    - (i) the provision of travel facilities for a journey made by the employee, or
    - (ii) the reimbursement of expenses incurred by the employee on such a journey, and
  - (b) the circumstances fall within Case A, B or C.
- (2) The deduction is equal to the included amount.
- (3) Case A is where—
  - (a) the employee is absent from the United Kingdom wholly and exclusively for the purpose of performing the duties of one or more employments,
  - (b) the duties concerned can only be performed outside the United Kingdom, and
  - (c) the journey is—
    - (i) a journey from a place outside the United Kingdom where such duties are performed to a place in the United Kingdom, or
    - (ii) a return journey following such a journey.
- (4) Case B is where—
  - (a) the duties of the employment are performed partly outside the United Kingdom,
  - (b) those duties are not performed on a vessel,

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- (c) the journey is between a place in the United Kingdom and a place outside the United Kingdom where duties of the employment are performed,
  - (d) the duties performed outside the United Kingdom can only be performed there, and
  - (e) the journey is made wholly and exclusively for the purpose of performing them or returning after performing them.
- (5) Case C is where—
- (a) the duties of the employment are performed partly outside the United Kingdom,
  - (b) those duties are performed on a vessel,
  - (c) the journey is between a place in the United Kingdom and a place outside the United Kingdom where duties of the employment are performed,
  - (d) the duties performed outside the United Kingdom can only be performed there, and
  - (e) the journey is made wholly and exclusively for the purpose of performing those duties, or those duties and other duties of the employment, or returning after performing them.

[<sup>F497</sup>(6) In this section “relevant taxable earnings” means general earnings for a tax year <sup>F498</sup>... that—

- (a) are taxable earnings under section 15, and
- (b) would be taxable earnings under section 15 even if the employee made a claim under section 809B of ITA 2007 (claim for remittance basis) for that year.]

#### Textual Amendments

**F496** Words in s. 370(1) substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 27\(2\)](#)

**F497** S. 370(6) inserted (with effect in accordance with [Sch. 7 para. 81](#) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 27\(3\)](#)

**F498** Words in s. 370(6) omitted (with effect in accordance with Sch. 46 para. 72 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 35](#)

### 371 **Travel costs and expenses where duties performed abroad: visiting spouse's [<sup>F499</sup>, civil partner's] or child's travel**

- (1) A deduction is allowed from earnings which are [<sup>F500</sup>relevant taxable earnings] if—
- (a) the earnings include an amount in respect of—
    - (i) the provision of travel facilities for a journey made by the employee's spouse [<sup>F501</sup>, civil partner] or child, or
    - (ii) the reimbursement of expenses incurred by the employee on such a journey, and
  - (b) conditions A to C are met.
- (2) The deduction is equal to the included amount.
- (3) Condition A is that the employee is absent from the United Kingdom for a continuous period of at least 60 days for the purpose of performing the duties of one or more employments.

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- (4) Condition B is that the journey is between a place in the United Kingdom and a place outside the United Kingdom where such duties are performed.
- (5) Condition C is that the employee’s spouse [<sup>F502</sup>, civil partner] or child is—
- (a) accompanying the employee at the beginning of the period of absence,
  - (b) visiting the employee during that period, or
  - (c) returning to a place in the United Kingdom after so accompanying or visiting the employee.
- (6) A deduction is not allowed under this section for more than two outward and two return journeys by the same person in a tax year.
- (7) In this section “child” includes a stepchild and an illegitimate child, but not a person who is 18 or over at the beginning of the outward journey.
- [<sup>F503</sup>(8) In this section “relevant taxable earnings” has the meaning given by section 370(6).]

#### Textual Amendments

- F499** Words in s. 371 heading inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **146(3)**
- F500** Words in s. 371(1) substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), **Sch. 7 para. 28(2)**
- F501** Words in s. 371(1)(a)(i) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **146(2)**
- F502** Words in s. 371(5) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **146(2)**
- F503** S. 371(8) inserted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), **Sch. 7 para. 28(3)**

### 372 Where seafarers' duties are performed

For the purposes of—

- (a) section 370 (employee’s travel costs and expenses where duties performed abroad), and
- (b) section 371 (visiting spouse’s [<sup>F504</sup>, civil partner's] or child’s travel costs and expenses where duties performed abroad),

whether duties performed on a vessel are performed in or outside the United Kingdom is determined without regard to section 40(2) (certain duties treated as performed in UK).

#### Textual Amendments

- F504** Words in s. 372(b) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **147**

*Status: Point in time view as at 01/09/2013.*

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### *Travel costs and expenses of non-domiciled employees where duties performed in UK*

#### **373 Non-domiciled employee's travel costs and expenses where duties performed in UK**

- (1) This section applies if a person (“the employee”) who is not domiciled in the United Kingdom—
  - (a) receives earnings from an employment for duties performed in the United Kingdom, and
  - (b) an amount is included in the earnings in respect of—
    - (i) the provision of travel facilities for a journey made by the employee, or
    - (ii) the reimbursement of expenses incurred by the employee on such a journey.
- (2) A deduction is allowed from earnings from the employment which are earnings charged on receipt if the journey meets conditions A and B.
- (3) Condition A is that the journey ends on, or during the period of 5 years beginning with, a date that is a qualifying arrival date in relation to the employee (see section 375).
- (4) Condition B is that the journey is made—
  - (a) from the country outside the United Kingdom in which the employee normally lives to a place in the United Kingdom in order to perform duties of the employment, or
  - (b) to that country from a place in the United Kingdom in order to return to that country after performing such duties.
- (5) If the journey is wholly for a purpose specified in subsection (4), the deduction is equal to the included amount.
- (6) If the journey is only partly for such a purpose, the deduction is equal to so much of the included amount as is properly attributable to that purpose.

#### **374 Non-domiciled employee's spouse's [<sup>F505</sup>, civil partner's] or child's travel costs and expenses where duties performed in UK**

- (1) This section applies if a person (“the employee”) who is not domiciled in the United Kingdom—
  - (a) receives earnings from an employment for duties performed in the United Kingdom, and
  - (b) an amount is included in the earnings in respect of—
    - (i) the provision of travel facilities for a journey made by the employee's spouse [<sup>F506</sup>, civil partner] or child, or
    - (ii) the reimbursement of expenses incurred by the employee on such a journey.
- (2) A deduction is allowed from earnings from the employment which are earnings charged on receipt if conditions A to C are met.
- (3) Condition A is that the journey—
  - (a) is made between the country outside the United Kingdom in which the employee normally lives and a place in the United Kingdom, and

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- (b) ends on, or during the period of 5 years beginning with, a date that is a qualifying arrival date in relation to the employee (see section 375).
- (4) Condition B is that the employee is in the United Kingdom for a continuous period of at least 60 days for the purpose of performing the duties of one or more employments from which the employee receives earnings for duties performed in the United Kingdom.
- (5) Condition C is that the employee’s spouse [<sup>F507</sup>, civil partner] or child is—
- (a) accompanying the employee at the beginning of that period,
  - (b) visiting the employee during that period, or
  - (c) returning to the country outside the United Kingdom in which the employee normally lives, after so accompanying or visiting the employee.
- (6) If the journey is wholly for the purpose of so accompanying or visiting the employee or so returning, the deduction is equal to the included amount.
- (7) If the journey is only partly for that purpose, the deduction is equal to so much of the included amount as is properly attributable to that purpose.
- (8) A deduction is not allowed under this section for more than two inward journeys and two return journeys by the same person in a tax year.
- (9) In this section “child” includes a stepchild and an illegitimate child, but not a person who is 18 or over at the beginning of the inward journey.

#### **Textual Amendments**

- F505** Words in s. 374 heading inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **148(3)**
- F506** Words in s. 374(1)(b)(i) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **148(2)**
- F507** Words in s. 374(5) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **148(2)**

### **375 Meaning of “qualifying arrival date”**

- (1) For the purposes of sections 373(3) and 374(3), a date is a qualifying arrival date in relation to a person if—
- (a) it is a date on which the person arrives in the United Kingdom to perform duties of an employment from which the person receives earnings for duties performed in the United Kingdom, and
  - (b) condition A or B is met.
- (2) Condition A is that the person has not been in the United Kingdom for any purpose during the period of 2 years ending with the day before the date.
- (3) Condition B is that the person was not resident in the United Kingdom in either of the 2 tax years preceding the tax year in which the date falls.
- (4) If, in a case where condition B applies, there are 2 or more dates in the tax year on which the person arrives in the United Kingdom to perform duties of an employment from which the person receives earnings for duties performed in the United Kingdom, the qualifying arrival date is the earliest of them.

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### *Foreign accommodation and subsistence costs and expenses*

#### **376 Foreign accommodation and subsistence costs and expenses (overseas employments)**

- (1) A deduction from earnings from an employment is allowed if—
  - (a) the duties of the employment are performed wholly outside the United Kingdom,
  - (b) the employee is [<sup>F508</sup>UK resident],
  - (c) in a case where the employer is a foreign employer, the employee is domiciled in the United Kingdom, and
  - (d) the earnings include an amount in respect of—
    - (i) the provision of accommodation or subsistence outside the United Kingdom for the employee for the purpose of enabling the employee to perform the duties of the employment, or
    - (ii) the reimbursement of expenses incurred by the employee on such accommodation or subsistence for that purpose.
- (2) If the accommodation or subsistence is wholly for that purpose, the deduction is equal to the included amount.
- (3) If the accommodation or subsistence is only partly for that purpose, the deduction is equal to so much of the included amount as is properly attributable to that purpose.
- (4) Subsection (5) applies if in the tax year the employment is in substance one whose duties fall to be performed outside the United Kingdom.
- (5) Duties of the employment performed in the United Kingdom, whose performance is merely incidental to the performance of duties outside the United Kingdom, are to be treated for the purposes of subsection (1)(a) as performed outside the United Kingdom.

#### **Textual Amendments**

**F508** Words in s. 376(1)(b) substituted (with effect in accordance with Sch. 46 para. 72 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 36](#)

### *Personal security assets and services*

#### **377 Costs and expenses in respect of personal security assets and services**

- (1) This section applies if—
  - (a) there is a special threat to an employee's personal physical security which arises wholly or mainly because of the employee's employment,
  - (b) an asset or service which improves personal security is provided for or used by the employee to meet the threat,
  - (c) the employee's earnings include an amount in respect of—
    - (i) the provision or use, or
    - (ii) expenses connected with it,

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- because the whole or part of the cost of the provision or use is borne, or the expenses are reimbursed to the employee, by or on behalf of another person (“the provider”), and
- (d) the provider’s sole object in bearing the whole or part of the cost or reimbursing the expenses is meeting the threat.
- (2) In the case of such an asset, if the provider intends it to be used solely for the purpose of improving personal physical security, a deduction equal to the included amount is allowed.
- (3) If the provider intends the asset to be used solely to improve personal physical security, any use of the asset incidental to that purpose is ignored.
- (4) If the provider intends the asset to be used only partly to improve personal physical security, a deduction equal to the proportion of the included amount attributable to the intended use for that purpose is allowed.
- (5) In determining whether or not this section applies in relation to an asset, it does not matter if—
- (a) the asset becomes fixed to land (even a dwelling or grounds), or
- (b) the employee is or becomes entitled—
- (i) to the property in the asset, or
- (ii) if the asset is a fixture, to any estate or interest in the land concerned.
- (6) In the case of a service within subsection (1), if the benefit resulting to the employee consists wholly or mainly of an improvement of the employee’s personal physical security, a deduction equal to the included amount is allowed.
- (7) The fact that an asset or a service improves the personal physical security of a member of the employee’s family or household, as well as that of the employee, does not prevent a deduction being allowed.
- (8) In this section—
- “asset” includes equipment or a structure (such as a wall), but not a car, ship or aircraft or a dwelling or grounds appurtenant to a dwelling, and
- “service” does not include a dwelling or grounds appurtenant to a dwelling.

## CHAPTER 6

### DEDUCTIONS FROM SEAFARERS' EARNINGS

#### **378 Deduction from seafarers' earnings: eligibility**

- (1) A deduction is allowed from earnings from an employment as a seafarer if—
- (a) the earnings are [<sup>F509</sup>relevant general earnings],
- (b) the duties of the employment are performed wholly or partly outside the United Kingdom, and
- (c) any of those duties are performed in the course of an eligible period.
- (2) In this Chapter “eligible period” means a period consisting of at least 365 days which is either—
- (a) a period of consecutive days of absence from the United Kingdom, or



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- (b) a combined period.
- (3) A combined period is a period—
  - (a) at least half of the days in which are days of absence from the United Kingdom, and
  - (b) which consists of 3 consecutive periods, A, B and C, where—
    - A is a period of consecutive days of absence from the United Kingdom or a period which is itself a combined period,
    - B is a period of not more than 183 days, and
    - C is a period of consecutive days of absence from the United Kingdom.
- (4) For this purpose a person is only regarded as being absent from the United Kingdom on any day if absent at the end of the day.
- [<sup>F510</sup>(5) Relevant general earnings” means—
  - (a) taxable earnings under section 15, 22 or 26, or
  - (b) general earnings—
    - (i) to which section 27 applies, and
    - (ii) which are for a period in which the employee is liable under the law of an EEA State (other than the United Kingdom) to tax in that State by reason of domicile or residence.]
- <sup>F511</sup>(6) .....

**Textual Amendments**

- F509** Words in s. 378(1) substituted (with effect in accordance with Sch. 46 para. 72 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 37\(2\)](#)
- F510** S. 378(5) substituted (with effect in accordance with Sch. 46 para. 72 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 37\(3\)](#)
- F511** S. 378(6) omitted (with effect in accordance with Sch. 46 para. 72 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 37\(4\)](#)

**379 Calculating the deduction**

- (1) The deduction under section 378—
  - (a) is allowed from the amount of the earnings from the employment attributable to the eligible period, and
  - (b) is equal to that amount.
- (2) Earnings from the employment for a period of leave immediately after the eligible period are to be regarded as earnings attributable to the eligible period if or to the extent that they are earnings for the tax year in which the eligible period ends.
- (3) This section is subject to section 380 (limit on deduction where UK duties etc. make amount unreasonable).

**380 Limit on deduction where UK duties etc. make amount unreasonable**

- (1) If—

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- (a) section 378 (deduction from seafarers' earnings: eligibility) applies to earnings for a tax year, and
  - (b) in the tax year the employee performs some of the duties of the employment as a seafarer or of any associated employments in the United Kingdom, the amount of earnings in respect of which the deduction under this Chapter is allowed is subject to the following limitation.
- (2) The amount is restricted to the proportion of the aggregate earnings for that year from the employment as a seafarer and all associated employments that is reasonable having regard to—
- (a) the nature of and time devoted to the duties performed outside and in the United Kingdom, and
  - (b) all other relevant circumstances.
- (3) In this section “associated employments” means employments with the same employer or with associated employers.
- (4) The same rules for determining whether employers are associated apply for the purposes of this section as apply for section 24(4) (limit on chargeable overseas earnings where duties of associated employment performed in UK) (see section 24(5)).

### 381 Taking account of other deductions

For the purposes of sections 379 and 380, the amount of the earnings from an employment for a tax year is the amount remaining after any deductions under—

- (a) section 232 (giving effect to mileage allowance relief),
- (b) Chapter 2, 3, 4 or 5 of this Part,
- [<sup>F512</sup>(c) section 262 of CAA 2001 (capital allowances to be given effect by treating them as deductions from earnings), and
- (d) sections 188 to 194 of FA 2004 (contributions to registered pension schemes).]

#### Textual Amendments

**F512** S. 381(c)(d) substituted for s. 381(c)-(e) (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), s. 284(1), [Sch. 35 para. 61](#) (with [Sch. 36](#))

### 382 Duties on board ship

- (1) Duties which a person performs on a ship engaged—
- (a) on a voyage beginning or ending outside the United Kingdom (but excluding any part of it beginning and ending in the United Kingdom), or
  - (b) on a part beginning or ending outside the United Kingdom of any other voyage,
- are treated as performed outside the United Kingdom for the purposes of this Chapter.
- (2) Duties which a person performs on a vessel engaged on a voyage not extending to a port outside the United Kingdom are treated for the purposes of this Chapter as performed in the United Kingdom.
- (3) For the purposes of subsection (1) the areas designated under section 1(7) of the Continental Shelf Act 1964 (c. 29) are treated as part of the United Kingdom.

*Status: Point in time view as at 01/09/2013.*

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- (4) Subsection (1) applies despite anything to the contrary in section 40 (duties on board vessel or aircraft).

### **383 Place of performance of incidental duties**

- (1) For the purposes of section 378(1)(b) (deduction from seafarers' earnings: eligibility), duties of an employment as a seafarer which are performed outside the United Kingdom are treated as performed in the United Kingdom if conditions A and B are met.
- (2) Condition A is that in the tax year in which the duties are performed the employment is in substance one whose duties fall to be performed in the United Kingdom.
- (3) Condition B is that the performance of the duties performed outside the United Kingdom is merely incidental to the performance of duties in the United Kingdom.
- (4) Section 39 (duties in UK merely incidental to duties outside UK) does not affect the question—
- (a) where any duties are performed, or
  - (b) whether a person is absent from the United Kingdom,
- for the purposes of section 378(1) to (3).

### **384 Meaning of employment “as a seafarer”**

- (1) In this Chapter employment “as a seafarer” means an employment (other than Crown employment) consisting of the performance of duties on a ship or of such duties and others incidental to them.
- (2) In this section “Crown employment” means employment under the Crown—
- (a) which is of a public nature, and
  - (b) the earnings from which are payable out of the public revenue of the United Kingdom or of Northern Ireland.

### **[<sup>F513</sup>385 Meaning of “ship”**

In this Chapter “ship” does not include an offshore installation.]

#### **Textual Amendments**

**F513** S. 385 substituted (with effect in accordance with Sch. 27 para. 16 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 27 para. 14](#)

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**PART 6**

EMPLOYMENT INCOME: INCOME WHICH IS NOT EARNINGS OR SHARE-RELATED

<sup>F514</sup>**CHAPTER 1**

PAYMENTS TO NON-APPROVED PENSION SCHEMES

**Textual Amendments**

**F514** Pt. 6 Ch. 1 repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), ss. 247, 284(1), [Sch. 42 Pt. 3](#) (with [Sch. 36](#))

<sup>F514</sup>**386 Charge on payments to non-approved retirement benefits schemes**

.....

<sup>F514</sup>**387 Meaning of “non-approved retirement benefits scheme”**

.....

<sup>F514</sup>**388 Apportionment of payments in respect of more than one employee**

.....

<sup>F514</sup>**389 Exception: employments where earnings charged on remittance**

.....

<sup>F514</sup>**390 Exception: non-domiciled employees with foreign employers**

.....

<sup>F514</sup>**391 Exception: seafarers with overseas earnings**

.....

<sup>F514</sup>**392 Relief where no benefits are paid or payable**

.....

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## CHAPTER 2

### BENEFITS FROM <sup>[F515]</sup>EMPLOYER-FINANCED RETIREMENT BENEFITS

#### Textual Amendments

**F515** Words in Pt. 6 Ch. 2 heading substituted (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), **ss. 249(2)**, 284(1) (with [Sch. 36](#))

#### *Benefits treated as employment income*

#### <sup>[F516]</sup>**393 Application of this Chapter**

- (1) This Chapter applies to relevant benefits provided under an employer-financed retirement benefits scheme.
- (2) Section 393A defines “employer-financed retirement benefits scheme” and section 393B defines “relevant benefits”.]

#### Textual Amendments

**F516** Ss. 393-393B substituted for s. 393 (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), **ss. 249(3)**, 284(1) (with [Sch. 36](#))

#### <sup>[F516]</sup>**393A Employer-financed retirement benefits scheme**

- (1) In this Chapter “employer-financed retirement benefits scheme” means a scheme for the provision of benefits consisting of or including relevant benefits to or in respect of employees or former employees of an employer.
- (2) But neither—
  - (a) a registered pension scheme, nor
  - (b) a section 615(3) scheme,is an employer-financed retirement benefits scheme.
- (3) “Section 615(3) scheme” means a superannuation fund to which section 615(3) of ICTA applies.
- (4) “Scheme” includes a deed, agreement, series of agreements, or other arrangements.

#### Textual Amendments

**F516** Ss. 393-393B substituted for s. 393 (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), **ss. 249(3)**, 284(1) (with [Sch. 36](#))

#### **393B Relevant benefits**

- (1) In this Chapter “relevant benefits” means any lump sum, gratuity or other benefit (including a non-cash benefit) provided (or to be provided)—
  - (a) on or in anticipation of the retirement of an employee or former employee,

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- (b) on the death of an employee or former employee,
  - (c) after the retirement or death of an employee or former employee in connection with past service,
  - (d) on or in anticipation of, or in connection with, any change in the nature of service of an employee, or
  - (e) to any person by virtue of a pension sharing order or provision relating to an employee or former employee.
- (2) But—
- (a) benefits charged to tax under Part 9 (pension income),
  - (b) benefits chargeable to tax by virtue of Schedule 34 to FA 2004 (which applies certain charges under Part 4 of that Act in relation to non-UK schemes), and
  - (c) excluded benefits,
- are not relevant benefits.
- (3) The following are “excluded benefits”—
- (a) benefits in respect of ill-health or disablement of an employee during service,
  - (b) benefits in respect of the death by accident of an employee during service,
  - (c) benefits under a relevant life policy, and
  - (d) benefits of any description prescribed by regulations made by the Board of Inland Revenue.
- (4) In subsection (3)(c) “relevant life policy” means—
- <sup>F517</sup>(a) an excepted group life policy as defined in section 480 of ITTOIA 2005,]
  - (b) a policy of life insurance the terms of which provide for the payment of benefits on the death of a single individual and with respect to which <sup>F518</sup>—
    - (i) condition A in section 481 of that Act would be met if paragraph (a) in that condition referred to the death, in any circumstances or except in specified circumstances, of that individual (rather than the death in any circumstances of each of the individuals insured under the policy) and if the condition did not include paragraph (b), and
    - (ii) conditions C and D in that section and conditions A and C in section 482 of that Act are met, or]
  - (c) a policy of life insurance that would be within paragraph (a) or (b) but for the fact that it provides for a benefit which is an excluded benefit under or by virtue of paragraph (a), (b) or (d) of subsection (3).
- <sup>F519</sup>[ Regulations under subsection (3)(d) may include provision having effect in relation (4A) to times before they are made.]
- (5) In subsection (1)(e) “pension sharing order or provision” means any such order or provision as is mentioned in section 28(1) of WRPA 1999 or Article 25(1) of WRP(NI)O 1999.]

#### Textual Amendments

**F516** Ss. 393-393B substituted for s. 393 (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), **ss. 249(3)**, 284(1) (with [Sch. 36](#))

**F517** S. 393B(4)(a) substituted by 2004 c. 12, s. 249(3) (as amended (6.4.2006) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), **Sch. 1 para. 651(2)(a)**, [Sch. 2 para. 161](#) (with [Sch. 2](#)))

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- F518** Words in s. 393B(4)(b) substituted by 2004 c. 12, s. 249(3) (as amended (6.4.2006) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), Sch. 1 para. 651\(2\)\(b\), Sch. 2 para. 161 \(with Sch. 2\)](#))
- F519** S. 393B(4A) inserted (19.7.2007) by [Finance Act 2007 \(c. 11\), Sch. 20 paras. 21, 24\(3\)](#)

### 394 Charge on benefit to which this Chapter applies

- (1) If a benefit to which this Chapter applies is received by an individual, the amount of the benefit counts as employment income of the individual for the relevant tax year.
- <sup>F520</sup>(1A) Subsection (1) does not apply in relation to the benefit if the total amount of the benefits to which this Chapter applies received by the individual in the relevant tax year does not exceed £100.]
- (2) If a benefit to which this Chapter applies is received by a person who is not an individual, the <sup>F521</sup>person who is (or persons who are) the responsible person in relation to] the scheme under which the benefit is provided is chargeable <sup>F522</sup>to income tax] on the amount of the benefit for the relevant tax year.
- (3) In <sup>F523</sup>this section] the “relevant tax year” is the tax year in which the benefit is received.
- (4) For the purposes of subsection (2), the rate of tax is <sup>F524</sup>45%] or such other rate as may for the time being be specified by the Treasury by order.
- <sup>F525</sup>(4A) Subsection (4B) applies if the receipt of a benefit to which this Chapter applies gives rise to other relevant income of the employee, or the former employee, to or in respect of whom the benefit is provided.
- (4B) Subsection (1) or (2) (as the case may be) applies to the amount of the benefit only so far as that amount exceeds the other relevant income.
- (4C) In subsections (4A) and (4B) “other relevant income” means—
- (a) general earnings of the employee or former employee which are chargeable to income tax,
  - (b) an amount which counts as employment income of the employee or former employee under Chapter 2 of Part 7A, <sup>F526</sup>...
- <sup>F527</sup>(ba) [ an amount which would count as employment income of the employee or former employee under that Chapter but for the application of section 554Z5 (overlap with earlier relevant step), or]
- <sup>F528</sup>(c) [ an amount which would be within paragraph (a), (b) or (ba) apart from—
- (i) the employee or former employee having been non-UK resident for any tax year, or
  - (ii) any tax year having been a split year as respects the employee or former employee.]]

(5) No liability to income tax arises by virtue of any other provision of this Act in respect of a benefit to which this Chapter applies.

<sup>F529</sup>(6) Subsection (5) does not affect—

    - (a) any liability to income tax on general earnings, or
    - (b) any liability to income tax on an amount which counts as employment income under Chapter 2 of Part 7A.]

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### Textual Amendments

- F520** S. 394(1A) inserted (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), **ss. 249(5)**, 284(1) (with [Sch. 36](#))
- F521** Words in s. 394(2) substituted (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), **ss. 249(6)**, 284(1) (with [Sch. 36](#))
- F522** Words in s. 394(2) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), **Sch. 1 para. 595** (with [Sch. 2](#))
- F523** Words in s. 394(3) substituted (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), **ss. 249(7)**, 284(1) (with [Sch. 36](#))
- F524** Word in s. 394(4) substituted (with effect in accordance with s. 1(6) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), **s. 1(4)**
- F525** S. 394(4A)-(4C) inserted (with effect in accordance with [Sch. 2](#) paras. 52-59, 60 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), **Sch. 2 para. 14(2)**
- F526** Word in s. 394(4C)(b) omitted (with effect in accordance with [Sch. 45](#) para. 153(2) of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), **Sch. 45 para. 65(2)**
- F527** S. 394(4C)(ba) inserted (with effect in accordance with [Sch. 45](#) para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), **Sch. 45 para. 65(2)**
- F528** S. 394(4C)(c) substituted (with effect in accordance with [Sch. 45](#) para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), **Sch. 45 para. 65(3)**
- F529** S. 394(6) inserted (with effect in accordance with [Sch. 2](#) paras. 52-59, 60 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), **Sch. 2 para. 14(3)**

### Modifications etc. (not altering text)

- C16** S. 394 restricted (22.7.2004) by [Finance Act 2004 \(c. 12\)](#), [Sch. 36](#) paras. 54(2)(3)(a), **55(2)** (with s. 283(5), [Sch. 36](#))

### [<sup>F530</sup>394A] Temporary non-residents

- (1) This section applies if an individual is temporarily non-resident.
- (2) Any benefits within subsection (3) are to be treated for the purposes of section 394(1) as if they were received by the individual in the period of return.
- (3) A benefit is within this subsection if—
  - (a) this Chapter applies to it,
  - (b) it is in the form of a lump sum,
  - (c) it is received by the individual in the temporary period of non-residence, and
  - (d) ignoring this section—
    - (i) no charge to tax arises by virtue of section 394(1) in respect of it, but
    - (ii) such a charge would arise if the existence of any double taxation relief arrangements were disregarded.
- (4) Subsection (3)(d)(i) includes a case where the charge could be prevented by making a DTR claim, even if no claim is in fact made.
- (5) Subsection (2) does not affect the operation of section 394(1A) (and, accordingly, “the relevant tax year” for the purposes of section 394(1A) remains the tax year in which the benefit is actually received).
- (6) Nothing in any double taxation relief arrangements is to be read as preventing the individual from being chargeable to income tax in respect of any benefit treated by



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virtue of this section as received in the period of return (or as preventing a charge to that tax from arising as a result).

- (7) Part 4 of Schedule 45 to FA 2013 (statutory residence test: anti-avoidance) explains—
- (a) when an individual is to be regarded as “temporarily non-resident”, and
  - (b) what “the temporary period of non-residence” and “the period of return” mean.

- (8) In this section—
- “double taxation relief arrangements” means arrangements that have effect under section 2(1) of TIOPA 2010;
  - “DTR claim” means a claim for relief under section 6 of that Act.]

#### Textual Amendments

**F530** S. 394A inserted (with effect in accordance with Sch. 45 para. 153(3) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 125](#)

#### [<sup>F531</sup>395 Reduction where employee has contributed

- (1) This section applies in relation to a relevant benefit under an employer-financed retirement benefits scheme in the form of a lump sum where, under the scheme, an employee has paid any sum or sums by way of contribution to the provision of the lump sum.
- (2) The amount which, by virtue of section 394, counts as employment income, or is chargeable to tax under [<sup>F532</sup>subsection (2) of that section], is the amount of the lump sum reduced by the sum, or the aggregate of the sums, paid by the employee by way of contribution to the provision of the lump sum.
- (3) A reduction under this section may not be claimed in respect of the same contribution in relation to more than one lump sum.
- (4) It is to be assumed, unless the contrary is shown, that no reduction is applicable under this section.]

#### Textual Amendments

**F531** S. 395 substituted for ss. 395-397 (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), [ss. 249\(8\)](#), [284\(1\)](#) (with [Sch. 36](#))

**F532** Words in s. 395 substituted by 2004 c. 12, s. 249(8) (as amended (6.4.2006) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), [Sch. 1 para. 651\(3\)](#), [Sch. 2 para. 161](#) (with [Sch. 2](#)))

#### Modifications etc. (not altering text)

**C17** S. 395 modified (22.7.2004) by [Finance Act 2004 \(c. 12\)](#), [Sch. 36 paras. 54\(3\)\(b\)](#), [55\(3\)](#) (with [s. 283\(5\)](#), [Sch. 36](#))

#### [<sup>F533</sup>395A Benefits under old section 222 schemes not taxed by virtue of section 394

Section 394 does not apply to a benefit provided under an employer-financed retirement benefits scheme if—

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- (a) immediately before 6th April 1980 the scheme was approved under section 222 of ICTA 1970,
- (b) the scheme was not approved under Chapter II of Part II of FA 1970,
- (c) no material changes have been made to the terms on which benefits are provided under the scheme after 5th April 1980, and
- (d) no contributions have been paid under the scheme after that date.]

**Textual Amendments**

**F533** S. 395A inserted (with effect in accordance with art. 2(2) of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2009 \(S.I. 2009/730\)](#), arts. 1(1), 2

<sup>F531</sup>**396 Certain lump sums not taxed by virtue of section 394**

.....

**Textual Amendments**

**F531** S. 395 substituted for ss. 395-397 (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), ss. 249(8), 284(1) (with Sch. 36)

<sup>F531</sup>**397 Certain lump sums: calculation of amount taxed by virtue of section 394**

.....

**Textual Amendments**

**F531** S. 395 substituted for ss. 395-397 (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), ss. 249(8), 284(1) (with Sch. 36)

*Valuation of benefits etc.*

**398 Valuation of benefits**

- (1) In the case of a cash benefit, for the purposes of this Chapter the amount of a benefit is taken to be the amount received.
- (2) In the case of a non-cash benefit, for the purposes of this Chapter the amount of a benefit is taken to be the greater of—
  - (a) the amount of earnings (as defined in Chapter 1 of Part 3) that the benefit would give rise to if it were received for performance of the duties of an employment (money's worth), and
  - (b) the cash equivalent of the benefit under the benefits code if it were so received and the code applied to it.
- (3) For the purposes of subsection (2) the benefits code has effect with the modifications in subsections (4) to (6).

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- (4) References in the benefits code to the employee are to be taken as references to the person by whom the benefit is received.
- (5) References in the benefits code to the employer are to be taken as including references to the former employer.
- (6) Where—
  - (a) section 106 (cash equivalent: cost of accommodation over £75,000) applies, and
  - (b) the amount referred to in section 105(2)(b) (the sum made good) exceeds the amount referred to in section 105(2)(a) (the rental value),the amount to be subtracted under paragraph (b) of step 4 of the calculation in section 106(2) is that excess (and not only the excess rent referred to there).

### **399 Employment-related loans: interest treated as paid**

- (1) This section applies if—
  - (a) an amount consisting of, or including, an amount representing the benefit of a loan (“a taxable amount”) counts as employment income of an individual in a tax year under section 394(1), or
  - (b) the [<sup>F534</sup>person who is (or any of the persons who are) the responsible person in relation to] a scheme is charged to tax on a taxable amount <sup>F535</sup>... under section 394(2).
- (2) The individual or the [<sup>F536</sup>responsible person] is to be treated for all purposes of the Tax Acts (other than this Chapter) as having paid interest on the loan in the tax year equal to the amount representing the cash equivalent of the loan.
- (3) The interest is to be treated—
  - (a) as accruing during the period in the tax year during which the loan is outstanding, and
  - (b) as paid at the end of the period.
- (4) The interest is not to be treated—
  - (a) as income of the person making the loan, or
  - (b) as relevant loan interest to which section 369 of ICTA applies (mortgage interest payable under deduction of tax).

#### **Textual Amendments**

**F534** Words in s. 399(1) substituted (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), **ss. 249(9)**, 284(1) (with [Sch. 36](#))

**F535** Words in s. 399(1)(b) repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), [s. 883\(1\)](#), [Sch. 1 para. 597](#), **Sch. 3** (with [Sch. 2](#))

**F536** Words in s. 399(2) substituted (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), **ss. 249(10)**, 284(1) (with [Sch. 36](#))

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## *Interpretation*

### **[<sup>F537</sup>399A] Responsible person**

- (1) The following heads specify the person who is, or persons who are, the responsible person in relation to an employer-financed retirement benefits scheme for the purposes of this Chapter.
- (2) But if a person is, or persons are, the responsible person in relation to the scheme by virtue of being specified under one head, no-one is the responsible person in relation to the scheme by virtue of being specified under a later head.

#### *Head 1*

If there are one or more trustees of the scheme who are resident in the United Kingdom, that trustee or each of those trustees.

#### *Head 2*

If there are one or more persons who control the management of the scheme, that person or each of those persons.

#### *Head 3*

If alive or still in existence, the employer, or any of the employers, who established the scheme and any person by whom that employer, or any of those employers, has been directly or indirectly succeeded in relation to the provision of benefits under the scheme.

#### *Head 4*

Any employer of employees to or in respect of whom benefits are, or are to be, provided under the scheme.

#### *Head 5*

If there are one or more trustees of the scheme who are not resident in the United Kingdom, that trustee or each of those trustees.]

#### **Textual Amendments**

**F537** Ss. 399A, 400 substituted for s. 400 (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), **ss. 249(11), 284(1)** (with [Sch. 36](#))

### **[<sup>F537</sup>400] Interpretation**

In this Chapter—

“employer-financed retirement benefits scheme” has the meaning given by section 393A;

“relevant benefits” has the meaning given by section 393B; and

“responsible person” has the meaning given by section 399A.]

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#### Textual Amendments

**F537** Ss. 399A, 400 substituted for s. 400 (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), **ss. 249(11), 284(1)** (with [Sch. 36](#))

## CHAPTER 3

### PAYMENTS AND BENEFITS ON TERMINATION OF EMPLOYMENT ETC.

#### *Preliminary*

#### **401 Application of this Chapter**

- (1) This Chapter applies to payments and other benefits which are received directly or indirectly in consideration or in consequence of, or otherwise in connection with—
  - (a) the termination of a person’s employment,
  - (b) a change in the duties of a person’s employment, or
  - (c) a change in the earnings from a person’s employment,by the person, or the person’s spouse [<sup>F538</sup>or civil partner], blood relative, dependant or personal representatives.
- (2) Subsection (1) is subject to subsection (3) and sections 405 to [<sup>F539</sup>413A] (exceptions for certain payments and benefits).
- (3) This Chapter does not apply to any payment or other benefit chargeable to income tax apart from this Chapter.
- (4) For the purposes of this Chapter—
  - (a) a payment or other benefit which is provided on behalf of, or to the order of, the employee or former employee is treated as received by the employee or former employee, and
  - (b) in relation to a payment or other benefit—
    - (i) any reference to the employee or former employee is to the person mentioned in subsection (1), and
    - (ii) any reference to the employer or former employer is to be read accordingly.

#### Textual Amendments

**F538** Words in s. 401(1) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), **regs. 1(1), 152**

**F539** Word in s. 401(2) substituted (with effect in accordance with art. 10(4) of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2011 \(S.I. 2011/1037\)](#), **arts. 1, 10(2)**

#### **402 Meaning of “benefit”**

- (1) In this Chapter “benefit” includes anything in respect of which, were it received for performance of the duties of the employment, an amount—

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- (a) would be taxable earnings from the employment, or
- (b) would be such earnings apart from an earnings-only exemption.

This is subject to subsections (2) to (4).

- (2) In this Chapter “benefit” does not include a benefit received in connection with the termination of a person’s employment that is a benefit which, were it received for performance of the duties of the employment, would fall within—
  - (a) section 239(4) (exemption of benefits connected with taxable cars and vans and exempt heavy goods vehicles), so far as that section applies to a benefit connected with a car or van,
  - (b) section 269 (exemption where benefits or money obtained in connection with taxable car or van or exempt heavy goods vehicle),
  - (c) section 319 (mobile telephones), or
  - (d) section 320 (limited exemption for computer equipment).
- (3) In this Chapter “benefit” does not include a benefit received in connection with any change in the duties of, or earnings from, a person’s employment to the extent that it is a benefit which, were it received for performance of the duties of the employment, would fall within section 271(1) (limited exemption of removal benefits and expenses).
- (4) The right to receive a payment or benefit is not itself a benefit for the purposes of this Chapter.

*Payments and benefits treated as employment income*

**403 Charge on payment or other benefit**

- (1) The amount of a payment or benefit to which this Chapter applies counts as employment income of the employee or former employee for the relevant tax year if and to the extent that it exceeds the £30,000 threshold.
- (2) In this section “the relevant tax year” means the tax year in which the payment or other benefit is received.
- (3) For the purposes of this Chapter—
  - (a) a cash benefit is treated as received—
    - (i) when it is paid or a payment is made on account of it, or
    - (ii) when the recipient becomes entitled to require payment of or on account of it, and
  - (b) a non-cash benefit is treated as received when it is used or enjoyed.
- (4) For the purposes of this Chapter the amount of a payment or benefit in respect of an employee or former employee exceeds the £30,000 threshold if and to the extent that, when it is aggregated with other such payments or benefits to which this Chapter applies, it exceeds £30,000 according to the rules in section 404 (how the £30,000 threshold applies).
- (5) If it is received after the death of the employee or former employee—
  - (a) the amount of a payment or benefit to which this Chapter applies counts as the employment income of the personal representatives for the relevant year if or to the extent that it exceeds £30,000 according to the rules in section 404, and

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- (b) the tax is accordingly to be assessed and charged on them and is a debt due from and payable out of the estate.
- (6) In this Chapter references to the taxable person are to the person in relation to whom subsection (1) or (5) provides for an amount to count as employment income.

#### **404 How the £30,000 threshold applies**

- (1) For the purpose of the £30,000 threshold in section 403(4) and (5), the payments and other benefits provided in respect of an employee or former employee which are to be aggregated are those provided—
- (a) in respect of the same employment,
  - (b) in respect of different employments with the same employer, and
  - (c) in respect of employments with employers who are associated.
- (2) For this purpose employers are “associated” if on a termination or change date—
- (a) one of them is under the control of the other, or
  - (b) one of them is under the control of a third person who on that termination or change date or another such date controls or is under the control of the other.
- (3) In subsection (2)—
- (a) references to an employer, or to a person controlling or controlled by an employer, include the successors of the employer or person, and
  - (b) “termination or change date” means a date on which a termination or change occurs in connection with which a payment or other benefit to which this Chapter applies is received in respect of the employee or former employee.
- (4) If payments and other benefits are received in different tax years, the £30,000 is set against the amount of payments and other benefits received in earlier years before those received in later years.
- (5) If more than one payment or other benefit is received in a tax year in which the threshold is exceeded—
- (a) the £30,000 (or the balance of it) is set against the amounts of cash benefits as they are received, and
  - (b) any balance at the end of the year is set against the aggregate amount of non-cash benefits received in the year.

#### **[<sup>F540</sup>404A] Amounts charged to be treated as highest part of total income**

- (1) A payment or other benefit which counts as a person's employment income as a result of section 403 is treated as the highest part of the person's total income.
- (2) Subsection (1) has effect for all income tax purposes except the purposes of sections 535 to 537 of ITTOIA 2005 (gains from contracts for life insurance etc: top slicing relief).
- (3) See section 1012 of ITA 2007 (relationship between highest part rules) for the relationship between—
- (a) the rule in subsection (1), and
  - (b) other rules requiring particular income to be treated as the highest part of a person's total income.]

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#### Textual Amendments

**F540** S. 404A inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 437](#) (with [Sch. 2](#))

### *Exceptions and reductions*

#### **405 Exception for certain payments exempted when received as earnings**

- (1) This Chapter does not apply to any payment received in connection with the termination of a person's employment which, were it received for the performance of the duties of the employment, would fall within section 308 (exemption of contributions to approved personal pension arrangements).
- (2) This Chapter does not apply to any payment received in connection with any change in the duties of, or earnings from, a person's employment to the extent that, were it received for the performance of the duties of the employment, it would fall within section 271(1) (limited exemption of removal benefits and expenses).

#### **406 Exception for death or disability payments and benefits**

This Chapter does not apply to a payment or other benefit provided—

- (a) in connection with the termination of employment by the death of an employee, or
- (b) on account of injury to, or disability of, an employee.

#### **407 Exception for payments and benefits under tax-exempt pension schemes**

- (1) This Chapter does not apply to a payment or other benefit provided under a tax-exempt pension scheme if—
  - (a) the payment or other benefit is by way of compensation—
    - (i) for loss of employment, or
    - (ii) for loss or diminution of earnings, and the loss or diminution is due to ill-health, or
  - (b) the payment or other benefit is properly regarded as earned by past service.
- (2) For this purpose “tax-exempt pension scheme” means—
  - <sup>F541</sup>(a) a registered pension scheme,
    - (aa) a scheme set up by a government outside the United Kingdom for the benefit of employees or primarily for their benefit, or]
  - (b) any such scheme or fund as was described in section 221(1) and (2) of ICTA 1970 (schemes to which payments could be made without charge to tax under section 220 of ICTA 1970).

<sup>F542</sup>(3) .....

#### Textual Amendments

**F541** S. 407(2)(a)(aa) substituted for s. 407(2)(a) (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), s. 284(1), [Sch. 35 para. 62\(2\)](#) (with [Sch. 36](#))



*Status: Point in time view as at 01/09/2013.*

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**F542** S. 407(3) repealed (6.4.2006) by Finance Act 2004 (c. 12), s. 284(1), Sch. 35 para. 62(3), **Sch. 42 Pt. 3** (with Sch. 36)

#### **408 Exception for contributions to [<sup>F543</sup>registered pension schemes]**

- (1) This Chapter does not apply to a contribution to a [<sup>F544</sup>registered pension scheme][<sup>F545</sup>or an employer-financed retirement benefit scheme] if the contribution is made—
- (a) as part of an arrangement relating to the termination of a person’s employment, and
  - (b) in order to provide benefits for the person in accordance with the terms of the scheme or approved personal pension arrangements.

<sup>F546</sup>(2) .....

##### **Textual Amendments**

**F543** Words in s. 408 heading substituted (6.4.2006) by Finance Act 2004 (c. 12), s. 284(1), **Sch. 35 para. 63(4)** (with Sch. 36)

**F544** Words in s. 408(1) substituted (6.4.2006) by Finance Act 2004 (c. 12), s. 284(1), **Sch. 35 para. 63(2)** (with Sch. 36)

**F545** Words in s. 408(1) inserted (with effect in relation to any time on or after 6.4.2006 in accordance with art. 1(2) of the amending S.I.) by The Taxation of Pension Schemes (Consequential Amendments) (No. 2) Order 2006 (S.I. 2006/1963), arts. 1(1), **2(2)**

**F546** S. 408(2) repealed (6.4.2006) by Finance Act 2004 (c. 12), s. 284(1), Sch. 35 para. 63(3), **Sch. 42 Pt. 3** (with Sch. 36)

#### **409 Exception for payments and benefits in respect of employee liabilities and indemnity insurance**

- (1) This Chapter does not apply to a payment or other benefit received by an individual if or to the extent that—
- (a) in the case of a cash benefit, it is provided for meeting the cost of a deductible amount, or
  - (b) in the case of a non-cash benefit, it is or represents a benefit equivalent to the cost of paying a deductible amount.
- (2) For the purposes of this section “deductible amount” means an amount which meets conditions A to C.
- (3) Condition A is that the amount is paid by the individual.
- (4) Condition B is that a deduction for the amount would have been allowed under section 346 from earnings from the relevant employment, if the individual still held the employment when the amount was paid.
- (5) Condition C is that the amount is paid at a time which falls within the run-off period.
- (6) In this section and section 410—
- “relevant employment” means the employment mentioned in section 401(1);
  - “run-off period” means the period which—
- (a) starts with the day on which the relevant employment terminated, and

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- (b) ends with the last day of the sixth tax year following the tax year in which the period started.

#### **410 Exception for payments and benefits in respect of employee liabilities and indemnity insurance: individual deceased**

- (1) This Chapter does not apply to a payment or other benefit received by an individual's personal representatives if or to the extent that—
- (a) in the case of a cash benefit, it is provided for meeting the cost of a deductible amount, or
  - (b) in the case of a non-cash benefit, it is or represents a benefit equivalent to the cost of paying a deductible amount.
- (2) For the purposes of this section “deductible amount” means an amount which meets conditions A to C.
- (3) Condition A is that the amount is paid by the individual's personal representatives.
- (4) Condition B is that a deduction for the amount would have been allowed under section 346 from earnings from the relevant employment, if—
- (a) the individual had not died,
  - (b) the amount had been paid by the individual, and
  - (c) the individual still held the employment when the amount was paid.
- (5) Condition C is that the amount is paid at a time which falls within the run-off period.

#### **411 Exception for payments and benefits for forces**

- [<sup>F547</sup>(1)] This Chapter does not apply to a payment or other benefit provided—
- (a) under a Royal Warrant, Queen's Order or Order in Council relating to members of Her Majesty's forces, or
  - (b) by way of payment in commutation of annual or other periodical payments authorised by any such Warrant or Order.
- [<sup>F548</sup>(2) This Chapter does not apply to a payment or other benefit provided under a scheme established by an order under section 1(1) of the Armed Forces (Pensions and Compensation) Act 2004.]

#### **Textual Amendments**

**F547** S. 411 renumbered as s. 411(1) (with effect in accordance with s. 63(2) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 63\(1\)](#)

**F548** S. 411(2) inserted (with effect in accordance with s. 63(2) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 63\(1\)](#)

#### **412 Exception for payments and benefits provided by foreign governments etc.**

- (1) This Chapter does not apply to—
- (a) a benefit provided under a pension scheme administered by the government of an overseas territory within the Commonwealth, or

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- (b) a payment of compensation for loss of career, interruption of service or disturbance made—
  - (i) in connection with any change in the constitution of any such overseas territory, and
  - (ii) to a person who was employed in the public service of the territory before the change.
- (2) References in subsection (1) to—
  - (a) an overseas territory,
  - (b) the government of such a territory, and
  - (c) employment in the public service of such a territory,have the meanings given in section 615 of ICTA.

#### **413 Exception in certain cases of foreign service**

- (1) This Chapter does not apply if the service of the employee or former employee in the employment in respect of which the payment or other benefit is received included foreign service comprising—
  - (a) three-quarters or more of the whole period of service ending with the date of the termination or change in question, or
  - (b) if the period of service ending with that date exceeded 10 years, the whole of the last 10 years, or
  - (c) if the period of service ending with that date exceeded 20 years, one-half or more of that period, including any 10 of the last 20 years.
- (2) In subsection (1) “foreign service” means service to which subsection [F549(2A),] (3), (4) or (6) applies.

[F550(2A) This subsection applies to service in or after the tax year 2013-14—

- (a) to the extent that it consists of duties performed outside the United Kingdom in respect of which earnings would not be relevant earnings, or
- (b) if a deduction equal to the whole amount of the earnings from the employment was or would have been allowable under Chapter 6 of Part 5 (deductions from seafarers' earnings).]

- (3) This subsection applies to service in or after the tax year 2003-04 [F551] but before the tax year 2013-14] such that—
  - [F552(a) any earnings from the employment would not be relevant earnings, or]
  - (b) a deduction equal to the whole amount of the earnings from the employment was or would have been allowable under Chapter 6 of Part 5 (deductions from seafarers' earnings).

[F553(3ZA) In subsection (2A)(a) “relevant earnings” means earnings for a tax year that are earnings to which section 15 applies and to which that section would apply even if the employee made a claim under section 809B of ITA 2007 (claim for remittance basis) for that year.]

[F554(3A) In subsection (3)(a) “relevant earnings” means—

- (a) for service in or after the tax year 2008-09, earnings—
  - (i) which are for a tax year in which the employee is ordinarily UK resident,
  - (ii) to which section 15 applies, and

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- (iii) to which that section would apply, even if the employee made a claim under section 809B of ITA 2007 (claim for remittance basis) for that year, and
  - (b) for service before the tax year 2008-09, general earnings to which section 15 or 21 as originally enacted applies.]
- (4) This subsection applies to service before the tax year 2003-04 and after the tax year 1973-74 such that—
- (a) the emoluments from the employment were not chargeable under Case I of Schedule E, or would not have been so chargeable had there been any, or
  - (b) a deduction equal to the whole amount of the emoluments from the employment was or would have been allowable under a foreign earnings deduction provision.
- (5) In subsection (4) “foreign earnings deduction provision” means—
- (a) paragraph 1 of Schedule 2 to FA 1974,
  - (b) paragraph 1 of Schedule 7 to FA 1977, or
  - (c) section 192A or 193(1) of ICTA.
- (6) This subsection applies to service before the tax year 1974-75 such that tax was not chargeable in respect of the emoluments of the employment—
- (a) in the tax year 1956-57 or later, under Case I of Schedule E, or
  - (b) in earlier tax years, under Schedule E,
- or it would not have been so chargeable had there been any such emoluments.

#### Textual Amendments

- F549** Word in s. 413(2) inserted (with effect in accordance with Sch. 46 para. 72 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 38\(2\)](#) (with [Sch. 46 para. 73](#))
- F550** S. 413(2A) inserted (with effect in accordance with Sch. 46 para. 72 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 38\(3\)](#) (with [Sch. 46 para. 73](#))
- F551** Words in s. 413(3) inserted (with effect in accordance with Sch. 46 para. 72 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 38\(4\)](#) (with [Sch. 46 para. 73](#))
- F552** S. 413(3)(a) substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 30\(2\)](#)
- F553** S. 413(3ZA) inserted (with effect in accordance with Sch. 46 para. 72 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 38\(5\)](#) (with [Sch. 46 para. 73](#))
- F554** S. 413(3A) inserted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 30\(3\)](#)

#### <sup>F555</sup>413A Exception for payment of certain legal costs

- (1) This Chapter does not apply to a payment which meets conditions A and B.
- (2) Condition A is that the payment meets the whole or part of legal costs incurred by the employee exclusively in connection with the termination of the employee’s employment.
- (3) Condition B is that either—
  - (a) the payment is made pursuant to an order of a court or tribunal, or

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- (b) the termination of the employee’s employment results in a [<sup>F556</sup>settlement] agreement between the employer and the employee and —
- (i) the [<sup>F556</sup>settlement] agreement provides for the payment to be made by the employer, and
  - (ii) the payment is made directly to the employee’s lawyer.
- (4) In this section—
- <sup>F557</sup> ...
- “lawyer” has the same meaning as “qualified lawyer” in section 203(4) of the Employment Rights Act 1996 or article 245(4) of the Employment Rights (Northern Ireland) Order 1996;
- “legal costs” means fees payable for the services and disbursements of a lawyer.]

#### Textual Amendments

- F555** S. 413A inserted (with effect in accordance with art. 10(4) of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2011 \(S.I. 2011/1037\)](#), arts. 1, **10(3)**
- F556** Word in s. 413A(3)(b) substituted (1.3.2013) by [The Enactment of Extra-Statutory Concessions Order 2013 \(S.I. 2013/234\)](#), arts. 1, **3(1)(a)** (with art. 3(2))
- F557** Words in s. 413A(4) omitted (1.3.2013) by virtue of [The Enactment of Extra-Statutory Concessions Order 2013 \(S.I. 2013/234\)](#), arts. 1, **3(1)(b)** (with art. 3(2))

#### 414 Reduction in other cases of foreign service

- (1) This section applies if—
- (a) the service of the employee or former employee in the employment in respect of which the payment or other benefit is received includes foreign service, and
  - (b) section 413 (exception in certain cases of foreign service) does not apply.
- (2) The taxable person may claim relief in the form of a proportionate reduction of the amount that would otherwise count as employment income under this Chapter.
- (3) The proportion is that which the length of the foreign service bears to the whole length of service in the employment before the date of the termination or change in question.
- (4) A person’s entitlement to relief under this section is limited as mentioned in subsection (5) if the person is entitled—
- (a) to deduct, retain or satisfy income tax out of a payment which the person is liable to make, or
  - (b) to charge any income tax against another person.
- (5) The relief must not reduce the amount of income tax for which the person is liable below the amount the person is entitled so to deduct, retain, satisfy or charge.
- (6) In this section “foreign service” has the same meaning as in section 413(2).

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### *General and supplementary provisions*

#### **415 Valuation of benefits**

- (1) In the case of a cash benefit, for the purposes of this Chapter the amount of a payment or other benefit is taken to be the amount received.
- (2) In the case of a non-cash benefit, for the purposes of this Chapter the amount of a payment or other benefit is taken to be the greater of—
  - (a) the amount of earnings (as defined in Chapter 1 of Part 3) that the benefit would give rise to if it were received by an employee within section 15 for performance of the duties of an employment (money's worth), and
  - (b) the cash equivalent of the benefit under the benefits code if it were so received and the code applied to it.
- (3) For the purposes of subsection (2), the benefits code has effect with the modifications in subsections (4), (6) and (7).
- (4) References in the benefits code to the employee are to be taken as references to the taxable person and any other person by whom the benefit is received.
- (5) For the purposes of subsection (4), section 401(4)(a) is to be disregarded.
- (6) References in the benefits code to the employer are to be taken as including references to the former employer.
- (7) Where—
  - (a) section 106 (cash equivalent: cost of accommodation over £75,000) applies, and
  - (b) the sum referred to in section 105(2)(b) (the sum made good) exceeds the amount referred to in section 105(2)(a) (the rental value),
 the amount to be subtracted under paragraph (b) of step 4 of the calculation in section 106(2) is that excess (and not only the excess rent referred to there).

#### **416 Notional interest treated as paid if amount charged for beneficial loan**

- (1) This section applies if an amount (“the taxable amount”) consisting of, or including, an amount representing the benefit of a loan counts as a person’s employment income in a tax year under section 403.
- (2) That person is to be treated for the purposes of the Tax Acts (other than this Chapter) as having paid interest on the loan in the tax year equal to the lesser of—
  - (a) the amount representing the cash equivalent of the loan, and
  - (b) the taxable amount.
- (3) The interest is to be treated—
  - (a) as accruing during the period in the tax year during which the loan is outstanding, and
  - (b) as paid at the end of the period.
- (4) The interest is not to be treated—
  - (a) as income of the person making the loan, or
  - (b) as relevant loan interest to which section 369 of ICTA applies (mortgage interest payable under deduction of tax).

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## PART 7

### [<sup>F558</sup>EMPLOYMENT INCOME: INCOME AND EXEMPTIONS RELATING TO SECURITIES]

#### Textual Amendments

**F558** Pt. 7 heading substituted (with effect in accordance with Sch. 22 para. 2(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 2\(1\)](#)

#### Modifications etc. (not altering text)

**C18** Pt. 7: power to modify conferred (7.4.2005) by [Finance Act 2005 \(c. 7\)](#), [s. 21\(8\)-\(10\)](#)

### [<sup>F559</sup>CHAPTER 1

#### INTRODUCTION

#### Textual Amendments

**F559** Pt. 7 Ch. 1 substituted (with effect in accordance with Sch. 22 para. 2(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 2\(1\)](#)

#### *General*

#### **417 Scope of Part 7**

- (1) This Part contains special rules about cases where securities, interests in securities or securities options are acquired in connection with an employment.
- (2) The rules are contained in—
  - Chapter 2 (restricted securities),
  - Chapter 3 (convertible securities),
  - Chapter 3A (securities with artificially depressed market value),
  - Chapter 3B (securities with artificially enhanced market value),
  - Chapter 3C (securities acquired for less than market value),
  - Chapter 3D (securities disposed of for more than market value),
  - Chapter 4 (post-acquisition benefits from securities),
  - Chapter 5 (securities options),
  - Chapter 6 (approved share incentive plans),
  - Chapter 7 (approved SAYE option schemes),
  - Chapter 8 (approved CSOP schemes),
  - Chapter 9 (enterprise management incentives), and
  - Chapter 10 (priority share allocations).
- (3) The following make provision for amounts to count as employment income—
  - Chapters 2 to 6, and
  - Chapter 8.
- (4) The following make provision for exemptions and reliefs from income tax—

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Chapters 2 and 3, and  
Chapters 5 to 10.

- (5) Chapter 11 contains supplementary provisions relating to employee benefit trusts.
- (6) Section 5(1) (application of employment income Parts to office-holders generally) does not apply to Chapters 6 to 10; and section 549(5) makes provision about its application to Chapter 11.

#### **418 Other related provisions**

- (1) In Part 3—  
Chapter 1 (earnings), and  
Chapter 10 (taxable benefits: residual liability to charge),  
may also have effect in relation to securities and interests in securities (but not securities options).
- (2) Part 7 of Schedule 7 (transitional provisions relating to securities and securities options) may also be relevant.
- (3) In view of section 49 of FA 2000 (phasing out of APS schemes) the following are not rewritten in this Act and continue in force unaffected by the repeals made by this Act—  
section 186 of ICTA (APS schemes) and section 187 of that Act (interpretation) so far as relating to APS schemes, and  
Schedule 9 to ICTA (approval of share schemes) so far as relating to APS schemes and Schedule 10 to that Act (further provisions about APS schemes).  
“APS schemes” means profit sharing schemes approved under Schedule 9 to ICTA.

<sup>F560</sup>(4) .....

#### **Textual Amendments**

**F560** S. 418(4) omitted (with effect in accordance with s. 50(3) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\), s. 50\(2\)\(a\)](#)

#### **419 Negative amounts treated as nil**

If the result given by any formula under any provision of this Part would otherwise be a negative amount, the result is to be taken to be nil instead.

*Interpretation of Chapters 1 to 5*

#### **420 Meaning of “securities” etc**

- (1) Subject to subsections (5) and (6), for the purposes of this Chapter and Chapters 2 to 5 the following are “securities”—
- (a) shares in any body corporate (wherever incorporated) or in any unincorporated body constituted under the law of a country or territory outside the United Kingdom,



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- [<sup>F561</sup>(aa) rights under contracts of insurance other than excluded contracts of insurance,]
- (b) debentures, debenture stock, loan stock, bonds, certificates of deposit and other instruments creating or acknowledging indebtedness [<sup>F562</sup>(other than contracts of insurance)],
  - (c) warrants and other instruments entitling their holders to subscribe for securities (whether or not in existence or identifiable),
  - (d) certificates and other instruments conferring rights in respect of securities held by persons other than the persons on whom the rights are conferred and the transfer of which may be effected without the consent of those persons,
  - (e) units in a collective investment scheme,
  - (f) [<sup>F563</sup>options and] futures, <sup>F564</sup>...
  - (g) rights under contracts for differences or contracts similar to contracts for differences [<sup>F565</sup>(other than contracts of insurance)] [<sup>F566</sup>, [<sup>F567</sup>and
  - (h) arrangements to which section 564G of ITA 2007 (alternative finance arrangements: investment bond arrangements) applies.]]
- [<sup>F568</sup>(1A) For the purposes of subsection (1)(aa) a contract of insurance is an excluded contract of insurance if it is—
- (a) a contract for an annuity which is (or will be) pension income (see Part 9),
  - (b) a contract of long-term insurance, other than an annuity contract, which does not have a surrender value and is not capable of acquiring one (whether on conversion or in any other circumstances), or
  - (c) a contract of general insurance other than one which falls, in accordance with generally accepted accounting practice, to be accounted for as a financial asset or liability.
- (1B) In this section—
- “contract of insurance”,
  - “contract of long-term insurance”, and
  - “contract of general insurance”,
- have the same meaning as in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.]
- (2) In subsection (1)(e) “collective investment scheme” means arrangements—
- (a) which are made with respect to property of any description, including money, and
  - (b) the purpose or effect of which is to enable persons taking part in the arrangements (whether by becoming owners of the property or any part of it or otherwise) to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income.
- (3) In subsection (1)(f) “futures” means rights under a contract for the sale of a commodity or other property under which delivery is to be made at a future date at a price agreed when the contract is made; and for this purpose a price is to be taken to be agreed when the contract is made—
- (a) if 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, and

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- (b) in a case where the contract is expressed to be by reference to a standard lot and quality, even if provision is made for a variation in the price to take account of any variation in quantity or quality on delivery.
- (4) For the purposes of subsection (1)(g) a contract similar to a contract for differences is a contract—
- (a) which is not a contract for differences, but
- (b) 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 or an index or other factor designated in the contract.
- (5) The following are not “securities” for the purposes of this Chapter or Chapters 2 to 5—
- (a) cheques and other bills of exchange, bankers' drafts and letters of credit (other than bills of exchange accepted by a banker),
- (b) money and statements showing balances on a current, deposit or savings account,
- (c) leases and other dispositions of property and heritable securities, [<sup>F569</sup>and]
- <sup>F570</sup>(d) .....
- (e) [<sup>F571</sup>securities] options.
- (6) The Treasury may by order amend subsections (1) to (5).
- (7) An order under subsection (6) may include any appropriate consequential provision (including provision amending any enactment).
- (8) In this Chapter and Chapters 2 to 5—
- “interest”, in relation to securities (or shares), means an interest in them less than full beneficial ownership and includes an interest in proceeds of their sale, but does not include a right to acquire them,
- “securities option” means a right to acquire securities [<sup>F572</sup>other than a right to acquire securities which is acquired pursuant to a right or opportunity made available under arrangements the main purpose (or one of the main purposes) of which is the avoidance of tax or national insurance contributions], and
- “shares” includes stock.

#### Textual Amendments

- F561** S. 420(1)(aa) inserted (with effect in accordance with Sch. 2 para. 2(8) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), **Sch. 2 para. 2(2)**
- F562** Words in s. 420(1)(b) inserted (with effect in accordance with Sch. 2 para. 2(8) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), **Sch. 2 para. 2(3)**
- F563** Words in s. 420(1)(f) inserted (with effect in accordance with s. 92(5) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), **s. 92(2)**
- F564** Word in s. 420(1)(f) omitted (14.8.2007) by virtue of [The Employment Income \(Meaning of Securities\) Order 2007 \(S.I. 2007/2130\)](#), arts. 1, **2(a)**
- F565** Words in s. 420(1)(g) inserted (with effect in accordance with Sch. 2 para. 2(8) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), **Sch. 2 para. 2(4)**
- F566** S. 420(1)(h) and word inserted (14.8.2007) by [The Employment Income \(Meaning of Securities\) Order 2007 \(S.I. 2007/2130\)](#), arts. 1, **2(b)**
- F567** S. 420(1)(h) and preceding word substituted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), **Sch. 8 para. 204** (with Sch. 9 paras. 1-9, 22)

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- F568** S. 420(1A)(1B) inserted (with effect in accordance with Sch. 2 para. 2(8) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), [Sch. 2 para. 2\(5\)](#)
- F569** Word in s. 420(5)(c) inserted (with effect in accordance with Sch. 2 para. 2(8) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), [Sch. 2 para. 2\(6\)\(a\)](#)
- F570** S. 420(5)(d) repealed (with effect in accordance with Sch. 2 para. 2(8) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), [Sch. 2 para. 2\(6\)\(b\)](#), [Sch. 11 Pt. 2\(1\)](#)
- F571** Word in s. 420(5)(e) inserted (with effect in accordance with s. 92(5) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [s. 92\(3\)](#)
- F572** Words in s. 420(8) inserted (with effect in accordance with s. 92(5) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [s. 92\(4\)](#)

## **421 Meaning of “market value” etc**

- (1) In this Chapter and Chapters 2 to 5 “market value” has the same meaning as it has for the purposes of TCGA 1992 by virtue of Part 8 of that Act.
- (2) Where consideration for anything is given in the form of an asset (as opposed to a payment), any reference in this Chapter or any of Chapters 2 to 5 to the amount of the consideration is to the market value of the asset.

### **421A Meaning of “consideration”**

- (1) This section applies for determining for the purposes of Chapters 2 to 5 the amount of the consideration given for anything.
- (2) If any consideration is given partly in respect of one thing and partly in respect of another, the amount given in respect of the different things is to be determined on a just and reasonable apportionment.
- (3) The consideration which is taken to be given wholly or partly for anything does not include the performance of any duties of, or in connection with, an employment.
- (4) No amount is to be counted more than once in calculating the amount of any consideration.

### *Application of Chapters 2 to [F573 4A]*

#### **Textual Amendments**

- F573** Word in s. 421B cross-heading substituted (with effect in accordance with s. 20(5) of the amending Act) by [Finance Act 2005 \(c. 7\)](#), [s. 20\(3\)\(b\)](#)

## **421B Application of Chapters 2 to [F574 4A]**

- (1) Subject as follows (and to any provision contained in Chapters 2 to [F575 4A] ) those Chapters apply to securities, or an interest in securities, acquired by a person where the right or opportunity to acquire the securities or interest is available by reason of an employment of that person or any other person.
- (2) For the purposes of subsection (1)—
  - (a) securities are, or an interest in securities is, acquired at the time when the person acquiring the securities or interest becomes beneficially entitled to

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- those securities or that interest (and not, if different, the time when the securities are, or interest is, conveyed or transferred), and
- (b) “employment” includes a former or prospective employment.
- (3) A right or opportunity to acquire securities or an interest in securities made available by a person’s employer, or by a person connected with a person’s employer, is to be regarded for the purposes of subsection (1) as available by reason of an employment of that person unless—
- (a) the person by whom the right or opportunity is made available is an individual, and
- (b) the right or opportunity is made available in the normal course of the domestic, family or personal relationships of that person.
- (4) Chapters 2 to [F576 4A] cease to apply to securities, or an interest in securities, when subsection (5), (6) or (7) is satisfied.
- (5) This subsection is satisfied immediately after the securities are, or the interest in securities is, disposed of otherwise than to an associated person.
- (6) This subsection is satisfied immediately before the death of the employee.
- (7) This subsection is satisfied 7 years after the first date after the acquisition on which the employee is an employee of none of the following—
- (a) the employer,
- (b) (if the securities are, or the interest in securities is an interest in, securities issued by a company) the company by which they are issued, or
- (c) a person connected with a person within paragraph (a) or (b).
- (8) In this Chapter and Chapters 2 to [F577 4A] —
- “the acquisition”, in relation to employment-related securities, means the acquisition of the employment-related securities pursuant to the right or opportunity available by reason of the employment,
- “the employment”, in relation to employment-related securities, means the employment by reason of which the right or opportunity to acquire the employment-related securities is available (“the employee” and “the employer” being construed accordingly unless otherwise indicated), and
- “employment-related securities” means securities or an interest in securities to which Chapters 2 to 4 apply (ignoring any provision of any of those Chapters which limits the application of the Chapter to a particular description or descriptions of employment-related securities).

#### **Textual Amendments**

- F574** Word in s. 421B heading substituted (with effect in accordance with s. 20(5) of the amending Act) by [Finance Act 2005 \(c. 7\), s. 20\(3\)\(b\)](#)
- F575** Word in s. 421B(1) substituted (with effect in accordance with s. 20(5) of the amending Act) by [Finance Act 2005 \(c. 7\), s. 20\(3\)\(a\)](#)
- F576** Word in s. 421B(4) substituted (with effect in accordance with s. 20(5) of the amending Act) by [Finance Act 2005 \(c. 7\), s. 20\(3\)\(a\)](#)
- F577** Word in s. 421B(8) substituted (with effect in accordance with s. 20(5) of the amending Act) by [Finance Act 2005 \(c. 7\), s. 20\(3\)\(a\)](#)

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## 421C Associated persons

- (1) For the purposes of this Chapter and Chapters 2 to 4 the following are “associated persons” in relation to employment-related securities—
  - (a) the person who acquired the employment-related securities on the acquisition,
  - (b) (if different) the employee, and
  - (c) any relevant linked person.
- (2) A person is a relevant linked person if—
  - (a) that person (on the one hand), and
  - (b) either the person who acquired the employment-related securities on the acquisition or the employee (on the other),  
[<sup>F578</sup>are or have been connected or (without being or having been connected) are or have been] members of the same household.
- (3) But a company which would otherwise be a relevant linked person is not if it is—
  - (a) the employer,
  - (b) the person from whom the employment-related securities were acquired,
  - (c) the person by whom the right or opportunity to acquire the employment-related securities was made available, or
  - (d) the person by whom the employment-related securities (or the securities in which they are an interest) were issued.

### Textual Amendments

**F578** Words in s. 421C(2) substituted (18.6.2004 with application in accordance with s. 90(5) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 90\(2\)](#)

## 421D Replacement and additional securities and changes in interests

- (1) Subsections (2) and (3) apply where an associated person is entitled to employment-related securities (the “original securities”) and either—
  - (a) as a result of the conversion of the original securities (or the securities in which they are an interest), or of any other transaction or series of transactions, that person ceases to be entitled to the original securities but that person or another associated person acquires securities or an interest in securities (the “replacement securities”), or
  - (b) by virtue of that person being entitled to the original securities, that person or another associated person acquires other securities or an interest in other securities (the “additional securities”).
- (2) The replacement securities or the additional securities are to be regarded for the purposes of section 421B(1) (securities acquired pursuant to a right or opportunity available by reason of an employment) as acquired pursuant to the same right or opportunity as the original securities.
- (3) Where the market value of the original securities is reduced by reason of the issue of, or of securities including, the replacement securities or the additional securities (or the securities in which they are an interest), the amount of that reduction is to be treated for the purposes of Chapters 2 and 3 as consideration or additional consideration given for the acquisition of the replacement securities or the additional securities.

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- (4) Subsections (2) and (3) apply whether or not the replacement securities, or the additional securities, were acquired for consideration.
- (5) Where Chapters 2 to [F579 4A] apply to an interest in securities, an increase of that interest is to be treated for the purposes of section 421B(1) (securities acquired pursuant to a right or opportunity available by reason of an employment) as a separate interest acquired pursuant to the same right or opportunity as the original interest.
- (6) Where Chapters 2 to [F580 4A] apply to an interest in securities, a reduction of that interest (otherwise than by a disposal to an associated person) is to be treated for the purposes of those Chapters as the disposal otherwise than to an associated person of a separate interest proportionate to the reduction.

#### Textual Amendments

**F579** Word in s. 421D(5) substituted (with effect in accordance with s. 20(5) of the amending Act) by [Finance Act 2005 \(c. 7\), s. 20\(3\)\(c\)](#)

**F580** Word in s. 421D(6) substituted (with effect in accordance with s. 20(5) of the amending Act) by [Finance Act 2005 \(c. 7\), s. 20\(3\)\(c\)](#)

#### 421E Exclusions: residence etc

- [F581(1) Chapters 2, 3 and 4 do not apply in relation to employment-related securities if the acquisition occurs in a tax year that is not a split year as respects the employee and—
- (a) the earnings from the employment for that tax year are not general earnings to which section 15, 22 or 26 applies (earnings for year when employee UK resident), or
  - (b) had there been any earnings from the employment for that tax year, they would not have been general earnings to which any of those sections applied.
- (1A) Chapters 2, 3 and 4 do not apply in relation to employment-related securities if the acquisition occurs in the UK part of a tax year that is a split year as respects the employee and—
- (a) the earnings from the employment attributable to that part of the year are not general earnings to which section 15, 22 or 26 applies, or
  - (b) had there been any earnings from the employment attributable to that part of the year, they would not have been general earnings to which any of those sections applied.
- (1B) Chapters 2, 3 and 4 do not apply in relation to employment-related securities if the acquisition occurs in the overseas part of a tax year that is a split year as respects the employee.]
- (2) Chapters 3A to 3D do not apply in relation to employment-related securities if, at the time of the acquisition, the earnings from the employment were not (or would not have been if there had been any) general earnings to which any of the charging provisions of Chapter 4 or 5 of Part 2 apply.
- [F582(2A) But Chapters 3A to 3D do apply in relation to employment-related securities in relation to which they are disapplied by subsection (2) if—
- (a) the acquisition takes place in the overseas part of a tax year that is a split year as respects the employee,

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- (b) the tax year is a split year because the circumstances of the case fall within Case 1, Case 2 or Case 3 as described in Part 3 of Schedule 45 to FA 2013 (split year treatment: cases involving actual or deemed departure from the United Kingdom), and
- (c) had it not been a split year—
  - (i) the earnings from the employment for that tax year (or some of them) would have been general earnings to which section 15, 22 or 26 applied, or
  - (ii) if there had been any earnings from the employment for that tax year, they (or some of them) would have been general earnings to which any of those sections applied.]
- (3) Chapters 2 to 4 do not apply in the case of a former employment if they would not apply if the acquisition had taken place in the last tax year in which the employment was held.
- (4) Chapters 2 to 4 do not apply in the case of a prospective employment if they would not apply if the acquisition had taken place in the first tax year in which the employment is held.
- (5) Where the employment-related securities are replacement securities or additional securities (within the meaning of section 421D), the references in this section to the acquisition are to the acquisition of the original securities (within the meaning of that section).

#### Textual Amendments

**F581** Ss. 421E(1)-(1B) substituted for s. 421E(1) (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by Finance Act 2013 (c. 29), Sch. 45 para. 66(2)

**F582** S. 421E(2A) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by Finance Act 2013 (c. 29), Sch. 45 para. 66(3)

#### 421F Exclusions: public offers

- (1) [<sup>F583</sup>Chapters 2, 3 and 3C] do not apply in relation to employment-related securities that are shares acquired under the terms of an offer to the public or an interest in shares so acquired.
- [<sup>F584</sup>(1A) But subsection (1) does not disapply those Chapters if the main purpose (or one of the main purposes)—
  - (a) of the arrangements under which the right or opportunity under which the shares were acquired, or
  - (b) for which the shares are held,is the avoidance of tax or national insurance contributions.]
- (2) In a case within subsection (1) of section 544 (exemption for priority share allocations where offer to employees separate from public offer), any acquisition made under the terms of either the public offer or the employee offer within the meaning of that subsection is to be treated for the purposes of this section as made under the terms of an offer to the public.
- (3) Subsection (2) applies whether or not there is any benefit within section 544(2) (benefit derived from entitlement to priority allocation exempt from income tax).

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#### Textual Amendments

- F583** Words in s. 421F(1) substituted (18.6.2004 with application in accordance with s. 89(4)(5) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 89\(2\)](#)
- F584** S. 421F(1A) inserted (18.6.2004 with application in accordance with s. 89(4)(5) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 89\(3\)](#)

### <sup>F585</sup>421G Exclusions: approved plan or scheme securities

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#### Textual Amendments

- F585** S. 421G repealed (18.6.2004 with effect in accordance with s. 88(11)-(13) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 88\(2\), Sch. 42 Pt. 2\(11\)](#)

### 421H Meaning of “employee-controlled” etc

- (1) For the purposes of Chapters 2 to 4 a company is “employee-controlled” by virtue of shares of a class if—
- (a) the majority of the company’s shares of that class (other than any held by or for the benefit of an associated company) are held by or for the benefit of employees of the company or a company controlled by the company, and
  - (b) those employees are together able as holders of the shares to control the company.

In this subsection “employee” includes a person who is to be or has been an employee.

- (2) In this section and Chapters 2 to 4 “associated company” has the [<sup>F586</sup>meaning given by section 449 of CTA 2010].

#### Textual Amendments

- F586** Words in s. 421H(2) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 386 \(with Sch. 2\)](#)

### 421I Consideration for acquisition of employment-related securities

- (1) This section applies for determining for the purposes of Chapters 2 to 3A the amount of the consideration given for the acquisition of employment-related securities.
- (2) References to consideration given for the acquisition of the employment-related securities are to consideration given by—
- (a) the employee, or
  - (b) (if not the employee) the person by whom the employment-related securities were acquired.
- (3) The amount of the consideration given by a person for the acquisition of the employment-related securities includes the amount of any consideration given for a right to acquire the employment-related securities.



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- (4) If the right to acquire the employment-related securities (“the new option”) is the whole or part of the consideration for the assignment or release of another right to acquire them (“the old option”), the amount of the consideration given for the new option is to be treated as being the sum of—
  - (a) the amount by which the amount of the consideration given for the old option exceeds the amount of any consideration for the assignment or release of the old option, apart from the new option, and
  - (b) any valuable consideration given for the new option, apart from the old option.
- (5) Two or more transactions are to be treated for the purposes of subsection (4) as a single transaction by which a right to acquire the employment-related securities is assigned for a consideration which consists of or includes another right to acquire the employment-related securities if—
  - (a) the transactions result in a person ceasing to hold a right to acquire the employment-related securities and that person or a connected person coming to hold another right to acquire them, and
  - (b) one or more of the transactions is effected under arrangements to which two or more persons who hold rights to acquire the employment-related securities, in respect of which there may be a liability to tax under Chapter 5 of this Part (securities options), are parties.
- (6) Subsection (5) applies regardless of the order in which the assignment and the acquisition occur.
- (7) In this section “release”, in relation to a right to acquire the employment-related securities, includes agreeing to the restriction of the exercise of the right.

### *Information*

#### **421J Duty to provide information**

- (1) This section applies in relation to reportable events.
- (2) Section 421K explains what are reportable events for the purposes of this section.
- (3) Each person who is a responsible person in relation to a reportable event must provide [<sup>F106</sup>an officer of Revenue and Customs] with particulars in writing of the reportable event before 7th July in the tax year following that in which the reportable event takes place.
- (4) [<sup>F106</sup>An officer of Revenue and Customs] may by notice require any person to provide [<sup>F587</sup>the officer] with such particulars of any reportable events—
  - (a) which take place in a period specified in the notice, and
  - (b) in relation to which that person is a responsible person,as are required by the notice or, if no reportable event in relation to which that person is a responsible person has taken place in that period, to state that fact.
- (5) A notice under subsection (4) must specify a date by which it must be complied with.
- (6) That date must not be less than 30 days after the date when the notice is given.

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- (7) Once one person complies with the duty imposed by subsection (3) in relation to a reportable event, that subsection ceases to impose a duty on any other person in relation to the reportable event.
  - (8) Once a person complies with the duty imposed by a notice under subsection (4) by providing the required particulars of a reportable event, subsection (3) ceases to impose a duty on that person or any other person in relation to that reportable event.
  - (9) Section 421L explains who are the responsible persons in relation to a reportable event.
  - (10) The particulars required by, or by a notice under, this section must be provided in a form specified by [<sup>F82</sup>the Commissioners for Her Majesty's Revenue and Customs] .
  - (11) A person need not provide particulars required by, or by a notice under, this section if they have been given in a notice under paragraph 44 of Schedule 5 (enterprise management incentives: notice of option to be given to [<sup>F106</sup>an officer of Revenue and Customs]).
- In other respects the obligations imposed by, or by a notice under, this section and by that paragraph are independent of each other.
- (12) Paragraph 52 of that Schedule contains a duty to deliver annual returns where a company's shares are subject to a qualifying option within the meaning of that Schedule.

#### Textual Amendments

- F82** Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 102\(2\)](#); S.I. 2005/1126, art. 2(2)(h)
- F106** Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 102\(1\)](#); S.I. 2005/1126, art. 2(2)(h)
- F587** Words in s. 421J(4) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 103\(1\)\(i\)](#); S.I. 2005/1126, art. 2(2)(h)

#### 421K Reportable events

- (1) This section applies for the purposes of section 421J (duty to provide information).
- (2) Each of the events mentioned in subsection (3) is a reportable event.
- (3) The events are—
  - (a) an acquisition (or an event treated as an acquisition) of securities, an interest in securities or a securities option pursuant to a right or opportunity available by reason of the employment of the person who acquires the securities, interest in securities or securities option or of any other person,
  - (b) an event which is a chargeable event in relation to securities, or an interest in securities, for the purposes of section 426 (chargeable events in relation to restricted securities and restricted interests in securities),
  - (c) an event which is a chargeable event in relation to securities, or an interest in securities, for the purposes of section 438 (chargeable events in relation to convertible securities and interests in convertible securities),

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- (d) the doing of anything which gives rise to a taxable amount counting as employment income under section 446L (artificial enhancement of market value of securities),
- (e) an event which discharges a notional loan relating to securities, or an interest in securities, under section 446U (securities and interests in securities acquired for less than market value),
- (f) a disposal of securities, or an interest in securities, by virtue of which Chapter 3D of this Part applies (securities and interests in securities disposed of for more than market value),
- (g) the receipt of a benefit which gives rise to a taxable amount counting as employment income under section 447 (charge on benefit from securities or interest in securities) [<sup>F588</sup>or would give rise to such an amount but for Chapter 4A (shares in research institution spin-out companies)],
- (h) the assignment or release of a securities option acquired pursuant to a right or opportunity available by reason of the employment of the person who acquires the securities option or any other person, and
- (i) the receipt of a benefit in money or money's worth which is (or by virtue of section 477(6) is to be regarded as being) received in connection with such a securities option.

#### Textual Amendments

**F588** Words in s. 421K(3)(g) inserted (with effect in accordance with s. 20(5) of the amending Act) by [Finance Act 2005 \(c. 7\), s. 20\(4\)](#)

#### 421L Persons to whom section 421J applies

- (1) This section applies for the purposes of section 421J (duty to provide information).
- (2) Each of the following persons is a responsible person in relation to a reportable event.
- (3) The persons are—
  - (a) the employer in question,
  - (b) any host employer of the employee in question,
  - (c) the person from whom the securities in question were, or interest or option in question was, acquired, and
  - (d) in relation to a reportable event concerning securities or an interest in securities which are not excluded securities, the person by whom the securities were issued.
- (4) In subsection (3)(b) “host employer” means a person other than the employer in question—
  - (a) for whom the employee in question works at the time of the reportable event, and
  - (b) who would, by virtue of subsection (2) of section 689 (employees of non-UK employers working for a person other than the employer), be treated for the purposes of PAYE regulations as making a payment of PAYE income of the employee in question if a payment to which subsection (5) would apply were made by the employer in question in respect of the period during which the employee works for the other person.

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- (5) For the purposes of subsection (4)(b) this subsection would apply to a payment if—
- (a) it were a payment of PAYE income of the employee, and
  - (b) the conditions in subsection (1)(c) and (d) of section 689 were satisfied in relation to the payment.
- (6) For the purposes of subsection (3)(d) securities are excluded securities in relation to a reportable event if they are—
- (a) loan stock, bonds or other instruments creating or acknowledging indebtedness issued by or on behalf of any national or regional government or local authority (in the United Kingdom or elsewhere) or any body whose members consists of states, national or regional governments or local authorities, or
  - (b) securities which are issued by a person who, at the time of the reportable event, is not connected with the employer in question and which are listed [<sup>F589</sup>on a recognised stock exchange or dealt in on any designated market in the United Kingdom].
- [<sup>F590</sup>(7) In subsection (6)(b) “designated” means designated by an order made by the Commissioners for Her Majesty’s Revenue and Customs for the purposes of that provision.
- (8) An order under subsection (7) may—
- (a) designate a market by name or by reference to any class or description of market, and
  - (b) vary or revoke a previous order under that subsection.]]

#### Textual Amendments

- F589** Words in s. 421L(6)(b) substituted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 26 para. 10\(2\)\(a\)](#)  
**F590** S. 421L(7)(8) inserted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 26 para. 10\(2\)\(b\)](#)

## [<sup>F591</sup>CHAPTER 2

### RESTRICTED SECURITIES

#### Textual Amendments

- F591** Pt. 7 Ch. 2 substituted (1.9.2003 with effect in accordance with Sch. 22 para. 3(2)-(4) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 3\(1\)](#); S.I. 2003/1997, art. 2

#### *Introduction*

#### **422 Application of this Chapter**

This Chapter applies to employment-related securities if they are—

- (a) restricted securities, or
  - (b) a restricted interest in securities,
- at the time of the acquisition.

*Status: Point in time view as at 01/09/2013.*

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#### **Modifications etc. (not altering text)**

- C19** S. 422 modified (with application in accordance with Sch. 2 para. 4(4) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 2 para. 4(4)**

### **423 “Restricted securities” and “restricted interest in securities”**

- (1) For the purposes of this Chapter employment-related securities are restricted securities or a restricted interest in securities if—
- (a) there is any contract, agreement, arrangement or condition which makes provision to which any of subsections (2) to (4) applies, and
  - (b) the market value of the employment-related securities is less than it would be but for that provision.
- (2) This subsection applies to provision under which—
- (a) there will be a transfer, reversion or forfeiture of the employment-related securities, or (if the employment-related securities are an interest in securities) of the interest or the securities, if certain circumstances arise or do not arise,
  - (b) as a result of the transfer, reversion or forfeiture the person by whom the employment-related securities are held will cease to be beneficially entitled to the employment-related securities, and
  - (c) that person will not be entitled on the transfer, reversion or forfeiture to receive in respect of the employment-related securities an amount of at least their market value (determined as if there were no provision for transfer, reversion or forfeiture) at the time of the transfer, reversion or forfeiture.
- (3) This subsection applies to provision under which there is a restriction on—
- (a) the freedom of the person by whom the employment-related securities are held to dispose of the employment-related securities or proceeds of their sale,
  - (b) the right of that person to retain the employment-related securities or proceeds of their sale, or
  - (c) any other right conferred by the employment-related securities, (not being provision to which subsection (2) applies).
- (4) This subsection applies to provision under which the disposal or retention of the employment-related securities, or the exercise of a right conferred by the employment-related securities, may result in a disadvantage to—
- (a) the person by whom the employment-related securities are held,
  - (b) the employee (if not the person by whom they are held), or
  - (c) any person connected with the person by whom they are held or with the employee, (not being provision to which subsection (2) or (3) applies).

### **424 Exceptions**

- [<sup>F592</sup>(1) Employment-related securities are not restricted securities or a restricted interest in securities by reason only that any one or more of the following is the case—
- (a) the employment-related securities (or the securities in which they are an interest) are unpaid or partly paid shares which may be forfeited for non-

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payment of calls and there is no restriction on the meeting of calls by the person by whom they are held, [<sup>F593</sup>or]

- (b) that person may be required to offer for sale or transfer the employment-related securities on the employee ceasing, as a result of misconduct, to be employed by the employer or a person connected with the employer, or

<sup>F594</sup>(c) .....]

[<sup>F595</sup>(2) Subsection (1) does not apply if the main purpose (or one of the main purposes) of the arrangements under which the right or opportunity to acquire the employment-related securities is made available is the avoidance of tax or national insurance contributions.]

#### Textual Amendments

**F592** S. 424 renumbered as s. 424(1) (with effect in accordance with Sch. 2 para. 4(4) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), **Sch. 2 para. 4(1)**

**F593** Word in s. 424(1)(a) inserted (with effect in accordance with Sch. 2 para. 4(4) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), **Sch. 2 para. 4(2)(a)**

**F594** S. 424(1)(c) repealed (with effect in accordance with Sch. 2 para. 4(4) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), **Sch. 2 para. 4(2)(b)**, **Sch. 11 Pt. 2(1)**

**F595** S. 424(2) inserted (with effect in accordance with Sch. 2 para. 4(4) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), **Sch. 2 para. 4(3)**

### *Tax exemption on acquisition*

#### **425 No charge in respect of acquisition in certain cases**

- (1) Subsection (2) applies if the employment-related securities—
- (a) are restricted securities, or a restricted interest in securities, by virtue of subsection (2) of section 423 (provision for transfer, reversion or forfeiture) at the time of the acquisition, and
  - (b) will cease to be restricted securities, or a restricted interest in securities, by virtue of that subsection within 5 years after the acquisition (whether or not they may remain restricted securities or a restricted interest in securities by virtue of the application of subsection (3) or (4) of that section).
- (2) No liability to income tax arises in respect of the acquisition, except as provided by—
- (a) Chapter 3 of this Part (acquisition by conversion),
  - (b) Chapter 3C of this Part (acquisition for less than market value), or
  - (c) Chapter 5 of this Part (acquisition pursuant to securities option).
- (3) But the employer and the employee may elect that subsection (2) is not to apply to the employment-related securities.
- (4) An election under subsection (3)—
- (a) is to be made by agreement by the employer and the employee, and
  - (b) is irrevocable.
- (5) Such an agreement—
- (a) must be made in a form approved by [<sup>F82</sup>the Commissioners for Her Majesty's Revenue and Customs], and
  - (b) may not be made more than 14 days after the acquisition.

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#### Textual Amendments

**F82** Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 102\(2\)](#); S.I. 2005/1126, art. 2(2)(h)

### *Tax charge on post-acquisition chargeable events*

#### **426 Charge on occurrence of chargeable event**

[<sup>F596</sup>(1) If a chargeable event occurs in relation to the employment-related securities, the taxable amount counts as employment income of the employee for the relevant tax year.

(2) For this purpose—

- (a) “chargeable event” has the meaning given by section 427,
- (b) “the taxable amount” is the amount determined under section 428, and
- (c) “the relevant tax year” is the tax year in which the chargeable event occurs.

(3) Relief may be available under section 428A (relief for secondary Class 1 contributions met by employee) against an amount counting as employment income under this section.]

(5) This section is subject to section 429 (case outside charge under this section).

#### Textual Amendments

**F596** S. 426(1)-(3) substituted for s. 426(1)-(4) (1.9.2004) by [Finance Act 2004 \(c. 12\)](#), s. 85(2), [Sch. 16 para. 1\(2\)](#); S.I. 2004/1945, art. 2

#### **427 Chargeable events**

(1) This section applies for the purposes of section 426 (charge on occurrence of chargeable event).

(2) Any of the events mentioned in subsection (3) is a “chargeable event” in relation to the employment-related securities.

(3) The events are—

- (a) the employment-related securities ceasing to be restricted securities, or a restricted interest in securities, in circumstances in which an associated person is beneficially entitled to the employment-related securities after the event,
- (b) the variation of any restriction relating to the employment-related securities in such circumstances (without the employment-related securities ceasing to be restricted securities or a restricted interest in securities), and
- (c) the disposal for consideration of the employment-related securities, or any interest in them, by an associated person otherwise than to another associated person (at a time when they are still restricted securities or a restricted interest in securities).

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- (4) For the purposes of this Chapter there is a variation of a restriction relating to the employment-related securities if any restriction in relation to them is removed or varied.

**428** <sup>F597</sup> **Amount of charge**

- (1) The taxable amount for the purposes of section 426 (charge on occurrence of chargeable event) is—

$$UMV \times (IUPPCPOP)CE$$

- (2) UMV is what would be the market value of the employment-related securities immediately after the chargeable event but for any restrictions.
- (3) IUP is—

$$IUMVDAIUMV$$

where—

IUMV is what would have been the market value of the employment-related securities at the time of the acquisition but for any restrictions, and

DA is the total of any deductible amounts.

- (4) PCP is the aggregate of the result of the application of the formula—

$$IUPPCPOP$$

on each previous event (if any) occurring since the acquisition that was a chargeable event for the purposes of section 426 in relation to the employment-related securities (and so is nil if there has not been such a previous event).

- (5) OP is—

$$UMVAMVUMV$$

where AMV is the actual market value of the employment-related securities immediately after the chargeable event.

- (6) CE is any expenses incurred by the holder of the employment-related securities in connection with—
- (a) the employment-related securities ceasing to be restricted securities or a restricted interest in securities,
  - (b) the variation of a restriction relating to the employment-related securities, or
  - (c) the disposal of the employment-related securities,

together (if the chargeable event is one within section 427(3)(a) or (b) (lifting of restrictions and variation of restriction)) with any consideration given for the employment-related securities ceasing to be restricted securities or a restricted interest in securities or the variation of a restriction relating to the employment-related securities.

- [<sup>F598</sup>(6A) CE also includes any amount that has counted as employment income of the employee in respect of the employment under Chapter 2 of Part 7A in relation to the employment-related securities where the relevant step (within the meaning of that Part) was taken before the chargeable event occurred.]



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- (7) For the purposes of this section each of the following is a “deductible amount”—
- (a) the amount of any consideration given for the acquisition of the employment-related securities,
  - (b) any amount that constituted earnings from the employee’s employment under Chapter 1 of Part 3 (earnings) in respect of the acquisition of the employment-related securities [<sup>F599</sup>(other than an amount of exempt income)],
  - [<sup>F600</sup>(ba) any amount treated as earnings from the employee's employment under section 226A (employee shareholder shares: amount treated as earnings) in respect of the acquisition of the employment-related securities (other than an amount of exempt income),]
  - (c) any amount that counted as employment income in relation to the employment-related securities under Chapter 2 or 4 of this Part as originally enacted,
  - (d) if the employment-related securities were acquired on a conversion of other employment-related securities, any amount that counted as employment income of the employee under Chapter 3 of this Part (including that Chapter as originally enacted) (convertible securities) by reason of the conversion, and
  - (e) if the acquisition of the employment-related securities was pursuant to a securities option, any amount that counted as employment income of the employee under section 476 (or section 476 or 477 as originally enacted) (acquisition of securities pursuant to securities option) by reason of the acquisition.
- (8) If the employment-related securities are convertible securities, or an interest in convertible securities, their market value is to be determined for the purposes of this section as if they were not.
- (9) Where the chargeable event is one within section 427(3)(c) (disposal) and CD is less than AMV, the taxable amount for the purposes of section 426 is the amount determined under subsection (1) multiplied by—
- CDAMV
- where—
- CD is the consideration given for the employment-related securities, and
- AMV is the actual market value of the employment-related securities immediately after the chargeable event.
- [<sup>F601</sup>(10) But subsection (9) does not apply if something which affects the employment-related securities has been done (at or before the time of the chargeable event) as part of a scheme or arrangement the main purpose (or one of the main purposes) of which is the avoidance of tax or national insurance contributions.]

#### Textual Amendments

**F597** The words "(other than an amount of exempt income)" inserted at the end of s. 428(2)(b) as originally enacted (with effect in accordance with s. 49(10) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [s. 49\(3\)](#)

**F598** S. 428(6A) inserted (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 15](#)

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- F599** Words in s. 428(7)(b) inserted (with effect in accordance with s. 49(11) of the amending Act) by Finance Act 2008 (c. 9), s. 49(4)
- F600** S. 428(7)(ba) inserted (1.9.2013) by Finance Act 2013 (c. 29), Sch. 23 paras. 5, 38; S.I. 2013/1755, art. 2
- F601** S. 428(10) inserted (with effect in accordance with Sch. 2 para. 5(2) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), Sch. 2 para. 5

**[<sup>F602</sup>428A] Relief for secondary Class 1 contributions met by employee**

- (1) Relief is available under this section against an amount counting as employment income under section 426 (“the employment income amount”) if—
- (a) an agreement having effect under paragraph 3A of Schedule 1 to the Contributions and Benefits Act has been entered into allowing the secondary contributor to recover from the employee the whole or part of any secondary Class 1 contribution in respect of that amount, or
  - (b) an election having effect under paragraph 3B of that Schedule is in force which has the effect of transferring to the employee the whole or part of the liability to pay secondary Class 1 contributions in respect of that amount.
- (2) The amount of the relief is the total of—
- (a) any amount that under the agreement referred to in subsection (1)(a) is recovered in respect of the employment income amount by the secondary contributor before 5th June in the tax year following that in which the chargeable event occurs, and
  - (b) the amount of any liability in respect of the employment income amount that, by virtue of the election referred to in subsection (1)(b), has become the employee’s liability.
- (3) If notice of withdrawal of approval of the election is given, the amount of the liability referred to in subsection (2)(b) is limited to the amount met before 5th June in the tax year following that in which the chargeable event occurs.
- (4) Relief under this section is given by way of deduction from the amount otherwise counting as employment income.
- (5) Relief under this section does not affect the amount to be taken into account—
- (a) as employment income in determining contributions payable under the Contributions and Benefits Act, or
  - (b) as relevant employment income for the purposes of paragraph 3A or 3B of Schedule 1 to that Act.
- (6) In this section—
- “approval”, in relation to an election, means approval by [<sup>F106</sup>an officer of Revenue and Customs] under paragraph 3B of Schedule 1 to the Contributions and Benefits Act, and
- “secondary contributor” has the same meaning as in that Act (see section 7).]

**Textual Amendments**

- F106** Words in Act substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), Sch. 4 para. 102(1); S.I. 2005/1126, art. 2(2)(h)

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**F602** S. 428A inserted (1.9.2004) by [Finance Act 2004 \(c. 12\)](#), s. 85(2), [Sch. 16 para. 1\(3\)](#); S.I. 2004/1945, art. 2

## 429 Case outside charge under section 426

- (1) Section 426 (charge on occurrence of chargeable event) does not apply if—
- (a) the employment-related securities are shares (or an interest in shares) in a company of a class,
  - (b) the provision by virtue of which the employment-related securities are restricted securities, or a restricted interest in securities, applies to all the company's shares of the class,
  - <sup>F603</sup>(ba) subsection (1A) is satisfied,]
  - (c) all the company's shares of the class (other than the employment-related securities) are affected by an event similar to that which is a chargeable event in relation to the employment-related securities, and
  - (d) subsection (3) or (4) is satisfied.
- (1A) [<sup>F604</sup>This subsection is satisfied unless something which affects the employment-related securities has been done (at or before the time when section 426 would apply) as part of a scheme or arrangement the main purpose (or one of the main purposes) of which is the avoidance of tax or national insurance contributions.]
- (2) For the purposes of subsection (1)(c) shares are affected by an event similar to that which is a chargeable event in relation to the employment-related securities—
- (a) in the case of a chargeable event within section 427(3)(a) (lifting of restrictions), if the provision mentioned in subsection (1)(b) ceases to apply to them,
  - (b) in the case of a chargeable event within section 427(3)(b) (variation of restriction), if that provision is varied in relation to them in the same way as in relation to the employment-related securities, or
  - (c) in the case of a chargeable event within section 427(3)(c) (disposal), if they are disposed of.
- (3) This subsection is satisfied if, immediately before the event that would be a chargeable event, the company is employee-controlled by virtue of holdings of shares of the class.
- (4) This subsection is satisfied if, immediately before that event, the majority of the company's shares of the class are not [<sup>F605</sup>employment-related securities.]
- <sup>F606</sup>(5) .....

### Textual Amendments

**F603** S. 429(1)(ba) inserted (retrospective to 7.5.2004) by [Finance Act 2004 \(c. 12\)](#), [ss. 86\(2\)\(a\)\(3\)\(8\)](#), 86(1)

**F604** S. 429(1A) substituted (with effect in accordance with Sch. 2 para. 6(2) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), [Sch. 2 para. 6](#)

**F605** Words in s. 429(4) substituted (retrospective to 7.5.2004) by [Finance Act 2004 \(c. 12\)](#), [ss. 86\(2\)\(a\)\(5\)\(8\)](#), 86(1)

**F606** S. 429(5) repealed (with effect in accordance with s. 86(8) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 2\(11\)](#)

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### 430 Election for outstanding restrictions to be ignored

- (1) The employer and the employee may elect that—
  - (a) on a chargeable event the taxable amount for the purposes of section 426 is to be determined by applying section 428(1) as if it did not include a reference to OP, and
  - (b) sections 426 to 429 are not to apply to the employment-related securities after that chargeable event.
- (2) An election under this section—
  - (a) is to be made by agreement by the employer and the employee, and
  - (b) is irrevocable.
- (3) Such an agreement—
  - (a) must be made in a form approved by [<sup>F82</sup>the Commissioners for Her Majesty's Revenue and Customs] , and
  - (b) may not be made more than 14 days after the chargeable event.

#### Textual Amendments

**F82** Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 102\(2\)](#); S.I. 2005/1126, art. 2(2)(h)

### 431 Election for full or partial disapplication of this Chapter

- (1) The employer and the employee may elect in relation to employment-related securities which are restricted securities or a restricted interest in securities that—
  - (a) for the relevant tax purposes their market value at the time of the acquisition is to be calculated as if they were not, and
  - (b) sections 425 to 430 are not to apply to the employment-related securities.
- (2) Or the employer and the employee may elect in relation to employment-related securities which are restricted securities or a restricted interest in securities that—
  - (a) for the relevant tax purposes their market value at the time of the acquisition is to be calculated, and
  - (b) sections 425 to 430 are to apply to the employment-related securities, as if any specified restriction did not apply to the employment-related securities.
- (3) For the purposes of subsections (1) and (2) “the relevant tax purposes” are—
  - (a) determining any amount that is to constitute earnings from the employment under Chapter 1 of Part 3 (earnings),
  - [<sup>F607</sup>(aa) determining any amount that is to be treated as earnings from the employment where section 226A applies (employee shareholder shares: amount treated as earnings),]
  - (b) determining the amount of any gain realised on the occurrence of an event that is a chargeable event by virtue of section 439(3)(a) (conversion),
  - (c) operating Chapter 3C of this Part (acquisition of securities for less than market value), <sup>F608</sup> ...
  - (d) determining any amount that counts as employment income of the employee under Chapter 5 of this Part (securities acquired pursuant to securities option) [<sup>F609</sup>, and

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- (e) determining any amount that counts as employment income of the employee in respect of the employment under Chapter 2 of Part 7A (employment income provided through third parties)]
- (4) An election under this section—
  - (a) is to be made by agreement by the employer and the employee, and
  - (b) is irrevocable.
- (5) Such an agreement—
  - (a) must be made in a form approved by [<sup>F82</sup>the Commissioners for Her Majesty's Revenue and Customs] and
  - (b) may not be made more than 14 days after the acquisition.

#### Textual Amendments

- F82** Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 102\(2\)](#); S.I. 2005/1126, art. 2(2)(h)
- F607** S. 431(3)(aa) inserted (1.9.2013) by [Finance Act 2013 \(c. 29\)](#), [Sch. 23 paras. 6, 38](#); S.I. 2013/1755, art. 2
- F608** Word in s. 431(3) omitted (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by virtue of [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 16\(a\)](#)
- F609** S. 431(3)(e) and word inserted (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 16\(b\)](#)

#### Modifications etc. (not altering text)

- C20** S. 431 applied (with modifications) (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 91\(2\)](#)

### [<sup>F610</sup>431] Shares under approved plan or scheme

- (1) Where employment-related securities are restricted securities or a restricted interest in securities, the employer and the employee are to be treated as making an election under section 431(1) in relation to the employment-related securities if they are shares, or an interest in shares, to which this subsection applies.
- (2) Subsection (1) applies to—
  - (a) shares awarded or acquired under an approved share incentive plan (within the meaning of Chapter 6 of this Part) in circumstances in which (in accordance with section 490) no liability to income tax arises,
  - (b) shares acquired by the exercise of a share option granted under an approved SAYE option scheme (within the meaning of Chapter 7 of this Part) in circumstances in which (in accordance with section 519) no liability to income tax arises,
  - (c) shares acquired by the exercise of a share option granted under an approved CSOP scheme (within the meaning of Chapter 8 of this Part) in circumstances in which (in accordance with section 524) no liability to income tax arises, and
  - (d) shares acquired by the exercise of a qualifying option within the meaning of section 527(4) (enterprise management incentives) in circumstances in which (in accordance with section 530) no liability to income tax arises.]

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#### Textual Amendments

**F610** S. 431A inserted (18.6.2004 with effect in accordance with s. 88(11)-(13) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 88\(3\)](#)

### [<sup>F611</sup> **431B** Securities acquired for purpose of avoidance

Where employment-related securities are restricted securities or a restricted interest in securities, the employer and the employee are to be treated as making an election under section 431(1) in relation to the employment-related securities if the main purpose (or one of the main purposes) of the arrangements under which the right or opportunity to acquire the employment-related securities is made available is the avoidance of tax or national insurance contributions.]

#### Textual Amendments

**F611** S. 431B inserted (with effect in accordance with Sch. 2 para. 7(2) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\), Sch. 2 para. 7\(1\)](#)

### **432 Definitions**

- (1) In this Chapter—
  - “interest”, in relation to securities,
  - “securities”,
  - “securities option”, and
  - “shares”,
 have the meaning indicated in section 420.
- (2) In this Chapter “market value” has the meaning indicated in section 421(1).
- (3) For the purposes of this Chapter sections 421(2) and 421A apply for determining the amount of the consideration given for anything and section 421I applies for determining the amount of the consideration given for the acquisition of employment-related securities.
- (4) In this Chapter—
  - “the acquisition”,
  - “the employee” (except in section 429),
  - “the employer”,
  - “the employment”, and
  - “employment-related securities”,
 have the meaning indicated in section 421B(8).
- (5) In this Chapter “associated person” has the meaning indicated in section 421C.
- (6) In this Chapter—
  - “associated company”, and
  - “employee-controlled”,
 have the meaning indicated in section 421H.

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- (7) In this Chapter—  
“restricted interest in securities”, and  
“restricted securities”,  
have the meaning indicated in sections 423 and 424.
- (8) In this Chapter “restriction”, in relation to securities or an interest in securities, means provision relating to the securities or interest which is made by any contract, agreement, arrangement or condition and to which any of subsections (2) to (4) of section 423 applies.
- (9) In this Chapter “variation”, in relation to a restriction, has the meaning indicated in section 427(4).
- (10) In this Chapter “convertible securities” has the same meaning as in Chapter 3 of this Part (see section 436).]

## [<sup>F612</sup>CHAPTER 3

### CONVERTIBLE SECURITIES

#### Textual Amendments

**F612** Pt. 7 Ch. 3 substituted (1.9.2003 with effect in accordance with Sch. 22 para. 4(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 4\(1\)](#); S.I. 2003/1997, art. 2

#### *Introduction*

#### **435 Application of this Chapter**

This Chapter applies to employment-related securities if they are—

- (a) convertible securities, or
- (b) an interest in convertible securities,

at the time of the acquisition.

#### **436 “Convertible securities”**

For the purposes of this Chapter securities are convertible securities if—

- (a) they confer on the holder an [<sup>F613</sup>entitlement (whether immediate or deferred and whether conditional or unconditional)] to convert them into securities of a different description,
- (b) a contract, agreement, arrangement or condition authorises or requires the grant of such an entitlement to the holder if certain circumstances arise, or do not arise, or
- (c) a contract, agreement, arrangement or condition makes provision for the conversion of the securities (otherwise than by the holder) into securities of a different description.

*Status: Point in time view as at 01/09/2013.*

*Changes to legislation: Income Tax (Earnings and Pensions) Act 2003 is up to date with all changes known to be in force on or before 10 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### Textual Amendments

**F613** Words in s. 436(a) substituted (with effect in accordance with Sch. 2 para. 9(4) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 2 para. 9(1)**

### *Tax relief on acquisition*

#### 437 Adjustment of charge

[<sup>F614</sup>(1) For the purposes of—

- (a) any liability to tax under Chapter 1 of Part 3 (earnings), Chapter 10 of Part 3 (taxable benefits: residual liability to charge) [<sup>F615</sup>, section 226A (employee shareholder shares: amount treated as earnings)] or Chapter 5 of this Part (acquisition of securities pursuant to securities option) [<sup>F616</sup> or Chapter 2 of Part 7A (employment income provided through third parties)], and
- (b) the operation of Chapter 3C of this Part (acquisition of securities for less than market value),

the market value of the employment-related securities is to be determined as if they were not convertible securities or an interest in convertible securities]

[<sup>F617</sup>(2) Subsection (1) does not apply if the main purpose (or one of the main purposes) of the arrangements under which the right or opportunity to acquire the employment-related securities is made available is the avoidance of tax or national insurance contributions unless the market value of the employment-related securities determined under subsection (1) would be greater than that determined under subsection (3).

(3) Where subsection (1) does not apply by virtue of subsection (2) the market value of the employment-related securities is to be determined—

- (a) where the securities which are (or an interest in which is) the employment-related securities fall within paragraph (a) of section 436 and the entitlement to convert is not both immediate and unconditional, as if it were,
- (b) where they fall within paragraph (b) of that section, as if the circumstances are such that an entitlement to convert arises immediately, and
- (c) where they fall within paragraph (c) of that section, as if provision were made for their immediate conversion;

and in each case is to be determined as if they were immediately and fully convertible.

(4) In subsection (3) “immediately and fully convertible” means convertible immediately after the acquisition of the employment-related securities so as to obtain the maximum gain that would be possible on a conversion at that time (assuming, where the securities into which the securities may be converted were not in existence at that time and it is appropriate to do so, that they were) without giving any consideration for the conversion or incurring any expenses in connection with it.]

### Textual Amendments

**F614** S. 437(1): s. 437 renumbered as s. 437(1) (with effect in accordance with Sch. 2 para. 9(4) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 2 para. 9(2)**

**F615** Words in s. 437(1)(a) inserted (1.9.2013) by Finance Act 2013 (c. 29), **Sch. 23 paras. 7, 38**; S.I. 2013/1755, art. 2



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**F616** Words in s. 437(1)(a) inserted (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 17](#)

**F617** S. 437(2)-(4) inserted (with effect in accordance with Sch. 2 para. 9(4) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), [Sch. 2 para. 9\(3\)](#)

### *Tax charge on post-acquisition chargeable events*

#### **438 Charge on occurrence of chargeable event**

- [<sup>F618</sup>(1) If a chargeable event occurs in relation to the employment-related securities, the taxable amount counts as employment income of the employee for the relevant tax year.
- (2) For this purpose—
- (a) “chargeable event” has the meaning given by section 439,
  - (b) “the taxable amount” is the amount determined under section 440, and
  - (c) “the relevant tax year” is the tax year in which the chargeable event occurs.
- (3) Relief may be available under section 442A (relief for secondary Class 1 contributions met by employee) against an amount counting as employment income under this section.]
- (5) This section is subject to section 443 (case outside charge under this section).

#### **Textual Amendments**

**F618** S. 438(1)-(3) substituted for s. 438(1)-(4) (1.9.2004) by [Finance Act 2004 \(c. 12\)](#), s. 85(2), [Sch. 16 para. 2\(2\)](#); S.I. 2004/1945, art. 2

#### **439 Chargeable events**

- (1) This section applies for the purposes of section 438 (charge on occurrence of chargeable event).
- (2) Any of the events mentioned in subsection (3) is a “chargeable event” in relation to the employment-related securities.
- (3) The events are—
- (a) the conversion of the employment-related securities (or the securities in which they are an interest) into securities of a different description in circumstances in which an associated person is beneficially entitled to the securities into which the employment-related securities are converted,
  - (b) the disposal for consideration of the employment-related securities, or any interest in them, by an associated person otherwise than to another associated person (at a time when they are still convertible securities or an interest in convertible securities),
  - (c) the release for consideration of the entitlement to convert the employment-related securities (or the securities in which they are an interest) into securities of a different description, and
  - (d) the receipt by an associated person of a benefit in money or money’s worth in connection with the entitlement to convert (other than securities acquired on

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the conversion of the employment-related securities or consideration such as is mentioned in paragraph (b) or (c)).

- (4) A benefit received on account of any disability (within the meaning of <sup>[F619]</sup>the Equality Act 2010 in England and Wales and Scotland, or] the Disability Discrimination Act 1995) of the employee is to be disregarded for the purposes of subsection (3)(d).

#### Textual Amendments

**F619** Words in s. 439(4) inserted by [Equality Act 2010 \(c. 15\)](#), [Sch. 26 para. 51](#) (as inserted (1.10.2010) by [S.I. 2010/2279](#), [art. 1\(2\)](#), [Sch. 1 para. 5](#)) (with [S.I. 2010/2317](#), [art. 2](#))

#### 440 Amount of charge

- (1) The taxable amount for the purposes of section 438 (charge on occurrence of chargeable event) is—

AGCE

- (2) AG is the amount of any gain realised on the occurrence of the chargeable event.
- (3) CE is the amount of any consideration given for the entitlement to convert the employment-related securities or the securities in which they are an interest together with the amount of any expenses incurred by the holder of the employment-related securities in connection with the conversion, disposal, release or receipt.

<sup>[F620]</sup>(3A) If (because of subsection (2) of section 437) subsection (1) of that section did not apply in relation to the employment-related securities, the taxable amount is to be reduced by the amount by which—

- (a) the market value of the employment-related securities for the purposes specified in that subsection, exceeded
- (b) what it would have been had that subsection applied,

(less the aggregate of any amount by which the taxable amount on any previous chargeable event relating to the employment-related securities has been reduced under this subsection).]

- (4) Section 441 explains what is the amount of any gain realised on the occurrence of a chargeable event.
- (5) Section 442 explains whether consideration is given for the entitlement to convert the employment-related securities or the securities in which they are an interest and, if it is, what is its amount.

#### Textual Amendments

**F620** [S. 440\(3A\)](#) inserted (with effect in accordance with [Sch. 2 para. 10\(2\)](#) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), [Sch. 2 para. 10\(1\)](#)

#### 441 Amount of gain realised on occurrence of chargeable event

- (1) This section applies for the purposes of section 440 (amount of charge on occurrence of chargeable event).

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(2) The amount of the gain realised on the occurrence of an event that is a chargeable event by virtue of section 439(3)(a) (conversion) is—

CMVCS(CMVERS+CC)

(3) The amount of the gain realised on the occurrence of an event that is a chargeable event by virtue of section 439(3)(b) (disposal) is—

DCCMVERS

(4) The amount of the gain realised on the occurrence of an event that is a chargeable event by virtue of section 439(3)(c) (release of entitlement to convert) is the amount of the consideration received by an associated person in respect of the release.

(5) The amount of the gain realised on the occurrence of an event that is a chargeable event by virtue of section 439(3)(d) (receipt of benefit) is the amount or market value of the benefit.

(6) CMVCS—

(a) if the employment-related securities are securities, is the market value at the time of the chargeable event of the securities into which they are converted (determined, where those securities are themselves convertible securities, as if they were not), or

(b) if the employment-related securities are an interest in securities, is the same proportion of that market value as the market value of the interest in the securities in which the employment-related securities are an interest bears to the market value of those securities.

(7) CMVERS is the market value of the employment-related securities at the time of the chargeable event determined as if they were not convertible securities or an interest in convertible securities.

(8) CC is the amount of any consideration given for the conversion of the employment-related securities.

(9) DC is the amount of the consideration given on the disposal.

[<sup>F621</sup>(10) Subsection (11) applies for the purposes of subsection (2) or (3) if—

(a) prior to the acquisition, the employment-related securities were the subject of a relevant step within the meaning of Part 7A by reason of which Chapter 2 of that Part applied in respect of the employment, and

(b) the amount mentioned in subsection (11)(a) is higher than the amount mentioned in subsection (11)(b).

(11) The amount of the gain realised is reduced (but not below nil) by the amount equal to—

(a) the amount that counted as employment income of the employee in respect of the employment under Chapter 2 of Part 7A, less

(b) the market value of the employment-related securities when the relevant step was taken determined as if they were not convertible securities or an interest in convertible securities.]

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### Textual Amendments

**F621** S. 441(10)(11) inserted (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 18](#)

## 442 Amount of consideration given for entitlement to convert

- (1) This section applies for the purposes of section 440 (amount of charge on occurrence of chargeable event).
- (2) Consideration is to be regarded as given for the entitlement to convert the employment-related securities (or the securities in which they are an interest) if (and only if) ACS exceeds NCMV.
- (3) The amount of the consideration to be regarded as so given is the amount of the excess.
- (4) ACS is the amount of the consideration given for the acquisition of the employment-related securities.
- (5) NCMV is the market value of the employment-related securities at the time of the acquisition, determined as if they were not convertible securities or an interest in convertible securities.

## <sup>F622</sup>442 Relief for secondary Class 1 contributions met by employee

- (1) Relief is available under this section against an amount counting as employment income under section 438 (“the employment income amount”) if—
  - (a) an agreement having effect under paragraph 3A of Schedule 1 to the Contributions and Benefits Act has been entered into allowing the secondary contributor to recover from the employee the whole or part of any secondary Class 1 contribution in respect of that amount, or
  - (b) an election having effect under paragraph 3B of that Schedule is in force which has the effect of transferring to the employee the whole or part of the liability to pay secondary Class 1 contributions in respect of that amount.
- (2) The amount of the relief is the total of—
  - (a) any amount that under the agreement referred to in subsection (1)(a) is recovered in respect of the employment income amount by the secondary contributor before 5th June in the tax year following that in which the chargeable event occurs, and
  - (b) the amount of any liability in respect of the employment income amount that, by virtue of the election referred to in subsection (1)(b), has become the employee’s liability.
- (3) If notice of withdrawal of approval of the election is given, the amount of the liability referred to in subsection (2)(b) is limited to the amount met before 5th June in the tax year following that in which the gain is realised.
- (4) Relief under this section is given by way of deduction from the amount otherwise counting as employment income.
- (5) Relief under this section does not affect the amount to be taken into account—

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- (a) as employment income in determining contributions payable under the Contributions and Benefits Act, or
  - (b) as relevant employment income for the purposes of paragraph 3A or 3B of Schedule 1 to that Act.
- (6) In this section—
- “approval”, in relation to an election, means approval by [<sup>F106</sup>an officer of Revenue and Customs] under paragraph 3B of Schedule 1 to the Contributions and Benefits Act, and
  - “secondary contributor” has the same meaning as in that Act (see section 7).]

#### Textual Amendments

**F106** Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 102\(1\)](#); S.I. 2005/1126, art. 2(2)(h)

**F622** S. 442A inserted (1.9.2004) by [Finance Act 2004 \(c. 12\)](#), s. 85(2), [Sch. 16 para. 2\(3\)](#); S.I. 2004/1945, art. 2

#### 443 Case outside charge under section 438

- (1) Section 438 (charge on occurrence of chargeable event) does not apply if—
- (a) the employment-related securities are shares (or an interest in shares) in a company of a class,
  - (b) all the company’s shares of the class are convertible securities,
  - [<sup>F623</sup>(ba) subsection (1A) is satisfied,]
  - (c) all the company’s shares of the class (other than the employment-related securities) are affected by an event similar to that which is a chargeable event in relation to the employment-related securities, and
  - (d) subsection (3) or (4) is satisfied.

[<sup>F624</sup>(1A) This subsection is satisfied unless something which affects the employment-related securities has been done (at or before the time when section 438 would apply) as part of a scheme or arrangement the main purpose (or one of the main purposes) of which is the avoidance of tax or national insurance contributions.]

- (2) For the purposes of subsection (1)(c) shares are affected by an event similar to that which is a chargeable event in relation to the employment-related securities—
- (a) in the case of a chargeable event within section 439(3)(a) (conversion), if they are converted into securities of a different description,
  - (b) in the case of a chargeable event within section 439(3)(b) (disposal), if they are disposed of,
  - (c) in the case of a chargeable event within section 439(3)(c) (release of entitlement to convert), if the entitlement to convert them into securities of a different description is released, or
  - (d) in the case of a chargeable event within section 439(3)(d) (receipt of benefit), if a similar benefit is received in respect of the entitlement to convert them.
- (3) This subsection is satisfied if, immediately before the event that would be a chargeable event, the company is employee-controlled by virtue of holdings of shares of the class.

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(4) This subsection is satisfied if, immediately before that event, the majority of the company's shares of the class are not [<sup>F625</sup>employment-related securities.]

<sup>F626</sup>(5) .....

#### **Textual Amendments**

**F623** S. 443(1)(ba) inserted (retrospective to 7.5.2004) by [Finance Act 2004 \(c. 12\)](#), ss. 86(2)(b)(3)(8), 86(1)

**F624** S. 443(1A) substituted (with effect in accordance with Sch. 2 para. 11(2) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), **Sch. 2 para. 11(1)**

**F625** Words in s. 443(4) substituted (retrospective to 7.5.2004) by [Finance Act 2004 \(c. 12\)](#), ss. 86(2)(b)(5)(8), 86(1)

**F626** S. 443(5) repealed (with effect in accordance with s. 86(8) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), **Sch. 42 Pt. 2(11)**

### *Supplementary*

#### **444 Definitions**

- (1) In this Chapter—
  - “interest”, in relation to securities,
  - “securities”, and
  - “shares”,
 have the meaning indicated in section 420.
- (2) In this Chapter “market value” has the meaning indicated in section 421(1).
- (3) For the purposes of this Chapter sections 421(2) and 421A apply for determining the amount of the consideration given for anything and section 421I applies for determining the amount of the consideration given for the acquisition of employment-related securities.
- (4) In this Chapter—
  - “the acquisition”,
  - “the employee” (except in section 443), and
  - “employment-related securities”,
 have the meaning indicated in section 421B(8).
- (5) In this Chapter “associated person” has the meaning indicated in section 421C.
- (6) In this Chapter—
  - “associated company”, and
  - “employee-controlled”,
 have the meaning indicated in section 421H.
- (7) In this Chapter “convertible securities” has the meaning indicated in section 436.]

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## [<sup>F627</sup> CHAPTER 3A

### SECURITIES WITH ARTIFICIALLY DEPRESSED MARKET VALUE

#### Textual Amendments

**F627** Pt. 7 Ch. 3A inserted (16.4.2003 with effect in accordance with Sch. 22 para. 5(2)-(4) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), **Sch. 22 para. 5(1)**

#### *Introduction*

#### **446A Application of this Chapter**

- (1) This Chapter applies in certain cases where the market value of employment-related securities (or other relevant securities or interests in securities) is reduced by things done otherwise than for genuine commercial purposes.
- (2) The following are among the things that are, for the purposes of this Chapter, done otherwise than for genuine commercial purposes—
  - (a) anything done as part of a scheme or arrangement the main purpose, or one of the main purposes, of which is the avoidance of tax or national insurance contributions, and
  - (b) any transaction between companies which are members of the same group on terms which are not such as might be expected to be agreed between persons acting at arm's length (other than a payment for group relief).
- (3) In subsection (2)(b)—
  - (a) “group” means a company and its 51% subsidiaries, and
  - (b) “group relief” has the same meaning as in [<sup>F628</sup>section 183(1) of CTA 2010].

#### Textual Amendments

**F628** Words in s. 446A(3)(b) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 1 para. 387** (with Sch. 2)

#### *Tax charge on acquisition*

#### **446B Charge on acquisition**

- (1) This section applies where the market value of employment-related securities at the time of the acquisition has been reduced by at least 10% as a result of things done otherwise than for genuine commercial purposes within the period of 7 years ending with the acquisition.
- (2) The taxable amount determined under section 446C counts as employment income of the employee for the tax year in which the acquisition occurs.
- (3) But this section does not apply if section 425(2) (no charge on acquisition of certain restricted securities or restricted interests in securities) applies in relation to the employment-related securities.

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- (4) This section does not affect any liability to income tax arising in respect of the acquisition of the employment-related securities under—
- (a) Chapter 1 of Part 3 (earnings),
  - (b) Chapter 10 of Part 3 (taxable benefits: residual liability to charge),
  - [ section 226A (employee shareholder shares: amount treated as earnings),]
  - <sup>F629</sup>(ba)
  - (c) Chapter 3 of this Part (acquisition by conversion),
  - (d) Chapter 3C of this Part (acquisition for less than market value), <sup>F630</sup> ...
  - (e) Chapter 5 of this Part (acquisition pursuant to securities option) [<sup>F631</sup>, or
  - (f) Chapter 2 of Part 7A (employment income provided through third parties)]

#### Textual Amendments

- F629** S. 446B(4)(ba) inserted (1.9.2013) by [Finance Act 2013 \(c. 29\)](#), [Sch. 23 paras. 8, 38](#); [S.I. 2013/1755](#), [art. 2](#)
- F630** Word in s. 446B(4) omitted (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by virtue of [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 19\(a\)](#)
- F631** S. 446B(4)(f) and word inserted (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 19\(b\)](#)

#### 446C Amount of charge

- (1) The taxable amount for the purposes of section 446B (charge on acquisition) is—
- FMVMV
- (2) FMV is what would be the market value of the employment-related securities at the time of the acquisition if the things mentioned in section 446B(1) had not been done.
  - (3) MV is the actual market value of the employment-related securities at the time of the acquisition.
  - (4) But where what would be MV is less than the amount of any consideration given for the acquisition of the employment-related securities, MV is the amount of that consideration.
- [ Subsection (4B) applies if, prior to the acquisition, the employment-related securities
- <sup>F632</sup>(4A) were the subject of a relevant step within the meaning of Part 7A by reason of which Chapter 2 of that Part applied in respect of the employment.
- (4B) If what would be MV in accordance with subsection (3) or (4) (as the case may be) is less than the amount that counted as employment income of the employee in respect of the employment under Chapter 2 of Part 7A, MV is the amount of that employment income instead of the amount determined in accordance with subsection (3) or (4).]
- (5) This section is subject to section 446D (restricted securities and convertible securities).

#### Textual Amendments

- F632** S. 446C(4A)(4B) inserted (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 20](#)



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#### **446D Restricted securities and convertible securities**

- (1) Where the employment-related securities are restricted securities or a restricted interest in securities, FMV (but not MV) is to be determined as if the employment-related securities were not restricted securities or a restricted interest in securities; and, accordingly, sections 426 to 431 (post-acquisition charges on restricted securities) do not apply to the employment-related securities.
- (2) Where the employment-related securities are convertible securities or an interest in convertible securities, FMV and MV are to be determined as if they were not.

#### *Other tax charges*

#### **446E Charge on restricted securities**

- (1) This section applies where the market value of employment-related securities which are restricted securities or a restricted interest in securities is artificially low—
  - (a) immediately after an event which is a chargeable event in relation to the employment-related securities for the purposes of section 426 (charge on restricted securities),
  - <sup>F633</sup>(aa) [ immediately before the employment-related securities are disposed of (in circumstances which do not constitute such an event) or are cancelled without being disposed of,] or
  - (b) on 5th April in any year.
- (2) The market value of the employment-related securities is artificially low where it has been reduced by at least 10% as a result of things done otherwise than for genuine commercial purposes within the relevant period.
- <sup>F634</sup>(3) “The relevant period” is the period beginning—
  - (a) if section 425(2) (no charge on acquisition of certain restricted securities or restricted interests in securities) applied in relation to the employment-related securities, 7 years before the acquisition, and
  - (b) in any other case, 7 years before the relevant date,and ending with the relevant date.
- (4) “The relevant date” is—
  - (a) in a case within subsection (1)(a), the date on which the chargeable event concerned occurs,
  - (b) in a case within subsection (1)(aa), the date on which the disposal or cancellation concerned occurs, and
  - (c) in a case within subsection (1)(b), the 5th April concerned.
- (5) Where this section applies in a case within subsection (1)(aa) or (b), a chargeable event within section 427(3)(a) (lifting of restrictions) is to be treated as occurring in relation to the employment-related securities on the relevant date.
- (6) In every case where this section applies, subsection (1) of section 428 (amount of charge on restricted securities) applies as if the reference in subsection (2) of that section to what would be the market value of the employment-related securities immediately after the chargeable event but for any restrictions were to what would be their market value at the appropriate time but for the matters to be disregarded.

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- (7) “The appropriate time” is—
- (a) in a case within subsection (1)(a) or (b), the time immediately after the chargeable event concerned, and
  - (b) in a case within subsection (1)(aa), the time immediately before the chargeable event concerned.
- (8) “The matters to be disregarded” are—
- (a) any restrictions,
  - (b) the things done as mentioned in subsection (2), and
  - (c) if the employment-related securities are about to be disposed of or cancelled, that fact.
- (9) Where this section applies in a case within subsection (1)(aa), section 428(1) applies with the omission of the reference to OP.
- (10) Where this section applies in a case within subsection (1)(a) and the chargeable event concerned is within section 427(3)(c) (disposal for consideration), section 428 applies with the omission of subsection (9) (case where consideration is less than actual market value).]

#### Textual Amendments

**F633** S. 446E(1)(aa) inserted (retrospective to 7.5.2004) by [Finance Act 2004 \(c. 12\), s. 87\(2\)\(4\)](#) (with s. 87(5))

**F634** Ss. 446E(3)-(10) substituted for (retrospective to 7.5.2004) by [Finance Act 2004 \(c. 12\), s. 87\(3\)\(4\)](#) (with s. 87(5))

#### 446F Adjustment of market value: conditional interests

- (1) This section applies where the market value of an employee’s interest in shares which is only conditional is artificially low immediately after a chargeable event relating to the shares under section 427 as originally enacted.
- (2) The market value of the shares is artificially low where it has been reduced by at least 10% as a result of things done otherwise than for genuine commercial purposes within the period beginning—
  - (a) 7 years before the chargeable event, or
  - (b) with 16th April 2003,
 whichever is later.
- (3) There is a chargeable event in relation to shares if section 427 (as originally enacted) applies in relation to them.
- (4) The reference in the definition of MV in section 428(1) (as originally enacted) to the market value of the employee’s interest is to what would be the market value but for the reduction as a result of the things done as mentioned in subsection (2).
- (5) Expressions used in this section and in Chapter 2 of this Part as originally enacted have the same meaning in this section as in that Chapter.

*Status: Point in time view as at 01/09/2013.*

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#### **446G Adjustment of market value: consideration for entitlement to convert**

- (1) This section applies where the market value of employment-related securities which are convertible securities or an interest in convertible securities (determined as if they were not) has been reduced by at least 10% as a result of things done otherwise than for genuine commercial purposes within the period of 7 years ending with the acquisition.
- (2) The reference to the market value of the employment-related securities in the definition of NCMV in section 442(5) (value of convertible securities at time of acquisition) is to what would be the market value but for the reduction as a result of the things done as mentioned in subsection (1) (and but for the fact that they are convertible securities or an interest in convertible securities).

#### **446H Adjustment of market value: charge on conversion**

- (1) This section applies where the market value of securities (“the converted securities”) into which employment-related securities (or securities in which employment-related securities are an interest) are converted is artificially low at the time of an event which is a chargeable event in relation to the employment-related securities by virtue of section 439(3)(a) (conversion).
- (2) The market value of the converted securities is artificially low where it has been reduced by at least 10% as a result of things done otherwise than for genuine commercial purposes within the period of 7 years ending with the chargeable event.
- (3) The references to the market value of the converted securities in the definition of CMVCS in section 441(6) (amount of gain realised by conversion) are to what would be the market value but for the reduction as a result of the things done as mentioned in subsection (2).

#### **446I Adjustment of consideration or benefit received**

- (1) This section applies where any consideration or benefit mentioned in—
  - (a) section 428(9) (consideration on disposal of restricted securities),
  - (b) section 441(4), (5) or (9) (consideration for disposal of convertible securities or release of entitlement to convert or benefit received in respect of entitlement to convert),
  - (c) section 446C(4) (securities with artificially depressed market value: MV to be amount of consideration),
  - (d) sections 446X and 446Y(3) (consideration for disposal of securities exceeding market value), or
  - (e) section 448 (securities benefit not otherwise subject to tax),consists (in whole or in part) in the provision of securities or an interest in securities the market value of which is artificially low.
- (2) The market value of any securities or interest in securities is artificially low where it has been reduced by at least 10% as a result of things done otherwise than for genuine commercial purposes within the period of 7 years ending with the receipt of the consideration or benefit.
- (3) The market value of the consideration or benefit consisting in the provision of the securities or interest in securities is for the purposes of the provision or provisions

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concerned to be taken to be what it would be but for the reduction as a result of the things done as mentioned in subsection (2).

### **Disapplication of exceptions from charges**

**F635 446IA**

- (1) Section 429 (exception from charge under section 426 for certain company shares) does not prevent section 426 (restricted securities: chargeable events) applying in relation to an event if section 446E or 446I(1)(a) would have effect in relation to the event.
- (2) Section 443 (exception from charge under section 438 for certain company shares) does not prevent section 438 (convertible securities: chargeable events) applying in relation to an event if section 446G, 446H or 446I(1)(b) would have effect in relation to the event.
- (3) Section 446R (exception from charge under Chapter 3C for certain company shares) does not prevent that Chapter (securities acquired for less than market value) applying in relation to employment-related securities if section 446B would have effect in relation to them.
- (4) Section 449 (exception from charge under Chapter 4 for certain company shares) does not prevent that Chapter (benefits from securities) applying in relation to a benefit if section 446I(1)(e) would have effect in relation to the benefit.]

#### **Textual Amendments**

**F635** S. 446IA inserted (retrospective to 7.5.2004) by [Finance Act 2004 \(c. 12\), s. 86\(6\)\(8\)](#)

### *Supplementary*

#### **446J Definitions**

- (1) In this Chapter—
  - “interest”, in relation to securities, and
  - “securities”,
 have the meaning indicated in section 420.
- (2) In this Chapter “market value” has the meaning indicated in section 421(1).
- (3) For the purposes of this Chapter sections 421(2) and 421A apply for determining the amount of the consideration given for anything and section 421I applies for determining the amount of the consideration given for the acquisition of employment-related securities.
- (4) In this Chapter—
  - “the acquisition”,
  - “the employee”, and
  - “employment-related securities”,
 have the meaning indicated in section 421B(8).
- (5) In this Chapter—
  - “restricted interest in securities”, and

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“restricted securities”,  
have the same meaning as in Chapter 2 of this Part (see sections 423 and 424).

(6) In this Chapter “restriction” has the same meaning as in Chapter 2 of this Part (see section 432(8)).

(7) In this Chapter “convertible securities” has the same meaning as in Chapter 3 of this Part (see section 436).]

## [<sup>F636</sup>CHAPTER 3B

### SECURITIES WITH ARTIFICIALLY ENHANCED MARKET VALUE

#### Textual Amendments

**F636** Pt. 7 Ch. 3B inserted (16.4.2003 with effect in accordance with Sch. 22 para. 6(2)-(4) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 6\(1\)](#)

#### Introduction

#### 446K Application of this Chapter

- (1) This Chapter applies in certain cases where the market value of employment-related securities is increased by things done otherwise than for genuine commercial purposes.
- (2) The following are among the things that are, for the purposes of this Chapter, done otherwise than for genuine commercial purposes—
  - (a) anything done as part of a scheme or arrangement the main purpose, or one of the main purposes, of which is the avoidance of tax or national insurance contributions, and
  - (b) any transaction between companies which are members of the same group on terms which are not such as might be expected to be agreed between persons acting at arm’s length (other than a payment for group relief).
- (3) In subsection (2)(b)—
  - (a) “group” means a company and its 51% subsidiaries, and
  - (b) “group relief” has the same meaning as in [<sup>F637</sup>section 183(1) of CTA 2010].
- (4) In this Chapter, in relation to the market value of the employment-related securities—

“non-commercial increase” means an increase in the market value as a result of anything done otherwise than for genuine commercial purposes, and

“non-commercial reduction” means a reduction in the market value as a result of anything done otherwise than for genuine commercial purposes.

#### Textual Amendments

**F637** Words in s. 446K(3)(b) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 388](#) (with [Sch. 2](#))

*Status: Point in time view as at 01/09/2013.*

*Changes to legislation: Income Tax (Earnings and Pensions) Act 2003 is up to date with all changes known to be in force on or before 10 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### *Charge on non-commercial increases*

#### **446L Charge on non-commercial increases**

- (1) This section applies in relation to employment-related securities where on a date that is the valuation date in relation to a relevant period IMV is at least 10% greater than MV.
- (2) The taxable amount determined under subsection (4) counts as employment income of the employee for the relevant tax year (but subject to sections 446M and 446N).
- (3) The “relevant tax year” is the tax year in which the valuation date falls.
- (4) The taxable amount is—
  - IMVMV
- (5) IMV is the market value of the employment-related securities on the valuation date.
- (6) MV is the amount that would be the market value of the employment-related securities on the valuation date if any non-commercial increases during the relevant period were disregarded.
- (7) For the purposes of subsections (5) and (6)—
  - (a) any restrictions having effect in relation to the employment-related securities on the valuation date, and
  - (b) any non-commercial reductions during the relevant period, are to be disregarded.

#### **446M Securities subject to restriction on valuation date**

- (1) This section applies where on the valuation date the employment-related securities are relevant restricted securities.
- (2) The amount determined under section 446L(4) is to be multiplied by CP.
- (3) CP is—
  - 1OP

where OP is the amount that would be determined under section 428(5) (amount of charge on chargeable event in relation to restricted securities) on the valuation date if there were on that date a chargeable event (resulting in no tax charge).
- (4) For the purposes of this section the employment-related securities are relevant restricted securities if they are restricted securities or a restricted interest in securities but are not subject to—
  - (a) an election under section 430 (election to ignore outstanding restrictions) in relation to a chargeable event which occurred before the valuation date, or
  - (b) an election under section 431(1) (election to treat securities as not subject to restrictions).
- (5) If sections 425 to 430 apply to the employment-related securities in accordance with section 431(2) (election to treat securities as not subject to specified restrictions), the reference in subsection (3) to the amount that would be determined under section 428(5) is to the amount that would be so determined in accordance with section 431(2).

*Status: Point in time view as at 01/09/2013.*

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#### **446N Securities subject to restriction during relevant period**

- (1) This section applies where the employment-related securities have been restricted securities or a restricted interest in securities at any time during the relevant period.
- (2) DA is to be deducted from the amount determined under section 446L(4) (or, where section 446M applies, the amount determined under sections 446L(4) and 446M).
- (3) DA is the aggregate of the amounts arrived at under subsection (4) in relation to each event occurring during the relevant period that is a chargeable event in relation to the employment-related securities.
- (4) The amount is—  
TAARTA
- (5) TA is the taxable amount actually determined under section 428 in relation to the chargeable event.
- (6) ARTA is the taxable amount which would have been determined under section 428 in relation to the chargeable event if any non-commercial increases during the period—
  - (a) beginning at the same time as the relevant period, and
  - (b) ending immediately before the chargeable event,had been disregarded.
- [<sup>F638</sup>(7) If any of the employment income arising under section 426 by virtue of the chargeable event is foreign securities income within the meaning of section 41C, reduce the taxable amount mentioned in subsection (5) by the amount of the foreign securities income.
- (8) If any of the employment income that would have arisen (if the non-commercial interests mentioned in subsection (6) had been disregarded) under section 426 by virtue of the chargeable event would have been foreign securities income (within that meaning), reduce the taxable amount mentioned in subsection (6) by the amount of the foreign securities income.]

#### **Textual Amendments**

**F638** S. 446N(7)(8) inserted (with effect in accordance with Sch. 7 para. 80 of the amending Act) by Finance Act 2008 (c. 9), **Sch. 7 para. 32**

#### **[<sup>F639</sup>446NA Disapplication of exceptions from charges**

- (1) None of the provisions specified in subsection (2) (exceptions from charges for certain company shares) apply in relation to employment-related securities if the market value of the employment-related securities at the time of the acquisition has been increased by at least 10% by non-commercial increases within the period of 7 years ending with the acquisition.
- (2) The provisions are—
  - (a) section 429 (restricted securities),
  - (b) section 443 (convertible securities),
  - (c) section 446R (securities acquired for less than market value), and
  - (d) section 449 (post-acquisition benefits from securities).

*Status: Point in time view as at 01/09/2013.*

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- (3) If section 446L (market value on valuation date increased by more than 10% by non-commercial increases during relevant period) applies in relation to employment-related securities, section 429 does not subsequently apply in relation to the employment-related securities.]

#### Textual Amendments

**F639** S. 446NA inserted (retrospective to 7.5.2004) by [Finance Act 2004 \(c. 12\), s. 86\(7\)\(8\)](#)

### *Supplementary*

#### **446O “Relevant period” and “valuation date”**

- (1) This section explains what is meant by “relevant period” and “valuation date” in this Chapter.
- (2) The first relevant period in relation to employment-related securities is the period beginning with the date of the acquisition and ending with the following 5th April.
- (3) After the first relevant period, each period beginning with 6th April and ending with the following 5th April is a relevant period in relation to the employment-related securities.
- (4) But if this Chapter ceases to apply to the employment-related securities during a relevant period, the relevant period ends with the date on which this Chapter ceases to apply to them.
- (5) And if this Chapter ceases to apply to an interest in the employment-related securities during a relevant period, the relevant period ends in relation to that interest with the date on which this Chapter ceases to apply to that interest.
- (6) In a case where subsection (5) applies, this Chapter has effect separately in relation to that interest and the remainder of the employment-related securities.
- (7) In this Chapter “valuation date”, in relation to a relevant period, means the date with which the relevant period ends.

#### Modifications etc. (not altering text)

**C21** [S. 446O](#) modified (with effect in accordance with Sch. 2 para. 2(8) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\), Sch. 2 para. 2\(8\)\(a\)](#)

#### **446P Definitions**

- (1) In this Chapter “interest”, in relation to securities, has the meaning indicated in section 420.
- (2) In this Chapter “market value” has the meaning indicated in section 421(1).
- (3) In this Chapter—
  - “the acquisition”,
  - “the employee”, and



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“employment-related securities”,  
have the meaning indicated in section 421B(8).

(4) In this Chapter—

“restricted interest in securities”, and  
“restricted securities”,

have the same meaning as in Chapter 2 of this Part (see sections 423 and 424).

(5) In this Chapter “chargeable event” means an event which is a chargeable event for the purposes of section 426.

(6) In this Chapter “restriction” has the same meaning as in Chapter 2 of this Part (see section 432(8)).

(7) In this Chapter—

“non-commercial increase”, and  
“non-commercial reduction”,

have the meaning indicated in section 446K(4).

(8) In this Chapter—

“relevant period”, and  
“valuation date”,

have the meaning indicated in section 446O.]

## [<sup>F640</sup>CHAPTER 3C

### SECURITIES ACQUIRED FOR LESS THAN MARKET VALUE

#### Textual Amendments

**F640** Pt. 7 Ch. 3C inserted (with effect in accordance with Sch. 22 para. 7(2) of the amending Act) by  
[Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 7\(1\)](#)

#### 446Q Application of this Chapter

(1) This Chapter applies if—

- (a) no payment is made for employment-related securities at or before the time of the acquisition, or
- (b) the payment made for employment-related securities at or before that time is less than their market value.

(2) For the purposes of subsection (1) any obligation to make a payment or further payment after the time of the acquisition is to be disregarded.

(3) Where the employment-related securities are, or are an interest in, securities which are not fully paid up, the reference in subsection (1) to the market value of the employment-related securities is to what it would be if the securities were fully paid up.

*Status: Point in time view as at 01/09/2013.*

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(4) If section 425(2) (no charge on acquisition of certain restricted securities or restricted interests in securities) applies in relation to the employment-related securities, this Chapter has effect as if the employment-related securities were not acquired until the occurrence of the first event which is a chargeable event for the purposes of section 426 in relation to the employment-related securities.

(5) This section is subject to section 446R (case outside this Chapter).

#### **446R Case outside this Chapter**

(1) This Chapter does not apply if—

(a) the employment-related securities are shares (or an interest in shares) in a company of a class,

(b) all the company's shares of the class are acquired either for no payment or for a payment less than their market value,

<sup>F641</sup>(ba) [ subsection (1A) is satisfied,] and

(c) subsection (3) or (4) is satisfied.

<sup>F642</sup>(1A) This subsection is satisfied unless something which affects the employment-related securities has been done (at or before the time of the acquisition) as part of a scheme or arrangement the main purpose (or one of the main purposes) of which is the avoidance of tax or national insurance contributions.]

(2) Where the company's shares of the class are not fully paid up, the reference in subsection (1) to their market value is to what it would be if they were fully paid up.

(3) This subsection is satisfied if, at the time of the acquisition of the employment-related securities, the company is employee-controlled by virtue of holdings of shares of the class.

(4) This subsection is satisfied if, at that time, the majority of the company's shares of the class are not <sup>F643</sup>employment-related securities.]

<sup>F644</sup>(5) . . . . .

#### **Textual Amendments**

**F641** S. 446R(1)(ba) inserted (retrospective to 7.5.2004) by [Finance Act 2004 \(c. 12\)](#), **ss. 86(2)(c)(3)(8)**, 86(1)

**F642** S. 446R(1A) substituted (with effect in accordance with Sch. 2 para. 13(2) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), **Sch. 2 para. 13**

**F643** Words in s. 446R(4) substituted (retrospective to 7.5.2004) by [Finance Act 2004 \(c. 12\)](#), **ss. 86(2)(c)(5)(8)**, 86(1)

**F644** S. 446R(5) repealed (with effect in accordance with s. 86(8) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), **Sch. 42 Pt. 2(11)**

#### **446S Notional loan**

(1) Where this Chapter applies an interest-free loan (“the notional loan”) is to be treated as having been made to the employee by the employer at the time of the acquisition.

*Status: Point in time view as at 01/09/2013.*

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- (2) The provisions listed in subsection (3) apply as though the notional loan were an employment-related loan as defined in section 174 if and for so long as the employment has not terminated.
- (3) The provisions are—
- section 175 (benefit of taxable cheap loan treated as earnings),
  - section 178 (exception for loans where interest qualifies for tax relief),
  - section 180 (threshold for benefit of loan to be treated as earnings),
  - section 182 (normal method of calculation: averaging),
  - section 183 (alternative method of calculation),
  - section 184 (interest treated as paid),
  - section 185 (apportionment of cash equivalent in case of joint loan etc), and
  - section 187 (aggregation of loans by close company to director).

[ This section is not affected by section 554Z2(2).]  
F645(4)

#### Textual Amendments

**F645** S. 446S(4) inserted (with effect in accordance with Sch . 2 para. 52-59 of the amending Act) by Finance Act 2011 (c. 11), Sch. 2 para. 21

#### 446T Amount of notional loan

- (1) The amount of the notional loan initially outstanding is—

MVDA

where—

MV is the market value of the employment-related securities at the time of the acquisition, and

DA is the total of any deductible amounts.

- (2) Where the employment-related securities are, or are an interest in, securities which are not fully paid up, the reference in subsection (1) to the market value of the employment-related securities is to what it would be if the securities were fully paid up.
- (3) For the purposes of subsection (1) each of the following is a “deductible amount”—
- (a) any payment made for the employment-related securities by the employee, and any payment so made by the person by whom they were acquired (if not the employee), at or before the time of the acquisition,
  - (b) any amount that constitutes earnings from the employee’s employment under Chapter 1 of Part 3 (earnings) in respect of the acquisition of the employment-related securities [F646 (other than an amount of exempt income)],
- [ F647 (ba) any amount treated as earnings from the employee's employment under section 226A (employee shareholder shares: amount treated as earnings) in respect of the acquisition of the employment-related securities (other than an amount of exempt income),]

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- (c) if section 425(2) (no charge on acquisition of certain restricted securities or restricted interests in securities) applies in relation to the employment-related securities, any amount that counts as employment income of the employee under section 426 by reason of the first event which is a chargeable event for the purposes of that section in relation to the employment-related securities,
  - (d) if the employment-related securities were acquired on a conversion of other employment-related securities, any amount that counts as employment income of the employee under section 438 (charge on conversion) by reason of the conversion, <sup>F648</sup> ...
  - (e) if the acquisition is pursuant to a securities option, any amount that counted as employment income of the employee under section 476 (acquisition of securities pursuant to securities option) in respect of the acquisition [<sup>F649</sup>, and
  - (f) any amount that has counted as employment income of the employee in respect of the employment under Chapter 2 of Part 7A in relation to the employment-related securities.]
- (4) The amount of the notional loan outstanding at any subsequent time is the difference between—
- (a) the amount initially outstanding, and
  - (b) the amount of any payments or further payments made for the employment-related securities after the acquisition but before that time.

#### Textual Amendments

- F646** Words in s. 446T(3)(b) inserted (with effect in accordance with s. 49(12) of the amending Act) by [Finance Act 2008 \(c. 9\), s. 49\(5\)](#)
- F647** S. 446T(3)(ba) inserted (1.9.2013) by [Finance Act 2013 \(c. 29\), Sch. 23 paras. 9, 38; S.I. 2013/1755, art. 2](#)
- F648** Word in s. 446T(3) omitted (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by virtue of [Finance Act 2011 \(c. 11\), Sch. 2 para. 22\(a\)](#)
- F649** S. 446T(3)(f) and word inserted (with effect in accordance with Sch. 2 para. 52-59 of the amending Act) by [Finance Act 2011 \(c. 11\), Sch. 2 para. 22\(b\)](#)

#### 446U Discharge of notional loan

- (1) The notional loan is treated as discharged when—
- (a) the employment-related securities are disposed of otherwise than to an associated person, or
  - (b) if the employment-related securities were securities, or an interest in securities, not fully paid up at the time of the acquisition, the outstanding or contingent liability to pay for them is released, transferred or adjusted so as no longer to bind any associated person [<sup>F650</sup> or
  - (c) something which affects the employment-related securities is done as part of a scheme or arrangement the main purpose (or one of the main purposes) of which is the avoidance of tax or national insurance contributions.]
- (2) If the notional loan is discharged as the result of an event specified in subsection (1), the amount of the notional loan outstanding immediately before the occurrence of the event counts as employment income of the employee for the relevant tax year (whether or not the employment has terminated before or since the acquisition).

*Status: Point in time view as at 01/09/2013.*

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- (3) The “relevant tax year” is the tax year in which the notional loan is treated as discharged.
- (4) The notional loan is also treated as discharged when—
  - (a) payments or further payments for the employment-related securities equal to the amount initially outstanding in relation to them have been made by an associated person, or
  - (b) the employee dies.

#### Textual Amendments

**F650** S. 446U(1)(c) and word inserted (with effect in accordance with Sch. 2 para. 14(2) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 2 para. 14**

#### **Pre-acquisition avoidance cases**

**F651** 446UA

- (1) Sections 446S to 446U do not apply if the main purpose (or one of the main purposes) of the arrangements under which the right or opportunity to acquire the employment-related securities is made available is the avoidance of tax or national insurance contributions.
- (2) But instead an amount equal to what would (apart from this section) be the amount of the notional loan initially outstanding by virtue of sections 446S and 446T counts as employment income of the employee for the tax year in which the acquisition takes place.]

#### Textual Amendments

**F651** S. 446UA inserted (with effect in accordance with Sch. 2 para. 15(2) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 2 para. 15**

#### **446V Chapter to be additional to other income tax charges**

This Chapter does not affect any liability to income tax arising in respect of the acquisition under—

- (a) Chapter 1 of Part 3 (earnings),
- (b) Chapter 10 of Part 3 (taxable benefits: residual liability to charge),  
[ section 226A (employee shareholder shares: amount treated as earnings),]
- F652** (ba)
- (c) Chapter 3 of this Part (acquisition by conversion),
- (d) Chapter 3A of this Part (securities with artificially depressed market value),  
**F653** ...
- (e) Chapter 5 of this Part (acquisition of securities pursuant to securities option)  
[**F654**, or
- (f) Chapter 2 of Part 7A (employment income provided through third parties)]

*Status: Point in time view as at 01/09/2013.*

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#### Textual Amendments

- F652** S. 446V(ba) inserted (1.9.2013) by [Finance Act 2013 \(c. 29\)](#), [Sch. 23 paras. 10, 38](#); [S.I. 2013/1755, art. 2](#)
- F653** Word in s. 446V omitted (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by virtue of [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 23\(a\)](#)
- F654** S. 446V(f) and word inserted (with effect in accordance with Sch. 2 para. 52-59 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 23\(b\)](#)

#### 446W Definitions

- (1) In this Chapter—  
     “interest”, in relation to securities,  
     “securities”,  
     “securities option”, and  
     “shares”,  
     have the meaning indicated in section 420.
- (2) In this Chapter “market value” has the meaning indicated in section 421(1).
- (3) In this Chapter “the acquisition” has the meaning indicated in section 421B(8) (but subject to section 446Q(4)).
- (4) In this Chapter—  
     “the employment”,  
     “the employee” (except in section 446R),  
     “the employer”, and  
     “employment-related securities”,  
     have the meaning indicated in section 421B(8).
- (5) In this Chapter “associated person” has the meaning indicated in section 421C.
- (6) In this Chapter—  
     “associated company”, and  
     “employee-controlled”,  
     have the meaning indicated in section 421H.
- (7) In this Chapter “the notional loan” has the meaning indicated in section 446S(1).]

### [<sup>F655</sup>CHAPTER 3D

#### SECURITIES DISPOSED OF FOR MORE THAN MARKET VALUE

#### Textual Amendments

- F655** Pt. 7 Ch. 3D inserted (with effect in accordance with Sch. 22 para. 8(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 8\(1\)](#)

*Status: Point in time view as at 01/09/2013.*

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#### **446X Application of this Chapter**

This Chapter applies if—

- (a) employment-related securities are disposed of by an associated person so that no associated person is any longer beneficially entitled to them, and
- (b) the disposal is for a consideration which exceeds the market value of the employment-related securities at the time of the disposal.

#### **446Y Amount treated as income**

- (1) Where this Chapter applies the amount determined under subsection (3) counts as employment income of the employee for the relevant tax year.
- (2) The “relevant tax year” is the tax year in which the disposal occurs.
- (3) The amount is—

CDMVDA

where—

CD is the amount of the consideration given on the disposal,

MV is the market value of the employment-related securities at the time of the disposal, and

DA is the amount of any expenses incurred in connection with the disposal.

#### **446Z Definitions**

- (1) In this Chapter “market value” has the meaning indicated in section 421(1).
- (2) For the purposes of this Chapter sections 421(2) and 421A apply for determining the amount of the consideration given for anything.
- (3) In this Chapter—  
“the employee”, and  
“employment-related securities”,  
have the meaning indicated in section 421B(8).
- (4) In this Chapter “associated person” has the meaning indicated in section 421C.]

## [<sup>F656</sup>CHAPTER 4

### POST-ACQUISITION BENEFITS FROM SECURITIES

#### **Textual Amendments**

**F656** Pt. 7 Ch. 4 (ss. 447-450) substituted for Pt. 7 Ch. 4 (ss. 447-470) (16.4.2003 with effect in accordance with Sch. 22 para. 9(2)-(4) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 9\(1\)](#)

*Status: Point in time view as at 01/09/2013.*

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#### **447 Charge on other chargeable benefits from securities**

- (1) This Chapter applies if an associated person receives a benefit [<sup>F657</sup>in connection with employment-related securities] .
- (2) The taxable amount determined under section 448 counts as employment income of the employee for the relevant tax year.
- (3) The “relevant tax year” is the tax year in which the benefit is received.
- (4) [<sup>F658</sup>If the benefit is otherwise chargeable to income tax this section does not apply unless something has been done which affects the employment-related securities as part of a scheme or arrangement the main purpose (or one of the main purposes) of which is the avoidance of tax or national insurance contributions.]
- (5) This section is subject to section 449 (case outside this Chapter).

#### **Textual Amendments**

**F657** Words in s. 447(1) substituted (with effect in accordance with Sch. 2 para. 18(4) of the amending Act) by *Finance (No. 2) Act 2005 (c. 22), Sch. 2 para. 18(2)*

**F658** S. 447(4) substituted (with effect in accordance with Sch. 2 para. 18(4) of the amending Act) by *Finance (No. 2) Act 2005 (c. 22), Sch. 2 para. 18(3)*

#### **448 Amount of charge**

The taxable amount for the purposes of section 447 (charge on other chargeable benefits) is the amount or market value of the benefit.

#### **449 Case outside this Chapter**

- (1) This Chapter does not apply if—
  - (a) the employment-related securities are shares (or an interest in shares) in a company of a class,
  - (b) a similar benefit is received by the owners of all the company’s shares of the class,
  - [<sup>F659</sup>(ba) subsection (1A) is satisfied,] and
  - (c) subsection (2) or (3) is satisfied.
- [<sup>F660</sup>(1A) This subsection is satisfied unless something which affects the employment-related securities has been done as part of a scheme or arrangement the main purpose (or one of the main purposes) of which is the avoidance of tax or national insurance contributions.]
- (2) This subsection is satisfied if, immediately before the receipt of the benefit, the company is employee-controlled by virtue of holdings of shares of the class.
- (3) This subsection is satisfied if, immediately before the receipt of the benefit, the majority of the company’s shares of the class are not [<sup>F661</sup>employment-related securities.]
- [<sup>F662</sup>(4) . . . . .]



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### Textual Amendments

- F659** S. 449(1)(ba) inserted (retrospective to 7.5.2004) by [Finance Act 2004 \(c. 12\)](#), ss. 86(2)(d)(3)(8), 86(1)
- F660** S. 449(1A) substituted (with effect in accordance with Sch. 2 para. 19(2) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), **Sch. 2 para. 19**
- F661** Words in s. 449(3) substituted (retrospective to 7.5.2004) by [Finance Act 2004 \(c. 12\)](#), ss. 86(2)(d)(5)(8), 86(1)
- F662** S. 449(4) repealed (with effect in accordance with s. 86(8) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), **Sch. 42 Pt. 2(11)**

## 450 Definitions

- (1) In this Chapter—  
“interest”, in relation to shares, and  
“shares”,  
have the meaning indicated in section 420(8).
- (2) In this Chapter “market value” has the meaning indicated in section 421(1).
- (3) In this Chapter—  
“the employee” (except in section 449), and  
“employment-related securities”,  
have the meaning indicated in section 421B(8).
- (4) In this Chapter “associated person” has the meaning indicated in section 421C.
- (5) In this Chapter—  
“associated company”, and  
“employee-controlled”,  
have the meaning indicated in section 421H.]

*Tax charge where restrictions or rights varied*

## <sup>F656</sup> 451 Amount of charge

.....

## <sup>F656</sup> 452 Cases outside charge under section 449

.....

### Modifications etc. (not altering text)

- C22** S. 452(1) applied (with effect in accordance with s. 21(1) of the amending Act) by [Finance Act 2005 \(c. 7\)](#), **s. 21(2)**
- C23** S. 452(2)(a) applied (with effect in accordance with s. 21(1) of the amending Act) by [Finance Act 2005 \(c. 7\)](#), **s. 21(2)**
- C24** S. 452(2)(c)(d) applied (with effect in accordance with s. 21(1) of the amending Act) by [Finance Act 2005 \(c. 7\)](#), **s. 21(2)**

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**C25** S. 452(2)(c)(d) applied (with effect in accordance with s. 21(1) of the amending Act) by [Finance Act 2005 \(c. 7\), s. 21\(2\)](#)

*Tax charge on increase in value of shares of dependent subsidiaries*

**F656 453 Charge on increase in value of shares of dependent subsidiary**

.....

**F656 454 Chargeable increases**

.....

**F656 455 Amount of charge**

.....

**F656 456 Cases outside charge under section 453**

.....

*Tax charge on other benefits from shares*

**F656 457 Charge on other chargeable benefits from shares**

.....

**F656 458 Chargeable benefits**

.....

**F656 459 Amount of charge**

.....

**F656 460 Cases outside charge under section 457**

.....

*Supplementary provisions*

**F656 461 Related acquisitions of additional shares**

.....

**F656 462 Company reorganisations etc.**

.....

*Status: Point in time view as at 01/09/2013.*

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**F656 463 Disposals of shares to connected persons etc. ignored**

.....

**F656 464 Application to interests in shares**

.....

**F656 465 Duty to notify acquisitions of shares or interests in shares**

.....

**F656 466 Duty to notify chargeable events and chargeable benefits**

.....

*Interpretation*

**F656 467 Meaning of “dependent subsidiary”**

.....

**F656 468 Meaning of “employee-controlled”**

.....

**F656 469 Shares “held by outside shareholders”**

.....

**F656 470 Minor definitions**

.....

**[<sup>F663</sup>CHAPTER 4A**

**SHARES IN RESEARCH INSTITUTION SPIN-OUT COMPANIES**

**Textual Amendments**

**F663** Pt. 7 Ch. 4A inserted (with effect in accordance with s. 20(5)-(7) of the amending Act) by [Finance Act 2005 \(c. 7\), s. 20\(1\)](#)

*Introduction*

**451 Application of this Chapter**

(1) This Chapter applies where—

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- (a) an agreement is made for one or more transfers of intellectual property (an “intellectual property agreement”) from one or more research institutions to a company (a “spin-out company”),
  - (b) a person acquires shares (or an interest in shares) in the spin-out company before the intellectual property agreement is made or within the period of 183 days beginning with the date on which it is made,
  - (c) the right or opportunity to acquire the shares (or interest in shares) was available by reason of employment by the research institution (or any of them) or by the spin-out company, and
  - (d) the person is involved in research in relation to any of the intellectual property that is the subject of the intellectual property agreement.
- (2) But this Chapter does not apply if the avoidance of tax or national insurance is the main purpose (or one of the main purposes) of the arrangements under which the right or opportunity to acquire the shares (or interest in shares) is made available.

#### *Tax relief on acquisition*

### 452 Market value on acquisition

- (1) For the relevant tax purposes the market value of the shares (or interest in shares) at the time of the acquisition is to be calculated disregarding the effect on that market value of the intellectual property agreement and any transfer of intellectual property pursuant to it.
- (2) For the purposes of subsection (1) “the relevant tax purposes” are—
- (a) determining any amount that is to constitute earnings from the employment under Chapter 1 of Part 3 (earnings),
  - (b) determining the amount of any gain realised on the occurrence of an event that is a chargeable event by virtue of section 439(3)(a) (conversion),
  - (c) operating Chapter 3C of this Part (acquisition of securities for less than market value),<sup>F664</sup> ...
  - (d) determining any amount that counts as employment income of the employee under Chapter 5 of this Part (securities acquired pursuant to securities option)<sup>F665</sup>, and
  - (e) determining any amount that counts as employment income of the employee in respect of the employment under Chapter 2 of Part 7A (employment income provided through third parties)]

#### **Textual Amendments**

**F664** Word in s. 452(2) omitted (with effect in accordance with [Sch. 2 paras. 52-59](#) of the amending Act) by virtue of [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 24\(a\)](#)

**F665** S. 452(2)(e) and word inserted (with effect in accordance with [Sch. 2 paras. 52-59](#) of the amending Act) by virtue of [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 24\(b\)](#)

#### **Modifications etc. (not altering text)**

**C22** S. 452(1) applied (with effect in accordance with s. 21(1) of the amending Act) by [Finance Act 2005 \(c. 7\)](#), [s. 21\(2\)](#)

**C23** S. 452(2)(a) applied (with effect in accordance with s. 21(1) of the amending Act) by [Finance Act 2005 \(c. 7\)](#), [s. 21\(2\)](#)

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**C24** S. 452(2)(c)(d) applied (with effect in accordance with s. 21(1) of the amending Act) by [Finance Act 2005 \(c. 7\), s. 21\(2\)](#)

### *Tax relief following acquisition*

#### **453 Taxable amount under Chapter 4**

- (1) If the shares are (or interest in shares is) acquired before the intellectual property agreement is made, or before any transfer of intellectual property pursuant to it, and any benefit deriving from the intellectual property agreement or any such transfer is received by the employee in connection with the shares (or interest in shares), the taxable amount determined under section 448 (post-acquisition benefits from securities: amount of charge) is to be treated as nil.
- (2) But this section does not apply if something which affects the shares (or interest in shares) has been done (at or before the time when the intellectual property agreement is made or intellectual property is transferred) as part of a scheme or arrangement the main purpose (or one of the main purposes) of which is the avoidance of tax or national insurance contributions.

#### **Modifications etc. (not altering text)**

**C26** S. 453(1) applied (with effect in accordance with s. 21(1) of the amending Act) by [Finance Act 2005 \(c. 7\), s. 21\(2\)](#)

### *Disapplication of Chapters 2 and 3B*

#### **454 Deemed election for disapplication of Chapter 2**

- (1) If the shares are restricted securities (or the interest in shares is a restricted interest in securities), the employer and the employee are to be treated as making an election under section 431(1) (election for disapplication of Chapter 2) in relation to the shares (or interest in shares).
- (2) But the employer and the employee may agree that subsection (1) is not to apply in relation to the shares (or interest in shares).
- (3) An agreement under subsection (2) is irrevocable and—
  - (a) must be made in a form approved by the Board of the Inland Revenue, and
  - (b) may not be made more than 14 days after the acquisition.
- (4) If the employer and the employee make an agreement under subsection (2) in relation to the shares (or interest in shares), subsection (5) applies for the purposes of determining the taxable amount for the purposes of section 426 (charge on occurrence of chargeable event) on the occurrence on any chargeable event in relation to the shares (or interest in shares).
- (5) In determining under section 428(3) (amount of charge) what would have been the market value of the shares (or interest in shares) at the time of the acquisition but for any restrictions (IUMV), that market value is to be calculated disregarding the

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effect on that market value of the intellectual property agreement and any transfer of intellectual property pursuant to it.

#### **455 Disapplication of Chapter 3B**

For the purposes of Chapter 3B (securities with artificially enhanced market value) neither the intellectual property agreement nor any transfer of intellectual property pursuant to it are things done otherwise than for genuine commercial purposes.

#### *Supplementary*

#### **456 Meaning of “intellectual property” and “transfer”**

- (1) In this Chapter “intellectual property” means—
  - (a) any patent, trade mark, registered design, copyright or design right, plant breeders' rights or rights under section 7 of the Plant Varieties Act 1997,
  - (b) any right under the law of a country or territory outside the United Kingdom corresponding to, or similar to, a right within paragraph (a),
  - (c) any information or technique not protected by a right within paragraph (a) or (b) but having industrial, commercial or other economic value,
  - (d) any licence or other right in respect of anything within paragraph (a), (b) or (c), or
  - (e) any goodwill (having the meaning that it has for accounting purposes) associated with anything within paragraphs (a) to (d).
- (2) The Treasury may by order amend the definition of “intellectual property” in subsection (1).
- (3) For the purposes of this Chapter a transfer of intellectual property includes—
  - (a) a sale of the intellectual property,
  - (b) the grant of a licence or other right in respect of it, and
  - (c) the assignment of a licence or other right in respect of it.

#### **457 Meaning of “research institution”**

- (1) In this Chapter “research institution” means—
  - (a) any university or other institution that is a publicly funded institution as defined in section 41(2) of the Higher Education Act 2004, or
  - (b) any institution that carries out research activities otherwise than for profit and that is neither controlled nor wholly or mainly funded by a person who carries on activities for profit.
- (2) The Treasury may by order amend subsection (1) to include in or exclude from the definition of “research institution” a person specified in the order or persons of a description specified in the order.

#### **458 Meaning of “involved in research”**

For the purposes of this Chapter a person is involved in research in relation to any intellectual property transferred or to be transferred from one or more research institutions if—

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- (a) he has been actively engaged for the research institution (or any of them) in connection with research (whether as an employee or otherwise), and
- (b) that research is relevant to anything to which the intellectual property relates.

#### **459 Transfer of intellectual property by controlled company**

- (1) For the purposes of this Chapter where a research institution has control of a company, a transfer of intellectual property from the company is to be treated as a transfer from the research institution.
- (2) For the purposes of this Chapter where two or more research institutions together have control of a company, a transfer of intellectual property from the company is to be treated as a transfer from those research institutions.
- (3) In this section “control” means control within the meaning [<sup>F666</sup>given by sections 450 and 451 of CTA 2010].

#### **Textual Amendments**

**F666** Words in s. 459(3) substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 389** (with Sch. 2)

#### **460 Definitions**

- (1) In this Chapter—  
“interest”, in relation to shares, and  
“shares”,  
have the meaning indicated in section 420.
- (2) In this Chapter “market value” has the meaning indicated in section 421(1).
- (3) In this Chapter—  
“the acquisition”,  
“the employee”, and  
“the employer”,  
have the meaning indicated in section 421B(8).
- (4) In this Chapter—  
“restricted interest in securities”, and  
“restricted securities”,  
have the meaning indicated in sections 423 and 424.]

*Status: Point in time view as at 01/09/2013.*

*Changes to legislation: Income Tax (Earnings and Pensions) Act 2003 is up to date with all changes known to be in force on or before 10 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## [<sup>F667</sup>CHAPTER 5

### SECURITIES OPTIONS

#### Textual Amendments

**F667** Pt. 7 Ch. 5 substituted (16.4.2003 for specified purposes and otherwise 1.9.2003 with effect in accordance with Sch. 22 para. 10(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 10\(1\)](#); S.I. 2003/1997, art. 2

#### *Introduction*

#### **471 Options to which this Chapter applies**

- (1) This Chapter applies to a securities option acquired by a person where the right or opportunity to acquire the securities option is available by reason of an employment of that person or any other person.
- (2) For the purposes of subsection (1) “employment” includes a former or prospective employment.
- (3) A right or opportunity to acquire a securities option made available by a person’s employer, or a person connected with a person’s employer, is to be regarded for the purposes of subsection (1) as available by reason of an employment of that person unless—
  - (a) the person by whom the right or opportunity is made available is an individual, and
  - (b) the right or opportunity is made available in the normal course of the domestic, family or personal relationships of that person.
- (4) A right or opportunity to acquire a securities option available by reason of holding employment-related securities is to be regarded for the purposes of subsection (1) as available by reason of the same employment as that by reason of which the right or opportunity to acquire the employment-related securities was available.
- (5) In this Chapter—
 

“the acquisition”, in relation to an employment-related securities option, means the acquisition of the employment-related securities option pursuant to the right or opportunity available by reason of the employment,

“the employment” means the employment by reason of which the right or opportunity to acquire the employment-related securities option is available (“the employee” and “the employer” being construed accordingly), and

“employment-related securities option” means a securities option to which this Chapter applies.

#### **472 Associated persons**

- (1) For the purposes of this Chapter the following are “associated persons” in relation to an employment-related securities option—
  - (a) the person who acquired the employment-related securities option on the acquisition,



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- (b) (if different) the employee, and
  - (c) any relevant linked person.
- (2) A person is a relevant linked person if—
- (a) that person (on the one hand), and
  - (b) either the person who acquired the employment-related securities option on the acquisition or the employee (on the other),  
[<sup>F668</sup>are or have been connected or (without being or having been connected) are or have been] members of the same household.
- (3) But a company which would otherwise be a relevant linked person is not if it is—
- (a) the employer,
  - (b) the person from whom the employment-related securities option was acquired, or
  - (c) the person by whom the right or opportunity to acquire the employment-related securities option was made available.

#### Textual Amendments

**F668** Words in s. 472(2) substituted (18.6.2004 with application in accordance with s. 90(5) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 90\(3\)](#)

### 473 Introduction to taxation of securities options

- (1) The starting-point is that section 475 contains an exemption from the liability to tax that might otherwise arise under—
- (a) Chapter 1 of Part 3 (earnings), or
  - (b) Chapter 10 of that Part (taxable benefits: residual liability to charge),
- when an employment-related securities option is acquired.
- (2) Liability to tax may arise, when securities are acquired pursuant to the employment-related securities option, under—
- (a) section 446B (charge on acquisition where market value of securities or interest artificially depressed),
  - (b) Chapter 3C of this Part (acquisition of securities for less than market value), or
  - (c) section 476 (acquisition of securities pursuant to securities option).
- (3) Liability to tax may also arise by virtue of section 476 when—
- (a) the employment-related securities option is assigned or released, or
  - (b) a benefit is received in connection with the employment-related securities option.
- (4) There are special rules relating to share options acquired under—
- (a) approved SAYE option schemes (see Chapter 7 of this Part),
  - (b) approved CSOP schemes (see Chapter 8 of this Part), or
  - (c) enterprise management incentives (see Chapter 9 of this Part).

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#### 474 Cases where this Chapter does not apply

- [<sup>F669</sup>(1) This Chapter (apart from sections 473 and 483) does not apply in relation to an employment-related securities option if the acquisition occurs in a tax year that is not a split year as respects the employee and—
- (a) the earnings from the employment are not general earnings to which section 15, 22 or 26 applies (earnings for year when employee UK resident), or
  - (b) had there been any earnings from the employment, they would not have been general earnings to which any of those sections applied.
- (1A) This Chapter (apart from sections 473 and 483) does not apply in relation to an employment-related securities option if the acquisition occurs in the UK part of a tax year that is a split year as respects the employee and—
- (a) the earnings from the employment attributable to that part of the year are not general earnings to which section 15, 22 or 26 applies (earnings for year when employee UK resident), or
  - (b) had there been any earnings from the employment attributable to that part of the year, they would not have been general earnings to which any of those sections applied.
- (1B) This Chapter (apart from sections 473 and 483) does not apply in relation to an employment-related securities option if the acquisition occurs in the overseas part of a tax year that is a split year as respects the employee.]
- (2) This Chapter (apart from sections 473 and 483) does not apply in the case of a former employment if it would not apply if the acquisition had taken place in the last tax year in which the employment was held.
  - (3) This Chapter (apart from sections 473 and 483) does not apply in the case of a prospective employment if it would not apply if the acquisition had taken place in the first tax year in which the employment is held.
  - (4) Where the employment-related securities option is a new option (within the meaning of section 483), the references in this section to the acquisition are to the acquisition of the old option (within the meaning of that section).

#### Textual Amendments

**F669** S. 474(1)-(1B) substituted for s. 474(1) (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 67](#)

#### *Tax relief on acquisition of option*

#### 475 No charge in respect of acquisition of option

- (1) No liability to income tax arises in respect of the acquisition of an employment-related securities option.
- (2) Subsection (1) is subject to section 526 (approved CSOP schemes: charge where share option granted at a discount).

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### *Tax charge on post-acquisition chargeable events*

#### **476 Charge on occurrence of chargeable event**

- [<sup>F670</sup>(1) If a chargeable event occurs in relation to an employment-related securities option, the taxable amount counts as employment income of the employee for the relevant tax year.
- (2) For this purpose—
- (a) “chargeable event” has the meaning given by section 477,
  - (b) “the taxable amount” is the amount determined under section 478, and
  - (c) “the relevant tax year” is the tax year in which the chargeable event occurs.
- (3) Relief under section 481 or 482 (relief for secondary Class 1 contributions or special contribution met by employee) may be available against an amount counting as employment income under this section.]
- [<sup>F671</sup>(5) If the employee has been divested of the employment-related securities option by operation of law—
- (a) income tax is charged on the amount determined under section 478, and
  - (b) the person liable for any tax so charged is the relevant person in relation to the chargeable event (see section 477(7)).]

[<sup>F672</sup>(5A) An amount charged under subsection (5)(a) is treated for income tax purposes as an amount of income.]

(6) This section is subject to—

    - section 519 (approved SAYE option schemes: no charge in respect of exercise of share option by employee),
    - section 524 (approved CSOP schemes: no charge in respect of exercise of share option by employee), and
    - section 530 (enterprise management incentives: no charge on exercise by employee of option to acquire shares at market value).

#### **Textual Amendments**

- F670** S. 476(1)-(3) substituted for s. 476(1)-(4) (1.9.2004) by [Finance Act 2004 \(c. 12\), s. 85\(2\), Sch. 16 para. 3\(2\)](#); [S.I. 2004/1945, art. 2](#)
- F671** S. 476(5) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 598](#) (with [Sch. 2](#))
- F672** S. 476(5A) inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 438](#) (with [Sch. 2](#))

#### **477 Chargeable events**

- (1) This section applies for the purposes of section 476 (charge on occurrence of chargeable event).
- (2) Any of the events mentioned in subsection (3) is a “chargeable event” in relation to the employment-related securities option unless it occurs on or after the death of the employee.
- (3) The events are—

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- (a) the acquisition of securities pursuant to the employment-related securities option by an associated person,
  - (b) the assignment for consideration of the employment-related securities option by an associated person otherwise than to another associated person or the release for consideration of the employment-related securities option by an associated person, or
  - (c) the receipt by an associated person of a benefit [<sup>F673</sup>in connection with the employment-related securities option (other than one within paragraph (a) or (b)).]
- (4) For the purposes of subsection (3)(a) securities are acquired at the time when a beneficial interest is acquired (and not, if different, the time when the securities are conveyed or transferred).
- (5) A benefit received on account of any disability (within the meaning of [<sup>F674</sup>the Equality Act 2010 in England and Wales and Scotland, or] the Disability Discrimination Act 1995) of the employee is to be disregarded for the purposes of subsection (3)(c).
- (6) A benefit in money or money's worth received in consideration for or otherwise in connection with—
- (a) failing or undertaking not to acquire securities pursuant to the employment-related securities option, or
  - (b) granting or undertaking to grant to another person a right to acquire securities which are subject to the employment-related securities option or any interest in them,
- is to be regarded for the purposes of subsection (3)(c) as received in connection with the employment-related securities option.
- (7) For the purposes of section 476(5) [<sup>F675</sup>(charge to income tax)] the relevant person in relation to a chargeable event is—
- (a) in the case of an event that is a chargeable event by virtue of subsection (3) (a), the person by whom the securities are acquired, and
  - (b) in the case of an event that is a chargeable event by virtue of subsection (3) (b) or (c), the person by whom the consideration or benefit is received.

#### **Textual Amendments**

**F673** Words in s. 477(3)(c) substituted (18.6.2004 with application in accordance with s. 90(5) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [s. 90\(4\)](#)

**F674** Words in s. 477(5) inserted by [Equality Act 2010 \(c. 15\)](#), [Sch. 26 para. 52](#) (as inserted (1.10.2010) by [S.I. 2010/2279](#), [art. 1\(2\)](#), [Sch. 1 para. 5](#)) (with [S.I. 2010/2317](#), [art. 2](#))

**F675** Words in s. 477(7) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), [s. 883\(1\)](#), [Sch. 1 para. 599](#) (with [Sch. 2](#))

#### **478 Amount of charge**

- (1) The taxable amount for the purposes of section 476 (charge on occurrence of chargeable event) is—

AGDA

where—

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AG is the amount of any gain realised on the occurrence of the chargeable event, and

DA is the total of any deductible amounts.

- (2) Section 479 explains what is the amount of any gain realised on the occurrence of a chargeable event.
- (3) Section 480 specifies what are deductible amounts.

#### **479 Amount of gain realised on occurrence of chargeable event**

- (1) This section applies for the purposes of section 478 (amount of charge on occurrence of chargeable event).
- (2) The amount of the gain realised on the occurrence of an event that is a chargeable event by virtue of section 477(3)(a) (acquisition of securities) is (subject to subsection (4))—

MVC

- (3) In subsection (2)—

MV is the market value of the securities that are acquired at the time when they are acquired, and

C is the amount of any consideration given for the securities that are acquired.

[<sup>F676</sup>(3A) Sections 226B to 226D (deemed payment for acquisition of employee shareholder shares) provide for the determination of the amount of consideration, if any, which is given for employee shareholder shares (within the meaning of section 226A(6)).]

- (4) But the amount of the gain realised on the occurrence of an event that is a chargeable event by virtue of section 477(3)(a) (acquisition of securities) is calculated—
  - (a) if section 531 (enterprise management incentives: limitation of charge on exercise of option to acquire shares below market value) applies, in accordance with that section, and
  - (b) if section 532 (enterprise management incentives: modified tax consequences following disqualifying events) applies, in accordance with that section.
- (5) The amount of the gain realised on the occurrence of an event that is a chargeable event by virtue of section 477(3)(b) (assignment or release of option) is the amount of the consideration given for the assignment or release.
- (6) The amount of the gain realised on the occurrence of an event that is a chargeable event by virtue of section 477(3)(c) (receipt of benefit in connection with option) is the amount or market value of the benefit.
- (7) But if—
  - (a) the consideration mentioned in subsection (5), or
  - (b) the benefit mentioned in subsection (6),consists (in whole or in part) in the provision of securities or an interest in securities the market value of which has been reduced by at least 10% as a result of things done otherwise than for genuine commercial purposes within the period of 7 years ending with the receipt of the consideration or benefit, its market value is to be taken to be what it would be but for the reduction.
- (8) The following are among the things that are, for the purposes of subsection (7), done otherwise than for genuine commercial purposes—

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- (a) anything done as part of a scheme or arrangement the main purpose, or one of the main purposes, of which is the avoidance of tax or national insurance contributions, and
  - (b) any transaction between companies which are members of the same group on terms which are not such as might be expected to be agreed between persons acting at arm's length (other than a payment for group relief).
- (9) In subsection (8)(b)—
- (a) “group” means a company and its 51% subsidiaries, and
  - (b) “group relief” has the same meaning as in [F677section 183(1) of CTA 2010].

#### Textual Amendments

**F676** S. 479(3A) inserted (1.9.2013) by Finance Act 2013 (c. 29), Sch. 23 paras. 12, 38; S.I. 2013/1755, art. 2

**F677** Words in s. 479(9)(b) substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), Sch. 1 para. 390 (with Sch. 2)

## 480 Deductible amounts

- (1) This section applies for the purposes of section 478 (amount of charge on occurrence of chargeable event).
- (2) The amount of—
  - (a) any consideration given for the acquisition of the employment-related securities option, and
  - (b) the amount of any expenses incurred in connection with the acquisition of securities, assignment, release or receipt which constitutes the chargeable event,
 is a deductible amount.
- (3) Where in consequence of—
  - (a) the acquisition of the employment-related securities option,
  - (b) the acquisition of securities pursuant to the employment-related securities option, or
  - (c) a transaction of which the acquisition of the employment-related securities option or the acquisition of securities pursuant to the employment-related securities option forms part,
 there is a reduction in the market value of any employment-related securities to which an associated person is beneficially entitled, the amount of the reduction is to be treated for the purposes of subsection (2) as consideration (or additional consideration) given for the acquisition of the employment-related securities option.
- (4) If an amount counts as employment income of the employee under section 526 (approved CSOP schemes: charge where option granted at a discount) in respect of the employment-related securities option, so much of that amount as is attributable to the shares in question is a deductible amount.
- (5) The following are also deductible amounts—

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- (a) any amount that constituted earnings from the employment under Chapter 1 of Part 3 (earnings) in respect of the acquisition of the employment-related securities option [<sup>F678</sup>(other than an amount of exempt income)],
  - (b) any amount that was treated as earnings from the employment under Chapter 10 of that Part (taxable benefits: residual liability to charge) in respect of the acquisition of the employment-related securities option, <sup>F679</sup> ...
  - (c) the amount of any gain by a previous holder on an assignment of the employment-related securities option which would have been a deductible cost by virtue of subsection (2)(c) of section 479 (as originally enacted) on an exercise of the option at a time when that section was in force<sup>F680</sup>, and
  - (d) any amount that has counted as employment income of the employee in respect of the employment under Chapter 2 of Part 7A in relation to the employment-related securities option or to any sum of money or asset held solely for the purposes of the option.]
- (6) If there has been a previous chargeable event in relation to the employment-related securities option (or if section 476 or 477 as originally enacted applied to the option by virtue of an earlier event), so much of any deductible amount as was deducted in calculating the taxable amount on the occasion of that event is to be regarded as not being a deductible amount.

<sup>F681</sup>(7) .....

#### Textual Amendments

- F678** Words in s. 480(5)(a) inserted (with effect in accordance with s. 49(11) of the amending Act) by [Finance Act 2008 \(c. 9\), s. 49\(6\)](#)
- F679** Word in s. 480(5) omitted (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by virtue of [Finance Act 2011 \(c. 11\), Sch. 2 para. 25\(a\)](#)
- F680** S. 480(5)(d) and word inserted (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by [Finance Act 2011 \(c. 11\), Sch. 2 para. 25\(b\)](#)
- F681** S. 480(7) repealed (1.9.2004) by [Finance Act 2004 \(c. 12\), s. 85\(2\), Sch. 16 para. 3\(3\), Sch. 42 Pt. 2\(10\)](#); S.I. 2004/1945, art. 2

#### 481 [<sup>F682</sup>Relief for] secondary Class 1 contributions met by employee

- (1) [<sup>F683</sup>Relief is available under this section against an amount counting as employment income under section 476 if] —
  - (a) an agreement having effect under paragraph 3A of Schedule 1 to the Contributions and Benefits Act has been entered into allowing the secondary contributor to recover from the employee the whole or part of any secondary Class 1 contributions in respect of the gain, or
  - (b) an election having effect under paragraph 3B of Schedule 1 to that Act is in force which has the effect of transferring to the employee the whole or part of the liability to pay secondary Class 1 contributions in respect of the gain.
- (2) [<sup>F684</sup>The amount of the relief is the total of] —
  - (a) any amount that under the agreement referred to in subsection (1)(a) is recovered in respect of the gain by the secondary contributor before 5th June in the tax year following that in which the gain is realised, and

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- (b) the amount of any liability in respect of the gain that, by virtue of the election referred to in subsection (1)(b), has become the employee's liability.
- (3) If notice of withdrawal of approval of the election is given, the amount of any liability in respect of the gain for the purposes of subsection (2)(b) is limited to the amount of the liability met before 5th June in the tax year following that in which the gain is realised.
- (4) Subsection (1) does not apply in respect of a liability to pay Class 1 contributions which is prevented from arising by virtue of section 2(1)(a) of the Social Security Contributions (Share Options) Act 2001 (liability to pay Class 1 contributions in respect of gains replaced by liability to pay special contribution).
- [<sup>F685</sup>(4A) Relief under this section is given by way of deduction from the amount otherwise counting as employment income.
- (4B) Relief under this section does not affect the amount to be taken into account—
- (a) as employment income in determining contributions payable under the Contributions and Benefits Act, or
- (b) as relevant employment income for the purposes of paragraph 3A or 3B of Schedule 1 to that Act.]
- (5) In this section—
- “approval”, in relation to an election, means approval by [<sup>F82</sup>the Commissioners for Her Majesty's Revenue and Customs] under paragraph 3B of Schedule 1 to the Contributions and Benefits Act, and
- “secondary contributor” has the same meaning as in that Act (see section 7).

#### Textual Amendments

- F82** Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 102\(2\)](#); S.I. 2005/1126, art. 2(2)(h)
- F682** Words in s. 481 heading substituted (1.9.2004) by [Finance Act 2004 \(c. 12\)](#), s. 85(2), [Sch. 16 para. 3\(4\)\(a\)](#); S.I. 2004/1945, art. 2
- F683** Words in s. 481(1) substituted (1.9.2004) by [Finance Act 2004 \(c. 12\)](#), s. 85(2), [Sch. 16 para. 3\(4\)\(b\)](#); S.I. 2004/1945, art. 2
- F684** Words in s. 481(2) substituted (1.9.2004) by [Finance Act 2004 \(c. 12\)](#), s. 85(2), [Sch. 16 para. 3\(4\)\(c\)](#); S.I. 2004/1945, art. 2
- F685** S. 481(4A)(4B) inserted (1.9.2004) by [Finance Act 2004 \(c. 12\)](#), s. 85(2), [Sch. 16 para. 3\(4\)\(d\)](#); S.I. 2004/1945, art. 2

#### 482 [<sup>F686</sup>Relief for] special contribution met by employee

- (1) [<sup>F687</sup>Relief is available under this section against an amount counting as employment income under section 476 if] conditions A to D are met.
- (2) Condition A is that a notice in respect the employment-related securities option was given to [<sup>F82</sup>the Commissioners for Her Majesty's Revenue and Customs] in accordance with section 1 of the Social Security Contributions (Share Options) Act 2001 before 11th August 2001.
- (3) Condition B is that the person, or one of the persons, who gave that notice is a person who (apart from that Act) was liable, or would have become liable, by virtue of an



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election under paragraph 3B of Schedule 1 to the Contributions and Benefits Act, to pay secondary Class 1 contributions in respect of an event which is a chargeable event for the purposes of section 476.

- (4) Condition C is that that person became liable to pay a special contribution under section 2 of the Social Security Contributions (Share Options) Act 2001 in respect of the employment-related securities option.
- (5) Condition D is that that person met that liability before 11th August 2001 or before the end of such further period as [<sup>F82</sup>the Commissioners for Her Majesty's Revenue and Customs] directed under section 2(5) of that Act.
- [<sup>F688</sup>(6) The amount of the relief is the amount of the liability referred to in subsection (4).
- (7) Relief under this section is given by way of deduction from the amount otherwise counting as employment income.]

#### Textual Amendments

- F82** Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 102\(2\)](#); S.I. 2005/1126, art. 2(2)(h)
- F686** Words in s. 482 heading substituted (1.9.2004) by [Finance Act 2004 \(c. 12\)](#), s. 85(2), [Sch. 16 para. 3\(5\)\(a\)](#); S.I. 2004/1945, art. 2
- F687** Words in s. 482(1) substituted (1.9.2004) by [Finance Act 2004 \(c. 12\)](#), s. 85(2), [Sch. 16 para. 3\(5\)\(b\)](#); S.I. 2004/1945, art. 2
- F688** S. 482(6)(7) added (1.9.2004) by [Finance Act 2004 \(c. 12\)](#), s. 85(2), [Sch. 16 para. 3\(5\)\(c\)](#); S.I. 2004/1945, art. 2

#### Supplementary provisions

#### 483 Application of this Chapter where option exchanged for another

- (1) This section applies if—
  - (a) the employment-related securities option (the “old option”) is assigned or released, and
  - (b) the whole or part of the consideration for the assignment or release consists of or includes another securities option (the “new option”).
- (2) For the purposes of section 479(5) (amount of gain realised by assigning or releasing option) the new option is not to be treated as consideration given for the assignment or release of the old option.
- (3) This Chapter applies to the new option as it applies to the old option.
- (4) For the purposes of section 480(2) (consideration for acquisition of option) the amount of the consideration given for the acquisition of the new option is to be treated as being the sum of—
  - (a) the amount by which the amount of the consideration given for the acquisition of the old option exceeds the amount of any consideration given for the assignment or release of the old option, apart from the new option, and
  - (b) any valuable consideration given for the acquisition of the new option, apart from the old option.

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- (5) Two or more transactions are to be treated for the purposes of subsection (1) as a single transaction by which one option is assigned for a consideration which consists of or includes another option if—
- (a) the transactions result in—
    - (i) a person ceasing to hold an option, and
    - (ii) that person or a connected person coming to hold another option, and
  - (b) one or more of the transactions is effected under arrangements to which two or more persons holding options, in respect of which there may be liability to tax under this Chapter, are parties.
- (6) Subsection (5) applies regardless of the order in which the assignments and the acquisition occur.

#### 484 Definitions

- (1) In this Chapter—
- “securities”, and
  - “securities option”,
- have the meaning indicated in section 420.
- (2) In this Chapter “market value” has the meaning indicated in section 421(1).
- (3) For the purposes of this Chapter sections 421(2) and 421A apply for determining the amount of consideration given for anything.
- (4) In this Chapter “employment-related securities” has the same meaning as in Chapter 1 of this Part (see section 421B(8)).
- (5) In this Chapter—
- “the acquisition”,
  - “the employee”,
  - “the employer”,
  - “the employment”, and
  - “employment-related securities option”,
- have the meaning indicated in section 471(5).
- (6) In this Chapter “associated person” has the meaning indicated in section 472.
- (7) In this Chapter—
- “secondary Class 1 contributions” has the same meaning as in the Contributions and Benefits Act (see section 1 of that Act),<sup>F689</sup>...
- <sup>F689</sup> ...]

#### Textual Amendments

**F689** Words in s. 484(7) repealed (1.9.2004) by Finance Act 2004 (c. 12), s. 85(2), Sch. 16 para. 7(1), Sch. 42 Pt. 2(10); S.I. 2004/1945, art. 2

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### *Supplementary provisions*

#### **F<sup>667</sup>485 Application of this Chapter where share option exchanged for another**

.....

#### **F<sup>667</sup>486 Duty to notify matters relating to share options**

.....

#### **F<sup>667</sup>487 Minor definitions**

.....

## **CHAPTER 6**

### **APPROVED SHARE INCENTIVE PLANS**

#### *Introduction*

#### **488 Approved share incentive plans (SIPs)**

(1) This Chapter provides—

- (a) for the approval of share incentive plans (“SIPs”) by [F<sup>106</sup>an officer of Revenue and Customs] ,
- (b) for exemptions from income tax in connection with shares obtained under those plans,
- (c) for amounts to count as employment income in certain circumstances in connection with such plans, and
- (d) for the making of PAYE deductions in connection with such amounts.

(2) Schedule 2 contains the requirements that have to be met for a SIP to be approved, together with—

- (a) the approval procedure, and
- (b) provisions relating to the administration and operation of a SIP.

(3) The provisions of—

- (a) this and the following sections of this Chapter,
- (b) Schedule 2, and
- (c) the provisions mentioned in section 515 (tax advantages and charges under other Acts),

together constitute “the SIP code”.

(4) In the SIP code—

“approved” means approved by [F<sup>106</sup>an officer of Revenue and Customs] under Schedule 2, and “approval” has a corresponding meaning;

“PAYE deduction” means a deduction required by PAYE regulations;

a “share incentive plan” (or “SIP” for short) means a plan established by a company providing—

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- (a) for shares to be appropriated to employees without payment (“free shares”), or
  - (b) for shares to be acquired on behalf of employees out of sums deducted from their salary (“partnership shares”).
- (5) Other expressions used in the SIP code and contained in the index at the end of Schedule 2 have the meaning indicated by the index.

#### **Textual Amendments**

**F106** Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 102\(1\)](#); S.I. 2005/1126, art. 2(2)(h)

### *Scope of tax advantages*

#### **489 Operation of tax advantages in connection with approved SIP**

- (1) Sections 490 to 499 apply for income tax purposes in connection with shares awarded under an approved SIP.
- (2) But those sections do not apply to an individual if, at the time of the award of shares in question, the earnings from the eligible employment are not (or would not be if there were any) general earnings to which any of the charging provisions of Chapter 4 or 5 of Part 2 apply.
- (3) “The eligible employment” means the employment which results in the individual meeting the employment requirement in relation to the plan.
- [<sup>F690</sup>(4) And those sections do not apply if the main purpose (or one of the main purposes) of the arrangements under which the shares in question are awarded or acquired is the avoidance of tax or national insurance contributions.]

#### **Textual Amendments**

**F690** S. 489(4) inserted (18.6.2004 with effect in accordance with s. 88(11)-(13) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), s. [88\(4\)](#)

### *Tax advantages connected with award of shares*

#### **490 No charge on award or acquisition of shares: general**

- (1) This section applies—
  - (a) on the award to an employee of free, matching or partnership shares under the plan, or
  - (b) on the acquisition on behalf of an employee of dividend shares under the plan.
- (2) The employee is not liable to income tax on the value of the beneficial interest in the shares that passes to the employee at the time of the award or acquisition.

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**F691 491 No charge on award of shares as taxable benefit**

.....

**Textual Amendments**

**F691** S. 491 repealed (with effect in accordance with Sch. 22 para. 26(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 26\(1\)](#), [Sch. 43 Pt. 3\(4\)](#)

**492 No charge on partnership share money deducted from salary**

(1) An employee is not liable to income tax under Part 2 on any amount of the employee's salary which is deducted as partnership share money under a partnership share agreement.

**F692**(2) .....

**Textual Amendments**

**F692** S. 492(2) repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 3](#) (with [Sch. 36](#))

**493 No charge on acquisition of dividend shares**

**F693**(1) .....

**F693**(2) .....

(3) [<sup>F694</sup>Section 1105(3) of CTA 2010] (information relating to distributions to be provided by nominee) does not apply to any amount applied by the trustees in acquiring dividend shares on behalf of a participant.

[<sup>F695</sup>(3A) For the exemption of such amounts from income tax, see section 770 of ITTOIA 2005 (amounts applied by SIP trustees acquiring dividend shares or retained for reinvestment).]

**F696**(4) .....

(5) Subsection (3) is subject to paragraph 80(4)(c) of Schedule 2 (information required where dividend shares cease to be subject to plan).

**Textual Amendments**

**F693** S. 493(1)(2) repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 600\(2\)](#), [Sch. 3](#) (with [Sch. 2](#))

**F694** Words in s. 493(3) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 391](#) (with [Sch. 2](#))

**F695** S. 493(3A) inserted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 600\(3\)](#) (with [Sch. 2](#))

**F696** S. 493(4) repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 600\(2\)](#), [Sch. 3](#) (with [Sch. 2](#))

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### *Tax advantages connected with holding of shares*

#### <sup>F697</sup> **494 No charge on removal of restrictions applying to shares**

.....

##### **Textual Amendments**

**F697** S. 494 repealed (with effect in accordance with Sch. 22 para. 27(2) of the amending Act and otherwise 1.9.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 27\(1\)](#), [Sch. 43 Pt. 3\(4\)](#); [S.I. 2003/1997](#), art. 2

#### <sup>F698</sup> **495 No charge on increase in value of shares of dependent subsidiary**

.....

##### **Textual Amendments**

**F698** S. 495 repealed (16.4.2003 with effect in accordance with Sch. 22 para. 28(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 28\(1\)](#), [Sch. 43 Pt. 3\(4\)](#)

#### <sup>F699</sup> **496 No charge on cash dividend retained for reinvestment**

For the exemption from income tax of amounts retained under paragraph 68(2) of Schedule 2 (amount of cash dividend not reinvested), see section 770 of ITTOIA 2005 (amounts applied by SIP trustees acquiring dividend shares or retained for reinvestment).]

##### **Textual Amendments**

**F699** S. 496 substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 601](#) (with [Sch. 2](#))

### *Tax advantages connected with shares ceasing to be subject to plan*

#### **497 Limitations on charges on shares ceasing to be subject to plan**

- (1) No liability to income tax arises on free or matching shares ceasing to be subject to the plan, except as provided by—
  - (a) section 505 (charge on free or matching shares ceasing to be subject to plan),
  - or
  - (b) section 507 (charge on disposal of beneficial interest during holding period).
- (2) No liability to income tax arises on partnership shares ceasing to be subject to the plan, except as provided by section 506 (charge on partnership shares ceasing to be subject to plan).
- (3) No liability to income tax arises on dividend shares ceasing to be subject to the plan, except [<sup>F700</sup> under Chapter 3 or 4 of Part 4 of ITTOIA 2005 (dividends etc. from UK

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or non-UK resident companies etc.) as a result of section 394(2) or 407(2) of that Act (distribution or dividend payment when dividend shares cease to be subject to plan).]

#### Textual Amendments

**F700** Words in s. 497(3) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 602](#) (with [Sch. 2](#))

### 498 No charge on shares ceasing to be subject to plan in certain circumstances

- (1) A participant is not liable to income tax on shares ceasing to be subject to the plan if—
- they cease to be so subject on the participant ceasing to be in relevant employment, and
  - subsection (2) applies.
- (2) This subsection applies if the participant ceases to be in relevant employment—
- because of injury or disability,
  - on being dismissed by reason of redundancy,
  - by reason of [<sup>F701</sup>a relevant transfer within the meaning of the Transfer of Undertakings (Protection of Employment) Regulations 2006],
  - if the relevant employment is employment by an associated company (see paragraph 95(2) of Schedule 2), by reason of a change of control or other circumstances ending that company's status as an associated company,
  - by reason of the participant's retirement <sup>F702</sup> ..., or
  - on the participant's death.

- [<sup>F703</sup>(3) A participant is not liable to income tax on shares (“the relevant shares”) in a company (“the relevant company”) being withdrawn from the plan if—
- the withdrawal of the relevant shares from the plan relates to—
    - a transaction resulting from a compromise, arrangement or scheme falling within subsection (9),
    - an offer forming part of a general offer falling within subsection (10), or
    - the application of sections 979 to 982 or 983 to 985 of the Companies Act 2006 in the case of a takeover offer (as defined in section 974 of that Act) falling within subsection (13), and
  - as a result of, as the case may be—
    - the transaction,
    - the offer, or
    - the application of sections 979 to 982 or 983 to 985 of the Companies Act 2006,the participant receives cash (and no other assets) in exchange for the relevant shares.

(4) For the purposes of subsection (3)(b) it does not matter if the participant receives other assets in exchange for shares other than the relevant shares.

(5) Subsection (3) does not apply to the relevant shares (or to a proportion of them) if in connection with, as the case may be—

- the compromise, arrangement or scheme,

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- (b) the general offer, or
  - (c) the takeover offer,
- a course of action was open to the participant which, had it been followed, would have resulted in other assets being received in exchange for the relevant shares (or the proportion of them) instead of cash.
- (6) Subsection (3) does not apply to the relevant shares (or to a proportion of them) if it is reasonable to suppose that the relevant shares (or the proportion of them) would not have been awarded to the participant—
- (a) had, as the case may be—
    - (i) the compromise, arrangement or scheme,
    - (ii) the general offer, or
    - (iii) the takeover offer,
 not been made, or
  - (b) had any arrangements for the making of—
    - (i) a compromise, arrangement or scheme which would fall within subsection (9),
    - (ii) a general offer which would fall within subsection (10), or
    - (iii) a takeover offer (as defined in section 974 of the Companies Act 2006) which would fall within subsection (13),
 which were in place or under consideration at any time not been in place or under consideration.
- (7) In subsection (6) the reference to shares being awarded to the participant is to be read, in the case of dividend shares, as a reference to the shares being acquired by the trustees on the participant's behalf.
- (8) In subsection (6)(b) “arrangements” includes any plan, scheme, agreement or understanding, whether or not legally enforceable.
- (9) A compromise, arrangement or scheme falls within this subsection if it is applicable to or affects—
- (a) all the ordinary share capital of the relevant company or all the shares of the same class as the relevant shares, or
  - (b) all the shares, or all the shares of that same class, which are held by a class of shareholders identified otherwise than by reference to their employment or their participation in an approved SIP.
- (10) A general offer falls within this subsection if—
- (a) it is made to holders of shares of the same class as the relevant shares or to holders of shares in the relevant company, and
  - (b) it is made in the first instance on a condition such that if it is satisfied the person making the offer will have control of the relevant company.
- (11) For the purposes of subsection (10) it does not matter if the general offer is made to different shareholders by different means.
- (12) In subsection (10)(b) “control” has the meaning given by sections 450 and 451 of CTA 2010.
- (13) A takeover offer falls within this subsection if—
- (a) it relates to the relevant company, and



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- (b) where there is more than one class of share in the relevant company, the class or classes to which it relates is or include the class of the relevant shares.]

#### Textual Amendments

- F701** Words in s. 498(2)(c) substituted (6.4.2006) by [The Transfer of Undertakings \(Protection of Employment\) Regulations 2006 \(S.I. 2006/246\)](#), reg. 1(2), **Sch. 2 para. 12(2)** (with reg. 21(1))
- F702** Words in s. 498(2)(e) omitted (17.7.2013) by virtue of [Finance Act 2013 \(c. 29\)](#), **Sch. 2 para. 2** (with [Sch. 2 para. 17](#))
- F703** S. 498(3)-(13) inserted (17.7.2013) by [Finance Act 2013 \(c. 29\)](#), **Sch. 2 para. 19**

#### *Tax advantages: supplementary*

#### **499 No charge in respect of incidental expenditure**

An employee is not liable to income tax in respect of incidental expenditure of—

- (a) the trustees,
- (b) the company which established the plan, or
- (c) (if different) the employer,

in operating the plan.

#### *Scope of tax charges*

#### **500 Operation of tax charges in connection with approved SIP**

- (1) Sections 501 to 508 apply for income tax purposes in connection with shares awarded under an approved SIP.
- (2) But those sections do not apply to an individual if, at the time of the award of shares in question, the earnings from the eligible employment are not (or would not be if there were any) general earnings to which any of the charging provisions of Chapter 4 or 5 of Part 2 apply.
- (3) “The eligible employment” means the employment which results in the individual meeting the employment requirement in relation to the plan.

#### *Charges connected with holding of shares*

#### **501 Charge on capital receipts in respect of plan shares**

- (1) This section applies if conditions A and B are met.
- (2) Condition A is that a capital receipt is received by a participant in respect of, or by reference to, any of the participant’s plan shares.
- (3) Condition B is that the plan shares in respect of, or by reference to, which the capital receipt is received are—
  - (a) free, matching or partnership shares that were awarded to the participant less than 5 years before the participant received the capital receipt, or

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- (b) dividend shares that were acquired on behalf of the participant less than 3 years before the participant received the capital receipt.
- (4) If this section applies, the amount or value of the capital receipt counts as employment income of the participant for the relevant tax year.
- (5) The “relevant tax year” is the tax year in which the participant receives the capital receipt.
- (6) This section does not apply if the capital receipt is received by the participant’s personal representatives after the death of the participant.
- (7) Section 502 explains what is meant by a “capital receipt”.

## **502 Meaning of “capital receipt” in section 501**

- (1) This section applies for determining whether any money or money’s worth is a “capital receipt” for the purposes of section 501.
- (2) The general rule is that any money or money’s worth is a “capital receipt” for the purposes of section 501.
- (3) The general rule is subject to the following exceptions.
- (4) Money or money’s worth is not a capital receipt for the purposes of section 501 to the extent that—
  - (a) it constitutes income in the hands of the recipient for the purposes of income tax or would do so but for sections 489 to 498 (SIPs: tax advantages) [<sup>F704</sup>or section 770 of ITTOIA 2005 (exemption for amounts applied by SIP trustees acquiring dividend shares or retained for reinvestment)],
  - (b) it consists of the proceeds of disposal of the plan shares mentioned in section 501, or
  - (c) it consists of new shares within the meaning of paragraph 87 of Schedule 2 (company reconstructions).
- (5) If, as a result of a direction given by or on behalf of the participant for the purposes of paragraph 77 of Schedule 2 (power of trustees to raise funds to subscribe for rights issues), the trustees—
  - (a) dispose of some of the rights under a rights issue, and
  - (b) use the proceeds of that disposal to exercise other such rights,
 the money or money’s worth constituting the proceeds of that disposal is not a capital receipt for the purposes of section 501.

### **Textual Amendments**

**F704** Words in s. 502(4)(a) inserted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 603](#) (with [Sch. 2](#))

## **503 Charge on partnership share money paid over to employee**

- (1) Any amount paid over to an individual under any of the provisions of Schedule 2 mentioned in subsection (2) counts as employment income of the individual for the relevant tax year.

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- (2) The provisions are—
- paragraph 46(5) (deductions in excess of permitted maximum amount),
  - paragraph 50(5)(b) or paragraph 52(6)(b) (surplus partnership share money remaining after acquisition of shares),
  - paragraph 52(7) (partnership share money paid over on individual ceasing to be in relevant employment),
  - paragraph 52(8) (partnership share money paid over where accumulation period brought to an end by event specified in plan),
  - paragraph 55(3) (partnership share money paid over on withdrawal from partnership share agreement), or
  - paragraph 56 (partnership share money paid over on withdrawal of plan approval or termination of plan).
- (3) The “relevant tax year” is the tax year in which the amount is paid over.

#### **504 Charge on cancellation payments in respect of partnership share agreement**

- (1) This section applies if an individual who has entered into a partnership share agreement receives any money or money’s worth in respect of the cancellation of the agreement.
- (2) The amount of the money or the value of the money’s worth counts as employment income of the individual for the relevant tax year.
- (3) The “relevant tax year” is the tax year in which the individual receives the money or money’s worth.

*Charges connected with shares ceasing to be subject to plan*

#### **505 Charge on free or matching shares ceasing to be subject to plan**

- (1) When free or matching shares cease to be subject to the plan, there may be an amount that counts as employment income of the participant depending on the period that has elapsed between—
- (a) the date when the shares were awarded to the participant (“the award date”), and
  - (b) the date when they cease to be subject to the plan (“the exit date”).
- (2) If the period is less than 3 years, the market value of the shares at the exit date counts as employment income of the participant for the relevant tax year (see subsection (5)).
- (3) If the period is 3 years or more but less than 5 years, whichever is the lesser of—
- (a) the market value of the shares at the award date, and
  - (b) the market value of the shares at the exit date,
- counts as employment income of the participant for the relevant tax year (see subsection (5)).
- (4) Where—
- (a) subsection (3) applies, and
  - (b) the applicable amount is the market value of the shares at the award date,

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the tax due is reduced by the amount or aggregate amount of any tax paid by virtue of section 501 (charge on capital receipts in respect of plan shares) on any capital receipts in respect of the shares.

[<sup>F705</sup>(4A) Any tax due under subsection (2) or (3) is reduced by the amount or aggregate amount of any tax paid by virtue of Chapter 3B of this Part in relation to the shares.]

- (5) The “relevant tax year” is the tax year in which the exit date falls.
- (6) No liability to tax arises by virtue of this section—
- (a) on the forfeiture of free or matching shares,
  - (b) if section 498 (no charge on shares ceasing to be subject to plan in certain circumstances) applies, or
  - (c) if section 507 (charge on disposal of beneficial interest in holding period) applies.

#### **Textual Amendments**

**F705** S. 505(4A) inserted (18.6.2004 with effect in accordance with s. 88(11)-(13) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 88\(5\)](#)

### **506 Charge on partnership shares ceasing to be subject to plan**

- (1) When partnership shares cease to be subject to the plan, there may be an amount that counts as employment income of the participant depending on the period that has elapsed between—
- (a) the acquisition date in respect of those shares (as defined by paragraph 50(4) or, as the case may be, paragraph 52(5) of Schedule 2), and
  - (b) the date when they cease to be subject to the plan (“the exit date”).
- (2) If the period is less than 3 years, the market value of the shares at the exit date counts as employment income of the participant for the relevant tax year (see subsection (5)).
- (3) If the period is 3 years or more but less than 5 years, whichever is the lesser of—
- (a) the amount of partnership share money used to acquire the shares, and
  - (b) the market value of the shares at the exit date,
- counts as employment income of the participant for the relevant tax year (see subsection (5)).
- (4) Where—
- (a) subsection (3) applies, and
  - (b) the applicable amount is the amount of partnership share money used to acquire the shares,
- the tax due is reduced by the amount or aggregate amount of any tax paid by virtue of section 501 (charge on capital receipts in respect of plan shares) on any capital receipts in respect of the shares.

[<sup>F706</sup>(4A) Any tax due under subsection (2) or (3) is reduced by the amount or aggregate amount of any tax paid by virtue of Chapter 3B of this Part in relation to the shares.]

- (5) The “relevant tax year” is the tax year in which the exit date falls.

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- (6) No liability to income tax arises by virtue of this section if section 498 (no charge on shares ceasing to be subject to plan in certain circumstances) applies.

#### Textual Amendments

**F706** S. 506(4A) inserted (18.6.2004 with effect in accordance with s. 88(11)-(13) of the amending Act) by Finance Act 2004 (c. 12), s. 88(5)

### 507 Charge on disposal of beneficial interest during holding period

- (1) This section applies if—
- (a) free or matching shares cease to be subject to the plan at any time during the holding period for those shares, and
  - (b) this occurs as a result of the participant assigning, charging or otherwise disposing of the participant's beneficial interest in the shares in breach of obligations under paragraph 36(1)(b) of Schedule 2 (restrictions relating to disposals within holding period).
- (2) The market value of the shares at the date when they cease to be subject to the plan counts as employment income of the participant for the relevant tax year.
- (3) The “relevant tax year” is the tax year in which that date falls.

### 508 Identification of shares ceasing to be subject to plan

- (1) For the purpose of determining any liability to tax arising by virtue of the SIP code in respect of any of a participant's shares ceasing to be subject to the plan—
- (a) shares are to be taken as ceasing to be subject to the plan in the order in which they were awarded to the participant under the plan, and
  - (b) where shares are awarded to the participant on the same day, the shares are to be treated as ceasing to be subject to the plan in the order which gives rise to the lowest charge to income tax on the participant.
- (2) For the purposes of subsection (1) dividend shares are “awarded” to a participant when the trustees acquire them on behalf of, or appropriate them to, the participant.

#### PAYE

### 509 Modification of section 696 where charge on shares ceasing to be subject to plan

- (1) Where—
- (a) as a result of shares ceasing to be subject to an approved SIP, there is an amount that counts as employment income of a participant by virtue of the SIP code, and
  - (b) the shares are readily convertible assets,
- section 696 (readily convertible assets) applies as follows.
- (2) Section 696 applies as if the participant (“P”) were being provided with PAYE income in the form of those shares—
- (a) at the time when the shares cease to be subject to the plan, and

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- (b) in respect of the relevant employment in which P is employed at that time (or, if P is not then employed in relevant employment, the relevant employment in which P was last employed before that time).
- (3) In addition, subsection (2) of section 696 applies as if the reference in that subsection to the amount of income likely to be PAYE income in respect of the provision of the asset were a reference to the amount which is likely to count as employment income by virtue of the SIP code as a result of the shares ceasing to be subject to the plan.
- (4) In this section “readily convertible asset” has the same meaning as in section 696 (see sections 701 and 702), but this is subject to [<sup>F707</sup>subsections (5) and (6)].
- (5) In determining for the purposes of this section (and of section 696 in its application in accordance with this section) whether the shares are readily convertible assets, any market for the shares which—
  - (a) is created by virtue of the trustees acquiring shares for the purposes of the plan, and
  - (b) exists solely for the purposes of the plan,
 is to be disregarded.
- [<sup>F708</sup>(6) In determining for the purposes of this section (and of section 696 in its application in accordance with this section) whether the shares are readily convertible assets, section 702 has effect with the omission of subsections (5A) to (5D).]

#### Textual Amendments

**F707** Words in s. 509(4) substituted (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 11\(2\)](#)

**F708** S. 509(6) inserted (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 11\(3\)](#)

### 510 Payments by trustees to employer company on shares ceasing to be subject to plan

- (1) This section applies if, as a result of any shares (“the relevant shares”) ceasing to be subject to an approved SIP—
  - (a) there is an amount that counts as employment income of a participant by virtue of the SIP code, and
  - (b) an obligation to make a PAYE deduction arises in respect of that amount.
- (2) The trustees must pay to the employer company a sum which is sufficient to enable the employer company to discharge that obligation.
- (3) Subsection (2) is subject to—
  - (a) subsection (4), and
  - (b) section 511 (PAYE deductions to be made by trustees on shares ceasing to be subject to plan).
- (4) Subsection (2) only applies if, or to the extent that, the plan does not require the participant to pay the employer company a sum which is sufficient to discharge the obligation mentioned in subsection (1)(b).
- (5) Section 710(1) (notional payments: accounting for tax) has effect as if it required the deduction of income tax to be made from any sum or sums received by the employer company—

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- (a) from the trustees under subsection (2), or
  - (b) from the participant in accordance with a requirement of the plan, as mentioned in subsection (4).
- (6) After making the necessary PAYE deduction from the sum or sums received as mentioned in subsection (5), the employer company must pay any remaining amount to the participant.
- (7) In this section “the employer company” means—
- (a) the company which employs the participant in relevant employment at the time when the relevant shares cease to be subject to the plan, or
  - (b) if the participant is not then employed in relevant employment, the company which last employed the participant in relevant employment before that time, so long as that company is one to which PAYE regulations apply at that time.

## 511 PAYE deductions to be made by trustees on shares ceasing to be subject to plan

- (1) This section applies if, as a result of any shares ceasing to be subject to an approved SIP—
- (a) there is an amount that counts as employment income of a participant by virtue of the SIP code, and
  - (b) condition A or B is met.
- (2) Condition A is that [<sup>F106</sup>an officer of Revenue and Customs] —
- (a) [<sup>F709</sup>is] of the opinion that it is impracticable for the employer company (within the meaning of section 510) to make a PAYE deduction, and
  - (b) accordingly [<sup>F710</sup>directs] that this section is to apply.
- (3) Condition B is that there is no company that qualifies as the employer company (within the meaning of that section).
- (4) If this section applies—
- (a) section 510(2) does not apply, and
  - (b) the trustees must make a PAYE deduction in respect of the taxable equivalent as if the participant were a former employee of the trustees.
- (5) The “taxable equivalent” means an amount equal to that mentioned in subsection (1).
- (6) If this section applies, section 689 (employee of non-UK employer) does not apply.

### Textual Amendments

- F106** Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 102\(1\)](#); S.I. 2005/1126, art. 2(2)(h)
- F709** Word in s. 511(2)(a) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 114\(a\)](#); S.I. 2005/1126, art. 2(2)(h)
- F710** Word in s. 511(2)(b) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 114\(b\)](#); S.I. 2005/1126, art. 2(2)(h)

## 512 Disposal of beneficial interest by participant

- (1) This section applies if—

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- (a) a participant (“P”) disposes of P’s beneficial interest in any of P’s plan shares to the trustees, and
  - (b) the trustees are, as a result of paragraph 6 of Schedule 7D to TCGA 1992 (deemed disposal by trustees on disposal of beneficial interest), treated as having disposed of the shares in question.
- (2) If this section applies, sections 510 and 511 apply as if the consideration payable by the trustees to the participant on the disposal had been received by the trustees as the proceeds of disposal of plan shares.

### **513 Capital receipts: payments by trustees to employer company**

- (1) This section applies if the trustees receive a sum of money which constitutes (or forms part of) a capital receipt which, by virtue of the SIP code, counts as employment income of a participant when it is received by the participant.
- (2) Out of that sum of money the trustees must pay to the employer company an amount equal to the amount of employment income.
- (3) The employer company must then pay over that amount to the participant, but when doing so must make a PAYE deduction.
- (4) This section is subject to section 514 (capital receipts: deductions to be made by trustees).
- (5) In this section “the employer company” means—
- (a) the company which employs the participant in relevant employment at the time when the trustees receive the sum mentioned in subsection (1), or
  - (b) if the participant is not then employed in relevant employment, the company which last employed the participant in relevant employment before that time, so long as that company is one to which PAYE regulations apply at that time.

### **514 Capital receipts: PAYE deductions to be made by trustees**

- (1) This section applies if—
- (a) the trustees receive a sum of money which constitutes (or forms part of) a capital receipt which, by virtue of the SIP code, counts as employment income of a participant when it is received by the participant, and
  - (b) either condition A or B is met.
- (2) Condition A is that [<sup>F106</sup>an officer of Revenue and Customs —
- (a) [<sup>F711</sup>is] of the opinion that it is impracticable for the employer company (within the meaning of section 513) to make a PAYE deduction, and
  - (b) accordingly [<sup>F712</sup>directs] that this section is to apply.
- (3) Condition B is that there is no company that qualifies as the employer company (within the meaning of that section).
- (4) If this section applies, the trustees must, when paying the capital receipt over to the participant, make a PAYE deduction in respect of the taxable equivalent as if the participant were a former employee of the trustees.
- (5) The “taxable equivalent” means an amount equal to the amount which counts as employment income as mentioned in subsection (1)(a).



*Status: Point in time view as at 01/09/2013.*

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(6) If this section applies, section 689 (employee of non-UK employer) does not apply.

#### Textual Amendments

- F106** Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 102\(1\)](#); S.I. 2005/1126, art. 2(2)(h)
- F711** Word in s. 514(2)(a) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 115\(a\)](#); S.I. 2005/1126, art. 2(2)(h)
- F712** Word in s. 514(2)(b) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 115\(b\)](#); S.I. 2005/1126, art. 2(2)(h)

#### Other tax consequences

### 515 Tax advantages and charges under other Acts

<sup>F713</sup>(1) .....

(2) SIPs are also dealt with in—

- (a) Part 1 of Schedule 7D to TCGA 1992 (which provides for relief from capital gains tax for the trustees and for participants in relation to an approved SIP in certain circumstances, including where shares cease to be subject to the plan),<sup>F714</sup> ...
- (b) section 95 of FA 2001 (which contains relief from stamp duty and stamp duty reserve tax for transfers of partnership or dividend shares) [<sup>F715</sup>, <sup>F716</sup> ...
- (c) sections 392 to 395 and 405 to 408 of ITTOIA 2005 (SIPs: special rules for charges under Chapters 3 and 4 of Part 4 of that Act (dividends etc. from UK or non-UK resident companies etc.)) and section 770 of that Act (exemption for amounts applied by SIP trustees acquiring dividend shares or retained for reinvestment)] [<sup>F717</sup>, <sup>F718</sup> ...
- (d) Chapter 5 of Part 9 of ITA 2007 (which provides for section 479 of that Act not to apply to income of the trustees of an approved SIP in certain circumstances)] [<sup>F719</sup>, and
- (e) Chapter 1 of Part 11 of CTA 2009 (share incentive plans)]

<sup>F720</sup>(3) .....

#### Textual Amendments

- F713** S. 515(1) repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 554\(2\)](#), [Sch. 3 Pt. 1](#) (with [Sch. 2 Pts. 1, 2](#))
- F714** Word in s. 515(2)(a) repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 604\(3\)](#), [Sch. 3](#) (with [Sch. 2](#))
- F715** S. 515(2)(c) and word inserted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 604\(4\)](#) (with [Sch. 2](#))
- F716** Word in s. 515(2)(b) repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 439\(3\)\(a\)](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))
- F717** S. 515(2)(d) and word inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 439\(3\)\(b\)](#) (with [Sch. 2](#))
- F718** Word in s. 515(2) repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 554\(3\)\(a\)](#), [Sch. 3 Pt. 1](#) (with [Sch. 2 Pts. 1, 2](#))

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- F719** S. 515(2)(e) and word inserted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 554(3)(b)** (with Sch. 2 Pts. 1, 2)
- F720** S. 515(3) repealed (6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 1 para. 439(4), Sch. 3 Pt. 1** (with Sch. 2)

## CHAPTER 7

### APPROVED SAYE OPTION SCHEMES

#### *Introduction*

#### 516 Approved SAYE option schemes

- (1) This Chapter provides—
- (a) for the approval of SAYE option schemes by [<sup>F106</sup>an officer of Revenue and Customs], and
  - (b) for exemptions from income tax in connection with share options granted under those schemes.
- (2) Schedule 3 contains the requirements that have to be met for an SAYE option scheme to be approved, together with the approval procedure.
- (3) The provisions of—
- (a) this and the following sections of this Chapter,
  - (b) Schedule 3, and
  - (c) Part 2 of Schedule 7D to TCGA 1992 (approved SAYE option schemes: amount of consideration on exercise of option),
- together constitute “the SAYE code”.
- (4) In the SAYE code—
- “approved” means approved by [<sup>F106</sup>an officer of Revenue and Customs] under Schedule 3 (see paragraph 1 of the Schedule);
- “SAYE option scheme” means a scheme (commonly referred to as an SAYE share option scheme) which is established by a company and provides—
- (a) for share options to be granted to employees and directors, and
  - (b) for the shares acquired by the exercise of the share options to be paid for in the way mentioned in paragraph 24 of Schedule 3 (payments for shares to be linked to [<sup>F721</sup>approved savings arrangements] );
- “share option” means a right to acquire shares in a company;
- “shares” includes stock.
- (5) Other expressions used in the SAYE code and contained in the index at the end of Schedule 3 have the meaning indicated by the index.

#### **Textual Amendments**

- F106** Words in Act substituted (18.4.2005) by **Commissioners for Revenue and Customs Act 2005 (c. 11)**, s. 53(1), **Sch. 4 para. 102(1)**; S.I. 2005/1126, art. 2(2)(h)

*Status: Point in time view as at 01/09/2013.*

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**F721** Words in s. 516(4) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 605](#) (with Sch. 2)

## **517 Share options to which this Chapter applies**

- (1) This Chapter applies to a share option granted to an individual—
  - (a) in accordance with the provisions of an approved SAYE option scheme, and
  - (b) by reason of the individual's office or employment as a director or employee of a company.
- (2) The individual may be a director or employee of the company whose shares are the subject of the share option, or of some other company.

### *Tax advantages*

## **<sup>F722</sup>518 No charge in respect of receipt of option**

.....

### **Textual Amendments**

**F722** S. 518 repealed (1.9.2003) by [Finance Act 2003 \(c. 14\), Sch. 22 para. 29\(1\)\(2\), Sch. 43 Pt. 3\(4\); S.I. 2003/1997, art. 2](#)

## **519 No charge in respect of exercise of option**

- (1) No liability to income tax arises in respect of the exercise of the share option if—
  - (a) the individual exercises it in accordance with the provisions of the SAYE option scheme at a time when the scheme is approved,<sup>F723</sup>...
  - (b) condition A or B is met [<sup>F724</sup>and
  - (c) the avoidance of tax or national insurance contributions is not the main purpose (or one of the main purposes) of any arrangements under which the option was granted or is exercised.]
- (2) Condition A is that the option is exercised on or after the third anniversary of the date on which it was granted.
- (3) Condition B is that the option—
  - (a) is exercised before the third anniversary of the date on which it was granted, and
  - (b) is so exercised otherwise than by virtue of a provision included in the scheme under—
    - paragraph 34(5) of Schedule 3 (exercise of option where scheme-related employment ends), or
    - paragraph 37 of that Schedule (exercise of option where certain company events occur).

[<sup>F725</sup>(3A) In relation to any shares acquired by the exercise of the share option, no liability to income tax arises in respect of its exercise if—

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- (a) the individual exercises the option before the third anniversary of the date on which the option was granted at a time when the SAYE option scheme is approved,
  - (b) the option is exercised by virtue of a provision included in the scheme—
    - (i) under paragraph 37(1) of Schedule 3 where the relevant date is the relevant date for the purposes of paragraph 37(2) or (4), or
    - (ii) under paragraph 37(6) of Schedule 3,
  - (c) as a result of, as the case may be—
    - (i) the general offer,
    - (ii) the compromise or arrangement, or
    - (iii) the takeover offer,
 the individual receives cash (and no other assets) in exchange for the shares,
  - (d) when the decision to grant the option was taken—
    - (i) the general offer,
    - (ii) the compromise or arrangement, or
    - (iii) the takeover offer,
 as the case may be, had not been made,
  - (e) when that decision was taken, no arrangements were in place or under consideration for—
    - (i) the making of a general offer which would fall within subsection (3D),
    - (ii) the making of any compromise or arrangement which would fall within subsection (3H), or
    - (iii) the making of a takeover offer (as defined in section 974 of the Companies Act 2006) which would fall within subsection (3I),
  - (f) if the scheme includes a provision under paragraph 38 of Schedule 3 (“the paragraph 38 provision”), in connection with—
    - (i) the general offer,
    - (ii) the compromise or arrangement, or
    - (iii) the takeover offer,
 as the case may be, no course of action was open to the individual which, had it been followed, would have resulted in the individual making an agreement under the paragraph 38 provision which would have prevented the individual from acquiring the shares by the exercise of the option, and
  - (g) the avoidance of tax or national insurance contributions is not the main purpose (or one of the main purposes) of any arrangements under which the option was granted or is exercised.
- (3B) In subsection (3A)(c)(iii), (d)(iii) and (f)(iii) “the takeover offer” means the takeover offer (as defined in section 974 of the Companies Act 2006) giving rise to the application of sections 979 to 982 or 983 to 985 of that Act.
- (3C) In subsection (3A)(e) “arrangements” includes any plan, scheme, agreement or understanding, whether or not legally enforceable.
- (3D) A general offer falls within this subsection if it is—
- (a) a general offer to acquire the whole of the issued ordinary share capital of the relevant company which is made on a condition such that, if it is met, the person making the offer will have control of the relevant company, or

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- (b) a general offer to acquire all the shares in the relevant company which are of the same class as those acquired by the exercise of the option.
- (3E) In subsection (3D)(a) the reference to the issued ordinary share capital of the relevant company does not include any capital already held by the person making the offer or a person connected with that person and in subsection (3D)(b) the reference to the shares in the relevant company does not include any shares already held by the person making the offer or a person connected with that person.
- (3F) For the purposes of subsection (3D)(a) and (b) it does not matter if the general offer is made to different shareholders by different means.
- (3G) For the purposes of subsection (3D)(a) a person is to be treated as obtaining control of a company if that person and others acting in concert together obtain control of it.
- (3H) A compromise or arrangement falls within this subsection if it is applicable to or affects—
  - (a) all the ordinary share capital of the relevant company or all the shares of the same class as those acquired by the exercise of the option, or
  - (b) all the shares, or all the shares of that same class, which are held by a class of shareholders identified otherwise than by reference to their employment or directorships or their participation in an approved SAYE option scheme.
- (3I) A takeover offer falls within this subsection if—
  - (a) it relates to the relevant company, and
  - (b) where there is more than one class of share in the relevant company, the class or classes to which it relates is or include the class of the shares acquired by the exercise of the option.
- (3J) In subsections (3D), (3H) and (3I) “the relevant company” means the company whose shares are acquired by the exercise of the option.]
- <sup>F726</sup>(4) .....
- (5) In Schedule 3—
  - (a) paragraph 32 provides for the exercise of an option where the holder has died, and
  - (b) paragraph 42(3) provides for an SAYE option scheme to be treated as approved at the time when an option is exercised even though approval of the scheme has been previously withdrawn.

#### Textual Amendments

- F723** Word in s. 519(1)(a) repealed (with effect in accordance with s. 88(11) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 2\(11\)](#)
- F724** S. 519(1)(c) and word inserted (18.6.2004 with effect in accordance with s. 88(11)-(13) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [s. 88\(6\)](#)
- F725** S. 519(3A)-(3J) inserted (17.7.2013) by [Finance Act 2013 \(c. 29\)](#), [Sch. 2 para. 21](#)
- F726** S. 519(4) repealed (1.9.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 30\(1\)\(2\)](#), [Sch. 43 Pt. 3\(4\)](#); [S.I. 2003/1997](#), art. 2

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**F727 520 No charge in respect of post-acquisition benefits**

.....

**Textual Amendments**

**F727** S. 520 repealed (16.4.2003 with effect in accordance with Sch. 22 para. 31(2) of the amending Act) by Finance Act 2003 (c. 14), Sch. 22 para. 31(1), **Sch. 43 Pt. 3(4)**

**CHAPTER 8**

APPROVED CSOP SCHEMES

*Introduction*

**521 Approved CSOP schemes**

- (1) This Chapter provides—
- (a) for the approval of CSOP schemes by [F106an officer of Revenue and Customs]
  - (b) for exemptions from income tax in connection with share options granted under those schemes, and
  - (c) for amounts to count as employment income in certain circumstances in connection with such options.
- (2) Schedule 4 contains the requirements that have to be met for a CSOP scheme to be approved, together with the approval procedure.
- (3) The provisions of—
- (a) this and the following sections of this Chapter,
  - (b) Schedule 4, and
  - (c) Part 3 of Schedule 7D to TCGA 1992 (approved CSOP schemes: amount of consideration on exercise of option),
- together constitute “the CSOP code”.
- (4) In the CSOP code—
- “approved” means approved by [F106an officer of Revenue and Customs] under Schedule 4 (see paragraph 1 of the Schedule);
- “CSOP scheme” means a scheme (commonly referred to as a company share option plan) which—
- (a) is established by a company,
  - (b) provides for share options to be granted to employees and directors, and
  - (c) is not an SAYE option scheme (within the meaning of the SAYE code: see section 516(4));
- “share option” means a right to acquire shares in a company;
- “shares” includes stock.
- (5) Other expressions used in the CSOP code and contained in the index at the end of Schedule 4 have the meaning indicated by the index.

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#### Textual Amendments

**F106** Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 102\(1\)](#); S.I. 2005/1126, art. 2(2)(h)

### 522 Share options to which this Chapter applies

- (1) This Chapter applies to a share option granted to an individual—
  - (a) in accordance with the provisions of an approved CSOP scheme, and
  - (b) by reason of the individual's office or employment as a director or employee of a company.
- (2) The individual may be a director or employee of the company whose shares are the subject of the share option, or of some other company.

#### *Tax advantages*

### <sup>F728</sup>523 No charge in respect of receipt of option

.....

#### Textual Amendments

**F728** S. 523 repealed (1.9.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 32\(1\)\(2\)](#), [Sch. 43 Pt. 3\(4\)](#); S.I. 2003/1997, art. 2

### 524 No charge in respect of receipt of option

- (1) No liability to income tax arises in respect of the exercise of the share option if—
  - (a) the individual exercises it in accordance with the provisions of the CSOP scheme at a time when the scheme is approved,<sup>F729</sup> ...
  - <sup>F730</sup>(b) Condition A or B is met<sup>[F731]</sup>and
  - (c) the avoidance of tax or national insurance contributions is not the main purpose (or one of the main purposes) of any arrangements under which the option was granted or is exercised.]
- <sup>F732</sup>(2) Condition A is that the option is exercised—
  - (a) on or after the third anniversary of the date on which it was granted, but
  - (b) not later than the tenth anniversary of that date.
- (2A) Condition B is that the option—
  - (a) is exercised before the third anniversary of the date on which it was granted, and
  - (b) is so exercised by virtue of a provision included in the scheme under paragraph 24 of Schedule 4 (exercise of options after ceasing to be director or employee) in circumstances in which subsection (2B) applies.
- (2B) This subsection applies if the individual exercising the option—
  - <sup>F733</sup>(a) has ceased to be in qualifying employment because of—

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- (i) injury, disability, redundancy or retirement,
  - (ii) a relevant transfer within the meaning of the Transfer of Undertakings (Protection of Employment) Regulations 2006, or
  - (iii) in the case of a group scheme where the qualifying employment is as a director or employee of a constituent company, that company ceasing to be controlled by the scheme organiser, and]
  - (b) exercises the option within 6 months of the day on which he ceases to be such a director or employee.
- [<sup>F734</sup>(2BA) For the purposes of subsection (2B) an individual is in “qualifying employment” if the individual is a full-time director or qualifying employee (as defined in paragraph 8(2) of Schedule 4) of—
- (a) the scheme organiser, or
  - (b) in the case of a group scheme, a constituent company.]
- (2C) In subsection [<sup>F735</sup>(2B)(a)(i)] —
- “redundancy” means redundancy within the meaning of ERA 1996 or ER(NI)O 1996,  
<sup>F736</sup> ...]
- [<sup>F737</sup>(2D) Subsection (2B)(a)(iii) does not cover a case where the constituent company was controlled by the scheme organiser by virtue of paragraph 34 of Schedule 4 (jointly owned companies).
- (2E) In relation to any shares acquired by the exercise of the share option, no liability to income tax arises in respect of its exercise if—
- (a) the individual exercises the option before the third anniversary of the date on which the option was granted at a time when the CSOP scheme is approved,
  - (b) the option is exercised by virtue of a provision included in the scheme under paragraph 25A of Schedule 4,
  - (c) as a result of, as the case may be—
    - (i) the general offer,
    - (ii) the compromise or arrangement, or
    - (iii) the takeover offer,
 the individual receives cash (and no other assets) in exchange for the shares,
  - (d) when the decision to grant the option was taken—
    - (i) the general offer,
    - (ii) the compromise or arrangement, or
    - (iii) the takeover offer,
 as the case may be, had not been made,
  - (e) when that decision was taken, no arrangements were in place or under consideration for—
    - (i) the making of a general offer which would fall within subsection (2H),
    - (ii) the making of any compromise or arrangement which would fall within subsection (2L), or
    - (iii) the making of a takeover offer (as defined in section 974 of the Companies Act 2006) which would fall within subsection (2M),
  - (f) if the scheme includes a provision under paragraph 26 of Schedule 4 (“the paragraph 26 provision”), in connection with—
    - (i) the general offer,



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- (ii) the compromise or arrangement, or
  - (iii) the takeover offer,
- as the case may be, no course of action was open to the individual which, had it been followed, would have resulted in the individual making an agreement under the paragraph 26 provision which would have prevented the individual from acquiring the shares by the exercise of the option, and
- (g) the avoidance of tax or national insurance contributions is not the main purpose (or one of the main purposes) of any arrangements under which the option was granted or is exercised.
- (2F) In subsection (2E)(c)(iii), (d)(iii) and (f)(iii) “the takeover offer” means the takeover offer (as defined in section 974 of the Companies Act 2006) giving rise to the application of sections 979 to 982 or 983 to 985 of that Act.
- (2G) In subsection (2E)(e) “arrangements” includes any plan, scheme, agreement or understanding, whether or not legally enforceable.
- (2H) A general offer falls within this subsection if it is—
- (a) a general offer to acquire the whole of the issued ordinary share capital of the relevant company which is made on a condition such that, if it is met, the person making the offer will have control of the relevant company, or
  - (b) a general offer to acquire all the shares in the relevant company which are of the same class as those acquired by the exercise of the option.
- (2I) In subsection (2H)(a) the reference to the issued ordinary share capital of the relevant company does not include any capital already held by the person making the offer or a person connected with that person and in subsection (2H)(b) the reference to the shares in the relevant company does not include any shares already held by the person making the offer or a person connected with that person.
- (2J) For the purposes of subsection (2H)(a) and (b) it does not matter if the general offer is made to different shareholders by different means.
- (2K) For the purposes of subsection (2H)(a) a person is to be treated as obtaining control of a company if that person and others acting in concert together obtain control of it.
- (2L) A compromise or arrangement falls within this subsection if it is applicable to or affects—
- (a) all the ordinary share capital of the relevant company or all the shares of the same class as those acquired by the exercise of the option, or
  - (b) all the shares, or all the shares of that same class, which are held by a class of shareholders identified otherwise than by reference to their employment or directorships or their participation in an approved CSOP scheme.
- (2M) A takeover offer falls within this subsection if—
- (a) it relates to the relevant company, and
  - (b) where there is more than one class of share in the relevant company, the class or classes to which it relates is or include the class of the shares acquired by the exercise of the option.
- (2N) In subsections (2H), (2L) and (2M) “the relevant company” means the company whose shares are acquired by the exercise of the option.]

<sup>F732</sup>(3) .....

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<sup>F738</sup>(4) .....

(5) Paragraph 25 of Schedule 4 provides for the exercise of an option where the holder has died.

#### Textual Amendments

- F729** Word in s. 524(1)(a) repealed (with effect in accordance with s. 88(11) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 2\(11\)](#)
- F730** S. 524(1)(b) substituted (with effect in accordance with Sch. 21 para. 14(5) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 21 para. 14\(2\)](#)
- F731** S. 524(1)(c) and preceding word inserted (18.6.2004 with effect in accordance with s. 88(11)-(13) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [s. 88\(7\)](#)
- F732** S. 524(2)-(2C) substituted for s. 524(2)(3) (with effect in accordance with Sch. 21 para. 14(5) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 21 para. 14\(3\)](#)
- F733** S. 524(2B)(a) substituted (17.7.2013) by [Finance Act 2013 \(c. 29\)](#), [Sch. 2 para. 26\(2\)](#)
- F734** S. 524(2BA) inserted (17.7.2013) by [Finance Act 2013 \(c. 29\)](#), [Sch. 2 para. 26\(3\)](#)
- F735** Word in s. 524(2C) substituted (17.7.2013) by [Finance Act 2013 \(c. 29\)](#), [Sch. 2 para. 26\(4\)](#)
- F736** Words in s. 524(2C) omitted (17.7.2013) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 2 para. 14](#) (with [Sch. 2 para. 17](#))
- F737** S. 524(2D)-(2N) inserted (17.7.2013) by [Finance Act 2013 \(c. 29\)](#), [Sch. 2 para. 26\(5\)](#)
- F738** S. 524(4) repealed (1.9.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 33\(1\)\(2\)](#), [Sch. 43 Pt. 3\(4\)](#); [S.I. 2003/1997](#), art. 2

<sup>F739</sup>**525 No charge in respect of post-acquisition benefits**

.....

#### Textual Amendments

- F739** S. 525 repealed (16.4.2003 with effect in accordance with Sch. 22 para. 34(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 34\(1\)](#), [Sch. 43 Pt. 3\(4\)](#)

### *Tax charge*

#### **526 Charge where option granted at a discount**

- (1) This section applies if, at the time when the share option is granted to the individual, the aggregate of—
  - (a) the amount or value of any consideration given by the individual for the grant of the option, and
  - (b) the amount payable by the individual, on exercising the option, in order to acquire the maximum number of shares that may be acquired under it,
 is less than the market value of the same quantity of issued shares of the same class.
- (2) The amount of the difference counts as employment income of the individual for the relevant tax year.
- (3) The “relevant tax year” is the tax year in which the option is granted to the individual.

*Status: Point in time view as at 01/09/2013.*

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- (4) [<sup>F740</sup>Section 480(4) (gain realised on acquisition of securities pursuant to option etc) provides for a deduction] to be made to take account of amounts that count as employment income under this section.

#### Textual Amendments

**F740** Words in s. 526(4) substituted (with effect in accordance with Sch. 22 para. 35(2) of the amending Act, otherwise 1.9.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 35\(1\)](#); S.I. 2003/1997, art. 2

## CHAPTER 9

### ENTERPRISE MANAGEMENT INCENTIVES

#### *Introduction*

#### **527 Enterprise management incentives: qualifying options**

- (1) This Chapter provides—
- for share options notified to [<sup>F106</sup>an officer of Revenue and Customs] to be qualifying options for the purposes of the EMI code, and
  - for exemptions and reliefs from income tax in connection with qualifying options.
- (2) Schedule 5 contains the requirements that have to be met for a share option to be a qualifying option, together with the notification procedure.
- (3) The provisions of—
- this and the following sections of this Chapter,
  - Schedule 5, and
  - Part 4 of Schedule 7D to TCGA 1992 (enterprise management incentives: capital gains tax consequences of exercise of qualifying option),
- together constitute “the EMI code”.
- (4) In the EMI code—
- “qualifying option” means a share option—
- in relation to which the requirements of Schedule 5 are met at the time when the option is granted, and
  - which is notified to [<sup>F106</sup>an officer of Revenue and Customs] in accordance with Part 7 of that Schedule;
- “replacement option” means an option within paragraph 41(4) of that Schedule (grant of replacement option in connection with company reorganisations);
- “share option” means a right to acquire shares in a company;
- and any reference to the requirements of Schedule 5 is to the requirements set out in paragraph 1(3) of that Schedule.
- (5) Other expressions used in the EMI code and contained in the index at the end of Schedule 5 have the meaning indicated by the index.

*Status: Point in time view as at 01/09/2013.*

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#### **Textual Amendments**

**F106** Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 102\(1\)](#); S.I. 2005/1126, art. 2(2)(h)

*Tax advantages: receipt of option*

#### **<sup>F741</sup>528 No charge on receipt of qualifying option**

.....

#### **Textual Amendments**

**F741** S. 528 repealed (1.9.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 36\(1\)\(2\)](#), [Sch. 43 Pt. 3\(4\)](#); S.I. 2003/1997, art. 2

*Tax advantages: exercise of option*

#### **529 Scope of tax advantages: option must be exercised within 10 years**

- (1) Sections 530 to 540 apply in connection with the exercise of a qualifying option.
- (2) But those sections only apply in cases where the option is exercised on or before the tenth anniversary of—
  - (a) the date of the grant of the option, or
  - (b) if it is a replacement option, the date of the grant of the original option.
- (3) In the EMI code “the original option” means—
  - (a) where there has been one replacement option, the option that that option replaced, or
  - (b) where there have been two or more replacement options, the option that the first of them replaced.

#### **530 No charge on exercise of option to acquire shares at market value**

- (1) This section applies if the option is to acquire shares at not less than their market value—
  - (a) at the time when the option is granted, or
  - (b) if it is a replacement option, at the time when the original option was granted.
- (2) If this section applies, no liability to income tax arises by virtue of section 476 (charge on exercise etc. of option by employee) in respect of the exercise of the option.
- (3) This section has effect subject to section 532 (modified tax consequences following disqualifying events).

#### **531 Limitation of charge on exercise of option to acquire shares below market value**

- (1) This section applies if the option is to acquire shares at less than their market value—

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- (a) at the time when the option is granted, or
  - (b) if it is a replacement option, at the time when the original option was granted, or at nil cost.
- (2) If this section applies, the section 476 gain is—

$$\text{CMV} - (\text{ACO} + \text{ACS})$$

where—

CMV is the chargeable market value,

ACO is the amount or value of the consideration given for the grant of the option, and

ACS is the amount, if any, for which the shares are acquired.

- (3) “The chargeable market value” means—
- (a) the market value of the shares—
    - (i) at the time when the option was granted, or
    - (ii) if it is a replacement option, at the time when the original option was granted, or
  - (b) the market value of the shares at the time when the option is exercised, whichever is lower.
- [<sup>F742</sup>(3A) Sections 226B to 226D (deemed payment for acquisition of employee shareholder shares) provide for the determination of the amount, if any, for which employee shareholder shares (within the meaning of section 226A(6)) are acquired.]
- (4) In this section “the section 476 gain” means the amount [<sup>F743</sup>under section 478 (amount of charge under section 476) is to be regarded as the taxable amount for the purposes of section 476 in respect of the acquisition of the shares pursuant to the option.]
- (5) This section has effect subject to section 532 (modified tax consequences following disqualifying events).

#### Textual Amendments

**F742** S. 531(3A) inserted (1.9.2013) by Finance Act 2013 (c. 29), Sch. 23 paras. 13, 38; S.I. 2013/1755, art. 2

**F743** Words in s. 531(4) substituted (1.9.2003) by Finance Act 2003 (c. 14), Sch. 22 para. 37(1)(2); S.I. 2003/1997, art. 2

### *Tax advantages where disqualifying events*

#### **532 Modified tax consequences following disqualifying events**

- (1) This section applies where—
- (a) a disqualifying event (see section 533) occurs in relation to a qualifying option before the option is exercised, and
  - (b) the option is exercised later than [<sup>F744</sup>90] days after the day on which the event occurred.

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- (2) If the option is within section 530(1) (option to acquire shares at market value), the section 476 gain is—

### PEG - ACO

(see subsection (4)).

- (3) If the option is within section 531(1) (option to acquire shares at less than market value), the section 476 gain is—

$$\text{(CMV + PEG)} - \text{(ACO + ACS)}$$

(see subsection (4)).

- (4) For the purposes of subsections (2) and (3)—

ACO is the amount or value of the consideration given for the grant of the option,  
 ACS is the amount, if any, for which the shares are acquired,  
 CMV is the chargeable market value (as defined by section 531(3)), and  
 PEG is the post-event gain, that is the amount (if any) by which the market value of the shares at the time when the option is exercised exceeds their market value immediately before the disqualifying event.

[<sup>F745</sup>(4A) Sections 226B to 226D (deemed payment for acquisition of employee shareholder shares) provide for the determination of the amount, if any, for which employee shareholder shares (within the meaning of section 226A(6)) are acquired.]

- (5) In [<sup>F746</sup>subsections (2) and (3)] “the section 476 gain” means the amount [<sup>F747</sup>under section 478 (amount of charge under section 476) is to be regarded as the taxable amount for the purposes of section 476 in respect of the acquisition of the shares pursuant to the option.]

- (6) Nothing in the following provisions—

- (a) subsections (2) and (3) above, or  
 (b) sections 530 and 531,

applies if the amount that counts as employment income by virtue of section 476 in respect of the exercise of the option would, in the absence of those provisions, be less than the amount that counts as such income as a result of those provisions.

#### **Textual Amendments**

**F744** Word in s. 532(1)(b) substituted (with effect in accordance with Sch. 2 para. 94(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), **Sch. 2 para. 94(1)**

**F745** S. 532(4A) inserted (1.9.2013) by [Finance Act 2013 \(c. 29\)](#), **Sch. 23 paras. 14(2)**, 38; S.I. 2013/1755, art. 2

**F746** Words in s. 532(5) substituted (1.9.2013) by [Finance Act 2013 \(c. 29\)](#), **Sch. 23 paras. 14(3)**, 38; S.I. 2013/1755, art. 2

**F747** Words in s. 532(5) substituted (1.9.2003) by [Finance Act 2003 \(c. 14\)](#), **Sch. 22 para. 38(1)(2)**; S.I. 2003/1997, art. 2

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### **533 Disqualifying events**

- (1) The following provisions deal with the events that are (or are to be treated as) disqualifying events in relation to a qualifying option—
  - (a) section 534 (events relating to the relevant company),
  - (b) section 535 (events relating to the employee), and
  - (c) section 536 (other disqualifying events), read with sections 537 to 539 (which contain supplementary provisions).
- (2) In the provisions mentioned in subsection (1) “the employee” means the person holding the qualifying option and “the relevant company” means the company whose shares are the subject of the option (see paragraph 1(3) of Schedule 5).

### **534 Disqualifying events relating to relevant company**

- (1) The following events relating to the relevant company are disqualifying events in relation to a qualifying option—
  - (a) when the relevant company becomes a 51% subsidiary of another company;
  - (b) when the relevant company comes under the control of—
    - (i) another company, or
    - (ii) another company and any other person connected with that other company,without becoming a 51% subsidiary of that other company;
  - (c) when the relevant company ceases to meet the trading activities requirement (see paragraphs 13 to 23 of Schedule 5).
- (2) But where a replacement option has been granted, an event within subsection (1)(a) or (b) is not a disqualifying event in relation to the old option (see paragraph 41(2) of Schedule 5) if the event occurs at any time during the period—
  - (a) beginning at the same time as the period within which the replacement option had to be granted (see paragraph 42 of Schedule 5), and
  - (b) ending with the release of the rights under the old option.
- (3) A disqualifying event is to be treated as occurring in relation to a qualifying option if the circumstances mentioned in subsection (4) arise.
- (4) The circumstances are that—
  - (a) the relevant company was a qualifying company at the time when the option was granted as a result only of preparations to carry on a qualifying trade; and
  - (b) either—
    - (i) the preparations cease to be carried on, or
    - (ii) the initial period comes to an end,without the relevant company (or, if it is a parent company, any member of the group) beginning to carry on that qualifying trade.
- (5) “The initial period” means the period of two years after the date when the option was granted.
- (6) Paragraph 41(5)(b) of Schedule 5 has the effect that a replacement option is to be treated as granted on the date when the original option was granted.

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### **535 Disqualifying events relating to employee**

- (1) The following events relating to the employee are disqualifying events in relation to a qualifying option—
  - (a) when the employee ceases to be an eligible employee in relation to the relevant company as a result of ceasing to meet the requirement in paragraph 25 of Schedule 5 (the employment requirement);
  - (b) when the employee ceases to be such an employee as a result of ceasing to meet the requirement in paragraph 26 of that Schedule (the requirement as to commitment of working time).
- (2) In addition, a disqualifying event is to be treated as occurring in relation to a qualifying option at the end of any tax year if, during that year, the average amount per week of the employee’s reckonable time in relevant employment was less than the statutory threshold.
- (3) An employee’s “reckonable time in relevant employment” means the time which the employee in fact spent, as an employee in relevant employment—
  - (a) on the business of the relevant company, or
  - (b) if that company is a parent company, on the business of the group,
 together with any time which the employee would, as such an employee, have spent on that business but for any of the reasons set out in paragraph 26(3)(a) to (d) of Schedule 5 (requirement as to commitment of working time).
- (4) The “statutory threshold” means—
  - (a) 25 hours, or
  - (b) if less, 75% of the employee’s working time.
- (5) For the purpose of applying subsection (2) to the tax year in which the option was granted, any part of that year which preceded the date on which it was granted is to be disregarded in calculating the average amount mentioned in that subsection.
- (6) In this section—
  - (a) “relevant employment” means employment—
    - (i) by the relevant company, or
    - (ii) if that company is a parent company, by any member of the group;
  - (b) “working time” has the meaning given by paragraph 27 of Schedule 5 (meaning of “working time”).

### **536 Other disqualifying events**

- (1) The following are also disqualifying events in relation to a qualifying option—
  - (a) any variation of the terms of the option whose effect is either—
    - (i) to increase the market value of the shares that are the subject of the option, or
    - (ii) that the requirements of Schedule 5 would no longer be met in relation to the option;
  - (b) any alteration to the share capital of the relevant company—
    - (i) to which subsection (2) (share values affected by alteration of rights or restrictions) of section 537 applies, and
    - (ii) whose effect is that the requirements of Schedule 5 would no longer be met in relation to the option;



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- (c) any alteration to the share capital of the relevant company to which—
    - (i) subsection (2) (share values affected by alteration of rights or restrictions), and
    - (ii) subsection (3) (alteration designed to increase share values),of section 537 apply;
  - (d) a conversion of any of the shares to which the option relates into shares of a different class, except in a case within section 538(2); and
  - (e) the grant to the employee of a relevant CSOP option, if immediately after it is granted the employee holds unexercised employee options in respect of shares with a total value of more than [<sup>F748</sup>£250,000] .
- (2) In subsection (1)(e)—
- “relevant CSOP option”, and
  - “employee option”,
- have the meaning given by section 539 (CSOP and other options relevant for purposes of this section); and sub-paragraphs (6) to (8) of paragraph 5 of Schedule 5 (determination of value of shares) apply for the purposes of subsection (1)(e) as they apply for the purposes of paragraph 5.

#### Textual Amendments

**F748** Word in s. 536(1)(e) substituted (16.6.2012) by [The Income Tax \(Limits for Enterprise Management Incentives\) Order 2012 \(S.I. 2012/1360\)](#), arts. 1, **2(2)(c)**

### 537 Alterations of share capital for purposes of section 536

- (1) This section has effect for the purposes of section 536(1)(b) and (c) (other disqualifying events: alterations of share capital of relevant company).
- (2) This subsection applies to an alteration of the share capital of the relevant company if—
  - (a) the alteration affects (or but for the occurrence of some other event would affect) the value of the shares to which the option relates; and
  - (b) it consists of or includes—
    - (i) the creation, variation or removal of a right relating to any shares in the relevant company,
    - (ii) the imposition of a restriction relating to any such shares, or
    - (iii) the variation or removal of a restriction to which any such shares are subject.
- (3) This subsection applies to an alteration of the share capital of the relevant company if the effect of the alteration is to increase the market value of the shares to which the option relates and either—
  - (a) it is not made by the relevant company for commercial reasons, or
  - (b) the main purpose (or one of the main purposes) for making it is to increase the market value of those shares.
- (4) In this section any reference to—
  - (a) a restriction relating to shares or to which shares are subject, or
  - (b) a right relating to shares,

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is a reference to such a restriction imposed or right conferred by any contract or arrangement or in any other way.

### 538 Share conversions excluded for purposes of section 536

- (1) This section has effect for the purposes of section 536(1)(d) (other disqualifying events: share conversions).
  - (2) A conversion of shares is not a disqualifying event if—
    - (a) it is a conversion of shares of one class only (“the original class”) into shares of one other class only (“the new class”);
    - (b) all the shares of the original class are converted into shares of the new class; and
    - (c) one of the conditions in subsection (3) is met.
  - (3) The conditions are—
    - (a) that immediately before the conversion the majority of the relevant company’s shares of the original class are held otherwise than by or for the benefit of—
      - (i) directors or employees of the relevant company,
      - (ii) an associated company of the relevant company, or
      - (iii) directors or employees of such an associated company;
    - (b) that immediately before the conversion the relevant company is employee-controlled as a result of holdings of shares of the original class.
- [<sup>F749</sup>(4) “associated company” has the [<sup>F750</sup>meaning given by section 449 of CTA 2010], “director” has the same meaning as in the benefits code (see section 67) but also includes a person who is to be or has been a director, “employee” includes a person who is to be or has been an employee, and “employee-controlled” has the same meaning as in Chapters 1 to 4 of this Part (see section 421H(1)).]

#### Textual Amendments

**F749** S. 538(4) substituted (1.9.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 39\(1\)\(2\)](#); S.I. 2003/1997, [art. 2](#)

**F750** Words in s. 538(4) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 392](#) (with [Sch. 2](#))

### 539 CSOP and other options relevant for purposes of section 536

- (1) This section has effect for the purposes of section 536(1)(e) (other disqualifying events: grant of CSOP option).
- (2) A “relevant CSOP option” means a CSOP option granted to the employee by reason of the employee’s employment—
  - (a) with the employer company, or
  - (b) if it is a member of a group of companies, with any member of that group.
- (3) A share option is an “employee option” if it is—

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- (a) the qualifying option mentioned in section 536(1), or
  - (b) another qualifying option granted to the employee by reason of the employee's employment as mentioned in subsection (2)(a) or (b) above, or
  - (c) a relevant CSOP option.
- (4) In this section a “CSOP option” means an option to acquire shares under a scheme approved under Schedule 4 (CSOP schemes).

*Tax advantages: taxable benefits*

**540 No charge on acquisition of shares as taxable benefit**

- (1) In its application in relation to a UK resident employee, [<sup>F751</sup>Chapter 3C of this Part] (taxable benefits: notional loans in respect of acquisitions of shares) does not apply in relation to the acquisition of shares by the exercise of a qualifying option.
- (2) An employee is a “UK resident employee” if—
- (a) at the time when the option is granted, or
  - (b) at the time when it is exercised,
- the earnings from the employment are (or would be if there were any) general earnings to which section 15 [<sup>F752</sup>applies (earnings for year when employee UK resident).]

**Textual Amendments**

- F751** Words in s. 540(1) substituted (with effect in accordance with Sch. 22 para. 40(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 40\(1\)](#)
- F752** Words in s. 540(2) substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 34](#)

*Other income tax consequences*

**541 Effects on other income tax charges**

- [<sup>F753</sup>(1) Nothing in the EMI code affects—
- (a) the operation of Chapters 2 to 4 of this Part in relation to shares acquired under a qualifying option, or
  - (b) the operation of Chapter 5 of this Part otherwise than in relation to the acquisition of shares under a qualifying option.
- (2) But in calculating the taxable amount for the purposes of section 426 (post-acquisition charge on restricted securities) in respect of shares acquired under a qualifying option, the amount of relief on the exercise of the option is to be regarded as a deductible amount for the purposes of section 428 (amount of charge).]
- (3) “The amount of relief on the exercise of the option” means the difference between—
- (a) the amount that would have counted as employment income by virtue of section 476 in respect of the exercise of the option apart from the EMI code, and
  - (b) the amount (if any) that in fact counts as such income in accordance with the EMI code.

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### Textual Amendments

**F753** S. 541(1)(2) substituted (1.9.2003 with effect in accordance with Sch. 22 para. 41(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), **Sch. 22 para. 41(1)**; S.I. 2003/1997, art. 2

## CHAPTER 10

### PRIORITY SHARE ALLOCATIONS

#### *Exemption where offer made to both public and employees*

#### **542 Exemption: offer made to public and employees**

- (1) This section applies if—
  - (a) there is a genuine offer to the public of shares in a company at a fixed price or by tender,
  - (b) a director or employee of the company, or of another company or person, is entitled by reason of the office or employment to an allocation of the shares in priority to members of the public, and
  - (c) conditions A to C are met.
- (2) No liability to income tax in respect of earnings arises by virtue of any benefit derived by the director or employee from the entitlement.
- (3) Condition A is that the aggregate number of shares subject to the offer that may be allocated as mentioned in subsection (1)(b) (“priority shares”) does not exceed—
  - (a) if the offer is part of arrangements which include one or more other offers to the public of shares of the same class, either of the limits in subsection (4), or
  - (b) in any other case, 10% of the shares subject to the offer (including the priority shares).
- (4) The limits referred to in subsection (3)(a) are—
  - (a) 40% of the shares subject to the offer (including the priority shares), and
  - (b) 10% of all the shares of the class in question that are subject to any of the offers forming part of the arrangements (including the priority shares).
- (5) Condition B is that all the persons entitled to an allocation of priority shares are entitled to it on similar terms (see section 546).
- (6) Condition C is that those persons are not restricted wholly or mainly to directors or to those whose remuneration exceeds a particular level.
- (7) This section has effect subject to section 543 (discount not covered by exemption in this section).

#### **543 Discount not covered by exemption in section 542**

- (1) This section applies if the total of—
  - (a) the price payable by the director or employee for the shares of the company allocated to the director or employee under the offer, and

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- (b) the amount or value of any registrant discount made to the director or employee in respect of the shares,  
is less than the fixed price or the lowest price successfully tendered.
- (2) Section 542(2) (exemption: offer made to public and employees) does not apply to the benefit (if any) represented by the difference.

*Exemption where different offers made to public and employees*

#### **544 Exemption: different offers made to public and employees**

- (1) This section applies if—
  - (a) there is a genuine offer to the public of a combination of shares in two or more companies at a fixed price or by tender (“the public offer”),
  - (b) there is at the same time an offer (“the employee offer”) of shares, or of a combination of shares, in one or more, but not all, of those companies—
    - (i) to directors or employees of any of those companies, or of any other company or person, or
    - (ii) to those directors or employees and to other persons,
  - (c) any of those directors or employees is entitled by reason of the office or employment to an allocation of shares under the employee offer in priority to any allocation to members of the public under the public offer, and
  - (d) conditions A to C are met.
- (2) No liability to income tax in respect of earnings arises by virtue of any benefit derived by the director or employee from the entitlement.
- (3) Condition A is that for each company whose shares are subject to the employee offer, the aggregate number of shares subject to that offer that may be allocated as mentioned in subsection (1)(c) (“priority shares”) does not exceed—
  - (a) if the public offer and the employee offer are part of arrangements which include one or more other offers to the public of shares in the company of the same class, either of the limits in subsection (4), or
  - (b) in any other case, 10% of the shares in the company that are subject to the public offer or the employee offer (including the priority shares).
- (4) The limits referred to in subsection (3)(a) are—
  - (a) 40% of the shares in the company that are subject to the public offer or the employee offer (including the priority shares), and
  - (b) 10% of all the shares in the company of the class in question that are subject to any of the offers forming part of the arrangements (including the priority shares).
- (5) Condition B is that all the persons entitled to an allocation of priority shares are entitled to it on similar terms (see section 546).
- (6) Condition C is that those persons are not restricted wholly or mainly to directors or to those whose remuneration exceeds a particular level.
- (7) This section has effect subject to section 545 (discount not covered by exemption in this section).

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#### **545 Discount not covered by exemption in section 544**

- (1) This section applies if the total of—
- (a) the price payable by the director or employee for the shares of a company allocated to the director or employee under the employee offer, and
  - (b) the amount or value of any registrant discount made to the director or employee in respect of the shares,
- is not the same as, or as near as reasonably practicable to, the appropriate notional price for the shares of the company.
- (2) Section 544(2) (exemption: different offers made to public and employees) does not apply to the benefit (if any) represented by the amount by which the appropriate notional price exceeds the total referred to in subsection (1).
- (3) The “appropriate notional price” for the shares of a company is—
- (a) if subsection (4) applies, the amount given by the formula in subsection (6), and
  - (b) in any other case, the notional price.
- (4) This subsection applies if shares of the company are subject to the public offer and there is a difference between CP and AFP—
- (a) CP being the price for the combination of shares subject to the public offer determined by aggregating the notional prices for each one of the shares comprised in the combination, and
  - (b) AFP being the actual fixed price or (as the case may be) the lowest successfully tendered price for that combination of shares.
- (5) The “notional price” for the shares of a company is the price that might reasonably have been expected to be the fixed price for the shares of the company under a separate offer of those shares if—
- (a) the shares of the company, and of each of the other companies had, instead of being subject to the public offer and the employee offer, been subject to separate offers to the public in respect of each company at fixed prices, and
  - (b) those separate offers had been made at the time at which the public offer was in fact made.
- (6) The formula referred to in subsection (3)(a) is—

$$NP \times \frac{AFP}{CP}$$

where—

NP is the notional price for the shares of the company, and

AFP and CP have the same meanings as in subsection (4).

#### *Supplementary provisions*

#### **546 Meaning of being entitled “on similar terms”**

- (1) This section applies for the purposes of sections 542(5) and 544(5) (condition that entitlements to allocation of priority shares must be on similar terms).

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- (2) The fact that different provision is made for persons according to—
  - (a) the levels of their remuneration,
  - (b) the length of their service, or
  - (c) similar factors,does not mean that they are not entitled to an allocation on similar terms.
- (3) The fact that the allocations of shares in a company to which non-company employees are entitled are smaller than those to which company employees are entitled does not mean that they are not entitled on similar terms, if conditions A and B are met.
- (4) Condition A is that each non-company employee is also entitled by reason of the office or employment and in priority to members of the public, to an allocation of shares in another company or companies which are offered to the public at a fixed price or by tender at the same time as the shares in the company.
- (5) Condition B is that in the case of each non-company employee the aggregate value of all the shares included in the allocations to which the non-company employee is entitled is the same, or as nearly the same as is reasonably practicable, as that of the shares in the company included in the entitlement of a comparable company employee.
- (6) For the purposes of subsection (5), the value of shares is to be measured by reference to the fixed price or the lowest price successfully tendered.
- (7) In this section—
  - “company employee”, in relation to a company, means a director or employee of the company, and
  - “non-company employee”, in relation to a company, means a director or employee of another company or person.

#### **547 Meaning and amount or value of “registrant discount”**

- (1) For the purposes of this Chapter there is a “registrant discount” in respect of the shares of a company if conditions A to C are met.
- (2) Condition A is that members of the public who comply with such requirements as may be imposed in connection with the offer or, if section 544 applies, the public offer are, or may become, entitled to a discount in respect of the whole or part of the shares of the company allocated to them.
- (3) Condition B is that at least 40% of the shares of the company allocated to members of the public are allocated to individuals who are or become entitled to—
  - (a) the discount, or
  - (b) some other benefit of similar value for which they may elect as an alternative to the discount.
- (4) Directors and employees who are entitled by reason of their office or employment to an allocation of the shares in priority to members of the public are not to be treated as members of the public for the purposes of subsection (3).
- (5) Condition C is that subscribing employees are, or may become, entitled to the same discount in respect of the shares of the company as any other members of the public to whom shares of the company are allocated under the offer.
- (6) In subsection (5) a “subscribing employee” means a director or employee who—

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- (a) subscribes for shares—
    - (i) if section 542 (offer made to public and employees) applies, under the offer as a member of the public, or
    - (ii) if section 544 (different offers made to public and employees) applies, under the public offer as a member of the public or under the employee offer as a director or employee, and
  - (b) complies (or, in the case of a requirement to register, is taken under the terms of the offer to comply) with the requirements mentioned in subsection (2).
- (7) For the purposes of this Chapter, the “amount or value” of any registrant discount made to a director or employee means—
- (a) the amount of any such discount made to the director or employee as is mentioned in subsection (5), or
  - (b) the value of any such other benefit as is mentioned in subsection (3)(b) which is conferred on the director or employee as an alternative to the discount.

#### **548 Minor definitions**

- (1) In this Chapter—
- “director” means—
- (a) in relation to a company whose affairs are managed by a board of directors or similar body, a member of that body,
  - (b) in relation to a company whose affairs are managed by a single director or similar person, that director or person, and
  - (c) in relation to a company whose affairs are managed by the members themselves, a member of the company, and
- includes any person in accordance with whose directions or instructions the directors of the company (as defined in paragraphs (a) to (c)) are accustomed to act and a person who is to be, or has ceased to be, a director (as so defined);
- “employee” includes a person who is to be or has been an employee;
- “shares” includes stock;
- “the employee offer” and “the public offer” have the meanings given by section 544(1).
- (2) For the purposes of subsection (1) a person is not to be regarded as a person in accordance with whose directions or instructions the directors of the company are accustomed to act merely because the directors act on advice given by that person in a professional capacity.
- (3) References in this Chapter—
- (a) to the employment, in relation to an employee, are to the employment of that employee, and
  - (b) to the office, in relation to a director, are to the office of that director.



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## CHAPTER 11

### SUPPLEMENTARY PROVISIONS ABOUT EMPLOYEE BENEFIT TRUSTS

#### Introduction

#### 549 Application of this Chapter

- (1) This Chapter applies for the purposes of any listed provision in circumstances where—
- an individual (“B”) is interested as a beneficiary of an employee benefit trust in shares or obligations of a particular company (“the company”), and
  - the question arises under that provision whether the trustees of the trust are, as a result of B’s being so interested, to be regarded as associates of B’s for the relevant purposes.

The relevant purposes are those of the operation, in relation to the company, of the “no material interest” requirement contained in the Schedule to this Act in which the listed provision appears.

- (2) In this Chapter “listed provision” means any of the following provisions (under which trustees of an employee benefit trust are not to be regarded as associates if specified limits relating to share ownership are not exceeded)—

- paragraph 23(2) of Schedule 2 (approved SIPs),
- paragraph 15(2) of Schedule 3 (approved SAYE option schemes),
- paragraph 13(2) of Schedule 4 (approved CSOP schemes), or
- paragraph 32(2) of Schedule 5 (enterprise management incentives).

- (3) The general effect of this Chapter is that if the provisions of—

- sections 552 and 553 (attribution of interest in company to beneficiary or associate), or
- section 554 (attribution of further interest),

apply in relation to B or an associate of B's, B or the associate is to be treated for the purposes of the listed provision as having been the beneficial owner of a particular percentage of the company’s ordinary share capital on a particular date.

- (4) In this Chapter, in relation to an individual, “associate”—

- has the <sup>F754</sup> meaning given by section 448 of CTA 2010 (close companies: meaning of “associate”)], but
- does not include the trustees of an employee benefit trust as a result only of the individual’s having (as mentioned in subsection (1)(a)) an interest in shares or obligations of the company which are subject to the trust.

- (5) In this Chapter “employee” means the holder of a taxable employment under Part 2 (as defined in section 66(3)), and accordingly includes an office-holder whose office is within the scope of that definition as a result of section 5(1).

#### Textual Amendments

**F754** Words in s. 549(4)(a) substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 393** (with **Sch. 2**)

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### *Employee benefit trusts*

#### **550 Meaning of “employee benefit trust”**

- (1) In this Chapter “employee benefit trust”, in relation to a company, means a trust where conditions A and B are met.
- (2) Condition A is that all or most of the employees of the company are eligible to benefit under the trust.
- (3) Condition B is that after 13th March 1989 either—
  - (a) there has been no disposal of any of the property subject to the trust, or
  - (b) any disposal of any of that property was a disposal within subsection (4).
- (4) The disposals within this subsection are—
  - (a) disposals in the ordinary management of the trust, or
  - (b) qualifying disposals (within the meaning given by section 551).
- (5) In this section and section 551 “disposal” means disposal by sale, loan or otherwise.

#### **551 “Qualifying disposals” for purposes of section 550**

- (1) For the purposes of section 550 (meaning of “employee benefit trust”) a “qualifying disposal” is a disposal of property consisting of—
  - (a) any of the ordinary share capital of the company, or
  - (b) money paid outright,
 where any of conditions 1, 2 and 3 is met.
- (2) Condition 1 is that the property has been applied for the benefit of—
  - (a) individual employees or former employees of the company,
  - (b) spouses [<sup>F755</sup>or civil partners] , former spouses [<sup>F755</sup>or civil partners] , widows or widowers [<sup>F756</sup>or surviving civil partners] of employees or former employees of the company,
  - (c) dependants of persons within paragraph (a), or
  - (d) relatives, or spouses [<sup>F757</sup>or civil partners] of relatives, of persons within paragraph (a) or (b).
- (3) In subsection (2) each reference to the company includes a reference to a company controlled by the company.
- (4) Condition 2 is that the property has been applied for charitable purposes.
- (5) Condition 3 is that the property has been transferred to—
  - (a) the trustees of another employee benefit trust,
  - (b) the trustees of a qualifying employee share ownership trust (within the meaning of Schedule 5 to FA 1989), or
  - (c) the trustees of a profit sharing scheme approved under Schedule 9 to ICTA (approved share option schemes and profit sharing schemes).
- (6) In this section “relative” means—
  - (a) parent, child or remoter relation in the direct line, or
  - (b) brother, sister, uncle, aunt, nephew or niece.

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#### Textual Amendments

- F755** Words in s. 551(2)(b) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **153(a)(i)**
- F756** Words in s. 551(2)(b) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **153(a)(ii)**
- F757** Words in s. 551(2)(d) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **153(b)**

### *Attribution of interests in company*

#### **552 Attribution of interest in company to beneficiary or associate**

- (1) This section applies if—
- after 13th March 1989 B, or an associate of B's, has received a payment (“the relevant payment”) from the trustees of the employee benefit trust, and
  - at any time during the period of 3 years ending with the day on which the relevant payment was received (“the payment date”), the property subject to the trust consisted of or included any part of the ordinary share capital of the company.
- (2) In such a case B or the associate is to be treated for the purposes of the listed provision as having been the beneficial owner of the appropriate percentage of the ordinary share capital of the company on the payment date.
- (3) This is in addition to any percentage of that share capital of which B or the associate was actually the beneficial owner on that date.
- (4) Section 553 explains what is meant by “the appropriate percentage”.

#### Modifications etc. (not altering text)

- C27** Ss. 552-554 applied (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), ss. **395(5)**, 1034(1) (with Sch. 2)

#### **553 Meaning of “appropriate percentage” for purposes of section 552**

- (1) For the purposes of section 552 “the appropriate percentage” is—

$$\frac{P \times 100}{D}$$

where P and D have the meaning given by the following provisions.

- (2) Unless subsection (3) applies, P is the aggregate of the relevant payment and any other payments received by B or associates of B's from the trustees of the trust during the period of 12 months ending with the payment date.
- (3) If—
- any distributions were made to the trustees of the trust by the company in respect of its ordinary share capital during the period of 3 years ending with the payment date, and

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- (b) the aggregate of those distributions is less than the aggregate mentioned in subsection (2),

P is the aggregate of those distributions.

- (4) Unless subsection (5) applies, D is the amount determined as follows—

*Step 1*

Calculate the aggregate of—

- (a) any distributions made by the company in respect of its ordinary share capital during the period of 12 months ending with the payment date,
- (b) any distributions so made during the period of 12 months immediately preceding that mentioned in paragraph (a), and
- (c) any distributions so made during the period of 12 months immediately preceding that mentioned in paragraph (b).

*Step 2*

Divide the aggregate so calculated by the number of the periods mentioned in paragraphs (a) to (c) in which distributions were so made.

- (5) If no distributions were so made during any of those periods, D is 1.
- (6) In this section “the payment date” and “the relevant payment” have the meaning indicated in section 552(1).

**Modifications etc. (not altering text)**

C27 Ss. 552-554 applied (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), ss. 395(5), 1034(1) (with Sch. 2)

**554 Attribution of further interest in company**

- (1) This section applies if—
- (a) B or an associate of B’s is (apart from this section) to be treated by virtue of section 552(2) as having been the beneficial owner of a percentage of the ordinary share capital of the company as a result of receiving the relevant payment from the trustees of an [<sup>F758</sup>employee] benefit trust, and
  - (b) B or an associate of B’s has, during the period of 12 months ending with the payment date, received one or more payments from the trustees of any other employee benefit trust or trusts connected with the company.
- (2) In such a case section 552 applies to B or (as the case may be) the associate mentioned in subsection (1)(a) as if B or the associate had received—
- (a) any payment from the trustees of a trust as mentioned in subsection (1)(b), or
  - (b) where more than one payment has been received from the trustees of a trust, the last of the payments,
- on the payment date.
- (3) B or the associate is accordingly to be treated for the purposes of the listed provision as having been the beneficial owner on the payment date of both—
- (a) the percentage of the ordinary share capital of the company mentioned in subsection (1)(a), and

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- (b) the appropriate percentage of that share capital as determined in accordance with subsection (2).
- (4) This is in addition to any percentage of that share capital of which B or the associate was actually the beneficial owner on that date.
- (5) For the purposes of this section a trust is “connected with” the company if, at any time during the period of 3 years ending with the payment date, the property subject to the trust consisted of or included any part of the ordinary share capital of the company.
- (6) In this section “the payment date” and “the relevant payment” have the meaning indicated in section 552(1).

#### Textual Amendments

**F758** Word in s. 554(1)(a) substituted (22.7.2004) by [Finance Act 2004 \(c. 12\)](#), [Sch. 17 para. 9\(3\)](#)

#### Modifications etc. (not altering text)

**C27** [Ss. 552-554](#) applied (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), [ss. 395\(5\)](#), [1034\(1\)](#) (with [Sch. 2](#))

## [<sup>F759</sup>PART 7A

### EMPLOYMENT INCOME PROVIDED THROUGH THIRD PARTIES

#### Textual Amendments

**F759** Pt. 7A inserted (with effect in accordance with [Sch. 2 paras. 52-59](#) of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 1](#)

## CHAPTER 1

### APPLICATION ETC

#### *Application*

#### **554A Application of Chapter 2**

- (1) Chapter 2 applies if—
  - (a) a person (“A”) is an employee, or a former or prospective employee, of another person (“B”),
  - (b) there is an arrangement (“the relevant arrangement”) to which A is a party or which otherwise (wholly or partly) covers or relates to A,
  - (c) it is reasonable to suppose that, in essence—
    - (i) the relevant arrangement, or
    - (ii) the relevant arrangement so far as it covers or relates to A,is (wholly or partly) a means of providing, or is otherwise concerned (wholly or partly) with the provision of, rewards or recognition or loans in connection with A's employment, or former or prospective employment, with B,

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- (d) a relevant step is taken by a relevant third person, and
  - (e) it is reasonable to suppose that, in essence—
    - (i) the relevant step is taken (wholly or partly) in pursuance of the relevant arrangement, or
    - (ii) there is some other connection (direct or indirect) between the relevant step and the relevant arrangement.
- (2) In this Part “relevant step” means a step within section 554B, 554C or 554D.
- (3) Subsection (1) is subject to subsection (4) and sections 554E to 554Y.
- (4) Chapter 2 does not apply by reason of a relevant step within section 554B taken on or after A's death.
- (5) In subsection (1)(b) and (c)(ii) references to A include references to any person linked with A.
- (6) For the purposes of subsection (1)(c) it does not matter if the relevant arrangement does not include details of the steps which will or may be taken in connection with providing, in essence, rewards or recognition or loans as mentioned (for example, details of any sums of money or assets which will or may be involved or details of how or when or by whom or in whose favour any step will or may be taken).
- (7) In subsection (1)(d) “relevant third person” means—
- (a) A acting as a trustee,
  - (b) B acting as a trustee, or
  - (c) any person other than A and B.
- (8) If B is a company and is a member of a group of companies at the time the relevant step is taken, in subsection (7) references to B are to be read as including references to any other company which is a member of that group at that time.
- (9) If B is a limited liability partnership, in subsection (7) references to B are to be read as including references to any company which is a wholly-owned subsidiary (as defined in section 1159(2) of the Companies Act 2006) of B at the time the relevant step is taken.
- (10) Neither subsection (8) nor subsection (9) applies if there is a connection (direct or indirect) between the relevant step and a tax avoidance arrangement.
- (11) For the purposes of subsection (1)(e)—
- (a) the relevant step is connected with the relevant arrangement if (for example) the relevant step is taken (wholly or partly) in pursuance of an arrangement at one end of a series of arrangements with the relevant arrangement being at the other end, and
  - (b) it does not matter if the person taking the relevant step is unaware of the relevant arrangement.
- (12) For the purposes of subsection (1)(c) and (e) in particular, all relevant circumstances are to be taken into account in order to get to the essence of the matter.

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### *Relevant steps*

#### **554B Relevant steps: earmarking etc of sum of money or asset**

- (1) A person (“P”) takes a step within this section if—
  - (a) a sum of money or asset held by or on behalf of P is earmarked (however informally) by P with a view to a later relevant step being taken by P or any other person (on or following the meeting of any condition or otherwise) in relation to—
    - (i) that sum of money or asset, or
    - (ii) any sum of money or asset which may arise or derive (directly or indirectly) from it, or
  - (b) a sum of money or asset otherwise starts being held by or on behalf of P, specifically with a view, so far as P is concerned, to a later relevant step being taken by P or any other person (on or following the meeting of any condition or otherwise) in relation to—
    - (i) that sum of money or asset, or
    - (ii) any sum of money or asset which may arise or derive (directly or indirectly) from it.
- (2) For the purposes of subsection (1)(a) and (b) it does not matter—
  - (a) if details of the later relevant step have not been worked out (for example, details of the sum of money or asset which will or may be the subject of the step or details of how or when or by whom or in whose favour the step will or may be taken),
  - (b) if any condition which would have to be met before the later relevant step is taken might never be met, or
  - (c) if A, or any person linked with A, has no legal right to have a relevant step taken in relation to any sum of money or asset mentioned in subsection (1)(a) (i) or (ii) or (b)(i) or (ii) (as the case may be).
- (3) For the purposes of subsection (1)(b) it does not matter whether or not the sum of money or asset in question has previously been held by or on behalf of P on a basis which is different to that mentioned in subsection (1)(b).

#### **554C Relevant steps: payment of sum, transfer of asset etc**

- (1) A person (“P”) takes a step within this section if P—
  - (a) pays a sum of money to a relevant person,
  - (b) transfers an asset to a relevant person,
  - (c) takes a step by virtue of which a relevant person acquires an asset within subsection (4),
  - (d) makes available a sum of money or asset for use, or makes it available under an arrangement which permits its use—
    - (i) as security for a loan made or to be made to a relevant person, or
    - (ii) otherwise as security for the meeting of any liability, or the performance of any undertaking, which a relevant person has or will have, or
  - (e) grants to a relevant person a lease of any premises the effective duration of which is likely to exceed 21 years.

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- (2) In subsection (1) “relevant person”—
- (a) means A or a person chosen by A or within a class of person chosen by A, and
  - (b) includes, if P is taking a step on A's behalf or otherwise at A's direction or request, any other person.
- (3) In subsection (2) references to A include references to any person linked with A.
- (4) The following assets are within this subsection—
- (a) securities,
  - (b) interests in securities, and
  - (c) securities options,
- as defined in section 420 for the purposes of Chapters 1 to 5 of Part 7; and in subsection (1)(c) “acquires” is to be read in accordance with section 421B(2)(a).
- (5) For the purposes of subsection (1)(d)—
- (a) references to making a sum of money or asset available are references to making it available in any way, however informal,
  - (b) it does not matter if the relevant person has no legal right to have the sum of money or asset used as mentioned, and
  - (c) it does not matter if the sum of money or asset is not actually used as mentioned.
- (6) Subsections (7) and (8) apply for the purpose of determining the likely effective duration of a lease of any premises granted to a relevant person (“the original lease”) for the purposes of subsection (1)(e).
- (7) If there are circumstances which make it likely that the original lease will be extended for any period, the effective duration of the original lease is to be determined on the assumption that the original lease will be so extended.
- (8) Further, if—
- (a) A is, or is likely to become, entitled to a later lease, or the grant of a later lease, of the same premises, or
  - (b) it is otherwise likely that A will be granted a later lease of the same premises, the original lease is to be treated as continuing until the end of the later lease (and subsection (7) also applies for the purpose of determining the duration of the later lease).
- (9) In subsection (8)—
- (a) references to A include references to—
    - (i) any person linked with A, and
    - (ii) the person to whom the original lease was granted where the original lease was not granted to A or any person linked with A, and
  - (b) references to the same premises include references to any premises which include the whole or part of the same premises.
- (10) In this section “lease” and “premises” have the same meaning as they have in Chapter 4 of Part 3 of ITTOIA 2005.



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#### **554D Relevant steps: making asset available**

- (1) A person (“P”) takes a step within this section if, without transferring the asset to the relevant person, P—
  - (a) at any time, makes an asset available for a relevant person to benefit from in a way which is substantially similar to the way in which the relevant person would have been able to benefit from the asset had the asset been transferred to the relevant person at that time, or
  - (b) at or after the end of the relevant period, makes an asset available for a relevant person to benefit from.
- (2) If—
  - (a) before the end of the relevant period, P makes available an asset for a relevant person to benefit from, and
  - (b) at the end of the relevant period, P continues to make the asset available for the relevant person to benefit from,

P is treated as taking a step within this section by virtue of subsection (1)(b) at the end of the relevant period.
- (3) For the purposes of subsections (1) and (2)—
  - (a) references to making an asset available are references to making it available in any way, however informal,
  - (b) it does not matter if the relevant person has no legal right to benefit from the asset, and
  - (c) it does not matter if the relevant person does not actually benefit from the asset.
- (4) In subsections (1) and (2) “the relevant period” means the period of two years starting with the day on which A's employment with B ceases.
- (5) In subsections (1) and (2) “relevant person”—
  - (a) means A or a person chosen by A or within a class of person chosen by A, and
  - (b) includes, if P is taking a step on A's behalf or otherwise at A's direction or request, any other person.
- (6) In subsection (5) references to A include references to any person linked with A.
- (7) The following factors (among others) may be taken into account in determining whether a step within this section is taken by virtue of subsection (1)(a)—
  - (a) any limitations on the way in which the relevant person may benefit from the asset,
  - (b) the period over which the asset is being made available and (if relevant) the extent to which that period covers the expected remaining useful life of the asset,
  - (c) the extent to which the relevant person has, or is to have, a say over the disposal of the asset, and
  - (d) the extent to which the relevant person may benefit from any proceeds arising from the disposal of the asset or otherwise have a say in the way the proceeds are used.

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### *Exclusions*

#### **554E Exclusions: steps under certain schemes etc**

- (1) Chapter 2 does not apply by reason of a relevant step if the step is taken under any of the following—
  - (a) an approved SIP (within the meaning of Chapter 6 of Part 7),
  - (b) an approved SAYE option scheme (within the meaning of Chapter 7 of Part 7),
  - (c) an approved CSOP scheme (within the meaning of Chapter 8 of Part 7),
  - (d) an arrangement the sole purpose of which is the provision of excluded benefits (as defined in section 393B(3)),
  - (e) an arrangement the sole purpose of which is the making of payments which are to be disregarded in the calculation mentioned in regulation 25 of the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004) by virtue of paragraph 12 of Part 10 of Schedule 3 to those Regulations (as that paragraph has effect by virtue of regulation 2(3) of the Social Security (Contributions) (Amendment No. 9) Regulations 2007 (S.I. 2007/2905)),
  - (f) a pension scheme set up by a government outside the United Kingdom for the benefit of its employees or primarily for their benefit,
  - (g) a registered pension scheme, or
  - (h) an arrangement the sole purpose of which is the making of payments (within the meaning of Chapter 3 of Part 4 of FA 2004 (see section 161(2) of that Act))—
    - (i) to which section 161(4) of FA 2004 applies in relation to a registered pension scheme (or a registered pension scheme which has been wound up), and
    - (ii) which are authorised in relation to that scheme by section 160(1) of FA 2004.
- (2) Subject to subsection (4), subsection (3) applies to a relevant step taken by a person (“P”) if—
  - (a) the relevant step is not taken under an arrangement mentioned in subsection (1)(a) to (c), and
  - (b) there is no connection (direct or indirect) between the relevant step and a tax avoidance arrangement.
- (3) Chapter 2 does not apply by reason of the relevant step if the step is taken solely for the purpose of—
  - (a) acquiring or holding shares—
    - (i) to be awarded under an approved SIP, or
    - (ii) to be provided pursuant to options granted under an approved SAYE option scheme or an approved CSOP scheme, or
  - (b) providing shares pursuant to—
    - (i) an award of shares under an approved SIP, or
    - (ii) an option granted under an approved SAYE option scheme or an approved CSOP scheme.
- (4) Subsection (3) does not apply to the relevant step if, immediately before or after the step is taken—

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- (a) the total number of shares of any type held, in relation to the approved SIP, the approved SAYE option scheme or the approved CSOP scheme, by P and any other persons for purposes within subsection (3)(a) and (b), exceeds
  - (b) the maximum number of shares of that type which might reasonably be expected to be required, in relation to the approved SIP, the approved SAYE option scheme or the approved CSOP scheme, for those purposes over the period of ten years starting with the day on which the relevant step is taken.
- (5) Terms used in subsections (2) to (4) have the same meaning as they have in Chapter 6, 7 or 8 of Part 7 (as the case may be).
- (6) Chapter 2 does not apply by reason of a relevant step taken by a person (“P”) if—
- (a) the relevant step is taken for the sole purpose of—
    - (i) granting qualifying options under an EMI arrangement,
    - (ii) acquiring or holding shares to be provided pursuant to qualifying options granted under an EMI arrangement, or
    - (iii) providing shares pursuant to qualifying options granted under an EMI arrangement, and
  - (b) there is no connection (direct or indirect) between the relevant step and a tax avoidance arrangement.
- (7) But subsection (6) does not apply to the relevant step if, immediately before or after the step is taken—
- (a) the total number of shares of any type held, in relation to the EMI arrangement, by P and any other persons for purposes within subsection (6)(a)(i) to (iii), exceeds
  - (b) the maximum number of shares of that type which might reasonably be expected to be required, in relation to the EMI arrangement, for those purposes over the period of ten years starting with the day on which the relevant step is taken.
- (8) In subsections (6) and (7) “EMI arrangement” means an arrangement under which qualifying options are granted.
- (9) Terms used in subsections (6) to (8) have the same meaning as in Chapter 9 of Part 7.
- (10) Subsection (11) applies if—
- (a) a person (“P”) takes a relevant step within section 554B by reason of which Chapter 2 would apply apart from subsection (3) or (6), and
  - (b) at any time (“the relevant time”) the sum of money or asset (or any part of it) which is the subject of the relevant step—
    - (i) ceases to be held by or on behalf of P solely for purposes within subsection (3)(a) and (b) or (6)(a)(i) to (iii), but
    - (ii) continues to be held by or on behalf of P on the basis mentioned in section 554B(1)(a) or (b).
- (11) This Part has effect as if a relevant step within section 554B were taken at the relevant time—
- (a) the subject of which is the sum of money or asset (or the part of it) mentioned in subsection (10)(b), and
  - (b) by reason of which Chapter 2 is to apply (subject only to section 554A(4)).

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- (12) Chapter 2 does not apply by reason of a relevant step taken by the Independent Parliamentary Standards Authority in relation to a member of the House of Commons.

#### **554F Exclusions: commercial transactions**

- (1) Chapter 2 does not apply by reason of a relevant step which is the payment of a sum of money by way of a loan if—
- (a) the loan is a loan on ordinary commercial terms within the meaning of section 176, ignoring conditions B and C in that section, and
  - (b) there is no connection (direct or indirect) between the relevant step and a tax avoidance arrangement.
- (2) Chapter 2 does not apply by reason of a relevant step taken by a person (“P”), which is not the payment of a sum of money by way of a loan, if—
- (a) the step is taken for the sole purpose of a transaction which P has with A and which P entered into in the ordinary course of P's business,
  - (b) a substantial proportion of P's business involves similar transactions with members of the public,
  - (c) the terms on which P entered into the transaction with A are substantially the same as the terms on which P normally enters into similar transactions with members of the public, and
  - (d) there is no connection (direct or indirect) between the relevant step and a tax avoidance arrangement.
- (3) For the purposes of subsection (2)(b) and (c) a transaction is “similar” if it is of the same or a similar type to the transaction which P has with A.
- (4) In subsection (2)(b) and (c) “members of the public” means members of the public at large with whom P deals at arm's length.
- (5) In this section references to A include references to any person linked with A.

#### **554G Exclusions: transactions under employee benefit packages**

- (1) Chapter 2 does not apply by reason of a relevant step taken by a person (“P”) if—
- (a) the step is not taken under a pension scheme,
  - (b) the step is taken for the sole purpose of a transaction which P has with A and which P entered into in the ordinary course of P's business,
  - (c) if the step is the payment of a sum of money by way of a loan—
    - (i) a substantial proportion of P's business involves making similar loans to members of the public,
    - (ii) the transaction with A is part of a package of benefits which is available to a substantial proportion of B's employees, and
    - (iii) subsection (3) does not apply,
  - (d) if the step is not the payment of a sum of money by way of a loan, the transaction with A is part of a package of benefits which is available—
    - (i) to a substantial proportion of B's employees, or
    - (ii) to a substantial proportion of those employees of B whose status as employees of B is comparable with A's status as an employee of B (taking into account (for example) levels of seniority, types of duties and levels of remuneration),

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- (e) the terms on which similar transactions are offered by P under the package of benefits mentioned in paragraph (c)(ii) or (d) (as the case may be) are generous enough to enable substantially all of the employees of B to whom the package is available to take advantage of what is offered (if they want to),
  - (f) the terms on which P entered into the transaction with A are substantially the same as the terms on which P normally enters into similar transactions with employees of B under the package of benefits,
  - (g) if B is a company, a majority of B's employees to whom the package of benefits is available do not have a material interest (as defined in section 68) in B, and
  - (h) there is no connection (direct or indirect) between the relevant step and a tax avoidance arrangement.
- (2) For the purposes of subsection (1)(c)(i)—
- (a) a loan is “similar” if it is made for the same or similar purposes as the loan which is the subject of the relevant step, and
  - (b) “members of the public” means members of the public at large with whom P deals at arm's length.
- (3) This subsection applies if any feature of the package of benefits mentioned in subsection (1)(c)(ii) has or is likely to have the effect that, of the employees of B to whom the package is available, it is employees within subsection (4) on whom benefits under the package will be wholly or mainly conferred.
- (4) The employees within this subsection are—
- (a) directors,
  - (b) senior employees,
  - (c) employees who receive, or as a result of the package of benefits are likely to receive, the higher or highest levels of remuneration, and
  - (d) if B is a company and is a member of a group of companies, any employees not within paragraph (b) or (c) who—
    - (i) are senior employees in the group, or
    - (ii) receive, or as a result of the package of benefits are likely to receive, the higher or highest levels of remuneration in the group.
- (5) For the purposes of subsection (1)(e) and (f) a transaction is “similar” if it is of the same or a similar type to the transaction which P has with A.
- (6) If the relevant step is not the payment of a sum of money by way of a loan, in this section references to employees of B are references to those employees of B whose duties of employment are performed in the United Kingdom; and for this purpose duties performed outside the United Kingdom the performance of which is merely incidental to the performance of duties in the United Kingdom are to be treated as performed in the United Kingdom.
- (7) In this section (apart from subsection (1)(d)(ii)) references to A include references to any person linked with A.

#### **554H Exclusions: earmarking of deferred remuneration**

- (1) This section applies if—

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- (a) on a date (“the award date”) A is awarded remuneration (“the deferred remuneration”) in respect of A’s employment with B,
  - (b) the main purpose of the award is not the provision of relevant benefits (within the meaning of Chapter 2 of Part 6, but ignoring section 393B(2)(a)),
  - (c) the deferred remuneration is awarded on terms (“the deferred remuneration terms”) the main purpose of which is to defer the provision to A of the deferred remuneration to a specified date (“the vesting date”) which is after the award date, while providing that the award of the deferred remuneration is revoked if specified conditions are not met on or before the vesting date,
  - (d) the vesting date is not more than five years after the award date,
  - (e) as at the award date, there is a reasonable chance that the award of the deferred remuneration will be revoked because not all the specified conditions will be met on or before the vesting date,
  - (f) if the deferred remuneration were to be provided to A by any person on the award date, that action would, for the purposes of Part 11, be a payment of PAYE employment income of A in respect of A’s employment with B,
  - (g) before the end of the vesting date, a person (“P”) takes a relevant step within section 554B by reason of which Chapter 2 would apply apart from this section,
  - (h) on the taking of the relevant step, the sum of money or asset which is the subject of the step represents the deferred remuneration or any part of it (and nothing else), and
  - (i) there is no connection (direct or indirect) between the relevant step and a tax avoidance arrangement.
- (2) In addition to the provision relating to revocation required by subsection (1)(c) (which must be included), the deferred remuneration terms may also provide that the award of the deferred remuneration is partly revoked if specified conditions are not met on or before the vesting date.
- (3) Chapter 2 does not apply by reason of the relevant step mentioned in subsection (1)(g).
- (4) In the following subsections “the earmarked deferred remuneration” means the deferred remuneration so far as, on the taking of the relevant step mentioned in subsection (1)(g), it is represented by the sum of money or asset which is the subject of the step as mentioned in subsection (1)(h).
- (5) Subsection (6) applies if, at any time (“the relevant time”)—
- (a) any sum of money or asset held by or on behalf of P on the basis mentioned in section 554B(1)(a) or (b) which represents any of the earmarked deferred remuneration ceases to represent that earmarked deferred remuneration or a part of it (because the remuneration is to be provided to A in another way or its award has been revoked or for any other reason), but
  - (b) the sum of money or asset continues to be held by or on behalf of P on the basis mentioned in section 554B(1)(a) or (b).
- (6) This Part has effect as if a relevant step within section 554B were taken at the relevant time—
- (a) the subject of which is—
    - (i) the sum of money or asset mentioned in subsection (5), and
    - (ii) a just and reasonable proportion of any relevant income (see subsection (12)), and

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- (b) by reason of which Chapter 2 is to apply (subject only to section 554A(4)).
- (7) Subsection (8) applies if neither subsection (10) nor subsection (11) applies to the earmarked deferred remuneration or to a part of it.
- (8) This Part has effect as if a relevant step within section 554B were taken at the end of the vesting date—
  - (a) the subject of which is—
    - (i) a sum of money of the notional PAYE amount, and
    - (ii) a just and reasonable proportion of any relevant income (see subsection (12)), and
  - (b) by reason of which Chapter 2 is to apply (subject only to section 554A(4)).
- (9) In subsection (8)(a) “the notional PAYE amount” means the amount which the payment of PAYE employment income would have been had, as the case may be—
  - (a) the earmarked deferred remuneration, or
  - (b) the part of it to which neither subsection (10) nor subsection (11) applies, been provided to A at the end of the vesting date in a way which is, for the purposes of Part 11, a payment of PAYE employment income of A in respect of A's employment with B.
- (10) This subsection applies to the earmarked deferred remuneration so far as it is provided to A before the end of the vesting date in a way which is, for the purposes of Part 11, a payment of PAYE employment income of A in respect of A's employment with B.
- (11) This subsection applies to the earmarked deferred remuneration so far as, before the end of the vesting date, the award of the earmarked deferred remuneration is revoked in accordance with the deferred remuneration terms.
- (12) In subsections (6)(a)(ii) and (8)(a)(ii) “relevant income” means any income—
  - (a) which, before the relevant time or the end of the vesting date (as the case may be)—
    - (i) arises (directly or indirectly) from a sum of money or asset held by or on behalf of P representing any of the earmarked deferred remuneration, and
    - (ii) is the subject of a relevant step within section 554B taken by P by reason of which Chapter 2 would apply apart from section 554Q, and
  - (b) which, at the relevant time or the end of the vesting date (as the case may be), continues to be held by or on behalf of P on the basis mentioned in section 554B(1)(a) or (b).

#### **554I Exclusions: introduction to sections 554J to 554M**

- (1) Sections 554J and 554K are about steps within section 554B taken in relation to awards of certain shares or securities or of sums of money determined by reference to the market value of certain shares or securities.
- (2) Sections 554L and 554M are about steps within section 554B taken in relation to grants of rights to acquire certain shares or securities or to receive sums of money determined by reference to the market value of certain shares or securities.
- (3) Sections 554J to 554M apply only if B is a company.
- (4) In those sections—

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“relevant benefits” has the same meaning as in Chapter 2 of Part 6, but ignoring section 393B(2)(a),

“relevant shares” means—

- (a) shares (including stock) in B,
- (b) instruments issued by B which are securities for the purposes of Chapters 1 to 5 of Part 7 within section 420(1)(b), or
- (c) units in a collective investment scheme (as defined in section 420(2)) managed by B which are securities for the purposes of Chapters 1 to 5 of Part 7 within section 420(1)(e), and

“trading company” means a company the business of which consists wholly or mainly in the carrying on of a trade.

(5) If B is a member of a group of companies, in the definition of “relevant shares” in subsection (4) references to B are to be read as including references to any other company which is a member of that group.

(6) For the purposes of sections 554K and 554M an exit event occurs if—

- (a) shares in the relevant company are admitted to trading on a stock exchange,
- (b) all the shares in the relevant company, or a substantial proportion of them, are disposed of to persons none of whom is connected with any of the persons making any disposal,
- (c) if the relevant company is a trading company (as defined in subsection (4)), the company's trade, or a substantial proportion of it, is transferred to a person who is not a relevant connected person,
- (d) the relevant company's assets, or a substantial proportion of them, are disposed of to a person who is not a relevant connected person,
- (e) the winding up of the relevant company starts, or
- (f) a person (“P”) who controls the relevant company ceases to control it, so long as no person connected with P starts to control it.

(7) For the purposes of subsection (6)—

- (a) “the relevant company” means—
  - (i) if the relevant shares mentioned in section 554K(1)(a)(i) or (ii) or 554M(1)(a)(i) or (ii) are shares (including stock), the company in which they are shares, or
  - (ii) if the relevant shares so mentioned are instruments within paragraph (b) of the definition of “relevant shares” in subsection (4), the company by which those instruments are issued,
- (b) “relevant connected person” means a person who—
  - (i) is connected with the relevant company, or
  - (ii) is a shareholder in the relevant company or is connected with a shareholder in the relevant company,
- (c) the relevant company's trade, or a substantial proportion of it, is transferred to another person if—
  - (i) the relevant company ceases to carry on the trade or the proportion of it, and
  - (ii) on that occurring, the other person starts to carry on the trade or the proportion of it, and
- (d) section 12(7) of CTA 2009 applies for the purpose of determining when the winding up of the relevant company starts.



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## **554J Exclusions: earmarking for employee share schemes (1)**

- (1) This section applies if—
- (a) there is an arrangement (“B’s employee share scheme”) under which, in respect of A’s employment with B, an award may be made to A of—
    - (i) relevant shares, or
    - (ii) a sum of money the amount of which is to be determined by reference to the market value of any relevant shares at the time the sum is to be paid,
  - (b) the main purpose of the award of the relevant shares or sum of money would not be the provision of relevant benefits,
  - (c) the award of the relevant shares or sum of money would be on terms (“the deferred award terms”) the main purpose of which is to defer the receipt of the shares by A, or the payment of the sum of money to A, to a specified date (“the vesting date”) which is after the date (“the award date”) on which the award is made, while providing that the award is revoked if specified conditions are not met on or before the vesting date,
  - (d) the vesting date would not be more than ten years after the award date, and
  - (e) as at the award date, there would be a reasonable chance that the award of the relevant shares or sum of money will be revoked because not all the specified conditions will be met on or before the vesting date.
- (2) In addition to the provision relating to revocation required by subsection (1)(c) (which must be included), the deferred award terms may also provide that the award of the relevant shares or sum of money is partly revoked if specified conditions are not met on or before the vesting date.
- (3) Chapter 2 does not apply by reason of a relevant step within section 554B (by reason of which it would otherwise apply) taken by a person (“P”) if—
- (a) the subject of the relevant step is relevant shares (“earmarked shares”) which are earmarked, or otherwise start being held, solely with a view to the meeting of—
    - (i) an award of relevant shares or a sum of money made to A under B’s employee share scheme as mentioned in subsection (1)(a) in relation to which the requirements of subsection (1)(b) to (e) are met, or
    - (ii) an award of relevant shares or a sum of money which is expected to be made to A under B’s employee share scheme as mentioned in subsection (1)(a) and in relation to which the requirements of subsection (1)(b) to (e) would be met,
  - (b) the number of relevant shares of any type which are earmarked shares does not exceed the maximum number of relevant shares of that type which might reasonably be expected to be needed for meeting the award or expected award, and
  - (c) there is no connection (direct or indirect) between the relevant step and a tax avoidance arrangement.
- (4) If the relevant step mentioned in subsection (3) is taken in relation to an expected award as mentioned in subsection (3)(a)(ii), subsection (5) applies if—
- (a) the award is not made before the end of the date (“the final award date”) falling immediately after the period of three months starting with the date on which P takes the relevant step, and

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- (b) as at the end of the final award date, any of the earmarked shares continue to be held by or on behalf of P solely on the basis mentioned in subsection (3)(a).
- (5) This Part has effect as if a relevant step within section 554B were taken at the end of the final award date—
  - (a) the subject of which is—
    - (i) the shares which continue to be held as mentioned in subsection (4)(b), and
    - (ii) any relevant income in relation to those shares (see subsection (13)), and
  - (b) by reason of which Chapter 2 is to apply (subject only to section 554A(4)).
- (6) Subsection (7) applies if, at any time (“the relevant time”)—
  - (a) any of the earmarked shares cease to be held by or on behalf of P solely on the basis mentioned in subsection (3)(a), but
  - (b) the shares continue to be held by or on behalf of P on the basis mentioned in section 554B(1)(a) or (b).
- (7) This Part has effect as if a relevant step within section 554B were taken at the relevant time—
  - (a) the subject of which is—
    - (i) the shares mentioned in subsection (6), and
    - (ii) any relevant income in relation to those shares (see subsection (13)), and
  - (b) by reason of which Chapter 2 is to apply (subject only to section 554A(4)).
- (8) Subsection (9) applies if—
  - (a) the relevant step mentioned in subsection (3) is taken in relation to an award which has been made as mentioned in subsection (3)(a)(i), or
  - (b) the relevant step mentioned in subsection (3) is taken in relation to an expected award as mentioned in subsection (3)(a)(ii) and the award is made before the end of the final award date.
- (9) This Part has effect as if a relevant step within section 554B were taken at the end of the vesting date—
  - (a) the subject of which is—
    - (i) any of the earmarked shares to which none of subsections (10) to (12) applies, and
    - (ii) any relevant income in relation to any of the earmarked shares mentioned in sub-paragraph (i) (see subsection (13)), and
  - (b) by reason of which Chapter 2 is to apply (subject only to section 554A(4)).
- (10) This subsection applies to any earmarked shares if—
  - (a) A receives the shares before the end of the vesting date, and
  - (b) the receipt of the shares by A gives rise to employment income of A which is chargeable to income tax or which is exempt income.
- (11) This subsection applies to any earmarked shares if—
  - (a) the sum of money mentioned in subsection (1)(a)(ii) (or a part of it) is paid to A before the end of the vesting date,
  - (b) the payment of the sum to A gives rise to employment income of A which is chargeable to income tax or which is exempt income, and

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- (c) the payment represents the proceeds of the disposal of the shares, or the payment is made from another source and, correspondingly, the shares are no longer held by any person in relation to the award.
- (12) This subsection applies to any earmarked shares if—
- (a) before the end of the vesting date, the award (or any part of it) is revoked in accordance with the deferred award terms, and
  - (b) correspondingly, the shares are no longer held by any person in relation to the award.
- (13) In subsections (5)(a)(ii), (7)(a)(ii) and (9)(a)(ii) “relevant income”, in relation to any earmarked shares, means any income—
- (a) which, before the relevant step is treated as being taken by subsection (5), (7) or (9) (as the case may be)—
    - (i) arises (directly or indirectly) from the shares, and
    - (ii) is the subject of a relevant step within section 554B taken by P by reason of which Chapter 2 would apply apart from section 554Q, and
  - (b) which, at the time the relevant step is treated as being taken, continues to be held by or on behalf of P on the basis mentioned in section 554B(1)(a) or (b).

#### **554K Exclusions: earmarking for employee share schemes (2)**

- (1) This section applies if—
- (a) there is an arrangement (“B’s employee share scheme”) under which, in respect of A’s employment with B, an award may be made to A of—
    - (i) relevant shares, or
    - (ii) a sum of money the amount of which is to be determined by reference to the market value of any relevant shares at the time the sum is to be paid,
  - (b) the main purpose of the award would not be the provision of relevant benefits,
  - (c) the relevant shares would be—
    - (i) shares (including stock) in, or
    - (ii) instruments within paragraph (b) of the definition of “relevant shares” in section 554I(4) issued by,  
a trading company or a company which controls a trading company,
  - (d) the award would be on terms the main purpose of which is to ensure—
    - (i) that the relevant shares are received, or
    - (ii) that the sum of money is paid,only if a specified exit event, or an exit event within a specified description, occurs, and
  - (e) as at the time the award is made, there would be a reasonable chance that the specified exit event, or an exit event within the specified description, will occur.
- (2) Chapter 2 does not apply by reason of a relevant step within section 554B (by reason of which it would otherwise apply) taken by a person (“P”) if—
- (a) the subject of the relevant step is relevant shares (“earmarked shares”) which are earmarked, or otherwise start being held, solely with a view to the meeting of—

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- (i) an award of relevant shares or a sum of money made to A under B's employee share scheme as mentioned in subsection (1)(a) in relation to which the requirements of subsection (1)(b) to (e) are met, or
  - (ii) an award of relevant shares or a sum of money which is expected to be made to A under B's employee share scheme as mentioned in subsection (1)(a) and in relation to which the requirements of subsection (1)(b) to (e) would be met,
  - (b) the number of relevant shares of any type which are earmarked shares does not exceed the maximum number of relevant shares of that type which might reasonably be expected to be needed for meeting the award or expected award, and
  - (c) there is no connection (direct or indirect) between the relevant step and a tax avoidance arrangement.
- (3) If the relevant step mentioned in subsection (2) is taken in relation to an expected award as mentioned in subsection (2)(a)(ii), subsection (4) applies if—
- (a) the award is not made before the end of the date (“the final award date”) falling immediately after the period of three months starting with the date on which P takes the relevant step, and
  - (b) as at the end of the final award date, any of the earmarked shares continue to be held by or on behalf of P solely on the basis mentioned in subsection (2)(a).
- (4) This Part has effect as if a relevant step within section 554B were taken at the end of the final award date—
- (a) the subject of which is—
    - (i) the shares which continue to be held as mentioned in subsection (3) (b), and
    - (ii) any relevant income in relation to those shares (see subsection (12)), and
  - (b) by reason of which Chapter 2 is to apply (subject only to section 554A(4)).
- (5) Subsection (6) applies if, at any time (“the relevant time”)—
- (a) any of the earmarked shares cease to be held by or on behalf of P solely on the basis mentioned in subsection (2)(a), but
  - (b) the shares continue to be held by or on behalf of P on the basis mentioned in section 554B(1)(a) or (b).
- (6) This Part has effect as if a relevant step within section 554B were taken at the relevant time—
- (a) the subject of which is—
    - (i) the shares mentioned in subsection (5), and
    - (ii) any relevant income in relation to those shares (see subsection (12)), and
  - (b) by reason of which Chapter 2 is to apply (subject only to section 554A(4)).
- (7) Subsection (8) applies if—
- (a) the relevant step mentioned in subsection (2) is taken in relation to an award which has been made as mentioned in subsection (2)(a)(i), or
  - (b) the relevant step mentioned in subsection (2) is taken in relation to an expected award as mentioned in subsection (2)(a)(ii) and the award is made before the end of the final award date,

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- and the specified exit event, or an exit event within the specified description, occurs.
- (8) This Part has effect as if a relevant step within section 554B were taken at the end of the exit period—
- (a) the subject of which is—
    - (i) any of the earmarked shares to which neither subsection (9) nor subsection (10) applies, and
    - (ii) any relevant income in relation to any of the earmarked shares mentioned in sub-paragraph (i) (see subsection (12)), and
  - (b) by reason of which Chapter 2 is to apply (subject only to section 554A(4)).
- (9) This subsection applies to any earmarked shares if—
- (a) A receives the shares before the end of the exit period, and
  - (b) the receipt of the shares by A gives rise to employment income of A which is chargeable to income tax or which is exempt income.
- (10) This subsection applies to any earmarked shares if—
- (a) the sum of money mentioned in subsection (1)(a)(ii) (or a part of it) is paid to A before the end of the exit period,
  - (b) the payment of the sum to A gives rise to employment income of A which is chargeable to income tax or which is exempt income, and
  - (c) the payment represents the proceeds of the disposal of the shares, or the payment is made from another source and, correspondingly, the shares are no longer held by any person in relation to the award.
- (11) In subsections (8), (9)(a) and (10)(a) “the exit period” means the period of six months starting with the date on which the exit event occurs.
- (12) In subsections (4)(a)(ii), (6)(a)(ii) and (8)(a)(ii) “relevant income”, in relation to any earmarked shares, means any income—
- (a) which, before the relevant step is treated as being taken by subsection (4), (6) or (8) (as the case may be)—
    - (i) arises (directly or indirectly) from the shares, and
    - (ii) is the subject of a relevant step within section 554B taken by P by reason of which Chapter 2 would apply apart from section 554Q, and
  - (b) which, at the time the relevant step is treated as being taken, continues to be held by or on behalf of P on the basis mentioned in section 554B(1)(a) or (b).

### **554L Exclusions: earmarking for employee share schemes (3)**

- (1) This section applies if—
- (a) there is an arrangement (“B’s employee share scheme”) under which, in respect of A’s employment with B, a right (“a relevant share option”) may be granted to A—
    - (i) to acquire relevant shares, or
    - (ii) to receive a sum of money the amount of which is to be determined by reference to the market value of any relevant shares at the time the sum is to be paid,
  - (b) the main purpose of the grant of the relevant share option would not be the provision of relevant benefits,

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- (c) the grant would be made on terms (“the deferred grant terms”) the main purpose of which is to ensure that the relevant share option is not exercisable by A before a specified date (“the vesting date”) which is after the date (“the grant date”) on which the grant is made, while providing that the relevant share option is not to be exercisable at all by A if specified conditions are not met on or before the vesting date,
  - (d) the vesting date would not be more than ten years after the grant date, and
  - (e) as at the grant date, there would be a reasonable chance that the relevant share option will not be exercisable at all by A because not all the specified conditions will be met on or before the vesting date.
- (2) In addition to the provision relating to revocation required by subsection (1)(c) (which must be included), the deferred grant terms may also provide that the relevant share option may be exercised by A only in part if specified conditions are not met on or before the vesting date.
- (3) Chapter 2 does not apply by reason of a relevant step within section 554B (by reason of which it would otherwise apply) taken by a person (“P”) if—
- (a) the subject of the relevant step is relevant shares (“earmarked shares”) which are earmarked, or otherwise start being held, solely with a view to providing relevant shares, or paying a sum of money, pursuant to—
    - (i) a relevant share option granted to A under B's employee share scheme as mentioned in subsection (1)(a) in relation to which the requirements of subsection (1)(b) to (e) are met, or
    - (ii) a relevant share option which is expected to be granted to A under B's employee share scheme as mentioned in subsection (1)(a) and in relation to which the requirements of subsection (1)(b) to (e) would be met,
  - (b) the number of relevant shares of any type which are earmarked shares does not exceed the maximum number of relevant shares of that type which might reasonably be expected to be needed for providing shares, or paying a sum of money, pursuant to the relevant share option which is granted or expected to be granted, and
  - (c) there is no connection (direct or indirect) between the relevant step and a tax avoidance arrangement.
- (4) If the relevant step mentioned in subsection (3) is taken in relation to an expected grant of a relevant share option as mentioned in subsection (3)(a)(ii), subsection (5) applies if—
- (a) the grant is not made before the end of the date (“the final grant date”) falling immediately after the period of three months starting with the date on which P takes the relevant step, and
  - (b) as at the end of the final grant date, any of the earmarked shares continue to be held by or on behalf of P solely on the basis mentioned in subsection (3)(a).
- (5) This Part has effect as if a relevant step within section 554B were taken at the end of the final grant date—
- (a) the subject of which is—
    - (i) the shares which continue to be held as mentioned in subsection (4) (b), and
    - (ii) any relevant income in relation to those shares (see subsection (15)), and

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- (b) by reason of which Chapter 2 is to apply (subject only to section 554A(4)).
- (6) Subsection (7) applies if, at any time (“the relevant time”)—
  - (a) any of the earmarked shares cease to be held by or on behalf of P solely on the basis mentioned in subsection (3)(a), but
  - (b) the shares continue to be held by or on behalf of P on the basis mentioned in section 554B(1)(a) or (b).
- (7) This Part has effect as if a relevant step within section 554B were taken at the relevant time—
  - (a) the subject of which is—
    - (i) the shares mentioned in subsection (6), and
    - (ii) any relevant income in relation to those shares (see subsection (15)), and
  - (b) by reason of which Chapter 2 is to apply (subject only to section 554A(4)).
- (8) Subsection (9) applies if—
  - (a) the relevant step mentioned in subsection (3) is taken in relation to a grant of a relevant share option made as mentioned in subsection (3)(a)(i), or
  - (b) the relevant step mentioned in subsection (3) is taken in relation to an expected grant of a relevant share option as mentioned in subsection (3)(a)(ii) and the grant is made before the end of the final grant date.
- (9) This Part has effect as if a relevant step within section 554B were taken at the end of the final exercise date—
  - (a) the subject of which is—
    - (i) any of the earmarked shares to which none of subsections (10) to (13) applies, and
    - (ii) any relevant income in relation to any of the earmarked shares mentioned in sub-paragraph (i) (see subsection (15)), and
  - (b) by reason of which Chapter 2 is to apply (subject only to section 554A(4)).
- (10) This subsection applies to any earmarked shares if—
  - (a) the relevant share option becomes exercisable (in whole or in part) by A before the end of the vesting date,
  - (b) A exercises the option (wholly or partly) before the end of the final exercise date and, as a result, receives the shares, and
  - (c) the receipt of the shares gives rise to employment income of A—
    - (i) which is chargeable to income tax or would be chargeable apart from section 474, or
    - (ii) which is exempt income.
- (11) This subsection applies to any earmarked shares if—
  - (a) the relevant share option becomes exercisable (in whole or in part) by A before the end of the vesting date,
  - (b) A exercises the option (wholly or partly) before the end of the final exercise date and, as a result, a sum of money is paid to A as mentioned in subsection (1)(a)(ii),
  - (c) the payment of the sum gives rise to employment income of A—
    - (i) which is chargeable to income tax or would be chargeable apart from section 474, or

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- (ii) which is exempt income, and
  - (d) the payment represents the proceeds of the disposal of the shares, or the payment is made from another source and, correspondingly, the shares are no longer held by any person in relation to the relevant share option.
- (12) This subsection applies to any earmarked shares if—
- (a) in accordance with the deferred grant terms, before the end of the vesting date, the relevant share option ceases to be exercisable by A (in whole or in part), and
  - (b) correspondingly, the shares are no longer held by any person in relation to the relevant share option.
- (13) This subsection applies to any earmarked shares if—
- (a) the relevant share option becomes exercisable by A (in whole or in part) before the end of the vesting date but the option lapses (in whole or in part) before the end of the final exercise date, and
  - (b) correspondingly, the shares are no longer held by any person in relation to the relevant share option.
- (14) In subsections (9) to (13) “the final exercise date” means the date which is ten years after the grant date.
- (15) In subsections (5)(a)(ii), (7)(a)(ii) and (9)(a)(ii) “relevant income”, in relation to any earmarked shares, means any income—
- (a) which, before the relevant step is treated as being taken by subsection (5), (7) or (9) (as the case may be)—
    - (i) arises (directly or indirectly) from the shares, and
    - (ii) is the subject of a relevant step within section 554B taken by P by reason of which Chapter 2 would apply apart from section 554Q, and
  - (b) which, at the time the relevant step is treated as being taken, continues to be held by or on behalf of P on the basis mentioned in section 554B(1)(a) or (b).

#### **554M Exclusions: earmarking for employee share schemes (4)**

- (1) This section applies if—
- (a) there is an arrangement (“B’s employee share scheme”) under which, in respect of A’s employment with B, a right (“a relevant share option”) may be granted to A—
    - (i) to acquire relevant shares, or
    - (ii) to receive a sum of money the amount of which is to be determined by reference to the market value of any relevant shares at the time the sum is to be paid,
  - (b) the main purpose of the grant of the relevant share option would not be the provision of relevant benefits,
  - (c) the relevant shares would be—
    - (i) shares (including stock) in, or
    - (ii) instruments within paragraph (b) of the definition of “relevant shares” in section 554I(4) issued by,
      - a trading company or a company which controls a trading company,
  - (d) the grant would be made on terms (“the deferred grant terms”) the main purpose of which is to ensure that the relevant share option is exercisable by



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- A only if a specified exit event, or an exit event within a specified description, occurs, and
- (e) as at the time the grant is made, there would be a reasonable chance that the specified exit event, or an exit event within the specified description, will occur.
- (2) Chapter 2 does not apply by reason of a relevant step within section 554B (by reason of which it would otherwise apply) taken by a person (“P”) if—
- (a) the subject of the relevant step is relevant shares (“earmarked shares”) which are earmarked, or otherwise start being held, solely with a view to providing relevant shares, or paying a sum of money, pursuant to—
- (i) a relevant share option granted to A under B's employee share scheme as mentioned in subsection (1)(a) in relation to which the requirements of subsection (1)(b) to (e) are met, or
- (ii) a relevant share option which is expected to be granted to A under B's employee share scheme as mentioned in subsection (1)(a) and in relation to which the requirements of subsection (1)(b) to (e) would be met,
- (b) the number of relevant shares of any type which are earmarked shares does not exceed the maximum number of relevant shares of that type which might reasonably be expected to be needed for providing shares, or paying a sum of money, pursuant to the relevant share option which is granted or expected to be granted, and
- (c) there is no connection (direct or indirect) between the relevant step and a tax avoidance arrangement.
- (3) If the relevant step mentioned in subsection (2) is taken in relation to an expected grant of a relevant share option as mentioned in subsection (2)(a)(ii), subsection (4) applies if—
- (a) the grant is not made before the end of the date (“the final grant date”) falling immediately after the period of three months starting with the date on which P takes the relevant step, and
- (b) as at the end of the final grant date, any of the earmarked shares continue to be held by or on behalf of P solely on the basis mentioned in subsection (2)(a).
- (4) This Part has effect as if a relevant step within section 554B were taken at the end of the final grant date—
- (a) the subject of which is—
- (i) the shares which continue to be held as mentioned in subsection (3)(b), and
- (ii) any relevant income in relation to those shares (see subsection (14)), and
- (b) by reason of which Chapter 2 is to apply (subject only to section 554A(4)).
- (5) Subsection (6) applies if, at any time (“the relevant time”)—
- (a) any of the earmarked shares cease to be held by or on behalf of P solely on the basis mentioned in subsection (2)(a), but
- (b) the shares continue to be held by or on behalf of P on the basis mentioned in section 554B(1)(a) or (b).
- (6) This Part has effect as if a relevant step within section 554B were taken at the relevant time—

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- (a) the subject of which is—
    - (i) the shares mentioned in subsection (5), and
    - (ii) any relevant income in relation to those shares (see subsection (14)), and
  - (b) by reason of which Chapter 2 is to apply (subject only to section 554A(4)).
- (7) Subsection (8) applies if—
- (a) the relevant step mentioned in subsection (2) is taken in relation to a grant of a relevant share option made as mentioned in subsection (2)(a)(i), or
  - (b) the relevant step mentioned in subsection (2) is taken in relation to an expected grant of a relevant share option as mentioned in subsection (2)(a)(ii) and the grant is made before the end of the final grant date,
- and the specified exit event, or an exit event within the specified description, occurs.
- (8) This Part has effect as if a relevant step within section 554B were taken at the end of the exit period—
- (a) the subject of which is—
    - (i) any of the earmarked shares to which none of subsections (9) to (11) applies, and
    - (ii) any relevant income in relation to any of the earmarked shares mentioned in sub-paragraph (i) (see subsection (14)), and
  - (b) by reason of which Chapter 2 is to apply (subject only to section 554A(4)).
- (9) This subsection applies to any earmarked shares if—
- (a) A exercises the relevant share option (wholly or partly) before the end of the exit period and, as a result, receives the shares, and
  - (b) the receipt of the shares gives rise to employment income of A—
    - (i) which is chargeable to income tax or would be chargeable apart from section 474, or
    - (ii) which is exempt income.
- (10) This subsection applies to any earmarked shares if—
- (a) A exercises the relevant share option (wholly or partly) before the end of the exit period and, as a result, a sum of money is paid to A as mentioned in subsection (1)(a)(ii),
  - (b) the payment of the sum gives rise to employment income of A—
    - (i) which is chargeable to income tax or would be chargeable apart from section 474, or
    - (ii) which is exempt income, and
  - (c) the payment represents the proceeds of the disposal of the shares, or the payment is made from another source and, correspondingly, the shares are no longer held by any person in relation to the relevant share option.
- (11) This subsection applies to any earmarked shares if—
- (a) the relevant share option becomes exercisable by A before the end of the exit period but the option lapses (in whole or in part) at or before the end of that period, and
  - (b) correspondingly, the shares are no longer held by any person in relation to the relevant share option.
- (12) In subsections (8), (9)(a), (10)(a) and (11)(a) “the exit period” means—

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- (a) the period of six months starting with the date on which the exit event occurs, or
  - (b) if it ends earlier, the period during which the relevant share option is exercisable by A in accordance with the deferred grant terms.
- (13) If the exit event is an event within section 554I(6)(a), in subsection (12)(a) the reference to six months is to be read as a reference to five years.
- (14) In subsections (4)(a)(ii), (6)(a)(ii) and (8)(a)(ii) “relevant income”, in relation to any earmarked shares, means any income—
- (a) which, before the relevant step is treated as being taken by subsection (4), (6) or (8) (as the case may be)—
    - (i) arises (directly or indirectly) from the shares, and
    - (ii) is the subject of a relevant step within section 554B taken by P by reason of which Chapter 2 would apply apart from section 554Q, and
  - (b) which, at the time the relevant step is treated as being taken, continues to be held by or on behalf of P on the basis mentioned in section 554B(1)(a) or (b).

#### **554N Exclusions: other cases involving employment-related securities etc**

- (1) Chapter 2 does not apply by reason of a relevant step the subject of which is employment-related securities if—
- (a) by virtue of the step, the securities are acquired by a person, and
  - (b) section 425(2) applies, or would apply apart from section 421E(1), to the acquisition.
- (2) Chapter 2 does not apply by reason of a relevant step the subject of which is an employment-related securities option if—
- (a) by virtue of the step, the option is acquired by a person, and
  - (b) section 475(1) applies, or would apply apart from section 474(1), to the acquisition.
- (3) Terms used in subsection (1) or (2) have the same meaning as they have in Chapter 2 or 5 of Part 7 (as the case may be).
- (4) Chapter 2 does not apply by reason of an event within subsection (5) if by virtue of the event an amount counts as employment income of A in respect of A's employment with B.
- (5) The events within this subsection are—
- (a) a chargeable event for the purposes of section 426, 438 or 476,
  - (b) an event which gives rise to the discharge of a notional loan for the purposes of section 446U, or
  - (c) a disposal to which Chapter 3D of Part 7 applies.
- (6) Chapter 2 does not apply by reason of an event to which subsection (4) would apply apart from section 421B(6), 421E(1), 429, 443, 474(1) or 477(2) or apart from an election under section 430 or 431.
- (7) Subsection (11) applies if there is an acquisition of an asset within section 554C(4)(a) or (b) (“the relevant asset”) and—

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- (a) relevant consideration is given by A for the relevant asset of an amount equal to or greater than the market value of the relevant asset at the time of the acquisition, or
  - (b) ignoring any relevant consideration given for the relevant asset, the acquisition gives rise (or would give rise) to earnings of A within Chapter 1 of Part 3 [F760, or an amount treated under section 226A as earnings of A,] from A's employment with B—
    - (i) the amount of which is equal to or greater than the market value of the relevant asset at the time of the acquisition, and
    - (ii) which are not exempt income.
- (8) In subsection (7) “relevant consideration”—
- (a) means consideration—
    - (i) which is given before, or at or about, the time of the acquisition, and
    - (ii) which is money or money's worth, but
  - (b) does not include—
    - (i) a promise to do anything, or
    - (ii) the performance of any duties of, or in connection with, an employment.
- (9) If section 437(1) or 452(1) applies in relation to the acquisition, or would apply if Chapter 3 or 4A of Part 7 (as the case may be) applied in relation to the acquisition, in subsection (7) references to the market value of the relevant asset are to be read as references to that value determined on the basis mentioned in section 437(1) or 452(1) (as the case may be).
- (10) Subsection (11) also applies if—
- (a) there is an acquisition of an asset within section 554C(4)(a) or (b) (“the relevant asset”),
  - (b) the acquisition is pursuant to an employment-related securities option (within the meaning of Chapter 5 of Part 7, but ignoring section 474(1)) acquired by reason of A's employment, or former or prospective employment, with B, and
  - (c) the acquisition is a chargeable event for the purposes of section 476 or would be a chargeable event apart from section 474(1).
- (11) Chapter 2 does not apply by reason of a relevant step taken after the acquisition if—
- (a) the subject of the relevant step is the relevant asset, and
  - (b) there is no connection (direct or indirect) between the relevant step and a tax avoidance arrangement.
- (12) In subsections (7) to (11) “acquisition” is to be read in accordance with section 421B(2) (a).
- (13) Chapter 2 does not apply by reason of a relevant step within section 554C(1)(a) taken by a person if—
- (a) the payment of the sum of money is by way of a loan (“the relevant loan”),
  - (b) the relevant loan is made and used solely for the purpose of enabling A to exercise an employment-related securities option (within the meaning of Chapter 5 of Part 7),
  - (c) the exercise of the option by A gives rise to employment income of A in respect of A's employment with B—

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- (i) which is chargeable to income tax or would be chargeable apart from section 474, or
  - (ii) which is exempt income, and
  - (d) there is no connection (direct or indirect) between the relevant step and a tax avoidance arrangement.
- (14) Subsection (15) applies if—
- (a) apart from subsection (13), Chapter 2 would apply by reason of the relevant step mentioned in that subsection, and
  - (b) by the end of the relevant period, the relevant loan has not been fully repaid.
- (15) This Part has effect as if a relevant step within section 554C(1)(a) were taken at the end of the relevant period—
- (a) the subject of which is a sum of money of an amount equal to the outstanding amount of the relevant loan as at the end of the relevant period,
  - (b) in relation to which the relevant person (within the meaning of section 554C(1)) is the person to whom the relevant loan is made, and
  - (c) by reason of which Chapter 2 is to apply.
- (16) In subsections (14) and (15) “the relevant period” means the period of 40 days starting with the day on which the relevant step mentioned in subsection (13) is taken.

#### Textual Amendments

**F760** Words in s. 554N(7)(b) inserted (1.9.2013) by [Finance Act 2013 \(c. 29\)](#), [Sch. 23 paras. 15, 38](#); [S.I. 2013/1755](#), art. 2

### 554O Exclusions: employee car ownership schemes

- (1) This section applies if—
- (a) there is an arrangement (“the car ownership arrangement”) which—
    - (i) provides for A to purchase a new car from another person (“P”) using a loan (“the car loan”) to be made to A by [<sup>F761</sup>a licensed lender][<sup>F761</sup>an authorised lender] ,
    - (ii) specifies the date (“the repayment date”) by which the car loan must be fully repaid which must be no later than four years after the date on which the car loan is made, and
    - (iii) permits A, in order to obtain funds to repay the car loan, to sell the car back to P on a specified date at a specified price based on an estimate (made at the time the car ownership arrangement is made) of the likely outstanding amount of the car loan on the specified date, and
  - (b) as provided for by the car ownership arrangement, A purchases the car using the car loan.
- (2) Chapter 2 does not apply by reason of a relevant step taken for the sole purpose of—
- (a) the purchase of the car or its sale-back as provided for by the car ownership arrangement, or
  - (b) the making of the car loan as so provided,

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so long as the car ownership arrangement is not a tax avoidance arrangement and there is no other connection (direct or indirect) between the relevant step and a tax avoidance arrangement.

- (3) Subsection (4) applies if—
- (a) apart from subsection (2), Chapter 2 would apply by reason of the making of the car loan, and
  - (b) by the end of the repayment date, the car loan has not been fully repaid.
- (4) This Part has effect as if a relevant step within section 554C(1)(a) were taken at the end of the repayment date—
- (a) the subject of which is a sum of money of an amount equal to the outstanding amount of the car loan as at the end of the repayment date,
  - (b) in relation to which the relevant person (within the meaning of section 554C(1)) is A, and
  - (c) by reason of which Chapter 2 is to apply.
- (5) In this section—
- “car” has the meaning given by section 235(2), and
- [<sup>F762</sup>“licensed lender” means a person—
- (a) who is a licensee under the Consumer Credit Act 1974 acting within the terms of the person's licence, and
  - (b) who is not acting as a trustee.]

[<sup>F762</sup>“authorised lender” means a person who—

    - (a) has permission under Part 4A of the Financial Services and Markets Act 2000 to enter into, or to exercise or have the right to exercise rights and duties under, a contract of the kind mentioned in paragraph 23 of Schedule 2 to that Act, and
    - (b) is not acting as a trustee.]

[ The definition of “authorised lender” must be read with—

<sup>F763</sup>(6) (a) section 22 of the 2000 Act,

      - (b) any relevant order under that section, and
      - (c) Schedule 2 to that Act.]

#### Textual Amendments

**F761** Words in s. 554O(1)(a)(i) substituted (26.7.2013 for specified purposes) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2013 \(S.I. 2013/1881\)](#), art. 1(2)(6), **Sch. para. 9(a)**

**F762** Words in s. 554O(5) substituted (26.7.2013 for specified purposes) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2013 \(S.I. 2013/1881\)](#), art. 1(2)(6), **Sch. para. 9(b)**

**F763** S. 554O(6) inserted (26.7.2013 for specified purposes) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2013 \(S.I. 2013/1881\)](#), art. 1(2)(6), **Sch. para. 9(c)**

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#### **554P Exclusions: employment income exemptions under Part 4**

- (1) Chapter 2 does not apply by reason of a relevant step if an employment income exemption under Part 4 applies to the subject of the relevant step.
- (2) If the employment income exemption applies to the subject of the relevant step in part only, the relevant step is to be treated for the purposes of this Part as being two separate relevant steps—
  - (a) one in relation to the subject of the step so far as the exemption applies to it, and
  - (b) one in relation to the subject of the step so far as the exemption does not apply to it,with subsection (1) applying only in relation to the separate relevant step mentioned in paragraph (a).
- (3) In order to give effect to subsection (2), the sum of money or asset which is the subject of the relevant step is to be apportioned between the two separate relevant steps on a just and reasonable basis.
- (4) In this section “employment income exemption” includes the exemption under section 271.

#### **554Q Exclusions: income arising from earmarked sum or asset**

- (1) This section applies if—
  - (a) a sum of money or asset (“sum or asset R”) is held by or on behalf of a person (“P”),
  - (b) income arises from sum or asset R, and
  - (c) when the income arises, it—
    - (i) is received by or on behalf of P, and
    - (ii) is the subject of a relevant step within section 554B taken by P.
- (2) Chapter 2 does not apply by reason of the relevant step mentioned in subsection (1)(c)(ii) if—
  - (a) before the income arises, sum or asset R was the subject of a relevant step within section 554B taken by P,
  - (b) Chapter 2 applied by reason of the relevant step mentioned in paragraph (a) in respect of A's employment with B or would have so applied apart from this section or section 554R or any of sections 554H to 554M or section 554T,
  - (c) immediately before the income arises, sum or asset R is still earmarked or otherwise held on the basis mentioned in section 554B(1)(a) or (b), and
  - (d) subsection (3) does not apply.
- (3) This subsection applies if it is reasonable to suppose that, taking into account the type of investments from which the income derives (directly or indirectly), in essence, the income represents a return from sum or asset R which exceeds the return which might be expected applying the assumption that all relevant connected persons are acting at arm's length of each other.
- (4) In subsection (3) “relevant connected person” means a person with a connection (direct or indirect) to the arrangement under which the income arises.

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## **554R Exclusions: acquisitions out of sums or assets**

- (1) This section applies if—
- (a) a sum of money or asset (“sum or asset S”) is held by or on behalf of a person (“P”),
  - (b) a sum of money or asset (“sum or asset T”) is acquired by or on behalf of P wholly out of sum or asset S,
  - (c) sum or asset T is not acquired (directly or indirectly) from A or any person linked with A, and
  - (d) subsection (2) does not apply.
- (2) This subsection applies if it is reasonable to suppose that, in essence—
- (a) at the time of the acquisition of sum or asset T, the value of sum or asset T is greater or less than the value of sum or asset S, and
  - (b) the difference (or any part of the difference) in the values might not have been expected applying the assumption that all relevant connected persons are acting at arm's length of each other.
- (3) In subsection (2)—
- (a) the reference to sum or asset S is to sum or asset S so far as sum or asset T is acquired out of it, and
  - (b) “relevant connected person” means a person with a connection (direct or indirect) to the arrangement under which sum or asset T is acquired.
- (4) The cases covered by subsection (1)(b) include (in particular) cases in which sum or asset T represents the proceeds of the disposal of sum or asset S.
- (5) Subsection (6) applies if, on its acquisition, sum or asset T is the subject of a relevant step within section 554B taken by P.
- (6) Chapter 2 does not apply by reason of the relevant step if—
- (a) before the acquisition, sum or asset S was the subject of a relevant step within section 554B taken by P,
  - (b) Chapter 2 applied by reason of the relevant step mentioned in paragraph (a) in respect of A's employment with B or would have applied apart from this section or section 554Q or 554T, and
  - (c) immediately before the acquisition, sum or asset S is still earmarked or otherwise held on the basis mentioned in section 554B(1)(a) or (b).
- (7) Subsection (8) applies if—
- (a) on its acquisition, sum or asset T—
    - (i) is the subject of a relevant step within section 554B taken by P by reason of which Chapter 2 applies or would apply apart from subsection (6) above or any of sections 554H to 554M, 554Q or 554T, or
    - (ii) if sub-paragraph (i) does not apply, is held by or on behalf of P on the same basis as that on which sum or asset S was held by or on behalf of P immediately before the acquisition, and
  - (b) for the sole purpose of the acquisition, sum or asset S or sum or asset T is the subject of a relevant step within section 554C(1)(a) to (c).
- (8) Chapter 2 does not apply by reason of the relevant step mentioned in subsection (7)(b).



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#### **554S Exclusions: pension income chargeable under Part 9 etc**

- (1) Chapter 2 does not apply by reason of a relevant step within section 554C or 554D if the step is the provision of pension income which is chargeable to income tax under Part 9 or is exempt income (within the meaning of that Part).
- (2) Sections 554T, 554U, 554V, 554W and 554X contain further provision relating to retirement benefits etc and are to be applied, so far as applicable, in that order.

#### **Modifications etc. (not altering text)**

- C28** S. 554S(2) modified (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Employment Income Provided Through Third Parties \(Excluded Relevant Steps\) Regulations 2011 \(S.I. 2011/2696\)](#), regs. 1(1), 5

#### **554T Exclusions: employee pension contributions**

- (1) Chapter 2 does not apply by reason of a relevant step within section 554B if the sum of money or asset which is the subject of the step arises or derives (whether wholly or partly or directly or indirectly) from an excluded pension contribution paid by A on or after 6 April 2011.
- (2) If the sum of money or asset arises or derives from the excluded pension contribution only partly, the relevant step is to be treated for the purposes of this Part as being two separate relevant steps—
  - (a) one in relation to the sum of money or asset so far as it arises or derives from the excluded pension contribution, and
  - (b) one in relation to the sum of money or asset so far as it does not arise or derive from the excluded pension contribution,with subsection (1) applying only in relation to the separate relevant step mentioned in paragraph (a).
- (3) Chapter 2 does not apply by reason of a relevant step within section 554C or 554D if the sum of money or asset which is the subject of the step—
  - (a) represents relevant benefits, and
  - (b) arises or derives (whether wholly or partly or directly or indirectly) from an excluded pension contribution paid by A.
- (4) If the sum of money or asset arises or derives from the excluded pension contribution only partly, the relevant step is to be treated for the purposes of this Part as being two separate relevant steps—
  - (a) one in relation to the sum of money or asset so far as it arises or derives from the excluded pension contribution, and
  - (b) one in relation to the sum of money or asset so far as it does not arise or derive from the excluded pension contribution,with subsection (3) applying only in relation to the separate relevant step mentioned in paragraph (a).
- (5) In order to give effect to subsection (2) or (4), the sum of money or asset which is the subject of the relevant step is to be apportioned between the two separate relevant steps on a just and reasonable basis.
- (6) For the purposes of this section an excluded pension contribution is a contribution—

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- (a) which is made to an arrangement by A by way of a payment of a sum of money,
- (b) by virtue of which A acquires rights to receive relevant benefits under the arrangement (and nothing else),
- (c) which is neither a relievable pension contribution nor a tax-relieved contribution, and
- (d) which is not a repayment of any loan and otherwise has nothing to do with any loan and has nothing to do with a sum of money or asset which has been the subject of a relevant step within section 554C(1)(d).

(7) In this section—

“relevant benefits” has the same meaning as in Chapter 2 of Part 6, but ignoring section 393B(2)(a),

“relievable pension contribution” means a contribution in respect of which an individual is entitled to relief under section 188 of FA 2004, and

“tax-relieved contribution” has the meaning given by paragraph 3(3) of Schedule 34 to FA 2004.

#### **554U Exclusions: pre-6 April 2006 contributions to employer-financed retirement benefit schemes**

- (1) This section applies if the subject of a relevant step is a sum of money or asset which has (wholly or partly) arisen or derived (directly or indirectly) from a sum of money (“the taxed sum”)—
  - (a) which was paid by B in accordance with an employer-financed retirement benefits scheme (within the meaning of Chapter 2 of Part 6) with a view to the provision of benefits under the scheme, and
  - (b) in respect of which A is taxed.
- (2) For the purpose of determining whether A is taxed in respect of a sum of money, paragraph 53(3) of Schedule 36 to FA 2004 applies as it applies for the purpose of determining whether an employee is taxed for the purposes of paragraph 53(1)(b) of that Schedule.
- (3) Chapter 2 does not apply by reason of the relevant step.
- (4) Subsection (5) applies if the sum of money or asset which is the subject of the relevant step only partly arises or derives from the taxed sum.
- (5) The relevant step is to be treated for the purposes of this Part as being two separate relevant steps—
  - (a) one in relation to the sum of money or asset so far as it arises or derives from the taxed sum, and
  - (b) one in relation to the sum of money or asset so far as it does not arise or derive from the taxed sum,
 with subsection (3) applying only in relation to the separate relevant step mentioned in paragraph (a).
- (6) In order to give effect to subsection (5), the sum of money or asset which is the subject of the relevant step is to be apportioned between the two separate relevant steps on a just and reasonable basis.
- (7) If B is a company and is a member of a group of companies at any time (“the relevant time”), in subsection (1)(a), in relation to any sum of money paid at the relevant time,

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the reference to B is to be read as including a reference to any other company which is a member of that group at the relevant time.

#### **554V Exclusions: purchases of annuities out of pension scheme rights**

- (1) This section applies if—
- (a) an annuity contract is purchased from an insurance company wholly out of rights which A has under a pension scheme, and
  - (b) A's rights out of which the annuity contract is purchased are, wholly or partly, pre-6 April 2011 annuity rights.

- (2) If the purchaser—
- (a) takes a relevant step for the sole purpose of purchasing the annuity contract or transferring the beneficiary's rights under the annuity contract to A or a person linked with A, or
  - (b) on the purchase of the annuity contract, otherwise takes a relevant step within section 554B the subject of which is the beneficiary's rights under the annuity contract,

Chapter 2 does not apply by reason of the relevant step.

- (3) If the insurance company—
- (a) takes a relevant step for the sole purpose of selling the annuity contract, or
  - (b) on the sale of the annuity contract, otherwise takes a relevant step within section 554B the subject of which is a sum of money or asset representing the purchase price received for the annuity contract,

Chapter 2 does not apply by reason of the relevant step.

- (4) If A's rights out of which the annuity contract is purchased are only partly pre-6 April 2011 annuity rights, any relevant step mentioned in subsection (2)(a) or (b) or (3)(a) or (b) is to be treated for the purposes of this Part as being two separate relevant steps—
- (a) one in relation to the annuity contract so far as it is purchased out of rights which are pre-6 April 2011 annuity rights, and
  - (b) one in relation to the annuity contract so far as it is purchased out of rights which are not pre-6 April 2011 annuity rights,

with subsection (2) or (3) (as the case may be) applying only in relation to the separate relevant step mentioned in paragraph (a) of this subsection.

- (5) In order to give effect to subsection (4), the sum of money or asset which is the subject of the relevant step mentioned in subsection (2)(a) or (b) or (3)(a) or (b) is to be apportioned between the two separate relevant steps on a just and reasonable basis.

- (6) In this section—

“annuity contract” means a contract for the provision of an annuity—

- (a) granted for consideration in money or money's worth in the ordinary course of a business of granting annuities on human life, and
- (b) payable for a term ending at a time ascertainable only by reference to the end of a human life,

although for this purpose it does not matter that the annuity may in some circumstances end before or after the life,

“insurance company” means—

- (a) a person or EEA firm within section 275(1)(a) or (b) of FA 2004, or

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- (b) a person resident in a territory outside the European Economic Area—
  - (i) whose normal business includes the provision of annuities, and
  - (ii) who is regulated in the conduct of that business by the government of that territory or by a body established under the law of that territory for the purpose of regulating such business, and
 “pre-6 April 2011 annuity rights” means rights, which accrued before 6 April 2011, specifically to receive an annuity.

#### **554W Exclusions: certain retirement benefits etc**

- (1) This section applies if—
  - (a) a relevant benefit is provided under a relevant scheme by way of a payment of a lump sum wholly out of rights which A has under the scheme,
  - (b) A's rights out of which the lump sum is paid are, wholly or partly, pre-6 April 2011 lump sum rights, and
  - (c) the payment of the lump sum is a relevant step within section 554C.
- (2) Chapter 2 does not apply by reason of the relevant step.
- (3) If A's rights out of which the lump sum is paid are only partly pre-6 April 2011 lump sum rights, the relevant step is to be treated for the purposes of this Part as being two separate relevant steps—
  - (a) one in relation to the lump sum so far as it is paid out of rights which are pre-6 April 2011 lump sum rights, and
  - (b) one in relation to the lump sum so far as it is paid out of rights which are not pre-6 April 2011 lump sum rights,
 with subsection (2) applying only in relation to the separate relevant step mentioned in paragraph (a).
- (4) In order to give effect to subsection (3), the lump sum is to be apportioned between the two separate relevant steps on a just and reasonable basis.
- (5) In this section—
  - “pre-6 April 2011 lump sum rights” means rights, which accrued before 6 April 2011, specifically to receive relevant benefits by way of lump sum payments,
  - “relevant benefit” has the same meaning as in Chapter 2 of Part 6, and
  - “relevant scheme” means an employer-financed retirement benefits scheme (within the meaning of that Chapter) or a superannuation fund to which section 615(3) of ICTA applies.

#### **554X Exclusions: transfers between certain foreign pension schemes**

- (1) This section applies if rights which A has under a section 390 scheme are transferred to another section 390 scheme or to an overseas pension scheme.
- (2) This section also applies if—
  - (a) rights which A has under an overseas pension scheme are transferred to another overseas pension scheme, and
  - (b) some or all of the rights transferred are section 390 scheme rights.

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- (3) Chapter 2 does not apply by reason of—
  - (a) a relevant step within section 554C taken for the sole purpose of transferring the rights, or
  - (b) a relevant step within section 554B taken by the transferee in relation to the transferred rights on their transfer.
- (4) Subsection (5) applies in relation to a transfer within subsection (2) if not all the transferred rights are section 390 scheme rights.
- (5) Any relevant step mentioned in subsection (3) is to be treated for the purposes of this Part as being two separate relevant steps—
  - (a) one in relation to the section 390 scheme rights, and
  - (b) one in relation to the rest of the transferred rights,with subsection (3) applying only in relation to the separate relevant step mentioned in paragraph (a) of this subsection.
- (6) In order to give effect to subsection (5), the sum of money or asset which is the subject of the relevant step mentioned in subsection (3) is to be apportioned between the two separate relevant steps on a just and reasonable basis.
- (7) Subsection (8) applies if any of the transferred rights arise or derive (directly or indirectly) from contributions to any scheme which—
  - (a) are paid by B on or after 6 April 2006, and
  - (b) are neither tax-relieved contributions nor tax-exempt provision.
- (8) Any relevant step mentioned in subsection (3) is to be treated for the purposes of this Part as being two separate relevant steps—
  - (a) one in relation to the rights mentioned in subsection (7), and
  - (b) one in relation to the rest of the transferred rights,with subsection (3) applying only in relation to the separate relevant step mentioned in paragraph (b) of this subsection.
- (9) In order to give effect to subsection (8), the sum of money or asset which is the subject of the relevant step mentioned in subsection (3) is to be apportioned between the two separate relevant steps on a just and reasonable basis.
- (10) If subsection (5) applies in relation to a transfer—
  - (a) in subsection (7) the reference to the transferred rights is to be read as a reference to the transferred section 390 scheme rights only, and
  - (b) in subsections (8) and (9) references to any relevant step mentioned in subsection (3) are to be read as references to the separate relevant step mentioned in subsection (5)(a).
- (11) If B is a company and is a member of a group of companies at any time (“the relevant time”), in subsection (7)(a), in relation to any contribution paid at the relevant time, the reference to B is to be read as including a reference to any other company which is a member of that group at the relevant time.
- (12) In this section—
  - “overseas pension scheme” has the same meaning as in Part 4 of FA 2004 (see section 150(7) of that Act),
  - “section 390 scheme” means a scheme in relation to which a claim was accepted under section 390,

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“section 390 scheme rights” means rights which A has under an overseas pension scheme and which—

- (a) have been transferred to the scheme (directly or indirectly) from a section 390 scheme, or
- (b) have arisen or derived (directly or indirectly) from rights that have been so transferred, and

“tax-exempt provision” and “tax-relieved contribution” have the meaning given by paragraph 3(3) and (4) of Schedule 34 to FA 2004.

#### **554Y Power to exclude other relevant steps**

- (1) The Commissioners for Her Majesty's Revenue and Customs may by regulations provide for Chapter 2 not to apply—
  - (a) by reason of a relevant step falling within a specified description, or
  - (b) in the cases otherwise specified in the regulations.
- (2) Regulations under this section may, in consequence of provision within subsection (1)—
  - (a) provide—
    - (i) for a relevant step to be treated for the purposes of this Part as if it were two or more separate relevant steps,
    - (ii) for the provision within subsection (1) to apply only to one or some of the separate relevant steps, and
    - (iii) for the sum of money or asset which is the subject of the relevant step to be apportioned between the separate relevant steps on a just and reasonable basis,
  - (b) make provision, in relation to cases in which Chapter 2 does not apply by reason of a relevant step by virtue of the provision within subsection (1)—
    - (i) for a relevant step to be treated as taking place if, subsequently, specified conditions are met or not met, and
    - (ii) for Chapter 2 to apply by reason of the relevant step treated as taking place, and
  - (c) make other provision modifying the application of any provision of this Part.
- (3) Regulations under this section may contain incidental, supplemental, consequential and transitional provision and savings.
- (4) Regulations under this section may have retrospective effect.

#### *Interpretation*

#### **554Z Interpretation: general**

- (1) This section applies for the purposes of this Part.
- (2) “A” and “B” are defined in section 554A(1)(a).
- (3) “Arrangement” includes any agreement, scheme, settlement, transaction, trust or understanding (whether or not it is legally enforceable).
- (4) “Market value” has the same meaning as it has for the purposes of TCGA 1992 by virtue of Part 8 of that Act.

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- (5) Section 170(2) to (11) of TCGA 1992 applies for the purpose of determining whether a company is a member of a group of companies.
- (6) And for that purpose, section 170(2) to (11) is to be read as if for “75 per cent” (wherever occurring) there were substituted “51 per cent” (with section 1154(2) of CTA 2010 applying accordingly).
- (7) References to the payment of a sum of money include (in particular) references to the payment of a sum of money by way of a loan.
- (8) “Pension scheme” has the same meaning as in Part 4 of FA 2004 (see section 150(1) of that Act).
- (9) “Relevant step” is defined in section 554A(2).
- (10) References to a relevant step which involves a sum of money are references to—
  - (a) a step within section 554B where the subject of the relevant step is a sum of money,
  - (b) a step within section 554C(1)(a), or
  - (c) a step within section 554C(1)(d) where the subject of the relevant step is a sum of money.
- (11) References to the asset which is the subject of a relevant step are, in the case of a step within section 554C(1)(e), references to the lease granted.
- (12) For this purpose, the lease granted is to be treated as including any extensions of the lease, or any later lease, which by virtue of section 554C(7) or (8) is taken into account in determining the likely effective duration of the lease for the purposes of section 554C(1)(e).
- (13) “Tax avoidance arrangement” means an arrangement which has a tax avoidance purpose.
- (14) For the purposes of subsection (13) an arrangement has a tax avoidance purpose if subsection (15) applies to a person who is a party to the arrangement.
- (15) This subsection applies to a person if the main purpose, or one of the main purposes, of the person in entering into the arrangement is the avoidance of tax or national insurance contributions.
- (16) The following paragraphs apply for the purpose of determining whether any relevant step or any other step is connected with a tax avoidance arrangement—
  - (a) the step is connected with a tax avoidance arrangement if (for example) the step is taken (wholly or partly) in pursuance of—
    - (i) the tax avoidance arrangement, or
    - (ii) an arrangement at one end of a series of arrangements with the tax avoidance arrangement being at the other end, and
  - (b) it does not matter if the person taking the step is unaware of the tax avoidance arrangement.

#### **554Z1 Interpretation: persons linked with A**

- (1) In this Part references to any person linked with A are references to—
  - (a) any person who is or has been connected with A,

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- (b) a close company in which A or a person within any other paragraph of this subsection is or has been a participator,
  - (c) a company in which A or a person within any other paragraph of this subsection is or has been a participator and which would be a close company if it were a UK resident company, or
  - (d) a company which is a 51% subsidiary of a company within paragraph (b) or (c).
- (2) In applying section 993 of ITA 2007 for the purposes of subsection (1)—
- (a) a man and woman living together as if they were spouses of each other are treated as if they were spouses of each other, and
  - (b) two people of the same sex living together as if they were civil partners of each other are treated as if they were civil partners of each other.
- (3) In subsection (1) “participator”—
- (a) in relation to a close company, means a person who is a participator in relation to the company for the purposes of section 455 of CTA 2010 (see sections 454 and 455(5) of that Act), and
  - (b) in relation to a company which would be a close company if it were a UK resident company, means a person who would be such a participator if the company were a close company.

**Modifications etc. (not altering text)**

**C29** S. 554Z1 applied (with modifications) (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 36\(3\)](#)

## CHAPTER 2

### TREATMENT OF RELEVANT STEP FOR INCOME TAX PURPOSES

**Modifications etc. (not altering text)**

**C30** [Pt. 7A Ch. 2](#) disappplied (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Employment Income Provided Through Third Parties \(Excluded Relevant Steps\) Regulations 2011 \(S.I. 2011/2696\)](#), regs. 1(1), 3, 4

### *Employment income*

#### **554Z2 Value of relevant step to count as employment income**

- (1) If this Chapter applies by reason of a relevant step, the value of the relevant step (see section 554Z3) counts as employment income of A in respect of A's employment with B—
- (a) if the relevant step is taken before A's employment with B starts, for the tax year in which the employment starts, or
  - (b) otherwise, for the tax year in which the relevant step is taken.
- (2) If the relevant step gives rise to—



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- (a) an amount which (apart from this subsection) would be treated as earnings of A under a provision of the benefits code, or
  - (b) any income of A which (apart from this subsection) would be dealt with under Chapter 3 of Part 4 of ITTOIA 2005,
- subsection (1) applies instead of that provision of the benefits code or Chapter 3 of Part 4 of ITTOIA 2005 (as the case may be).
- (3) In particular, in a case in which the relevant step is the making of an employment-related loan (within the meaning of Chapter 7 of Part 3), the effect of subsection (2) (a) is that the loan is not to be treated for any tax year as a taxable cheap loan for the purposes of that Chapter.

### **554Z3 Value of relevant step**

- (1) If the relevant step involves a sum of money, its value is the amount of the sum.
- (2) In any other case, the value of the relevant step is—
  - (a) the market value when the relevant step is taken of the asset which is the subject of the step, or
  - (b) if higher, the cost of the relevant step.
- (3) Subsection (2)(a) is subject to sections 437 and 452.
- (4) Subsection (2)(b) is to be ignored if—
  - (a) the relevant step is within section 554C(1)(c), and
  - (b) any of Chapters 2 to 4A of Part 7 apply by virtue of the acquisition.
- (5) Subsection (2)(b) is also to be ignored if section 554Z7 applies.
- (6) In subsection (2)(b) the reference to the cost of the relevant step is to the expense incurred in connection with the relevant step (including a proper proportion of any expense relating partly to the relevant step and partly to other matters) by the person or persons at whose cost the relevant step is taken.
- (7) Subsections (1) and (2) are subject to sections 554Z4, 554Z5, 554Z6, 554Z7 and 554Z8, which, so far as applicable, are to be applied in that order.

### **554Z4 Residence issues**

- (1) After the value of the relevant step is determined under section 554Z3, the particular tax year or years which the value of the relevant step is “for” are to be determined.
- (2) For this purpose, apply sections 16(1) to (4) and 17(1) to (3) as if the value of the relevant step were general earnings.
- [<sup>F764</sup>(3) Subsection (4) applies if the value of the relevant step, or a part of it, is “for”—
  - (a) a tax year for which A is non-UK resident, or
  - (b) a tax year that is a split year as respects A.
- (4) The value, or the part of it, is to be reduced—
  - (a) in a case within subsection (3)(a), by so much of the value, or the part of it, as is not in respect of UK duties, and
  - (b) in a case within subsection (3)(b), by so much of the value, or the part of it, as is both—

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- (i) attributable to the overseas part of the tax year, and
  - (ii) not in respect of UK duties.
- (5) The extent to which—
- (a) the value, or the part of it, is not in respect of UK duties, or
  - (b) so much of the value, or the part of it, as is attributable to the overseas part of the tax year is not in respect of UK duties,
- is to be determined on a just and reasonable basis.]
- [ Any attribution required for the purposes of subsection (4)(b)(i) is to be done on a just  
 F765 (5A) and reasonable basis.
- (5B) “UK duties” means duties performed in the United Kingdom.]
- (6) This section does not change the tax year for which the value of the relevant step counts as employment income under section 554Z2(1).

#### Textual Amendments

**F764** S. 554Z4(3)-(5) substituted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 68\(2\)](#)

**F765** S. 554Z4(5A)(5B) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 68\(3\)](#)

#### **Temporary non-residents**

- F766 554Z4A**
- (1) This section applies if A is temporarily non-resident.
  - (2) Any relevant step within subsection (3) is to be treated for the purposes of section 554Z2 as if it were taken in the period of return.
  - (3) A relevant step is within this subsection if—
    - (a) it is the payment of a lump sum to a relevant person (see section 554C(2)),
    - (b) the lump sum is a relevant benefit provided under a relevant scheme,
    - (c) the step is taken in the temporary period of non-residence, and
    - (d) ignoring this section—
      - (i) no charge to tax arises by virtue of section 554Z2 by reason of the step, but
      - (ii) such a charge would arise if the existence of any double taxation relief arrangements were disregarded.
  - (4) Subsection (3)(d)(i) includes a case where the charge could be prevented by making a DTR claim, even if no claim is in fact made.
  - (5) Nothing in any double taxation relief arrangements is to be read as preventing A from being chargeable to income tax in respect of any relevant step treated by virtue of this section as taken in the period of return (or as preventing a charge to that tax from arising as a result).
  - (6) Part 4 of Schedule 45 to FA 2013 (statutory residence test: anti-avoidance) explains—
    - (a) when an individual is to be regarded as “temporarily non-resident”, and
    - (b) what “the temporary period of non-residence” and “the period of return” mean.

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(7) In this section—

“double taxation relief arrangements” means arrangements that have effect under section 2(1) of TIOPA 2010;

“DTR claim” means a claim for relief under section 6 of that Act;

“relevant benefit” has the same meaning as in Chapter 2 of Part 6;

“relevant scheme” means an employer-financed retirement benefits scheme (within the meaning of that Chapter) or a superannuation fund to which section 615(3) of ICTA applies.]

#### Textual Amendments

**F766** S. 554Z4A inserted (with effect in accordance with Sch. 45 para. 153(3) of the amending Act) by Finance Act 2013 (c. 29), Sch. 45 para. 126

### 554Z5 Overlap with earlier relevant step

(1) This section applies if there is overlap between—

- (a) the sum of money or asset (“sum or asset P”) which is the subject of the relevant step, and
- (b) the sum of money or asset (“sum or asset Q”) which was the subject of an earlier relevant step (“the earlier relevant step”) by reason of which this Chapter applied in respect of A's employment with B.

(2) The value of the relevant step (after any reductions under section 554Z4) is reduced (but not below nil)—

- (a) if the overlap covers the whole of sum or asset Q, by the value of the earlier relevant step, or
- (b) if the overlap covers only part of sum or asset Q, by the part of the value of the earlier relevant step which corresponds to the part of sum or asset Q covered by the overlap as determined on a just and reasonable basis.

(3) In subsection (2) references to the value of the earlier relevant step are to that value—

- (a) after any reductions made to it under section 554Z4 or this section or section 554Z7, but
- (b) before any reductions made to it under section 554Z6 or 554Z8.

(4) For the purposes of this section there is overlap between sum or asset P and sum or asset Q so far as—

- (a) they are the same sum of money or asset, or
- (b) sum or asset P, essentially, replaces sum or asset Q.

(5) Further, if any reductions were made under this section to the value of the earlier relevant step, sum or asset P is treated as overlapping with any other sum of money or asset so far as the other sum of money or asset was treated as overlapping with sum or asset Q for the purposes of this section.

### 554Z6 Overlap with certain earnings

(1) This section applies if the relevant step gives rise to relevant earnings of A from A's employment with B—

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- (a) which are, in accordance with section 16 and (if applicable) section 17, “for” a tax year in which A is UK resident [<sup>F767</sup>(and, in the case of a tax year that is a split year as respects A, are not “excluded” by virtue of section 15(1A) (a) and (b)(i))], or
  - (b) which are, in accordance with section 29 and (if applicable) section 30, “for” a tax year in which A is non-UK resident but which are in respect of duties performed in the United Kingdom for the purposes of section 27(1)(a).
- (2) The value of the relevant step (after any reductions under section 554Z4 or 554Z5) is reduced (but not below nil) by the amount of the relevant earnings.
- (3) For the purposes of this section the following are “relevant” earnings—
- (a) earnings within Chapter 1 of Part 3,
  - (b) amounts treated as earnings under Chapter 12 of Part 3, and
  - (c) a deemed employment payment under section 50 or any part of such a payment.
- (4) But anything which is exempt income, or which falls within Chapter 3 of Part 4 of ITTOIA 2005, is not “relevant”.

#### **Textual Amendments**

**F767** Words in s. 554Z6(1)(a) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 69](#)

#### **554Z7 Exercise price of share options**

- (1) Subsection (3) applies if—
- (a) the relevant step is a step within section 554B (other than one treated as being taken by section 554L(5), (7) or (9) or 554M(4), (6) or (8)),
  - (b) B is a company,
  - (c) there is an arrangement (“B’s employee share scheme”) under which, in respect of A’s employment with B, a right (“a relevant share option”) may be granted to A—
    - (i) to acquire relevant shares, or
    - (ii) to receive a sum of money the amount of which is to be determined by reference to the market value of any relevant shares at the time the sum is to be paid,
  - (d) in order to exercise the relevant share option so as—
    - (i) to acquire the relevant shares, or
    - (ii) to receive the sum of money,

A would, under the terms of the option, have to pay a sum of money the amount of which can be determined at the time of the grant of the option,
  - (e) the subject of the relevant step is relevant shares (“earmarked shares”) which are earmarked, or otherwise start being held, solely with a view to providing shares, or paying a sum of money, pursuant to—
    - (i) a relevant share option granted to A under B’s employee share scheme as mentioned in paragraph (c) in relation to which the requirements of paragraph (d) are met, or

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- (ii) a relevant share option which is expected to be granted to A under B's employee share scheme as mentioned in paragraph (c) and in relation to which the requirements of paragraph (d) would be met,
  - (f) the number of relevant shares of any type which are earmarked shares does not exceed the maximum number of relevant shares of that type which might reasonably be expected to be needed for providing shares, or paying a sum of money, pursuant to the relevant share option which is granted or expected to be granted, and
  - (g) there is no connection (direct or indirect) between the relevant step and a tax avoidance arrangement.
- (2) Subsection (3) also applies if—
- (a) the relevant step is a step treated as being taken by section 554L(9) or 554M(8), and
  - (b) in order to exercise the relevant share option to which the step relates so as—
    - (i) to acquire the shares which are the subject of the relevant step, or
    - (ii) to receive the sum of money determined by reference to the market value of those shares,A would, under the terms of the option, have to pay a sum of money the amount of which can be determined at the time the option is granted.
- (3) The value of the relevant step (after any reductions under sections 554Z4 to 554Z6) is to be reduced (but not below nil) by—
- (a) the amount of the sum of money which A would have to pay as mentioned in subsection (1)(d) or (2)(b), or
  - (b) if the value of the relevant step was reduced under section 554Z4, X% of the amount of that sum of money.
- (4) In subsection (3)(b) “X%” means the proportion of the value of the relevant step (as determined under section 554Z3) left after the reduction under section 554Z4.
- (5) If subsection (3) applies by virtue of subsection (1) and the relevant step is taken in relation to an expected grant of a relevant share option as mentioned in subsection (1)(e)(ii), subsection (7) applies if—
- (a) the grant is not made before the end of the date (“the final grant date”) falling immediately after the period of three months starting with the date on which the relevant step is taken, and
  - (b) as at the end of the final grant date, any of the earmarked shares continue to be held by or on behalf of P solely on the basis mentioned in subsection (1)(e).
- (6) If subsection (3) applies by virtue of subsection (1), subsection (7) also applies if at any time after the taking of the relevant step—
- (a) any of the earmarked shares cease to be held by or on behalf of P solely on the basis mentioned in subsection (1)(e), but
  - (b) the shares continue to be held by or on behalf of P on the basis mentioned in section 554B(1)(a) or (b).
- (7) This Part has effect as if a relevant step within section 554B were taken at the end of the final grant date or when the shares cease to be held as mentioned in subsection (6)—
- (a) the subject of which is the earmarked shares mentioned in subsection (5)(b) or (6), and
  - (b) by reason of which this Chapter is to apply (subject only to section 554A(4)).

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(8) In this section “relevant shares” has the meaning given by section 554I(4).

### **554Z8 Cases where consideration given for relevant step**

- (1) Subsection (2) applies if—
- (a) the relevant step is a step within section 554C(1)(a) to (c),
  - (b) the relevant step is for consideration given by A in the form of the transfer of an asset to P from A,
  - (c) the transfer by A of the asset is made before, or at or about, the time the relevant step is taken and is not by way of a loan, and
  - (d) there is no connection (direct or indirect) between the transfer by A of the asset and a tax avoidance arrangement.
- (2) The value of the relevant step (after any reductions under sections 554Z4 to 554Z6) is reduced (but not below nil) by—
- (a) the market value of the asset transferred by A at the time of its transfer, or
  - (b) if the value of the relevant step was reduced under section 554Z4, X% of that market value.
- (3) For the purposes of subsection (1)(d) it is (in particular) to be assumed that the transfer by A of the asset is connected with a tax avoidance arrangement if—
- (a) before the transfer, the asset was transferred to A by another person by way of a loan, or
  - (b) the asset is, or carries with it, any rights or interests under the relevant arrangement or any arrangement which is connected (directly or indirectly) with the relevant arrangement.
- (4) In subsection (3)(b) “the relevant arrangement” has the meaning given by section 554A(1)(b).
- (5) Subsection (6) applies if—
- (a) the relevant step is a step within section 554C(1)(b) or (c) or (e) or 554D and does not also involve a sum of money,
  - (b) the relevant step is for consideration given by A in the form of the payment of a sum of money to P by A, and
  - (c) the payment is made before, or at or about, the time the relevant step is taken.
- (6) The value of the relevant step (after any reductions under sections 554Z4 to 554Z6) is reduced (but not below nil) by—
- (a) the amount of the consideration given, or
  - (b) if the value of the relevant step was reduced under section 554Z4, X% of the amount of that consideration.
- (7) In subsections (2)(b) and (6)(b) “X%” means the proportion of the value of the relevant step (as determined under section 554Z3) left after the reduction under section 554Z4.
- (8) In this section references to A include references to any person linked with A.

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### Remittance basis

#### 554Z9 Remittance basis: [F768 A does not meet section 26A requirement]

- (1) Subsection (2) applies if—
  - (a) the value of the relevant step, or a part of it, is “for” a tax year (“the relevant tax year”) as determined under section 554Z4,
  - (b) section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to A for the relevant tax year,
  - [F769](c) A does not meet the requirement of section 26A for the relevant tax year (reading references there to the employee as references to A),]
  - (d) A's employment with B in the relevant tax year is employment with a foreign employer, and
  - (e) the duties of A's employment with B in the relevant tax year are performed wholly outside the United Kingdom.
- (2) A's employment income by virtue of section 554Z2(1), or the relevant part of it, is “taxable specific income” in a tax year so far as it is remitted to the United Kingdom in that year.
- (3) For this purpose, any income which is remitted before A's employment with B starts is treated as being remitted in the tax year in which the employment starts.
- (4) Subsection (5) applies if in the relevant tax year—
  - (a) A has associated employments, and
  - (b) the duties of the associated employments are not performed wholly outside the United Kingdom.
- (5) The amount of A's employment income to which subsection (2) applies is limited to such amount as is just and reasonable, having regard to—
  - (a) A's employment income for the relevant tax year from all associated employments, together with A's employment with B,
  - (b) the proportion of that income [F770(or of so much of it as is attributable to the UK part of the relevant tax year, if it was a split year as respects A)] which is general earnings to which section 22 applies or is employment income to which section 41A applies,
  - (c) the nature of and time devoted to the duties performed outside the United Kingdom, and those performed in the United Kingdom, in the relevant tax year [F771(or the UK part of it)], and
  - (d) all other relevant circumstances,and, if the amount of A's employment income to which subsection (2) would otherwise apply exceeds that limit, the amount of A's employment income to which that subsection applies is instead to be such amount as is just and reasonable.
- (6) In this section “associated employments” means employments with B or with employers associated with B; and section 24(5) and (6) applies for the purposes of this subsection.

#### Textual Amendments

**F768** Words in s. 554Z9 heading substituted (with effect in accordance with Sch. 46 para. 25 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 13\(2\)](#) (with [Sch. 46 para. 26](#))

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- F769** S. 554Z9(1)(c) substituted (with effect in accordance with Sch. 46 para. 25 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 13\(1\)](#) (with [Sch. 46 para. 26](#))
- F770** Words in s. 554Z9(5)(b) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 70\(a\)](#)
- F771** Words in s. 554Z9(5)(c) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 70\(b\)](#)

### 554Z10 Remittance basis: [<sup>F772</sup>A meets section 26A requirement]

(1) Subsection (2) applies if—

- [<sup>F773</sup>(a) the value of the relevant step, or a part of it, is “for” a tax year (“the relevant tax year”) as determined under section 554Z4,]
- (b) section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to A for the relevant tax year, and
- [<sup>F774</sup>(c) A meets the requirement of section 26A for the relevant tax year (reading references there to the employee as references to A).]

[<sup>F775</sup>(2) The overseas portion of (as the case may be)—

- (a) A's employment income by virtue of section 554Z2(1), or
- (b) the relevant part of A's employment income by virtue of that section,

is “taxable specific income” in a tax year so far as the overseas portion is remitted to the United Kingdom in that year.]

[ The overseas portion” of A's employment income by virtue of section 554Z2(1), or  
<sup>F776</sup>(2A) of the relevant part of that income, is so much of that income, or of the relevant part of it, as is not in respect of UK duties.

(2B) “UK duties” means duties performed in the United Kingdom.]

(3) For [<sup>F777</sup>the purposes of this section], any income which is remitted before A's employment with B starts is treated as being remitted in the tax year in which the employment starts.

[<sup>F778</sup>(4) The extent to which—

- (a) the employment income, or the relevant part of it, is not in respect of UK duties, or
- (b) so much of the employment income, or of the relevant part of it, as is attributable to the UK part of the relevant tax year is not in respect of UK duties,

is to be determined on a just and reasonable basis.]

#### Textual Amendments

- F772** Words in s. 554Z10 heading substituted (with effect in accordance with Sch. 46 para. 25 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 14\(2\)](#) (with [Sch. 46 para. 26](#))
- F773** S. 554Z10(1)(a) substituted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 71\(2\)](#)
- F774** S. 554Z10(1)(c) substituted (with effect in accordance with Sch. 46 para. 25 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 14\(1\)\(c\)](#) (with [Sch. 46 para. 26](#))
- F775** S. 554Z10(2) substituted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 71\(3\)](#)



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- F776** S. 554Z10(2A)(2B) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 71\(4\)](#)
- F777** Words in s. 554Z10(3) substituted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 71\(5\)](#)
- F778** S. 554Z10(4) substituted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 71\(6\)](#)

### **554Z11 Remittance basis: supplementary**

- (1) Subsection (2) applies if section 554Z9(1)(a) or 554Z10(1)(a) applies to a part (“the relevant part”) of the value of the relevant step.
- (2) Any reduction to the value of the relevant step to be made under any of sections 554Z5 to 554Z8 is to be made so that X% of the reduction is made by way of reducing the relevant part.
- (3) In subsection (2) “X%” means the proportion of the value of the relevant step represented by the relevant part before any reductions under any of sections 554Z5 to 554Z8.
- (4) For the purpose of applying section 554Z9(2) or 554Z10(2), see Chapter A1 of Part 14 of ITA 2007 for the meaning of “remitted to the United Kingdom” etc.
- (5) If the relevant step involves a sum of money, for the purposes of that Chapter the sum of money is treated as deriving from A's employment income (or the relevant part of it) to which section 554Z9(2) or 554Z10(2) applies.
- (6) In any other case, for the purposes of that Chapter the asset which is the subject of the relevant step is treated as deriving from A's employment income (or the relevant part of it) to which section 554Z9(2) or 554Z10(2) applies.
- (7) Subsection (8) applies if—
  - (a) after the relevant step is taken, there is another relevant step (“the later relevant step”) by reason of which this Chapter applies in respect of A's employment with B, and
  - (b) within the meaning of section 554Z5, there is overlap between the sum of money or asset (“sum or asset R”) which is the subject of the relevant step and the sum of money or asset (“sum or asset S”) which is the subject of the later relevant step.
- (8) Except so far as, in any event—
  - (a) sum or asset S and sum or asset R are the same sum of money or asset, or
  - (b) sum or asset S derives from sum or asset R,for the purposes of Chapter A1 of Part 14 of ITA 2007 sum or asset S is treated, to the extent of the overlap, as deriving from sum or asset R.
- (9) Subsections (10) and (11) apply if—
  - (a) the relevant tax year within the meaning of section 554Z9 or 554Z10 is the tax year 2007-08 or any earlier tax year, and
  - (b) A—
    - (i) was UK resident in that year, but
    - (ii) was not domiciled in the United Kingdom, or was not ordinarily UK resident, in that year.

*Status: Point in time view as at 01/09/2013.*

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- (10) Section 554Z9 or 554Z10 (as the case may be) applies as if section 809B of ITA 2007 applied to A for the relevant tax year.
- (11) In section 554Z9(1)(d) the reference to a foreign employer is to be read as not including a person resident in the Republic of Ireland.

### **Temporary non-residents**

#### **F779 554Z11A**

- (1) This section applies if A is temporarily non-resident.
- (2) Any amount within subsection (3) is to be treated for the purposes of section 554Z9(2) or (as the case may be) 554Z10(2) as if it were remitted to the United Kingdom in the period of return.
- (3) An amount is within this subsection if—
- (a) it is all or part of a relevant benefit provided to a relevant person (see section 554C(2)) under a relevant scheme,
  - (b) it is provided in the form of the lump sum,
  - (c) it is remitted to the United Kingdom in the temporary period of non-residence, and
  - (d) ignoring this section—
    - (i) no charge to tax arises by virtue of section 554Z9(2) or 554Z10(2) in respect of it, but
    - (ii) such a charge would arise by virtue of one of those sections if the existence of any double taxation relief arrangements were disregarded.
- (4) Subsection (3)(d)(i) includes a case where the charge could be prevented by making a DTR claim, even if no claim is in fact made.
- (5) Nothing in any double taxation relief arrangements is to be read as preventing A from being chargeable to income tax in respect of any income treated by virtue of this section as remitted to the United Kingdom in the period of return (or as preventing a charge to that tax from arising as a result).
- (6) Part 4 of Schedule 45 to FA 2013 (statutory residence test: anti-avoidance) explains—
- (a) when an individual is to be regarded as “temporarily non-resident”, and
  - (b) what “the temporary period of non-residence” and “the period of return” mean.
- (7) In this section—
- “double taxation relief arrangements” means arrangements that have effect under section 2(1) of TIOPA 2010;
- “DTR claim” means a claim for relief under section 6 of that Act;
- “relevant benefit” has the same meaning as in Chapter 2 of Part 6;
- “relevant scheme” means an employer-financed retirement benefits scheme (within the meaning of that Chapter) or a superannuation fund to which section 615(3) of ICTA applies;
- “remitted to the United Kingdom” has the same meaning as in Chapter A1 of Part 14 of ITA 2007.]

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### Textual Amendments

**F779** S. 554Z11A inserted (with effect in accordance with Sch. 45 para. 153(3) of the amending Act) by Finance Act 2013 (c. 29), **Sch. 45 para. 127**

## Supplementary

### 554Z12 Relevant step taken after A's death etc

- (1) Subsection (3), (4) or (5) (as the case may be) applies if the relevant step is a step within section 554C or 554D and—
- the relevant step is taken on or after A's death, or
  - if relevant, any of A's employment income by virtue of section 554Z2(1) is remitted to the United Kingdom on or after A's death.

But none of those subsections applies if A's employment with B never started before A's death.

- (2) In subsections (3) to (5) “the relevant person” means the relevant person (within the meaning of section 554C(1) or 554D(1) or (2)) in relation to the relevant step.

- (3) If the relevant person is A, A's personal representatives are liable for, as the case may be, the income tax on—

- A's employment income by virtue of section 554Z2(1), or
- so much of that income as is remitted.

- (4) If the relevant person is an individual other than A, the amount which, as the case may be—

- counts as employment income of A, or
- is remitted,

is to count as an amount of employment income of the relevant person for the tax year in which the relevant step is taken or the income is remitted.

- (5) If the relevant person is not an individual, the relevant taxable person is chargeable to income tax on the amount which, as the case may be—

- counts as employment income of A, or
- is remitted.

- (6) In subsection (5) “the relevant taxable person” is to be read as follows—

- if the person (or any of the persons) who took the relevant step is UK resident, “the relevant taxable person” is the person (or each of the UK resident persons) who took the relevant step,
- if paragraph (a) does not apply and B is still alive or in existence when the relevant step is taken, “the relevant taxable person” is B, or
- if neither paragraph (a) nor paragraph (b) applies, “the relevant taxable person” is the non-UK resident person (or each of the non-UK resident persons) who took the relevant step.

- (7) For the purposes of subsection (5)—

- the rate of tax is the rate applying for the purposes of section 394(2) (see section 394(4)) at the time of the relevant step or remittance of income, and

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- (b) the tax is charged for the tax year in which the relevant step is taken or the income is remitted.
- (8) If there is more than one relevant person in relation to the relevant step, the amount which, as the case may be—
- (a) counts as employment income of A, or
  - (b) is remitted,
- is to be apportioned between the relevant persons on a just and reasonable basis with subsections (3) to (5) applying accordingly.
- [ Section 554Z4A and section 554Z11A apply for the purposes of subsection (4) as <sup>F780</sup>(9) for the purposes of section 554Z2 and section 554Z9(2) or 554Z10(2) respectively (reading references in sections 554Z4A and 554Z11A to “A” as references to “the relevant person”).
- (10) But those sections do not apply for the purposes of subsection (4) if the relevant person's temporary period of non-residence began before A died.]

#### **Textual Amendments**

**F780** S. 554Z12(9)(10) inserted (with effect in accordance with Sch. 45 para. 153(3) of the amending Act) by **Finance Act 2013 (c. 29), Sch. 45 para. 128**

#### **554Z13 Subsequent income tax liability**

- (1) This section applies if—
- (a) after the relevant step is taken, another event (“the later event”) occurs,
  - (b) other than by virtue of—
    - (i) this Chapter,
    - (ii) Chapters 2 to 5 of Part 7, or
    - (iii) Part 9,
 the later event would (apart from this section) give rise to a liability for income tax of A or any other person on an amount (“the later amount”), and
  - (c) it is just and reasonable for this section to apply in order to avoid a double charge to income tax in respect of the sum of money or asset which is the subject of the relevant step.
- (2) So far as it is just and reasonable in order to avoid a double charge to income tax as mentioned in subsection (1)(c), there is to be no liability to income tax on the later amount by virtue of the later event.

#### **554Z14 Relief where earmarking not followed by further relevant step**

- (1) An application for relief may be made by A (or, if A has died, A's personal representatives) to an officer of Revenue and Customs if—
- (a) this Chapter has applied by reason of a relevant step (“the original relevant step”) within section 554B taken by a person (“P”),
  - (b) there occurs an event (“the relevant event”) which is not a relevant step in relation to a relevant sum or asset,

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- (c) by reason of the relevant event no further relevant step is or will be taken by P or any other person in relation to any relevant sum or asset, and
  - (d) there is no connection (direct or indirect) between the relevant event and a tax avoidance arrangement.
- (2) In section 554Z(15) the reference to the avoidance of tax includes (in particular) a reference to the avoidance of tax by way of obtaining relief under this section.
- (3) In subsection (1) “relevant sum or asset” means—
- (a) the sum of money or asset which is the subject of the original relevant step, or
  - (b) a sum of money or asset which (directly or indirectly) has arisen or derived, or may arise or derive, from the sum of money or asset mentioned in paragraph (a).
- (4) The application for relief must be made within four years from the time when the relevant event occurs.
- (5) If an officer of Revenue and Customs is satisfied that the requirements in subsection (1) are met, the officer must give such relief as the officer considers just and reasonable (if any) in respect of income tax paid on any previously charged amount.
- (6) In subsection (5) “previously charged amount” means—
- (a) the amount which counted as employment income of A under this Chapter as a result of this Chapter applying by reason of the original relevant step, or
  - (b) any amount treated by section 222 as earnings of A in relation to the notional payment (within the meaning of that section) which B is treated as having made by virtue of the original relevant step.
- (7) Subsection (8) applies if, by virtue of this Chapter having applied by reason of the original relevant step, any tax liability of A or any other person arising from another event is reduced (including to nil) by virtue of section 554Z5 or 554Z13 or otherwise.
- (8) In determining what is a just and reasonable amount of relief, the officer of Revenue and Customs must have regard (in particular) to the reduction in the tax liability and reduce the amount of relief which would otherwise have been given accordingly (including to nil).
- (9) The relief is to be given by repayment or otherwise as appropriate.
- (10) In relation to times after the relief is given, the Tax Acts have effect as if this Chapter had never applied by reason of the original relevant step.

### **554Z15 Location of employment duties**

The following provisions apply for the purposes of this Chapter—

- (a) section 38 (but as if references to general earnings were to the value of the relevant step or a part of it),
- (b) section 39(1) and (2),
- (c) section 40 (but as if in subsections (3) and (4) references to section 24(1)(b) were to section 554Z9(4)(b)), and
- (d) section 41 (but as if references to general earnings were to the value of the relevant step or a part of it).

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## CHAPTER 3

### UNDERTAKINGS GIVEN BY EMPLOYERS ETC IN RELATION TO RETIREMENT BENEFITS ETC

#### 554Z16 Application etc

- (1) This Chapter applies if there is an undertaking (“the relevant undertaking”) that a contribution to which subsection (2) would apply will be paid.
- (2) This subsection applies to a contribution if—
  - (a) the contribution is paid to an arrangement which is not a registered pension scheme,
  - (b) in connection with that arrangement (directly or indirectly), relevant benefits are to be provided (directly or indirectly) out of the contribution by a relevant third person,
  - (c) the provision of the relevant benefits would be a relevant step, and
  - (d) the contribution is neither a tax-relieved contribution nor tax-exempt provision.
- (3) In subsection (2)—
 

“relevant benefits” has the same meaning as in Chapter 2 of Part 6, but ignoring section 393B(2)(a),

“relevant third person” means a person within section 554A(7)(a) to (c) (ignoring this Chapter), and

“tax-exempt provision” and “tax-relieved contribution” have the meaning given by paragraph 3(3) and (4) of Schedule 34 to FA 2004.
- (4) In this Chapter references to an undertaking include references to—
  - (a) an undertaking which is not legally enforceable, and
  - (b) an undertaking which is to be performed only on or following the meeting of a condition (including a condition which might never be met).

#### 554Z17 Employer etc to be treated as relevant third person etc

- (1) If B takes a step within section 554Z18 or 554Z19, Chapters 1 and 2 have effect in relation to the step—
  - (a) as if B were a relevant third person for the purposes of section 554A(1)(d), and
  - (b) as if the step were a relevant step within section 554B (if it would not otherwise be).
- (2) For the purpose of determining whether Chapter 2 applies by reason of the step, Chapter 1 has effect—
  - (a) as if sections 554F to 554O, 554S to 554U, 554W and 554X were omitted,
  - (b) if the step is within section 554Z18, as if sections 554Q(2)(d), (3) and (4) and 554R(1)(c) and (d), (2) and (3) were omitted, and
  - (c) if the step is within section 554Z19, as if sections 554Q and 554R were omitted.
- (3) If Chapter 2 applies by reason of the step, Chapter 2 has effect as if sections 554Z7 to 554Z12 were omitted.

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- (4) If Chapter 2 does not apply by reason of the step by virtue of section 554E(3) or (6), section 554E(10) and (11) does not apply in relation to the step.
- (5) For further modifications of Chapters 1 and 2, see sections 554Z18(3) and (4), 554Z19(5) and (6), 554Z20 and 554Z21.
- (6) Regulations under section 554Y may (in particular) make provision covering cases in which Chapters 1 and 2 have effect as provided for by this section.
- (7) In this Chapter—
  - (a) references to B do not include references to B acting as a trustee,
  - (b) if B is a company and is a member of a group of companies, references to B are to be read as including references to any other company which is a member of that group, and
  - (c) if B is a limited liability partnership, references to B are to be read as including references to any company which is a wholly-owned subsidiary (as defined in section 1159(2) of the Companies Act 2006) of B.

#### **554Z18 Earmarking etc**

- (1) B takes a step within this section if—
  - (a) a sum of money or asset held by or on behalf of B is earmarked (however informally) by B with a view to the relevant undertaking being performed at a later time (wholly or partly) out of—
    - (i) that sum of money or asset, or
    - (ii) any sum of money or asset which may arise or derive (directly or indirectly) from it, or
  - (b) a sum of money or asset otherwise starts being held by or on behalf of B, specifically with a view, so far as B is concerned, to the relevant undertaking being performed at a later time (wholly or partly) out of—
    - (i) that sum of money or asset, or
    - (ii) any sum of money or asset which may arise or derive (directly or indirectly) from it.
- (2) For the purposes of subsection (1)(b) it does not matter whether or not the sum of money or asset in question has previously been held by or on behalf of B on a basis which is different to that mentioned in subsection (1)(b).
- (3) Subsection (4) applies if, in the application of section 554Q or 554R in any case, the relevant step mentioned in section 554Q(2)(a) or 554R(6)(a) is a step within this section taken by B.
- (4) In section 554Q(2)(c) or 554R(6)(c) (as the case may be) the reference to section 554B(1)(a) or (b) is to be read as a reference to subsection (1)(a) or (b) above.

#### **554Z19 Provision of security**

- (1) B takes a step within this section if B provides security for the performance of the relevant undertaking.
- (2) For the purposes of this Part, the sum of money or asset which is the subject of the step is to be taken to be—

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- (a) any sums of money which, as at the time the step is taken, are the subject of the security, and
  - (b) any assets which, as at that time, are the subject of the security,
- and references to the sum of money or asset which is the subject of a relevant step are to be read accordingly.
- (3) If, when the step is taken, the security covers other undertakings as well as the relevant undertaking, the sums of money and assets within subsection (2)(a) and (b) are to be apportioned between the relevant undertaking and the other undertakings on a just and reasonable basis.
- (4) Subsections (2) and (3) are subject to section 554Z20(7).
- (5) Section 554Q does not apply in any case in which the relevant step mentioned in section 554Q(2)(a) would be a step within this section taken by B.
- (6) Section 554R(6) does not apply in any case in which the relevant step mentioned in section 554R(6)(a) would be a step within this section taken by B.
- (7) In this Chapter references to providing security for the performance of an undertaking are references to providing such security in any way, however informal.

#### **554Z20 Valuation of step within section 554Z19**

- (1) This section applies if, by virtue of section 554Z17, Chapter 2 applies by reason of a step taken by B within section 554Z19.
- (2) Section 554Z3 has effect as if subsections (3) and (4) below were substituted for subsections (1) to (6) of that section.
- (3) The value of the relevant step is—
- (a) the amount to be paid as a contribution under the relevant undertaking determined, as at the time the step is taken, on a just and reasonable basis assuming that any condition to be met before any payment is made will be met, or
  - (b) if lower, the value of the security.
- (4) For the purposes of subsection (3)(b) the value of the security—
- (a) consists of—
    - (i) the total amount of the sums of money included in the subject of the step (see section 554Z19(2)(a)), and
    - (ii) the total market value, as at the time the step is taken, of the assets included in the subject of the step (see section 554Z19(2)(b)), but
  - (b) is to be subject to a just and reasonable reduction to take account of any term of the security which limits the total amount which may be made available under the security for the performance of the relevant undertaking to an amount which is lower than the amount determined under paragraph (a).
- (5) The following subsections apply if, as at the end of the day of an anniversary of the taking of the step (“the anniversary day”), B continues to provide the security for the performance of the relevant undertaking.
- (6) This Part has effect as if B's continuing to provide the security were a new step (“the anniversary step”) within section 554Z19—



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- (a) which is taken by B at the end of the anniversary day, and
  - (b) by reason of which Chapter 2 is to apply by virtue of section 554Z17 (subject only to section 554A(4)).
- (7) If the total amount of the sums of money which are the subject of the security (“the security sums”) varies from time to time, for the purpose of determining the sums of money included in the subject of the anniversary step, in section 554Z19(2)(a) the reference to the time the step is taken is to be read as a reference to the time during the preceding year at which the total amount of the security sums is at its highest.
- (8) For the purposes of subsection (4)(a)(ii) the market value of any asset included in the subject of the anniversary step may be determined as at any time during the preceding year (so long as the asset is the subject of the security, or one of the assets which is the subject of the security, as at that time).
- (9) In subsections (7) and (8) “the preceding year” means the year ending with the anniversary day.

#### **554Z21 Relief for earmarking or security not followed by contribution or relevant benefit**

- (1) This section applies if, by virtue of section 554Z17, Chapter 2 applies by reason of a step taken by B within section 554Z18 or 554Z19.
- (2) Section 554Z14 has effect in relation to the step with the following modifications.
- (3) Subsection (1)(b) has effect as if for “not a relevant step in relation to a relevant sum or asset” there were substituted “neither the payment of the relevant contribution (or any part of it) nor the provision of any relevant benefit”.
- (4) Subsection (1)(c) has effect as if for the words from “no further relevant step” to “any relevant sum or asset” there were substituted “the relevant contribution (or any part of it) will not be paid or a relevant benefit will not be provided”.
- (5) Subsection (1) has effect as if subsection (6) below were substituted for subsection (3).
- (6) In subsection (1)—
  - (a) “the relevant contribution” means the contribution to be paid under the relevant undertaking (within the meaning of Chapter 3), and
  - (b) “relevant benefit” means a relevant benefit to be provided out of the relevant contribution as mentioned in section 554Z16(2)(b) and (c).]

## **PART 8**

### **FORMER EMPLOYEES: DEDUCTIONS FOR LIABILITIES**

#### *Deductions [<sup>F781</sup>in calculating net income]*

#### **Textual Amendments**

**F781** Words in s. 555 cross-heading substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 440\(5\)](#) (with [Sch. 2](#))

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## 555 Former employee entitled to deduction [<sup>F782</sup>in calculating net income]

- (1) This Part applies if—
- (a) a former employee makes a deductible payment, or
  - (b) a former employer makes a deductible payment on behalf of a former employee and the payment is treated—
    - (i) as a relevant retirement benefit, or
    - (ii) as post-employment earnings, of the former employee.
- (2) A deduction of the amount of the deductible payment may be made [<sup>F783</sup>in calculating the former employee's net income] for the tax year in which the payment is made [<sup>F784</sup>(see Step 2 of the calculation in section 23 of ITA 2007)].
- (3) Subsection (2) applies only if the former employee makes a claim to the deduction.
- (4) The entitlement to a deduction under this section is subject to sections 556 and 557.
- (5) For the application of this Part in relation to former office-holders, see section 564.
- [<sup>F785</sup>(6) See section 263ZA of TCGA 1992 for relief from capital gains tax where the amount of the deduction allowed under this section exceeds the remaining total income (as defined in that section).]

### Textual Amendments

- F782** Words in s. 555 sidenote substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 440\(4\)](#) (with [Sch. 2](#))
- F783** Words in s. 555(2) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 440\(2\)\(a\)](#) (with [Sch. 2](#))
- F784** Words in s. 555(2) inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 440\(2\)\(b\)](#) (with [Sch. 2](#))
- F785** S. 555(6) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 440\(3\)](#) (with [Sch. 2](#))

## 556 Deductible payments made outside the time limits allowed

- (1) No deduction may be made under section 555 if the deductible payment is made—
- (a) on or before the day on which the former employee ceased to hold the former employment, or
  - (b) after the end of the sixth tax year following the tax year in which the former employee ceased to hold the former employment.
- (2) If subsection (1)(a) applies, see section 346 (deduction for employee liabilities).

## [<sup>F786</sup>556A] Deductible payments made pursuant to tax avoidance arrangements

No deduction may be made under section 555 if the deductible payment is made in pursuance of arrangements the main purpose, or one of the main purposes, of which is the avoidance of tax.]

*Status: Point in time view as at 01/09/2013.*

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### Textual Amendments

**F786** S. 556A inserted (with effect in accordance with s. 67(4) of the amending Act) by [Finance Act 2009](#) (c. 10), s. 67(3)

## 557 Deductible payments wholly or partly borne by the former employer etc.

- (1) This section applies if—
  - (a) a deductible payment is made by the former employee (and not by the former employer on behalf of the former employee), but
  - (b) the whole or a part of the cost of making the payment is borne—
    - (i) by the former employer, or
    - (ii) out of the proceeds of a contract of insurance.
- (2) No deduction of the amount of the cost borne as mentioned in subsection (1)(b) (the “relevant amount”) may be made under section 555.
- (3) But this is subject to subsection (4) if the whole or a part of the relevant amount is treated—
  - (a) as a relevant retirement benefit of the former employee, or
  - (b) as post-employment earnings of the former employee.
- (4) In such a case, a deduction of so much of the relevant amount as is treated in that way may be made under section 555.

### *Interpretation*

## 558 Meaning of “deductible payment”

- (1) For the purposes of this Part each of the following is a deductible payment—
  - A. Payment in or towards the discharge of a liability related to the former employment.
  - B. Payment of any costs or expenses incurred in connection with—
    - (a) a claim that the former employee is subject to a liability related to the former employment, or
    - (b) proceedings relating to or arising out of a claim that the former employee is subject to a liability related to the former employment.
  - C. Payment of a premium under a qualifying insurance contract, but only to the extent that the premium relates to—
    - (a) provision in the contract for the former employee to be indemnified against a payment falling within paragraph A, or
    - (b) provision in the contract for the payment of any costs or expenses falling within paragraph B.
- (2) But a payment which falls within paragraph A or B is not a deductible payment if it would have been unlawful for the former employer to enter into a contract of insurance in respect of the liability, or costs or expenses, in question.
- (3) In this Part—

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- (a) “premium”, in relation to a qualifying insurance contract, means an amount payable to the insurer under the contract, and
- (b) where a qualifying insurance contract relates to more than one person, employment or risk, the part of the premium to be treated as relating to each of them is to be determined by apportionment on a just and reasonable basis.

## **559 Liabilities related to the former employment**

For the purposes of this Part each of the following kinds of liability is related to the former employment—

A. Liability imposed upon the former employee because he did an act, or failed to do an act—

- (a) in his capacity as holder of the former employment, or
- (b) in any other capacity in which he acted in the performance of the duties of the former employment.

B. Liability imposed upon the former employee in connection with any proceedings relating to, or arising from, a claim that he is subject to a liability because he did an act, or failed to do an act—

- (a) in his capacity as holder of the former employment, or
- (b) in any other capacity in which he acted in the performance of the duties of the former employment.

## **560 Meaning of “qualifying insurance contract”**

- (1) In section 558 “qualifying insurance contract” means a contract of insurance which meets conditions A, B, C and D.
- (2) Condition A is that, so far as the risks insured against are concerned, the contract only relates to one or more of the following—
  - (a) the indemnification of a former employee against a liability related to the former employment,
  - (b) the indemnification of a person against vicarious liability in respect of a liability related to another person’s employment,
  - (c) the payment of costs or expenses incurred—
    - (i) in connection with a claim that a person is subject to a liability to which the insurance relates, or
    - (ii) in connection with any proceedings relating to or arising out of a claim that a person is subject to a liability to which the insurance relates,
  - (d) the indemnification of an employer against loss from a payment made by the employer to a former employee in respect of—
    - (i) a liability related to the former employment, or
    - (ii) any costs or expenses incurred as mentioned in paragraph (c).
- (3) Condition B is that—
  - (a) the period of insurance under the contract does not exceed 2 years or, if it does, it does so only because of one or more renewals, each for a period of 2 years or less, and
  - (b) the insured is not required to renew the contract for any period.
- (4) Condition C is—

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- (a) that the insured is not entitled under the contract to receive any payment or other benefit in addition to—
    - (i) cover for the risks insured against, and
    - (ii) any right to renew the contract, or
  - (b) if the insured is so entitled, that the part of the premium reasonably attributable to the entitlement is not a significant part of the whole premium.
- (5) Condition D is that the contract is not connected with another contract.

## **561 Connected contracts**

- (1) An insurance contract is connected with another contract for the purposes of section 560 if conditions E and F are met—
- (a) at the time when both contracts are first in force, or
  - (b) at any time after that time.
- (2) Condition E is that one of the contracts was entered into—
- (a) by reference to the other, or
  - (b) with a view to enabling or facilitating entry into the other on particular terms.
- (3) Condition F is that the terms on which one of the contracts was entered into are significantly different from what they would have been if—
- (a) it had not been entered into in anticipation of the other being entered into, or
  - (b) the other had not also been entered into.
- (4) If—
- (a) there is only one such significant difference in terms, and
  - (b) the contracts meet conditions A, B and C specified in section 560,
- the difference may be disregarded in the following cases.
- (5) The first case is where the difference is a reduction in premiums under the contract that is reasonably attributable only to the contract—
- (a) containing a right to renew, or
  - (b) being entered into by way of renewal.
- (6) The second case is where—
- (a) two or more contracts have been entered into as part of a single transaction, and
  - (b) the difference is reductions in their premiums that are reasonably attributable only to the premium under each of them having been fixed by reference to the appropriate proportion of the combined premium.
- (7) In subsection (6) “the combined premium” means the amount that would have been the total premium under a single contract relating to all the risks covered by the contracts.

## **562 Meaning of “former employee” and “employment”**

- (1) In this Part “former employee” means an individual who has ceased to hold an employment.
- (2) In this Part “employment” includes in particular—
- (a) any employment under a contract of service,

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- (b) any employment under a contract of apprenticeship, and
- (c) any employment in the service of the Crown.

“Employee” and “employer” have corresponding meanings.

### 563 Other interpretation

In this Part each of the following expressions, when used in relation to a former employee, has the meaning given—

“former employment” means the employment which the former employee has ceased to hold;

“former employer” means—

- (a) the person under whom the former employee held the former employment,
- (b) a person for the time being carrying on the whole or any part of the business or other undertaking for the purposes of which the former employee held the former employment,
- (c) a person who is for the time being subject to any of the liabilities with respect to that business or other undertaking of the person mentioned in paragraph (a), and
- (d) a person who is connected with a person falling within paragraph (a), (b) or (c);

“post-employment earnings” means so much of any amount received after the former employee has ceased to hold the former employment as constitutes general earnings for the purposes of the employment income Parts;

“relevant retirement benefit” means a benefit—

- (a) [<sup>F787</sup> which is received by the former employee under an employer-financed retirement benefits scheme, and
- (b) which, under Chapter 2 of Part 6, counts as employment income of the former employee.]

#### Textual Amendments

**F787** Words in s. 563 substituted (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), s. 284(1), [Sch. 35 para. 64](#) (with [Sch. 36](#))

### 564 Application of this Part to office-holders

- (1) The provisions of this Part are expressed to apply to former employees but they apply equally to former office-holders.
- (2) In those provisions as they apply to a former office-holder—
  - (a) references to holding a former employment are to holding the office;
  - (b) “former employment” means the office held;
  - (c) “former employer” means the person under whom the person held the office.
- (3) In this Part “office” includes in particular any position which has an existence independent of the person who holds it and may be filled by successive holders.

*Status: Point in time view as at 01/09/2013.*

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## PART 9

### PENSION INCOME

#### CHAPTER 1

##### INTRODUCTION

### 565 Structure of Part 9

The structure of this Part is as follows— Chapter 2—

- (a) imposes the charge to tax on pension income, and
- (b) provides for deductions to be made from the amount of income chargeable;

Chapters 3 to 15 set out the types of income which are charged to tax under this Part and, for each type of income, identify—

- (a) the amount of income chargeable to tax for a tax year, and
- (b) the person liable to pay any tax charged;

[<sup>F788</sup>Chapter 15A makes provision about exemptions and charges in relation to lump sums under registered pension schemes; Chapters 17 and 18 deal with other] exemptions from the charge to tax (whether under this Part or any other provision).

#### Textual Amendments

**F788** Words in s. 565 substituted (6.4.2006) by Finance Act 2004 (c. 12), s. 284(1), Sch. 31 para. 2 (with Sch. 36)

## CHAPTER 2

### TAX ON PENSION INCOME

### 566 Nature of charge to tax on pension income and relevant definitions

- (1) The charge to tax on pension income under this Part is a charge to tax on that income excluding any exempt income.
- (2) “Pension income” means the pensions, annuities and income of other types to which the provisions listed in subsection (4) apply.

This definition applies for the purposes of the Tax Acts.

- (3) “Exempt income” means pension income on which no liability to income tax arises as a result of any provision of Chapters 16 to 18 of this Part.

This definition applies for the purposes of this Part.

- (4) These are the provisions referred to in subsection (2)—

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*Provision*

*Income*

*Chapter (of this Part)*

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|                                 |                                                                                                                                                                 |              |
|---------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|
| Section 569                     | United Kingdom pensions                                                                                                                                         | Chapter 3    |
| Section 573                     | Foreign pensions                                                                                                                                                | Chapter 4    |
| Section 577                     | United Kingdom social security pensions                                                                                                                         | Chapter 5    |
| [ <sup>F789</sup> Section 579A] | Pensions under registered pension schemes                                                                                                                       | Chapter 5A]  |
| Section 609                     | Annuities for the benefit of dependants                                                                                                                         | Chapter 10   |
| Section 610                     | Annuities under sponsored superannuation schemes                                                                                                                | Chapter 10   |
| Section 611                     | Annuities in recognition of another's services                                                                                                                  | Chapter 10   |
| Section 615                     | Certain overseas government pensions paid in the United Kingdom                                                                                                 | Chapter 11   |
| Section 619                     | The House of Commons Members' Fund                                                                                                                              | Chapter 12   |
| F790                            | F790                                                                                                                                                            | F790         |
| ...                             | ...                                                                                                                                                             | ...          |
| Section 629                     | Pre-1973 pensions paid under OPA 1973                                                                                                                           | Chapter 14   |
| Section 633                     | Voluntary annual payments                                                                                                                                       | Chapter 15   |
| [ <sup>F791</sup> Section 636B] | Pensions treated as arising from payment of trivial commutation lump sums and winding-up lump sums under registered pension schemes                             | Chapter 15A  |
| Section 636C                    | Pensions treated as arising from payment of trivial commutation lump sum death benefits and winding-up lump sum death benefits under registered pension schemes | Chapter 15A] |

#### Textual Amendments

**F789** Words in s. 566(4) substituted (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), s. 284(1), [Sch. 31 para. 3\(2\)](#) (with [Sch. 36](#))

**F790** Words in s. 566(4) repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), s. 284(1), [Sch. 31 para. 3\(3\)](#), [Sch. 42 Pt. 3](#) (with [Sch. 36](#))



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**F791** Words in s. 566(4) inserted (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), s. 284(1), [Sch. 31 para. 3\(4\)](#) (with [Sch. 36](#))

## 567 Amount charged to tax

- (1) The amount of pension income which is charged to tax under this Part for a particular tax year is as follows.
- (2) In relation to each pension, annuity or other item of pension income, the amount charged to tax is the “net taxable pension income” for the tax year.
- (3) The net taxable pension income for a pension, annuity or other item of pension income for a tax year is given by the formula—

### TPI- DPI

where—

TPI means the amount of taxable pension income for that pension, annuity or item of pension income for that year (see subsection (4)), and

DPI means the total amount of any deductions allowed from the pension, annuity or item of pension income (see subsection (5)).

- (4) For the purposes of this Act—
  - (a) the amount of taxable pension income for a pension, annuity or other item of pension income for a tax year is determined in accordance with Chapters 3 to <sup>[F792]</sup>15A] of this Part (which contain provisions relating to this amount for each type of pension income); and
  - (b) in determining the amount of taxable pension income for a pension, annuity or other item of pension income, any exempt income is to be excluded.
- (5) The deductions allowed from a pension, annuity or other item of pension income are those under—
  - <sup>[F793]</sup>section 567A (deduction to avoid double taxation where Part 7A has applied to the source of the pension income);
  - section 617 (10% deduction from an overseas government pension to which section 615 applies);
  - Part 12 (payroll giving).

#### Textual Amendments

**F792** Word in s. 567(4)(a) substituted (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), s. 284(1), [Sch. 31 para. 4](#) (with [Sch. 36](#))

**F793** Words in s. 567(5) inserted (with effect in accordance with Sch . 2 para. 52-59 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 26](#)

## <sup>[F794]</sup>567A Cases in which Part 7A has applied to source of pension income

- (1) This section applies if—
  - (a) for a tax year there is an amount (“amount TPI”) of taxable pension income for a pension, annuity or other item of pension income,

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- (b) the pension, annuity or other item of pension income accrues or arises out of rights (“the relevant rights”) which represent, or have arisen or derived (directly or indirectly) from, a sum of money or asset which was the subject of a relevant step within the meaning of Part 7A, and
  - (c) Chapter 2 of that Part applied by reason of the relevant step.
- (2) A deduction is allowed from amount TPI.
- (3) The amount of the deduction allowed is the amount (“amount EI”) which counted as employment income of A under Chapter 2 of Part 7A in relation to the relevant step (see section 554Z2(1)).
- (4) If amount EI exceeds amount TPI, the excess is to be carried forward to future tax years to be deducted under this section (when applicable) until all of amount EI has been deducted.
- (5) Subsection (6) applies if it is determined on a just and reasonable basis that the relevant rights represent, or have arisen or derived from, only part of the sum of money or asset which was the subject of the relevant step.
- (6) In subsection (3) the reference to the amount which counted as employment income is to be read as a reference to the corresponding proportion of that amount.]

#### Textual Amendments

**F794** [S. 567A](#) inserted (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 27](#)

### 568 Person liable for tax

For the provision identifying which person is liable for any tax charged under this Part on a pension, annuity or other item of pension income, see Chapters 3 to [<sup>F795</sup>15A].

#### Textual Amendments

**F795** Word in s. 568 substituted (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), s. 284(1), [Sch. 31 para. 5](#) (with [Sch. 36](#))

## CHAPTER 3

### UNITED KINGDOM PENSIONS: GENERAL RULES

### 569 United Kingdom pensions

- (1) This section applies to any pension paid by or on behalf of a person who is in the United Kingdom.
- (2) But this section does not apply to a pension if any provision of Chapters 5 to 14 of this Part applies to it.
- (3) For pensions paid by or on behalf of a person who is outside the United Kingdom, see Chapter 4 of this Part.

*Status: Point in time view as at 01/09/2013.*

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## **570 “Pension”: interpretation**

In this Chapter “pension” includes a pension which is paid voluntarily or is capable of being discontinued.

## **571 Taxable pension income**

If section 569 applies, the taxable pension income for a tax year is the full amount of the pension accruing in that year irrespective of when any amount is actually paid.

## **572 Person liable for tax**

If section 569 applies, the person liable for any tax charged under this Part is the person receiving or entitled to the pension.

## **[<sup>F796</sup>572A] Temporary non-residents**

- (1) This section applies if an individual is temporarily non-resident.
- (2) Any pension within subsection (3) is to be treated for the purposes of section 571 as if it accrued in the period of return.
- (3) A pension is within this subsection if—
  - (a) section 569 applies to it,
  - (b) it is in the form of a lump sum,
  - (c) it accrued in the temporary period of non-residence, and
  - (d) ignoring this section—
    - (i) it is not chargeable to tax under this Chapter, but
    - (ii) it would be so chargeable if the existence of any double taxation relief arrangements were disregarded.
- (4) Subsection (3)(d)(i) includes a case where the charge could be prevented by making a DTR claim, even if no claim is in fact made.
- (5) Nothing in any double taxation relief arrangements is to be read as preventing the individual from being chargeable to income tax in respect of any pension treated by virtue of this section as accruing in the period of return (or as preventing a charge to that tax from arising as a result).
- (6) Part 4 of Schedule 45 to FA 2013 (statutory residence test: anti-avoidance) explains—
  - (a) when an individual is to be regarded as “temporarily non-resident”, and
  - (b) what “the temporary period of non-residence” and “the period of return” mean.
- (7) In this section—

“double taxation relief arrangements” means arrangements that have effect under section 2(1) of TIOPA 2010;

“DTR claim” means a claim for relief under section 6 of that Act.]

*Status: Point in time view as at 01/09/2013.*

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### Textual Amendments

**F796** S. 572A inserted (with effect in accordance with Sch. 45 para. 153(3) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 129](#)

## CHAPTER 4

### FOREIGN PENSIONS: GENERAL RULES

#### 573 Foreign pensions

- (1) This section applies to any pension paid by or on behalf of a person who is outside the United Kingdom to a person who is resident in the United Kingdom.
- (2) But this section does not apply to a pension if any provision of Chapters 5 to 14 of this Part applies to it.
- (3) For pensions paid by or on behalf of a person who is in the United Kingdom, see Chapter 3 of this Part.

#### 574 “Pension”: interpretation

- [<sup>F797</sup>(1) For the purposes of this Chapter “pension” includes—
- (a) an annuity under, or purchased with sums or assets held for the purposes of, or representing acquired rights under, a relevant non-UK scheme or an overseas pension scheme,
  - (b) an amount paid under a relevant non-UK scheme or an overseas pension scheme which, if the scheme were a registered pension scheme, would be income withdrawal or dependants' income withdrawal (within the meaning of paragraphs 7 and 21 of Schedule 28 to FA 2004), and
  - (c) if conditions A and B are met, a pension which is paid voluntarily or is capable of being discontinued.]
- (2) Condition A is that the pension is paid to—
- (a) a former employee or a former office-holder,
  - (b) the widow or widower [<sup>F798</sup>or surviving civil partner] of a former employee or a former office-holder, or
  - (c) any child, relative or dependant of a former employee or a former office-holder.
- (3) Condition B is that the pension is paid by or on behalf of—
- (a) the person—
    - (i) who employed the former employee, or
    - (ii) under whom the former office-holder held the office, or
  - (b) the successors of that person.

[<sup>F799</sup>(4) In this section—

“office” includes in particular any position which has an existence independent of the person who holds it and may be filled by successive holders;

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“overseas pension scheme” has the same meaning as in Part 4 of FA 2004 (see section 150(7) of that Act);

“relevant non-UK scheme” is to be read in accordance with paragraph 1(5) of Schedule 34 to FA 2004.]

#### Textual Amendments

**F797** S. 574(1) substituted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 21\(2\)\(a\)](#)

**F798** Words in s. 574(2)(b) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), [154](#)

**F799** S. 574(4) substituted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 21\(2\)\(b\)](#)

### 575 Taxable pension income

(1) If section 573 applies, the taxable pension income for a tax year is <sup>F800</sup>the full amount of the pension income arising in the tax year, but subject to subsections <sup>F801</sup>[<sup>F801</sup>(1A),] (2) and (3) <sup>F802</sup>[<sup>F802</sup>and section 576A].]

<sup>F803</sup>(1A) If the person liable for the tax under this Part is an individual and the tax year is a split year as respects that individual, the taxable pension income for the tax year is the full amount of the pension income arising in the UK part of the year, subject to subsections (2) and (3) and section 576A.]

<sup>F804</sup>(2) The full amount of the pension income arising in the tax year <sup>F805</sup>[<sup>F805</sup>or, as the case may be, the UK part of the tax year] is to be calculated on the basis that the pension is 90% of its actual amount, unless as a result of subsection (3) the pension income is charged in accordance with section 832 of ITTOIA 2005 (relevant foreign income charged on the remittance basis).

(3) That pension income is treated as relevant foreign income for the purposes of Chapters 2 and 3 of Part 8 of that Act (relevant foreign income: remittance basis and deductions and reliefs).

<sup>F806</sup>(4) . . . . .

(5) See also Chapter 4 of that Part (unremittable income).]

#### Textual Amendments

**F800** Words in s. 575(1) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 606\(2\)](#) (with Sch. 2)

**F801** Word in s. 575(1) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 72\(2\)](#)

**F802** Words in s. 575(1) inserted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 21\(3\)](#)

**F803** S. 575(1A) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 72\(3\)](#)

**F804** S. 575(2)-(5) substituted for s. 575(2) (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 606\(3\)](#) (with Sch. 2)

**F805** Words in s. 575(2) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 72\(4\)](#)

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**F806** S. 575(4) omitted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by virtue of Finance Act 2008 (c. 9), [Sch. 7 para. 45](#)

## 576 Person liable for tax

If section 573 applies, the person liable for any tax charged under this Part is the person receiving or entitled to the pension.

### <sup>F807</sup> 576A Temporary non-residents

- (1) This section applies if a person is temporarily non-resident.
- (2) Any relevant withdrawals within subsection (3) are to be treated for the purposes of section 575 as if they arose in the period of return.
- (3) A relevant withdrawal is within this subsection if—
  - (a) it is paid to the person in the temporary period of non-residence, and
  - (b) ignoring this section, it is not chargeable to tax under this Part (or would not be if a DTR claim were made in respect of it).
- (4) A “relevant withdrawal” is an amount paid under a relevant non-UK scheme that—
  - (a) is paid to the person in respect of a flexible drawdown arrangement relating to the person under the scheme, and
  - (b) would, if the scheme were a registered pension scheme, be “income withdrawal” or “dependants’ income withdrawal” within the meaning of paragraphs 7 and 21 of Schedule 28 to FA 2004.
- (5) If section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the person for the year of return, any relevant withdrawal within subsection (3) that was remitted to the United Kingdom in the temporary period of non-residence is to be treated as remitted to the United Kingdom in the period of return.
- (6) This section does not apply to a relevant withdrawal if—
  - (a) it is paid to or in respect of a relieved member of the scheme and is not referable to the member’s UK tax-relieved fund under the scheme, or
  - (b) it is paid to or in respect of a transfer member of the scheme and is not referable to the member’s relevant transfer fund under the scheme.
- (7) Nothing in any double taxation relief arrangements is to be read as preventing the person from being chargeable to income tax in respect of any relevant withdrawal treated by virtue of this section as arising in the period of return (or as preventing a charge to that tax from arising as a result).
- (8) Part 4 of Schedule 45 to FA 2013 (statutory residence test: anti-avoidance) explains—
  - (a) when a person is to be regarded as “temporarily non-resident”, and
  - (b) what “the temporary period of non-residence” and “the period of return” mean.
- (9) In this section—
 

“double taxation relief arrangements” means arrangements that have effect under section 2(1) of TIOPA 2010;

“DTR claim” means a claim for relief under section 6 of that Act;

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“flexible drawdown arrangement” means an arrangement to which section 165(3A) or 167(2A) of FA 2004 applies;

“remitted to the United Kingdom” has the same meaning as in Chapter A1 of Part 14 of ITA 2007;

“the year of return” means the tax year that consists of or includes the period of return.

(10) The following expressions have the meaning given in Schedule 34 to FA 2004—

“relevant non-UK scheme” (see paragraph 1(5));

“relieved member” (see paragraph 1(7));

“transfer member” (see paragraph 1(8));

“member's UK tax-relieved fund” (see paragraph 3(2));

“member's relevant transfer fund” (see paragraph 4(2)).]

#### Textual Amendments

**F807** S. 576A substituted (with effect in accordance with [Sch. 45 para. 153\(3\)](#) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 116](#)

## CHAPTER 5

### UNITED KINGDOM SOCIAL SECURITY PENSIONS

#### 577 United Kingdom social security pensions

(1) This section applies to—

the state pension,  
graduated retirement benefit,  
industrial death benefit,  
widowed mother's allowance,  
widowed parent's allowance, and  
widow's pension.

[<sup>F808</sup>(1A) But this section does not apply to any social security pension lump sum (within the meaning of section 7 of F(No.2)A 2005).]

(2) In this section—

“state pension” means any pension payable under—

(a) section 44, 48A, 48B, 48BB, 51 or 78 of SSCBA 1992, or

(b) section 44, [<sup>F809</sup>48A], 48B, 48BB, 51 or 78 of SSCB(NI)A 1992;

“graduated retirement benefit” means any benefit payable under—

(a) section 36 or 37 of the National Insurance Act 1965 (c. 51), or

(b) section 35 or 36 of the National Insurance Act (Northern Ireland) 1966 (c. 6 (N.I.));

“industrial death benefit” means any benefit payable under—

(a) section 94 of, and Part 6 of Schedule 7 to, SSCBA 1992, or

(b) section 94 of, and Part 6 of Schedule 7 to, SSCB(NI)A 1992;

“widowed mother's allowance” means any allowance payable under—

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- (a) section 37 of SSCBA 1992, or
- (b) section 37 of SSCB(NI)A 1992;
- “widowed parent’s allowance” means any allowance payable under—
- (a) section 39A of SSCBA 1992, or
- (b) section 39A of SSCB(NI)A 1992;
- “widow’s pension” means any pension payable under—
- (a) section 38 of SSCBA 1992, or
- (b) section 38 of SSCB(NI)A 1992.

<sup>F810</sup>(3) . . . . .

- (4) Chapter 17 of this Part provides a partial exemption for a pension to which this section applies in respect of any part of the pension which is attributable to an increase in respect of a child (see section 645).

#### Textual Amendments

- F808** S. 577(1A) inserted (20.7.2005) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), s. 10(2)
- F809** Word in s. 577(2) substituted (22.7.2004) by [Finance Act 2004 \(c. 12\)](#), [Sch. 17 para. 9\(4\)\(a\)](#)
- F810** S. 577(3) repealed (22.7.2004) by [Finance Act 2004 \(c. 12\)](#), [Sch. 17 para. 9\(4\)\(b\)](#), [Sch. 42 Pt. 2\(12\)](#)

### 578 Taxable pension income

If section 577 applies, the taxable pension income for a tax year is the full amount of the pension, benefit or allowance accruing in that year irrespective of when any amount is actually paid.

### 579 Person liable for tax

If section 577 applies, the person liable for any tax charged under this Part is the person receiving or entitled to the pension, benefit or allowance.

## [<sup>F811</sup>CHAPTER 5A

### PENSIONS UNDER REGISTERED PENSION SCHEMES

#### Textual Amendments

- F811** Pt. 9 Ch. 5A inserted (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), s. 284(1), [Sch. 31 para. 6](#) (with [Sch. 36](#))

#### Modifications etc. (not altering text)

- C31** Pt. 9 Ch. 5A restricted (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), [Sch. 36 para. 43\(2\)](#) (with s. 283(5), [Sch. 36](#))
- C32** Pt. 9 Ch. 5A modified (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), [Sch. 36 paras. 44, 45](#) (with s. 283(5), [Sch. 36](#))
- C33** [Pt. 9 Ch. 5A](#) modified (1.4.2012 being "the specified day", see S.I. 2012/687, 688 and 966) by [The Postal Services Act 2011 \(Taxation\) Regulations 2012 \(S.I. 2012/764\)](#), regs. 1(1), [23\(2\)](#)
- C34** [Pt. 9 Ch. 5A](#) modified (1.4.2012 being "the specified day", see S.I. 2012/687, 688 and 966) by [The Postal Services Act 2011 \(Taxation\) Regulations 2012 \(S.I. 2012/764\)](#), regs. 1(1), [24](#)



*Status: Point in time view as at 01/09/2013.*

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## 579A Pensions

- (1) This section applies to any pension under a registered pension scheme (but subject to subsection (2)).
- (2) This section does not apply to a pension under a registered pension scheme if and to the extent that, when it is paid, a liability to the unauthorised payments charge arises in respect of the amount of the payment (see section 208 of FA 2004).

### Modifications etc. (not altering text)

- C35** S. 579A applied (6.4.2006) by [The Pension Protection Fund \(Tax\) Regulations 2006 \(S.I. 2006/575\)](#), regs. 1, [41](#)

## 579B Taxable pension income

If section 579A applies, the taxable pension income for a tax year is the full amount of the pension under the registered pension scheme that accrues in that year irrespective of when any amount is actually paid [<sup>F812</sup>This is subject to section 579CA.]

### Textual Amendments

- F812** Words in s. 579B inserted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 22\(2\)](#)

## 579C Person liable for tax

If section 579A applies, the person liable for any tax charged under this Part is the person receiving or entitled to the pension under the registered pension scheme.

## [<sup>F813</sup>579CA] Temporary non-residents

- (1) This section applies if a person is temporarily non-resident.
- (2) Any relevant withdrawals within subsection (3) are to be treated for the purposes of section 579B as if they accrued in the period of return.
- (3) A relevant withdrawal is within this subsection if—
  - (a) it is paid to the person in the temporary period of non-residence, and
  - (b) ignoring this section, it is not chargeable to tax under this Part (or would not be if a DTR claim were made in respect of it).
- (4) A “relevant withdrawal” is any income withdrawal or dependants' income withdrawal paid to the person under a registered pension scheme in respect of a flexible drawdown arrangement relating to the person under the scheme.
- (5) Nothing in any double taxation relief arrangements is to be read as preventing the person from being chargeable to income tax in respect of any relevant withdrawal treated by virtue of this section as accruing in the period of return (or as preventing a charge to that tax from arising as a result).
- (6) Part 4 of Schedule 45 to FA 2013 (statutory residence test: anti-avoidance) explains—

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- (a) when a person is to be regarded as “temporarily non-resident”, and
- (b) what “the temporary period of non-residence” and “the period of return” mean.

(7) In this section—

“double taxation relief arrangements” means arrangements that have effect under section 2(1) of TIOPA 2010;

“DTR claim” means a claim for relief under section 6 of that Act;

“flexible drawdown arrangement” means an arrangement to which section 165(3A) or 167(2A) of FA 2004 applies.]

#### Textual Amendments

**F813** S. 579CA substituted (with effect in accordance with [Sch. 45 para. 153\(3\)](#) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 117](#)

#### [<sup>F814</sup>579D] Interpretation

In this Chapter—

“dependants' income withdrawal” has the meaning given by paragraph 21 of Schedule 28 to FA 2004;

“income withdrawal” has the meaning given by paragraph 7 of that Schedule;

“pension under a registered pension scheme” includes—

- (a) an annuity under, or purchased with sums or assets held for the purposes of, or representing acquired rights under, a registered pension scheme, and
- (b) income withdrawal or dependants' income withdrawal under a registered pension scheme.]]

#### Textual Amendments

**F814** S. 579D substituted (with effect in accordance with [Sch. 16 para. 85](#) of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 22\(4\)](#)

## <sup>F815</sup>CHAPTER 6

### APPROVED RETIREMENT BENEFITS SCHEMES

#### Textual Amendments

**F815** Pt. 9 Ch. 6 repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), s. 284(1), [Sch. 31 para. 7](#), [Sch. 42 Pt. 3](#) (with [Sch. 36](#))

*Pensions and annuities*

.....

*Unauthorised payments*

.....

*Status: Point in time view as at 01/09/2013.*

*Changes to legislation: Income Tax (Earnings and Pensions) Act 2003 is up to date with all changes known to be in force on or before 10 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

*Interpretation etc.*

.....

<sup>F817</sup>CHAPTER 7

FORMER APPROVED SUPERANNUATION FUNDS

**Textual Amendments**

**F817** Pt. 9 Ch. 7 repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), s. 284(1), Sch. 31 para. 7, [Sch. 42 Pt. 3](#) (with [Sch. 36](#))

*Annuities*

**590 Annuities**

.....

**591 Taxable pension income**

.....

**592 Person liable for tax**

.....

*Unauthorised payments*

**593 Unauthorised payments: application of section 583**

.....

*Interpretation*

**594 Meaning of “former approved superannuation fund”**

.....

<sup>F818</sup>CHAPTER 8

APPROVED PERSONAL PENSION SCHEMES

**Textual Amendments**

**F818** Pt. 9 Ch. 8 repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), s. 284(1), Sch. 31 para. 7, [Sch. 42 Pt. 3](#) (with [Sch. 36](#))

*Status: Point in time view as at 01/09/2013.*

*Changes to legislation: Income Tax (Earnings and Pensions) Act 2003 is up to date with all changes known to be in force on or before 10 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

*Annuities*

**595 Annuities**

.....

**596 Taxable pension income**

.....

**597 Person liable for tax**

.....

*Income withdrawals*

**598 Income withdrawals**

.....

**599 Taxable pension income**

.....

**600 Person liable for tax**

.....

*Unauthorised personal pension payments*

**601 Unauthorised personal pension payments**

.....

**602 Taxable pension income**

.....

**603 Person liable for tax**

.....

*Interpretation*

**604 Meaning of “personal pension scheme” and related expressions**

.....

*Status: Point in time view as at 01/09/2013.*

*Changes to legislation: Income Tax (Earnings and Pensions) Act 2003 is up to date with all changes known to be in force on or before 10 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## <sup>F819</sup>CHAPTER 9

### RETIREMENT ANNUITY CONTRACTS

#### Textual Amendments

**F819** Pt. 9 Ch. 9 repealed (6.4.2006) by Finance Act 2004 (c. 12), s. 284(1), Sch. 31 para. 7, Sch. 42 Pt. 3 (with Sch. 36)

#### 605 Annuities

.....

#### 606 Meaning of “retirement annuity contract”

.....

#### 607 Taxable pension income

.....

#### 608 Person liable for tax

.....

## CHAPTER 10

### OTHER EMPLOYMENT-RELATED ANNUITIES

#### 609 Annuities for the benefit of dependants

(1) This section applies to any annuity which was granted for consideration consisting in whole or in part of sums [<sup>F820</sup>—

- (a) which, in the tax year 2012-13 or an earlier tax year, satisfied the conditions for relief under section 273 of ICTA or section 459 of ITA 2007 (obligatory contributions to secure an annuity for the benefit of dependants), or
- (b) which fall within subsection (3)]

(2) But this section applies to an annuity which arises from a source outside the United Kingdom only if it is paid to a person resident in the United Kingdom.

[<sup>F821</sup>(3) A sum falls within this subsection if—

- (a) in the tax year 2013-14 or a later tax year, the sum is paid by an individual, or is deducted from an individual's earnings, under an Act or the individual's terms and conditions of employment,
- (b) the sum is for the purpose of—
  - (i) securing a deferred annuity after the individual's death for the individual's surviving spouse or civil partner, or
  - (ii) making provision after the individual's death for the individual's children, and

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- (c) the individual—
- (i) is UK resident for the tax year in which the sum is paid or deducted, or
  - (ii) at any time in that tax year, falls within any of paragraphs (a) to (f) of section 460(3) of ITA 2007 (matters relating to residence).
- (4) Subsection (3)(a) does not cover contributions paid by a person under—
- (a) Part 1 of the Social Security Contributions and Benefits Act 1992, or
  - (b) Part 1 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992.
- (5) In subsection (3)(a) “earnings” has the meaning given by section 62.]

#### Textual Amendments

**F820** Words in s. 609(1) substituted (with effect in accordance with Sch. 39 para. 32(6) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 39 para. 32(4)**

**F821** S. 609(3)-(5) inserted (with effect in accordance with Sch. 39 para. 32(6) of the amending Act) by Finance Act 2012 (c. 14), **Sch. 39 para. 32(5)**

#### 610 Annuities under [<sup>F822</sup>non-registered occupational pension] schemes

- (1) This section applies to—
- (a) any annuity paid under [<sup>F823</sup>an occupational pension scheme that is not a registered pension scheme], and
  - (b) any annuity acquired using funds held for the purposes of [<sup>F824</sup>such an occupational pension scheme].
- (2) But this section applies to an annuity which arises from a source outside the United Kingdom only if it is paid to a person resident in the United Kingdom.
- (3) This section does not apply to an annuity to which [<sup>F825</sup>Chapter 5A] of this Part applies.
- [<sup>F826</sup>(4) In this section “occupational pension scheme” has the same meaning as in Part 4 of FA 2004 (see section 150(5) of that Act).]

#### Textual Amendments

**F822** Words in s. 610 heading substituted (6.4.2006) by Finance Act 2004 (c. 12), s. 284(1), **Sch. 31 para. 8(5)** (with Sch. 36)

**F823** Words in s. 610(1)(a) substituted (6.4.2006) by Finance Act 2004 (c. 12), s. 284(1), **Sch. 31 para. 8(2)(a)** (with Sch. 36)

**F824** Words in s. 610(1)(b) substituted (6.4.2006) by Finance Act 2004 (c. 12), s. 284(1), **Sch. 31 para. 8(2)(b)** (with Sch. 36)

**F825** Words in s. 610(3) substituted (6.4.2006) by Finance Act 2004 (c. 12), s. 284(1), **Sch. 31 para. 8(3)** (with Sch. 36)

**F826** S. 610(4) substituted (6.4.2006) by Finance Act 2004 (c. 12), s. 284(1), **Sch. 31 para. 8(4)** (with Sch. 36)

*Status: Point in time view as at 01/09/2013.*

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## 611 Annuities in recognition of another's services

- (1) This section applies to any annuity purchased by any person in recognition of another person's services in any office or employment.
- (2) But this section applies to an annuity which arises from a source outside the United Kingdom only if it is paid to a person resident in the United Kingdom.
- (3) This section does not apply to an annuity to which [<sup>F827</sup>Chapter 5A] of this Part applies.
- (4) For the purposes of this section "office" includes in particular any position which has an existence independent of the person who holds it and may be filled by successive holders.

### Textual Amendments

**F827** Words in s. 611(3) substituted (6.4.2006) by Finance Act 2004 (c. 12), s. 284(1), Sch. 31 para. 9 (with Sch. 36)

## 612 Taxable pension income: UK annuities

- (1) The taxable pension income for an annuity to which section 609, 610 or 611 applies is determined in accordance with this section if the annuity arises from a source in the United Kingdom.
- (2) The taxable pension income for a tax year is the full amount of the annuity arising in that year.

## 613 Taxable pension income: foreign annuities

- (1) The taxable pension income for an annuity to which section 609, 610 or 611 applies is determined in accordance with this section if the annuity arises from a source outside the United Kingdom.
- (2) The taxable pension income for a tax year is [<sup>F828</sup>the full amount of the annuity arising in the tax year, but subject to subsections (3) and (4).]
- [<sup>F829</sup>(3) The full amount of the annuity arising in the tax year is to be calculated on the basis that the annuity is 90% of its actual amount, unless as a result of subsection (4) the annuity is charged in accordance with section 832 of ITTOIA 2005 (relevant foreign income charged on the remittance basis).
- (4) The annuity is treated as relevant foreign income for the purposes of Chapters 2 and 3 of Part 8 of that Act (relevant foreign income: remittance basis and deductions and reliefs).
- (5) But if the annuity arises in the Republic of Ireland, section 839 of that Act (annual payments payable out of relevant foreign income) applies with the omission of condition B and subsection (5)(a).
- (6) See also Chapter 4 of that Part (unremittable income).]

*Status: Point in time view as at 01/09/2013.*

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### Textual Amendments

- F828** Words in s. 613(2) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 607\(2\)](#) (with Sch. 2)
- F829** S. 613(3)-(6) substituted for s. 613(3)(4) (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 607\(3\)](#) (with Sch. 2)

## 614 Person liable for tax

If section 609, 610 or 611 applies, the person liable for any tax charged under this Part is the person receiving or entitled to the annuity.

## CHAPTER 11

### CERTAIN OVERSEAS GOVERNMENT PENSIONS PAID IN THE UK

## 615 Certain overseas government pensions paid in the United Kingdom

- (1) This section applies to a pension if conditions A, B and C are met.
- (2) Condition A is that the pension—
  - (a) is payable—
    - (i) to a person who has been employed in overseas government service, or
    - (ii) to the widow, widower, [<sup>F830</sup>surviving civil partner,] child, relative or dependant of a person who has been employed in overseas government service, and
  - (b) is payable in respect of that service.
- (3) Condition B is that the pension—
  - (a) is payable in the United Kingdom, and
  - (b) is payable to a person who is resident in the United Kingdom.
- (4) Condition C is that the pension is payable by or on behalf of the government of—
  - (a) a country which forms part of Her Majesty’s dominions,
  - (b) any other country which is for the time being mentioned in Schedule 3 to the British Nationality Act 1981 (c. 61), or
  - (c) any territory under Her Majesty’s protection.
- (5) But condition C is not met if the pension is payable out of the public revenue of the United Kingdom or Northern Ireland.
- (6) In condition A the references to a person being employed in overseas government service are to the person being employed outside the United Kingdom—
  - (a) in the service of the Crown, or
  - (b) in service under the government of a country or territory which falls within subsection (4).
- (7) In this Chapter “pension” includes a pension which is paid voluntarily or is capable of being discontinued.



*Status: Point in time view as at 01/09/2013.*

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### Textual Amendments

**F830** Words in s. 615(2)(a)(ii) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **158**

## **616 Taxable pension income**

If section 615 applies, the taxable pension income for a tax year is the full amount of the pension accruing in that year irrespective of when any amount is actually paid.

## **617 Deduction allowed from taxable pension income**

A deduction of 10% is allowed from an amount of taxable pension income determined under section 616 (see section 567).

## **618 Person liable for tax**

If section 615 applies, the person liable for any tax charged under this Part is the person receiving or entitled to the pension.

## **CHAPTER 12**

### **HOUSE OF COMMONS MEMBERS' FUND**

## **619 The House of Commons Members' Fund**

This section applies to any periodical payment granted out of—

- (a) the House of Commons Members' Fund,
- (b) sums appropriated from that Fund, or
- (c) income from sums appropriated from that Fund.

## **620 Meaning of “House of Commons Members' Fund”**

In this Chapter “House of Commons Members' Fund” means the fund with that name established by section 1 of the House of Commons Members' Fund Act 1939 (c. 49).

## **621 Taxable pension income**

If section 619 applies, the taxable pension income for a tax year is the total amount of the payments made in that year.

## **622 Person liable for tax**

If section 619 applies, the person liable for any tax charged under this Part is the person receiving or entitled to the payments.

*Status: Point in time view as at 01/09/2013.*

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## F831 CHAPTER 13

### RETURN OF SURPLUS EMPLOYEE ADDITIONAL VOLUNTARY CONTRIBUTIONS

**Textual Amendments**

**F831** Pt. 9 Ch. 13 repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), s. 284(1), Sch. 31 para. 10, [Sch. 42 Pt. 3](#) (with [Sch. 36](#) and with further transitional provisions in [S.I. 2006/572](#), [arts. 1\(1\)](#), 38(3))

**623 Return of surplus employee additional voluntary contributions**  
 .....

**624 Taxable pension income**  
 .....

**625 Person liable for tax**  
 .....

**626 Income tax treated as paid**  
 .....

**627 Meaning of “grossing up”**  
 .....

**628 Interpretation**  
 .....

## CHAPTER 14

### PRE-1973 PENSIONS PAID UNDER THE OVERSEAS PENSIONS ACT 1973

**629 Pre-1973 pensions paid under the Overseas Pensions Act 1973**

- (1) This section applies to a pension if—
  - (a) it is paid under section 1 of OPA 1973 (whether or not paid out of a fund established under a scheme made under that section),
  - (b) it is a pre-1973 pension, and
  - (c) it is paid to—
    - (i) the original pensioner, or
    - (ii) the widow or widower of the original pensioner.

*Status: Point in time view as at 01/09/2013.*

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- (2) But this section does not apply to a part of a pension which is paid because the Pensions (Increase) Act 1971 (c. 56) applies to it (and accordingly section 569 applies to that part of the pension).
- (3) Chapter 18 of this Part provides an exemption where a pension to which this section applies is paid to a person who is not resident in the United Kingdom (see sections 647 and 651).

### 630 Interpretation

- (1) For the purposes of this Chapter a person is the “original pensioner” in relation to a pension if—
  - (a) the pension is payable by virtue of the person’s service, and
  - (b) the person retired from that service before 6th April 1973.
- (2) For the purposes of this Chapter a pension is a “pre-1973 pension” if, immediately before 6th April 1973—
  - (a) the pension was payable to—
    - (i) the original pensioner, or
    - (ii) the widow or widower of the original pensioner, and
  - (b) that person was resident in the United Kingdom.

### 631 Taxable pension income

- (1) If section 629 applies, the taxable pension income for a tax year is [<sup>F832</sup>the full amount of the pension income arising in the tax year] .
- [<sup>F833</sup>(2) The full amount of the pension income arising in the tax year is to be calculated on the basis that the pension is 90% of its actual amount.
- (3) The pension income is treated as relevant foreign income for the purposes of section 838 of that Act (expenses attributable to collection or payment of relevant foreign income).]

#### Textual Amendments

**F832** Words in s. 631(1) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 608\(2\)](#) (with [Sch. 2](#))

**F833** S. 631(2)(3) substituted for s. 631(2) (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 608\(3\)](#) (with [Sch. 2](#))

### 632 Person liable for tax

If section 629 applies, the person liable for any tax charged under this Part is the person receiving or entitled to the pension.

*Status: Point in time view as at 01/09/2013.*

*Changes to legislation: Income Tax (Earnings and Pensions) Act 2003 is up to date with all changes known to be in force on or before 10 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## CHAPTER 15

### VOLUNTARY ANNUAL PAYMENTS

#### 633 Voluntary annual payments

- (1) This section applies to an annual payment which—
  - (a) is paid voluntarily, or
  - (b) is capable of being discontinued,
 if conditions A and B are met.
- (2) Condition A is that the payment is paid to—
  - (a) a former employee or a former office-holder,
  - (b) the widow or widower [<sup>F834</sup>or surviving civil partner] of a former employee or former office-holder, or
  - (c) any child, relative or dependant of a former employee or a former office-holder.
- (3) Condition B is that the payment is paid by or on behalf of—
  - (a) the person—
    - (i) who employed the former employee, or
    - (ii) under whom the former office-holder held the office, or
  - (b) the successors of that person.
- (4) But this section applies to a payment which is paid by or on a behalf of a person who is outside the United Kingdom only if it is paid to a person resident in the United Kingdom.
- (5) In this section “office” includes in particular any position which has an existence independent of the person who holds it and may be filled by successive holders.

#### Textual Amendments

**F834** Words in s. 633(2)(b) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **159**

#### 634 Taxable pension income: UK voluntary annual payments

- (1) The taxable pension income for payments to which section 633 applies is determined in accordance with this section if the payments are made by or on behalf of a person who is in the United Kingdom.
- (2) The taxable pension income for a tax year is the full amount of the payments accruing in that year irrespective of when any amount is actually paid.

#### 635 Taxable pension income: foreign voluntary annual payments

- (1) The taxable pension income for payments to which section 633 applies is determined in accordance with this section if the payments are made by or on behalf of a person who is outside the United Kingdom.

*Status: Point in time view as at 01/09/2013.*

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- (2) The taxable pension income for a tax year is [<sup>F835</sup>the full amount of the pension income arising in the tax year, but subject to subsections (3) and (4)] .
- [<sup>F836</sup>(3) The full amount of the pension income arising in the tax year is to be calculated on the basis that the pension is 90% of its actual amount, unless as a result of subsection (4) the pension income is charged in accordance with section 832 of ITTOIA 2005 (relevant foreign income charged on the remittance basis).
- (4) That pension income is treated as relevant foreign income for the purposes of Chapters 2 and 3 of Part 8 of that Act (relevant foreign income: remittance basis and deductions and reliefs).
- (5) But if that pension income arises in the Republic of Ireland, section 839 of that Act (annual payments payable out of relevant foreign income) applies with the omission of condition B and subsection (5)(a).
- (6) See also Chapter 4 of that Part (unremittable income).]

#### Textual Amendments

**F835** Words in s. 635(2) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 609\(2\)](#) (with [Sch. 2](#))

**F836** S. 635(3)-(6) substituted for s. 635(3) (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 609\(3\)](#) (with [Sch. 2](#))

### 636 Person liable for tax

If section 633 applies, the person liable for any tax charged under this Part is the person receiving or entitled to the payment.

## [<sup>F837</sup>CHAPTER 15A

### LUMP SUMS UNDER REGISTERED PENSION SCHEMES

#### Textual Amendments

**F837** Pt. 9 Ch. 15A inserted (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), s. 284(1), [Sch. 31 para. 11](#) (with [Sch. 36](#))

### 636A Exemption for certain lump sums under registered pension schemes

- (1) No liability to income tax arises on a lump sum paid under a registered pension scheme if the lump sum is—
- a pension commencement lump sum,
  - a serious ill-health lump sum [<sup>F838</sup>paid to a member who has not reached the age of 75] ,
  - a refund of excess contributions lump sum,
  - a defined benefits lump sum death benefit [<sup>F839</sup>paid in respect of a member who had not reached the age of 75 at the date of the member's death] , [<sup>F840</sup>or]

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- (e) an uncrystallised funds lump sum death benefit, [<sup>F841</sup>paid in respect of such a member]<sup>F842</sup> ...
- <sup>F842</sup>(f) .....
- (2) But subsection (1) does not limit the operation of sections 214 to 226 of FA 2004 (lifetime allowance charge).
- (3) A short service refund lump sum under a registered pension scheme is subject to income tax in accordance with section 205 of FA 2004 (charge to tax on scheme administrator in respect of such a lump sum) but not otherwise.
- <sup>F843</sup> [ A serious ill-health lump sum which is paid under a registered pension scheme to a (3A) member who has reached the age of 75 is subject to income tax in accordance with section 205A of FA 2004 (charge to tax on scheme administrator in respect of such a lump sum) but not otherwise.]
- (4) A lump sum under a registered pension scheme which is—
- <sup>F844</sup> [ a defined benefits lump sum death benefit paid in respect of a member who (za) had reached the age of 75 at the date of the member’s death,]
- (a) a pension protection lump sum death benefit,
- <sup>F845</sup> [ an uncrystallised funds lump sum death benefit paid in respect of a member (aa) who had reached the age of 75 at the date of the member’s death,]
- (b) an annuity protection lump sum death benefit, or
- <sup>F846</sup>(c) a drawdown pension fund lump sum death benefit,]
- is subject to income tax in accordance with section 206 of FA 2004 (charge to tax on scheme administrator in respect of such lump sum death benefits) but not otherwise.
- <sup>F847</sup> [ In the case of a registered pension scheme which is a split scheme for the purposes (4A) of the Registered Pensions Schemes (Splitting of Schemes) Regulations 2006, subsections (3) and (4) shall have effect as if the references to the scheme administrator were to the sub-scheme administrator (within the meaning of those Regulations).]
- (5) A lifetime allowance excess lump sum is chargeable to income tax in accordance with sections 214 to 226 of FA 2004 (lifetime allowance charge) but not otherwise.
- (6) In this section—
- “lifetime allowance excess lump sum”,
- “pension commencement lump sum”,
- “refund of excess contributions lump sum”,
- “serious ill-health lump sum”, and
- “short service refund lump sum”,
- have the same meaning as in section 166 of FA 2004 (see Part 1 of Schedule 29 to that Act).
- (7) In this section—
- “annuity protection lump sum death benefit”,
- “defined benefits lump sum death benefit”,
- <sup>F848</sup> [“drawdown pension fund lump sum death benefit”,]
- “pension protection lump sum death benefit”, [<sup>F849</sup>and]
- <sup>F850</sup> ...
- “uncrystallised funds lump sum death benefit”, <sup>F851</sup> ...
- <sup>F851</sup> ...

*Status: Point in time view as at 01/09/2013.*

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have the same meaning as in section 168 of FA 2004 (see Part 2 of Schedule 29 to that Act).

#### Textual Amendments

- F838** Words in s. 636A(1)(b) inserted (with effect in accordance with Sch. 16 paras. 85, 102 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), **Sch. 16 para. 42(2)(a)**
- F839** Words in s. 636A(1)(d) inserted (with effect in accordance with Sch. 16 paras. 85, 103 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), **Sch. 16 para. 42(2)(b)**
- F840** Word in s. 636A(1)(d) inserted (with effect in accordance with Sch. 19 para. 29(3) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), **Sch. 19 para. 28(2)(a)**
- F841** Words in s. 636A(1)(e) inserted (with effect in accordance with Sch. 16 paras. 85, 103 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), **Sch. 16 para. 42(2)(c)**
- F842** S. 636A(1)(f) and word repealed (with effect in accordance with Sch. 19 para. 29(3) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), **Sch. 19 para. 28(2)(b)**, **Sch. 27 Pt. 3(1)**
- F843** S. 636A(3A) inserted (with effect in accordance with Sch. 16 paras. 85, 102 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), **Sch. 16 para. 42(3)**
- F844** S. 636A(4)(za) inserted (with effect in accordance with Sch. 16 paras. 85, 103 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), **Sch. 16 para. 42(4)(a)**
- F845** S. 636A(4)(aa) inserted (with effect in accordance with Sch. 16 paras. 85, 103 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), **Sch. 16 para. 42(4)(b)**
- F846** S. 636A(4)(c) substituted (with effect in accordance with Sch. 16 paras. 85, 103 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), **Sch. 16 para. 42(4)(c)**
- F847** S. 636A(4A) inserted by 2004 c. 12, Sch. 31 para. 11 (as amended (6.4.2006) by [The Registered Pension Schemes \(Splitting of Schemes\) Regulations 2006 \(S.I. 2006/569\)](#), regs. 1(1), **5(1)(2)**)
- F848** Words in s. 636A(7) inserted (with effect in accordance with Sch. 16 paras. 85, 103 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), **Sch. 16 para. 42(5)(a)**
- F849** Word in s. 636A(7) inserted (with effect in accordance with Sch. 16 paras. 85, 103 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), **Sch. 16 para. 42(5)(b)**
- F850** Words in s. 636A(7) repealed (with effect in accordance with Sch. 19 para. 29(3) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), **Sch. 19 para. 28(3)**, **Sch. 27 Pt. 3(1)**
- F851** Words in s. 636A(7) omitted (with effect in accordance with Sch. 16 paras. 85, 103 of the amending Act) by virtue of [Finance Act 2011 \(c. 11\)](#), **Sch. 16 para. 42(5)(c)**

#### Modifications etc. (not altering text)

- C36** S. 636A(1) modified (6.4.2006) by [The Taxation of Pension Schemes \(Transitional Provisions\) Order 2006 \(S.I. 2006/572\)](#), arts. 1(1), **6**, 7(1)(2)
- C37** S. 636A(7) modified (6.4.2006) by [The Taxation of Pension Schemes \(Transitional Provisions\) Order 2006 \(S.I. 2006/572\)](#), arts. 1(1), **6**, 7(1)(3)
- C38** S. 636A(1)(2) applied (1.5.2010) by [The Financial Assistance Scheme \(Tax\) Regulations 2010 \(S.I. 2010/1187\)](#), regs. 1(1), **4**

### 636B Trivial commutation and winding-up lump sums

- (1) This section applies if—
- a trivial commutation lump sum, or
  - a winding-up lump sum,
- is paid to a member of a registered pension scheme under the pension scheme.
- (2) The member is to be treated as having taxable pension income for the tax year in which the payment is made equal to the amount of the lump sum.

*Status: Point in time view as at 01/09/2013.*

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- (3) But if, immediately before the lump sum is paid, the member [F852] has uncrystallised rights (within the meaning of section 212 of FA 2004) under any one or more arrangements under the pension scheme, the amount of the taxable pension income—
- (a) if all his rights under the pension scheme are uncrystallised rights, is 75% of the lump sum, and
  - (b) otherwise, is reduced by 25% of the value of the uncrystallised rights calculated in accordance with that section.]
- (4) In this section—
- “trivial commutation lump sum”, and
- “winding-up lump sum”,
- have the same meaning as in section 166 of FA 2004 (see Part 1 of Schedule 29 to that Act).

#### Textual Amendments

**F852** Words in s. 636B(3) substituted (6.4.2006) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 59, 64\(1\)](#)

#### Modifications etc. (not altering text)

**C39** [S. 636B](#) modified (6.4.2006) by [The Taxation of Pension Schemes \(Transitional Provisions\) Order 2006 \(S.I. 2006/572\)](#), arts. 1(1), [37](#)

**C40** [S. 636B](#) applied (with modifications) (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), [Sch. 36 para. 35\(4\)](#) (with [s. 283\(5\)](#), [Sch. 36](#))

### 636C Trivial commutation and winding-up lump sum death benefits

- (1) This section applies if—
- (a) a trivial commutation lump sum death benefit, or
  - (b) a winding-up lump sum death benefit,
- is paid to a person under a registered pension scheme.
- (2) The person is to be treated as having taxable pension income for the tax year in which the payment is made equal to the amount of the lump sum.
- (3) In this section—
- “trivial commutation lump sum death benefit”, and
- “winding-up lump sum death benefit”,
- have the same meaning as in section 168 of FA 2004 (see Part 2 of Schedule 29 to that Act).]

## F853 CHAPTER 16

### EXEMPTION FOR CERTAIN LUMP SUMS

#### Textual Amendments

**F853** Pt. 9 Ch. 16 repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), s. 284(1), [Sch. 31 para. 12](#), [Sch. 42 Pt. 3](#) (with [Sch. 36](#))



*Status: Point in time view as at 01/09/2013.*

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## 637 Exemption for lump sums provided under certain pension schemes etc.

.....

### CHAPTER 17

#### EXEMPTIONS: ANY TAXPAYER

## 638 Awards for bravery

- (1) No liability to income tax arises on a pension or annuity if it is paid to the holder of an award for bravery in respect of the award.
- (2) In this section “award for bravery” means—
  - the Victoria Cross,
  - the George Cross,
  - the Albert Medal,
  - the Edward Medal,
  - the Military Cross,
  - the Distinguished Flying Cross,
  - the Distinguished Conduct Medal,
  - the Conspicuous Gallantry Medal,
  - the Distinguished Service Medal,
  - the Military Medal,
  - the Distinguished Flying Medal.

## 639 Pensions in respect of death due to military or war service

- [<sup>F854</sup>(1)] No liability to income tax arises on these pensions and allowances—
- (a) a pension or allowance payable by or on behalf of [<sup>F855</sup>the Ministry of Defence] under so much of [<sup>F856</sup>instrument specified in subsection (2),] as relates to death due to—
    - (i) service in the armed forces of the Crown,
    - (ii) wartime service in the merchant navy, or
    - (iii) war injuries;
  - (b) a pension or allowance—
    - (i) payable by the Ministry of Defence in respect of death due to peacetime service in the armed forces of the Crown before 3rd September 1939, and
    - (ii) payable at rates, and subject to conditions, similar to those of a pension within paragraph (a);
  - (c) a pension or allowance—
    - (i) payable under the law of a country other than the United Kingdom, and
    - (ii) of a character substantially similar to a pension within paragraph (a) or (b).

- [<sup>F857</sup>(2) The instruments referred to in subsection (1)(a) are—  
Defence (Local Defence Volunteers) Regulations 1940 (S.R. & O. 1940/748),

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War Pensions (Coastguards) Scheme 1944 (S.R. & O. 1944/500),  
 War Pensions (Naval Auxiliary Personnel) Scheme 1964 (S.I. 1964/1985),  
 Pensions (Polish Forces) Scheme 1964 (S.I. 1964/2007),  
 War Pensions (Mercantile Marine) Scheme 1964 (S.I. 1964/2058),  
 Order by Her Majesty concerning pensions and other grants in respect of  
 disablement or death due to service in the Home Guard (1964 Cmnd. 2563),  
 Order by Her Majesty concerning pensions and other grants in respect of  
 disablement or death due to service in the Home Guard after 27th April 1952  
 (1964 Cmnd. 2564),  
 Order by Her Majesty concerning pensions and other grants in respect of  
 disablement or death due to service in the Ulster Defence Regiment (1971 Cmnd.  
 4567),  
 Personal Injuries (Civilians) Scheme 1983 (S.I. 1983/686),  
 Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions  
 Order 1983 (S.I. 1983/883).

(3) The Treasury may by order amend subsection (2).]

#### Textual Amendments

**F854** S. 639 renumbered as s. 639(1) (retrospectively) by [Finance Act 2005 \(c. 7\), s. 19\(3\)\(8\)](#)

**F855** Words in s. 639(a) substituted (retrospectively) by [Finance Act 2005 \(c. 7\), s. 19\(3\)\(a\)\(8\)](#)

**F856** Words in s. 639(a) substituted (retrospectively) by [Finance Act 2005 \(c. 7\), s. 19\(3\)\(b\)\(8\)](#)

**F857** S. 639(2)(3) inserted (retrospectively) by [Finance Act 2005 \(c. 7\), s. 19\(3\)\(8\)](#)

#### 640 Exemption under section 639 where income withheld

(1) This section applies if—

- (a) an individual is entitled to both of the following—
  - (i) a pension or allowance mentioned in section 639 (“pension A”), and
  - (ii) any other pension or allowance (“pension B”), and
- (b) the whole or a part of pension A is withheld because of the individual’s entitlement to pension B.

(2) In such a case, an amount of pension B equal to the withheld amount of pension A is treated for the purposes of section 639 as part of pension A.

#### [<sup>F858</sup> 640A Lump sums provided under armed forces early departure scheme

No liability to income tax arises on a lump sum provided under a scheme established by the Armed Forces Early Departure Payments Scheme Order 2005 (S.I. 2005/437).]

#### Textual Amendments

**F858** S. 640A inserted (with effect in accordance with s. 19(9) of the amending Act) by [Finance Act 2005 \(c. 7\), s. 19\(5\)](#)

*Status: Point in time view as at 01/09/2013.*

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## 641 Wounds and disability pensions

- (1) No liability to income tax arises on—
- (a) a wounds pension granted to a member of the armed forces of the Crown;
  - (b) retired pay of a disabled officer granted on account of medical unfitness attributable to or aggravated by service in the armed forces of the Crown;
  - (c) a disablement or disability pension granted to a member of the armed forces of the Crown, other than a commissioned officer, on account of medical unfitness attributable to or aggravated by service in the armed forces of the Crown;
  - (d) a disablement pension granted to a person who has been employed in the nursing services of any of the armed forces of the Crown on account of medical unfitness attributable to or aggravated by service in the armed forces of the Crown;
  - <sup>F859</sup>(e) .....
  - (f) an injury or disablement pension payable under any War Risks Compensation Scheme for the Mercantile marine;
  - (g) a pension—
    - (i) granted to a person on account of disablement, and
    - (ii) payable under any scheme made under section 3, 4 or 5 of the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939 (c. 83).
  - [<sup>F860</sup>(h) a benefit under a scheme established by an order under section 1(2) of the Armed Forces (Pensions and Compensation) Act 2004 payable to a person by reason of his illness or injury—
    - (i) by way of a lump sum, or
    - (ii) following the termination of the person's service in the armed forces or reserve forces.]
- (2) But if the Secretary of State certifies that a pension or retired pay of a kind listed in subsection (1) is only partly attributable to disablement or disability, that subsection applies only to the part attributable to disablement or disability.

### Textual Amendments

**F859** S. 641(1)(e) repealed (21.7.2008) by [Statute Law \(Repeals\) Act 2008 \(c. 12\)](#), [Sch. 1 Pt. 1](#) Group 4

**F860** S. 641(1)(h) inserted (with effect in accordance with s. 19(9) of the amending Act) by [Finance Act 2005 \(c. 7\)](#), [s. 19\(6\)](#)

## 642 Compensation for National-Socialist persecution

No liability to income tax arises on a pension or annuity which is payable under any special provision for victims of National-Socialist persecution which is made by the law of—

- (a) the Federal Republic of Germany or any part of it, or
- (b) Austria.

## 643 Malawi, Trinidad and Tobago and Zambia government pensions

- (1) No liability to income tax arises on—
- (a) a Malawi government pension,

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- (b) a Trinidad and Tobago government pension, or  
 (c) a Zambia government pension,  
 if conditions A, B and C are met.
- (2) Condition A is that the pension is paid to—  
 (a) the original pensioner, or  
 (b) the widow or widower [<sup>F861</sup>or surviving civil partner] of the original pensioner.
- (3) Condition B is that the pension is now paid under section 1 of OPA 1973 (whether or not it is paid out of a fund established under a scheme made under that section).
- (4) Condition C is that, at the time the pension is paid, provision is made by double taxation relief arrangements which would exempt the pension from income tax in the United Kingdom if the pension were still paid by the relevant government (rather than under section 1 of OPA 1973).
- (5) Subsection (1) does not apply to any part of a pension which is paid because the Pensions (Increase) Act 1971 (c. 56) applies to it.
- (6) In this section—  
 “double taxation relief arrangements” means arrangements [<sup>F862</sup>which have effect under section 2(1) of TIOPA 2010;]  
 “Malawi government pension” means a pension payable by the government of Malawi for services rendered—  
 (a) to the government of Malawi, or  
 (b) to the government of the Federation of Rhodesia and Nyasaland,  
 in the discharge of government functions;  
 “Trinidad and Tobago government pension” means a pension payable by the government of Trinidad and Tobago for services rendered to the government of Trinidad and Tobago in the discharge of governmental functions;  
 “Zambia government pension” means a pension payable by the government of Zambia for services rendered—  
 (a) to the government of Zambia,  
 (b) to the government of Northern Rhodesia, or  
 (c) to the government of the Federation of Rhodesia and Nyasaland,  
 in the discharge of governmental functions.
- (7) For the purposes of this section a person is the “original pensioner” in relation to a pension if—  
 (a) the pension is payable by virtue of the person’s service, and  
 (b) the person retired from that service before 6th April 1973.

#### Textual Amendments

**F861** Words in s. 643(2)(b) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **160**

**F862** Words in s. 643(6) substituted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), **Sch. 8 para. 60** (with Sch. 9 paras. 1-9, 22)

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*Changes to legislation: Income Tax (Earnings and Pensions) Act 2003 is up to date with all changes known to be in force on or before 10 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## 644 Pensions payable where employment ceased due to disablement

- (1) No liability to income tax arises on the exempt amount of a disablement pension.
- (2) For the purposes of this section a pension is a “disablement pension” if—
  - (a) the pension is payable because a person has ceased to hold an employment or office because of disablement, and
  - (b) that disablement is attributable to—
    - (i) performance of the duties of the employment or office, or
    - (ii) war injuries.

But “disablement pension” does not include any pension to which section [F863579A] applies.

- (3) The exempt amount of a disablement pension is determined in accordance with the following steps.

### *Step 1*

Determine what pension would have been payable if—

- (a) the person had ceased to hold the employment or office because of the disablement mentioned in subsection (2)(a), but
- (b) the disablement had not been attributable to—
  - (i) performance of the duties of the employment or office, or
  - (ii) war injuries.

### *Step 2*

If no pension would have been payable, the exempt amount is the amount of the disablement pension.

If a pension of a smaller amount than the disablement pension would have been payable, the exempt amount is the amount by which the disablement pension exceeds the smaller amount.

In any other case, the exempt amount is nil.

- (4) For the purposes of this section “office” includes in particular any position which has an existence independent of the person who holds it and may be filled by successive holders.

### **Textual Amendments**

**F863** Word in s. 644(2) substituted (6.4.2006) by Finance Act 2004 (c. 12), s. 284(1), Sch. 31 para. 13 (with Sch. 36)

## [F864] 644A Health and employment insurance payments

- (1) No liability to income tax arises in respect of a pension or annuity payment if or to the extent that—
  - (a) were the payment an annual payment falling within Chapter 7 of Part 5 of ITTOIA 2005, it would be exempt from income tax under section 735 of that Act (health and employment insurance payments), and
  - (b) it meets conditions A and B.

*Status: Point in time view as at 01/09/2013.*

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- (2) Condition A is that the payments are made—
- (a) to a person (“the pensioner”) who made payments or contributions in respect of premiums under an insurance policy which another person took out wholly or partly for the pensioner's benefit, or
  - (b) to the pensioner's [<sup>F865</sup>spouse or civil partner] .
- (3) Condition B is that the payments are attributable on a just and reasonable basis to the payments or contributions in respect of premiums.]

#### Textual Amendments

**F864** S. 644A inserted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 610](#) (with [Sch. 2](#))

**F865** Words in s. 644A(2)(b) substituted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\), regs. 1\(1\), 161](#)

#### 645 Social security pensions: increases in respect of children

- (1) No liability to income tax arises on a part of a social security pension which is attributable to an increase in respect of a child.
- (2) In this section “social security pension” means—
- (a) any pension, benefit or allowance to which section 577 applies, and
  - (b) any pension, benefit or allowance which—
    - (i) is payable under the law of a country or territory outside the United Kingdom, and
    - (ii) is substantially similar in character to a pension, benefit or allowance to which section 577 applies.

#### 646 Former miners etc: coal and allowances in lieu of coal

- (1) No liability to income tax arises on—
- (a) the provision of coal or smokeless fuel—
    - (i) to a former colliery worker, or
    - (ii) to the widow or widower [<sup>F866</sup>or surviving civil partner] of a former colliery worker, or
  - (b) any allowance paid to such a person in lieu of such provision, if the condition in subsection (2) is met.
- (2) That condition is that the amount of coal or fuel provided or in respect of which the allowance is paid does not substantially exceed the amount reasonably required for personal use.
- (3) That condition is assumed to be met unless the contrary is shown.
- (4) In this section “former colliery worker” means—
- (a) any person who has ceased to be employed as a coal miner, or
  - (b) any other person who has ceased to be employed at or about a colliery otherwise than in clerical, administrative or technical work.

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### Textual Amendments

**F866** Words in s. 646(1)(a)(ii) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **162**

## [<sup>F867</sup> **646A** Foreign pensions of consular employees

- (1) No liability to income tax arises in respect of foreign pension income of a consular officer or employee in the United Kingdom for a foreign state if—
  - (a) Her Majesty by Order in Council directs that this section applies to the foreign state for the purpose of giving effect to a reciprocal arrangement with that state, and
  - (b) the officer or employee meets conditions A to C.
- (2) Condition A is that the officer or employee is not—
  - (a) a British citizen,
  - (b) a British overseas territories citizen,
  - (c) a British National (Overseas), or
  - (d) a British Overseas citizen.
- (3) Condition B is that the officer or employee is not engaged in any trade, profession, vocation or employment in the United Kingdom, otherwise than as a consular officer or employee of the state in question.
- (4) Condition C is that the officer or employee—
  - (a) is a permanent employee of that state, or
  - (b) was not ordinarily resident in the United Kingdom immediately before becoming a consular officer or employee in the United Kingdom of that state.
- (5) In this section—

“consular officer or employee” includes any person employed for the purposes of the official business of a consular officer at—

  - (a) any consulate,
  - (b) any consular establishment, or
  - (c) any other premises used for those purposes,

“foreign pension income” means—

  - (a) income to which section 573 or 629 applies, and
  - (b) income arising from a source outside the United Kingdom to which section 609, 610, 611 or 633 applies; and

“reciprocal agreement” has the same meaning as in section 302.
- (6) Section 302(5) to (7) apply to an Order under subsection (1) and the operation of this section as they apply to an Order under section 302(1) and the operation of section 302.]

### Textual Amendments

**F867** S. 646A inserted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), **Sch. 1 para. 611** (with **Sch. 2**)

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## CHAPTER 18

### EXEMPTIONS: NON-UK RESIDENT TAXPAYERS

#### 647 Introduction and meaning of “foreign residence condition” etc.

- (1) The provisions of this Part provide that no liability to income tax arises on certain kinds of pensions if the foreign residence condition is met.
- (2) The foreign residence condition is met in relation to a pension if the pension is payable to a person who is not resident in the United Kingdom.
- (3) For the purposes of the foreign residence condition, a person is taken to be not resident in the United Kingdom only if—
  - (a) a person makes a claim to [<sup>F82</sup>the Commissioners for Her Majesty’s Revenue and Customs] that the person is not resident, and
  - (b) the [<sup>F868</sup>Commissioners][<sup>F869</sup>are] satisfied that the person is not resident.
- (4) In this Chapter “pension” includes—
  - (a) a gratuity or any sum payable on or in respect of death,
  - (b) a return of contributions, and
  - (c) any interest or other addition included in a return of contributions.

#### Textual Amendments

- F82** Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 102\(2\)](#); S.I. 2005/1126, art. 2(2)(h)
- F868** Word in s. 647 substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 102\(3\)\(h\)](#); S.I. 2005/1126, art. 2(2)(h)
- F869** Word in s. 647(3)(b) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 116](#); S.I. 2005/1126, art. 2(2)(h)

#### 648 The Central African Pension Fund

- (1) No liability to income tax arises on a pension which is paid from the Central African Pension Fund if the foreign residence condition is met.
- (2) In this section “the Central African Pension Fund” means the fund established under that name by section 24 of the Federation of Rhodesia and Nyasaland (Dissolution) Order in Council 1963 (S.I. 1963/2085).

#### 649 Commonwealth government pensions

- (1) No liability to income tax arises on a pension paid out of a fund which is established—
  - (a) in the United Kingdom,
  - (b) by a Commonwealth government,
  - (c) for the sole purpose of providing pensions payable in respect of service under that government,
 if the foreign residence condition is met.
- (2) In this section “Commonwealth government” means—



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- (a) the government of a territory or country mentioned in subsection (3),
  - (b) the government of any part of a territory or country mentioned in subsection (3), or
  - (c) a government constituted for two or more of the territories or countries mentioned in subsection (3).
- (3) The territories and countries referred to in subsection (2) are—
- (a) a country mentioned in Schedule 3 to the British Nationality Act 1981 (c. 61) apart from Australia, Canada, New Zealand, India, Sri Lanka and Cyprus,
  - (b) an associated state,
  - (c) a British overseas territory,
  - (d) a protectorate,
  - (e) a protected state, and
  - (f) a United Kingdom trust territory.
- (4) In subsection (2)(c) the reference to a government constituted for two or more of the territories or countries mentioned in subsection (3) includes a reference to any authority established for the purpose of providing or administering services which are common to, or relate to matters of common interest to, two or more of those territories or countries.
- (5) In subsection (3)(f) “United Kingdom trust territory” means a territory administered by the government of the United Kingdom under the trusteeship system of the United Nations.

## **650 Oversea Superannuation Scheme**

- (1) No liability to income tax arises on a pension which is paid under the Oversea Superannuation Scheme (formerly known as the Colonial Superannuation Scheme) if the foreign residence condition is met.
- (2) For the purposes of subsection (1) a pension is paid under the Oversea Superannuation Scheme if—
- (a) the pension is paid under the Scheme as it has effect (by reason of section 2(4A) of OPA 1973) as a scheme under section 2 of OPA 1973, or
  - (b) the pension is paid under a scheme which—
    - (i) the Secretary of State has made under section 2(1) of OPA 1973, and
    - (ii) corresponds to the Oversea Superannuation Scheme.

## **651 Overseas Pensions Act 1973**

- (1) No liability to income tax arises on a pension which is paid under section 1 of OPA 1973 if the foreign residence condition is met.
- (2) Subsection (1) applies whether or not the pension is paid out of a fund established under a scheme made under section 1 of OPA 1973.
- (3) But subsection (1) does not apply to any part of a pension paid because the Pensions (Increase) Acts apply to it.
- (4) In this section “the Pensions (Increase) Acts” means—
- (a) the Pensions (Increase) Act 1971 (c. 56), and

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- (b) any Act passed after that Act for purposes which correspond to the purposes of that Act.

## 652 Overseas Service Act 1958

- (1) No liability to income tax arises on a pension—
  - (a) which is paid under the authority of the Overseas Service Act 1958 (c. 14), and
  - (b) which the Secretary of State certifies to be attributable to the employment of a person in the public services of an overseas territory,
 if the foreign residence condition is met.
- (2) If the Secretary of State certifies that only part of a pension paid under the authority of the 1958 Act is attributable to the employment of a person in the public services of an overseas territory, subsection (1) applies only to that part of the pension.
- (3) For the purposes of subsections (1) and (2) a pension is paid under the authority of the 1958 Act if condition A or B is met.
- (4) Condition A is that the pension is paid under either of the following—
  - (a) an order made under section 2 of the 1958 Act, or
  - (b) section 4(2) of the 1958 Act,
 as it has effect (by reason of section 2(3) of OPA 1973) as a scheme under section 2 of OPA 1973.
- (5) Condition B is that the pension is paid under a scheme which the Secretary of State—
  - (a) has made under section 2(1) of OPA 1973, and
  - (b) has certified to correspond to—
    - (i) an order made under section 2 of the 1958 Act, or
    - (ii) section 4(2) of the 1958 Act.
- (6) For the purposes of this section, a person is taken to be employed in the public service of an overseas territory at any time when—
  - (a) the person is employed in any capacity under the government of that territory, or under any municipal or other local authority in it,
  - (b) the person is employed in circumstances not falling within paragraph (a), by a body corporate established for any public purpose in that territory by an enactment of a legislature empowered to make laws for that territory, or
  - (c) the person is the holder of a public office in that territory in circumstances not falling within paragraph (a) or (b).
- (7) In subsection (6) references to the government of an overseas territory include references to—
  - (a) a government constituted for two or more overseas territories, and
  - (b) any authority established for the purpose of providing or administering services which are common to, or relate to matters of common interest to, two or more such territories.
- (8) In this section—
  - “the 1958 Act” means the Overseas Service Act 1958 (c. 14);
  - “certified” means certified for the purposes of ICTA 1970, ICTA or this Act.

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### **653 Overseas Service Pensions Fund**

- (1) No liability to income tax arises on a pension which is paid out of the Overseas Service Pensions Fund if the foreign residence condition is met.
- (2) In this section “the Overseas Service Pensions Fund” means the fund with that name established under section 7(1) of the Overseas Aid Act 1966 (c. 21).
- (3) In this section “pension” includes not only the things mentioned in section 647(4) but also any sum payable in respect of ill-health.

### **654 The Pensions (India, Pakistan and Burma) Act 1955**

- (1) No liability to income tax arises on a pension paid under the authority of the Pensions (India, Pakistan and Burma) Act 1955 (c. 22) if the foreign residence condition is met.
- (2) A pension is paid under the authority of the 1955 Act if—
  - (a) the pension is paid under the 1955 Act as it has effect (by reason of section 2(3) of OPA 1973) as a scheme under section 2 of OPA 1973, or
  - (b) the pension is paid under a scheme which the Secretary of State—
    - (i) has made under section 2(1) of OPA 1973, and
    - (ii) has certified to correspond to the provision made under the 1955 Act.
- (3) This section does not apply to any part of a pension paid because the Pensions (Increase) Acts apply to it.
- (4) In this section—
  - “the 1955 Act” means the Pensions (India, Pakistan and Burma) Act 1955 (c. 22);
  - “certified” means certified for the purposes of ICTA 1970, ICTA or this Act;
  - “the Pensions (Increase) Acts” means—
    - (a) the Pensions (Increase) Act 1971 (c. 56), and
    - (b) any Act passed after that Act for purposes which correspond to the purposes of that Act.

## **PART 10**

### **SOCIAL SECURITY INCOME**

#### **CHAPTER 1**

##### **INTRODUCTION**

### **655 Structure of Part 10**

- (1) The structure of this Part is as follows—
  - Chapter 2—
    - (a) imposes the charge to tax on social security income, and
    - (b) provides for deductions to be made from the amount of income chargeable;

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Chapter 3 sets out the UK social security benefits which are charged to tax under this Part and identifies—

- (a) the amount of income chargeable to tax for a tax year, and
- (b) the person liable to pay any tax charged;

Chapters 4 and 5 deal with exemptions from the charge to tax on UK social security benefits (whether under this Part or any other provision);

Chapters 6 and 7 make provision about foreign benefits.

[<sup>F870</sup>Chapter 8 makes provision for the high income child benefit charge.]

- (2) For other provisions about the taxation of social security benefits, see—
  - section 151 of FA 1996 (power for the Treasury to make orders about the taxation of benefits payable under Government pilot schemes);
  - [<sup>F871</sup>section 781 of ITTOIA 2005 (exemption from income tax for payments under New Deal 50plus);
  - section 782 of ITTOIA 2005 (exemption from income tax for payments under employment zone programmes).]
- (3) For the charge to tax on social security pensions, see Part 9 (pension income).

#### Textual Amendments

**F870** Words in s. 655(1) inserted (with effect in accordance with Sch. 1 para. 7 of the amending Act) by Finance Act 2012 (c. 14), **Sch. 1 para. 5(3)**

**F871** Words in s. 655(2) substituted (6.4.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5), s. 883(1), **Sch. 1 para. 612** (with Sch. 2)

## CHAPTER 2

### TAX ON SOCIAL SECURITY INCOME

#### 656 Nature of charge to tax on social security income

- (1) The charge to tax on social security income is a charge to tax on that income excluding any exempt income.
- (2) “Exempt income” is social security income on which no liability to income tax arises as a result of any provision of Chapter 4, 5 or 7 of this Part.

This definition applies for the purposes of this Part.

#### 657 Meaning of “social security income”, “taxable benefits” etc.

- (1) This section defines—
  - “social security income” for the purposes of the Tax Acts, and
  - “taxable benefits”, “Table A” and “Table B” for the purposes of this Part.
- (2) “Social security income” means—
  - (a) the United Kingdom social security benefits listed in Table A,

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- (b) the United Kingdom social security benefits listed in Table B,
  - (c) the foreign benefits to which section 678 applies, and
  - (d) the foreign benefits to which section 681(2) applies.
- (3) “Taxable benefits” means—
- (a) the United Kingdom social security benefits listed in Table A, and
  - (b) the foreign benefits to which section 678 applies.
- (4) Subsections (2) and (3) are subject to section 660(2).
- (5) “Table A” means Table A in section 660.
- (6) “Table B” means Table B in section 677.

### **658 Amount charged to tax**

- (1) The amount of social security income which is charged to tax under this Part for a particular tax year is as follows.
- (2) In relation to a taxable benefit, the amount charged to tax is the net taxable social security income for the tax year.
- (3) The net taxable social security income for a taxable benefit for a tax year is given by the formula—

### **TSSI- PGD**

where—

TSSI means the amount of taxable social security income for that benefit for that year (see subsections (4) to (7)), and

PGD means the amount of the deduction (if any) allowed from the benefit under Part 12 (payroll giving).

- (4) In relation to bereavement allowance, carer’s allowance, [<sup>F872</sup>contributory employment and support allowance,] incapacity benefit and income support (which are listed in Table A), the amount of taxable social security income is determined in accordance with section 661.
- (5) In relation to any other benefit listed in Table A, the amount of taxable social security income is the amount of the benefit that falls to be charged to tax.
- (6) In relation to foreign benefits to which section 678 applies, the amount of taxable social security income is determined in accordance with section 679.
- (7) In determining for the purposes of this Act the amount of taxable social security income, any exempt income is to be excluded.

#### **Textual Amendments**

**F872** Words in s. 658(4) inserted (18.3.2008 for specified purposes, 27.10.2008 in so far as not already in force) by [Welfare Reform Act 2007 \(c. 5\)](#), s. 70(2), [Sch. 3 para. 24\(2\)](#); [S.I. 2008/787](#), art. 2(1)(4)(f), [Sch.](#)

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## 659 Person liable for tax

The person liable for any tax charged under this Part is identified in—

- (a) section 662 (UK benefits), or
- (b) section 680 (foreign benefits).

## CHAPTER 3

### TAXABLE UK SOCIAL SECURITY BENEFITS

## 660 Taxable benefits: UK benefits – Table A

(1) This is Table A—

TABLE A

### TAXABLE UK BENEFITS

| <i>Social security benefit</i>                                         | <i>Payable under</i>                                                                                  |                                 |
|------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------|---------------------------------|
| [ <sup>F873</sup> Additional statutory paternity pay]                  | SSCBA                                                                                                 | Section 171ZEA or 171ZEB        |
|                                                                        | Any provision made for Northern Ireland which corresponds to section 171ZEA or 171ZEB of SSCBA 1992.] |                                 |
| Bereavement allowance                                                  | SSCBA 1992                                                                                            | Section 39B                     |
|                                                                        | SSCB(NI)A 1992                                                                                        | Section 39B                     |
| Carer's allowance                                                      | SSCBA 1992                                                                                            | Section 70                      |
|                                                                        | SSCB(NI)A 1992                                                                                        | Section 70                      |
| [ <sup>F874</sup> [ <sup>F875</sup> Employment and support allowance]] | WRA 2007                                                                                              | Section 1(2)(a)                 |
|                                                                        | Any provision made for Northern Ireland which corresponds to section 1(2)(a) of WRA 2007]             |                                 |
| Incapacity benefit                                                     | SSCBA 1992                                                                                            | Section 30A(1) or (5), 40 or 41 |
|                                                                        | SSCB(NI)A 1992                                                                                        | Section 30A(1) or (5), 40 or 41 |
| Income support                                                         | SSCBA 1992                                                                                            | Section 124                     |
|                                                                        | SSCB(NI)A 1992                                                                                        | Section 123                     |
| Jobseeker's allowance                                                  | JSA 1995                                                                                              | Section 1                       |
|                                                                        | JS(NI)O 1995                                                                                          | Article 3                       |
| [ <sup>F876</sup> Ordinary statutory paternity pay]                    | SSCBA 1992                                                                                            | Section 171ZA or 171ZB          |
|                                                                        | Any provision made for Northern Ireland which corresponds to section 171ZA or 171ZB of SSCBA 1992.]   |                                 |

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|                         |                                                                                          |               |
|-------------------------|------------------------------------------------------------------------------------------|---------------|
| Statutory adoption pay  | SSCBA 1992                                                                               | Section 171ZL |
|                         | Any provision made for Northern Ireland which corresponds to section 171ZL of SSCBA 1992 |               |
| Statutory maternity pay | SSCBA 1992                                                                               | Section 164   |
|                         | SSCB(NI)A 1992                                                                           | Section 160   |
| <b>F877</b>             | <b>F877</b>                                                                              | <b>F877</b>   |
| ...                     | ...                                                                                      | ...           |
| Statutory sick pay      | SSCBA 1992                                                                               | Section 151   |
|                         | SSCB(NI)A 1992                                                                           | Section 147.  |

(2) A benefit listed below is not “social security income” or a “taxable benefit” if it is charged to tax under another Part of this Act—

- [<sup>F878</sup>additional statutory paternity pay;
- ordinary statutory paternity pay;
- statutory adoption pay;
- statutory maternity pay;]
- statutory sick pay.

#### Textual Amendments

- F873** Words in s. 660(1) Table A inserted (6.4.2010) by [Work and Families Act 2006 \(c. 18\)](#), s. 19(2), [Sch. 1 para. 60\(2\)\(3\)](#); S.I. 2010/495, art. 4(d)
- F874** Words in s. 660 Table A inserted (18.3.2008 for specified purposes, 27.10.2008 in so far as not already in force) by [Welfare Reform Act 2007 \(c. 5\)](#), s. 70(2), [Sch. 3 para. 24\(3\)](#); S.I. 2008/787, art. 2(1), [Sch.](#); S.I. 2008/787, art. 2(4)(f)
- F875** Words in s. 660(1) Table A substituted (29.4.2013) by [The Universal Credit \(Consequential, Supplementary, Incidental and Miscellaneous Provisions\) Regulations 2013 \(S.I. 2013/630\)](#), regs. 1(2), [16\(3\)](#)
- F876** Words in s. 660(1) Table A inserted (6.4.2010) by [Work and Families Act 2006 \(c. 18\)](#), s. 19(2), [Sch. 1 para. 60\(2\)\(4\)](#); S.I. 2010/495, art. 4(d)
- F877** Words in s. 660(1) Table A repealed (6.4.2010) by [Work and Families Act 2006 \(c. 18\)](#), s. 19(2), [Sch. 1 para. 60\(2\)\(5\)](#), [Sch. 2](#); S.I. 2010/495, art. 4(d)(e)(iii)
- F878** Words in s. 660(2) substituted (6.4.2010) by [Work and Families Act 2006 \(c. 18\)](#), s. 19(2), [Sch. 1 para. 60\(6\)](#); S.I. 2010/495, art. 4(d)

## 661 Taxable social security income

(1) This section applies in relation to each of the following taxable benefits listed in Table A—

- bereavement allowance,
- carer’s allowance,
- [<sup>F879</sup>contributory employment and support allowance,]
- incapacity benefit, and
- income support.

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- (2) The amount of taxable social security income for a taxable benefit for a tax year is the full amount of the benefit accruing in the tax year irrespective of when any amount is actually paid.

#### **Textual Amendments**

**F879** Words in s. 661 inserted (18.3.2008 for specified purposes, 27.10.2008 in so far as not already in force) by [Welfare Reform Act 2007 \(c. 5\)](#), s. 70(2), [Sch. 3 para. 24\(4\)](#); S.I. 2008/787, art. 2(1)(4)(f), [Sch.](#)

#### **662 Person liable for tax**

The person liable for any tax charged under this Part on a taxable benefit listed in Table A is the person receiving or entitled to the benefit.

### **CHAPTER 4**

#### TAXABLE UK SOCIAL SECURITY BENEFITS: EXEMPTIONS

##### *Incapacity benefit*

#### **663 Long-term incapacity benefit: previous entitlement to invalidity benefit**

- (1) No liability to income tax arises on long-term incapacity benefit if—
- (a) a person is entitled to the benefit for a day of incapacity for work which falls in a period of incapacity for work which is treated for the purposes of that benefit as having begun before 13th April 1995, and
  - (b) the part of that period which is treated as having fallen before that date includes a day for which that person was entitled to invalidity benefit.
- (2) In this section—
- “invalidity benefit” means invalidity benefit under—
- (a) Part 2 of SSCBA 1992, or
  - (b) Part 2 of SSCB(NI)A 1992;
- “long-term incapacity benefit” means incapacity benefit payable under—
- (a) section 30A(5), 40 or 41 of SSCBA 1992, or
  - (b) section 30A(5), 40 or 41 of SSCB(NI)A 1992.

#### **664 Short-term incapacity benefit not payable at the higher rate**

- (1) No liability to income tax arises on short-term incapacity benefit unless it is payable at the higher rate.
- (2) In this section—
- (a) “short-term incapacity benefit” means incapacity benefit payable under—
    - (i) section 30A(1) of SSCBA 1992, or
    - (ii) section 30A(1) of SSCB(NI)A 1992;
  - (b) the reference to short-term incapacity benefit payable at the higher rate is to be construed in accordance with—



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- (i) section 30B of SSCBA 1992, or
- (ii) section 30B of SSCB(NI)A 1992.

### *Income support*

## **665 Exempt unless payable to member of couple involved in trade dispute**

- (1) No liability to income tax arises on income support unless—
  - (a) the income support is payable to one member of a <sup>F880</sup>... couple (“the claimant”), and
  - (b) section 126 of SSCBA 1992 or section 125 of SSCB(NI)A 1992 (trade disputes) applies to the claimant but not to the other member of the couple.
- (2) In this section [<sup>F881</sup>“couple” has] the same meaning as in section 137(1) of SSCBA 1992 or section 133(1) of SSCB(NI)A 1992.

### **Textual Amendments**

**F880** Words in s. 665(1)(a) omitted (5.12.2005) by virtue of [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **163(a)**

**F881** Words in s. 665(2) substituted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **163(b)**

## **666 Child maintenance bonus**

No liability to income tax arises on a part of income support which is attributable to a child maintenance bonus (within the meaning of section 10 of CSA 1995 or Article 4 of CS(NI)O 1995).

## **667 Amounts in excess of taxable maximum**

- (1) If the amount of income support paid to a person (“the claimant”) for a week or a part of a week exceeds the claimant’s taxable maximum for that period, no liability to income tax arises on the excess.
- (2) The claimant’s taxable maximum for a period is determined under section 668.

## **668 Taxable maximum**

- (1) A claimant’s taxable maximum for a week is determined under this subsection if the applicable amount for the purpose of calculating the income support consists only of an amount in respect of the relevant couple.

The taxable maximum is equal to one half of the applicable amount.

- (2) A claimant’s taxable maximum for a week is determined under this subsection if the applicable amount includes amounts that are not in respect of the relevant couple.

The taxable maximum is equal to one half of the amount which is included in the applicable amount in respect of the relevant couple.

- (3) A claimant’s taxable maximum for a part of a week is determined as follows—

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### *Step 1*

Assume that the income support is paid to the claimant for the whole of, rather than part of, the week.

### *Step 2*

Determine under subsection (1) or (2) what the claimant's taxable maximum for that week would be on that assumption.

### *Step 3*

Determine the claimant's taxable maximum for the part of the week using this formula—

$$\frac{N}{7} \times \text{TMW}$$

where—

N is the number of days in the part of the week for which the claimant is actually paid the income support, and

TMW is the taxable maximum for the whole week determined under step 2.

## **669 Interpretation**

- (1) In section 668, except in relation to Northern Ireland—  
 “applicable amount” means the amount prescribed in relation to income support in regulations made under section 135 of SSCBA 1992;  
 [<sup>F882</sup>“couple” has the same meaning as in section 137(1) of SSCBA 1992]
- (2) In section 668, in relation to Northern Ireland—  
 “applicable amount” means the amount prescribed in relation to income support in regulations made under section 131 of SSCB(NI)A 1992;  
 [<sup>F883</sup>“couple” has the same meaning as in section 133(1) of SSCB(NI)A 1992]
- (3) In section 668 “relevant couple”, in relation to a claimant, means the <sup>F884</sup>... couple of which the claimant is a member.

### **Textual Amendments**

**F882** Words in s. 669(1) substituted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **164(a)**

**F883** Words in s. 669(2) substituted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **164(b)**

**F884** Words in s. 669(3) omitted (5.12.2005) by virtue of [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **164(c)**

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### *Jobseeker's allowance*

#### **670 Child maintenance bonus**

No liability to income tax arises on a part of a jobseeker's allowance which is attributable to a child maintenance bonus (within the meaning of section 10 of CSA 1995 or Article 4 of CS(NI)O 1995).

#### **671 Amounts in excess of taxable maximum**

- (1) If the amount of jobseeker's allowance paid to a person ("the claimant") for a week or a part of a week exceeds the claimant's taxable maximum for that period, no liability to income tax arises on the excess.
- (2) The claimant's taxable maximum for a period is determined under sections 672 to 674.

#### **672 Taxable maximum: general**

- (1) A claimant's taxable maximum for a week is determined—
  - (a) under section 673, if the claimant is paid an income-based jobseeker's allowance for that week, or
  - (b) under section 674, if the claimant is paid a contribution-based jobseeker's allowance for that week.
- (2) A claimant's taxable maximum for a part of a week is determined as follows—

##### *Step 1*

Assume that the jobseeker's allowance is paid to the claimant for the whole of, rather than part of, the week.

##### *Step 2*

Determine under section 673 or 674 what the claimant's taxable maximum for that week would be on that assumption.

##### *Step 3*

Determine the claimant's taxable maximum for the part of the week using this formula—

$$\frac{M}{7} \times \text{TMW}$$

where—

*M* is the number of days in the part of the week for which the claimant is actually paid the jobseeker's allowance, and

*TMW* is the taxable maximum for the whole week determined under step 2.

#### **673 Taxable maximum: income-based jobseeker's allowance**

- (1) A claimant's taxable maximum for a week is determined under this section if—
  - (a) the claimant is paid an income-based jobseeker's allowance for that week, or

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- (b) the claimant is assumed under section 672(2) to be paid an income-based jobseeker's allowance for that week.
- (2) If the claimant is not a member of a <sup>F885</sup>... couple, the claimant's taxable maximum for the week is equal to the age-related amount which would be applicable to the claimant if a contribution-based jobseeker's allowance were payable to the claimant for that week.
- (3) If the claimant is a member of a <sup>F886</sup>... couple, the claimant's taxable maximum for the week is equal to the portion of the applicable amount which is included in the jobseeker's allowance in respect of the couple for that week.
- (4) But if—
- (a) the claimant is a member of a <sup>F887</sup>... couple, and
- (b) the other member of that couple is prevented by section 14 of JSA 1995 or Article 16 of JS(NI)O 1995 (trade disputes) from being entitled to a jobseeker's allowance,
- the claimant's taxable maximum for that week is equal to half the portion of the applicable amount which is included in the jobseeker's allowance in respect of the couple for that week.

#### Textual Amendments

**F885** Words in s. 673(2) omitted (5.12.2005) by virtue of [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **165**

**F886** Words in s. 673(3) omitted (5.12.2005) by virtue of [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **165**

**F887** Words in s. 673(4)(a) omitted (5.12.2005) by virtue of [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **165**

#### 674 Taxable maximum: contribution-based jobseeker's allowance

- (1) A claimant's taxable maximum for a week is determined under this section if—
- (a) the claimant is paid a contribution-based jobseeker's allowance for that week, or
- (b) the claimant is assumed under section 672(2) to be paid a contribution-based jobseeker's allowance for that week.
- (2) If the claimant is not a member of a <sup>F888</sup>... couple, the claimant's taxable maximum for the week is equal to the age-related amount which is applicable to the claimant for that week.
- (3) If the claimant is a member of a <sup>F889</sup>... couple, the claimant's taxable maximum for the week is equal to the portion of the applicable amount which would be included in the jobseeker's allowance in respect of the couple if an income-based jobseeker's allowance were payable to the claimant for that week.

#### Textual Amendments

**F888** Words in s. 674(2) omitted (5.12.2005) by virtue of [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **166**

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**F889** Words in s. 674(3) omitted (5.12.2005) by virtue of [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **166**

## 675 Interpretation

(1) In sections 671 to 674, except in relation to Northern Ireland—

“age-related amount” and “applicable amount” mean the amounts determined as such in accordance with regulations made under section 4 of JSA 1995;

[<sup>F890</sup>“contribution-based jobseeker’s allowance” means a jobseeker’s allowance entitlement to which is based on the claimant’s satisfying conditions which include those set out in section 2 of JSA 1995;

“income-based jobseeker’s allowance” means a jobseeker’s allowance entitlement to which is based on the claimant’s satisfying conditions which include those set out in section 3 of JSA 1995 or a joint-claim jobseeker’s allowance (which means a jobseeker’s allowance entitlement to which arises by virtue of section 1(2B) of JSA 1995);]

[<sup>F891</sup>“couple” has the same meaning as in section 35(1) of JSA 1995]

(2) In sections 671 to 674, in relation to Northern Ireland—

“age-related amount” and “applicable amount” mean the amounts determined as such in accordance with regulations made under Article 6 of JS(NI)O 1995;

“contribution-based jobseeker’s allowance” and “income-based jobseeker’s allowance” have the same meaning as in Article 3(4) of JS(NI)O 1995;

[<sup>F892</sup>“couple” has the same meaning as in Article 2(2) of JS(NI)O 1995]

### Textual Amendments

**F890** Words in s. 675(1) substituted (29.4.2013) by [The Universal Credit \(Consequential, Supplementary, Incidental and Miscellaneous Provisions\) Regulations 2013 \(S.I. 2013/630\)](#), regs. 1(2), **16(4)**

**F891** Words in s. 675(1) substituted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **167(a)**

**F892** Words in s. 675(2) substituted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **167(b)**

### *Increases in respect of children*

## 676 Increases in respect of children

No liability to income tax arises on a part of a taxable benefit listed in Table A which is attributable to an increase in respect of a child.

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## CHAPTER 5

### UK SOCIAL SECURITY BENEFITS WHOLLY EXEMPT FROM INCOME TAX

#### 677 UK social security benefits wholly exempt from tax: Table B

(1) No liability to income tax arises on the United Kingdom social security benefits listed in Table B.

#### TABLE B—PART 1

#### BENEFITS PAYABLE UNDER PRIMARY LEGISLATION

| <i>Social security benefit</i>                                    | <i>Payable under</i>                                         |                  |
|-------------------------------------------------------------------|--------------------------------------------------------------|------------------|
| Attendance allowance                                              | SSCBA 1992                                                   | Section 64       |
|                                                                   | SSCB(NI)A 1992                                               | Section 64       |
| Back to work bonus                                                | JSA 1995                                                     | Section 26       |
|                                                                   | JS(NI)O 1995                                                 | Article 28       |
| Bereavement payment                                               | SSCBA 1992                                                   | Section 36       |
|                                                                   | SSCB(NI)A 1992                                               | Section 36       |
| Child benefit                                                     | SSCBA 1992                                                   | Section 141      |
|                                                                   | SSCB(NI)A 1992                                               | Section 137      |
| Child's special allowance                                         | SSCBA 1992                                                   | Section 56       |
|                                                                   | SSCB(NI)A 1992                                               | Section 56       |
| Child tax credit                                                  | TCA 2002                                                     | Part 1           |
| Council tax benefit                                               | SSCBA 1992                                                   | Section 131      |
| Disability living allowance                                       | SSCBA 1992                                                   | Section 71       |
|                                                                   | SSCB(NI)A 1992                                               | Section 71       |
| Guardian's allowance                                              | SSCBA 1992                                                   | Section 77       |
|                                                                   | SSCB(NI)A 1992                                               | Section 77       |
| [ <sup>F893</sup> Health in pregnancy grant                       | SSCBA 1992                                                   | Section 140A     |
|                                                                   | SSCB(NI)A 1992                                               | Section 136A]    |
| Housing benefit                                                   | SSCBA 1992                                                   | Section 130      |
|                                                                   | SSCB(NI)A 1992                                               | Section 129      |
| [ <sup>F894</sup> In-work credit                                  | ETA 1973                                                     | Section 2        |
|                                                                   | ETA(NI) 1950                                                 | Section 1        |
| In-work emergency discretion fund payment                         | ETA 1973                                                     | Section 2        |
| In-work emergency fund payment                                    | ETA(NI) 1950                                                 | Section 1]       |
| [ <sup>F895</sup> Income-related employment and support allowance | WRA 2007                                                     | Section 1(2)(b)] |
|                                                                   | Any provision made for Northern Ireland which corresponds to |                  |

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|                                                                   | section 1(2)(b) of WRA 2007                                                         |                            |
|-------------------------------------------------------------------|-------------------------------------------------------------------------------------|----------------------------|
| Industrial injuries benefit (apart from industrial death benefit) | SSCBA 1992<br>SSCB(NI)A 1992                                                        | Section 94<br>Section 94   |
| Pensioner’s Christmas bonus                                       | SSCBA 1992<br>SSCB(NI)A 1992                                                        | Section 148<br>Section 144 |
| [ <sup>F896</sup> Personal independence payment                   | WRA 2012                                                                            | Section 77]                |
|                                                                   | Any provision made for Northern Ireland which corresponds to section 77 of WRA 2012 |                            |
| Payments out of the social fund                                   | SSCBA 1992<br>SSCB(NI)A 1992                                                        | Section 138<br>Section 134 |
| [ <sup>F894</sup> Return to work credit                           | ETA 1973<br>ETA(NI) 1950                                                            | Section 2<br>Section 1]    |
| Severe disablement allowance                                      | SSCBA 1992<br>SSCB(NI)A 1992                                                        | Section 68<br>Section 68   |
| State maternity allowance                                         | SSCBA 1992<br>SSCB(NI)A 1992                                                        | Section 35<br>Section 35   |
| State pension credit                                              | SPCA 2002<br>SPCA(NI) 2002                                                          | Section 1<br>Section 1     |
| [ <sup>F897</sup> Universal credit                                | WRA 2012                                                                            | Part 1                     |
|                                                                   | Any provision made for Northern Ireland which corresponds to Part 1 of WRA 2012]    |                            |
| Working tax credit                                                | TCA 2002                                                                            | Part 1                     |

TABLE B — PART 2

BENEFITS PAYABLE UNDER REGULATIONS

| <i>Social security benefit</i>                                   | <i>Payable under regulations made under</i> |                          |
|------------------------------------------------------------------|---------------------------------------------|--------------------------|
| F898                                                             | F898                                        | F898                     |
| ...                                                              | ...                                         | ...                      |
| Payments to reduce under-occupation by housing benefit claimants | WRPA 1999<br>WRP(NI)O 1999                  | Section 79<br>Article 70 |

- (2) Industrial death benefit is charged to tax under Part 9 (see section 577).
- (3) In this section “industrial death benefit” means any benefit payable under—
- section 94 of, and Part 6 of Schedule 7 to, SSCBA 1992, or
  - section 94 of, and Part 6 of Schedule 7 to, SSCB(NI)A 1992.

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### Textual Amendments

- F893** Words in s. 677(1) Table B Pt. 1 inserted (1.1.2009) by [Health and Social Care Act 2008 \(c. 14\)](#), [ss. 138\(4\)](#), [170\(3\)\(4\)](#); [S.I. 2008/3137](#), [art. 2](#)
- F894** Words in s. 677(1) Table B Pt. 1 inserted (with effect in accordance with s. 46(3) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [s. 46\(1\)](#)
- F895** Words in s. 677(1) Table B Pt. 1 inserted (18.3.2008 for specified purposes) by [Welfare Reform Act 2007 \(c. 5\)](#), [s. 70\(2\)](#), [Sch. 3 para. 24\(5\)](#); [S.I. 2008/787](#), [art. 2\(1\)](#), [Sch.](#)
- F896** Words in s. 677(1) Table B Pt. 1 inserted (8.4.2013 for specified purposes, 10.6.2013 in so far as not already in force) by [Welfare Reform Act 2012 \(c. 5\)](#), [s. 150\(3\)](#), [Sch. 9 para. 49](#); [S.I. 2013/358](#), [art. 7\(1\)\(2\)\(k\)](#), [Sch. 3](#); [S.I. 2013/1250](#), [art. 2](#)
- F897** Words in s. 677(1) Table B Pt. 1 inserted (with effect in accordance with s. 13(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [s. 13\(1\)](#)
- F898** Words in s. 677(1) Table B Pt. 2 repealed (22.7.2004) by [Finance Act 2004 \(c. 12\)](#), [Sch. 17 para. 9\(5\)](#), [Sch. 42 Pt. 2\(12\)](#)

## CHAPTER 6

### TAXABLE FOREIGN BENEFITS

#### 678 Taxable benefits: foreign benefits

- (1) This section applies to any benefit which is payable under the law of a country or territory outside the United Kingdom if—
  - (a) it is substantially similar in character to a benefit listed in Table A, and
  - (b) it is payable to a person resident in the United Kingdom.
- (2) But this section does not apply to a benefit which is charged to tax under Part 9 (pension income).

#### 679 Taxable social security income

- (1) If section 678 applies, the taxable social security income for a taxable benefit for a tax year is <sup>[F899]</sup>the full amount of the social security income arising in the tax year, but subject to subsection (2).]
- <sup>[F900]</sup>(2) That income is treated as relevant foreign income for the purposes of Chapters 2 and 3 of Part 8 of ITTOIA 2005 (relevant foreign income: remittance basis and deductions and reliefs).
- (3) See also Chapter 4 of that Part (unremittable income).]

### Textual Amendments

- F899** Words in s. 679(1) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), [s. 883\(1\)](#), [Sch. 1 para. 613\(2\)](#) (with [Sch. 2](#))
- F900** S. 679(2)(3) substituted for s. 679(2) (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), [s. 883\(1\)](#), [Sch. 1 para. 613\(3\)](#) (with [Sch. 2](#))



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## 680 Person liable for tax

The person liable for any tax charged under this Part on a benefit to which section 678 applies is the person receiving or entitled to the benefit.

## CHAPTER 7

### TAXABLE AND OTHER FOREIGN BENEFITS: EXEMPTIONS

## 681 Taxable and other foreign benefits: exemptions

- (1) No liability to income tax arises on a taxable foreign benefit if, or to the extent that, the corresponding UK benefit is exempt income.
- (2) No liability to income tax arises on a benefit which is payable under the law of a country or territory outside the United Kingdom if it is substantially similar in character to a United Kingdom social security benefit listed in Table B.
- (3) In this section—
  - “taxable foreign benefit” means a benefit to which section 678 applies;
  - “corresponding UK benefit”, in relation to a taxable foreign benefit, means the taxable benefit listed in Table A to which the foreign benefit is substantially similar in character (see section 678).

## [<sup>F901</sup>681A Foreign benefits of consular employees

- (1) No liability to income tax arises in respect of any benefit to which section 678 applies of a consular officer or employee in the United Kingdom for a foreign state if—
  - (a) Her Majesty by Order in Council directs that this section applies to the foreign state for the purpose of giving effect to a reciprocal arrangement with that state, and
  - (b) the officer or employee meets conditions A to C.
- (2) Condition A is that the officer or employee is not—
  - (a) a British citizen,
  - (b) a British overseas territories citizen,
  - (c) a British National (Overseas), or
  - (d) a British Overseas citizen.
- (3) Condition B is that the officer or employee is not engaged in any trade, profession, vocation or employment in the United Kingdom, otherwise than as a consular officer or employee of the state in question.

## [<sup>F902</sup>(4) Condition C is that—

- (a) the officer or employee is a permanent employee of that state, or
  - (b) the officer or employee was non-UK resident for each of the 2 tax years preceding the tax year in which the officer or employee became a consular officer or employee in the United Kingdom of that state.]
- (5) In this section—  
“consular officer or employee” includes any person employed for the purposes of the official business of a consular officer at—

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- (a) any consulate,
  - (b) any consular establishment, or
  - (c) any other premises used for those purposes, and
- “reciprocal agreement” has the same meaning as in section 302.
- (6) Section 302(5) to (7) apply to an Order under subsection (1) and the operation of this section as they apply to an Order under section 302(1) and the operation of section 302.]

#### Textual Amendments

**F901** S. 681A inserted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 614](#) (with [Sch. 2](#))

**F902** S. 681A(4) substituted (with effect in accordance with [Sch. 46 para. 72](#) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 39\(1\)](#) (with [Sch. 46 para. 39\(2\)](#))

## [<sup>F903</sup> CHAPTER 8

### HIGH INCOME CHILD BENEFIT CHARGE

#### Textual Amendments

**F903** Pt. 10 Ch. 8 inserted (with effect in accordance with [Sch. 1 para. 7](#) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 1 para. 1](#)

#### 681B High income child benefit charge

- (1) A person (“P”) is liable to a charge to income tax for a tax year if—
  - (a) P’s adjusted net income for the year exceeds £50,000, and
  - (b) one or both of conditions A and B are met.
- (2) The charge is to be known as a “high income child benefit charge”.
- (3) Condition A is that—
  - (a) P is entitled to an amount in respect of child benefit for a week in the tax year, and
  - (b) there is no other person who is a partner of P throughout the week and has an adjusted net income for the year which exceeds that of P.
- (4) Condition B is that—
  - (a) a person (“Q”) other than P is entitled to an amount in respect of child benefit for a week in the tax year,
  - (b) Q is a partner of P throughout the week, and
  - (c) P has an adjusted net income for the year which exceeds that of Q.

#### 681C The amount of the charge

- (1) The amount of the high income child benefit charge to which a person (“P”) is liable for a tax year is the appropriate percentage of the total of—

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- (a) any amounts in relation to which condition A is met, and
- (b) any amounts in relation to which condition B is met.

For conditions A and B, see section 681B.

(2) “The appropriate percentage” is—

- (a) 100%, or
- (b) if less, the percentage determined by the formula—

$$\text{ANI} - \text{L} \times \%$$

Where—

ANI is P's adjusted net income for the tax year;

L is £50,000;

X is £100.

(3) If—

- (a) the total of the amounts mentioned in paragraphs (a) and (b) of subsection (1), or the amount of the charge determined under that subsection, is not a whole number of pounds, or
- (b) the percentage determined under subsection (2)(b) is not a whole number, it is to be rounded down to the nearest whole number.

#### **681D Extension of charge in cases where child not living with claimant**

(1) This section applies where—

- (a) a person (“R”) is entitled to an amount in respect of child benefit for a child for a week in a tax year by virtue of section 143(1)(b) of SSCBA 1992 or section 139(1)(b) of SSCB(NI)A 1992 (persons contributing to the cost of providing for a child),
- (b) neither R, nor any person who is a partner of R throughout that week, is liable for a charge to income tax in respect of that amount under section 681B, and
- (c) there is another person (“S”) who, for the purposes of section 143(1)(a) of SSCBA 1992 or section 139(1)(a) of SSCB(NI)A 1992 (persons with whom child is living), is a person who has the child living with him or her in that week.

(2) Section 681B applies as if S were entitled to the amount of child benefit mentioned in subsection (1)(a).

(3) Where there is more than one person to whom subsection (1)(c) applies in relation to an amount of child benefit for a week, subsection (2) applies only to the one with the highest adjusted net income for the tax year.

(4) For the purposes of subsection (1)(a), an amount of child benefit to which R is entitled for a week is to be ignored if—

- (a) the period (which includes that week) for which R is entitled to child benefit by virtue of section 143(1)(b) of SSCBA 1992 or section 139(1)(b) of SSCB(NI)A 1992 in respect of the same child does not exceed 52 weeks, and
- (b) R is entitled to child benefit in respect of the child for the week immediately before and the week immediately after that period by virtue of section 143(1) (a) of SSCBA 1992 or section 139(1)(a) of SSCB(NI)A 1992.

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- (5) In this section “child” means—
- (a) a child within the meaning of section 142 of SSCBA 1992 or section 138 of SSCB(NI)A 1992, or
  - (b) a qualifying young person within the meaning of either of those sections.

### **681E Special cases**

- (1) The following amounts are to be disregarded for the purposes of this Chapter—
- (a) amounts to which a person is entitled but in respect of which an election under section 13A of the Social Security Administration Act 1992 or section 11A of the Social Security Administration (Northern Ireland) Act 1992 (election for payment of child benefit not to be made if high income child benefit charge would be triggered) has effect;
  - (b) amounts to which a person is entitled by virtue of section 145A of SSCBA 1992 or section 141A of SSCB(NI)A 1992 (entitlement to child benefit after death of child or qualifying young person).
- (2) Subsection (3) applies if—
- (a) a person (“T”) is entitled to an amount in respect of child benefit for a week in a tax year or is treated as so entitled by virtue of section 681D(2),
  - (b) two or more other persons are partners of T throughout the week, and
  - (c) two or more of those persons would, apart from subsection (3), each be liable to a charge under section 681B(1) in relation to that amount.
- (3) Only one of those persons is liable, namely the person with the highest adjusted net income for the tax year.

### **681F Alteration of income limit etc by Treasury order**

- (1) The Treasury may by order—
- (a) substitute another amount for the amount for the time being specified in section 681B(1)(a) and defined as “L” in section 681C(2), or
  - (b) substitute another amount for the amount defined as “X” in section 681C(2).
- (2) An order under this section has effect for tax years beginning after the order is made.
- (3) A statutory instrument containing an order under this section which increases any person's liability to income tax may not be made unless a draft of it has been laid before and approved by a resolution of the House of Commons.

### **681G Meaning of “partner”**

- (1) For the purposes of this Chapter a person is a “partner” of another person at any time if any of conditions A to D is met at that time.
- (2) Condition A is that the persons are a man and a woman who are married to each other and are neither—
- (a) separated under a court order, nor
  - (b) separated in circumstances in which the separation is likely to be permanent.
- (3) Condition B is that the persons are a man and a woman who are not married to each other but are living together as husband and wife.

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- (4) Condition C is that the persons are two men, or two women, who are civil partners of each other and are neither—
  - (a) separated under a court order, nor
  - (b) separated in circumstances in which the separation is likely to be permanent.
- (5) Condition D is that the persons are two men, or two women, who are not civil partners of each other but are living together as if they were civil partners.

## **681H Other interpretation provisions**

- (1) This section applies for the purposes of this Chapter.
- (2) “Adjusted net income” of a person for a tax year means the person's adjusted net income for that tax year as determined under section 58 of ITA 2007.
- (3) “Week” means a period of 7 days beginning with a Monday; and a week is in a tax year if (and only if) the Monday with which it begins is in the tax year.]

## **PART 11**

### **PAY AS YOU EARN**

#### **Modifications etc. (not altering text)**

**C41** Pt. 11 power to amend or repeal conferred (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 58 para. 10](#)

## **CHAPTER 1**

### **INTRODUCTION**

## **682 Scope of this Part**

- (1) This Part provides for the assessment, collection and recovery of income tax in respect of PAYE income [<sup>F904</sup>and includes provision in respect of the deduction of certain other amounts from, and the repayment of certain other amounts with, PAYE income].
- (2) The provisions of this Part are contained in—
  - this Chapter (which gives the meaning of “PAYE income”),
  - Chapter 2 (PAYE: general),
  - Chapter 3 (PAYE: special types of payer or payee),
  - Chapter 4 (PAYE: special types of income),
  - Chapter 5 (PAYE settlement agreements), and
  - Chapter 6 (miscellaneous and supplemental).
- (3) Provision for PAYE regulations is made by Chapters 2 to 6.

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### Textual Amendments

**F904** Words in s. 682(1) inserted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 58 para. 9\(2\)](#)

## 683 PAYE income

- (1) For the purposes of this Act and any other enactment (whenever passed) “PAYE income” for a tax year consists of—
  - (a) any PAYE employment income for the year,
  - (b) any PAYE pension income for the year, and
  - (c) any PAYE social security income for the year.
- (2) “PAYE employment income” for a tax year means income which consists of—
  - (a) any taxable earnings from an employment in the year (determined in accordance with section 10(2)), and
  - (b) any taxable specific income from an employment for the year (determined in accordance with section 10(3)).
- (3) “PAYE pension income” for a tax year means, subject to <sup>F905</sup>subsections (3A) and (3B)], taxable pension income for the year determined in accordance with any of the following provisions—
  - section 571 (United Kingdom pensions),
  - section 578 (United Kingdom social security pensions),
  - <sup>F906</sup>section 579B (pension under registered pension scheme),]
  - <sup>F907</sup>section 612, so far as relating to annuities to which section 610 applies (annuities under non-registered occupational pension schemes),]
  - section 616 (certain overseas government pensions paid in the United Kingdom),
  - section 621 (the House of Commons Members' Fund),
  - section 634 (voluntary annual payments).
  - <sup>F908</sup>section 636B (pension treated as arising from payment of trivial commutation lump sum or winding-up lump sum), section 636C (pension treated as arising from payment of trivial commutation or winding-up lump sum death benefit).]
- <sup>F909</sup>(3ZA) “PAYE employment income” for a tax year does not include any taxable specific income treated as paid or received in that tax year by section 394A or 554Z4A (temporary non-residents).]
- <sup>F910</sup>(3A) “PAYE pension income” for a tax year also includes any social security pension lump sum (within the meaning of section 7 of F(No.2)A 2005) in respect of which a charge to income tax arises under that section for that tax year.]
- <sup>F911</sup>(3B) “PAYE pension income” for a tax year does not include any taxable pension income that is treated as accruing in that tax year by section 572A or 579CA (temporary non-residents).]
- <sup>F912</sup>(4) . . . . .
- (5) “PAYE social security income” for a tax year means taxable social security income for the year determined in accordance with section 658(4) or (5) (taxable United Kingdom social security benefits).

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### Textual Amendments

- F905** Words in s. 683(3) substituted (with effect in accordance with Sch. 16 para. 85 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 16 para. 60\(2\)](#)
- F906** Words in s. 683(3) substituted (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), s. 284(1), [Sch. 31 para. 14\(2\)](#) (with [Sch. 36](#))
- F907** Words in s. 683(3) inserted (6.4.2007) by [Finance Act 2005 \(c. 7\)](#), [Sch. 10 paras. 60, 64\(2\)](#)
- F908** Words in s. 683(3) inserted (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), s. 284(1), [Sch. 31 para. 14\(3\)](#) (with [Sch. 36](#))
- F909** S. 683(3ZA) inserted (with effect in accordance with Sch. 45 para. 153(3) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 130\(2\)](#)
- F910** S. 683(3A) inserted (20.7.2005) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), [s. 10\(4\)](#)
- F911** S. 683(3B) substituted (with effect in accordance with Sch. 45 para. 153(3) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 130\(3\)](#)
- F912** S. 683(4) repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), s. 284(1), [Sch. 31 para. 14\(4\)](#), [Sch. 42 Pt. 3](#) (with [Sch. 36](#))

### Modifications etc. (not altering text)

- C42** S. 683 modified (22.7.2004) by [Finance Act 2004 \(c. 12\)](#), [Sch. 36 para. 43\(3\)](#) (with s. 283(5), [Sch. 36](#))
- C43** S. 683(3) extended (22.7.2004) by [Finance Act 2004 \(c. 12\)](#), [Sch. 36 para. 46](#) (with s. 283(5), [Sch. 36](#))

## CHAPTER 2

### PAYE: GENERAL

#### 684 PAYE regulations

- (1) [<sup>F82</sup>The Commissioners <sup>F913</sup>...] must make regulations (“PAYE regulations”) with respect to the assessment, charge, collection and recovery of income tax in respect of all PAYE income.
- (2) [<sup>F914</sup>The provision that may be made in PAYE regulations includes] any such provision as is set out in the following list.

#### LIST OF PROVISIONS

##### 1. Provision—

- (a) for requiring persons making payments of, or on account of, PAYE income to make, at the [<sup>F915</sup>relevant time], deductions or repayments of income tax calculated by reference to tax tables prepared by [<sup>F82</sup>the Commissioners <sup>F916</sup>...], and
- (b) for making persons who are required to make any such deductions or repayments accountable to or, as the case may be, entitled to repayment from the Board.

##### [<sup>F917</sup>“The relevant time” is—

- (a) if the payment is a notional payment for the purposes of section 710 and the person is treated by virtue of any Act as making it at a time before the date on which the Act is passed, that date, and
- (b) in any other case, the time when the payment is made.]

##### [<sup>F918</sup>1A. Provision—

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- (a) for deductions to be made, if and to the extent that the payee does not object, with a view to securing that income tax payable in respect of any income of a payee for a tax year which is not PAYE income is deducted from PAYE income of the payee paid during that year; and
- (b) as to the circumstances and manner in which a payee may object to the making of deductions.

2. Provision—

- (a) for repayments or deductions to be made, if and to the extent that the payee does not object, in respect of any amounts overpaid or [<sup>F919</sup>(or treated as overpaid) on account of, or any amounts other than relevant debts remaining unpaid (or treated as remaining unpaid)] on account of—
  - (i) income tax in respect of income for a previous tax year, or
  - (ii) capital gains tax in respect of chargeable gains for such a year; and
- (b) as to the circumstances in which repayments or deductions may be made, and the circumstances and manner in which a payee may object to the making of repayments or deductions.]

[<sup>F920</sup>2ZA. Provision—

- (a) for deductions to be made, if and to the extent that the payee does not object, with a view to securing that income tax payable for a tax year by the payee by virtue of section 681B (high income child benefit charge) is deducted from PAYE income of the payee paid during that year,
- (b) for repayments to be made in a tax year, if and to the extent that the payee does not object, in respect of any amounts overpaid on account of income tax under that section for that tax year, and
- (c) as to the circumstances and manner in which a payee may object to the making of deductions or repayments.]

[<sup>F921</sup>2A. Provision—

- (a) for deductions to be made in respect of relevant debts of a payee,
- (b) as to the circumstances in which such deductions may be made, and
- (c) where such deductions are made, as to the date on which the relevant debts are to be treated as paid.]

3. Provision for the production to, and inspection by, persons authorised by the Board of wages sheets and other documents and records for the purposes of satisfying themselves that [<sup>F922</sup>amounts have been and are] being deducted, repaid and accounted for in accordance with the regulations.

4. Provision for requiring an employer or former employer to provide any information, within a prescribed time, about payments or other benefits provided or to be provided, including those provided or to be provided in connection with—

- (a) the termination of a person’s employment, or
- (b) a change in the duties of or general earnings from a person’s employment.

[<sup>F923</sup>4ZA. Provision-

- (a) for authorising or requiring a person who provides with respect to payments of or on account of PAYE income a service that is specified or of a specified description (“a relevant payment service”) to supply to Her Majesty’s Revenue and Customs information about payments with respect to which the service is



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- provided, or any information the Commissioners may request about features of the service provided or to be provided with respect to particular payments;
- (b) for conferring power on the Commissioners to specify by directions circumstances in which provision made by virtue of paragraph (a) or subsection (4ZB) is not to apply in relation to a payment;
  - (c) for securing that a supply of information that is authorised by regulations under paragraph (a) is not treated as breaching any obligation of confidence owed in respect of the information by the person supplying it;
  - (d) for prohibiting or restricting the disclosure, otherwise than to Her Majesty's Revenue and Customs, of information by a person to whom it was supplied pursuant to a requirement imposed by virtue of subsection (4ZB);
  - (e) for requiring a person who provides, or is to provide, a relevant payment service to take steps (including any steps that may be specified, or further specified, in accordance with item 8A(b)) for facilitating the meeting by persons making payments of obligations imposed by virtue of subsection (4ZB).]

[<sup>F924</sup>4A. Provision authorising the recovery from the payee rather than the payer of any amount that an officer of Revenue and Customs] considers should have been deducted by the payer.]

[<sup>F925</sup>4B. Provision for and in connection with requiring the giving, in specified circumstances, of security (or further security) for the payment of amounts in respect of which a person is or may be accountable to the Commissioners under the regulations.]

5. Provision for the way in which any matters provided for by the regulations are to be proved.

6. Provision—

- (a) for requiring the payment of interest on sums due to the Board which are not paid by the due date,
- (b) for determining the date (being not less than 14 days after the end of the tax year in respect of which the sums are due) from which such interest is to be calculated, and
- (c) for enabling the repayment or remission of such interest.

7. Provision for requiring the payment of interest on sums due from the Board and for determining the date from which such interest is to be calculated.

[<sup>F926</sup>7A. Provision for excluding payments of such description as may be specified from the operation of the regulations in such circumstances as may be specified. Provision for excluding payments of such description as may be specified from the operation of the regulations in such circumstances as may be specified.]

8. Provision for the making of decisions by [<sup>F927</sup>Her Majesty's Revenue and Customs] as to any matter required to be decided for the purposes of the regulations and for appeals against such decisions.]

[<sup>F928</sup>8A. Provision requiring compliance with any directions the Commissioners may give—

- (a) about the form and manner in which any information is to be provided under the regulations;
- (b) specifying, or further specifying, steps for the purposes of item 4ZA(e);

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- (c) specifying information that a person making payments of or on account of PAYE income must provide about the method by which the payments are made.]
9. Provision for appeals with respect to matters arising under the regulations which would otherwise not be the subject of an appeal.
10. Different provision for different cases or classes of case.
11. Any incidental, consequential, supplementary and transitional provision which appears to the Board to be expedient.
- (3) The deductions of income tax required to be made by PAYE regulations under item 1 in the above list may be required to be made at the basic rate or other rates in such cases or classes of case as may be provided by the regulations.
- [<sup>F929</sup>(3A) PAYE regulations under item 2A in the above list may not make provision enabling deductions totalling more than [<sup>F930</sup>£3,000] to be made from a payee's income for a tax year without the payee's consent.
- (3B) The Treasury may by order amend the amount specified in subsection (3A).]
- [<sup>F931</sup>(3C) References in items 4ZA and 8A of the above list to directions include directions making different provision for different cases.]
- (4) Interest required to be paid by PAYE regulations under item 6 or 7 in the above list must be paid without any deduction of income tax and may not be taken into account in computing any income, profits or losses for any tax purposes.
- [<sup>F932</sup>(4ZA) Item 8A in the above list does not prejudice the power of the Commissioners under subsection (1) to make provision in PAYE regulations about the matters mentioned in that item.
- (4ZB) The persons to whom PAYE information regulations may require information to be supplied include, in the case of information about a payment, a person who provides, or is to provide, with respect to the payment a service such as is mentioned in item 4ZA(a) in the above list.
- (4ZC) In subsection (4ZB) “PAYE information regulations” means PAYE regulations that require information to be supplied for any purpose authorised by subsections (1) and (2).]
- [<sup>F933</sup>(4A) A person who fails to comply with a requirement imposed under PAYE regulations to give security, or further security, for the payment of any amount commits an offence if the failure continues for such period as is specified; and a person guilty of an offence under this subsection is liable on summary conviction to a fine not exceeding level 5 on the standard scale.]
- (5) PAYE regulations must not affect any right of appeal to the [<sup>F934</sup>tribunal] which a person would have apart from the regulations.
- (6) It does not matter for the purposes of PAYE regulations that income is wholly or partly income for a tax year other than that in which the payment is made.
- (7) PAYE regulations have effect despite anything in the Income Tax Acts.
- (7A) [<sup>F935</sup>Nothing in PAYE regulations may be read—

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- (a) as preventing the making of arrangements for the collection of tax [<sup>F936</sup>or other amounts] in such manner as may be agreed by, or on behalf of, the payer and [<sup>F106</sup>an officer of Revenue and Customs], or
- (b) as requiring the payer to comply with the regulations in circumstances in which [<sup>F106</sup>an officer of Revenue and Customs] is satisfied that it is unnecessary or not appropriate for the payer to do so.

[ In this [<sup>F938</sup>Part] “relevant debt”, in relation to a payee, means—

- <sup>F937</sup>(7AA)
- (a) a sum payable by the payee to the Commissioners under or by virtue of an enactment, other than an excluded debt, and
  - (b) a sum payable by the payee to the Commissioners under a contract settlement.

(7AB) For the purposes of subsection (7AA)—

- (a) child tax credit or working tax credit that the payee is liable to repay is an excluded debt, and
- (b) if the payee is an employer, any amount that the payee is required to deduct from the PAYE income of employees for a tax year is an excluded debt until the tax year has ended.]

(7B) References in this section and section 685 to income tax in respect of PAYE income are references to income tax in respect of that income if reasonable assumptions are (when necessary) made about other income.

(7C) In this section and section 685—

[<sup>F939</sup>“the Commissioners” means the Commissioners for Her Majesty's Revenue and Customs;

“contract settlement” means an agreement made in connection with the liability of the payee or another person to make a payment to the Commissioners under or by virtue of an enactment;]

“payer” means any person paying PAYE income and “payee” means any person in receipt of such income;

“specified” means specified in PAYE regulations.]

(8) In this Act and any other enactment (whenever passed) “PAYE regulations” means regulations under this section.

### Textual Amendments

**F82** Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 102\(2\)](#); S.I. 2005/1126, art. 2(2)(h)

**F106** Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 102\(1\)](#); S.I. 2005/1126, art. 2(2)(h)

**F913** Words in s. 684(1) omitted (21.7.2009) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 58 para. 2](#)

**F914** Words in s. 684(2) substituted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 58 para. 3\(2\)](#)

**F915** Words in s. 684(2) substituted (with effect in accordance with s. 94(5) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [s. 94\(3\)\(a\)](#); S.I. 2007/1081, art. 2

**F916** Words in s. 684(2) omitted (21.7.2009) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 58 para. 3\(3\)](#)

**F917** Words in s. 684(2) inserted (with effect in accordance with s. 94(5) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [s. 94\(3\)\(b\)](#); S.I. 2007/1081, art. 2

**F918** S. 684(2) Items 1A and 2 substituted for s. 684(2) Item 2 (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), s. 145(1)(a)

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- F919** Words in s. 684(2) substituted (21.7.2009) by [Finance Act 2009 \(c. 10\), Sch. 58 para. 3\(4\)](#)
- F920** S. 684(2) Item 2ZA inserted (with effect in accordance with Sch. 1 para. 7 of the amending Act) by [Finance Act 2012 \(c. 14\), Sch. 1 para. 5\(4\)](#)
- F921** Words in s. 684(2) inserted (21.7.2009) by [Finance Act 2009 \(c. 10\), Sch. 58 para. 3\(5\)](#)
- F922** Words in s. 684(2) substituted (21.7.2009) by [Finance Act 2009 \(c. 10\), Sch. 58 para. 3\(6\)](#)
- F923** S. 684(2) Item 4ZA inserted (17.7.2012) by [Finance Act 2012 \(c. 14\), s. 225\(2\)\(a\)](#)
- F924** S. 684(2) Item 4A inserted (10.7.2003) by [Finance Act 2003 \(c. 14\), s. 145\(1\)\(b\)](#)
- F925** S. 684(2): Item 4B inserted (19.7.2011) by virtue of [Finance Act 2011 \(c. 11\), s. 85\(2\)](#)
- F926** S. 684(2) Items 7A and 8 substituted for s. 684(2) Item 8 (10.7.2003) by [Finance Act 2003 \(c. 14\), s. 145\(1\)\(c\)](#)
- F927** Words in s. 684 substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\), s. 53\(1\), Sch. 4 para. 117; S.I. 2005/1126, art. 2\(2\)\(h\)](#)
- F928** S. 684(2) Item 8A inserted (17.7.2012) by [Finance Act 2012 \(c. 14\), s. 225\(2\)\(b\)](#)
- F929** S. 684(3A)(3B) inserted (21.7.2009) by [Finance Act 2009 \(c. 10\), Sch. 58 para. 4](#)
- F930** Word in s. 684(3A) substituted (20.7.2011) by [The Income Tax \(Earnings and Pensions\) Act 2003 \(Section 684\(3A\)\) Order 2011 \(S.I. 2011/1585\), arts. 1, 2](#)
- F931** S. 684(3C) inserted (17.7.2012) by [Finance Act 2012 \(c. 14\), s. 225\(3\)](#)
- F932** S. 684(4ZA)-(4ZC) inserted (17.7.2012) by [Finance Act 2012 \(c. 14\), s. 225\(4\)](#)
- F933** S. 684(4A) inserted (19.7.2011) by [Finance Act 2011 \(c. 11\), s. 85\(3\)](#)
- F934** Word in s. 684(5) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\), art. 1\(2\), Sch. 1 para. 338](#)
- F935** S. 684(7A)-(7C) inserted (10.7.2003) by [Finance Act 2003 \(c. 14\), s. 145\(2\)](#)
- F936** Words in s. 684(7A)(a) inserted (21.7.2009) by [Finance Act 2009 \(c. 10\), Sch. 58 para. 5](#)
- F937** S. 684(7AA)(7AB) inserted (21.7.2009) by [Finance Act 2009 \(c. 10\), Sch. 58 para. 6](#)
- F938** Word in s. 684(7AA) substituted (20.7.2011) by [The Finance Act 2009 \(Consequential Amendments\) Order 2011 \(S.I. 2011/1583\), arts. 1, 2\(3\)](#)
- F939** Words in s. 684(7C) inserted (21.7.2009) by [Finance Act 2009 \(c. 10\), Sch. 58 para. 7](#)

#### Modifications etc. (not altering text)

- C44** S. 684(2) modified (6.4.2007) by [The Finance Act 2006 \(Section 94\(5\)\) \(PAYE: Retrospective Notional Payments — Appointment of Substituted Date\) Order 2007 \(S.I. 2007/1081\), art. 2; as provided for by 2006 c. 25, s. 94\(5\)](#)
- C45** S. 684(4A) applied by S.I. 2001/1004, Sch. 4 Pt. 3B para. 29X (as inserted (6.4.2012) by [The Social Security \(Contributions\) \(Amendment No. 3\) Regulations 2012 \(S.I. 2012/821\), regs. 1\(1\), 18](#))

## 685 Tax tables

- (1) [<sup>F82</sup>The Commissioners <sup>F940</sup>...] must construct tax tables with a view to securing that so far as possible—
- (a) the total income tax payable in respect of PAYE income for any tax year [<sup>F941</sup>and any relevant debts payable during that tax year are] deducted from PAYE income paid during that year, and
  - (b) the income tax [<sup>F942</sup>and any relevant debts] deductible or repayable on the occasion of any payment of, or on account of, PAYE income [<sup>F943</sup>are such] that the following proportions are the same—
    - (i) the proportion which the total net income tax [<sup>F944</sup>and any relevant debts] deducted since the beginning of the tax year bears to the total income tax [<sup>F945</sup>and the total amount of any relevant debts] payable for the year, and
    - (ii) the proportion which the part of the tax year which ends with the date of the payment bears to the whole year.

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- (2) References in subsection (1) to the total income tax payable for the year are to be read as references to the total income tax estimated to be payable for the year in respect of the income in question—
- (a) subject to a provisional deduction for allowances and reliefs, and
  - <sup>F946</sup>(b) subject to an adjustment in respect of amounts required to be deducted or repaid by PAYE regulations made under item 1A<sup>F947</sup>, 2<sup>F948</sup>, 2ZA] or 2A] in the list in section 684(2).]
- (3) For the purpose of estimating the total income tax payable as mentioned in subsection (1)(a), it may be assumed, in relation to any payment of, or on account of, PAYE income, that the following proportions will be the same—
- (a) the proportion which the income paid in the part of the tax year which ends with the making of the payment bears to the income for the whole year, and
  - (b) the proportion which that part of the tax year bears to the whole year.
- <sup>F949</sup>(4) PAYE regulations may make provision, where it appears to <sup>F106</sup>an officer of Revenue and Customs] that it is impracticable for a payer to deduct tax by reference to tax tables—
- (a) for deductions to be made by the payer in accordance with other arrangements agreed as mentioned in section 684(7A)(a), or
  - (b) for the payee to be required to keep records and make payments and returns as if he were the payer.]

#### Textual Amendments

- F82** Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 102\(2\)](#); S.I. 2005/1126, art. 2(2)(h)
- F106** Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 102\(1\)](#); S.I. 2005/1126, art. 2(2)(h)
- F940** Words in s. 685(1) omitted (21.7.2009) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 58 para. 9\(3\)\(a\)](#)
- F941** Words in s. 685(1)(a) substituted (20.7.2011) by [The Finance Act 2009 \(Consequential Amendments\) Order 2011 \(S.I. 2011/1583\)](#), arts. 1, [2\(4\)](#)
- F942** Words in s. 685(1)(b) inserted (20.7.2011) by [The Finance Act 2009 \(Consequential Amendments\) Order 2011 \(S.I. 2011/1583\)](#), arts. 1, [2\(5\)\(a\)](#)
- F943** Words in s. 685(1)(b) substituted (20.7.2011) by [The Finance Act 2009 \(Consequential Amendments\) Order 2011 \(S.I. 2011/1583\)](#), arts. 1, [2\(5\)\(b\)](#)
- F944** Words in s. 685(1)(b)(i) inserted (20.7.2011) by [The Finance Act 2009 \(Consequential Amendments\) Order 2011 \(S.I. 2011/1583\)](#), arts. 1, [2\(5\)\(c\)\(i\)](#)
- F945** Words in s. 685(1)(b)(i) inserted (20.7.2011) by [The Finance Act 2009 \(Consequential Amendments\) Order 2011 \(S.I. 2011/1583\)](#), arts. 1, [2\(5\)\(c\)\(ii\)](#)
- F946** S. 685(2)(b) substituted (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), s. [145\(3\)](#)
- F947** Words in s. 685(2)(b) substituted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 58 para. 9\(3\)\(b\)](#)
- F948** Word in s. 685(2)(b) inserted (with effect in accordance with Sch. 1 para. 7 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 1 para. 5\(5\)](#)
- F949** S. 685(4) inserted (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), s. [145\(4\)](#)

#### 686 Meaning of “payment”

- (1) For the purposes of PAYE regulations, a payment of, or on account of, PAYE income of a person is treated as made at the earliest of the following times—

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### Rule 1

The time when the payment is made.

### Rule 2

The time when the person becomes entitled to the payment.

### Rule 3

If the person is a director of a company and the income is income from employment with the company (whether or not as director), whichever is the earliest of—

- (a) the time when sums on account of the income are credited in the company's accounts or records (whether or not there is any restriction on the right to draw the sums);
- (b) if the amount of the income for a period is determined before the period ends, the time when the period ends;
- (c) if the amount of the income for a period is not determined until after the period has ended, the time when the amount is determined.

[<sup>F950</sup>But this is subject to subsection (5) (PAYE pension income: social security pension lump sums).]

(2) Rule 3 applies if the person is a director of the company at any time in the tax year in which the time mentioned falls.

(3) In this section “director” means—

- (a) in relation to a company whose affairs are managed by a board of directors or similar body, a member of that board or body,
- (b) in relation to a company whose affairs are managed by a single director or other person, that director or person, and
- (c) in relation to a company whose affairs are managed by the members themselves, a member of the company,

and includes any person in accordance with whose directions or instructions the company's directors (as defined above) are accustomed to act.

(4) For the purposes of subsection (3) a person is not regarded as a person in accordance with whose directions or instructions the company's directors are accustomed to act merely because the directors act on advice given by that person in a professional capacity.

[<sup>F951</sup>(5) For the purposes of PAYE regulations, a payment of, or on account of, an amount which is PAYE pension income of a person by virtue of section 683(3A) (social security pension lump sums) is to be treated as made at the time when the payment is made.]

#### Textual Amendments

**F950** Words in s. 686(1) inserted (20.7.2005) by Finance (No. 2) Act 2005 (c. 22), s. 10(5)

**F951** S. 686(5) inserted (20.7.2005) by Finance (No. 2) Act 2005 (c. 22), s. 10(6)

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## CHAPTER 3

### PAYE: SPECIAL TYPES OF PAYER OR PAYEE

#### 687 Payments by intermediary

- (1) If any payment of, or on account of, PAYE income of an employee is made by an intermediary of the employer, the employer is to be treated, for the purposes of PAYE regulations, as making a payment of the income of an amount equal to the amount given by subsection (3).
- (2) Subsection (1) does not apply if the intermediary (whether or not a person to whom PAYE regulations apply) deducts income tax [<sup>F952</sup>and any relevant debts] from the payment the intermediary makes, and accounts for it, in accordance with PAYE regulations.
- (3) The amount referred to is—
  - (a) if the amount of the payment made by the intermediary is an amount to which the recipient is entitled after deduction of income tax [<sup>F953</sup>and any relevant debts] , the aggregate of the amount of the payment and the amount of any income tax due [<sup>F954</sup>and any relevant debts deductible] , and
  - (b) in any other case, the amount of the payment.
- (4) For the purposes of this section a payment of, or on account of, PAYE income of an employee is made by an intermediary of the employer if it is made—
  - (a) by a person acting on behalf of the employer and at the expense of the employer or a person connected with the employer, or
  - (b) by trustees holding property for any persons who include or class of persons which includes the employee.
- [<sup>F955</sup>(5) This section does not apply in relation to a payment so far as the sum paid is employment income under Chapter 2 of Part 7A.]

#### Textual Amendments

**F952** Words in s. 687(2) inserted (20.7.2011) by [The Finance Act 2009 \(Consequential Amendments\) Order 2011 \(S.I. 2011/1583\)](#), arts. 1, **2(6)(a)**

**F953** Words in s. 687(3)(a) inserted (20.7.2011) by [The Finance Act 2009 \(Consequential Amendments\) Order 2011 \(S.I. 2011/1583\)](#), arts. 1, **2(6)(b)(i)**

**F954** Words in s. 687(3)(a) inserted (20.7.2011) by [The Finance Act 2009 \(Consequential Amendments\) Order 2011 \(S.I. 2011/1583\)](#), arts. 1, **2(6)(b)(ii)**

**F955** S. 687(5) inserted (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), **Sch. 2 para. 28**

#### [<sup>F956</sup>687A] Payment of employment income under Part 7A

- (1) This section applies if—
  - (a) the value of a relevant step counts as employment income under Chapter 2 of Part 7A, and
  - (b) the relevant step is the payment of a sum of money, and references to A and B are to be read accordingly.

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- (2) For the purposes of PAYE regulations B is treated as making a payment of PAYE income of A of an amount which, on the basis of the best estimate which can reasonably be made, is the amount of the employment income.
- (3) The payment is treated as made on the latest of the following days—
  - (a) the day on which the relevant step is taken,
  - (b) the day on which A's employment with B starts, and
  - (c) the day which is 30 days after the day on which FA 2011 is passed.
- (4) Subsection (2) does not apply if the person who takes the relevant step (whether or not a person to whom PAYE regulations apply) deducts income tax from the payment, and accounts for it, in accordance with PAYE regulations.]

#### Textual Amendments

**F956** S. 687A inserted (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 29](#)

### 688 Agency workers

- (1) If the remuneration receivable by an individual under or in consequence of any contract falls to be treated under section 44 (agency workers) as earnings from an employment, the relevant provisions have effect as if the individual held the employment with or under the agency.
- (2) If—
  - (a) the remuneration receivable by an individual under or in consequence of any contract falls to be so treated under section 44, and
  - (b) a payment of, or on account of, PAYE income of the individual is made by a person acting on behalf of the client, and at the expense of the client or a person connected with the client,
 section 687 and, in relation to any payment treated as made by the client under section 687, section 710 have effect in relation to the payment as if the client and not the agency were the employer for the purposes of the relevant provisions.
- (3) In subsections (1) and (2)—
 

“the agency” and “the client” have the same meanings as in section 44;

“the relevant provisions” means this Chapter except section 691, Chapter 4 of this Part and section 710.

### [<sup>F957</sup> 688A Managed service companies: recovery from other persons

- (1) PAYE regulations may make provision authorising the recovery from a person within subsection (2) of any amount that an officer of Revenue and Customs considers should have been deducted by a managed service company (“the MSC”) from a payment of, or on account of, PAYE income of an individual.
- (2) The persons are—
  - (a) a director or other office-holder, or an associate, of the MSC,
  - (b) an MSC provider,



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- (c) a person who (directly or indirectly) has encouraged or been actively involved in the provision by the MSC of the services of the individual, and
  - (d) a director or other office-holder, or an associate, of a person (other than an individual) who is within paragraph (b) or (c).
- (3) A person does not fall within subsection (2)(c) merely by virtue of—
- (a) providing legal or accountancy advice in a professional capacity, or
  - (b) placing the individual with persons who wish to obtain the services of the individual (including by contracting with the MSC for the provision of those services).
- (4) The supplementary provision that may be made by the regulations includes provision as to the liability of one person within subsection (2) to another such person.
- (5) In this section—
- “associate” has the meaning given by section 61I,
  - “director” has the meaning given by section 67,
  - “managed service company” has the meaning given by section 61B, and
  - “MSC provider” means an MSC provider who is involved with the MSC (within the meaning of section 61B).
- (6) Section 61C(4) (extended meaning of “associate”) applies for the purposes of subsection (2)(d).
- (7) The Treasury may by order amend this section (but not this subsection or subsection (8)).
- (8) The Treasury must not make an order under subsection (7) unless a draft of it has been laid before and approved by a resolution of the House of Commons.]

#### Textual Amendments

**F957** S. 688A inserted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), s. 25(2), [Sch. 3 para. 6](#)

### 689 Employee of non-UK employer

- (1) This section applies if—
- (a) an employee during any period works for a person (“the relevant person”) who is not the employer of the employee,
  - (b) any payment of, or on account of, PAYE income of the employee in respect of that period is made by a person who is the employer or an intermediary of the employer or of the relevant person,
  - (c) PAYE regulations do not apply to the person making the payment or, if that person makes the payment as an intermediary of the employer or of the relevant person, the employer, and
  - (d) income tax [<sup>F958</sup>and any relevant debts are] not deducted, or not accounted for, in accordance with the regulations by the person making the payment or, if that person makes the payment as an intermediary of the employer or of the relevant person, the employer.

[<sup>F959</sup>(1A) Subject to subsection (4), subsection (1)(b) does not apply in relation to a payment so far as the sum paid is employment income under Chapter 2 of Part 7A.]

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- (2) The relevant person is to be treated, for the purposes of PAYE regulations, as making a payment of PAYE income of the employee of an amount equal to the amount given by subsection (3).
- (3) The amount referred to is—
- (a) if the amount of the payment actually made is an amount to which the recipient is entitled after deduction of income tax [<sup>F960</sup>and any relevant debts due under the PAYE regulations], the aggregate of the amount of the payment and the amount of any income tax [<sup>F961</sup>and any relevant debts deductible] due, and
  - (b) in any other case, the amount of the payment.
- (4) If, by virtue of any of sections [<sup>F962</sup>687A and] 693 to 700, an employer would be treated for the purposes of PAYE regulations (if they applied to the employer) as making a payment of any amount to an employee, this section has effect as if—
- (a) the employer were also to be treated for the purposes of this section as making an actual payment of that amount, and
  - (b) paragraph (a) of subsection (3) were omitted.
- (5) For the purposes of this section a payment of, or on account of, PAYE income of an employee is made by an intermediary of the employer or of the relevant person if it is made—
- (a) by a person acting on behalf of the employer or the relevant person and at the expense of the employer or the relevant person or a person connected with the employer or the relevant person, or
  - (b) by trustees holding property for any persons who include or class of persons which includes the employee.
- (6) In this section and sections 690 and 691 “work”, in relation to an employee, means the performance of any duties of the employment of the employee and any reference to the employee’s working is to be read accordingly.

#### Textual Amendments

**F958** Words in s. 689(1)(d) substituted (20.7.2011) by [The Finance Act 2009 \(Consequential Amendments\) Order 2011 \(S.I. 2011/1583\)](#), arts. 1, **2(7)(a)**

**F959** S. 689(1A) inserted (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), **Sch. 2 para. 30(2)**

**F960** Words in s. 689(3)(a) inserted (20.7.2011) by [The Finance Act 2009 \(Consequential Amendments\) Order 2011 \(S.I. 2011/1583\)](#), arts. 1, **2(7)(b)(i)**

**F961** Words in s. 689(3)(a) inserted (20.7.2011) by [The Finance Act 2009 \(Consequential Amendments\) Order 2011 \(S.I. 2011/1583\)](#), arts. 1, **2(7)(b)(ii)**

**F962** Words in s. 689(4) inserted (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), **Sch. 2 para. 30(3)**

#### 690 Employee non-resident etc.

- (1) This section applies in relation to an employee in a tax year <sup>F963</sup>... if the employee—
- [<sup>F964</sup>(a) is either non-UK resident for the tax year or is UK resident but meets the requirement of section 26A for the tax year, and]
  - (b) works or will work in the United Kingdom and also works or is likely to work outside the United Kingdom.

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- [<sup>F965</sup>(1A) This section also applies in relation to an employee in a tax year if it appears to an officer of Revenue and Customs that—
- (a) the tax year is likely to be a split year as respects the employee, and
  - (b) the employee works or will work in the United Kingdom and also works or is likely to work outside the United Kingdom.]
- (2) If in relation to an employee to whom this section applies and any tax year it appears to [<sup>F106</sup>an officer of Revenue and Customs]—
- (a) some of the income paid to the employee by the employer is PAYE income, but
  - (b) some of that income may not be PAYE income,
- [<sup>F106</sup>an officer of Revenue and Customs] may, on an application made by the appropriate person, give a direction for determining a proportion of any payment made in that year of, or on account of, income of the employee which is to be treated as PAYE income.
- [<sup>F966</sup>(2A) For the purposes of subsection (2) as it applies in relation to an employee who is UK resident [<sup>F967</sup>for a tax year but not domiciled in the United Kingdom in that tax year], the officer may treat section 809B of ITA 2007 (remittance basis) as applying to the employee for that year, even if no claim under that section has been made.]
- (3) In this section—
- (a) “the appropriate person” means the person designated by the employer for the purposes of this section and, if no person is so designated, the employer, and
  - (b) any reference to a payment made by the employer includes a reference to a payment made by a person acting on behalf of the employer and at the expense of the employer or a person connected with the employer.
- (4) An application under subsection (2) must provide such information as is available and is relevant to the application.
- (5) A direction under subsection (2)—
- (a) must specify the employee to whom and the tax year to which it relates,
  - (b) must be given by notice to the appropriate person, and
  - (c) may be withdrawn by notice to the appropriate person from a date specified in the notice.
- (6) The date so specified may not be earlier than 30 days from the date on which the notice of withdrawal is given.
- (7) If—
- (a) a direction under subsection (2) has effect in relation to an employee to whom this section applies, and
  - (b) a payment of, or on account of, the income of the employee is made by the employer in the tax year to which the direction relates,
- the proportion of the payment determined in accordance with the direction is to be treated for the purposes of PAYE regulations as a payment of PAYE income of the employee.
- (8) If in any tax year—
- (a) no direction under subsection (2) has effect in relation to an employee to whom this section applies, and

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- (b) any payment of, or on account of, the income of the employee is made by the employer,  
the entire payment is to be treated for the purposes of PAYE regulations as a payment of PAYE income of the employee.
- (9) Subsections (7) and (8) are without prejudice to—
- (a) any assessment in respect of the income of the employee in question, and
- (b) any right to repayment of income tax [<sup>F968</sup>and any relevant debts] overpaid and any obligation to pay income tax underpaid [<sup>F969</sup>and any relevant debts that remain wholly or partly unpaid] .
- (10) In a case where section 689 applies—
- (a) the references to the employer in subsection (3)(a) are to be read as references to the relevant person, and
- (b) any reference to a payment made by the employer is to be read as a reference to a payment treated, for the purposes of PAYE regulations, as made by the relevant person.
- In this subsection “the relevant person” has the same meaning as in section 689.

#### Textual Amendments

- F106** Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 102\(1\)](#); S.I. 2005/1126, art. 2(2)(h)
- F963** Word in s. 690(1) omitted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 73\(2\)](#)
- F964** S. 690(1)(a) substituted (with effect in accordance with Sch. 46 para. 25 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 15\(2\)](#) (with [Sch. 46 para. 26](#))
- F965** S. 690(1A) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 73\(3\)](#)
- F966** S. 690(2A) inserted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 35](#)
- F967** Words in s. 690(2A) substituted (with effect in accordance with Sch. 46 para. 25 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 15\(3\)](#) (with [Sch. 46 para. 26](#))
- F968** Words in s. 690(9)(b) inserted (20.7.2011) by [The Finance Act 2009 \(Consequential Amendments\) Order 2011 \(S.I. 2011/1583\)](#), arts. 1, [2\(8\)\(a\)](#)
- F969** Words in s. 690(9)(b) inserted (20.7.2011) by [The Finance Act 2009 \(Consequential Amendments\) Order 2011 \(S.I. 2011/1583\)](#), arts. 1, [2\(8\)\(b\)](#)

#### 691 Mobile UK workforce

- (1) This section applies if it appears to [<sup>F82</sup>the Commissioners for Her Majesty’s Revenue and Customs] that—
- (a) a person (“the relevant person”) has entered into or is likely to enter into an agreement that employees of another person (“the contractor”) are in any period to work for, but not as employees of, the relevant person,
- (b) payments of, or on account of, PAYE income of the employees in respect of work done in that period are likely to be made by or on behalf of the contractor, and

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- (c) PAYE regulations would apply on the making of such payments but it is likely that income tax [<sup>F970</sup>and any relevant debts] will not be deducted, or will not be accounted for, in accordance with the regulations.
- (2) The [<sup>F971</sup>Commissioners] may give a direction that, if—
- (a) any of the employees of the contractor work in any period for, but not as employees of, the relevant person, and
- (b) any payment is made by the relevant person in respect of work done by the employees in that period,  
[<sup>F972</sup>income tax and any relevant debts are] to be deducted in accordance with the provisions of this section by the relevant person on making the payment.
- (3) A direction under subsection (2)—
- (a) must specify the relevant person and the contractor to whom it relates;
- (b) must be given by notice to the relevant person; and
- (c) may at any time be withdrawn by notice to the relevant person.
- (4) The [<sup>F971</sup>Commissioners] must take such steps as are reasonably practicable to ensure that a contractor is supplied with a copy of any notice under subsection (3) which relates to him.
- (5) If—
- (a) a direction under subsection (2) has effect, and
- (b) any employees of the contractor specified in the direction work for, but not as employees of, the relevant person so specified,  
income tax [<sup>F973</sup>and any relevant debts are], subject to and in accordance with PAYE regulations, to be deducted by the relevant person on making any payment in respect of that work as if so much of the payment as is attributable to work done by each employee were a payment of PAYE income of that employee.

#### Textual Amendments

- F82** Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 102\(2\)](#); S.I. 2005/1126, art. 2(2)(h)
- F970** Words in s. 691(1)(c) inserted (20.7.2011) by [The Finance Act 2009 \(Consequential Amendments\) Order 2011 \(S.I. 2011/1583\)](#), arts. 1, [2\(9\)\(a\)](#)
- F971** Words in s. 691 substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 102\(3\)\(i\)](#); S.I. 2005/1126, art. 2(2)(h)
- F972** Words in s. 691(2) substituted (20.7.2011) by [The Finance Act 2009 \(Consequential Amendments\) Order 2011 \(S.I. 2011/1583\)](#), arts. 1, [2\(9\)\(b\)](#)
- F973** Words in s. 691(5) substituted (20.7.2011) by [The Finance Act 2009 \(Consequential Amendments\) Order 2011 \(S.I. 2011/1583\)](#), arts. 1, [2\(9\)\(c\)](#)

## 692 Organised arrangements for sharing tips

- (1) PAYE regulations may make provision with respect to organised arrangements for tips to be shared among employees by a person (“P”) who is not the principal employer.
- (2) PAYE regulations may include provisions which, for the purposes of PAYE regulations—

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- (a) treat every payment made by P to an employee by way of the employee's share of any tips (including the retention by P of P's own share if P is an employee) as a payment of PAYE income by P, and
  - (b) treat P as the employer in relation to every such payment.
- (3) PAYE regulations may also include provisions which—
- (a) apply if P has failed to comply with any of the requirements of PAYE regulations, and
  - (b) treat the principal employer, for the purposes of PAYE regulations, as making payments to the employees of any tips paid over to P by the principal employer.
- (4) In this section—
- “the principal employer” means the person under whose general control and management the employees work;
  - “tips” means gratuities and service charges.

## CHAPTER 4

### PAYE: SPECIAL TYPES OF INCOME

#### *Income provided by means of vouchers and tokens*

#### **693 Cash vouchers**

- (1) If a cash voucher to which Chapter 4 of Part 3 (taxable benefits: vouchers and credit-tokens) applies is received by an employee at any time, the employer is to be treated, for the purposes of PAYE regulations, as making at that time a payment of PAYE income of the employee of an amount equal to the amount ascertained under section 81(2) (benefit of cash voucher treated as earnings).
- (2) This section does not apply to the provision of a cash voucher if—
  - (a) the voucher is used to meet expenses, and
  - (b) if the amount for which the voucher is capable of being exchanged had been paid directly to the employee by his or her employer, the amount would not have been PAYE income except by virtue of section 70 (sums in respect of expenses).
- (3) This section does not apply to the provision of a cash voucher if it is exchanged for an amount which—
  - (a) is used to meet expenses, and
  - (b) if it had been paid directly to the employee by the employer, would not have been PAYE income except by virtue of section 70.
- (4) PAYE regulations may exclude from the scope of this section the provision of cash vouchers in circumstances specified in the regulations.
- (5) A cash voucher provided for an employee and appropriated to the employee—
  - (a) by attaching it to a card held for the employee, or
  - (b) in any other way,

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is to be treated for the purposes of this section as having been received by the employee at the time when it is appropriated.

#### **694 Non-cash vouchers**

- (1) If a non-cash voucher to which this section applies is received by an employee, the employer is to be treated, for the purposes of PAYE regulations, as making a payment of PAYE income of the employee of an amount equal to the amount ascertained under section 87(2) (benefit of non-cash voucher treated as earnings).
- (2) This section applies to a non-cash voucher to which Chapter 4 of Part 3 (taxable benefits: vouchers and credit-tokens) applies if—
  - (a) either of the conditions set out below is met with respect to the voucher, and
  - (b) the voucher is not of a description for the time being excluded from the scope of this section by PAYE regulations.
- (3) The first condition is met with respect to a non-cash voucher if it is capable of being exchanged for anything which, if provided to the employee at the time when the voucher is received, would fall to be regarded as a readily convertible asset.
- (4) The second condition is met with respect to a non-cash voucher if (but for section 701(2)(b)) it would fall itself to be regarded as a readily convertible asset.
- (5) A payment under subsection (1) is made—
  - (a) in the case of a non-cash voucher other than a cheque voucher, at the time when the cost of provision is incurred or, if later, the time when the voucher is received by the employee;
  - (b) in the case of a cheque voucher, at the time when the voucher is handed over in exchange for money, goods or services.
- (6) For the purposes of subsection (5)—
  - “cheque voucher” has the same meaning as in Chapter 4 of Part 3;
  - “cost of provision”, in relation to a voucher provided by an employer, has the meaning given by section 87;
  - and a cheque voucher that is posted is to be treated as handed over at the time of posting.
- (7) A non-cash voucher provided for an employee and appropriated to the employee—
  - (a) by attaching it to a card held for the employee, or
  - (b) in any other way,is to be treated for the purposes of this section as having been received by the employee at the time when it is appropriated.

#### **695 Credit-tokens**

- (1) On each occasion on which an employee uses a credit-token provided to the employee because of the employee’s employment to obtain—
  - (a) money, or
  - (b) anything which, if provided to the employee at the time when the credit-token is used, would fall to be regarded as a readily convertible asset,

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the employer is to be treated, for the purposes of PAYE regulations, as making a payment of PAYE income of the employee of an amount equal to the amount ascertained under section 94(2) (benefit of credit-token treated as earnings).

- (2) The use of a credit-token by an employee to obtain money is excluded from the scope of this section if the money—
  - (a) is used to meet expenses, and
  - (b) if it had been paid directly to the employee by the employer, would not have been PAYE income except by virtue of section 70 (sums in respect of expenses).
- (3) PAYE regulations may make provision for excluding from the scope of this section any other description of use of a credit-token.

#### *Income provided in other ways*

### **[<sup>F974</sup>695A] Employment income under Part 7A**

- (1) This section applies if—
  - (a) the value of a relevant step counts as employment income under Chapter 2 of Part 7A, and
  - (b) the relevant step is not the payment of a sum of money, and references to A and B are to be read accordingly.
- (2) For the purposes of PAYE regulations B is treated as making a payment of PAYE income of A of an amount which, on the basis of the best estimate which can reasonably be made, is—
  - (a) the amount of the employment income, less
  - (b) so much of that amount (if any) to which section 554Z9(2) or 554Z10(2) applies.
- (3) The payment is treated as made on the latest of the following days—
  - (a) the day on which the relevant step is taken,
  - (b) the day on which A's employment with B starts, and
  - (c) the day which is 30 days after the day on which FA 2011 is passed.
- (4) Subsection (2) does not apply if the person who takes the relevant step (whether or not a person to whom PAYE regulations apply) accounts for income tax on the relevant step in accordance with PAYE regulations.]

#### **Textual Amendments**

**F974** S. 695A inserted (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 31](#)

### **696 Readily convertible assets**

- (1) If any PAYE income of an employee is provided in the form of a readily convertible asset, the employer is to be treated, for the purposes of PAYE regulations, as making a payment of that income of an amount equal to the amount given by subsection (2).



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(2) The amount referred to is the amount which, on the basis of the best estimate that can reasonably be made, is the amount of income likely to be PAYE income in respect of the provision of the asset.

[<sup>F975</sup>(3) This section does not apply to any PAYE income so far as it is employment income under Chapter 2 of Part 7A.]

#### Textual Amendments

**F975** S. 696(3) inserted (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by Finance Act 2011 (c. 11), Sch. 2 para. 32

### 697 Enhancing the value of an asset

- (1) This section applies if—
- (a) any PAYE income of an employee is provided in the form of anything enhancing the value of an asset in which the employee or a member of the employee's family or household already has an interest, and
  - (b) that asset, with its value enhanced, would be treated as a readily convertible asset if PAYE income were provided to the employee in the form of the asset at the time of the enhancement.
- (2) Section 696 has effect as if—
- (a) the employee had been provided, at the time of the enhancement, with PAYE income in the form of the asset (with its value enhanced), instead of with what enhanced its value, and
  - (b) the reference in subsection (2) to the provision of the asset were a reference to the enhancement of its value.
- (3) Any reference in this section to enhancing the value of an asset is a reference to—
- (a) the provision of any services by which the asset or any right or interest in it is improved or otherwise made more valuable,
  - (b) the provision of any property the addition of which to the asset improves it or otherwise increases its value, or
  - (c) the provision of any other enhancement by the application of money or property to the improvement of the asset or to securing an increase in its value or the value of any right or interest in it.
- (4) There is excluded from the scope of what constitutes enhancing the value of an asset for the purposes of this section any enhancement of value arising on the acquisition by the employee (whether or not as a result of the exercise of a right to acquire shares) of—
- (a) any shares acquired by the employee under a scheme approved under Schedule 3 (approved SAYE option schemes) or 4 (approved CSOP schemes), or Schedule 9 to ICTA (approved profit sharing schemes),
  - (b) any right over or interest in shares obtained or acquired by the employee under such a scheme, or
  - (c) any shares acquired by the employee as a result of the exercise of a right over shares obtained before 27th November 1996,
- if the shares in question form part of the share capital of a company falling within section 701(3).

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- (5) PAYE regulations may make provision excluding such other matters as may be described in the regulations from the scope of what constitutes enhancing the value of an asset for the purposes of this section.

**[<sup>F976</sup>698 PAYE: special charges on employment-related securities**

- (1) This section applies where by reason of the operation of—
- (a) section 426 (chargeable events in relation to restricted securities and restricted interests in securities),
  - (b) section 438 (chargeable events in relation to convertible securities and interests in convertible securities),
  - (c) section 446B (charge on acquisition where market value of securities or interest artificially depressed),
  - (d) section 446L (charge where market value of securities artificially enhanced),
  - (e) section 446U (securities or interest acquired for less than market value: charge on discharge of notional loan),
  - [<sup>F977</sup>(ea) section 446UA (securities or interest acquired for less than market value: charge in avoidance cases),]
  - (f) section 446Y (charge where securities or interest disposed of for more than market value), or
  - (g) section 447 (chargeable benefit from securities or interest),
- in relation to employment-related securities, an amount counts as employment income of an employee.
- (2) Sections 684 to 691 and 696 have effect as if—
- (a) the employee were provided with PAYE income in the form of the employment-related securities by the employer on the relevant date, and
  - (b) the reference in subsection (2) of section 696 to the amount of income likely to be PAYE income in respect of the provision of the asset were to the amount likely to count as employment income.

[<sup>F978</sup>(2A) For the purposes of this section the amount likely to count as employment income under section 426 or 438 means the amount after deducting the amount of any relief likely to be available under section 428A or 442A (relief for secondary Class 1 contributions met by employee).]

- (3) In a case in which the employment-related securities are not readily convertible assets, if—
- (a) the amount counts as income by virtue of section 427(3)(c), 439(3)(b), (c) or (d), 446Y or 447, and
  - (b) the whole or any part of the consideration or benefit concerned takes the form of a payment or consists in the provision of an asset,
- subsection (4) applies.
- (4) Sections 684 to 691 and 696 have effect —
- (a) to the extent that the consideration or benefit takes the form of a payment, as if it were a payment of PAYE income of the employee by the employer, and
  - (b) to the extent that the consideration or benefit consists in the provision of an asset, as if the provision of the asset were the provision of PAYE income in the form of the asset by the employer on the relevant date.

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(5) Section 696 as applied by subsection (4)(b) has effect as if the reference in subsection (2) of that section to the amount of income likely to be PAYE income were to the same proportion of the amount likely to count as employment income as so much of the consideration or benefit as consists in the provision of the asset bears to the whole of the consideration or benefit.

(6) In this section “the relevant date” means—

- (a) in relation to an amount counting as employment income under section 426 or 438, the date on which the chargeable event in question occurs,
- (b) in relation to an amount counting as employment income under section 446B, the date of the acquisition of the securities or interest in securities in question,
- (c) in relation to an amount counting as employment income under section 446L, the valuation date in question,
- (d) in relation to an amount counting as employment income under section 446U, the date on which the notional loan in question is treated as discharged,
- [<sup>F979</sup>(da) in relation to an amount counting as employment income under section 446UA, the date of the acquisition of the securities or interest in securities in question,]
- (e) in relation to an amount counting as employment income under section 446Y, the date of the disposal of the securities or interest in securities in question, and
- (f) in relation to an amount counting as employment income under section 447, the date on which the benefit in question is received.

(7) In this section “employment-related securities” has the same meaning as in Chapters 1 to 4 of Part 7.

[<sup>F980</sup>(8) This section is subject to section 700A (employment-related securities etc: remittance basis).]

#### Textual Amendments

**F976** S. 698 substituted for ss. 698, 699 (1.9.2003 with effect in accordance with Sch. 22 para. 12(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 12\(1\)](#); S.I. 2003/1997, art. 2

**F977** S. 698(1)(ea) inserted (with effect in accordance with Sch. 2 para. 16(4) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), [Sch. 2 para. 16\(2\)](#)

**F978** S. 698(2A) inserted (1.9.2004) by [Finance Act 2004 \(c. 12\)](#), s. 85(2), [Sch. 16 para. 4\(2\)](#); S.I. 2004/1945, art. 2

**F979** S. 698(6)(da) inserted (with effect in accordance with Sch. 2 para. 16(4) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), [Sch. 2 para. 16\(3\)](#)

**F980** S. 698(8) inserted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 36](#)

#### <sup>F976</sup>699 PAYE: conversion of shares

#### Textual Amendments

**F976** S. 698 substituted for ss. 698, 699 (1.9.2003 with effect in accordance with Sch. 22 para. 12(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 12\(1\)](#); S.I. 2003/1997, art. 2

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### [<sup>F981</sup>700 PAYE: gains from securities options

- (1) This section applies where by reason of the operation of section 476 (acquisition of securities pursuant to securities option etc) in relation to an employment-related securities option an amount counts as employment income of an employee.
  - (2) In a case where the amount counts as employment income by virtue of section 477(3)
    - (a) (acquisition of securities), sections 684 to 691 and 696 have effect as if—
      - (a) the employee were provided with PAYE income in the form of the securities by the employer on the relevant date, and
      - (b) the reference in subsection (2) of section 696 to the amount of income likely to be PAYE income in respect of the provision of the asset were to the amount likely to count as employment income.
  - (3) In a case where the amount counts as income by virtue of section 477(3)(b) or (c) (assignment or release for consideration or receipt of benefit), sections 684 to 691 and 696 have effect —
    - (a) to the extent that the consideration or benefit takes the form of a payment, as if it were a payment of PAYE income of the employee by the employer, and
    - (b) to the extent that the consideration or benefit consists in the provision of an asset, as if the provision of the asset were the provision of PAYE income in the form of the asset by the employer on the relevant date.
  - (4) Section 696 as applied by subsection (3)(b) has effect as if the reference in subsection (2) of that section to the amount of income likely to be PAYE income were to the same proportion of the amount likely to count as employment income as so much of the consideration or benefit as consists in the provision of the asset bears to the whole of the consideration or benefit.
- [<sup>F982</sup>(4A) For the purposes of this section the amount likely to count as employment income under section 476 means the amount after deducting the amount of any relief likely to be available under section 481 or 482 (relief for secondary Class 1 contributions or special contribution met by employee).]
- (5) In this section “the relevant date” means the date on which the chargeable event in question occurs.
  - (6) In this section—
 

“employment-related securities option”, and  
 “securities”,  
 have the same meaning as in Chapter 5 of Part 7.
  - [<sup>F983</sup>(7) This section is subject to section 700A (employment-related securities etc: remittance basis).]]

#### Textual Amendments

**F981** S. 700 substituted (1.9.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 13\(1\)](#); S.I. 2003/1997, [art. 2](#)

**F982** S. 700(4A) inserted (1.9.2004) by [Finance Act 2004 \(c. 12\)](#), [s. 85\(2\)](#), [Sch. 16 para. 4\(3\)](#); S.I. 2004/1945, [art. 2](#)

**F983** S. 700(7) inserted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 37](#)

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## **[<sup>F984</sup>700A] Employment-related securities etc: remittance basis**

- (1) This section applies if—
  - (a) section 698 or 700 applies, and
  - (b) part or all of the amount that counts as employment income is foreign securities income or is likely to be foreign securities income.
- (2) The amount of the payment treated under section 696 as made is limited to—
  - (a) the amount that, on the basis of the best estimate that can reasonably be made, is likely to count as employment income, minus
  - (b) the amount that, on the basis of such an estimate, is likely to be foreign securities income.
- (3) References in this section to “foreign securities income” are to income that is foreign securities income for the purposes of section 41A.]

### **Textual Amendments**

**F984** S. 700A inserted (with effect in accordance with Sch. 7 para. 80 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 38](#)

### *Supplemental*

## **701 Meaning of “asset”**

- (1) In this Chapter “asset” includes any property and in particular any investment of a kind specified in Part 3 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544).

This is subject to subsection (2).

- (2) In this Chapter “asset” does not include—
  - (a) any payment actually made of, or on account of, PAYE income;
  - (b) <sup>F985</sup>... any cash voucher, non-cash voucher or credit-token;
  - (c) the following—
    - (i) any shares acquired by the employee (whether or not as a result of the exercise of a right to acquire shares) under a scheme approved under Schedule 3 (approved SAYE option schemes) <sup>F986</sup>..., or Schedule 9 to ICTA (approved profit sharing schemes),
    - <sup>F987</sup>(ia) any shares acquired by the employee [<sup>F988</sup>under a scheme approved under Schedule 4 (approved CSOP schemes) in circumstances in which Condition A or B as set out in section 524(2) or (2A) is met;]]
    - <sup>F989</sup>(ii) .....
    - (iii) any shares acquired by the employee as the result of the exercise of a right over shares obtained before 27th November 1996 [<sup>F990</sup>where the avoidance of tax or national insurance contributions is not the main purpose (or one of the main purposes) of any arrangements under which the right was obtained or is exercised],

if the shares in question form part of the ordinary share capital of a company falling within subsection (3); or

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- (d) any description of property for the time being excluded from the scope of this section by PAYE regulations.
- (3) A company falls within this subsection if it—
- (a) is the employer (“the employer company”);
  - (b) has control of the employer company; or
  - (c) either is, or has control of, a company which is a member of a consortium owning either the employer company or a company having control of the employer company.
- [<sup>F991</sup>(3A) Paragraph (c) of subsection (2) does not apply to shares after their acquisition as mentioned in that paragraph.]
- (4) In this section “share” includes stock.
- (5) For the purposes of this section a company is a member of a consortium owning another company if it is one of a number of companies which between them beneficially own not less than 75% of the other company’s ordinary share capital and each of which beneficially owns not less than 5% of that capital.

#### Textual Amendments

- F985** Words in s. 701(2)(b) repealed (1.9.2003) by [Finance Act 2003 \(c. 14\), Sch. 22 para. 14\(1\), Sch. 43 Pt. 3\(4\)](#); [S.I. 2003/1997, art. 2](#)
- F986** Words in s. 701(2)(c)(i) repealed (with effect in accordance with Sch. 21 para. 18(5) of the amending Act) by [Finance Act 2003 \(c. 14\), Sch. 21 para. 18\(2\), Sch. 43 Pt. 3\(3\)](#)
- F987** S. 701(2)(c)(ia) inserted (with effect in accordance with Sch. 21 para. 18(5) of the amending Act) by [Finance Act 2003 \(c. 14\), Sch. 21 para. 18\(3\)](#)
- F988** Words in s. 701(2)(c)(ia) substituted (18.6.2004 with effect in accordance with s. 88(11)-(13) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 88\(9\)\(a\)](#)
- F989** S. 701(2)(c)(ii) repealed (18.6.2004 with effect in accordance with s. 88(11)-(13) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 88\(9\)\(b\), Sch. 42 Pt. 2\(11\)](#)
- F990** Words in s. 701(2)(c)(iii) inserted (18.6.2004 with effect in accordance with s. 88(11)-(13) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 88\(9\)\(c\)](#)
- F991** S. 701(3A) inserted (18.6.2004 with effect in accordance with s. 88(11)-(13) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 88\(10\)](#)

## 702 Meaning of “readily convertible asset”

- (1) In this Chapter “readily convertible asset” means—
- (a) an asset capable of being sold or otherwise realised on—
    - (i) a recognised investment exchange (within the meaning of the Financial Services and Markets Act 2000 (c. 8)),
    - (ii) the London Bullion Market,
    - (iii) the New York Stock Exchange, or
    - (iv) a market for the time being specified in PAYE regulations;
  - (b) an asset consisting in—
    - (i) the rights of an assignee, or any other rights, in respect of a money debt that is or may become due to the employer or any other person,
    - (ii) property that is subject to a warehousing regime, or any right in respect of property so subject, or

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- (iii) anything that is likely (without anything being done by the employee) to give rise to, or to become, a right enabling a person to obtain an amount or total amount of money which is likely to be similar to the expense incurred in the provision of the asset; or
    - (c) an asset for which trading arrangements are in existence, or are likely to come into existence in accordance with—
      - (i) any arrangements of another description existing when the asset is provided, or
      - (ii) any understanding existing at that time.
  - (2) For the purposes of this section trading arrangements for any asset provided to any person exist whenever there exist any arrangements the effect of which in relation to that asset is to enable—
    - (a) that person, or
    - (b) a member of that person’s family or household,to obtain an amount or total amount of money that is, or is likely to be, similar to the expense incurred in the provision of that asset.
  - (3) PAYE regulations may exclude any description of arrangements from being trading arrangements for the purposes of this section.
  - (4) References in this section to enabling a person to obtain an amount of money are to be read—
    - (a) as references to enabling an amount to be obtained by that person by any means at all, including in particular—
      - (i) by using any asset or other property as security for a loan or advance, or
      - (ii) by using any rights comprised in or attached to any asset or other property to obtain any asset for which trading arrangements exist; and
    - (b) as including references to cases where a person is enabled to obtain an amount as a member of a class or description of persons, as well as where the person is so enabled in the person’s own right.
  - (5) For the purposes of this section an amount is similar to the expense incurred in the provision of any asset if it is, or is an amount of money equivalent to—
    - (a) the amount of the expense so incurred, or
    - (b) a greater amount, or
    - (c) an amount that is less than that amount but not substantially so.
- [<sup>F992</sup>(5A) An asset consisting in securities which is not a readily convertible asset apart from this subsection is to be treated as a readily convertible asset unless the securities are shares that are corporation tax deductible.
- (5B) For the purposes of subsection (5A) shares are corporation tax deductible if they are acquired by a person—
  - (a) by reason of that, or another person's, employment with a company, or
  - (b) pursuant to an option granted by reason of that, or another person's, employment with a company,and the company is entitled to corporation tax relief in respect of the shares under [<sup>F993</sup>Part 12 of CTA 2009] (corporation tax relief for employee share acquisition).

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(5C) If a person acquires additional shares by virtue of holding shares that are corporation tax deductible, the additional shares are to be treated for the purposes of subsection (5A) as if they were corporation tax deductible.

(5D) If—

- (a) on a person ceasing to be beneficially entitled to shares that are corporation tax deductible, that person acquires other shares, and
- (b) the circumstances are such that the shares to which the person ceases to be beneficially entitled constitute “original shares” and the other shares constitute a “new holding” for the purposes of sections 127 to 130 of TCGA 1992,

the shares that constitute the new holding are to be treated for the purposes of subsection (5A) as if they were corporation tax deductible.]

(6) In this section—

“money” includes money expressed in a currency other than sterling;

“money debt” means any obligation which falls to be, or may be, settled—

- (a) by the payment of money, or
- (b) by the transfer of a right to settlement under an obligation which is itself a money debt;

[<sup>F994</sup>“securities” has the same meaning as in Chapters 1 to 5 of Part 7 (employment income from securities) (see section 420),

“shares” includes—

- (a) an interest in shares, and
- (b) stock or an interest in stock,]

“warehousing regime” means—

- (a) a warehousing or fiscal warehousing regime (within the meaning of sections 18 to 18F of the Value Added Tax Act 1994 (c. 23)); or
- (b) any corresponding arrangements in a State other than the United Kingdom which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993.

#### Textual Amendments

**F992** S. 702(5A)-(5D) inserted (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 15\(2\)](#)

**F993** Words in s. 702(5B) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 555](#) (with [Sch. 2 Pts. 1, 2](#))

**F994** Words in s. 702(6) inserted (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 15\(3\)](#)

#### Modifications etc. (not altering text)

**C46** S. 702 modified (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 15\(4\)](#)



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## CHAPTER 5

### PAYE SETTLEMENT AGREEMENTS

#### 703 Introduction

This Chapter provides—

- (a) for employers to make agreements with [<sup>F106</sup>an officer of Revenue and Customs] (“PAYE settlement agreements”) under which they agree to be accountable to the [<sup>F995</sup>Commissioners] for sums in respect of income tax on general earnings of their employees; and
- (b) for such earnings to be treated for certain purposes of the Income Tax Acts as excluded from the employees' income.

#### Textual Amendments

**F106** Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 102\(1\)](#); S.I. 2005/1126, art. 2(2)(h)

**F995** Words in s. 703 substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 102\(3\)\(j\)](#); S.I. 2005/1126, art. 2(2)(h)

#### 704 Sums payable by employers under agreements

(1) PAYE regulations may provide—

- (a) for a person to make a PAYE settlement agreement with [<sup>F106</sup>an officer of Revenue and Customs] ; and
- (b) to such extent as may be prescribed, for that person’s accountability, and the sums to be accounted for, in respect of income tax on general earnings of that person’s employees to be determined—
  - (i) in accordance with the agreement, and
  - (ii) not in accordance with PAYE regulations which would apply apart from this Chapter.

(2) Without prejudice to the generality of section 684(2), any power of the [<sup>F996</sup>Commissioners] to make PAYE regulations with respect to sums falling to be accounted for under such regulations includes power to make the corresponding provision with respect to sums falling to be accounted for in accordance with a PAYE settlement agreement.

#### Textual Amendments

**F106** Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 102\(1\)](#); S.I. 2005/1126, art. 2(2)(h)

**F996** Words in s. 704 substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 102\(3\)\(k\)](#); S.I. 2005/1126, art. 2(2)(h)

#### 705 Approximations allowed in calculations

PAYE regulations may provide for a PAYE settlement agreement to allow sums which an employer is to account for—

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- (a) to be computed, if two or more persons hold employments to which the agreement relates, by reference to a number of those persons all taken together;
- (b) to include sums representing income tax on an estimated amount taken to be the aggregate of the amounts of PAYE income consisting of—
  - (i) taxable benefits provided or made available by reason of the employments to which the agreement relates, and
  - (ii) expenses paid to the persons holding those employments; and
- (c) to be computed in a manner under which they do not necessarily represent an amount of income tax which would be payable (apart from the agreement) by persons holding employments to which the agreement relates.

#### **706 Exclusion of general earnings from income etc.**

PAYE regulations may provide—

- (a) that sums accountable for by an employer under a PAYE settlement agreement, or any other sums, are not to be treated for any prescribed purpose as tax deducted from general earnings;
- (b) that an employee is to have no right to be treated as having paid tax in respect of sums accountable for by the employer under such an agreement;
- (c) that an employee is to be treated, except—
  - (i) for the purposes of the obligations imposed on the employer by such an agreement, and
  - (ii) to such further extent as may be prescribed,
 as relieved from any prescribed obligations of the employee under the Income Tax Acts in respect of general earnings from an employment to which the agreement relates; and
- (d) that such earnings are to be treated as excluded from the employee’s income for such further purposes of the Income Tax Acts, and to such extent, as may be prescribed.

#### **707 Interpretation of this Chapter**

In this Chapter—

“employment” means any employment the general earnings from which are (or, apart from any regulations made by virtue of [<sup>F997</sup>this Chapter], would be) PAYE income and related expressions are to be construed accordingly;

“prescribed” means prescribed by PAYE regulations;

“taxable benefit”, in relation to an employee, means any benefit provided or made available, otherwise than in the form of a payment of money, to the employee, or to a person who is a member of the employee’s family or household.

#### **Textual Amendments**

**F997** Words in s. 707 substituted (10.7.2003) by *Finance Act 2003 (c. 14), s. 145(5)*

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## CHAPTER 6

### MISCELLANEOUS AND SUPPLEMENTAL

#### 708 PAYE repayments

- (1) PAYE regulations may provide that no repayment of income tax may be made under such regulations to a person—
  - (a) during a period for which the person has claimed jobseeker’s allowance, or
  - (b) at a time when the person is prevented by the trade disputes provisions from being entitled to a jobseeker’s allowance, or would be so prevented if the person otherwise met the conditions for entitlement.
- (2) Different provision may be made with respect to—
  - (a) persons within subsection (1)(a), and
  - (b) persons within subsection (1)(b).
- (3) “The trade disputes provisions” means—
  - (a) section 14 of JSA 1995, or
  - (b) Article 16 of JS(NI)O 1995.

#### 709 Additional provision for certain assessments

- (1) This section applies if—
  - (a) an assessment to income tax is made as respects relevant income (with or without other income), and
  - (b) the assessment is made after the end of the period of 12 months following the tax year for which it is made.
- (2) In so far as it relates to relevant income, the assessment is to be made in accordance with the practice generally prevailing at the end of that period.
- (3) “Relevant income” means income which—
  - (a) has been taken into account in the making of deductions or repayments of tax under PAYE regulations, and
  - (b) was received not less than 12 months before the beginning of the tax year in which the assessment is made.

#### 710 Notional payments: accounting for tax

- (1) If an employer makes a notional payment of PAYE income of an employee, the employer must [<sup>F998</sup>, subject to and in accordance with PAYE regulations,] deduct income tax at the relevant time from any payment or payments the employer actually makes of, or on account of, PAYE income of the employee.
- (2) For the purposes of this section—
  - (a) a notional payment is a payment treated as made by virtue of any of sections 687, [<sup>F999</sup>687A,] 689 and 693 to 700, other than a payment whose amount is given by section 687(3)(a) or 689(3)(a), and
  - (b) any reference to an employer includes a reference to a person who is treated as making a payment by virtue of section 689(2).

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- (3) Subsection (4) applies if, because the payments actually made are insufficient for the purpose, the employer is unable to deduct the full amount of the income tax as required by subsection (1).
- (4) The employer must [<sup>F1000</sup>, subject to and in accordance with PAYE regulations,] account to [<sup>F82</sup>the Commissioners for Her Majesty’s Revenue and Customs] at the relevant time for an amount of income tax equal to the amount of income tax the employer is required, but is unable, to deduct.
- (5) PAYE regulations may make provision—
- (a) with respect to the time when any notional payment (or description of notional payment) is made;
  - (b) applying (with or without modifications) any specified provisions of the regulations for the time being in force in relation to deductions from actual payments to amounts [<sup>F1001</sup>deducted or accounted for (or required to be deducted or accounted for)] in respect of any notional payments;
  - (c) with respect to the collection and recovery of amounts [<sup>F1002</sup>deducted or accounted for (or required to be deducted or accounted for)] in respect of notional payments.
- (6) Any amount—
- (a) which an employer deducts as mentioned in subsection (1), or
  - (b) for which an employer accounts as mentioned in subsection (4),
- is to be treated as [<sup>F1003</sup>an amount of tax which], at the time when the notional payment is made, [<sup>F1003</sup>is deducted] in respect of the employee’s liability to income tax.
- (7) “The relevant time” means [<sup>F1004</sup>(subject to subsection (7A))]<sup>F1004</sup>—
- (a) in subsection (1), any occasion—
    - (i) on or after the time when the notional payment is made, and
    - (ii) falling within the same income tax period,
 on which the employer actually makes a payment of, or on account of, PAYE income of the employee;
  - (b) in subsection (4), any time within 14 days of the end of the income tax period in which the notional payment was made.
- [<sup>F1005</sup>(7A) In a case where the notional payment is treated by virtue of any Act as made before the date on which the Act is passed—
- (a) the reference in sub-paragraph (i) of paragraph (a) of subsection (7) to the time when the notional payment is made is to the date on which the Act is passed,
  - (b) the reference in sub-paragraph (ii) of that paragraph to any occasion falling within the same income tax period is to any occasion falling before the end of the income tax period next after that in which that date falls, and
  - (c) the reference in paragraph (b) of that subsection to the income tax period in which the notional payment was made is to the income tax period next after that in which that date falls.]
- (8) In subsection (7) “income tax period” has the same meaning as in the Income Tax (Employments) Regulations 1993 (S.I. 1993/744), or any subsequent regulations making corresponding provision.

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#### Textual Amendments

- F82** Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 102\(2\)](#); S.I. 2005/1126, art. 2(2)(h)
- F998** Words in s. 710(1) inserted (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), s. 145(6)(a)
- F999** Word in s. 710(2)(a) inserted (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 33](#)
- F1000** Words in s. 710(4) inserted (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), s. 145(6)(a)
- F1001** Words in s. 710(5)(b) substituted (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), s. 145(6)(b)
- F1002** Words in s. 710(5)(c) substituted (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), s. 145(6)(b)
- F1003** Words in s. 710(6) substituted (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), s. 145(6)(c)
- F1004** Words in s. 710(7) inserted (with effect in accordance with s. 94(5) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), s. 94(4)(a); S.I. 2007/1081, art. 2
- F1005** S. 710(7A) inserted (with effect in accordance with s. 94(5) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), s. 94(4)(b); S.I. 2007/1081, art. 2

#### Modifications etc. (not altering text)

- C47** S. 710 modified (6.4.2007) by [The Finance Act 2006 \(Section 94\(5\)\) \(PAYE: Retrospective Notional Payments — Appointment of Substituted Date\) Order 2007 \(S.I. 2007/1081\)](#), art. 2; as provided for by [2006 c. 25](#), s. 94(5)

## 711 Right to make a return

- (1) A person who has PAYE income for a tax year in respect of which deductions or repayments are made under PAYE regulations may by notice require [<sup>F106</sup>an officer of Revenue and Customs] to give that person a notice under section 8 of TMA 1970 (personal return) for the tax year.
- (2) A notice to [<sup>F106</sup>an officer of Revenue and Customs] under subsection (1) must be given no later than [<sup>F1006</sup>3 years] after the 31st October next following the tax year.

#### Textual Amendments

- F106** Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 102\(1\)](#); S.I. 2005/1126, art. 2(2)(h)
- F1006** Words in s. 711(2) substituted (1.4.2010) by [Finance Act 2008 \(c. 9\)](#), s. 118(2), [Sch. 39 para. 49](#); S.I. 2009/403, art. 2(2) (with art. 10)

## 712 Interpretation of this Part

- (1) In this Part—
  - “employee” means a person who holds or has held employment with another person;
  - “employer” means—
    - (a) in relation to an employee, a person with whom the employee holds or has held an employment, and
    - (b) in relation to any PAYE income of an employee, the person who is the employer of the employee in relation to the employment in respect of which the income is or was provided or, as the case may be, by reference

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to which it falls to be regarded as PAYE income. The above definitions are subject to sections 688 and 710(2)(b).

[<sup>F1007</sup>“ relevant debt ” has the meaning given by section 684(7AA).]

- (2) Sections 4 and 5 apply for the purposes of this Part as they apply for the purposes of the employment income Parts.

#### Textual Amendments

**F1007** Words in s. 712(1) inserted (20.7.2011) by [The Finance Act 2009 \(Consequential Amendments\) Order 2011 \(S.I. 2011/1583\)](#), arts. 1, **2(10)**

## PART 12

### PAYROLL GIVING

#### 713 Donations to charity: payroll deduction scheme

- (1) This section applies if—
- (a) an individual is entitled to receive payments of, or on account of, PAYE income in respect of which PAYE regulations require deductions or repayments of income tax in accordance with those regulations, and
  - (b) at the request of the individual, the person making the payments (the “payer”) withholds sums from them as donations.
- (2) In determining whether there is such a requirement under PAYE regulations for the purposes of subsection (1)(a), any requirement under the regulations which requires the deduction of an amount in calculating the payments of, or on account of, PAYE income is to be disregarded.
- (3) The amount of the donations is allowed as a deduction in calculating the amount of the individual’s income which is charged to tax in accordance with subsection (4).
- (4) In the case of a payment of, or on account of—
- (a) taxable earnings from an employment, the deduction is allowed from the taxable earnings from the employment in calculating the net taxable earnings from the employment for the relevant tax year for the purposes of Part 2 (see section 11(1));
  - (b) taxable specific income from an employment, the deduction is allowed from that taxable specific income in calculating the net taxable specific income from the employment for the relevant tax year for the purposes of Part 2 (see section 12(1));
  - (c) taxable pension income for a pension, annuity or other item of pension income, the deduction is allowed from that taxable pension income in calculating the net taxable pension income for that income for the relevant tax year for the purposes of Part 9 (see section 567(3));
  - (d) taxable social security income for a taxable benefit, the deduction is allowed from that taxable social security income in calculating the net taxable social security income for that benefit for the relevant tax year for the purposes of Part 10 (see section 658(3)).

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- (5) For the purposes of subsection (4) “relevant tax year” means—
- (a) in the case of paragraphs (a) and (b), the tax year in which the donation is withheld, and
  - (b) in the case of paragraphs (c) and (d), the tax year for which the income referred to in subsection (1)(a) is taxable pension income or taxable social security income, as the case may be.

[<sup>F1008</sup>(6) This section is subject to section 809ZM of ITA 2007 (removal of income tax relief in respect of tainted charity donations etc).]

#### Textual Amendments

**F1008**S. 713(6) inserted (with effect in accordance with Sch. 3 para. 27 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 3 para. 5](#)

## 714 Meaning of “donations”

- (1) For the purposes of this Part “donations” means sums which—
- (a) are withheld by the payer under a scheme which is an approved scheme at the time of the withholding,
  - (b) constitute gifts by the individual to one or more specified charities under the scheme, and
  - (c) satisfy the conditions (if any) set out in the scheme.

- (2) In this section—

“approved scheme” means a scheme which is approved (or is of a kind approved) by [<sup>F106</sup>an officer of Revenue and Customs] and under which—

- (a) the payer is required to pay sums withheld to a body which is an approved agent at the time of the withholding, and
- (b) the approved agent is required—
  - (i) to pay sums withheld to the specified charity or charities, or
  - (ii) in a case where the agent is itself a specified charity, to retain any sum due to itself;

“charity” <sup>F1009</sup>... includes each of the bodies mentioned in [<sup>F1010</sup>section 468 of CTA 2010];

“specified charity” means a charity specified by the individual.

- (3) For the purposes of this section a body is an “approved agent” if it is approved by [<sup>F106</sup>an officer of Revenue and Customs] for the purpose of paying donations to one or more charities.

#### Textual Amendments

**F106** Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 102\(1\)](#); S.I. 2005/1126, art. 2(2)(h)

**F1009** Words in s. 714(2) omitted (coming into force for the tax year 2012-13 and subsequent tax years) by virtue of [Finance Act 2010 \(c. 13\)](#), [Sch. 6 paras. 17\(7\)](#), 34(2); S.I. 2012/736, art. 13

**F1010** Words in s. 714(2) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 394](#) (with [Sch. 2](#))

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## 715 Approval of schemes: regulation by Treasury

- (1) The Treasury may by regulations prescribe the circumstances in which [<sup>F106</sup>an officer of Revenue and Customs] may grant or withdraw approval of any—
- (a) scheme,
  - (b) kind of scheme, or
  - (c) agent.
- (2) The circumstances, whether relating to the terms of schemes or the qualifications of agents or otherwise, are to be such as the Treasury think fit.
- (3) The Treasury may by regulations make provision—
- (a) requiring a payer or agent who participates (or has at any time participated) in an approved scheme under this Part—
    - <sup>F1011</sup>(i) . . . . .
    - (ii) in prescribed circumstances, to furnish to [<sup>F106</sup>an officer of Revenue and Customs] prescribed information;
  - (b) for, and in relation to, appeals <sup>F1012</sup>... against [<sup>F1013</sup>a refusal by an officer of Revenue and Customs to approve], or [<sup>F1014</sup>the officer's] withdrawal of approval from, any—
    - (i) scheme,
    - (ii) kind of scheme, or
    - (iii) agent;
  - (c) generally for giving effect to sections 713 and 714.

In this subsection “prescribed” means prescribed by the regulations.

### Textual Amendments

**F106** Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 102\(1\)](#); S.I. 2005/1126, art. 2(2)(h)

**F1011** S. 715(3)(a)(i) omitted (1.4.2010) by virtue of [The Finance Act 2009, Section 96 and Schedule 48 \(Appointed Day, Savings and Consequential Amendments\) Order 2009 \(S.I. 2009/3054\)](#), art. 1, [Sch. para. 10](#)

**F1012** Words in s. 715(3)(b) omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), [Sch. 1 para. 339](#)

**F1013** Word in s. 715(3)(b) substituted (18.4.2005) by virtue of [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 118](#); S.I. 2005/1126, art. 2(2)(h)

**F1014** Words in s. 715(3)(b) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 103\(2\)\(a\)](#); S.I. 2005/1126, art. 2(2)(h)



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## PART 13

### SUPPLEMENTARY PROVISIONS

#### *Alteration of amounts*

#### **716 Alteration of amounts by Treasury order**

- (1) The Treasury may by order increase or further increase the sums of money specified in any of the following provisions.
- (2) They are—
  - (a) section 179(2)(a) (limit on exception for advances for necessary expenses),
  - (b) section 241(3)(a) and (b) (incidental overnight expenses: overall exemption limit),
  - (c) section 264(2) and (3) (annual parties and functions),
  - (d) section 287(1) (limit on exemption under Chapter 7 of Part 4: removal benefits and expenses),
  - (e) section 322(1) and (4) (suggestion awards: “the permitted maximum”),
  - (f) section 323(2) (long service awards),
  - (g) section 324(6) (small gifts from third parties), and
  - (h) section 358(3)(b) (business entertainment and gifts: other exceptions).
- (3) An order relating to section 241(3)(a) or (b) may make provision for determining what earnings are treated as received on or after the date when the order comes into force.
- (4) An order relating to section 287(1) applies to a change of an employee’s residence where the employment change occurs on or after the day specified in the order for the purpose.

“The employment change” here has the same meaning as in Chapter 7 of Part 4 (see section 275).

*[<sup>F1015</sup>Priority rule for certain dividends etc*

#### **Textual Amendments**

**F1015S.** 716A and cross-heading inserted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 615](#) (with Sch. 2)

#### **716A Priority rule for dividends etc. of UK resident companies etc.**

- [ Any income, so far as it falls within—
- <sup>F1016</sup>(1)
  - (a) Part 2, 9 or 10 of this Act, and
  - (b) Chapter 3 of Part 4 of ITTOIA 2005 (dividends etc. from UK resident companies etc.),
- is dealt with under Chapter 3 of Part 4 of ITTOIA 2005.

<sup>F1017</sup>(2) [ Subsection (1) is subject to section 554Z2(2). ]

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### Textual Amendments

- F1016S.** 716A renumbered as s. 716A(1) (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), **Sch. 2 para. 34(2)**
- F1017S.** 716A(2) inserted (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), **Sch. 2 para. 34(3)**

### *Orders and regulations*

#### 717 **Orders and regulations made by Treasury or <sup>F1018</sup>Commissioners]**

- (1) Any power of the Treasury or <sup>F82</sup>the Commissioners for Her Majesty's Revenue and Customs] to make any order or regulations under this Act is exercisable by statutory instrument.

This is subject to subsection (2).

- (2) Subsection (1) does not apply to the power conferred by section 28(5) (overseas Crown employment: order excepting certain earnings) <sup>F1019</sup>or section 421L(7) (persons to whom section 421J applies: order in relation to excluded securities).]

- (3) Any statutory instrument containing any order or regulations made by the Treasury or <sup>F82</sup>the Commissioners for Her Majesty's Revenue and Customs] under this Act is subject to annulment in pursuance of a resolution of the House of Commons.

This is subject to subsection (4).

- (4) Subsection (3) does not apply to any statutory instrument made under section 343(3) (deduction for professional membership fees: order adding certain fees) <sup>F1020</sup>or section 688A(7) (PAYE regulations: managed service companies)]<sup>F1021</sup>or to which section 681F(3) (variation of income limit etc for high income child benefit charge: orders increasing liability to tax) applies] .

### Textual Amendments

- F82** Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), **Sch. 4 para. 102(2)**; S.I. 2005/1126, art. 2(2)(h)
- F1018** Words in s. 717 title substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), **Sch. 4 para. 102(3)(i)**; S.I. 2005/1126, art. 2(2)(h)
- F1019** Words in s. 717(2) inserted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), **Sch. 26 para. 10(3)**
- F1020** Words in s. 717(4) inserted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), s. 25(2), **Sch. 3 para. 7**
- F1021** Words in s. 717(4) inserted (with effect in accordance with Sch. 1 para. 7 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), **Sch. 1 para. 5(6)**

### *Interpretation*

#### 718 **Connected persons**

<sup>F1022</sup>Section 993 of ITA 2007] (how to tell whether persons are connected) applies for the purposes of this Act.

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**Textual Amendments**

**F1022** Words in s. 718 substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 442](#) (with [Sch. 2](#))

**719** [<sup>F1023</sup> **Meaning of “control”**]

[<sup>F1024</sup> Section 995 of ITA 2007 (meaning of “control”)] applies for the purposes of this Act, unless otherwise indicated.

**Textual Amendments**

**F1023** S. 719 sidenote substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 443\(b\)](#) (with [Sch. 2](#))

**F1024** Words in s. 719 substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 443\(a\)](#) (with [Sch. 2](#))

<sup>F1025</sup> **720 Meaning of “ an officer of Revenue and Customs ” etc.**

.....

**Textual Amendments**

**F1025** S. 720 repealed (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 119](#), [Sch. 5](#); S.I. 2005/1126, art. 2(2)(h)(i)

**721 Other definitions**

(1) In this Act—

“cash voucher” has the same meaning as in Chapter 4 of Part 3 (see section 75),

[<sup>F1026</sup> “the Contributions and Benefits Act” means SSCBA 1992 or SSCB(NI)A 1992;]

“credit-token” has the same meaning as in Chapter 4 of Part 3 (see section 92),

[<sup>F1027</sup> “foreign employer” means an individual, partnership or body of persons resident outside, and not resident in, the United Kingdom,]

“non-cash voucher” has the same meaning as in Chapter 4 of Part 3 (see section 84),

<sup>F1028</sup> ...

<sup>F1029</sup> (2) .....

(3) Any reference in this Act to being domiciled in the United Kingdom is to be read as a reference to being domiciled in any part of the United Kingdom.

(4) For the purposes of this Act the following are members of a person’s family—

(a) the person’s spouse [<sup>F1030</sup> or civil partner],

(b) the person’s children and their spouses [<sup>F1031</sup> or civil partners],

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- (c) the person's parents, and
  - (d) the person's dependants.
- (5) For the purposes of this Act the following are members of a person's family or household—
- (a) members of the person's family,
  - (b) the person's domestic staff, and
  - (c) the person's guests.
- (6) The following provisions (which relate to the legal equality of illegitimate children) are to be disregarded in interpreting references in this Act to a child or children—
- (a) section 1 of the Family Law Reform Act 1987 (c. 42);
  - (b) the paragraph inserted in Schedule 1 to the Interpretation Act 1978 (c. 30) by paragraph 73 of Schedule 2 to the 1987 Act;
  - (c) section 1(2) of the Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9);
  - (d) Article 155 of the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)).
- (7) In the employment income Parts any reference to earnings which is not limited by the context—
- (a) to earnings within Chapter 1 of Part 3, or
  - (b) to any other particular description of earnings,
- includes a reference to any amount treated as earnings by any of the provisions mentioned in section 7(5) (meaning of "employment income" etc.).

#### **Textual Amendments**

- F1026** Words in s. 721(1) inserted (1.9.2004) by [Finance Act 2004 \(c. 12\)](#), s. 85(2), **Sch. 16 para. 7(2)**; S.I. 2004/1945, art. 2
- F1027** Words in s. 721(1) substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), **Sch. 7 para. 39**
- F1028** Words in s. 721(1) repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), Sch. 1 para. 444(2) (b), **Sch. 3 Pt. 1** (with Sch. 2)
- F1029** S. 721(2) repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), Sch. 1 para. 444(3), **Sch. 3 Pt. 1** (with Sch. 2)
- F1030** Words in s. 721(4)(a) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **168(a)**
- F1031** Words in s. 721(4)(b) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **168(b)**

#### **Modifications etc. (not altering text)**

- C48** S. 721 applied (6.4.2006) by [The Registered Pension Schemes \(Co-ownership of Living Accommodation\) Regulations 2006 \(S.I. 2006/133\)](#), regs. 1, **5(6)** (with reg. 2)
- C49** S. 721 applied (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), **ss. 173(11)**, 284(1) (with Sch. 36)

*Amendments, repeals, citation etc.*

## **722 Consequential amendments**

Schedule 6 contains consequential amendments.

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*Status: Point in time view as at 01/09/2013.*

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### **723 Commencement and transitional provisions and savings**

- (1) This Act comes into force on 6th April 2003 and has effect—
  - (a) for the purposes of income tax, for the tax year 2003-04 and subsequent tax years, and
  - (b) for the purposes of corporation tax, for accounting periods ending after 5th April 2003.
- (2) Subsection (1) is subject to Schedule 7, which contains transitional provisions and savings.

### **724 Repeals and revocations**

- (1) The enactments specified in Part 1 of Schedule 8 (which include certain spent provisions) are repealed to the extent specified.
- (2) The instruments specified in Part 2 of that Schedule are revoked to the extent specified.

### **725 Citation**

This Act may be cited as the Income Tax (Earnings and Pensions) Act 2003.

**Status:**

Point in time view as at 01/09/2013.

**Changes to legislation:**

Income Tax (Earnings and Pensions) Act 2003 is up to date with all changes known to be in force on or before 10 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.