



Income and Corporation Taxes Act 1970

1970 CHAPTER 10

PART VIII

SCHEDULE E

CHAPTER II

EXPENSES ALLOWANCES TO DIRECTORS AND OTHERS

195 Expenses allowances, etc.

- (1) Subject to the provisions of this Chapter, any sum paid in respect of expenses by a body corporate to any of its directors, or to any person employed by it in an employment to which this Chapter applies, shall, if not otherwise chargeable to tax as income of that director or employee, be treated for the purposes of section 183 above as a perquisite of the office or employment of that director or employee and included in the emoluments thereof assessable to tax accordingly:

Provided that nothing in this subsection shall prevent a claim for a deduction being made under section 189 above in respect of any money expended wholly, exclusively and necessarily in performing the duties of the office or employment, or under section 192 above in respect of any such fee, contribution or subscription as is mentioned in that section.

- (2) In this section, and, in relation to any director or person employed in an employment to which this Chapter applies, in so much of section 15 of the Taxes Management Act 1970 as requires employers in certain cases to give particulars of payments to directors and employees in respect of expenses, any reference to a sum paid in respect of expenses includes a reference to any sum put by a body corporate at the disposal of a director or employee and paid away by him.

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196 Benefits in kind to be taken into account

- (1) Subject to the following provisions of this Chapter, where a body corporate incurs expense in or in connection with the provision, for any of its directors or for any person employed by it in an employment to which this Chapter applies, of living or other accommodation, of entertainment, of domestic or other services or of other benefits or facilities of whatsoever nature, and, apart from this section, the expense would not be chargeable to tax as income of the director or employee, section 195 above, and section 15 of the Taxes Management Act 1970, shall have effect in relation to so much of the said expense as is not made good to the body corporate by the director or employee as if the expense had been incurred by the director or employee and the amount thereof had been refunded to him by the body corporate by means of a payment in respect of expenses:

Provided that, where in the case of any premises any amount falls under section 185(1) of this Act to be treated as a person's emoluments, then, if this subsection applies to expense incurred in the provision of accommodation for him in the premises, the expense shall be treated for the purposes of this section as reduced by that amount (or, if that amount is greater than the expense, shall be treated as not having been incurred).

- (2) The provisions of subsection (1) above shall not apply to expense incurred by the body corporate in or in connection with the provision for a director or employee, in any of its business premises, of any accommodation, supplies or services provided for the director or employee himself and used by him solely in performing the duties of his office or employment.
- (3) The provisions of subsection (1) above shall not apply to expense incurred by the body corporate in or in connection with the provision of living accommodation for an employee in part of any of its business premises which include living accommodation if the employee is, for the purpose of enabling him properly to perform his duties, required by the terms of his employment to reside in the accommodation and either—
- (a) the accommodation is provided in accordance with a practice which since before 30th July 1928 has commonly prevailed in trades of the class in question as respects employees of the class in question, or
 - (b) it is necessary, in the case of trades of the class in question, that employees of the class in question should reside on premises of the class in question:

Provided that this subsection shall not apply where the employee is a director of the body corporate in question or of any other body corporate over which that body corporate has control or which has control over that body corporate or which is under the control of a person who also has control over that body corporate.

- (4) The provisions of subsection (1) above shall not apply to expense incurred by the body corporate in or in connection with the provision of meals in any canteen in which meals are provided for the staff generally.
- (5) The provisions of subsection (1) above shall not apply to expense incurred by the body corporate in or in connection with the provision for a director or employee himself, or for his spouse, children or dependants, of any pension, annuity, lump sum, gratuity or other like benefit to be given on his death or retirement.
- (6) Any reference in this section to expense incurred in or in connection with any matter includes a reference to a proper proportion of any expense incurred partly in or in connection with that matter.

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197 Valuation of benefits in kind

- (1) Any expense incurred by a body corporate in the acquisition or production of an asset which remains its own property shall be left out of account for the purposes of section 196 above.
- (2) Where the making of any such provision as is mentioned in subsection (1) of the said section 196 takes the form of a transfer of the property in any asset of the body corporate, and, since the acquisition or production thereof by the body corporate, the asset has been used or has depreciated, the body corporate shall be deemed to have incurred in the making of the said provision expense equal to the value of the asset at the time of the transfer.
- (3) Where an asset which continues to belong to the body corporate is used wholly or partly in the making of any such provision as is mentioned in subsection (1) of the said section 196, the body corporate shall be deemed for the purposes of that section to incur (in addition to any other expense incurred by it in connection with the asset, not being expense to which subsection (1) of this section applies) annual expense in connection therewith of an amount equal to the annual value of the use of the asset:

Provided that, where any sum by way of rent or hire is payable by the body corporate in respect of the asset—

- (a) if the annual amount of the rent or hire is equal to or greater than the annual value of the use of the asset, this subsection shall not apply, and
- (b) if the annual amount of the rent or hire is less than the annual value of the use of the asset, the rent or hire shall be left out of account for the purposes of the said section 196.

In the case of an asset being land, the annual value of the use of the asset shall be taken for the purposes of this subsection to be the annual value of the land determined in accordance with section 531 of this Act.

198 Meaning of " director ", " employment ", and " employment to which this Chapter applies "

- (1) In this Chapter " director " means—
 - (a) in relation to a body corporate the affairs whereof are managed by a board of directors or similar body, a member of that board or similar body,
 - (b) in relation to a body corporate the affairs whereof are managed by a single director or similar person, that director or person,
 - (c) in relation to a body corporate the affairs whereof are managed by the members themselves, a member of the body corporate,

and includes any person in accordance with whose directions or instructions the directors of the body corporate, defined in accordance with the preceding provisions of this subsection, are accustomed to act:

Provided that a person shall not, within the meaning of this subsection, be deemed to be a person in accordance with whose directions or instructions the directors of a body corporate are accustomed to act by reason only that the said directors act on advice given by him in a professional capacity.

- (2) In this Chapter "employment" means an employment such that any emoluments thereof would fall to be assessed under Schedule E, and references to persons

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employed by, or employees of, a body corporate include any person who takes part in the management of the affairs of the body corporate and is not a director thereof.

- (3) Subject to the proviso to this subsection and to subsections (4) and (5) below the employments to which this Chapter applies are employments the emoluments of which, calculated on the basis that they are employments to which this Chapter applies, and without any deduction being made under section 189 of this Act in respect of money expended in performing the duties thereof, or under section 192 of this Act in respect of any fee, contribution or subscription, are at the rate of £2,000 a year or more:

Provided that—

- (a) where a person is employed in several employments by the same body corporate, and the total of the emoluments of those employments, calculated as aforesaid, is at the rate of £2,000 a year or more, all those employments shall be treated as employments to which this Chapter applies, and
 - (b) where a person is a director of a body corporate, all employments in which he is employed by the body corporate shall be treated as employments to which this Chapter applies.
- (4) All the directors of, and persons employed by, a body corporate over which another body corporate has control, shall be treated for the purposes of the proviso to subsection (3) above (but not for any other purpose) as if they were directors of, or, as the case may be, as if the employment were an employment by, that other body corporate.
- (5) Notwithstanding anything in the preceding provisions of this section, no employment of a person by a body corporate at a school or other educational establishment carried on by that body corporate shall be an employment to which this Chapter applies, or be taken into account in determining whether any other employment is an employment to which this Chapter applies.

199 Saving for certain payments and expenses

If a body corporate furnishes to the inspector a statement of the cases and the circumstances in which payments of a particular nature are made, or things of a particular nature are provided, for any of its directors or employees, and the inspector is satisfied that no additional tax would fall to be paid if this Chapter were to apply in relation to payments made or things provided by the body corporate in accordance with the statement, he shall notify the body corporate accordingly and, where such a notification is given, this Chapter shall not apply in relation to payments made or things provided by the body corporate in accordance with the statement:

Provided that the inspector may, if in his opinion there is reason so to do, by notice in writing served on the body corporate revoke any such notification, either as from the date of the making of the notification or as from such later date as may be specified in the notice, and thereupon all such tax shall become chargeable, and all such returns shall be made by the body corporate and by the directors or employees in question, as would have been chargeable or would have had to be made in the first instance if the notification had never been given or, as the case may be, if it had ceased to have effect on the specified date.

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200 Additional information

Where, for the purposes of a return under section 15 of the Taxes Management Act 1970 (payments to directors and other employees), a body corporate apportions expenses incurred partly in or in connection with a particular matter and partly in or in connection with other matters, the return shall contain a statement that the sum included in the return is the result of such an apportionment, and the body corporate, if required so to do by notice from the inspector, shall prepare and deliver to the inspector, within the time limited by the notice, a return containing full particulars as to the amount apportioned and the manner in which and the grounds on which the apportionment has been made.

201 Charities and non-trading bodies

This Chapter shall not apply in relation to any body corporate established for charitable purposes only, or to any other body corporate unless it carries on a trade or its functions consist wholly or mainly in the holding of investments or other property, or, except in relation to persons employed by it in an employment to which this Chapter applies wholly or mainly for the purposes of a trade carried on by it, to any local authority.

202 Interpretation

- (1) In this Chapter " business premises ", in relation to a body corporate, includes all premises occupied by that body for the purposes of any trade carried on by it:

Provided that, except where the reference is expressly to premises which include living accommodation, the said expression does not include so much of any such premises as aforesaid as is used wholly or mainly as living accommodation for any of the directors of the body corporate or for any persons employed by the body corporate in any employment to which this Chapter applies.

- (2) Any reference in this Chapter to anything provided for a director or employee shall, unless the reference is expressly to something provided for the director or employee himself, be construed as including a reference to anything provided for the spouse, family, servants, dependants or guests of that director or employee, and the reference in the proviso to subsection (1) above to living accommodation for directors or employees shall be construed accordingly.
- (3) In this Chapter " control ", in relation to a body corporate, has the meaning given by section 534 of this Act.

203 Unincorporated bodies and partnerships

- (1) The provisions of this Chapter shall apply in relation to unincorporated societies and other bodies as they apply in relation to bodies corporate, and, in connection with those provisions, the definition of " control" in section 534 of this Act shall, with the necessary adaptations, also so apply.
- (2) The said provisions shall apply in relation to any partnership carrying on any trade, profession or vocation as they would apply in relation to a body corporate carrying on a trade if so much thereof as relates to directors of the body corporate or persons taking part in the management of the affairs of the body corporate were omitted:

Provided that—

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- (a) " control " has, in relation to a partnership, the meaning assigned to it by section 534 of this Act in relation to a partnership, and
 - (b) where such a partnership as aforesaid has control over a body corporate to which this Chapter applies—
 - (i) any employment of any director of the body corporate by the partnership shall be an employment to which this Chapter applies, and
 - (ii) all the employments of any person who is employed both by the partnership and by the body corporate (being employments by the partnership or the body corporate) shall, for the purpose of seeing whether those employments or any of them are employments to which this Chapter applies, be treated as if they were employments by the body corporate.
- (3) Subsection (2) above shall apply in relation to individuals as it applies in relation to partnerships:

Provided that nothing in this subsection shall be construed as requiring an individual to be treated in any circumstances as under the control of another person.