



# Income Tax (Earnings and Pensions) Act 2003

## 2003 CHAPTER 1

### PART 5

#### EMPLOYMENT INCOME: DEDUCTIONS ALLOWED FROM EARNINGS

### CHAPTER 2

#### DEDUCTIONS FOR EMPLOYEE'S 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.

*Status: Point in time view as at 27/04/2017.*

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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.

#### **[<sup>F1</sup>339A Travel for necessary attendance: employment intermediaries**

- (1) This section applies where an individual (“the worker”)—
  - (a) personally provides services (which are not excluded services) to another person (“the client”), and
  - (b) the services are provided not under a contract directly between the client or a person connected with the client and the worker but under arrangements involving an employment intermediary.

This is subject to the following provisions of this section.

- (2) Where this section applies, each engagement is for the purposes of sections 338 and 339 to be regarded as a separate employment.
- (3) This section does not apply if it is shown that the manner in which the worker provides the services is not subject to (or to the right of) supervision, direction or control by any person.
- (4) Subsection (3) does not apply in relation to an engagement if—
  - (a) Chapter 8 of Part 2 applies in relation to the engagement,
  - (b) the conditions in section 51, 52 or 53 are met in relation to the employment intermediary, and
  - (c) the employment intermediary is not a managed service company.
- (5) This section does not apply in relation to an engagement if—
  - (a) Chapter 8 of Part 2 does not apply in relation to the engagement merely because the circumstances in section 49(1)(c) are not met,
  - (b) assuming those circumstances were met, the conditions in section 51, 52 or 53 would be met in relation to the employment intermediary, and
  - (c) the employment intermediary is not a managed service company.
- (6) In determining for the purposes of subsection (4) or (5) whether the conditions in section 51, 52 or 53 are or would be met in relation to the employment intermediary—

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- (a) in section 51(1)—
    - (i) disregard “either” in the opening words, and
    - (ii) disregard paragraph (b) (and the preceding or), and
  - (b) read references to the intermediary as references to the employment intermediary.
- [ Subsection (3) does not apply in relation to an engagement if—
- <sup>F2</sup>(6A) (a) sections 61N to 61R in Chapter 10 of Part 2 apply in relation to the engagement,
- (b) one of Conditions A to C in section 61N is met in relation to the employment intermediary, and
  - (c) the employment intermediary is not a managed service company.
- (6B) This section does not apply in relation to an engagement if—
- (a) sections 61N to 61R in Chapter 10 of Part 2 do not apply in relation to the engagement because the circumstances in section 61M(1)(d) are not met,
  - (b) assuming those circumstances were met, one of Conditions A to C in section 61N would be met in relation to the employment intermediary, and
  - (c) the employment intermediary is not a managed service company.
- (6C) In determining for the purposes of subsection (6A) or (6B) whether one of Conditions A to C in section 61N is or would be met in relation to the employment intermediary, read references to the intermediary as references to the employment intermediary.]
- (7) Subsection (8) applies if—
- (a) the client or a relevant person provides the employment intermediary (whether before or after the worker begins to provide the services) with a fraudulent document which is intended to constitute evidence that, by virtue of subsection (3), this section does not or will not apply in relation to the services,
  - (b) that section is taken not to apply in relation to the services, and
  - (c) in consequence, the employment intermediary does not under PAYE regulations deduct and account for an amount that would have been deducted and accounted for under those regulations if this section had been taken to apply in relation to the services.
- (8) For the purpose of recovering the amount referred to in subsection (7)(c) (“the unpaid tax”)—
- (a) the worker is to be treated as having an employment with the client or relevant person who provided the document, the duties of which consist of the services, and
  - (b) the client or relevant person is under PAYE regulations to account for the unpaid tax as if it arose in respect of earnings from that employment.
- (9) In subsections (7) and (8) “relevant person” means a person, other than the client, the worker or a person connected with the employment intermediary, who—
- (a) is resident, or has a place of business, in the United Kingdom, and
  - (b) is party to a contract with the employment intermediary or a person connected with the employment intermediary under or in consequence of which—
    - (i) the services are provided, or
    - (ii) the employment intermediary, or a person connected with the employment intermediary, makes payments in respect of the services.

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- (10) In determining whether this section applies, no regard is to be had to any arrangements the main purpose, or one of the main purposes, of which is to secure that this section does not to any extent apply.
- (11) In this section—
- “arrangements” includes any scheme, transaction or series of transactions, agreement or understanding, whether or not enforceable, and any associated operations;
  - “employment intermediary” means a person, other than the worker or the client, who carries on a business (whether or not with a view to profit and whether or not in conjunction with any other business) of supplying labour;
  - “engagement” means any such provision of service as is mentioned in subsection (1)(a);
  - “excluded services” means services provided wholly in the client's home;
  - “managed service company” means a company which—
    - (a) is a managed service company within the meaning given by section 61B, or
    - (b) would be such a company disregarding subsection (1)(c) of that section.]

#### Textual Amendments

- F1** S. 339A inserted (with effect in accordance with s. 14(6) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 14\(1\)](#)
- F2** Ss. 339A(6A)–(6C) inserted (with effect in accordance with Sch. 1 para. 15 of the amending Act) by [Finance Act 2017 \(c. 10\), Sch. 1 para. 12](#)

### 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).

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### **[<sup>F3</sup>340A Travel between linked employments**

- (1) A deduction from earnings from an employment is allowed for travel expenses if conditions A to E are met.
- (2) Condition A is that the employee is obliged to incur and pay the expenses.
- (3) Condition B is that the travel—
  - (a) takes place within the United Kingdom, and
  - (b) 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—
  - (a) at least one of the employments is as a director of a company (“company X”), and
  - (b) the other employment is also with a company (“company Y”) but not necessarily as a director of it.
- (6) Condition E is that the employee was appointed as a director of company X because company Y, or a company in the same group as company Y, has a shareholding or other financial interest in company X.
- (7) This section needs to be read with section 359 (disallowance of travel expenses: mileage allowances and reliefs).
- (8) In this section—
 

“director” has the same meaning as in the benefits code (see section 67),  
 and  
 “group” means a company and its 51% subsidiaries.]

#### **Textual Amendments**

- F3** S. 340A inserted (with effect in accordance with art. 4 of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2014 \(S.I. 2014/211\)](#), arts. 1, **2(2)**

### **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>F4</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.
- (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.

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- (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

- F4** 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>F5</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**

- F5** 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](#)



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