



# Income and Corporation Taxes Act 1988

## 1988 CHAPTER 1

### PART V

#### PROVISIONS RELATING TO THE SCHEDULE E CHARGE

#### CHAPTER I

#### SUPPLEMENTARY CHARGING PROVISIONS OF GENERAL APPLICATION

##### *Miscellaneous provisions*

#### **131 Chargeable emoluments.**

- <sup>M1</sup>(1) Tax under Case I, II or III of Schedule E shall, except as provided to the contrary by any provision of the Tax Acts, be chargeable on the full amount of the emoluments falling under that Case, subject to such deductions only as may be authorised by the Tax Acts, and the expression “emoluments” shall include all salaries, fees, wages, perquisites and profits whatsoever.
- (2) Tax under Case III of Schedule E shall be chargeable whether or not tax is chargeable in respect of the same office or employment under Case I or II of that Schedule, but shall not be chargeable on any emoluments falling under Case I or II *for the same or another chargeable period*<sup>F1</sup>.

#### **Textual Amendments**

- F1** *Words omitted by 1989 ss.42 and 187 and Sch.17 Part IV for 1989-90 and subsequent years of assessment.*

#### **Marginal Citations**

- M1** Source—1970 s.183

*Status: Point in time view as at 19/04/1996. This version of this part contains provisions that are not valid for this point in time.*

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### 132 Place of performance, and meaning of emoluments received in the U.K.

- (1) <sup>M2</sup>Where a person ordinarily performs the whole or part of the duties of his office or employment in the United Kingdom, then, for the purposes of Cases I and II of Schedule E, his emoluments for any period of absence from the office or employment shall be treated as emoluments for duties performed in the United Kingdom, except in so far as it is shown that, but for that absence, they would have been emoluments for duties performed outside the United Kingdom.
- (2) Where an office or employment is in substance one the duties of which fall in the chargeable period to be performed outside the United Kingdom, then, for the purposes of Cases I and II of Schedule E, there shall be treated as so performed any duties performed in the United Kingdom the performance of which is merely incidental to the performance of the other duties outside the United Kingdom.
- (3) <sup>M3</sup>Subsection (2) above shall not be construed as affecting any question under section 193(1) or paragraph 3 of Schedule 12 as to where any duties are performed or whether a person is absent from the United Kingdom.
- (4) <sup>M4</sup>For the purposes of Cases I and II of Schedule E, but subject to section 194(7) and paragraph 5 of Schedule 12, the following duties shall be treated as performed in the United Kingdom, namely—
  - (a) the duties of any office or employment under the Crown which is of a public nature and the emoluments of which are payable out of the public revenue of the United Kingdom or of Northern Ireland; and
  - (b) any duties which a person performs on a vessel engaged on a voyage not extending to a port outside the United Kingdom, or which a person resident in the United Kingdom performs on a vessel or aircraft engaged on a voyage or journey beginning or ending in the United Kingdom or on a part beginning or ending in the United Kingdom of any other voyage or journey.
- (5) <sup>M5</sup>For the purposes of Case III of Schedule E, emoluments shall be treated as received in the United Kingdom if they are paid, used or enjoyed in, or in any manner or form transmitted or brought to, the United Kingdom, and subsections (6) to (9) of section 65 shall apply for the purposes of this subsection as they apply for the purposes of subsection (5) of that section.

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

**C1** See S.I. 1989 No.2387, regns.3 and 4 (in Part III vol.5) private medical insurance.

#### **Marginal Citations**

**M2** Source—1970 s.184(1), (2)

**M3** Source—1970 Sch.7 9

**M4** Source—1970 s.184(3); 1977 s.31(3); 1986 s.34(7)

**M5** Source—1970 s.184(4)

### 133 Voluntary pensions.

<sup>M6</sup>(1) Where—

- (a) a person has ceased to hold any office or employment, and

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- (b) a pension or annual payment is paid to him, or to his widow or child, or to any relative or dependant of his, by the person under whom he held the office or by whom he was employed, or by the successors of that person, and
- (c) that pension or annual payment is paid otherwise than by or on behalf of a person outside the United Kingdom,

then, notwithstanding that the pension or payment is paid voluntarily or is capable of being discontinued, it shall be deemed to be income for the purposes of assessment to tax, and shall be assessed and charged under Schedule E.

- (2) For the avoidance of doubt, it is hereby declared that the expressions “annuity” and “pension” in Schedule E include respectively an annuity and a pension which is paid voluntarily or is capable of being discontinued.

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

**C2** See 1989 s.41—tax charged on amount accruing (1989-90 and subsequent years of assessment).

#### Marginal Citations

**M6** Source—1970 s.182

### 134 Workers supplied by agencies.

<sup>M7</sup>(1) Subject to the provisions of this section, where—

- (a) an individual (“the worker”) renders or is under an obligation to render personal services to another person (“the client”) and is subject to, or to the right of, supervision, direction or control as to the manner in which he renders those services; and
- (b) the worker is supplied to the client by or through a third person (“the agency”) and renders or is under an obligation to render those services under the terms of a contract between the worker and the agency (“the relevant contract”); and
- (c) remuneration receivable under or in consequence of that contract would not, apart from this section, be chargeable to income tax under Schedule E,

then, for all the purposes of the Income Tax Acts, the services which the worker renders or is under an obligation to render to the client under that contract shall be treated as if they were the duties of an office or employment held by the worker, and all remuneration receivable under or in consequence of that contract shall be treated as emoluments of that office or employment and shall be assessable to income tax under Schedule E accordingly.

- (2) Subsection (1)(b) above includes cases in which the third person is an unincorporated body of which the worker is a member.
- (3) Subsection (1) above shall apply whether or not the worker renders or is under an obligation to render the services in question as a partner in a firm or a member of an unincorporated body; and where, in any case in which that subsection applies, the worker is a partner in a firm or a member of such a body, remuneration receivable under or in consequence of the relevant contract shall be treated for all the purposes of the Income Tax Acts as income of the worker and not as income of the firm or body.
- (4) For the purposes of this section, any remuneration which the client pays or provides by reason of the worker being a person who renders or is under an obligation to render

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the services in question shall be treated as receivable in consequence of the relevant contract.

- (5) Subsection (1) above shall not apply—
- (a) if the services in question are services as an actor, singer, musician or other entertainer or as a fashion, photographic or artist’s model; or
  - (b) if the services in question are rendered wholly in the worker’s own home or at other premises which are neither under the control or management of the client nor premises at which the worker is required, by reason of the nature of the services, to render them; or
  - (c) if in rendering the services the worker is or would be a subcontractor within the meaning of section 560.
- (6) Where an individual enters into arrangements with another person with a view to the rendering of personal services by the individual, being arrangements such that, if and when he renders any such services as a result of the arrangements, those services will be treated under subsection (1) above as if they were the duties of an office or employment held by him, then for all purposes of the Income Tax Acts any remuneration receivable under or in consequence of the arrangements shall be treated as emoluments of an office or employment held by the individual and shall be assessable to income tax under Schedule E accordingly.
- (7) In this section “remuneration”, in relation to an individual, does not include anything in respect of which he would not have been chargeable to tax under Schedule E if it had been receivable in connection with an office or employment held by him but, subject to that, includes every form of payment and all perquisites, benefits and profits whatsoever.

#### **Marginal Citations**

**M7** Source—1975 (No.2) s.38(1)-(6), (8)

*Shareholdings, loans etc.*

### **135 Gains by directors and employees from share options.**

- (1) <sup>M8</sup>Subject to section 185, where a person realises a gain by the exercise, or by the assignment or release, of a right to acquire shares in a body corporate obtained by that person as a director or employee of that or any other body corporate, he shall be chargeable to tax under Schedule E on an amount equal to the amount of his gain, as computed in accordance with this section.
- (2) <sup>M9</sup>Without prejudice to section 185, where tax may by virtue of this section become chargeable in respect of any gain which may be realised by the exercise of a right which is not capable of being exercised more than seven years after it is obtained, tax shall not be chargeable under any other provision of the Tax Acts in respect of the receipt of the right.
- (3) <sup>M10</sup>Subject to section 136(4)—
  - (a) the gain realised by the exercise of any such right at any time shall be taken to be the difference between the amount that a person might reasonably expect to obtain from a sale in the open market at that time of the shares acquired

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and the amount or value of the consideration given whether for them or for the grant of the right; and

- (b) the gain realised by the assignment or release of any such right shall be taken to be the difference between the amount or value of the consideration for the assignment or release and the amount or value of the consideration given for the grant of the right;

(a just apportionment being made of any entire consideration given for the grant of the right to acquire those shares and other shares or otherwise for the grant of the right to acquire those shares and for something besides).

- (4) For the purposes of subsection (3) above, neither the consideration given for the grant of the right nor any such entire consideration as is mentioned in that subsection shall be taken to include the performance of any duties in or in connection with the office or employment by reason of which the right was granted, and no part of the amount or value of the consideration given for the grant shall be deducted more than once under that subsection.

- (5)<sup>M11</sup> Where such a right as is mentioned in subsection (1) above is obtained as mentioned therein and is capable of being exercised later than seven years after it is obtained, and the receipt of the right is chargeable to tax under any other provision of the Tax Acts, then—

- (a) the tax so charged shall be deducted from any tax which is chargeable under subsection (1) above by reference to the gain realised by the exercise, assignment or release of that right; and

- (b) for the purpose of any such charge to tax in relation to the receipt of the right, the value of the right shall be taken to be not less than the market value at the time the right is obtained—

- (i) of the shares which may be acquired by the exercise of the right, or  
(ii) of shares for which shares so acquired may be exchanged,

reduced by the amount or value (or, if variable, the least amount or value) of the consideration for which the shares may be so acquired.

- (6)<sup>M12</sup> subject to subsection (7) below, a person shall, in the case of a right granted by reason of his office or employment, be chargeable to tax under this section in respect of a gain realised by another person—

- (a) if the right was granted to that other person, or  
(b) if the other person acquired the right otherwise than by or under an assignment made by way of a bargain at arm's length, or if the two are connected persons at the time when the gain is realised,

but in a case within paragraph (b) above the gain realised shall be treated as reduced by the amount of any gain realised by a previous holder on an assignment of the right.

- (7) A person shall not be chargeable to tax by virtue of subsection (6)(b) above in respect of any gain realised by another person if the first-mentioned person was divested of the right by operation of law on his bankruptcy or otherwise, but the other person shall be chargeable to tax in respect of the gain under Case VI of Schedule D.

- (8)<sup>M13</sup> In any case where—

- (a) a person has obtained any such right to acquire shares as is mentioned in subsection (1) above (“the first right”); and

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- (b) as to any of the shares to which the first right relates, he omits or undertakes to omit to exercise the right or grants or undertakes to grant to another a right to acquire the shares or any interest in them; and
- (c) in consideration for or otherwise in connection with that omission, grant or undertaking, he receives any benefit in money or money's worth;

he shall be treated for the purposes of this section and section 136 as realising a gain by the assignment or release of the first right, so far as it relates to the shares in question, for a consideration equal to the amount or value of the benefit referred to in paragraph (c) above.

- (9) Where subsection (8) above has had effect on any occasion, nothing in that subsection affects the application of this section in relation to a gain realised on a subsequent occasion, except that on that subsequent occasion so much of the consideration given for the grant of the first right as was deducted on the first occasion shall not be deducted again.

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

- C3** S. 135 applied (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), **ss.120**, 289 (with **ss. 60, 101(1), 171, 201(3)**).

#### **Marginal Citations**

- M8** Source—1970 s.186(1); 1984 s.38  
**M9** Source—1970 s.186(2); 1972 s.77(1); 1984 s.38  
**M10** Source—1970 s.186(3)  
**M11** Source—1972 s.77(1)-(3)  
**M12** Source—1970 s.186(4), (5)  
**M13** Source—1970 s.186(5A), (5B); 1986 s.26(1)

### **136 Provisions supplementary to section 135.**

- (1) <sup>M14</sup>If a right to acquire shares in a body corporate is assigned or released in whole or in part for a consideration which consists of or comprises another right to acquire shares in that or any other body corporate, that other right shall not be treated as consideration for the assignment or release, but section 135 and this section shall apply in relation to it as they apply in relation to the right assigned or released and as if the consideration for its acquisition—
  - (a) did not include the value of the right assigned or released, but
  - (b) did include the amount or value of the consideration given for the grant of the right assigned or released so far as that has not been offset by any valuable consideration for the assignment or release other than the consideration consisting of the other right.
- (2) <sup>M15</sup>If—
  - (a) as a result of two or more transactions a person ceases to hold a right to acquire shares in a body corporate and he or a connected person comes to hold another right to acquire shares in that or any other body corporate (whether or not acquired from the person to whom the other right was assigned), and
  - (b) any of those transactions was effected under arrangements to which two or more persons holding rights in respect of which tax may be chargeable under this section were parties,

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those transactions shall be treated for the purposes of subsection (1) above as a single transaction whereby the one right is assigned for a consideration which consists of or comprises the other right.

(3) Subsection (2) above applies in relation to two or more transactions whether they involve an assignment preceding, coinciding with or subsequent to an acquisition.

(4) In the case of a right to acquire shares granted before 3rd May 1966—

- (a) the amount of the gain realised at any time by the exercise, or by the assignment or release, of the right shall not exceed the difference between the market value of those shares at that time and their market value on 3rd May 1966 (and no gain shall be treated as so realised unless the later value exceeds the earlier value); and
- (b) subsection (2) of section 135 shall not affect tax chargeable under Case I of Schedule E in respect of the receipt of the right, but the amount, if any, on which tax is so chargeable shall be taken into account under subsection (3)(a) and (b) of that section in relation to the gain realised by the exercise or by the assignment or release, of the right as if that amount formed part (in addition to any other amount) of the consideration for the grant of the right.

(5) For the purposes of this section and section 135—

- (a) references to the release of a right include references to agreeing to the restriction of the exercise of the right;
- (b) “director” means—
  - (i) in relation to a body corporate the affairs of which are managed by a board of directors or similar body, a member of that board or similar body;
  - (ii) in relation to a body corporate the affairs of which are managed by a single director or similar person, that director or person;
  - (iii) in relation to a body corporate the affairs of which are managed by the members themselves, a member of the body corporate;
 and includes any person who is to be or has been a director;
- (c) <sup>M16</sup> “employee”, in relation to a body corporate, includes any person taking part in the management of the affairs of the body corporate who is not a director, and includes a person who is to be or has been an employee; and
- (d) <sup>M17</sup> in so far as the context permits, “shares” includes stock;

and this section and section 135 shall apply in relation to any securities issued by a body corporate as they apply to shares in that body corporate.

(6) <sup>M18</sup> Where in any year of assessment a body corporate grants a right in respect of which tax may become chargeable under section 135, or allots or transfers any shares in pursuance of such a right, or receives notice of the assignment of such a right or provides any benefit in money or money’s worth—

- (a) for the assignment or for the release in whole or in part of such a right; or
- (b) for or in connection with an omission or undertaking to omit to exercise such a right; or
- (c) for or in connection with the grant or undertaking to grant a right to acquire shares or an interest in shares to which such a right relates;

it shall deliver particulars thereof in writing to the inspector not later than 30 days after the end of that year.

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#### **Marginal Citations**

- M14** Source—1970 s.186(6)
- M15** Source—1970 s.186(7)
- M16** Source—1970 ss.186(10)(c), 224(1)
- M17** Source—1970 s.186(10)(d)
- M18** Source—1970 s.186(11); 1986 s.26(2)

### **137 Payment of tax under section 135 by instalments.**

<sup>M19</sup>(1) In any case where—

- (a) for any year of assessment a person is chargeable to tax under Schedule E, by virtue of section 135, on an amount equal to a gain realised by the exercise of a right to acquire shares which was obtained before 6th April 1984; and
  - (b) the shares acquired in the exercise of that right were acquired for a consideration which, subject to subsection (2) below, was not less than the market value (determined as for the purposes of the [F<sup>2</sup>1992] Act) of shares of the same class at the time the right was granted or, if the right was granted before 6th April 1982, 90 per cent. of that market value; and
  - (c) following an assessment for the year in which that right was exercised (“the relevant year”) an amount of tax chargeable by virtue of section 135 in respect of the amount referred to in paragraph (a) above and exceeding £250 is payable to the collector pursuant to regulations under section 203; and
  - (d) the person concerned makes an election in accordance with subsection (3) below, he shall be entitled to pay tax by instalments in accordance with subsection (4) below.
- (2) Shares which are acquired for a consideration less than that required by paragraph (b) of subsection (1) above by reason only of a diminution in the market value of shares of that class (determined as for the purposes of the [F<sup>2</sup>1992] Act) which is attributable solely to the share capital of the company issuing the shares being varied after the right to acquire the shares was granted, shall for the purposes of that paragraph be regarded as having been acquired for a consideration not less than that required by that paragraph.
- (3) An election under this section shall be made by notice to the inspector before the expiry of the period of 60 days beginning immediately after the end of the relevant year.
- (4) Where an election has been made under this section the tax referred to in subsection (1) (c) above shall, subject to subsection (5) and (6) below, be paid in five equal instalments as follows—
- (a) the first shall be due and payable at the expiry of the period of 14 days beginning on the date on which application for the tax is made pursuant to regulations under section 203;
  - (b) the fifth shall be due and payable on the last day of the fifth year following the end of the relevant year; and
  - (c) the second, third and fourth instalments shall be due on such dates as will secure, so far as may be, that the interval between any two consecutive dates is the same.
- (5) In any case where the date which, apart from this subsection, would be the due date for the fifth instalment of tax under subsection (4) above is earlier than the due date



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referred to in paragraph (a) of that subsection, all five instalments shall be due on the later date.

- (6) Tax which, by virtue of an election under this section, is not yet due and payable in accordance with subsection (4) above may nevertheless be paid at any time and shall become due and payable forthwith if the person who made the election becomes bankrupt under the law of any part of the United Kingdom.
- (7) Subject to any other provision of the Income Tax Acts requiring income of any description to be treated as the highest part of a person's income, for the purposes of paragraph (c) of subsection (1) above in determining what tax is chargeable on a person by virtue of section 135 in respect of the amount referred to in paragraph (a) of that subsection, that amount shall be treated as the highest part of his income for the relevant year.

#### Textual Amendments

- F2** Words in s. 137(1)(b)(2) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289, 290, **Sch. 10 para. 14(9)** (with ss. 60, 101(1), 171, 201(3)).

#### Marginal Citations

- M19** Source—1982 s.40; 1984 s.39(7), (8)

### 138 Share acquisitions by directors and employees.

- (1) *Subject to section 185 and the following provisions of this section, where a person has acquired or acquires shares or an interest in shares in a body corporate in pursuance of a right conferred on him or opportunity offered to him as a director or employee of that or any other body corporate, and not in pursuance of an offer to the public—*
- (a) <sup>M20</sup> *if the market value of the shares at the end of the period mentioned in subsection (9) below exceeds their market value at the time of the acquisition, he shall be chargeable to tax under Schedule E for the year of assessment in which that period ends on an amount equal, except as provided by subsection (8) below, to the excess (or, if his interest is less than the full beneficial ownership, such part of that amount as corresponds to his interest);*
- (b) <sup>M21</sup> *if he receives, by virtue of his ownership of or interest in the shares, any benefit not received by the majority of persons who—*
- (i) *hold shares forming part of the ordinary share capital of the same body corporate; and*
- (ii) *have acquired the shares otherwise than as mentioned above;*
- and the benefit is not otherwise chargeable to income tax, he shall be chargeable to tax under Schedule E for the year of assessment in which he receives the benefit on an amount equal to the value of the benefit; and any amount chargeable under this subsection shall be treated as earned income, whether or not it would otherwise fall to be so treated.*
- (2) *Subsection (1) above does not apply if the acquisition—*
- (a) <sup>M22</sup> *was made in pursuance of arrangements under which employees of a body corporate receive as part of their emoluments shares or interests in shares in that body or in a body controlling it to an extent determined in advance by reference to the profits of either body; and*

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- (b) <sup>M23</sup> where the arrangements were made or modified after 22nd March 1973, was of shares or an interest in shares which satisfy the conditions set out in subsection (4)(a) below and the arrangements satisfy the condition set out in subsection (4)(b) below.
- (3) Subsection (1)(a) above does not apply if—
- (a) <sup>M24</sup> the acquisition was an acquisition of shares in a body and either of the following conditions was satisfied immediately after the acquisition, namely—
- (i) that the shares were not subject to such restrictions as are specified in subsection (6) below, and were not exchangeable for shares subject to such restrictions, and the majority of the available shares of the same class was acquired otherwise than as mentioned in subsection (1) above; or
  - (ii) that the shares were not subject to such restrictions as are specified in paragraph (a) or (b) of subsection (6) below and were not exchangeable for shares subject to such restrictions, and the majority of the available shares of the same class was acquired by persons who were or had been employees or directors of, or of a body controlled by, that body and who were together able as holders of the shares to control that body; or
- (b) <sup>M25</sup> the acquisition was an acquisition after 5th April 1984 of an interest in shares which consists of units in an authorised unit trust and—
- (i) prior to the acquisition the unit trust was approved by the Board for the purposes of this section and, at the time of the acquisition, continues to be so approved, and
  - (ii) the condition set out in subsection (7) below is fulfilled with respect to the body corporate (in that subsection referred to as “the relevant company”) directorship of or employment by which gave rise to the right or opportunity by virtue of which the acquisition was made; or
- (c) <sup>M26</sup> the acquisition took place before 6th April 1981.
- (4) The conditions referred to in subsection (2)(b) above are as follows—
- (a) <sup>M27</sup> that the shares—
- (i) are not subject to such restrictions as will or may result in the person acquiring the shares or an interest in the shares obtaining a benefit through an increase, subsequent to the acquisition, of the value or the value to him of the shares or interest; and
  - (ii) cannot (whether by one transaction or a series of transactions) be exchanged for or converted into shares which are subject to such restrictions; and
  - (iii) are either shares of a class quoted on a recognised stock exchange or are shares in a company which is not under the control of another company;
- (b) <sup>M28</sup> that the arrangements allow every full-time employee of the company concerned who—
- (i) has been a full-time employee of that company for a continuous period of not less than five years, and
  - (ii) is chargeable to tax in respect of his employment under Case I of Schedule E, and
  - (iii) is not less than 25 years old,

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*to acquire shares or interests in shares of the same class on similar terms.*

- (5) <sup>M29</sup>For the purposes of subsection (3)(a)above—
- (a) *shares in a body are available shares if they are not held by or for the benefit of an associated company of that body; and*
  - (b) *shares are exchangeable for other shares if (whether by one transaction or a series of transactions) they can be exchanged for or converted into the other shares.*
- (6) <sup>M30</sup>The restrictions referred to in subsection (3)(a)above are—
- (a) *restrictions not attaching to all shares of the same class; or*
  - (b) *restrictions ceasing or liable to cease at some time after the acquisition; or*
  - (c) *restrictions depending on the shares being or ceasing to be held by directors or employees of any body corporate (other than such restrictions imposed by a company's articles of association as require shares to be disposed of on ceasing to be so held).*
- (7) <sup>M31</sup>The condition referred to in subsection (3)(b)above is fulfilled with respect to the relevant company if, for no continuous period of one month or more, throughout which any director or employee of the relevant company either—
- (a) *has, by virtue of his office or employment, any such right or opportunity as is referred to in subsection (1)above to acquire units in the unit trust, or*
  - (b) *retains any beneficial interest in any units in the unit trust which he acquired in pursuance of such a right or opportunity,*
- do investments in the relevant company and in any other company in relation to which the relevant company is an associated company make up more than 10per cent. by value of the investments subject to the trusts of the unit trust.*
- (8) <sup>M32</sup>The amount on which or on part of which the person making the acquisition is chargeable to tax under subsection (1)(a)above (“the chargeable amount”)shall, in the following cases, be reduced as follows, that is to say—
- (a) *where, in accordance with the terms on which the acquisition of the shares was made, the consideration for the acquisition is subsequently increased, the chargeable amount shall be reduced by an amount equal to the increase; and*
  - (b) *where, in accordance with those terms, the shares are subsequently disposed of for a consideration which is less than their market value at the time of the disposal, the chargeable amount shall be reduced so as to be equal to the excess of that consideration over the market value of the shares at the time of the acquisition;*
- and similarly where the interest acquired is less than the full beneficial ownership, and such assessments, alterations of assessments or repayments of tax shall be made as may be necessary to give effect to the reduction.*
- (9) The period referred to in subsection (1)(a)above is a period ending at the earliest of the following times—
- (a) *the expiration of seven years from the acquisition of the shares or interest in the shares;*
  - (b) *the time when the person making the acquisition ceases to have any beneficial interest in the shares;*
  - (c) *in relation only to a person who acquires shares, the time when by reason of their ceasing to be subject to such restrictions as are specified in subsection*

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(6)above either of the conditions in subsection (3)(a)above would be satisfied in relation to the shares if they had been acquired at that time;

and for the purposes of subsection (1)(a)and paragraph (b)above a person whose beneficial interest in shares is reduced shall be treated as ceasing to have an interest in such part of the shares as is proportionate to the reduction.

(10)<sup>M33</sup>Subsection (11)below applies where—

- (a) a person has acquired shares or an interest in shares as mentioned in subsection (1)above (and the shares which he acquires or in which he acquires an interest are in sub-paragraphs (b)and (c)and subsection (11)below referred to as “the original shares”);and
- (b) the circumstances of his acquisition of the original shares are such that the application of subsection (1)(a)above is not excluded; and
- (c) after 18th March 1986by virtue of his holding of the original shares or the interest in them he acquires (whether or not for consideration)additional shares or an interest in additional shares (and the shares which he so acquires or in which he so acquires an interest are in subsection (11)below referred to as “the additional shares”).

(11) Where this subsection applies—

- (a) the additional shares or, as the case may be, the interest in them shall be treated as having been acquired as mentioned in subsection (1)above and in circumstances falling within subsection (10)(b)above and, for the purposes of subsection (9)(a)above, as having been acquired at the same time as the original shares or the interest in them;
- (b) for the purposes of subsections (1)(a)and (8)above, the additional shares and the original shares shall be treated as one holding of shares and the market value of the shares comprised in that holding at any time shall be determined accordingly (the market value of the original shares at the time of acquisition being attributed proportionately to all the shares in the holding); and
- (c) for the purposes of those subsections, any consideration given for the acquisition of the additional shares or the interest in them shall be taken to be an increase falling within subsection (8)(a)above in the consideration for the original shares or the interest in them.

(12)<sup>M34</sup>Subsection (1)(b)above does not apply where the benefit is received by virtue of a person’s ownership of or of an interest in shares which were acquired before 6th April 1972<sup>F3</sup>.

#### Textual Amendments

**F3** Ss. 138, 139 repealed by Finance Act 1988 (c. 39) ss. 88, 148, Sch.14 Part VI in respect of shares issued on or after 26 October 1987, subject to transitional arrangements.

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

**C4** S. 138 applied (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss.120, 289 (with ss. 60, 101(1), 171, 201(3)).

#### Marginal Citations

**M20** Source—1972 s.79(1), (4)

**M21** Source—1972 c.79(1), (7)

**M22** Source—1972 s.79(2)(b), (3)(b), (8)

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- M23** Source—1973 Sch.8 1  
**M24** Source—1972 s.79(2)(c); 1973 Sch.8 4(1)(a)  
**M25** Source—1972 s.79(2)(bb); 1984 s.40(1)  
**M26** Source—1972 s.79(6)  
**M27** Source—1973 Sch.8 1(b), 3; 1974 s.20(2)  
**M28** Source—1973 Sch.8 2  
**M29** Source—1972 s.79(2)(c); 1973 Sch.8 4(1)(a)  
**M30** Source—1972 s.79(2A); 1973 Sch.8 4(1)(b)  
**M31** Source—1972 s.79(2B); 1984 s.40(2)  
**M32** Source—1972 s.79(5), (6); 1973 Sch.8 4(1)(c); 1986 s.26(4)  
**M33** Source—1972 s.79(5A), (5B); 1986 s.26(3), (6)  
**M34** Source—1972 s.79(3)(a); 1974 s.20(1)(b)

#### **F<sup>4</sup>139 Provisions supplementary to section 138.**

- (1) <sup>M35</sup>Where—
- (a) a director or employee of a body corporate acquires shares in pursuance of an opportunity to acquire shares of that class offered to directors and employees of the body in their capacity as such (“the discount offer”); and
  - (b) the discount offer is made in conjunction with an offer to the public (“the main offer”) under which shares of the same class may be acquired on the same terms, except that a discount in price is offered to directors and employees; and
  - (c) the director or employee is chargeable to tax under Schedule E on an amount equal to the discount in the price of the shares acquired by him; and
  - (d) at least 75 per cent. of the aggregate number of shares of the class in question which are acquired in pursuance of the discount offer and the main offer taken together are shares acquired in pursuance of the main offer;
- he shall be treated for the purposes of section 138(1) as acquiring the shares in pursuance of an offer to the public.
- (2) Where a director or employee acquires an interest in shares, subsection (1) above shall apply as if the references in that subsection to the acquisition of shares were references to the acquisition of an interest in shares.
- (3) <sup>M36</sup>For the purposes of section 138 and this section, where a person acquires any shares or an interest in shares in a body corporate in pursuance of a right conferred on him or opportunity offered to him as a person connected with a director or employee of that or any other body corporate, the shares or interest shall be deemed to be acquired by the director or employee, and section 32A(4) of the 1979 Act shall apply with the necessary modifications; and where that person receives a benefit as mentioned in section 138(1) (b) the benefit shall be deemed to be received by the director or employee.
- (4) For the purposes of section 138, a person who disposes of shares or an interest in shares otherwise than by a bargain at arm’s length with a person who is not connected with him shall be deemed not to cease to have a beneficial interest in the shares.
- (5) <sup>M37</sup>Where in any year of assessment a person acquires shares or an interest in shares as mentioned in section 138(1) (disregarding subsections (1) and (2) above), the body from which the shares are or the interest is acquired shall deliver to the inspector within 30 days of the end of that year particulars in writing of the shares and the acquisition.

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- (6) <sup>M38</sup> *The Board may by notice require the managers or trustees of any unit trust scheme which is an authorised unit trust approved by the Board for the purposes of section 138 to furnish to the Board within such time as they may direct (but not being less than 30 days) such information as the Board think necessary for the purposes of enabling them to determine—*
- (a) *whether the condition in subsection (7) of that section is being or has at any time been fulfilled; and*
  - (b) *the liability to tax of any unit holder whose rights were acquired as mentioned in subsection (1) of that section.*

- (7) <sup>M39</sup> *Subject to subsection (9) below, in determining for the purposes of section 138 (including any valuation made for those purposes) whether shares which, or interests in which, have been acquired or are or are to be acquired by any person are subject to any restrictions, there shall be regarded as a restriction attaching to the shares any contract, agreement, arrangement or condition by which his freedom to dispose of the shares or any interest in them or to exercise any right conferred by them is restricted or by which such a disposal or exercise may result in any disadvantages to him or a person connected with him, except where the restriction is imposed as a condition of a loan which is not a related loan as defined by subsection (8) below.*

*This subsection does not apply where the person acquired the shares before 19th October 1972.*

- (8) *A loan made to any person is a related loan for the purposes of subsection (7) above if—*
- (a) *it is made, arranged, guaranteed or in any way facilitated by—*
    - (i) *the body corporate of which he is a director or employee, or*
    - (ii) *an associated company of that body, or*
    - (iii) *if that body or an associated company of it is a close company, any person having a material interest in the close company; or*
  - (b) *it is made to a person connected with another person and would have been such a loan if it had been made to that other person;*

*but a loan made by the body corporate, associated company or person mentioned in paragraph (a) above is not a related loan if that body, company or person carries on a business of making personal loans and the loan is made in the ordinary course of that business.*

- (9) *For the purposes of section 138(3)(a), shares acquired by any person shall not, by virtue of subsection (7) above, be regarded as subject to any restriction by reason only of any contract, agreement, arrangement or condition providing for the disposal of the shares, when that person ceases to hold the office or employment by virtue of which he acquired the shares, to a person nominated in accordance with the contract, agreement, arrangement or condition if he is required to dispose of them at a price not exceeding their market value.*

- (10) <sup>M40</sup> *Any reference in subsection (7) above to a contract, agreement, arrangement or condition does not include a reference to so much of any contract, agreement, arrangement or condition as contains provisions similar in purpose and effect to any of the provisions of the Model Rules set out in the Model Code for Securities Transactions by Directors of Listed Companies issued by the Stock Exchange in November 1984.*

- (11) *In section 138 and this section—* <sup>M41</sup>  
*“associated company” has the meaning given by section 416;*

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“control” has the meaning given by section 840;  
“director” includes a person who is to be a director;  
“employee” includes a person who is to be an employee;  
“full-time”, in relation to an employee, means required to devote substantially the whole of his time to service as an employee;  
“shares” includes stock and securities and references to an interest in any shares include references to the proceeds of sale of part of the shares; and  
“units”, in relation to an authorised unit trust, means an entitlement to a share in the investments subject to that trust.

- (12) For the purposes of section 138 and this section, section 168(11) shall apply for determining whether a person has a material interest in a company, but with the omission of the words following “417(3)”.
- (13) <sup>M42</sup> If, on a person ceasing to have a beneficial interest in any shares, he acquires, after 18th March 1986, other shares or an interest in other shares and the circumstances are such that, for the purposes of sections 78 to 81 of the 1979 Act (reorganisations etc.) the shares in which he ceases to have a beneficial interest constitute original shares and the other shares constitute a new holding—
- (a) section 78 of that Act (which equates the original shares with the new holding) shall apply for the purposes of this section and section 138;
  - (b) if any such consideration is given for the new holding as is mentioned in section 79(1) of that Act, it shall be treated for the purposes of this section and section 138 as an increase falling within section 138(8)(a) in the consideration for the shares; and
  - (c) if any such consideration is received for the disposal of the original shares as is mentioned in section 79(2) of the 1979 Act—
    - (i) the consideration shall be apportioned among the shares comprised in the new holding, and
    - (ii) the amount which, apart from this paragraph, would at any subsequent time be the market value of any of those shares shall be taken to be increased by the amount of the consideration apportioned to them;

and in paragraphs (a) to (c) above “the original shares” shall be construed in accordance with sections 78 to 81 of the 1979 Act.
- (14) <sup>M43</sup> In any case where section 138(1) applies and the acquisition was an acquisition of units in an authorised unit trust—
- (a) any reference in section 138(1)(a), (8) or (9) or subsection (4) above or section <sup>F5</sup> 120(4) of the 1992 Act to shares shall be construed as references to units; and
  - (b) any reference in those provisions to an interest in shares shall be omitted .

#### Textual Amendments

- F4** Ss. 138, 139 repealed by Finance Act 1988 (c. 39), ss. 88, 148, Sch. 14 Part VI in respect of shares issued on or after 26 October 1987, subject to transitional arrangements.
- F5** Words in s. 139(14) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, Sch. 10 para. 14(10) (with ss. 60, 101(1), 171, 201(3)).

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

- C5** Ss. 138-140 continued for specified purposes (6.4.2003 with effect in accordance with s. 723(1) of the affecting Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\), s. 418\(4\)](#) (and as that affecting section 418 is 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\(1\)](#))

#### **Marginal Citations**

- M35** Source—1972 s.79(1A), (1B); 1984 s.41(1)  
**M36** Source—1972 s.79(10), (11)  
**M37** Source—1972 Sch.12 3; 1984 s.41(2)  
**M38** Source—1972 Sch.12 3A; 1984 s.40(4)  
**M39** Source—1973 Sch.8 5-7; 1982 s.41  
**M40** Source—1982 s.41; 1986 s.23(4)  
**M41** Source—1973 Sch.8 35; 1972 Sch.12 6, 8  
**M42** Source—1972 s.79(6A); 1986 s.26(5)  
**M43** Source—1972 s.79(4A); 1984 s.40(3)

### **140 Further interpretation of sections 135 to 139.**

<sup>M44</sup>(1) For the purposes of section 135, 136, 138 or 139, a right to acquire shares is obtained by a person as a director or employee (within the meaning of the section in question) of a body corporate—

- (a) if it is granted to him by reason of his office or employment as such a director or employee who is chargeable to tax in respect of that office or employment under Case I of Schedule E; or
- (b) if the right is assigned to him and was granted by reason of any such office or employment of his to some other person;

and paragraph (a) above shall apply to a right granted by reason of a person's office or employment after he has ceased to hold it if it would apply to a right so granted in the last chargeable period in which he did hold it.

(2) <sup>M45</sup>For those purposes any question whether a person is connected with another shall be determined in accordance with section 839.

(3) <sup>M46</sup>For those purposes—

“market value” has the same meaning as, for the purposes of the [<sup>F6</sup>1992] Act, it has by virtue of section [<sup>F6</sup>272] of that Act; and  
“securities” has the meaning given by section 254(1).

#### **Textual Amendments**

- F6** Words in [s. 140\(3\)](#) substituted (6.3.1992 with effect as mentioned in [s. 289\(1\)\(2\)](#) of the amending Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\), ss. 289, 290, Sch. 10 para. 14\(11\)](#) (with [ss. 60, 101\(1\), 171, 201\(3\)](#)).

#### **Marginal Citations**

- M44** Source—1970 s.186(9); 1972 Sch.12 7  
**M45** Source—1970 s.186(10)(b); 1972 Sch.12 9  
**M46** Source—1972 s.77(3), 79(12), Sch.12 6; 1970 s.186(10)



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VALID FROM 31/07/1998

### [<sup>F7</sup>140A Conditional acquisition of shares.

- (1) This section applies where—
  - (a) a beneficial interest in any shares in a company (“the employee's interest”) is acquired by any person (“the employee”) as a director or employee of that or another company; and
  - (b) the employee acquires that interest on terms that make his interest in the shares only conditional.
- (2) If the terms on which the employee acquires the employee’s interest are such that his interest in the shares in question will or might continue to be only conditional until a time more than five years after his acquisition of the interest, tax shall be chargeable under Schedule E in respect of that interest on the basis that it is emoluments of the office or employment concerned.
- (3) In any other case, there shall (subject to the following provisions of this section) be no tax chargeable on the employee under Schedule E in respect of his acquisition of the interest except any tax which is so chargeable by virtue only of section 135 or 162.
- (4) If, in a case falling within subsection (2) or (3) above—
  - (a) the shares cease, without the employee ceasing to have a beneficial interest in them, to be shares in which the employee’s interest is only conditional, or
  - (b) the employee, not having become chargeable by virtue of this subsection in relation to the shares, sells or otherwise disposes of the employee’s interest or any other beneficial interest in them,
 he shall, for the year of assessment in which they so cease, or in which the sale or other disposal takes place, be chargeable to tax under Schedule E on the amount specified in subsection (5) below.
- (5) That amount is the amount (if any) by which the sum of the deductible amounts is exceeded by the market value of the employee’s interest immediately after that interest ceases to be only conditional or, as the case may be, at the time of the sale or other disposal.
- (6) For the purposes of subsection (5) above the market value of the employee’s interest at any time is the amount that might reasonably be expected to be obtained from a sale of that interest in the open market at that time.
- (7) For those purposes the deductible amounts are—
  - (a) the amount or value of the consideration given for the employee’s interest;
  - (b) any amounts on which the employee has become chargeable to tax under Schedule E in respect of his acquisition of the employee’s interest;
  - (c) any amounts on which the employee has, by reference to an event occurring not later than the time of the event by virtue of which a charge arises under this section, become chargeable to tax in respect of the shares under section 78 or 79 of the <sup>M47</sup>Finance Act 1988 (unapproved employee share schemes).
- (8) Where the employee dies holding the employee’s interest this section shall have effect—

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- (a) as if he had disposed of that interest immediately before his death; and
- (b) as if the market value of the interest at the time of that disposal were to be determined for the purposes of subsection (5) above on the basis-
  - (i) that it is known that the disposal is being made immediately before the employee's death; and
  - (ii) that any restriction on disposal subject to which the employee holds the shares is to be disregarded in so far as it is a restriction terminating on his death.
- (9) Any reference in this section or section 140B or 140C to shares in a company includes a reference to securities issued by a company; and the references in subsection (7) (c) above to an event include references to the expiry of a period.]

#### Textual Amendments

**F7** Ss. 140A-140C inserted (with application in accordance with s. 50(4) of the amending Act) by Finance Act 1998 (c. 36), s. 50(1)

#### Marginal Citations

**M47** 1988 c. 39.

VALID FROM 31/07/1998

#### [<sup>F7</sup>140B Consideration for shares conditionally acquired.

- (1) This section applies in relation to any shares for determining the amount or value of the consideration referred to in section 140A(7)(a).
- (2) Subject to the following provisions of this section, that consideration is any given by—
  - (a) the employee; or
  - (b) in a case where section 140H(1)(b) applies and the shares were acquired by another person, that other person,
 in respect of the acquisition of an interest in the shares.
- (3) The amount or value of the consideration given by any person for an interest in the shares shall include—
  - (a) the amount or value of any consideration given for a right to acquire those shares; and
  - (b) the amount or value of any consideration given for anything by virtue of which the employee's interest in the shares ceases to be only conditional.
- (4) Where 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 shall be determined on a just and reasonable apportionment.
- (5) The consideration which for the purposes of this section is taken to be given wholly or partly for anything shall not include the performance of any duties of or in connection with the office or employment by reference to which the interest in the shares in question has been acquired by a person as a director or employee of a company.

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- (6) No amount shall be counted more than once in the computation of the amount or value of any consideration.
- (7) Subsections (1) to (3) of section 136 shall apply for determining for the purposes of subsection (3)(a) above the amount or value of the consideration given for a right to acquire any shares as they apply for determining such an amount for the purposes of section 135.]

### Textual Amendments

- F7** Ss. 140A-140C inserted (with application in accordance with s. 50(4) of the amending Act) by Finance Act 1998 (c. 36), s. 50(1)

VALID FROM 31/07/1998

### [<sup>F7</sup>140C Cases where interest to be treated as only conditional.

- (1) For the purposes of sections 140A and 140B (but subject to the following provisions of this section) a beneficial interest in shares is only conditional for so long as the terms on which the person with that interest is entitled to it—
- provide that, if certain circumstances arise, or do not arise, there will be a transfer, reversion or forfeiture as a result of which that person will cease to be entitled to any beneficial interest in the shares; and
  - are not such that, on the transfer, reversion or forfeiture, that person will be entitled in respect of his interest to receive an amount equal to or more than the amount that might reasonably be expected (if there were no provision for transfer, reversion or forfeiture) to be obtained from a sale of that interest in the open market at that time.

[ A person shall not for the purposes of sections 140A and 140B be taken, in relation to

<sup>F8</sup>(1A) any shares in a company or any security, to have an interest which is only conditional by reason only that one or more of subsections (2) to (4) below applies in relation to him.]

- (2) [<sup>F9</sup>This subsection applies in relation to a person if], in a case where there is no restriction on the meeting of calls by that person, the shares—
- are unpaid or partly paid; and
  - may be forfeited for non-payment of calls.
- (3) [<sup>F10</sup>This subsection applies in relation to a person if] the articles of association of the company require him to offer the shares for sale [<sup>F11</sup>or transfer them][<sup>F12</sup>if he ceases to be an officer or employee of the company or of one or more group companies or of any group company.]

[ This subsection applies in relation to a person if he may be required to offer the

<sup>F13</sup>(3A) shares for sale or transfer them, if, as a result of misconduct, he ceases to be an officer or employee of the company or of one or more group companies or of any group company.]

- (4) [<sup>F14</sup>This subsection applies in relation to a person if] the security may be redeemed on payment of any amount.

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(5) In subsection (1) above the references, in relation to the terms of a person's entitlement, to circumstances arising include references—

- (a) to the expiration of a period specified in or determined under those terms or the death of that person or any other person; and
- (b) to the exercise by any person of any power conferred on him by or under those terms.

[ For the purposes of this section—

- <sup>F15</sup>(6) (a) a company is a “group company” in relation to another company if they are members of the same group, and
- (b) companies are taken to be members of the same group if, and only if, one is a 51 per cent. subsidiary of the other or both are 51 per cent. subsidiaries of a third company.]]

#### Textual Amendments

- F7** Ss. 140A-140C inserted (with application in accordance with s. 50(4) of the amending Act) by Finance Act 1998 (c. 36), s. 50(1)
- F8** S. 140C(1A) inserted (retrospectively) by Finance Act 1999 (c. 16), s. 43(2)(7)
- F9** Words in s. 140C(2) substituted (retrospectively) by Finance Act 1999 (c. 16), s. 43(3)(7)
- F10** Words in s. 140C(3) substituted (retrospectively) by Finance Act 1999 (c. 16), s. 43(3)(7)
- F11** Words in s. 140C(3) inserted (retrospectively) by Finance Act 1999 (c. 16), s. 43(4)(a)(7)
- F12** Words in s. 140C(3) substituted (retrospectively) by Finance Act 1999 (c. 16), s. 43(4)(b)(7)
- F13** S. 140C(3A) inserted (retrospectively) by Finance Act 1999 (c. 16), s. 43(5)(7)
- F14** Words in s. 140C(4) substituted (retrospectively) by Finance Act 1999 (c. 16), s. 43(3)(7)
- F15** S. 140C(6) added (retrospectively) by Finance Act 1999 (c. 16), s. 43(6)(7)

VALID FROM 31/07/1998

#### <sup>F16</sup>140D Convertible shares.

- (1) This section applies where a person (“the employee”) has acquired convertible shares in a company as a director or employee of that or another company.
- (2) For the purposes of this section shares are convertible wherever they—
  - (a) confer on the holder an immediate or conditional entitlement to convert them into shares of a different class; or
  - (b) are held on terms that authorise or require the grant of such an entitlement to the holder if certain circumstances arise, or do not arise.
- (3) The employee shall be chargeable to tax under Schedule E if, at a time when he has a beneficial interest in them, the shares are converted into shares of a different class in pursuance of any entitlement to convert them that has been conferred on the holder.
- (4) A charge by virtue of this section shall be a charge for the year of assessment in which the conversion occurs on the amount of the gain from the conversion.
- (5) The amount of the gain from the conversion is the amount (if any) by which the market value at the time of the conversion of the shares into which the convertible shares are converted exceeds the sum of the deductible amounts.

**Status:** Point in time view as at 19/04/1996. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** Income and Corporation Taxes Act 1988, PART V is up to date with all changes known to be in force on or before 30 May 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)

- (6) The deductible amounts are—
- (a) the amount or value of any consideration given for the convertible shares;
  - (b) the amount or value of any consideration given for the conversion in question;
  - (c) any amounts on which the employee has become chargeable to tax under Schedule E in respect of his acquisition of those shares;
  - (d) any amounts on which the employee has, by reference to an event occurring not later than the time of the conversion, become chargeable to tax in respect of the shares under section 78 or 79 of the <sup>M48</sup>Finance Act 1988 (unapproved employee share schemes);
  - (e) if the convertible shares were acquired through a series of conversions each of which was a taxable conversion, the amount of the gain from each conversion, so far as not falling within paragraph (c) above.
- (7) In subsection (6) above the reference to a taxable conversion is a reference to any conversion which—
- (a) gave rise to a gain on which the employee was chargeable to tax by virtue of this section, or
  - (b) would have given rise to such a gain but for the fact that the market value of the shares at the time of the conversion did not exceed the sum of the deductible amounts.
- (8) Tax shall not be chargeable by virtue of this section if—
- (a) the conversion is a conversion of shares of one class only (“the original class”) into shares of one other class only (“the new class”);
  - (b) all shares of the original class are converted into shares of the new class; and
  - (c) one of the conditions in subsection (9) below is fulfilled.
- (9) The conditions referred to in subsection (8) above are—
- (a) that immediately before the conversion the majority of the company’s shares of the original class are held otherwise than by or for the benefit of—
    - (i) directors or employees of the company;
    - (ii) an associated company of the company; or
    - (iii) directors or employees of such an associated company;
 and
  - (b) that immediately before the conversion the company is employee-controlled by virtue of holdings of shares of the original class.
- (10) Tax shall not be chargeable by virtue of this section where the interest which the employee acquires in the shares into which the convertible shares are converted is an interest which (within the meaning given for the purposes of section 140A by section 140C) is only conditional.]

#### Textual Amendments

**F16** Ss. 140D-140F inserted (with application in accordance with s. 51(3) of the amending Act) by Finance Act 1998 (c. 36), s. 51(1)

*Status: Point in time view as at 19/04/1996. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: Income and Corporation Taxes Act 1988, PART V is up to date with all changes known to be in force on or before 30 May 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)*

### Marginal Citations

**M48** 1988 c. 39.

VALID FROM 31/07/1998

### [<sup>F16</sup>140E Consideration for convertible shares.

- (1) This section applies in relation to any shares for determining the amount or value of the consideration referred to in section 140D(6)(a) or (b).
- (2) Subject to the following provisions of this section, the consideration referred to in section 140D(6)(a) is any consideration given by—
  - (a) the employee; or
  - (b) in a case where section 140H(1)(b) applies and the shares were acquired by another person, that other person,
 in respect of the acquisition of the shares.
- (3) The amount or value of the consideration given by any person for any shares shall include the amount or value of any consideration given for a right to acquire those shares.
- (4) Where 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 shall be determined on a just and reasonable apportionment.
- (5) The consideration which for the purposes of this section is taken to be given wholly or partly for anything shall not include the performance of any duties of or in connection with the office or employment by reference to which the shares in question have been acquired by a person as a director or employee of a company.
- (6) No amount shall be counted more than once in the computation of the amount or value of any consideration.
- (7) Subsections (1) to (3) of section 136 shall apply for determining for the purposes of subsection (3) above the amount or value of the consideration given for a right to acquire any shares as they apply for determining such an amount for the purposes of section 135.]

### Textual Amendments

**F16** Ss. 140D-140F inserted (with application in accordance with s. 51(3) of the amending Act) by [Finance Act 1998 \(c. 36\), s. 51\(1\)](#)

VALID FROM 31/07/1998

### [<sup>F16</sup>140F Supplemental provision with respect to convertible shares.

- (1) Where—
  - (a) a person has an interest in any convertible shares at the time of his death,

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- (b) those shares are converted into shares of a different class either on his death or within the following twelve months, and
  - (c) the conversion takes place wholly or partly as a consequence of his death, section 140D shall have effect as if the conversion had taken place immediately before his death and had been in pursuance of an entitlement to convert conferred on the deceased.
- (2) In section 140D(2) the references, in relation to the terms of a person's entitlement, to circumstances arising include references—
- (a) to the expiration of a period specified in or determined under those terms or the death of that person or any other person; and
  - (b) to the exercise by any person of any power conferred on him by or under those terms.
- (3) For the purposes of section 140D, the market value of any shares at any time is the amount that might reasonably be expected to be obtained from a sale of the shares in the open market at that time.
- (4) In this section and section 140D “associated company” has the same meaning as it has for the purposes of Part XI by virtue of section 416.
- (5) For the purposes of section 140D a company is employee-controlled by virtue of holdings 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 or directors of the company or a company controlled by the company; and
  - (b) those directors and employees are together able as holders of the shares to control the company.
- (6) The provisions of sections 140D and 140E and this section apply in relation to an interest in shares as they apply in relation to shares.
- (7) Section 840 (control) applies for the purposes of this section.]

#### Textual Amendments

**F16** Ss. 140D-140F inserted (with application in accordance with s. 51(3) of the amending Act) by Finance Act 1998 (c. 36), s. 51(1)

VALID FROM 31/07/1998

#### <sup>F17</sup> 140G Information for the purposes of sections 140A to 140F.

- (1) Where—
- (a) any person provides any individual with an interest in shares which is only conditional, and
  - (b) the circumstances are such that—
    - (i) the acquisition of that interest by that individual,
    - (ii) its subsequently ceasing to be only conditional,

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(iii) its subsequent disposal, or

(iv) the death of the individual,

gives rise or may give rise to a charge under section 140A on that individual, each of the relevant persons shall deliver to an officer of the Board particulars in writing of the interest and its provision.

(2) Where—

- (a) a person has an interest in any shares which is only conditional,
- (b) those shares cease to be shares in which that person's interest is only conditional or are disposed of or that person dies, and
- (c) that event gives rise to a charge under section 140A(4),

each of the relevant persons shall deliver to an officer of the Board particulars in writing of the shares and the event.

(3) Where—

- (a) any person has provided any individual with any convertible shares in a company,
- (b) those shares are subsequently converted into shares of a different class, and
- (c) the circumstances are such that the conversion gives rise or may give rise to a charge under section 140D on that individual,

each of the relevant persons shall deliver to an officer of the Board particulars in writing of the shares and their conversion.

(4) For the purposes of this section the relevant persons are—

- (a) the person who is providing, or who provided, the shares in question; and
- (b) the person under or with whom the office or employment is or was held by reference to which the charge may arise or has arisen.

(5) Particulars required to be delivered under this section must be delivered no later than thirty days after the end of the year of assessment in which the interest is provided, the event occurs or the conversion takes place.

(6) Expressions used in this section and in section 140A or 140D above have the same meanings in this section as in section 140A or, as the case may be, section 140D.]

#### Textual Amendments

**F17** S. 140G inserted (31.7.1998) by [Finance Act 1998 \(c. 36\), s. 52\(1\)](#)

VALID FROM 31/07/1998

#### <sup>F18</sup>**140H Construction of sections 140A to 140G.**

(1) For the purposes of sections 140A to 140G and this section, a person acquires any shares or securities as a director or employee of a company if—

- (a) he acquires them in pursuance of a right conferred on him, or an opportunity offered to him, by reason of his office or employment as a director or employee of the company; or



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- (b) the shares or securities are, or a right or opportunity in pursuance of which he acquires them is, assigned to him after being acquired by, conferred on or, as the case may be, offered to some other person by reason of the assignee's office or employment as a director or employee of the company.
- (2) Subject to subsection (3) below, the references in subsection (1) above to a right or opportunity conferred or offered by reason of a person's office or employment shall be taken to include—
- (a) a reference to one so conferred or offered after he has ceased to hold it; and
  - (b) a reference to one that arises from the fact that any shares which a person acquires as a director or employee (or is treated as so acquiring by virtue of this paragraph) are convertible for the purposes of section 140D.
- (3) For the purposes of this section—
- (a) the references in subsections (1) and (2) above to a person's office or employment are references only to an office or employment in respect of which he is chargeable to tax under Case I of Schedule E; but
  - (b) subsection (2)(a) above shall not apply where a right or opportunity conferred or offered in the last chargeable period in which the office or employment was held by the person in question would not have fallen to be taken into account for the purposes of subsection (1)(a) above.
- (4) Without prejudice to subsection (2)(b) above where—
- (a) a person has acquired an interest in any shares or securities which is only conditional or has acquired any convertible shares,
  - (b) he acquired that interest or those shares as a director or employee of a company, or is treated by virtue of this subsection as having done so, and
  - (c) as a result of any two or more transactions—
    - (i) he ceases to be entitled to that interest or those shares, and
    - (ii) he or a connected person becomes entitled to any interest in any shares or securities which is only conditional or to any convertible shares,
- he shall be treated for the purposes of sections 140A to 140G as if the interest or shares to which he becomes entitled were also acquired by him as a director or employee of the company in question.
- (5) Sections 140C and 140D(2) have effect for the purposes of subsection (4) above as they have effect for the purposes of sections 140A and 140B and section 140D respectively.
- (6) References in sections 140A to 140G or this section to the terms on which a person is entitled to an interest in shares or securities include references to any terms imposed by any contract or arrangement or in any other way.
- (7) References in this section to shares or to securities include references to an interest in shares or, as the case may be, securities.
- (8) Subsection (5) of section 136 applies for the purposes of sections 140A to 140G and this section as it applies for the purposes of that section but as if—
- (a) references to a body corporate were references to a company;
  - (b) at the end of paragraph (d) there were inserted "or any other interest of a member of a company"; and
  - (c) the words after paragraph (d) were omitted.

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(9) Section 839 applies for the purposes of this section.]

#### Textual Amendments

**F18** S. 140H inserted (31.7.1998) by [Finance Act 1998 \(c. 36\), s. 53](#)

#### *Vouchers etc.*

### 141 Non-cash vouchers.

(1) <sup>M49</sup>Subject to the following provisions of this section and section 157(3), where a non-cash voucher provided for an employee by reason of his employment is received by the employee, then, for the purposes of the Income Tax Acts—

- (a) he shall be treated as having received in the relevant year of assessment an emolument from his employment of an amount equal to [<sup>F19</sup> the expense incurred (“the chargeable expense”)—
  - (i) by the person at whose cost the voucher and the money, goods or services for which it is capable of being exchanged are provided,
  - (ii) in or in connection with that provision;] and
- (b) any money, goods or services obtained by the employee or any other person in exchange for the voucher shall be disregarded;

F20 .....

(2) In subsection (1)(a) above “the relevant year of assessment” means—

- (a) in relation to a cheque voucher, the year of assessment in which the voucher is handed over in exchange for money, goods or services (a voucher which is posted being treated as handed over at the time of posting); and
- (b) in relation to any other non-cash voucher, the year of assessment in which the chargeable expense is incurred or, if later, the year of assessment in which the voucher is received by the employee.

(3) <sup>M50</sup>There shall be deductible under section 198, 201, [<sup>F21</sup>201AA] or 332(3) from the amount taxable under subsection (1) above such amounts, if any, as would have been so deductible if the cost of the goods or services in question had been incurred by the employee out of his emoluments.

(4) <sup>M51</sup>The chargeable expense shall be treated as reduced by any part of that expense made good to the person incurring it by the employee.

(5) <sup>M52</sup>Where a non-cash voucher provided for an employee by reason of his employment is appropriated to him (whether by attaching it to a card held for him or in any other way), subsections (1) and (2) above shall have effect as if the employee had received the voucher at the time when it was so appropriated.

(6) [<sup>M53</sup>Subsection (1)] above shall not apply in relation to a transport voucher provided for an employee of a passenger transport undertaking under arrangements in operation on 25th March 1982 and intended to enable that employee or a relation of his to obtain passenger transport services provided by—

- (a) his employer;
- (b) a subsidiary of his employer;

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- (c) a body corporate of which his employer is a subsidiary; or
- (d) another passenger transport undertaking.

[<sup>F22</sup>(6A) Subsection (1) above shall not apply in relation to a non-cash voucher to the extent that it is used by the employee to obtain the use of a car parking space at or near his place of work.]

[<sup>F23</sup>(6B) Subsection (1) above shall not apply in relation to any non-cash voucher to the extent that it is used to obtain entertainment (including hospitality of any kind) for the employee or a relation of his, if—

- (a) [<sup>F24</sup>the person at whose cost the voucher and the entertainment are provided] is neither his employer nor a person connected with his employer;
- (b) neither his employer nor a person connected with his employer has directly or indirectly procured the provision of the entertainment; and
- (c) the entertainment is not provided either in recognition of particular services which have been performed by him in the course of his employment or in anticipation of particular services which are to be so performed by him;

and section 839 shall apply for determining whether persons are connected for the purposes of this subsection.]

[<sup>F25</sup>(6C) Subsection (1) above shall not apply in relation to a non-cash voucher to the extent that it is used by the employee to obtain goods, services or money where—

- (a) obtaining the goods or services is incidental to his being away from his usual place of abode during a qualifying absence from home or, as the case may be, the money is obtained for the purpose of being used to obtain goods or services which would be so incidental;
- (b) the authorised maximum is not exceeded in relation to that qualifying absence; and
- (c) the cost of obtaining the goods or services would not be deductible as mentioned in subsection (3) above if incurred by the employee out of his emoluments.

(6D) Subsections (3) to (5) of section 200A shall apply as they apply for the purposes of that section for construing the references in subsection (6C) above to a qualifying absence from home and for determining, for the purposes of that subsection, whether the authorised maximum is exceeded.]

(7) <sup>M54</sup>In this section—

“cheque voucher” means a cheque provided for an employee and intended for use by him wholly or mainly for payment for particular goods or services or for 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 shall be construed accordingly;

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

“subsidiary” means a wholly owned subsidiary within the meaning of section [<sup>F26</sup>736] of the <sup>M55</sup>Companies Act 1985;

“transport voucher” means any ticket, pass or other document or token intended to enable a person to obtain passenger transport services (whether or not in exchange for it) and, in relation to a transport voucher, references to

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a voucher being exchanged for services shall be construed as references to it being exchanged for, or otherwise being used to procure, services; and

“non-cash voucher” does not include a cash voucher within the meaning of section 143 but, subject to that, means any voucher, stamp or similar document or token capable of being exchanged (whether singly or together with other such vouchers, stamps, documents or tokens and whether immediately or only after a time) for money, goods or services (or for any combination of two or more of those things) and includes a transport voucher and a cheque voucher.

#### Textual Amendments

- F19** Words in s. 141(1)(a) substituted (3.5.1994) by [Finance Act 1994 \(c. 9\), s. 89\(2\)\(a\)](#)
- F20** Words in s. 141(1) repealed (3.5.1994) by [Finance Act 1994 \(c. 9\), s. 89\(2\)\(b\)](#), [Sch. 26 Pt. 5\(6\)](#)
- F21** Word in s. 141(3) inserted (with effect in accordance with s. 91(3) of the amending Act) by [Finance Act 1995 \(c. 4\), s. 91\(2\)](#)
- F22** 1988(F) s.46(1) for 1988-89 and subsequent years. Previously “subsections (1) and 2” in subs. (6).
- F23** 1988(F) s.47(1) for 1988-89 and subsequent years. For 1987-88 see 1988(F) s.47.
- F24** Words in s. 141(6B)(a) substituted (3.5.1994) by [Finance Act 1994 \(c. 9\), s. 89\(3\)](#)
- F25** S. 141(6C)(6D) inserted (with effect in accordance with s. 93(5) of the amending Act) by [Finance Act 1995 \(c. 4\), s. 93\(1\)](#)
- F26** [Companies Act 1989 \(c.40\)](#) s.144(4) and Sch.18 para.46 on and after 1 November 1990 by virtue of S.I. 1990 No.1392 (c.41) (art.2(d)) (not reproduced). Previously “736(5)(b)”.

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

- C6** See S.I. 1973 No.334, regn.31(d) (in Part III Vol.5)—returns by employers.
- C7** S. 141(6) modified (with effect in accordance with Sch. 24 para. 27(14) of the modifying Act) by [Finance Act 1994 \(c. 9\), Sch. 24 para. 27\(3\)\(4\)](#)
- C8** See 1990 s.56 and Sch.10 para.23—convertible securities.
- C9** S. 141(6A) extended (with effect in accordance with s. 49(4) of the extending Act) by [Finance Act 1999 \(c. 16\), s. 49\(1\)\(2\)](#)

#### Marginal Citations

- M49** Source—1975 (No.2) s.36(1); 1982 s.44(2)
- M50** Source—1975 (No.2) s.36(2); 1982 s.44(3)
- M51** Source—1975 (No.2) s.36(2A); 1981 s.70(2)
- M52** Source—1975(2) s.36(3)
- M53** Source—1975 (No.2) s.36(3A); 1982 s.44(4)
- M54** Source—1975 (No.2) s.36(4); 1982 s.44(5)
- M55** 1985 c. 6.

## 142 Credit-tokens.

(1) <sup>M56</sup> Subject to the provisions of this section and section 157(3), where a credit-token is provided for an employee by reason of his employment, then, for the purposes of the Income Tax Acts—

- (a) on each occasion on which the employee uses the credit-token to obtain money, goods or services he shall be treated as having received an emolument from his employment of an amount equal to <sup>F27</sup> the expense incurred—

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- (i) by the person at whose cost the money, goods or services are provided,  
(ii) in or in connection with that provision;] and
- (b) any money, goods or services obtained by the employee by use of the credit-token shall be disregarded.
- (2) <sup>M57</sup>There shall be deductible under section 198, 201, [<sup>F28</sup>201AA] or 332(3) from the amount taxable under subsection (1) above such amounts, if any, as would have been so deductible if the cost of the goods or services in question had been incurred by the employee out of his emoluments.
- (3) <sup>M58</sup>The expense incurred by the person [<sup>F29</sup>mentioned in subsection (1)(a)(i) above] shall be treated as reduced by any part of that expense made good to that person by the employee.
- [<sup>F30</sup>(3A) Subsection (1) above shall not apply in relation to a credit-token to the extent that it is used by the employee to obtain the use of a car parking space at or near his place of work.]
- [<sup>F31</sup>(3B) Subsection (1) above shall not apply in relation to any credit-token to the extent that it is used to obtain entertainment (including hospitality of any kind) for the employee or a relation of his, if—
- (a) the person [<sup>F32</sup>mentioned in subsection (1)(a)(i) above] is neither his employer nor a person connected with his employer;
- (b) neither his employer nor a person connected with his employer has directly or indirectly procured the provision of the entertainment; and
- (c) the entertainment is not provided either in recognition of particular services which have been performed by him in the course of his employment or in anticipation of particular services which are to be so performed by him;
- and section 839 shall apply for determining whether persons are connected for the purposes of this subsection.]
- [<sup>F33</sup>(3C) Subsection (1) above shall not apply in relation to a credit-token to the extent that it is used by the employee to obtain goods, services or money where—
- (a) obtaining the goods or services is incidental to his being away from his usual place of abode during a qualifying absence from home or, as the case may be, the money is obtained for the purpose of being used to obtain goods or services which would be so incidental;
- (b) the authorised maximum is not exceeded in relation to that qualifying absence; and
- (c) the cost of obtaining the goods or services would not be deductible as mentioned in subsection (2) above if incurred by the employee out of his emoluments.
- (3D) Subsections (3) to (5) of section 200A shall apply as they apply for the purposes of that section for construing the references in subsection (3C) above to a qualifying absence from home and for determining, for the purposes of that subsection, whether the authorised maximum is exceeded.]
- (4) <sup>M59</sup>In this section “credit-token” means a card, token, document or other thing given to a person by another person who undertakes—
- (a) that on the production of it (whether or not some other action is also required) he will supply money, goods and services (or any of them) on credit; or

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- (b) that where, on the production of it to a third party (whether or not some other action is also required) the third party supplies money, goods and services (or any of them), he will pay the third party for them (whether or not taking any discount or commission);

but does not include a non-cash voucher or a cash voucher.

- (5) <sup>M60</sup>For the purposes of subsection (4) above, the use of an object to operate a machine provided by the person giving the object, or by a third party, shall be treated as production of the object to that person or, as the case may be, third party.

#### Textual Amendments

- F27** Words in s. 142(1)(a) substituted (3.5.1994) by [Finance Act 1994 \(c. 9\), s. 89\(5\)](#)
- F28** Words in s. 142(2) inserted (with effect in accordance with s. 91(3) of the amending Act) by [Finance Act 1995 \(c. 4\), s. 91\(2\)](#)
- F29** Words in s. 142(3) substituted (3.5.1994) by [Finance Act 1994 \(c. 9\), s. 89\(6\)](#)
- F30** 1988(F) s.46(2) for 1988-89 and subsequent years.
- F31** 1988(F) s.48(1) for 1988-89 and subsequent years. For 1987-88 see 1988(F) s.48.
- F32** Words in s. 142(3B)(a) substituted (3.5.1994) by [Finance Act 1994 \(c. 9\), s. 89\(7\)](#)
- F33** S. 142(3C)(3D) inserted (with effect in accordance with s. 93(5) of the amending Act) by [Finance Act 1995 \(c. 4\), s. 93\(2\)](#)

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

- C10** See S.I. 1973 No.334, regn.31 (da) (in Part III Vol.5)—returns by employers.
- C11** S. 142(3A) extended (with effect in accordance with s. 49(4) of the extending Act) by [Finance Act 1999 \(c. 16\), s. 49\(1\)\(2\)](#)

#### Marginal Citations

- M56** Source—1975 (No.2) s.36A(1)(b), (c); 1981 s.71(1); 1982 s.45(2)
- M57** Source—1975 (No.2) s.36A(2); 1981 s.71(1)
- M58** Source—1975 (No.2) s.36A(3); 1981 s.71(1); 1982 s.45(2)
- M59** Source—1975 (No.2) s.36A(4), (4B); 1981 s.71(1); 1982 s.45(3)
- M60** Source—1975 (No.2) s.36A(4A); 1981 s.71(1); 1982 s.45(3)

### 143 Cash vouchers taxable under P.A.Y.E.

- (1) <sup>M61</sup>Where a cash voucher provided for an employee by reason of his employment is received by the employee, then, subject to subsection (5) below, for the purposes of the Income Tax Acts <sup>F34</sup>—
- (a) he shall be treated as having received], at the time when he receives the voucher, an emolument of his employment equal to the sum of money for which the voucher is capable of being exchanged as mentioned in subsection (3) below; and
- (b) any money obtained by the employee or any other person in exchange for the voucher shall be disregarded.
- (2) Where a cash voucher provided for an employee by reason of his employment is appropriated to him (whether by attaching it to a card held for him or in any other way), subsections (1) and (5) of this section shall have effect as if the employee had received the voucher at the time when it was so appropriated.

**Status:** Point in time view as at 19/04/1996. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** Income and Corporation Taxes Act 1988, PART V is up to date with all changes known to be in force on or before 30 May 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)

- (3) In this section “cash voucher” (subject to subsection (4) below) means any voucher, stamp or similar document capable of being exchanged (whether singly or together with such other vouchers, stamps or documents, and whether immediately or only after a time) for a sum of money greater than, equal to or not substantially less than the expense incurred [<sup>F35</sup>by the person at whose cost the voucher is provided] (whether or not it is also capable of being exchanged for goods or services), except that it does not include—
- (a) any document intended to enable a person to obtain payment of the sum mentioned in the document, being a sum which if paid to him directly would not have been chargeable to income tax under Schedule E; or
  - (b) a savings certificate the accumulated interest payable in respect of which is exempt from tax (or would be so exempt if certain conditions were satisfied).
- (4) Where—
- (a) a voucher, stamp or similar document is capable of being exchanged (as mentioned above) for a sum of money substantially less than the expense incurred [<sup>F36</sup>by the person at whose cost the voucher, stamp or similar document is provided], and
  - (b) the difference or part of the difference represents the cost to that person of providing benefits in connection with sickness, personal injury or death,
- then, in determining whether the voucher, stamp or document is a cash voucher within the meaning of this section, [<sup>F37</sup>the expense incurred by the person mentioned in paragraph (a) above shall be treated as reduced by the difference or part of the difference mentioned in paragraph (b) above.]
- (5) <sup>M62</sup>Subsection (1) above shall not apply to a cash voucher received by an employee if, at the time when the voucher is received, the scheme under which it was issued is a scheme approved by the Board for the purposes of this subsection; and the Board shall not approve a scheme for those purposes unless 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 regulations under section 203.

#### Textual Amendments

**F34** Words in s. 143(1) substituted (3.5.1994) by Finance Act 1994 (c. 9), s. 89(9)

**F35** Words in s. 143(3) substituted (3.5.1994) by Finance Act 1994 (c. 9), s. 89(10)

**F36** Words in s. 143(4)(a) substituted (3.5.1994) by Finance Act 1994 (c. 9), s. 89(11)(a)

**F37** Words in s. 143(4) substituted (3.5.1994) by Finance Act 1994 (c. 9), s. 89(11)(b)

#### Marginal Citations

**M61** Source—1975 (No.2) s.37(1)-(4)

**M62** Source—1975 (No.2) s.37(5); 1976 s.71(2)

## 144 Supplementary provisions.

- (1) <sup>M63</sup>If a person furnishes to the inspector a statement of the cases and circumstances in which non-cash vouchers [<sup>F38</sup>, credit-tokens or cash vouchers] are provided for any employees (whether his own or those of anyone else) and the inspector is satisfied that no additional tax is payable under section [<sup>F39</sup>141, 142 or 143] by reference to the vouchers or tokens mentioned in the statement, the inspector shall notify the person

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accordingly and nothing in those sections shall apply to the provision of those vouchers or tokens or their use.

- (2) The inspector may, if in his opinion there is reason to do so, by notice served on the person to whom the notification under subsection (1) above was given, revoke the notification, either as from the date of its making or as from such later date as may be specified in the notice under this subsection; and all such income tax becomes chargeable, and all such returns are to be made by that person and by the employees in question, as would have been chargeable or would have had to be made in the first instance if the notification under subsection (1) above had never been given or, as the case may be, it had ceased to have effect on the specified date.
- (3) <sup>M64</sup>For the purposes of sections [<sup>F40</sup>141, 142 and 143] where a person incurs expense in or in connection with the provision [<sup>F41</sup>of] vouchers or credit-tokens for two or more employees as members of a group or class, the expense incurred in respect of any one of them shall be taken to be such part of that expense as is just and reasonable.
- (4) <sup>M65</sup>For the purposes of sections 141, 142 and 143 and this section—
- (a) a non-cash voucher, cash voucher or credit-token provided for an employee by his employer shall be deemed to be provided for him by reason of his employment; and
  - (b) any reference to a non-cash voucher, cash voucher or credit-token being provided for or received by an employee includes a reference to it being provided for or received by a relation of his.
- (5) <sup>M66</sup>In sections 141, 142, 143 and this section—
- “cash voucher” has the meaning given by section 143(3);
  - “credit-token” has the meaning given by section 142(4);
  - “employee” means the holder of any office or employment the emoluments in respect of which fall to be assessed under Schedule E; and related expressions shall be construed accordingly;
  - “non-cash voucher” has the meaning given by section 141(7); and
  - “relation”, with respect to an employee, means his spouse, parent or child, the spouse of his child and any dependant of that employee.

#### Textual Amendments

- F38** Words in s. 144(1) substituted (3.5.1994) by [Finance Act 1994 \(c. 9\), s. 89\(13\)\(a\)](#)
- F39** Words in s. 144(1) substituted (3.5.1994) by [Finance Act 1994 \(c. 9\), s. 89\(13\)\(b\)](#)
- F40** Words in s. 144(3) substituted (3.5.1994) by [Finance Act 1994 \(c. 9\), s. 89\(14\)\(a\)](#)
- F41** Word in s. 144(3) substituted (3.5.1994) by [Finance Act 1994 \(c. 9\), s. 89\(14\)\(b\)](#)

#### Marginal Citations

- M63** Source—1975 (No.2) ss.36A(6), (7), 36(5A); 1981 s.71(1); 1982 s.44(6)
- M64** Source—1975 (No.2) ss.36(5)(b), 36(A)(5)
- M65** Source—1975 (No.2) ss.36(5)(c), (d), 36A(5), 37(6); 1981 s.70(5)(b)
- M66** Source—1975 (No.2) ss.37(3), (6), 36(4), 36A(4B); 1982 ss.44(5), 45(3)

#### [<sup>F42</sup>144A] Payments etc. received free of tax.

- (1) In any case where—



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- (a) an employer is treated, by virtue of any of sections 203B to 203I, as having made a payment of income of an employee which is assessable to income tax under Schedule E,
- (b) the employer is required, by virtue of section 203J(3), to account for an amount of income tax (“the due amount”) in respect of that payment, and
- (c) the employee does not, before the end of the period of thirty days from the date on which the employer is treated as making that payment, make good the due amount to the employer,

the due amount shall be treated as income of the employee which arises on the date mentioned in paragraph (c) above and is assessable to income tax under Schedule E.

- (2) In this section any reference to an employer includes a reference to a person who is treated as making a payment by virtue of section 203C(2).]

#### Textual Amendments

**F42** S. 144A inserted (3.5.1994) by Finance Act 1994 (c. 9), s. 132

### *Living accommodation*

#### **145 Living accommodation provided for employee.**

- <sup>M67</sup>(1) Subject to the provisions of this section, where living accommodation is provided for a person in any period by reason of his employment, and is not otherwise made the subject of any charge to him by way of income tax, he is to be treated for the purposes of Schedule E as being in receipt of emoluments of an amount equal to the value to him of the accommodation for the period, less so much as is properly attributable to that provision of any sum made good by him to those at whose cost the accommodation is provided.
- (2) The value of the accommodation to the employee in any period is the rent which would have been payable for the period if the premises had been let to him at an annual rent equal to their annual value as ascertained under section 837; but for a period in which those at whose cost the accommodation is provided pay rent at an annual rate greater than the annual value as so ascertained, the value of the accommodation to the employee is an amount equal to the rent payable by them for the period.
- (3) From any amount to be treated as emoluments under subsection (1) above there are deductible under section 198 or 332(3) such amounts (if any) as would have been so deductible if the accommodation had been paid for by the employee out of his emoluments.
- (4) Subject to subsection (5) below, subsection (1) above does not apply to accommodation provided for the employee in any of the following cases—
  - (a) where it is necessary for the proper performance of the employee’s duties that he should reside in the accommodation;
  - (b) where the accommodation is provided for the better performance of the duties of his employment, and his is one of the kinds of employment in the case of which it is customary for employers to provide living accommodation for employees;

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- (c) where there is a special threat to his security, special security arrangements are in force and he resides in the accommodation as part of those arrangements; and in any such case there is no charge to tax under Schedule E (either by virtue of this section or under section 131 or otherwise) in respect of a liability for rates on the premises being discharged for or on behalf of the employee or the employee being reimbursed for the discharge of that liability.
- (5) If the accommodation is provided by a company and the employee is a director of the company or of an associated company, then, except in a case where paragraph (c) of subsection (4) above applies, no exemption is given by virtue of that subsection unless, for each employment of his which is employment as director of the company or an associated company, the following conditions are fulfilled, that is—
- (a) he has no material interest in the company, and
  - (b) either his employment is as a full-time working director or the company is non-profit-making (meaning that neither does it carry on a trade nor do its functions consist wholly or mainly in the holding of investments or other property) or is established for charitable purposes only.
- (6) If by reason of a person's employment accommodation is provided for others being members of his family or household, he is to be treated under subsections (1) to (3) above as if it were accommodation provided for him.
- (7) For the purposes of this section, living accommodation provided for an employee, or for members of his family or household, by his employer is deemed to be provided by reason of his employment unless—
- (a) the employer is an individual, and it can be shown that he makes the provision in the normal course of his domestic, family or personal relationships; or
  - (b) the accommodation is provided by a local authority for an employee of theirs, and it can be shown that 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 are otherwise similarly circumstanced.
- (8) For the purposes of this section—
- (a) a company is associated with another if one has control of the other or both are under the control of the same person; and
  - (b) the expressions “employment”, “family or household”, “director”, “full-time working director”, “material interest” and (in relation to a body corporate) “control” shall be construed in accordance with subsections (2), (4) and (8) to (12) of section 168 as if this section were included in Chapter II of this Part.

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

**C12** See S.I. 1973 No.334, regn.31 (db) (*in Part III Vol.5*)—*returns by employers.*

**C13** S. 145 modified (retrospectively) by [Finance Act 2008 \(c. 9\), s. 45\(3\)](#)

**Marginal Citations**

**M67** Source—1977 s.33(1)-(8)

**146 Additional charge in respect of certain living accommodation.**

<sup>M68</sup>(1) This section applies where—

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- (a) living accommodation is provided for a person in any period, by reason of his employment;
  - (b) by virtue of section 145 he is treated for the purposes of Schedule E as being in receipt of emoluments of an amount calculated by reference to the value to him of that accommodation, or would be so treated if there were disregarded any sum made good by him to those at whose cost the accommodation is provided; and
  - (c) the cost of providing the accommodation exceeds £75,000.
- (2) Where this section applies, the employee shall be treated for the purposes of Schedule E as being in receipt of emoluments (in addition to those which he is treated as receiving by virtue of section 145) of an amount equal to the additional value to him of the accommodation for the period, less so much of any rent paid by the employee, in respect of the accommodation, to the person providing it as exceeds the value to the employee of the accommodation for the period (as determined under section 145).
- (3) The additional value of the accommodation to the employee in any period is the rent which would have been payable for that period if the premises had been let to him at an annual rent equal to the appropriate percentage of the amount by which the cost of providing the accommodation exceeds £75,000.
- (4) For the purposes of this section, the cost of providing any living accommodation shall be taken to be the aggregate of—
  - (a) the amount of any expenditure incurred in acquiring the estate or interest in the property held by a relevant person; and
  - (b) the amount of any expenditure incurred by a relevant person before the year of assessment in question on improvements to the property.
- (5) The aggregate amount mentioned in subsection (4) above shall be reduced by the amount of any payment made by the employee to a relevant person, so far as that amount represents a reimbursement of any such expenditure as is mentioned in paragraph (a) or (b) of that subsection or represents consideration for the grant to the employee of a tenancy of the property.
- (6) Subject to subsection (8) below, where throughout the period of six years ending with the date when the employee first occupied the property, any estate or interest in the property was held by a relevant person (whether or not it was the same estate, interest or person throughout), the additional value shall be calculated as if in subsection (4) above—
  - (a) the amount referred to in paragraph (a) were the market value of that property as at that date; and
  - (b) the amount referred to in paragraph (b) did not include expenditure on improvements made before that date.
- (7) In this section, “relevant person” means any of the following—
  - (a) the person providing the accommodation;
  - (b) where the person providing the accommodation is not the employee’s employer, that employer;
  - (c) any person, other than the employee, who is connected with a person falling within paragraph (a) or (b) above.
- (8) Subsection (6) above does not apply where the employee first occupied the property before 31st March 1983.

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- (9) Any amount which is deductible, by virtue of section 145(3), from an amount to be treated as emoluments under that section may, to the extent to which it exceeds the amount of those emoluments, be deductible from the amount to be treated as emoluments under this section.
- (10) For the purposes of this section, living accommodation shall be treated as provided for a person by reason of his employment if it is so treated for the purposes of section 145; and “employment” has the same meaning in this section as in that.
- (11) In this section—
- “the appropriate percentage” means the rate [<sup>F43</sup>applicable for the purposes of section 160] as at the beginning of the year of assessment in question;
- “property”, in relation to any living accommodation, means the property consisting of that accommodation;
- “market value”, in relation to any property, means the price which that property might reasonably be expected to fetch on a sale in the open market with vacant possession, no reduction being made, in estimating the market value, on account of any option in respect of the property held by the employee, or a person connected with him, or by any of the persons mentioned in subsection (7) above; and
- “tenancy” includes a sub-tenancy;
- and section 839 shall apply for the purposes of this section.

#### Textual Amendments

**F43** 1989 s.179(5) and S.I. 1989 No.1298 (in Part III Vol.5) in relation to years of assessment beginning after 18 August 1989. Previously “prescribed by the Treasury under section 160(5)”. And see S.I. 1989 No.1297 for regulations made, and interest rate set, under 1989 s.178.

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

**C14** See S.I. 1973 No.334, regn.31 (db) (in Part III Vol.5)—returns by employers.

#### Marginal Citations

**M68** Source—1977 s.33A; 1983 s.21(1)

VALID FROM 29/04/1996

#### [<sup>F44</sup>146A] Priority of rules applying to living accommodation.

- (1) This section applies where, within the meaning of section 145, living accommodation is provided in any period for any person by reason of his employment.
- (2) The question whether the employee is to be treated under section 145 or 146 as in receipt of emoluments in respect of the provision of the accommodation shall be determined before any other question whether there is an amount falling to be treated in respect of the provision of that accommodation as emoluments.
- (3) Tax under Schedule E in respect of the provision of the accommodation shall be chargeable on the employee otherwise than in pursuance of sections 145 and 146 to

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the extent only that the amount on which it is chargeable by virtue of those sections is exceeded by the amount on which it would be chargeable apart from those sections.]

#### Textual Amendments

- F44** S. 146A inserted (with application in accordance with s. 106(3) of the amending Act) by Finance Act 1996 (c. 8), s. 106(2)

### 147 Occupation of Chevening House.

<sup>M69</sup>Section 145 shall not apply in relation to the occupation of Chevening House or any other premises held on the trusts of the trust instrument set out in the Schedule to the <sup>M70</sup>Chevening Estate Act 1959 by a person nominated in accordance with those trusts.

#### Marginal Citations

- M69** Source—1973 s.43; 1977 Sch.8 4  
**M70** 1959 c. 49.

*Payments on retirement, sick pay etc.*

### 148 Payments on retirement or removal from office or employment.

- <sup>M71</sup>(1) Subject to the provisions of this section and section 188, tax shall be charged under Schedule E in respect of any payment to which this section applies which is made to the holder or past holder of any office or employment, or to his executors or administrators, whether made by the person under whom he holds or held the office or employment or by any other person.
- (2) This section applies to any payment (not otherwise chargeable to tax) which is made, whether in pursuance of any legal obligation or not, either directly or indirectly in consideration or in consequence of, or otherwise in connection with, the termination of the holding of the office or employment or any change in its functions or emoluments, including any payment in commutation of annual or periodical payments (whether chargeable to tax or not) which would otherwise have been so made.
- (3) For the purposes of this section and section 188, any payment made to the spouse or any relative or dependant of a person who holds or has held an office or employment, or made on behalf of or to the order of that person, shall be treated as made to that person, and any valuable consideration other than money shall be treated as a payment of money equal to the value of that consideration at the date when it is given.
- (4) Any payment which is chargeable to tax by virtue of this section shall be treated as income received on the following date, that is to say—
- in the case of a payment in commutation of annual or other periodical payments, the date on which the commutation is effected; and
  - in the case of any other payment, the date of the termination or change in respect of which the payment is made;

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and shall be treated as emoluments of the holder or past holder of the office or employment assessable to tax under Schedule E; and any such payment shall be treated for all the purposes of the Income Tax Acts as earned income.

- (5) In the case of the death of any person who, if he had not died, would have been chargeable to tax in respect of any such payment, the tax which would have been so chargeable shall be assessed and charged upon his executors or administrators and shall be a debt due from and payable out of his estate.
- (6) This section shall not apply to any payment made in pursuance of an obligation incurred before 6th April 1960.
- (7) Where any payment chargeable to tax under this section is made to any person in any year of assessment, it shall be the duty of the person by whom it is made to deliver particulars thereof in writing to the inspector not later than 30 days after the end of that year.

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

**C15** S. 148 restricted (with application in accordance with s. 92(11) of the restricting Act) by [Finance Act 1995 \(c. 4\), s. 92\(10\)](#)

**C16** See 1970(M) s.35(2)(b)—*time limit for assessment to run from year of actual receipt.*

**Marginal Citations**

**M71** Source—1970 s.187

**149 Sick pay.**

<sup>M72</sup>(1) Where a person holding an employment is absent from work for any period by reason of sickness or disability, any sums which—

- (a) are paid to, or to the order or for the benefit of, that person (or a member of his family or household) in respect of any such absence from work; and
- (b) are, by reason of his employment, paid as a result of any arrangements entered into by his employer,

shall be chargeable to income tax under Schedule E as emoluments of the employment *for that period*<sup>F45</sup> if, apart from this section, they would not be so chargeable *for that or any other period*<sup>F45</sup>.

- (2) Where the funds for making payments under any arrangements are attributable partly to contributions made by the employer and partly to contributions made by the persons employed by him, subsection (1) above shall apply only to such part of the sums paid as a result of the arrangements as it is just and reasonable to regard as attributable to the employer's contributions.
- (3) In this section “employment” means an office or employment the emoluments of which fall to be assessed under Schedule E and related expressions shall be construed accordingly; and the reference to a person's family or household is to his spouse, his sons and daughters and their spouses, his parents and his dependants.

**Textual Amendments**

**F45** Words repealed by 1989 ss.42(3), 187 and Sch.17 Part IV for 1989-90 and subsequent years.

**Status:** Point in time view as at 19/04/1996. This version of this part contains provisions that are not valid for this point in time.

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### Marginal Citations

**M72** Source—1981 s.30(1), (2), (4)

## 150 Job release scheme allowances, maternity pay and statutory sick pay.

The following payments shall be charged to income tax under Schedule E by virtue of this section if they would not otherwise be, that is to say—

- (a) <sup>M73</sup>allowances paid under a scheme of the kind described in the <sup>M74</sup>Job Release Act 1977, being a scheme which provides for the payment of allowances for periods beginning earlier than one year before the date on which the recipient attains pensionable age, as defined in that Act;
- (b) maternity pay (whether paid during the subsistence of a contract of employment or not) within the meaning of section 33 of the <sup>M75</sup>Employment Protection (Consolidation) Act 1978 or, in <sup>M76</sup>Northern Ireland, Article 15 of the Industrial Relations (No.2) (Northern Ireland) Order 1976;
- (c) payments of statutory sick pay within the meaning of section 1 of the <sup>M77</sup>Social Security and Housing Benefits Act 1982 or, in Northern Ireland, Article 3 of the <sup>M78</sup>Social Security (Northern Ireland) Order 1982; and
- <sup>F46</sup>(d) payments of statutory maternity pay under Part V of the <sup>M79</sup>Social Security Act 1986 or, in Northern Ireland, under Part VI of the <sup>M80</sup>Social Security (Northern Ireland) Order 1986].

### Textual Amendments

**F46** [Social Security Act 1986 \(c.50\) s.86](#) and Sch.10 para.71.

### Marginal Citations

**M73** Source—1970 s.219A; 1982 s.31(1)

**M74** 1977 c. 8.

**M75** 1978 c. 44.

**M76** S.I. 1976/2147 (N.I. 28).

**M77** 1982 c. 24.

**M78** S.I. 1982/1084 (N.I. 16).

**M79** 1986 c. 50.

**M80** S.I. 1986/1888 (N.I. 18).

## 151 Income support etc.

<sup>M81</sup>(1) Subject to the following provisions of this section, payments to any person of income support under the Social Security Act 1986 in respect of any period shall be charged to income tax under Schedule E if during that period—

- (a) his right to income support is subject to the condition specified in section 20(3)(d)(i) of that Act (availability for employment); or
- (b) he is one of a married or unmarried couple and section 23 of that Act (trade disputes) applies to him but not to the other person;

(2) <sup>M82</sup>In this section “married couple” and “unmarried couple” have the same meaning as in Part II of the Social Security Act 1986.

*Status: Point in time view as at 19/04/1996. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: Income and Corporation Taxes Act 1988, PART V is up to date with all changes known to be in force on or before 30 May 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)*

- (3) <sup>M83</sup> Where the amount of income support paid to any person in respect of any week or part of a week exceeds the taxable maximum for that period as defined below, the excess shall not be taxable.
- (4) Where payments of unemployment benefit and payments of income support are made to any person in respect of the same week or part of a week, the amount taxable in respect of that period in respect of those payments shall not exceed the taxable maximum for that period within the meaning of subsection (3) above.
- (5) <sup>M84</sup> For the purposes of subsections (3) and (4) above, the taxable maximum in respect of a week shall be determined in accordance with subsections (6) to (8) below and the taxable maximum in respect of part of a week shall be equal to one-sixth of the taxable maximum in respect of a week multiplied by the number of days in the part.
- (6) Where the income support is paid to one of a married or unmarried couple in a case not falling within subsection (1)(b) above, the taxable maximum in respect of a week shall be equal to the aggregate of—
- (a) the weekly rate specified for the week in question in relation to unemployment benefit in paragraph 1 of Part I of Schedule 4 to the <sup>M85</sup> Social Security Act 1975; and
  - (b) the increase for an adult dependant specified for that week in paragraph 1(a) of Part IV of that Schedule.
- (7) Where the income support is paid to one of a married or unmarried couple in a case falling within subsection (1)(b) above, the taxable maximum in respect of a week shall—
- (a) if the applicable amount (within the meaning of Part II of the Social Security Act 1986) consists only of an amount in respect of them, be equal to one half of that amount; and
  - (b) if the applicable amount includes other amounts, be equal to one half of the portion of it which is included in respect of them.
- (8) Where the income support is paid to a person who is not one of a married or unmarried couple, the taxable maximum in respect of a week shall be equal to the weekly rate referred to in subsection (6)(a) above.
- (9) In its application to Northern Ireland this section shall have effect as if—
- (a) for the references to the Social Security Act 1986, to Part II of that Act and to sections 20(3)(d)(i) and 23 of that Act there were substituted respectively references to the Social Security (Northern Ireland) Order 1986, Part III of that Order and Articles 21(3)(d)(i) and 24 of that Order; and
  - (b) for the references to paragraph 1 of Part I of Schedule 4 to the Social Security Act 1975 and paragraph 1(a) of Part IV of that Schedule there were substituted respectively references to paragraph 1 of Part I of Schedule 4 to the Social Security (Northern Ireland) Act 1975 and paragraph 1(a) of Part IV of that Schedule.

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

**C17** See 1989 s.41—*tax charged on amount accruing (1989-90 and subsequent years of assessment).*

**Marginal Citations**

**M81** Source—1987 s.29(2)



**Status:** Point in time view as at 19/04/1996. This version of this part contains provisions that are not valid for this point in time.

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**M82** Source—1987 s.29(2), Sch.3 1(2)

**M83** Source—1987 s.29(3), (4)

**M84** Source—1987 Sch.3 1(1), 2-4

**M85** 1975 c. 14.

VALID FROM 02/09/1996

#### <sup>F47</sup>151A Jobseeker's allowance.

- (1) Subject to the following provisions of this section, payments to any person of a jobseeker's allowance in respect of any period shall be charged to income tax under Schedule E.
- (2) Where the amount of a jobseeker's allowance paid to any person in respect of any week or part of a week exceeds the taxable maximum for that period as defined below, the excess shall not be taxable.
- (3) For the purposes of subsection (2) above, the taxable maximum in respect of a week shall be determined in accordance with subsections (4) to (8) below and the taxable maximum in respect of part of a week shall be equal to one-seventh of the taxable maximum in respect of a week multiplied by the number of days in the part.
- (4) Where an income-based jobseeker's allowance is paid to one of a married or unmarried couple, in a case which does not fall within subsection (8) below, the taxable maximum in respect of a week shall be equal to the portion of the applicable amount which is included in respect of them for that week.
- (5) Where a contribution-based jobseeker's allowance is paid to a person ("the claimant") who is a member of a married or unmarried couple, the taxable maximum in respect of a week shall be equal to the portion of the applicable amount which would be included in respect of them if an income-based jobseeker's allowance was payable to the claimant for that week.
- (6) Where an income-based jobseeker's allowance is paid to a person who is not a member of a married or unmarried couple, the taxable maximum in respect of a week shall be equal to the age-related amount which would be applicable to him if a contribution-based jobseeker's allowance was payable to him for that week.
- (7) Where a contribution-based jobseeker's allowance is paid to a person who is not a member of a married or unmarried couple, the taxable maximum in respect of a week shall be equal to the age-related amount which is applicable to him for that week.
- (8) Where an income-based jobseeker's allowance is paid to a person ("the claimant") who is a member of a married or unmarried couple, the other member of which is prevented by section 14 of the Jobseekers Act 1995 (trade disputes) or any corresponding enactment in Northern Ireland from being entitled to a jobseeker's allowance, the taxable maximum in respect of a week shall be equal to half the portion of the applicable amount which is included in respect of them for that week.
- (9) In this section—

“age-related amount” and “applicable amount” mean the amounts determined as such in accordance with regulations made under section 4 of the Jobseekers Act 1995 or, for Northern Ireland, regulations made under any corresponding enactment in Northern Ireland; and

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“contribution-based jobseeker’s allowance”, “income-based jobseeker’s allowance”, “married couple” and “unmarried couple” have the same meanings as in the Jobseekers Act 1995 or, for Northern Ireland, the same meanings as in any corresponding enactment in Northern Ireland.]

#### Textual Amendments

**F47** S. 151A inserted (2.9.1996) by Jobseekers Act 1995 (c. 18), s. 41(2)(4), **Sch. 2 para. 12**; S.I. 1996/2208, **art. 2(a)**

### 152 Notification of amount taxable under section 151.

<sup>M86</sup>(1) A benefit officer may by notice notify a person who is taxable in respect of any unemployment benefit or income support of the amount on which he is taxable and any such notification shall state the date on which it is issued and shall inform the person to whom it is given that he may object to the notification by notice given within 60 days after the date of issue of the notification.

(2) Where—

- (a) no objection is made to a notification of an amount under subsection (1) above within the period specified in that subsection (or such further period as may be allowed by virtue of subsection (5) below); or
- (b) an objection is made but is withdrawn by the objector by notice,

that amount shall not be questioned in any appeal against any assessment in respect of income including that amount.

(3) Where—

- (a) an objection is made to a notification of an amount under subsection (1) above within the period specified in that subsection (or such further period as may be allowed by virtue of subsection (5) below), and
- (b) the benefit officer and the objector come to an agreement that the amount notified should be varied in a particular manner, and
- (c) the officer confirms the agreement to vary in writing,

then, subject to subsection (4) below, that amount as so varied shall not be questioned in any appeal against any assessment in respect of income including that amount.

(4) Subsection (3) above shall not apply if, within 60 days from the date when the agreement was come to, the objector gives notice to the benefit officer that he wishes to repudiate or resile from the agreement.

(5) An objection to a notification may be made later than 60 days after the date of the issue of the notification if, on an application for the purpose—

- (a) a benefit officer is satisfied that there was a reasonable excuse for not objecting within that time, and
- (b) the objection was made thereafter without unreasonable delay, and
- (c) the officer gives consent in writing;

and if the officer is not so satisfied he shall refer the application for determination—

- (i) by the General Commissioners for the division in which the objector ordinarily resides or,

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- (ii) in a case where an appeal has been made against an assessment in respect of income including the amount in question, the General Commissioners or the Special Commissioners having jurisdiction in that appeal.
- (6) Where a benefit officer has notified an amount to a person under subsection (1) above, he may by another notice notify the person of an alteration in the amount previously notified and, if he does so, the original notification shall be cancelled and this section shall apply to such a subsequent notification as it applies to the original notification.
- (7) In this section “benefit officer” means the appropriate officer, in Great Britain, of the Department of Employment or of the Department of Health and Social Security, as the case may be, or, in Northern Ireland, of the Department of Health and Social Services.

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**Marginal Citations**

**M86** Source—1981 s.28; 1987 Sch.3 6

## CHAPTER II

### [<sup>F48</sup>EMPLOYEES EARNING £8,500 OR MORE AND DIRECTORS]

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**Textual Amendments**

**F48** Pt. 5 Ch. 2 heading substituted by Finance Act 1989 (c. 26), s. 53(2)(a)

### *Expenses*

#### **153** Payments in respect of expenses.

- <sup>M87</sup>(1) Subject to the provisions of this Chapter, where in any year a person is employed in [<sup>F49</sup>employment to which this Chapter applies] and by reason of his employment there are paid to him in respect of expenses any sums which, apart from this section, are not chargeable to tax as his income, those sums are to be treated as emoluments of the employment and accordingly chargeable to income tax under Schedule E.
- (2) Subsection (1) above is without prejudice to any claim for deductions under section 198, 201 [<sup>F50</sup>201AA] or 332(3).
- (3) The reference in subsection (1) above to sums paid in respect of expenses includes any sums put at the employee’s disposal by reason of his employment and paid away by him.

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**Textual Amendments**

**F49** 1989 s.53(2)(b).*Previously*

“director’s or higher-paid employment”.

**F50** Words in s. 153(2) inserted (with effect in accordance with s. 91(3) of the amending Act) by Finance Act 1995 (c. 4), s. 91(2)

*Status: Point in time view as at 19/04/1996. This version of this part contains provisions that are not valid for this point in time.*

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### Marginal Citations

**M87** Source—1976 s.60

## *Benefits in kind*

### 154 General charging provision.

- <sup>M88</sup>(1) Subject to section 163, where in any year a person is employed in [<sup>F51</sup>employment to which this Chapter applies] and—
- (a) by reason of his employment there is provided for him, or for others being members of his family or household, any benefit to which this section applies; and
  - (b) the cost of providing the benefit is not (apart from this section) chargeable to tax as his income,
- there is to be treated as emoluments of the employment, and accordingly chargeable to income tax under Schedule E, an amount equal to whatever is the cash equivalent of the benefit.
- (2) The benefits to which this section applies are accommodation (other than living accommodation), entertainment, domestic or other services, and other benefits and facilities of whatsoever nature (whether or not similar to any of those mentioned above in this subsection), excluding however—
- (a) any benefit consisting of the right to receive, or the prospect of receiving, any sums which would be chargeable to tax under section 149; and
  - (b) any benefit chargeable under section 157, 158, [<sup>F52</sup>159AA,][<sup>F53</sup>159A,]160 or 162;
- and subject to the exceptions provided for by [<sup>F54</sup>sections 155 and 155A].
- (3) For the purposes of this section and sections 155 and 156, the persons providing a benefit are those at whose cost the provision is made.

### Textual Amendments

- F51** 1989 s.53(2)(b). *Previously* “director’s or higher-paid employment”.
- F52** Words in s. 154(2)(b) inserted (with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 73, Sch. 4 paras.2, 8
- F53** Word in s. 154(2)(b) inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 30(1)(3)
- F54** 1990 s.21(2) *for the year 1990-91 and subsequent years. Previously* “section 155”.

### Modifications etc. (not altering text)

- C18** S. 154 excluded (N.I.) (in operation 30.12.1991 with effect from 1.9.1991) by S.R. 1991/508, regs. 1(2), 13(1)(b)(3), 15(2), Sch. 8 para. 5(6)(with Sch. 10)  
 S. 154 excluded (N.I.) (1.9.1992) by S.R. 1992/363, regs. 13(1)(b)(3), 15(2), Sch. 8 Pt. II para. 5(6).

### Marginal Citations

**M88** Source—1976 s.61; 1977 Sch.8 5; 1981 s.30(3)

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## 155 Exceptions from the general charge.

(1) <sup>M89</sup>Where the benefit of a car [<sup>F55</sup>or van] is taxable under section 157 [<sup>F56</sup>or 159AA], section 154 does not apply to any benefit in connection with the car [<sup>F55</sup>or van] other than a benefit in connection with the provision of a driver for the car [<sup>F55</sup>or van].

[<sup>F57</sup>(1A) Section 154 does not apply to a benefit consisting in the provision for the employee of a car parking space at or near his place of work.]

[<sup>F58</sup>(1B) Section 154 does not apply in the case of a benefit provided for the employee himself where—

- (a) the provision of the benefit is incidental to the employee's being away from his usual place of abode during a qualifying absence from home;
- (b) the authorised maximum is not exceeded in relation to that qualifying absence; and
- (c) the cost of the benefit would not be deductible as mentioned in section 156(8) if incurred by the employee out of his emoluments.

(1C) Subsections (3) to (5) of section 200A shall apply as they apply for the purposes of that section for construing the references in subsection (1B) above to a qualifying absence from home and for determining, for the purposes of that subsection, whether the authorised maximum is exceeded.]

(2) <sup>M90</sup>Section 154 does not apply where the benefit consists in provision for the employee, in premises occupied by the employer or others providing it, of accommodation, supplies or services used by the employee solely in performing the duties of his employment.

(3) <sup>M91</sup>Where living accommodation is provided by reason of a person's employment—

- (a) alterations and additions to the premises concerned which are of a structural nature, and
- (b) repairs to the premises of a kind which, if the premises were let under a lease to which section 11 of the <sup>M92</sup>Landlord and Tenant Act 1985 (repairing obligations) applies, would be the obligation of the lessor under the covenants implied by subsection (1) of that section,

are not benefits to which section 154 applies.

(4) <sup>M93</sup>Section 154 does not apply to a benefit consisting in the provision by the employee's employer for the employee himself, or for the spouse, children or dependants of the employee, of any pension, annuity, lump sum, gratuity or other like benefit to be given on the employee's death or retirement.

(5) <sup>M94</sup>Section 154 does not apply to a benefit consisting in the provision by the employee's employer of meals in any canteen in which meals are provided for the staff generally.

(6) <sup>M95</sup>Section 154 does not apply where the benefit consists—

- (a) in providing the employee with medical treatment outside the United Kingdom (including providing for him to be an in-patient) in a case where the need for the treatment arises while the employee is outside the United Kingdom for the purpose of performing the duties of his employment; or
- (b) in providing insurance for the employee against the cost of such treatment in such a case;

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and for the purpose of this subsection, medical treatment includes all forms of treatment for, and all procedures for diagnosing, any physical or mental ailment, infirmity or defect.

[<sup>F59</sup>(7) Section 154 does not apply to a benefit consisting in the provision of entertainment (including hospitality of any kind) for the employee, or for members of his family or household, if—

- (a) the person providing the benefit is neither his employer nor a person connected with his employer;
- (b) neither his employer nor a person connected with his employer has directly or indirectly procured its provision; and
- (c) it is not provided either in recognition of particular services which have been performed by the employee in the course of his employment or in anticipation of particular services which are to be so performed by him;

and section 839 shall apply for determining whether persons are connected for the purposes of this subsection.]

#### Textual Amendments

- F55** Words in s. 155(1) inserted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 73, Sch. 4 paras. 3(a), 8
- F56** Words in s. 155(1) inserted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 73, Sch. 4 paras. 3(b), 8
- F57** 1988(F) s.46(3) for 1988-89 and subsequent years.
- F58** S. 155(1B)(1C) inserted (with effect in accordance with s. 93(5) of the amending Act) by Finance Act 1995 (c. 4), s. 93(3)
- F59** 1988(F) s.49(1) for 1988-89 and subsequent years. For 1987-88 see 1988(F) s.49.

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

- C19** S. 155(1A) extended (with effect in accordance with s. 49(4) of the extending Act) by Finance Act 1999 (c. 16), s. 49(1)(2)

#### Marginal Citations

- M89** Source—1976 s.62(1); 1980 s.48(1)
- M90** Source—1976 s.62(3)
- M91** Source—1976 s.62(4); 1977 Sch.8 6
- M92** 1985 c. 70.
- M93** Source—1976 s.62(6)
- M94** Source—1976 s.62(7)
- M95** Source—1976 s.62(8); 1981 s.72(1)

VALID FROM 28/07/2000

#### [<sup>F60</sup>155ZA] **Accommodation, supplies or services used in performing duties of employment.**

- (1) Section 154 does not apply to a benefit consisting in the provision of accommodation, supplies or services used by the employee in performing the duties of his employment if the following conditions are met.

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- (2) Where the benefit is provided on premises occupied by the employer or other person providing it, the only condition is that any use of it for private purposes by the employee or members of his family or household is not significant.
- (3) Where the benefit is provided otherwise than on premises occupied by the employer or other person providing it, the conditions are—
  - (a) that the sole purpose of providing the benefit is to enable the employee to perform the duties of his employment,
  - (b) that any use of it for private purposes is not significant, and
  - (c) that it is not an excluded benefit.
- (4) The Treasury may make provision by regulations as to what is an excluded benefit for the purposes of subsection (3)(c) above.

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.
- (5) Subject to any such regulations, the provision of any of the following is an excluded benefit (whatever the terms and whoever it is provided to)—
  - (a) a motor vehicle, boat or aircraft;
  - (b) a benefit that involves—
    - (i) the extension, conversion or alteration of any 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.
- (6) For the purposes of this section—
  - (a) use “for private purposes” means any use that is not use in performing the duties of the employee’s employment; and
  - (b) use that is at the same time use in performing the duties of an employee’s employment and use for private purposes counts as use for private purposes.]

#### Textual Amendments

**F60** S. 155ZA inserted (with effect in accordance with s. 57(2) of the amending Act) by Finance Act 2000 (c. 17), s. 57(1), **Sch. 10 para. 2(1)**

VALID FROM 28/07/2000

#### [<sup>F61</sup>155ZBower to provide for exemption of minor benefits.

- (1) The Treasury may make provision by regulations for exempting from section 154 such minor benefits as may be specified in the regulations.
- (2) Any exemption conferred by regulations under this section is conditional on the benefit being made available to the employer’s employees generally on similar terms.]

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### Textual Amendments

**F61** S. 155ZB inserted (with effect in accordance with s. 57(2) of the amending Act) by Finance Act 2000 (c. 17), s. 57(1), Sch. 10 para. 3(1)

VALID FROM 27/07/1999

### [<sup>F62</sup>155A] Mobile telephones.

- (1) Section 154 does not apply where the benefit consists in a mobile telephone being made available (without any transfer of the property in it) to the employee or to a member of his family or household.
- (2) In this section “mobile telephone” means wireless telegraphy apparatus designed or adapted for the purpose of transmitting and receiving spoken messages so as to provide a telephone which—
  - (a) is connected to a public telecommunication system (within the meaning of the <sup>M96</sup>Telecommunications Act 1984); and
  - (b) is not physically connected to a land-line;
 but does not include any cordless telephone or any telepoint telephone.
- (3) The mobile telephones to which the exemption provided by this section applies include any mobile telephone provided in connection with a car, van or heavier commercial vehicle, notwithstanding that the vehicle is made available as mentioned in section 157, section 159AA or, as the case may be, section 159AC.
- (4) In this section “cordless telephone” means wireless telegraphy apparatus which (whether or not provided in connection with a car, van or heavier commercial vehicle) —
  - (a) is designed or adapted for the purpose of transmitting and receiving spoken messages so as to provide a wireless extension to a telephone, and
  - (b) is used only as such an extension to a telephone that is physically connected to a land-line.
- (5) In this section “telepoint telephone” means wireless telegraphy apparatus which (whether or not provided in connection with a car, van or heavier commercial vehicle) is used for the purpose of a short-range radio communications service utilising frequencies between 864 and 868 megahertz (inclusive).
- (6) In this section “heavier commercial vehicle” has the same meaning as in section 159AC.]

### Textual Amendments

**F62** S. 155AA inserted (with effect in accordance with s. 44(6) of the amending Act) by Finance Act 1999 (c. 16), s. 44(1)

### Marginal Citations

**M96** 1984 c.12.



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*Status:* Point in time view as at 19/04/1996. This version of this part contains provisions that are not valid for this point in time.

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### [<sup>F63</sup>155A Care for children.

- (1) Where a benefit consists in the provision for the employee of care for a child, section 154 does not apply to the benefit to the extent that it is provided in qualifying circumstances.
- (2) For the purposes of subsection (1) above the benefit is provided in qualifying circumstances if—
  - (a) the child falls within subsection (3) below,
  - (b) the care is provided on premises which are not domestic premises,
  - (c) the condition set out in subsection (4) below or the condition set out in subsection (5) below (or each of them) is fulfilled, and
  - (d) in a case where the registration requirement applies, it is met.
- (3) The child falls within this subsection if—
  - (a) he is a child for whom the employee has parental responsibility,
  - (b) he is resident with the employee, or
  - (c) he is a child of the employee and maintained at his expense.
- (4) The condition is that the care is provided on premises which are made available by the employer alone.
- (5) The condition is that—
  - (a) the care is provided under arrangements made by persons who include the employer,
  - (b) the care is provided on premises which are made available by one or more of those persons, and
  - (c) under the arrangements the employer is wholly or partly responsible for financing and managing the provision of the care.
- (6) The registration requirement applies where—
  - (a) the premises on which the care is provided are required to be registered under section 1 of the <sup>M97</sup>Nurseries and Child-Minders Regulation Act 1948 or section 11 of the <sup>M98</sup>Children and Young Persons Act (Northern Ireland) 1968, or
  - (b) any person providing the care is required to be registered under section 71 of the <sup>M99</sup>Children Act 1989 with respect to the premises on which it is provided; and the requirement is met if the premises are so registered or (as the case may be) the person is so registered.
- (7) In subsection (3)(c) above the reference to a child of the employee includes a reference to a stepchild of his.
- (8) In this section—

“care” means any form of care or supervised activity, whether or not provided on a regular basis, but excluding supervised activity provided primarily for educational purposes;

“child” means a person under the age of eighteen;

“domestic premises” means any premises wholly or mainly used as a private dwelling;

“parental responsibility” has the meaning given in section 3(1) of the Children Act 1989.]

*Status: Point in time view as at 19/04/1996. This version of this part contains provisions that are not valid for this point in time.*

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### Textual Amendments

**F63** S. 155A inserted (1990-91 and subsequent years of assessment) by [Finance Act 1990 \(c. 29\), s. 21\(1\)\(3\)](#)

### Marginal Citations

**M97** 1948 c.53.

**M98** 1968 c.34 (N.I.)

**M99** 1989 c.41.

## 156 Cash equivalent of benefits charged under section 154.

- (1) <sup>M100</sup>The cash equivalent of any benefit chargeable to tax under section 154 is an amount equal to the cost of the benefit, less so much (if any) of it as is made good by the employee to those providing the benefit.
- (2) Subject to the following subsections, the cost of a benefit is the amount of any expense incurred in or in connection with its provision, and (here and in those subsections) includes a proper proportion of any expense relating partly to the benefit and partly to other matters.
- (3) Where the benefit consists in the transfer of an asset by any person, and since that person acquired or produced the asset it has been used or has depreciated, the cost of the benefit is deemed to be the market value of the asset at the time of transfer.
- (4) <sup>M101</sup>Where the asset referred to in subsection (3) above is not a car and before the transfer a person (whether or not the transferee) has been chargeable to tax in respect of the asset in accordance with subsection (5) below, the amount which under subsection (3) above is deemed to be the cost of the benefit shall (if apart from this subsection it would be less) be deemed to be—
  - (a) the market value of the asset at the time when it was first applied (by those providing the benefit in question) for the provision of any benefit for a person, or for members of his family or household, by reason of his employment, less
  - (b) the aggregate of the amounts taken into account as the cost of the benefit in charging tax in accordance with subsection (5) below in the year or years up to and including that in which the transfer takes place.
- (5) <sup>M102</sup>Where the benefit consists in an asset being placed at the employee's disposal, or at the disposal of others being members of his family or household, for his or their use (without any transfer of the property in the asset), or of its being used wholly or partly for his or their purposes, then the cost of the benefit in any year is deemed to be—
  - (a) the annual value of the use of the asset ascertained under subsection (6) below; plus
  - (b) the total of any expense incurred in or in connection with the provision of the benefit excluding—
    - (i) the expense of acquiring or producing it incurred by the person to whom the asset belongs; and
    - (ii) any rent or hire charge payable for the asset by those providing the benefit.
- (6) <sup>M103</sup>Subject to subsection (7) below, the annual value of the use of the asset, for the purposes of subsection (5) above—

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- (a) in the case of land, is its annual value determined in accordance with section 837; and
  - (b) in any other case is 20 per cent. of its market value at the time when it was first applied (by those providing the benefit in question) in the provision of any benefit for a person, or for members of his family or household, by reason of his employment.
- (7) <sup>M104</sup> Where there is payable, by those providing the benefit, any sum by way of rent or hire-charge for the asset, the annual amount of which is equal to, or greater than, the annual value of the use of the asset as ascertained under subsection (6) above, that amount shall be substituted for the annual value in subsection (5)(a) above.
- (8) <sup>M105</sup> From the cash equivalent there are deductible in each case under section 198, 201, [F64 201AA] or 332(3) such amounts (if any) as would have been so deductible if the cost of the benefit had been incurred by the employee out of his emoluments.
- (9) <sup>M106</sup> In the case of assets first applied before 6th April 1980 by those providing the benefit in question in the provision of any benefit for a person, or for members of his family or household, by reason of his employment—
- (a) subsection (4) above shall not have effect; and
  - (b) in subsection (6)(b) above for the words “20 per cent.” there shall be substituted the words “ 10 per cent. ”.

#### Textual Amendments

**F64** Words in s. 156(8) inserted (with effect in accordance with s. 91(3) of the amending Act) by Finance Act 1995 (c. 4), s. 91(2)

#### Marginal Citations

**M100** Source—1976 s.63(1)-(3)  
**M101** Source—1976 s.63(3A); 1980 s.49(2)  
**M102** Source—1976 s.63(4); 1980 s.51(1)(a)  
**M103** Source—1976 s.63(5)(a), (c); 1980 s.49(3)  
**M104** Source—1976 s.63(6); 1980 s.51(1)(b)  
**M105** Source—1976 s.63(8)  
**M106** Source—1980 s.49(4)

VALID FROM 27/07/1999

#### [F65] 156A Limited exemption for computer equipment.

- (1) This section applies to a benefit consisting in the provision of computer equipment if, in the case of a person (“the employee”) who is in employment to which this Chapter applies—
- (a) that equipment is provided by being made available to the employee or to a member of his family or household;
  - (b) it is so made available without any transfer of property in the equipment to the employee or to a member of his family or household; and

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- (c) it is so made available in a case in which the arrangements for providing employees of the employer with the benefit of computer equipment comply with subsection (2) below.
- (2) The arrangements for providing the employees of the employer with the benefit of computer equipment comply with this subsection unless—
- (a) the only arrangements for making computer equipment available to such employees, or to members of their families or households, are arrangements that are confined to cases where the employee in question is a director of a company; or
  - (b) the arrangements (taking them all together) for making computer equipment available to employees of the employer, or to members of their families or households, are such that it is made available on terms that are more favourable in some or all of the cases where the employee in question is a director of a company than in one or more cases where he is not.
- (3) Section 154 applies for any year of assessment to—
- (a) the benefits to which this section applies that are provided in that year and consist in the making available to the employee of any equipment, and
  - (b) the benefits to which this section applies that are provided in that year and consist in the making available to members of his family or household of any equipment,
- to the extent only that the amount which (disregarding this section) would be taken to be the aggregate cash equivalent of the benefits falling within paragraphs (a) and (b) above exceeds £500.
- (4) For the purposes of this section “computer equipment” includes printers, scanners, modems, discs and other peripheral devices designed to be used by being connected to or inserted in a computer.
- (5) In this section references to making computer equipment available—
- (a) include references to the provision, together with any computer equipment made available, of a right to use computer software; but
  - (b) do not include references to the provision of a benefit consisting in access to, or the use of, any public telecommunication system (within the meaning of the <sup>M107</sup>Telecommunications Act 1984).]

#### Textual Amendments

**F65** S. 156A inserted (with application in accordance with s. 45(3) of the amending Act) by [Finance Act 1999 \(c. 16\), s. 45\(1\)](#)

#### Marginal Citations

**M107** 1984 c.12.

## 157 Cars available for private use.

- (1) <sup>M108</sup>Where in any year in the case of a person employed in [<sup>F66</sup>employment to which this Chapter applies], a car is made available (without any transfer of the property in it) either to himself or to others being members of his family or household, and—

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- (a) it is so made available by reason of his employment and it is in that year available for his or their private use; and
- (b) the benefit of the car is not (apart from this section) chargeable to tax as the employee's income,

there is to be treated as emoluments of the employment, and accordingly chargeable to income tax under Schedule E, an amount equal to whatever is the cash equivalent of that benefit in that year.

[<sup>F67</sup>(2) The cash equivalent of the benefit in the year concerned shall be ascertained in accordance with Schedule 6.]

- (3) <sup>M109</sup>Where in any year the benefit of a car is chargeable to tax under this section as the employee's income he shall not be taxable—
  - (a) under Schedule E in respect of the discharge of any liability of his in connection with the car;
  - (b) under section 141 or 142 in respect of any non-cash voucher or credit-token to the extent that it is used by him—
    - (i) for obtaining money which is spent on goods or services in connection with the car; or
    - (ii) for obtaining such goods or services;
  - (c) under section 153 in respect of any payment made to him in respect of expenses incurred by him in connection with the car.

<sup>F68</sup>(4) .....

<sup>F68</sup>(5) .....

#### Textual Amendments

**F66** 1989 s.53(2)(b). *Previously*

“director's or higher paid employment”.

**F67** S. 157(2) substituted (with effect for the year 1995-95 and subsequent years of assessment) by 1993 c. 34, s. 72, Sch. 3 paras. 2(1), 7

**F68** S. 157(4)(5) repealed (with effect for the year 1994-95 and subsequent years of assessment) by 1993 c. 34, ss. 72, 213, Sch. 3 paras. 2(2), 7, **Sch. 23 Pt.III**

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

**C20** See—1988 ss.197A, 197B to F—*car parking and mileage profit*. 1988 s.327—*disabled persons' vehicle maintenance grant*.

**C21** S. 157 applied (E.W.S.)(25.7.1991 for tax year beginning 6.4.1991 and subsequent years) by **Social Security Act 1975** (c. 14, SIF 113:1), **s. 4A(4)-(6)** (as inserted by **Social Security (Contributions) Act 1991** (c. 42, SIF 113:1), **ss. 1(5), 6(5)**)

**C22** S. 157 applied (N.I.)(16.10.1991 for tax year beginning 6.4.1991 and subsequent years) by **Social Security (Northern Ireland) Act 1975** (c. 15, SIF 113:1), **s. 4A(4)-(6)** (as inserted by S.I. 1991/2294 (N.I. 22), **arts. 1(4), 3(5)**)  
S. 157 applied (E.W.S.) (1.7.1992) by **Social Security Contributions and Benefits Act 1992** (c. 4), **ss. 10(4), 177(4)** (with s. 108(5)).

#### Marginal Citations

**M108** Source—1976 s.64(1)

**M109** Source—1976 s.64(2A); 1981 s.68(3); 1982 s.46(2)

*Status: Point in time view as at 19/04/1996. This version of this part contains provisions that are not valid for this point in time.*

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**[<sup>F69</sup>157A Cars available for private use: cash alternative, etc.**

Where, in any year in the case of a person employed in employment to which this Chapter applies—

- (a) a car is made available as mentioned in section 157, and
- (b) an alternative to the benefit of the car is offered,

the mere fact that the alternative is offered shall not make the benefit chargeable to tax under section 19(1).]

**Textual Amendments**

**F69** S. 157A inserted (with effect in accordance with s. 43(4) of the amending Act) by [Finance Act 1995 \(c. 4\), s. 43\(1\)](#)

**158 Car fuel.**

- (1) <sup>M110</sup>Where in any year in the case of a person employed in [<sup>F70</sup>employment to which this Chapter applies] fuel is provided by reason of his employment for a car [<sup>F71</sup>the benefit of which is chargeable to tax under section 157 as his income,] an amount equal to whatever is the cash equivalent of that benefit in that year shall be treated as emoluments of the employment and, accordingly, shall be chargeable to income tax under Schedule E.

[<sup>F72</sup>(2) Subject to the provisions of this section, the cash equivalent of that benefit shall be ascertained from—

- (a) Table A below where the car has an internal combustion engine with one or more reciprocating pistons and is not a diesel car;
- (b) Table AB below where the car has an internal combustion engine with one or more reciprocating pistons and is a diesel car;
- (c) Table B below where the car does not have an internal combustion engine with one or more reciprocating pistons.

[<sup>F73</sup> **TABLE A**

<b>Cylinder capacity of car in cubic centimetres</b>	<b>Cash equivalent</b>
1,400 or less.....	£710
More than 1,400 but not more than 2,000	£890
More than 2,000	£1,320

**TABLE AB**

<b>Cylinder capacity of car in cubic centimetres</b>	<b>Cash equivalent</b>
2,000 or less.....	£640
More than 2,000.....	£820

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**TABLE B**

<i>Description of car</i>	<i>Cash equivalent</i>
Any car.....	£1,320]

- (2A) For the purposes of subsection (2) above a diesel car is a car which uses heavy oil as fuel; and “heavy oil” here means heavy oil as defined by section 1(4) of the Hydrocarbon Oil Duties Act 1979.
- (2B) For the purposes of Tables A and AB in subsection (2) above a car’s cylinder capacity is the capacity of its engine calculated as for the purposes of [F74the Vehicle Excise and Registration Act 1994.]
- (3) <sup>MIII</sup>Without prejudice to the generality of subsection (1) above, fuel is provided for a car if—
- any liability in respect of the provision of fuel for the car is discharged;
  - a non-cash voucher or a credit-token is used to obtain fuel for the car or money which is spent on such fuel;
  - any sum is paid in respect of expenses incurred in providing fuel for the car.
- In this subsection “non-cash voucher” and “credit-token” have the meanings given by section 141(7) and 142(4) respectively.
- (4) The Treasury may by order taking effect from the beginning of any year beginning after it is made substitute a different Table for [F75any] of the Tables in subsection (2) above.
- (5) Where [F76paragraph 6] of Schedule 6 applies to reduce the cash equivalent of the benefit of the car for which the fuel is provided, the same reduction shall be made to the cash equivalent of the benefit of the fuel ascertained under subsection (2) above.
- (6) If in the relevant year—
- the employee is required to make good to the person providing the fuel the whole of the expense incurred by him in or in connection with the provision of fuel for his private use and he does so; or
  - the fuel is made available only for business travel;
- the cash equivalent is nil.

**Textual Amendments**

- F70** 1989 s.53(2)(b). Previously "director's or higher-paid employment".
- F71** Words in s. 158(1) substituted (with effect in accordance with s. 43(4) of the amending Act) by Finance Act 1995 (c. 4), s. 43(2)
- F72** S. 158(2)(2A)(2B) substituted for s. 158(2) (with effect for the year 1992-93 and subsequent years of assessment) by Finance (No. 2) Act 1992 (c. 48), s. 53(2)(4).
- F73** S. 158: Tables A, AB, B substituted (6.4.1996) by The Income Tax (Cash Equivalents of Car Fuel Benefits) Order 1995 (S.I. 1995/3035), art. 2
- F74** Words in s. 158(2B) substituted (1.9.1994) by Vehicle Excise and Registration Act 1994 (c. 22), ss. 63, 66(1), Sch. 3 para. 22 (with s. 57(4))
- F75** Word in s. 158(4) substituted (with effect for the year 1992-93 and subsequent years of assessment) by Finance (No. 2) Act 1992 (c. 48), s. 53(3)(4).
- F76** Words in s. 158(5) substituted (with effect for the year 1994-95 and subsequent years of assessment) by 1993 c. 34, s. 72, Sch. 3 paras. 6(2), 7

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

- C23** See—1988 ss.197A, 197B—*car parking and mileage profit*. 1988 s.327—*disabled persons' vehicle maintenance grant*.
- C24** S. 158 applied (E.W.S.) (25.7.1991 for tax year beginning 6.4.1991 and subsequent years) by **Social Security Act 1975 (c. 14, SIF 113:1), s. 4A(4)-(6)** (as inserted by **Social Security Act 1991 (c. 42, SIF 113:1), ss. 1(5), 6(5)**)
- C25** applied (N.I.) (16.10.1991 for tax year beginning 6.4.1991 and subsequent years) by **Social Security (Northern Ireland) Act 1975 (c. 15, SIF 113:1), s. 4A(4)-(6)** (as inserted by **S.I. 1991/2294 (N.I. 22), arts. 1(4), 3(5)**)  
 S. 158 applied (E.W.S.) (1.7.1992) by **Social Security Contributions and Benefits Act 1992 (c. 4), ss. 10(4), 177(4)** (with s. 108(5)).

#### **Marginal Citations**

- M110** Source—1976 s.64A(1); 1981 s.69(1); 1982 s.46(4)  
**M111** Source—1976 s.64A(3)-(6); 1981 s.69(1)

### **159 Pooled cars.**

- <sup>M112</sup>(1) This section applies to any car in the case of which the inspector is satisfied (whether on a claim under this section or otherwise) that it has for any year been included in a car pool for the use of the employees of one or more employers.
- (2) A car is to be treated as having been so included for a year if—
- (a) in that year it was made available to, and actually used by, more than one of those employees and, in the case of each of them, it was made available to him by reason of his employment but it was not in that year ordinarily used by one of them to the exclusion of the others; and
  - (b) in the case of each of them any private use of the car made by him in that year was merely incidental to his other use of it in the year; and
  - (c) it was in that year 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.
- (3) Where this section applies to a car, then for the year in question the car is to be treated under sections 154 and 157 as not having been available for the private use of any of the employees.
- (4) A claim under this section in respect of a car for any year may be made by any one of the employees mentioned in subsection (2)(a) above (referred to below as “the employees concerned”) or by the employer on behalf of all of them.
- (5) On an appeal against the decision of the inspector on a claim under this section all the employees concerned may take part in the proceedings, and the determination of the body of Commissioners or county court appealed to shall be binding on all those employees, whether or not they have taken part in the proceedings.
- (6) Where an appeal against the decision of the inspector on a claim under this section has been determined, no appeal against the inspector’s decision on any other such claim in respect of the same car and the same year shall be entertained.



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

**C26** See—1988 ss.197A, 197B—*car parking and mileage profit*. 1988 s.327—*disabled persons' vehicle maintenance grant*.

#### Marginal Citations

**M112** Source—1976 s.65

### [<sup>F77</sup> **159A** Vans available for private use.

- (1) Where in any year, in the case of a person employed in employment to which this Chapter applies, a van is made available (without any transfer of the property in it) either to himself or to others being members of his family or household, and—
  - (a) it is so made available by reason of his employment and it is in that year available for his or their private use, and
  - (b) the benefit of the van is not (apart from this section) chargeable to tax as the employee's income,  
there is to be treated as emoluments of the employment, and accordingly chargeable to income tax under Schedule E, an amount equal to whatever is the cash equivalent of that benefit in that year.
- (2) The cash equivalent of the benefit in the year concerned shall be ascertained in accordance with Schedule 6A.
- (3) Where in any year the benefit of a van is chargeable to tax under this section as the employee's income, he shall not be taxable—
  - (a) under Schedule E in respect of the discharge of any liability of his in connection with the van;
  - (b) under section 141 or 142 in respect of any non-cash voucher or credit-token to the extent that it is used by him—
    - (i) for obtaining money which is spent on goods or services in connection with the van, or
    - (ii) for obtaining such goods or services;
  - (c) under section 153 in respect of any payment made to him in respect of expenses incurred by him in connection with the van.]

#### Textual Amendments

**F77** Ss. 159AA, 159AB inserted after s. 159 (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 73, Sch. 4 paras. 4, 8

### [<sup>F78</sup> **159A** Booled vans.

Section 159 shall apply in relation to vans as it applies in relation to cars, and for the purposes of the application of that section to vans—

- (a) any reference in that section to a car shall be construed as a reference to a van,
- (b) the reference in subsection (1) of that section to a car pool shall be construed as a reference to a van pool, and

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- (c) the reference in subsection (3) of that section to section 157 shall be construed as a reference to section 159AA.

#### Textual Amendments

**F78** Ss. 159AA, 159AB inserted after s. 159 (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 73, Sch. 4 paras. 4, 8

#### [<sup>F79</sup>159A] Heavier commercial vehicles available for private use.

- (1) This section applies where in any year—
- (a) a heavier commercial vehicle is made available to an employee in circumstances such that, had that vehicle been a van, the benefit so provided would have been chargeable to tax under section 159AA, and
  - (b) the employee's use of the vehicle is not wholly or mainly private use.
- (2) Section 154 shall not apply to—
- (a) the benefit so provided, or
  - (b) any benefit in connection with the vehicle other than a benefit in connection with the provision of a driver for the vehicle.
- (3) The employee shall not be taxable—
- (a) under Schedule E in respect of the discharge of any liability of his in connection with the vehicle;
  - (b) under section 141 or 142 in respect of any non-cash voucher or credit-token to the extent that it is used by him—
    - (i) for obtaining money which is spent on goods or services in connection with the vehicle, or
    - (ii) for obtaining such goods or services;
  - (c) under section 153 in respect of any payment made to him in respect of expenses incurred by him in connection with the vehicle.
- (4) In this section “heavier commercial vehicle” means a mechanically propelled road vehicle which is—
- (a) of a construction primarily suited for the conveyance of goods or burden of any description, and
  - (b) of a design weight exceeding 3,500 kilograms;
- and “design weight” here means the weight which the vehicle is designed or adapted not to exceed when in normal use and travelling on a road laden.
- (5) In this section—
- (a) “private use”, in relation to a vehicle made available to an employee, means any use other than for his business travel, and
  - (b) “business travel” means travelling which the employee is necessarily obliged to do in the performance of the duties of his employment.]

#### Textual Amendments

**F79** S. 159AC inserted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 74(1)(3)

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## **[<sup>F80</sup>159A Mobile telephones.**

- (1) Where in any year in the case of a person employed in employment to which this Chapter applies a mobile telephone is made available (without any transfer of the property in it) either to that person or to others who are members of his family or household, and—
  - (a) it is so made available by reason of his employment and it is in that year available for his or their private use, and
  - (b) the benefit of the mobile telephone is not (apart from this section) chargeable to tax as the employee's income,there is to be treated as emoluments of the employment, and accordingly chargeable to income tax under Schedule E, an amount equal to whatever is the cash equivalent of that benefit in that year.
- (2) The cash equivalent of a benefit taxable under this section in any year shall be £200 for each mobile telephone made available in that year, but subject to the following provisions of this section.
- (3) If for any year—
  - (a) there is no private use of the mobile telephone, or
  - (b) the employee is required to, and does, make good to the person providing the benefit the full cost of any private use of the mobile telephone,then the cash equivalent of the benefit for that year is nil.
- (4) If the mobile telephone is unavailable for any part of a year, the cash equivalent of the benefit for that year shall be reduced by an amount which bears to that specified in subsection (2) above for that year the proportion which the number of days in the year on which the mobile telephone is unavailable bears to 365.
- (5) For the purposes of subsection (4) above, a mobile telephone is to be regarded as “unavailable” on any day if, and only if—
  - (a) it is not made available as mentioned in subsection (1) above until after that day, or
  - (b) it ceases to be so available before that day, or
  - (c) it is incapable of being used at all throughout a period of not less than 30 consecutive days of which that day is one.
- (6) Where different mobile telephones are made available on different days in a year, the employee shall be treated for the purposes of this section as if the same mobile telephone (or, in a case where two or more mobile telephones are made available concurrently, the same mobile telephones) had been made available on each of those days.
- (7) The Treasury may by order taking effect from the beginning of any year commencing after the making of the order increase or further increase the amount specified in subsection (2) above.
- (8) For the purposes of this section—
  - (a) “mobile telephone” means wireless telegraphy apparatus designed or adapted for the purpose of transmitting and receiving spoken messages so as to provide a telephone which is connected to a public telecommunication system (within the meaning of the Telecommunications Act 1984) but which is not physically connected to a land-line and—

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- (i) includes any such apparatus provided in connection with a car [<sup>F81</sup>or van], notwithstanding that the car [<sup>F81</sup>or van] is made available as mentioned in section 157 [<sup>F82</sup>or 159AA], <sup>F83</sup> . . .
- [ includes any such apparatus provided in connection with a heavier <sup>F84</sup>(ia) commercial vehicle (within the meaning given by section 159AC) notwithstanding that the vehicle is made available as mentioned in that section;]
- (ii) does not include a cordless telephone or a telepoint telephone, whether or not provided in connection with a car [<sup>F81</sup>or van][<sup>F85</sup>or heavier commercial vehicle];
- (b) “cordless telephone” means wireless telegraphy apparatus—
  - (i) designed or adapted for the purpose of transmitting and receiving spoken messages so as to provide a wireless extension to a telephone, and
  - (ii) used only as such an extension to a telephone that is physically connected to a land-line;
- (c) “telepoint telephone” means wireless telegraphy apparatus used for the purpose of a short-range radio communications service utilising frequencies between 864 and 868 megahertz (inclusive);
- (d) “private use”, in relation to a mobile telephone, means any use of the telephone to make calls, other than calls made wholly, exclusively and necessarily in the performance of the duties of the employment;
- (e) “full cost”, in relation to any private use of a mobile telephone, means the aggregate of—
  - (i) the cost of any telephone calls which constitute private use of the mobile telephone; and
  - (ii) any other cost of the benefit provided, determined in accordance with the provisions of section 156(2) and (5) to (7) as they would apply if the benefit were chargeable to tax under section 154;
- (f) an employee who accepts a call on the footing that the cost of the call will be charged to the person providing the benefit shall be treated as if the employee had made the call.]

#### Textual Amendments

- F80** S. 159A inserted (for the year 1991-92 and subsequent years of assessment) by [Finance Act 1991 \(c. 31, SIF 63:1\)](#), [s. 30\(2\)\(3\)](#)
- F81** Words in s. 159A(8)(a) inserted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 73, [Sch. 4 paras. 5\(a\), 8](#)
- F82** Words in s. 159A(8)(a) inserted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 73, [Sch. 4 paras. 5\(b\), 8](#)
- F83** Word in s. 159A(8)(a)(i) repealed (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, [ss. 74\(2\)\(a\)\(3\), 213](#), [Sch. 23 Pt.III](#)
- F84** S. 159A(8)(a)(ia) inserted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, [s. 74\(2\)\(b\)\(3\)](#)
- F85** Words in s. 159A(8)(a)(ii) inserted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, [s. 74\(2\)\(c\)\(3\)](#)

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## 160 Beneficial loan arrangements.

(1) <sup>M113</sup>Where in the case of a person employed in [<sup>F86</sup>employment to which this Chapter applies] there is outstanding for the whole or part of a year a loan (whether to the employee himself or a relative of his) of which the benefit is obtained by reason of his employment and—

- (a) no interest is paid on the loan for that year; or
- (b) the amount of interest paid on it for the year is less than interest at the official rate,

[<sup>F87</sup>an amount equal to whatever is the cash equivalent of the benefit of the loan for that year shall, subject to the provisions of this Chapter, be treated as emoluments of the employment, and accordingly chargeable to tax under Schedule E; and where that amount is so treated, the employee is to be treated as having paid interest on the loan in that year of the same amount.

(1A) Interest treated as paid by virtue of subsection (1) above—

- (a) shall be treated as paid for all the purposes of the Tax Acts (other than this Chapter, including Schedule 7), but shall not be treated for any purpose as income of the person making the loan or be treated as relevant loan interest to which section 369 applies, and
- (b) shall be treated as accruing during, and paid by the employee at the end of, the year or, if different, the period in the year during which he is employed in employment to which this Chapter applies and the loan is outstanding.

(1B) All the loans between the same lender and borrower which—

- (a) are outstanding at any time, as to any amount, in any year,
- (b) are not qualifying loans, and
- (c) are made in the same currency,

are, if a cash equivalent for them falls to be ascertained, to be treated for the purposes of subsections (1) and (1A) above and Part II of Schedule 7 as a single loan.

(1C) In this section and section 161 “qualifying loan” means any loan made to any person where, assuming interest is being paid on the loan (whether or not it is in fact being paid), the whole or any part of the interest—

- (a) is eligible for relief under section 353 or would be so eligible but for subsection (2) of that section or section 357(1)(b), or
- (b) is deductible in computing the amount of the profits or gains to be charged under Case I or II of Schedule D in respect of a trade, profession or vocation carried on by him.]

(2) <sup>M114</sup>Where in the case of a person employed in [<sup>F86</sup>employment to which this chapter applies]—

- (a) there is in any year released or written off the whole or part of a loan (whether to the employee himself or a relative of his, and whether or not such a loan as is mentioned in subsection (1) above), and
- (b) the benefit of that loan was obtained by reason of his employment,

then there is to be treated as emoluments of the employment, and accordingly chargeable to income tax under Schedule E, an amount equal to that which is released or written off.

[<sup>F88</sup>(3) Where—

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- (a) there was outstanding, at any time when a person was in employment to which this Chapter applies, the whole or part of a loan to him (or a relative of his) the benefit of which was obtained by reason of his employment, and
- (b) that employment has terminated or ceased to be employment to which this Chapter applies,

subsection (2) above applies as if the employment had not terminated or, as the case may be, had not ceased to be employment to which this Chapter applies.]

[<sup>F89</sup>(3A) Where subsection (3) above applies, a loan which—

- (a) is applied directly or indirectly to the replacement of any such loan as is mentioned in paragraph (a) of that subsection, and
- (b) would, if the employment referred to in that subsection had not terminated or, as the case may be, ceased to be employment to which this Chapter applies, have been a loan the benefit of which was obtained by reason of that employment,

shall, unless it is a loan the benefit of which was obtained by reason of other employment, be treated as a loan the benefit of which was obtained by reason of that employment.]

- (4) <sup>M115</sup>Part I of Schedule 7 has effect as to what is meant by the benefit of a loan obtained by reason of a person's employment; the cash equivalent of the benefit is to be ascertained in accordance with Part II of that Schedule; <sup>F90</sup> . . .

[<sup>F91</sup>(4A) Where an assessment for any year in respect of a loan has been made or determined on the footing that the whole or part of the interest payable on the loan for that year was not in fact paid, but it is subsequently paid, then, on a claim in that behalf, the cash equivalent for that year shall be recalculated so as to take that payment into account and the assessment shall be adjusted accordingly.]

- (5) <sup>M116</sup>In this section, sections 161 and 162 and Schedule 7—

- (a) “loan” includes any form of credit;
- (b) <sup>F92</sup> . . . . .
- (c) references to making a loan include arranging, guaranteeing or in any way facilitating a loan (related expressions being construed accordingly); and
- (d) references to the official rate of interest are to the [<sup>F93</sup>rate applicable under section 178 of the Finance Act 1989.]

[<sup>F94</sup>and, without prejudice to the generality of section 178 of the Finance Act 1989, regulations under that section may make different provision in relation to a loan outstanding for the whole or part of a year if—

- (i) it was made in the currency of a country or territory outside the United Kingdom,
- (ii) the benefit of the loan is obtained by reason of the employment of a person who normally lives in that country or territory, and
- (iii) that person has lived in that country or territory at some time in the period of six years ending with that year]

- (6) For the purposes of this section and section 161, a person is a relative of another person if he or she is—

- (a) the spouse of that other; or
- (b) a parent or remoter forebear, child or remoter issue, or brother or sister of that other or of the spouse of that other; or

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(c) the spouse of a person falling within paragraph (b) above.

(7) Subject to section 161, this section applies to loans whether made before or after this Act is passed.

#### Textual Amendments

- F86** 1989 s.53(2)(b). *Previously*  
“director's or higher-paid employment”.
- F87** Words in s. 160(1), s. 160(1A)-(1C) substituted for words in s. 160(1) (with effect in accordance with s. 88(6) of the amending Act) by [Finance Act 1994 \(c. 9\), s. 88\(1\)](#)
- F88** 1989 s.53(2)(c). *Previously*  
“(3) Where there was outstanding at any time when a person was in director's or higher-paid employment the whole or part of a loan to him (or to a relative of his) the benefit of which was obtained by reason of his employment, and that director's or higher-paid employment has terminated, whether on the employee ceasing to be employed or ceasing to be employed in director's or higher-paid employment, subsection (2) above applies as if it had not terminated.”.
- F89** [S. 160\(3A\)](#) inserted (with effect in accordance with [s. 44\(5\)](#) of the amending Act) by [Finance Act 1995 \(c. 4\), s. 45\(3\)](#)
- F90** Words in s. 160(4) repealed (with effect in accordance with s. 88(6) of the repealing Act) by [Finance Act 1994 \(c. 9\), Sch. 26 Pt. 5\(5\)](#)
- F91** [S. 160\(4A\)](#) inserted by [Finance Act 1991 \(c. 31, SIF 63:1\), s. 27\(6\), Sch. 6 para. 1\(2\)](#)(for year 1991-92 and subsequent years of assessment)
- F92** [S. 160\(5\)\(b\)](#) repealed (with effect in accordance with s. 45(5) of the repealing Act) by [Finance Act 1995 \(c. 4\), s. 45\(2\), Sch. 29 Pt. 8\(3\)](#), Note
- F93** 1989 s.179(1) and (4) and S.I. [1989 No. 1298](#) (not reproduced) on and after 18 August 1989. *Previously* “rate prescribed from time to time by the Treasury by order”. *And see* S.I. [1989 No. 1297](#) (in Part III Vol.5) for regulations made, and interest rates set, under 1989 s.178. *See also* Table O Vol.1 for rates of interest.
- F94** Words in s. 160(5) added (with effect in accordance with [s. 88\(6\)](#) of the amending Act) by [Finance Act 1994 \(c. 9\), s. 88\(2\)](#)

#### Marginal Citations

- M113** Source—1976 s.66(1)
- M114** Source—1976 s.66(3)
- M115** Source—1976 s.66(8); 1982 s.26(9)(a)
- M116** Source—1976 s.66(9)-(11)

### 161 Exceptions from section 160.

[<sup>F95</sup>(1) The cash equivalent of the benefit of any such loan as is referred to in section 160(1) is not to be treated as emoluments of the employment if—

- (a) at no time in the year does the amount outstanding on the loan (or, if two or more such loans as are referred to in section 160(1) are outstanding in the year, the aggregate of the amounts outstanding on them) exceed £5000, or
- (b) where paragraph (a) above does not apply, the loan is not a qualifying loan and at no time in the year does the amount outstanding on the loan (or, if two or more such loans as are referred to in section 160(1) and are not qualifying loans are outstanding in the year, the aggregate of the amounts outstanding on them) exceed £5000.

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- (1A) Section 160(1) does not in any year apply to a loan made at any time in that or an earlier year by a person in the ordinary course of a business carried on by him which includes the lending of money if—
- (a) comparable loans were available, at the time the loan in question was made, to all those who might be expected to avail themselves of the services which he provides in the course of that business,
  - (b) of the total number of the loan in question and comparable loans made by him at or about the time the loan in question was made, a substantial proportion were made to members of the public at large with whom he was dealing at arm's length, and
  - (c) the loan in question, and comparable loans in general made by him at or about that time to members of the public at large with whom he was dealing at arm's length, are held on the same terms and, if those terms differ from the terms applicable immediately after the loan was first made, they were imposed in the ordinary course of his business.
- (1B) For the purposes of subsection (1A) above, a loan is comparable to the loan in question if it is made for the same or similar purposes, and on the same terms and conditions, as that loan.]
- (2) <sup>M117</sup>Where the amount of interest paid on a loan for the year in which it is made is not less than interest at the official rate applying for that year for the purposes of section 160 and the loan is made—
- (a) for a fixed and unvariable period; and
  - (b) at a fixed and unvariable rate of interest,
- subsection (1) of that section shall not apply to the loan in any subsequent year by reason only of an increase in the official rate since the year in which the loan was made.
- (3) Where a loan was made at any time before 6th April 1978—
- (a) for a fixed and unvariable period; and
  - (b) at a fixed and unvariable rate of interest,
- section 160(1) shall not apply to the loan if it is shown that the rate of interest is not less than such rate as could have been expected to apply to a loan on the same terms (other than as to the rate of interest) made at that time between persons not connected with each other (within the meaning of section 839) dealing at arm's length.
- (4) <sup>M118</sup>If the employee shows that he derived no benefit from a loan made to a relative of his, section 160(1) and (2) above shall not apply to that loan.
- (5) Section 160(2) does not apply where the amount released or written off is chargeable to income tax as income of the employee apart from that section, except—
- (a) where it is chargeable only by virtue of section 148; or
  - (b) to the extent that the amount exceeds the sums previously falling to be treated as the employee's income under section 677.
- (6) <sup>M119</sup>On the employee's death—
- (a) a loan within subsection (1) of section 160 ceases to be outstanding for the purposes of the operation of that subsection; and
  - (b) no charge arises under subsection (2) of that section by reference to any release or writing-off which takes effect on or after the death.



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- (7) <sup>M120</sup>Section 160(2) does not apply to benefits received in pursuance of arrangements made at any time with a view to protecting the holder of shares acquired before 6th April 1976 from a fall in their market value.

#### Textual Amendments

**F95** S. 161(1)(1A)(1B) substituted for s. 161(1) (with effect in accordance with s. 88(6) of the amending Act) by Finance Act 1994 (c. 9), s. 88(3)(5)

#### Marginal Citations

**M117** Source—1980 s.50(2), (3)

**M118** Source—1976 s.66(4), (5)

**M119** Source—1976 s.66(7)

**M120** Source—1976 s.66(11)(b)

VALID FROM 28/07/2000

#### [<sup>F96</sup>161A Treatment of qualifying loans.

- (1) In this Chapter a “qualifying loan” means a loan made to a person where, assuming interest is paid on the loan (whether or not it is in fact paid), the whole or part of the interest paid on it for the year—
- (a) is eligible for relief under section 353 or would be so eligible but for subsection (2) of that section, or
  - (b) is deductible in computing the amount of the profits to be charged—
    - (i) under Case I or II of Schedule D in respect of a trade, profession or vocation carried on by him, or
    - (ii) under Schedule A in respect of a Schedule A business carried on by him.
- (2) Section 160(1) does not apply to a loan in any year in which, on the assumption mentioned in subsection (1) above, the whole of the interest paid on it is eligible for relief or deductible as mentioned in that subsection.]

#### Textual Amendments

**F96** S. 161A inserted (with effect in accordance with s. 57(2) of the amending Act) by Finance Act 2000 (c. 17), s. 57(1), Sch. 10 para. 4(1)

VALID FROM 28/07/2000

#### [<sup>F97</sup>161B Beneficial loans: loans on ordinary commercial terms.

- (1) Section 160(1) does not apply to a loan on ordinary commercial terms.
- (2) Schedule 7A to this Act has effect as to what is meant by a loan on ordinary commercial terms.]

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### Textual Amendments

**F97** S. 161B inserted (with effect in accordance with s. 57(2) of the amending Act) by **Finance Act 2000** (c. 17), s. 57(1), **Sch. 10 para. 5(1)**

## 162 Employee shareholdings.

- (1) <sup>M121</sup>Where [<sup>F98</sup>after 6th April 1976—]
- (a) a person employed or about to be employed in [<sup>F99</sup>employment to which this Chapter applies] (“the employee”), or a person connected with him, acquires shares in a company (whether the employing company or not); and
  - (b) the shares are acquired at an under-value in pursuance of a right or opportunity available by reason of his employment,
- section 160(1) and Schedule 7 apply as if the employee had the benefit of an interest-free loan obtained by reason of his employment (“the notional loan”).
- (2) The provisions of this section have effect subject to sections 185 and 186; and in this section—
- (a) <sup>M122</sup>references to shares being acquired at an under-value are references to shares being acquired either without payment for them at the time or being acquired for an amount then paid which is less than the market value of fully paid up shares of that class (in either case with or without obligation to make payment or further payment at some later time); and
  - (b) <sup>M123</sup>any reference, in relation to any shares, to the under-value on acquisition is a reference to the market value of fully paid up shares of that class less any payment then made for the shares.
- (3) <sup>M124</sup>The amount initially outstanding of the notional loan is so much of the under-value on acquisition as is not chargeable to tax as an emolument of the employee; and—
- (a) the loan remains outstanding until terminated under subsection (4) below; and
  - (b) payments or further payments made for the shares after the initial acquisition go to reduce the amount outstanding of the notional loan.
- (4) <sup>M125</sup>The notional loan terminates on the occurrence of any of the following events—
- (a) the whole amount of it outstanding is made good by means of payments or further payments made for the shares; or
  - (b) the case being one in which the shares were not at the time of acquisition fully paid up, any outstanding or contingent obligation to pay for them is released, transferred or adjusted so as no longer to bind the employee or any person connected with him; or
  - (c) the shares are so disposed of by surrender or otherwise that neither he nor any such person any longer has a beneficial interest in the shares; or
  - (d) the employee dies.
- (5) If the notional loan terminates as mentioned in subsection (4)(b) or (c) above, there is then for the year in which the event in question occurs the same charge to income tax on the employee, under section 160(2) [<sup>F100</sup>(and where appropriate section 160(3))], as if an amount equal to the then outstanding amount of the notional loan had been released or written off from a loan within that section.

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(6) Where after 6th April 1976 shares are acquired, whether or not at an under-value but otherwise as mentioned in subsection (1) above, and—

- (a) the shares are subsequently disposed of by surrender or otherwise so that neither the employee nor any person connected with him any longer has a beneficial interest in them; and
- (b) the disposal is for a consideration which exceeds the then market value of the shares,

then for the year in which the disposal is effected the amount of the excess is treated as emoluments of the employee's employment and accordingly chargeable to income tax under Schedule E.

[<sup>F101</sup>(7) If at the time of the event giving rise to a charge by virtue of subsection (6) above the employment in question has terminated, that subsection shall apply as if it had not].

(8) No charge arises under subsection (6) above by reference to any disposal effected after the death of the employee, whether by his personal representatives or otherwise.

(9) This section applies in relation to acquisition and disposal of an interest in shares less than full beneficial ownership (including an interest in the proceeds of sale of part of the shares but not including a share option) as it applies in relation to the acquisition and disposal of shares, subject to the following modifications—

- (a) for references to the shares acquired there shall be substituted references to the interest in shares acquired;
- (b) for the reference to the market value of the shares acquired there shall be substituted a reference to the proportion corresponding to the size of the interest of the market value of the shares in which the interest subsists;
- (c) for the reference to shares of the same class as those acquired there shall be substituted a reference to shares of the same class as those in which the interest subsists; and
- (d) for the reference to the market value of fully paid up shares of that class there shall be substituted a reference to the proportion of that value corresponding to the size of the interest.

(10) In this section—

- (a) “shares” includes stock and also includes securities as defined in section 254(1);
- (b) “acquisition” in relation to shares includes receipt by way of allotment or assignment or otherwise howsoever;
- (c) any reference to payment for shares includes giving any consideration in money or money's worth or making any subscription, whether in pursuance of a legal liability or not;
- (d) “market value” has the same meaning as, for the purposes of the [<sup>F102</sup>1992] Act, it has by virtue of section [<sup>F102</sup>272] of that Act;

and section 839 applies for the purposes of this section.

(11) <sup>M126</sup>This section, in respect of any shares or any interest in shares, operates only to include an amount in emoluments so far as any amount corresponding to it, and representing the same benefit, does not otherwise fall to be so included under the Tax Acts.

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### Textual Amendments

- F98** 1988(F) s.146 and Sch.13 para.3 (*deemed always to have had effect*).
- F99** 1989 s.53(2)(b). *Previously*  
“director’s or higher-paid employment”.
- F100** 1989 s.53(2)(d).
- F101** 1989 s.53(2)(e). *Previously*  
“(7) If at the time of the event giving rise to a charge in relation to any shares by virtue of subsection (5) or (6) above the employee has ceased to be in the director’s or higher-paid employment by virtue of which he is the employee for the purposes of this section in relation to those shares, those subsections shall apply as if he had not so ceased.”.
- F102** Words in s. 162(10)(d) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289, 290, **Sch. 10 para. 14(11)** (with ss. 60, 101(1), 171, 201(3)).

### Modifications etc. (not altering text)

- C27** S. 162 applied (with effect as mentioned in s. 289(1)(2) of the affecting Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), **ss.120**, 289 (with ss. 60, 101(1), 171, 201(3)).
- C28** S. 162(1) excluded in part (28.7.2000) by [Finance Act 2000 \(c. 17\)](#), s. 62, **Sch. 14 para. 54(1)** (with Sch. 14 para. 54(2), 55)
- C29** S. 162(5) modified (24.2.2003) by [Proceeds of Crime Act 2002 \(c. 29\)](#), ss. 448, 458(1), **Sch. 10 para. 32**; S.I. 2003/120, **art. 2** Sch. (with arts. 3-5, as amended by S.I. 2003/333, art. 14)

### Marginal Citations

- M121** Source—1976 s.67(1), (3)
- M122** Source—1976 s.67(2)
- M123** Source—1976 s.67(4)
- M124** Source—1976 s.67(4)
- M125** Source—1976 s.67(5)-(11); 1979(C) Sch.7
- M126** Source—1976 s.67(12)

## 163 Expenses connected with living accommodation.

<sup>M127</sup>(1) This section applies where, in the case of a person employed in [<sup>F103</sup>employment to which this Chapter applies], living accommodation is provided by reason of the employment and, accordingly, a charge to tax would arise in his case under section 145 but for the case being one of those specified in subsection (4) of that section.

(2) Where, by reason of expenditure incurred in one or more of the following, that is to say,—

- (a) heating, lighting or cleaning the premises concerned;
- (b) repairs to the premises, their maintenance or decoration;
- (c) the provision in the premises of furniture or other appurtenances or effects which are normal for domestic occupation;

or by reason of such expenditure being reimbursed to the employee, an amount falls to be included in the emoluments of his employment, that amount shall not exceed the limit specified in subsection (3) below.

(3) That limit is—

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- (a) 10 per cent. of the net amount of the emoluments of the employment or, if the accommodation is provided for a period of less than a year, so much of that percentage of the net amount as is attributable to the period; less
  - (b) where the expenditure is incurred by a person other than the employee, so much as is properly attributable to the expenditure of any sum made good by the employee to that other.
- (4) The net amount of the emoluments of a person's employment for the purposes of subsection (3) above is the amount of those emoluments (leaving out of account the expenditure in question) after—
- (a) any capital allowance; and
  - (b) any deductions allowable under section 198, 199, 201, 332(3), 592(7), 594 or 619(1)(a);
- and, for the purposes of this subsection, in the case of employment by a company there shall be taken into account, as emoluments of the employment, the emoluments of any employment by an associated company.
- (5) For the purposes of subsection (4) above, a company is an associated company of another if one of them has control of the other or both are under the control of the same person.

#### Textual Amendments

**F103** 1989 s.53(2)(b). *Previously*  
“director's or higher-paid employment”.

#### Marginal Citations

**M127** Source—1976 s.63A; 1977 s.34

### 164 Director's tax paid by employer.

- (1) <sup>M128</sup>Subject to the provisions of this Chapter, where in any year a person (“the recipient”) is employed as a director of a company and—
- (a) a payment of, or on account of, income assessable to income tax under Schedule E as emoluments of that employment is made to him in circumstances in which the person making the payment is required, by regulations made under section 203, to deduct an amount of income tax on making the payment; and
  - (b) the whole of that amount is not so deducted but is, or any part of it is, accounted for to the Board by someone other than the recipient;
- the amount so accounted for to the Board, less so much (if any) as is made good by the recipient to that other person or so deducted, shall be treated as emoluments of the employment and accordingly chargeable to income tax under Schedule E.
- (2) A person shall not be treated, for the purposes of subsection (1) above, as employed as a director of a company if he has no material interest in the company and either paragraph (a) or paragraph (b) of section 167(5) is satisfied.
- (3) Where an amount treated as emoluments of a person's employment, by subsection (1) above, is accounted for to the Board at a time when the employment has come to an end, those emoluments shall be treated, for the purposes of the Income Tax Acts, as having arisen in the year in which the employment ended; but that subsection shall

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not apply in relation to any amount accounted for to the Board after the death of the director in question.

#### **Marginal Citations**

**M128** Source—1976 s.66A; 1983 s.22

### **165 Scholarships.**

- (1) <sup>M129</sup>Nothing in section 331 shall be construed as conferring on any person other than the person holding the scholarship in question any exemption from the charge to tax under section 154.
- (2) <sup>M130</sup>For the purposes of this Chapter, any scholarship provided for a member of a person's family or household shall, without prejudice to any other provision of this Chapter, be taken to have been provided by reason of that person's employment if it is provided under arrangements entered into by, or by any person connected with, his employer (whether or not those arrangements require the employer or connected person to contribute directly or indirectly to the cost of providing the scholarship).
- (3) <sup>M131</sup>Section 154 does not apply to a benefit consisting in a payment in respect of a scholarship—
  - (a) provided from a trust fund or under a scheme; and
  - (b) held by a person receiving full-time instruction at a university, college, school or other educational establishment; and
  - (c) which would not be regarded, for the purposes of this Chapter, as provided by reason of a person's employment were subsection (2) above and section 168(3) to be disregarded;
 if, in the year in which the payment is made, not more than 25 per cent. of the total amount of the payments made from that fund, or under that scheme, in respect of scholarships held as mentioned in paragraph (b) above is attributable to relevant scholarships.
- (4) <sup>M132</sup>This section does not have effect in relation to any payment if—
  - (a) it is made in respect of a scholarship awarded before 15th March 1983, and
  - (b) the first payment in respect of the scholarship was made before 6th April 1984; and
  - (c) in relation to payments made after 5th April 1989, the person holding the scholarship is receiving full-time instruction at the university, college, school or other educational establishment at which he was receiving such instruction on—
    - (i) 15th March 1983, in a case where the first payment in respect of the scholarship was made before that date; or
    - (ii) the date on which the first such payment was made, in any other case.
- (5) <sup>M133</sup>For the purposes of subsection (4)(c) above, a payment made before 6th April 1989 in respect of any period beginning on or after that date shall be treated as made at the beginning of that period.
- (6) <sup>M134</sup>In this section—
  - (a) "scholarship" includes an exhibition, bursary or other similar educational endowment;

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- (b) “relevant scholarship” means a scholarship which is provided by reason of a person’s employment (whether or not that employment is [F104 employment to which this Chapter applies]); and for the purposes of this definition “employment” includes an office or employment whose emoluments do not fall to be assessed under Schedule E but would fall to be so assessed if the employee were resident, and ordinarily resident, and all the duties of the employment were performed wholly, in the United Kingdom;  
and section 839 applies for the purposes of this section.

#### Textual Amendments

**F104** 1989 s.53(2)(b). *Previously*  
“director’s or higher-paid employment”.

#### Marginal Citations

**M129** Source—1976 s.62A(1); 1983 s.20(1)  
**M130** Source—1976 s.62A(2); 1983 s.20(1)  
**M131** Source—1976 s.62A(3); 1983 s.20(1); 1984 s.31(1)  
**M132** Source—1983 s.20(2), (3); 1984 s.31(3)  
**M133** Source—1983 s.20(3A); 1984 s.31(3)  
**M134** Source—1976 s.62A(4); 1983 s.20(1); 1984 s.31(2)

#### *General supplementary provisions*

### **166 Notice of nil liability under this Chapter.**

- <sup>M135</sup>(1) If a person furnishes to the inspector a statement of the cases and circumstances in which payments of a particular character are made, or benefits or facilities of a particular kind are provided, for any employees (whether his own or those of anyone else), and the inspector is satisfied that no additional tax is payable under this Chapter by reference to the payments, benefits or facilities mentioned in the statement, the inspector shall notify the person accordingly; and then nothing in this Chapter applies to those payments, or to the provision of those benefits or facilities, or otherwise for imposing any additional charge to income tax.
- (2) The inspector may, if in his opinion there is reason to do so, by notice served on the person to whom notification under subsection (1) above was given, revoke the notification, either as from the date of its making or from such later date as may be specified in the notice under this subsection; and then all such income tax becomes chargeable, and all such returns are to be made by that person and by the employees in question as would have been chargeable or would have had to be made in the first instance if the notification under subsection (1) had never been given or, as the case may be, it had ceased to have effect on the specified date.
- (3) In relation to a notification given before 6th April 1988, the reference in subsection (2) above to income tax includes a reference to income tax chargeable under the corresponding enactments in force before that date, and accordingly, where the notification is revoked for any period before that date, that subsection has effect in relation to years of assessment before the year 1988-89.
- (4) The validity of any notification given under section 199 of the 1970 Act which was continued in force by paragraph 14 of Schedule 9 to the Finance Act 1976 shall not

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be affected by the repeal of that paragraph by this Act but shall continue in force as if made under subsection (1) above in relation to tax liability under sections 153 to 156; and subsection (2) above shall apply accordingly.

#### **Marginal Citations**

**M135** Source—1976 s.70, Sch.9 14(2)-(4)

#### **[<sup>F105</sup>167 Employment to which this Chapter applies.**

- (1) This Chapter applies—
- (a) to employment as a director of a company (but subject to subsection (5) below), and
  - (b) to employment with emoluments at the rate of £8,500 a year or more.
- (2) [<sup>F106</sup>Subject to subsection (2B) below] for this purpose emoluments are to be calculated—
- (a) on the basis that they include all such amounts as come, or would but for section 157(3) come, into charge under this Chapter or section 141, 142, 143 or 145, and
  - (b) without any deduction under section 198, 201 or 332(3).

(2A) <sup>F107</sup> .....

[ Where, in any relevant year—

- <sup>F108</sup>(2B) (a) a car is made available as mentioned in section 157, and
- (b) an alternative to the benefit of the car is offered,
- subsection (2)(a) above shall have effect as if, in connection with the benefit of the car, the amount produced under subsection (2C) below together with any amounts falling within (2D) below were the amounts to be included in the emoluments.

- (2C) The amount produced under this subsection is the higher of—
- (a) the amount equal to the aggregate of—
    - (i) whatever is the cash equivalent (ascertained in accordance with Schedule 6) of the benefit of the car; and
    - (ii) whatever is the cash equivalent (ascertained in accordance with section 158) of the benefit of any fuel provided, by reason of the employee's employment, for the car; and
  - (b) the amount which would be chargeable to tax under section 19(1), if the benefit of the car were chargeable under that section by reference to the alternative offered to that benefit.

(2D) The amounts which fall within this subsection are those which would come into charge under section 141, 142 or 153 if the section in question applied in connection with the car.]

- (3) Where a person is employed in two or more employments by the same employer and either—
- (a) the total of the emoluments of those employments (applying this section) is at the rate of £8,500 a year or more, or
  - (b) this Chapter applies (apart from this subsection) to one or more of those employments,



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this Chapter shall apply to all the employments.

- (4) All employees of a partnership or body over which an individual or another partnership or body has control are to be treated for the purposes of this section (but not for any other purpose) as if the employment were an employment by the individual or by that other partnership or body as the case may be.
- (5) This Chapter shall not apply to a person's employment by reason only of its being employment as a director of a company (without prejudice to its application by virtue of subsection (1)(b) or (3) above) if he has no material interest in the company and either—
  - (a) his employment is as a full-time working director; or
  - (b) the company is non-profit-making (meaning that neither does it carry on a trade nor do its functions consist wholly or mainly in the holding of investments or other property) or is established for charitable purposes only.]

#### Textual Amendments

**F105** S. 167 substituted by Finance Act 1989 (c. 26), s. 53(1). *Previously*

“Meaning of “director's or higher-paid employment”. **167.**—(1) In this Chapter “director's or higher-paid employment” means—(a) subject to subsection (5) below, employment as a director of a company; or (b) employment with emoluments at the rate of £8,500 a year or more. (2) For this purpose emoluments are to be calculated—(a) on the basis that they include all such amounts as come or would but for section 157(3) come into charge under this Chapter or section 141, 142, 143 or, in the case of those in director's or higher-paid employment, 145; and (b) without any deduction under section 198, 201 or 332(3). (3) Where a person is employed in two or more employments by the same employer and either—(a) the total of the emoluments of those employments (applying this section) is at the rate of £8,500 a year or more; or (b) one or more of those employments is (apart from this subsection) director's or higher-paid, all the employments are to be treated as director's or higher-paid. (4) All employees of a partnership or body over which an individual or another partnership or body has control are to be treated for the purposes of this section (but not for any other purpose) as if the employment were an employment by the individual or by that other partnership or body as the case may be. (5) A person's employment is not director's or higher-paid by reason only of its being employment as a director of a company (without prejudice to its being so under subsection (1)(b) or (3) above) if he has no material interest in the company and either—(a) his employment is as a full-time working director; or (b) the company is non-profit-making (meaning that neither does it carry on a trade nor do its functions consist wholly or mainly in the holding of investments or other property) or is established for charitable purposes only.”

**F106** Words in s. 167(2) inserted (with effect in accordance with s. 43(4) of the amending Act) by Finance Act 1995 (c. 4), s. 43(3)

**F107** S. 167(2A) repealed (with effect in accordance with s. 88(6) of the repealing Act) by Finance Act 1994 (c. 9), Sch. 26 Pt. 5(5), Note

**F108** S. 167(2B)-(2D) inserted (with effect in accordance with s. 43(4) of the amending Act) by Finance Act 1995 (c. 4), s. 43(3)

#### 168 Other interpretative provisions.

- <sup>M136</sup>(1) The following provisions of this section apply for the interpretation of expressions used in this Chapter.

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- (2) Subject to section 165(6)(b), “employment” means an office or employment the emoluments of which fall to be assessed under Schedule E; and related expressions shall be construed accordingly.
- (3) For the purposes of this Chapter—
- (a) all sums paid to an employee by his employer in respect of expenses, and
  - (b) all such provision as is mentioned in this Chapter which is made for an employee, or for members of his family or household, by his employer,
- are deemed to be paid to or made for him or them by reason of his employment, except any such payment or provision made by the employer, being an individual, as can be shown to have been made in the normal course of his domestic, family or personal relationships.
- (4) References to members of a person’s family or household are to his spouse, his sons and daughters and their spouses, his parents and his servants, dependents and guests.
- (5) As respects cars, the following definitions apply—
- (a) “car” means any mechanically propelled road vehicle except—
    - (i) a vehicle of a construction primarily suited for the conveyance of goods or burden of any description,
    - (ii) a vehicle of a type not commonly used as a private vehicle and unsuitable to be so used,
    - (iii) a motor cycle as defined in section 190(4) of the <sup>M137</sup>Road Traffic Act 1972, and
    - (iv) an invalid carriage as defined in section 190(5) of that Act;
  - (b) the age of a car at any time is the interval between the date of its first registration and that time;
  - (c) “business travel” means travelling which a person is necessarily obliged to do in the performance of the duties of his employment;
  - <sup>F109</sup>(d) the date of a car’s first registration is the date on which it was first registered under <sup>F110</sup>the Vehicle Excise and Registration Act 1994.] or under corresponding legislation of any country or territory;]
  - <sup>F111</sup>(e) the price of a car as regards a year shall be determined in accordance with the provisions contained in or made under sections 168A to 168G; and]
  - (f) “private use”, in relation to a car made available to any person, or to others being members of his family or household, means any use otherwise than for his business travel.
- <sup>F112</sup>(5A) As respects vans, the following definitions apply—
- (a) “van” means a mechanically propelled road vehicle which is—
    - (i) of a construction primarily suited for the conveyance of goods or burden of any description, and
    - (ii) of a design weight not exceeding 3,500 kilograms,
 and which is not a motor cycle as defined in section 185(1) of the <sup>M138</sup>Road Traffic Act 1988;
  - (b) the age of a van at any time is the interval between the date of its first registration and that time;
  - (c) “business travel” means travelling which a person is necessarily obliged to do in the performance of the duties of his employment;

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- (d) the date of a van's first registration is the date on which it was first registered under [<sup>F113</sup>the Vehicle Excise and Registration Act 1994.] or under corresponding legislation of any country or territory;
  - (e) “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; and
  - (f) “private use”, in relation to a van made available to any person, or to others being members of his family or household, means any use otherwise than for his business travel.]
- (6) For the purposes of this Chapter—
- (a) a car made available in any year to an employee, or to others being members of his family or household, by reason of his employment is deemed to be available in that year for his or their private use unless the terms on which the car is made available prohibit such use and no such use is made of the car in that year;
  - (b) a car made available to an employee, or to others being members of his family or household, by his employer is deemed to be made available to him or them by reason of his employment (unless the employer is an individual and it can be shown that the car was made so available in the normal course of his domestic, family or personal relationships).
  - [<sup>F114</sup>(c) a van made available in any year to an employee, or to others being members of his family or household, by reason of his employment is deemed to be available in that year for his or their private use unless the terms on which the van is made available prohibit such use and no such use is made of the van in that year;
  - (d) a van made available to an employee, or to others being members of his family or household, by his employer is deemed to be made available to him or them by reason of his employment (unless the employer is an individual and it can be shown that the van was made so available in the normal course of his domestic, family or personal relationships).]
- (7) For the purposes of section 156, the market value of an asset at any time is the price which it might reasonably have been expected to fetch on a sale in the open market at that time.
- (8) Subject to subsection (9) below, “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 similar 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.
- (9) A person is not under subsection (8) above to be deemed to be a person in accordance with whose directions or instructions the directors of the company are accustomed to act by reason only that the directors act on advice given by him in a professional capacity.
- (10) “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.

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- (11) A person shall be treated as having a material interest <sup>F115</sup> in a company if he, either on his own or with one or more associates, or if any associate of his with or without such other associates,—
- (a) is 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 per cent. of the ordinary share capital of the company, or
  - (b) in the case of a close company, possesses, or is entitled to acquire, such rights as would, in the event of the winding-up of the company or in any other circumstances, give an entitlement to receive more than 5 per cent. of the assets which would then be available for distribution among the participators.]
- In this subsection “associate” has the same meaning as in section 417(3), except that for this purpose “relative” in that subsection has the meaning given by section 160(6) <sup>F116</sup> and “participator” has the meaning given by section 417(1)].
- (12) “Control”, in relation to a body corporate or partnership, has the meaning given to it by section 840; and the definition of “control” in that section applies (with the necessary modifications) in relation to an unincorporated association as it applies in relation to a body corporate.
- (13) “Year” means year of assessment (except where the expression is used with reference to the age of a car).

#### Textual Amendments

- F109** S. 168(5)(d) substituted (27.7.1993 with effect for the year 1994-95 and subsequent years of assessment) by 1993 c. 34, s. 72, Sch. 3 paras. 3(1), 7
- F110** Words in s. 168(5)(d) substituted (1.9.1994) by [Vehicle Excise and Registration Act 1994 \(c. 22\)](#), ss. 63, 66(1), **Sch. 3 para. 22** (with s. 57(4))
- F111** S. 168(5)(e) substituted (with effect for the year 1994-95 and subsequent years of assessment) by 1993 c. 34, s. 72, Sch. 3 paras. 3(2), 7
- F112** S. 168(5A) inserted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 73, Sch. 4 paras. 6(1), 8
- F113** Words in s. 168(5A)(d) substituted (1.9.1994) by [Vehicle Excise and Registration Act 1994 \(c. 22\)](#), ss. 63, 66(1), **Sch. 3 para. 22** (with s. 57(4))
- F114** S. 168(6)(c)(d) added (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 73, Sch. 4 paras. 6(2), 8
- F115** 1989 s.107 and Sch.12 para 8 in relation to accounting periods beginning after 31 March 1989. Previously  
 “in a company—(a) if he, either on his own or with any one or more of his associates, or if any associate of his with or without such other associates, is 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 per cent. of the ordinary share capital of the company; or (b) if, in the case of a close company, on an amount equal to the whole distributable income of the company falling to be apportioned under Part XI for the purpose of computing total income, more than 5 per cent. of that amount could be apportioned to him together with his associates (if any), or to any associate of his, or any such associates taken together.”.
- F116** 1989 s.107 and Sch.12 para 8 for accounting periods beginning after 31 March 1989.

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

- C30** Definition applied for purposes of 1988(F) s.131—penalties; and 1989 s.134—non-payment of tax by non-residents.

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#### Marginal Citations

**M136** Source—1976 s.72(1)-(12); 1980 s.51(3)

**M137** 1972 c. 20.

**M138** 1988 c. 52.

#### [<sup>F117</sup>168A] Price of a car as regards a year.

- (1) Subject to the provisions contained in or made under sections 168B to 168G, for the purposes of this Chapter the price of a car as regards a year is—
  - (a) its list price, if it has one, or
  - (b) its notional price, if it has no list price;and in this section any reference to the relevant car is to the particular car whose price as regards a year is being determined.
- (2) The relevant car has a list price if a price was 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 on the relevant day.
- (3) In a case where—
  - (a) subsection (2) above applies, and
  - (b) at the time when the relevant car was first made available to the employee the only qualifying accessories available with it were standard accessories,the list price of the car is the price published as mentioned in subsection (2) above.
- (4) In a case where—
  - (a) subsection (2) above applies,
  - (b) at the time when the relevant car was first made available to the employee a qualifying accessory which was an optional accessory was available with it, and
  - (c) in relation to each such accessory then available with the car a price was 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 as the relevant car in the United Kingdom singly in a retail sale in the open market on the relevant day,the list price of the car is the price found under subsection (5) below.
- (5) The price referred to in subsection (4) above is the total of—
  - (a) the price published as mentioned in subsection (2) above, and
  - (b) the price, or the sum of the prices, published as mentioned in subsection (4) above in relation to the optional accessory or (as the case may be) the optional accessories.
- (6) In a case where—
  - (a) subsection (2) above applies, and
  - (b) at the time when the relevant car was first made available to the employee a qualifying accessory falling within subsection (7) below was available with the car,

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the list price of the car is the price which would have been its list price under subsection (3) or (4) above (as the case may be) if no such accessory had been available with it at that time.

- (7) An accessory falls within this subsection if—
- (a) it is an optional accessory, and
  - (b) no price was published by the relevant 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 as the relevant car in the United Kingdom singly in a retail sale in the open market on the relevant day.
- (8) The notional price of a car is 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 an equivalent car if sold in the United Kingdom singly in a retail sale in the open market on the relevant day; and “equivalent car” here means a car—
- (a) of the same kind as the relevant car, and
  - (b) with accessories equivalent to the qualifying accessories available with the relevant car at the time when it was first made available to the employee.
- (9) For the purposes of this section—
- (a) the inclusive price is the price inclusive of any charge for delivery by the manufacturer, importer or distributor to the seller’s place of business and of any relevant tax and, in the case of an accessory, of any charge for fitting it,
  - (b) the relevant day is the day immediately before the date of the relevant car’s first registration,
  - (c) a standard accessory is an accessory equivalent to an accessory which, in arriving at the price published as mentioned in subsection (2) above, is assumed to be available with cars of the same kind as the relevant car, and
  - (d) an optional accessory is an accessory other than a standard accessory;
- and “relevant tax” here means any customs or excise duty, any tax chargeable as if it were a duty of customs, any value added tax and any car tax.
- (10) For the purposes of this section a qualifying accessory is an accessory which—
- (a) is made available for use with the car without any transfer of the property in it,
  - (b) is made available by reason of the employee’s employment,
  - (c) is attached to the car (whether or not permanently), and
  - (d) is not an accessory necessarily provided for use in the performance of the duties of the employee’s employment.
- (11) For the purposes of this section “accessory” includes any kind of equipment, but does not include a mobile telephone within the meaning given by section 159A(8)(a) [F118 or equipment which falls within section 168AA].
- (12) For the purposes of this section the time when a car is first made available to an employee is the earliest time when the car is made available, by reason of his employment and without any transfer of the property in it, either to him or to others being members of his family or household.]

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#### Textual Amendments

- F117** Ss. 168A-168G inserted (with effect for the year 1994-95 and subsequent years of assessment) by 1993 c. 34, s. 72, Sch. 3 paras. 4, 7
- F118** Words in s. 168A(11) inserted (with effect in accordance with s. 44(3) of the amending Act) by Finance Act 1995 (c. 4), s. 44(1)

#### [<sup>F119</sup>168AA] **Equipment to enable disabled person to use car.**

- (1) Equipment falls within this section if it is designed solely for use by a chronically sick or disabled person.
- (2) Equipment also falls within this section if—
  - (a) at the time when the car is first made available to the employee, the employee holds a disabled person's badge, and
  - (b) the equipment is made available for use with the car because the equipment enables him to use the car in spite of the disability entitling him to hold the badge.
- (3) In subsection (2) above “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 or section 14 of the <sup>M139</sup>M140 Chronically Sick and Disabled Persons (Northern Ireland) Act 1978 (or which has effect as if so issued), and
  - (b) which is not required to be returned to the issuing authority under or by virtue of the section in question.
- (4) Subsection (12) of section 168A applies for the purposes of this section as it applies for the purposes of that.]

#### Textual Amendments

- F119** S. 168AA inserted (with effect in accordance with s. 44(3) of the amending Act) by Finance Act 1995 (c. 4), s. 44(2)

#### Marginal Citations

- M139** 1978 c. 53.  
**M140** 1970 c. 44.

VALID FROM 31/07/1998

#### [<sup>F120</sup>168AB] **Equipment etc. to enable car to run on road fuel gas.**

- (1) Equipment by means of which the car is capable of running on road fuel gas shall not be regarded as an accessory for the purposes of section 168A.
- (2) Where the car is manufactured in such way as to be capable of running on road fuel gas, the price of the car as regards each relevant year shall be treated as the price given by section 168A, reduced by so much of that price as it is reasonable to attribute

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to the car's being manufactured in that way rather than in such a way as to be capable of running only on petrol.

- (3) In this section "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.]

#### Textual Amendments

**F120** S. 168AB inserted (with effect in accordance with s. 60(6) of the amending Act) by [Finance Act 1998 \(c. 36\), s. 60\(3\)](#)

#### <sup>F121</sup>**168B** Price of a car: accessories not included in list price.

- (1) This section applies where a car has a list price and in any year there are available with the car qualifying accessories which—
  - (a) fall within section 168A(7), and
  - (b) were available with the car at the time when it was first made available to the employee.
- (2) As regards that year the price of the car shall be treated as the price found under section 168A, increased by the price of the accessories.
- (3) For the purposes of this section the price of an accessory is—
  - (a) its list price, if it has one, or
  - (b) its notional price, if it has no list price.
- (4) The list price of an accessory is the price published by or on behalf of its manufacturer, importer or distributor (as the case may be) as the inclusive price appropriate for such an accessory if sold in the United Kingdom singly in a retail sale in the open market at the relevant time; and the relevant time is the time immediately before the accessory concerned is first made available for use with the car (which may be before the car is first made available to the employee).
- (5) The notional price of an accessory is the inclusive price which it might reasonably have been expected to fetch if sold in the United Kingdom singly in a retail sale in the open market immediately before it is first made available for use with the car (which may be before the car is first made available to the employee).
- (6) Where the accessory is permanently attached to the car the sale assumed by subsection (4) or (5) above is one under which the seller is to attach it.
- (7) For the purposes of this section the inclusive price is the price inclusive of—
  - (a) any charge for delivery by the manufacturer, importer or distributor to the seller's place of business, and
  - (b) any customs or excise duty, any tax chargeable as if it were a duty of customs and any value added tax.
- (8) Subsections (10) to (12) of section 168A apply for the purposes of this section as they apply for the purposes of that.



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#### Textual Amendments

**F121** Ss. 168A-168G inserted (with effect for the year 1994-95 and subsequent years of assessment) by 1993 c. 34, s. 72, Sch. 3 paras. 4, 7

#### <sup>F122</sup>**168C** Price of a car: accessories available after car first made available.

- (1) This section applies where in any year there are available with a car qualifying accessories which—
  - (a) were not available with the car at the time when it was first made available to the employee, and
  - (b) were not made available with the car before 1st August 1993, but any accessory whose price is less than £100 shall be ignored for the purposes of this section.
- (2) As regards that year the price of the car shall be treated as the price found under sections 168A and 168B, increased by the price of the accessories.
- (3) Subsections (10) to (12) of section 168A apply for the purposes of this section as they apply for the purposes of that.
- (4) Subsections (3) to (6) of section 168B apply for the purposes of this section as they apply for the purposes of that, but ignoring for the purposes of this section the words “(which may be before the car is first made available to the employee)”.
- (5) The Treasury may by order substitute for the sum for the time being specified in subsection (1) above a sum of a greater amount; and any such substitution shall have effect as regards such years as are specified in the order.

#### Textual Amendments

**F122** Ss. 168A-168G inserted (with effect for the year 1994-95 and subsequent years of assessment) by 1993 c. 34, s. 72, Sch. 3 paras. 4, 7

#### <sup>F123</sup>**168D** Price of a car: capital contributions.

- (1) This section applies where the employee contributes a capital sum to expenditure on the provision of—
  - (a) the car, or
  - (b) any qualifying accessories which are taken into account under sections 168A to 168C in determining the price of the car as regards a year.
- (2) As regards each relevant year the price of the car shall be treated as the price found under sections 168A to 168C, reduced by the appropriate amount; and relevant years are the year in which the capital sum is contributed and all subsequent years in which section 157 applies in the case of the car and the employee.
- (3) As regards a relevant year the appropriate amount is whichever is the smaller of—
  - (a) the amount found under subsection (4) below as regards the year, and
  - (b) £5,000.

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- (4) As regards a relevant year the amount referred to in subsection (3) above is the amount of the capital sum, or the total amount of all the capital sums, which the employee has contributed (whether in the year in question or earlier) to expenditure on the provision of—
- (a) the car, or
  - (b) any qualifying accessories which are taken into account under sections 168A to 168C in determining the price of the car as regards the year in question.
- (5) Subsections (10) and (11) of section 168A apply for the purposes of this section as they apply for the purposes of that.
- (6) The Treasury may by order substitute for the sum for the time being specified in subsection (3)(b) above a sum of a greater amount; and any such substitution shall have effect as regards such years as are specified in the order.

#### Textual Amendments

**F123** Ss. 168A-168G inserted (with effect for the year 1994-95 and subsequent years of assessment) by 1993 c. 34, s. 72, Sch. 3 paras. 4, 7

#### <sup>F124</sup>168E Price of a car: replacement accessories.

- (1) The Treasury may make regulations under this section as regards any case where—
- (a) a qualifying accessory is available with a car in any year, and
  - (b) the accessory (the replacing accessory) replaces another accessory (the replaced accessory).
- (2) Regulations under this section may provide that as regards the year—
- (a) the price of the car shall be found as if the replacement had not been made and the replacing accessory were a continuation of the replaced accessory, or
  - (b) sections 168A to 168D shall apply to the car with such modifications to take account of the fact that the replacement has been made as are prescribed by the regulations.
- (3) The regulations may—
- (a) provide as mentioned in subsection (2)(a) above as regards some cases and as mentioned in subsection (2)(b) above as regards others;
  - (b) provide under subsection (2)(b) above that sections 168A to 168D shall apply with different modifications in different cases.

#### Textual Amendments

**F124** Ss. 168A-168G inserted (with effect for the year 1994-95 and subsequent years of assessment) by 1993 c. 34, s. 72, Sch. 3 paras. 4, 7

#### <sup>F125</sup>168F Price of a car: classic cars.

- (1) This section applies where—

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- (a) the price of a car as regards a year, found under the provisions contained in or made under sections 168A to 168E, is less than the market value of the car for the year,
  - (b) the age of the car at the end of the year is 15 years or more, and
  - (c) the market value of the car for the year is £15,000 or more.
- (2) In such a case—
  - (a) the price of the car as regards the year is not the amount found under the provisions contained in or made under sections 168A to 168E;
  - (b) the price of the car as regards the year is the market value of the car for the year;but paragraph (b) above is subject to subsection (5) below.
- (3) The market value of a car for a year is the price which the car might reasonably have been expected to fetch on a sale in the open market on the material day, on the assumption that any qualifying accessories available with the car on the material day are included in the sale.
- (4) For the purposes of subsection (3) above the material day is—
  - (a) the last day of the year concerned, or
  - (b) if earlier, the last day in the year on which the car is available to the employee.
- (5) Where the employee contributes a capital sum to expenditure on the provision of—
  - (a) the car, or
  - (b) any qualifying accessories which are taken into account under subsection (3) above in determining the price of the car as regards a year,as regards each relevant year the price of the car shall be treated as the market value of the car for the year, reduced by the appropriate amount.
- (6) For the purposes of subsection (5) above relevant years are the year in which the capital sum is contributed and all subsequent years in which section 157 applies in the case of the car and the employee.
- (7) For the purposes of subsection (5) above the appropriate amount, in relation to a relevant year, is whichever is the smaller of—
  - (a) the amount found under subsection (8) below as regards the year, and
  - (b) £5,000.
- (8) As regards a particular year the amount referred to in subsection (7) above is the amount of the capital sum, or the total amounts of all the capital sums, which the employee has contributed (whether in the year or earlier) to expenditure—
  - (a) on the provision of the car, or
  - (b) on the provision of any qualifying accessories which are taken into account in determining the price of the car as regards the year.
- (9) Subsections (10) and (11) of section 168A apply for the purposes of this section as they apply for the purposes of that.
- (10) For the purposes of this section the last day in a year on which a car is available to an employee is the last day in the year on which the car is made available, by reason of his employment and without any transfer of the property in it, either to him or to others being members of his family or household.

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(11) The Treasury may by order—

- (a) substitute for the sum for the time being specified in subsection (1)(c) above a sum of a greater amount;
- (b) substitute for the sum for the time being specified in subsection (7)(b) above a sum of a greater amount;

and any such substitution shall have effect as regards such years as are specified in the order.

#### Textual Amendments

**F125** Ss. 168A-168G inserted (with effect for the year 1994-95 and subsequent years of assessment) by 1993 c. 34, s. 72, Sch. 3 paras. 4, 7

#### <sup>F126</sup>**168** Price of a car: cap for expensive car.

- (1) Where the price of a car as regards a year (as found under the provisions contained in or made under sections 168A to 168F) exceeds £80,000, the price of the car as regards the year is £80,000 and not the price as so found.
- (2) The Treasury may by order substitute for the sum for the time being specified in subsection (1) above a sum of a greater amount; and any such substitution shall have effect as regards such years as are specified in the order.

#### Textual Amendments

**F126** Ss. 168A-168G inserted (with effect for the year 1994-95 and subsequent years of assessment) by 1993 c. 34, s. 72, Sch. 3 paras. 4, 7

## CHAPTER III

### PROFIT-RELATED PAY

#### *Preliminary*

#### **169 Interpretation.**

<sup>M141</sup>(1) In this Chapter—

“employment” means an office or employment whose emoluments fall to be assessed under Schedule E, and related expressions have corresponding meanings;

“employment unit” means an undertaking, or that part of an undertaking, to which a profit-related pay scheme relates;

“pay” (except in the expression “profit-related pay”) means emoluments paid under deduction of tax pursuant to section 203, reduced by any amounts included in them by virtue of Chapter II of Part V;

“profit period” means an accounting period by reference to which any profit-related pay is calculated;

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“profit-related pay” means emoluments from an employment which are paid in accordance with a profit-related pay scheme;

“profit-related pay scheme” means a scheme providing for the payment of emoluments calculated by reference to profits;

“profits”, or “losses”, in relation to a profit period, means the amount shown in the account prepared for that period in accordance with the relevant profit-related pay scheme as the profit, or as the case may be the loss, on ordinary activities after taxation;

“registered scheme” means a profit-related pay scheme registered under this Chapter;

“scheme employer” means the person on whose application a profit-related pay scheme is or may be registered under this Chapter.

- (2) References in this Chapter to the employees to whom a profit-related pay scheme relates are references to the employees who will receive any payments of profit-related pay under the scheme.

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**Marginal Citations**

M141 Source—1987 (No.2) s.1

## 170 Taxation of profit-related pay.

*<sup>M142</sup> Any charge to income tax on profit-related pay paid in accordance with a registered scheme shall be made for the year of assessment in which it is paid (rather than the period for which it is paid)<sup>F127</sup>.*

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**Textual Amendments**

F127 Repealed by 1989 ss.42(4), 187 and Sch.17 Part IV for 1989-90 and subsequent years.

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**Marginal Citations**

M142 Source—1987 (No.2) s.2

### *The relief*

## 171 Relief from tax.

<sup>M143</sup>(1) [<sup>F128</sup>The whole] of any profit-related pay to which this section applies shall be exempt from income tax.

(2) This section applies to any profit-related pay paid to an employee by reference to a profit period and in accordance with a registered scheme, but only so far as it does not exceed the lower of the two limits specified in the following provisions of this section.

(3) The first of the limits referred to in subsection (2) above is one fifth of the aggregate of—

- (a) the pay (but not any profit-related pay) paid to the employee in the profit period in respect of his employment in the employment unit concerned (or, if the employee is eligible to receive profit-related pay by reference to part

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only of the period, so much of his pay, but not any profit-related pay, as is paid in that part); and

- (b) the profit-related pay paid to him by reference to that period in respect of that employment.

- (4) The second of the limits referred to in subsection (2) above is [<sup>F129</sup>£4,000] (or, if the profit period is less than 12 months, or the employee is eligible to receive profit-related pay by reference to part only of the profit period, a proportionately reduced amount).

#### Textual Amendments

**F128** Words in s. 171(1) substituted by [Finance Act 1991 \(c. 31, SIF 63:1\), s. 37\(1\)\(2\)](#)

**F129** 1989 s.61 and Sch.4 para 2 in relation to profit periods beginning on or after 1 April 1989. Previously “£3,000”.

#### Marginal Citations

**M143** Source—1987 (No.2) s.3

### 172 Exceptions from tax.

- <sup>M144</sup>(1) Profit-related pay shall not be exempt from income tax by virtue of section 171 if—
- (a) it is paid to an employee in respect of his employment in an employment unit during a time when he also has another employment; and
- (b) he receives in respect of that other employment during that time profit-related pay which is exempt from income tax by virtue of that section.
- (2) Subject to subsection (3) below, profit-related pay in respect of which no secondary Class 1 contributions under Part I of the <sup>M145</sup>Social Security Act 1975 or Part I of the <sup>M146</sup>Social Security (Northern Ireland) Act 1975 are payable shall not be exempt from income tax by virtue of section 171.
- (3) Subsection (2) above shall not apply to profit-related pay in respect of which no Class 1 contributions are payable only because the employee’s earnings are below the lower earnings limit for such contributions.

#### Marginal Citations

**M144** Source—1987 (No.2) s.4

**M145** 1975 c. 14.

**M146** 1975 c. 15.

### *Registration*

### 173 Persons who may apply for registration.

- <sup>M147</sup>(1) Where the emoluments of all the employees to whom a profit-related pay scheme relates are paid by the same person, an application to register the scheme under this Chapter may be made to the Board by that person.
- (2) Where subsection (1) above does not apply to a profit-related pay scheme, no application to register it may be made unless all the persons who pay emoluments to

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employees to whom the scheme relates are bodies corporate which are members of the same group; and in that case an application may be made by the parent company of the group.

(3) In subsection (2) above—

“group” means a body corporate and its 51 per cent. subsidiaries, and

“parent company” means that body corporate; and

in applying for the purposes of this section the definition of “51 per cent. subsidiary” in section 838, any share capital of a registered industrial and provident society (within the meaning of section 486) shall be treated as ordinary share capital.

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**Marginal Citations**

M147 Source—1987 (No.2) s.5

**174 Excluded employments.**

<sup>M148</sup>(1) No application may be made to register a scheme under this Chapter if any employment to which the scheme relates is—

- (a) employment in an office under the Crown or otherwise in the service of the Crown; or
- (b) employment by an excluded employer.

(2) For the purposes of this section “excluded employer” means—

- (a) a person in an employment within subsection (1) above;
- (b) a body under the control of the Crown, or of one or more persons acting on behalf of the Crown;
- (c) a local authority;
- (d) a body under the control of one or more local authorities, or of the Crown (or one or more persons acting on behalf of the Crown) and one or more local authorities.

(3) For the purposes of this section a person has control of a body only if one or more of the following conditions is satisfied—

- (a) in the case of a body whose affairs are managed by its members, he has the power to appoint more than half of the members;
- (b) in the case of a body having a share capital, he holds more than half of its issued share capital;
- (c) in the case of a body whose members vote in general meeting, he has the power to exercise more than half of the votes exercisable in general meeting;
- (d) the articles of association or other rules regulating the body give him the power to secure that the affairs of the body are conducted in accordance with his wishes.

(4) For the purposes of this section a person shall be taken to possess rights and powers possessed by—

- (a) a person appointed by him to an office by virtue of which the rights or powers are exercisable; or
- (b) a body which he controls;

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including rights and powers which such an officer or body is taken to possess by virtue of this subsection.

- (5) Subsections (3) and (4) above apply with the necessary modifications for the purpose of determining whether persons together have control of a body.

#### Marginal Citations

**M148** Source—1987 (No.2) s.6

### 175 Applications for registration.

- <sup>M149</sup>(1) An application for the registration of a profit-related pay scheme under this Chapter—
- (a) shall be in such form as the Board may prescribe;
  - (b) shall contain a declaration by the applicant that the scheme complies with the requirements of Schedule 8;
  - (c) shall contain an undertaking by the applicant that the emoluments paid to any employee to whom the scheme relates and to whom minimum wage legislation applies will satisfy that legislation without taking account of profit-related pay;
  - (d) shall specify the profit period or periods to which the scheme relates;
  - (e) shall be supported by such information as the Board may require.
- (2) An application for the registration of a profit-related pay scheme under this Chapter shall be accompanied by a report by an independent accountant, in a form prescribed by the Board, to the effect that in his opinion—
- (a) the scheme complies with the requirements of Schedule 8;
  - (b) the books and records maintained and proposed to be maintained by the applicant are adequate for the purpose of enabling the documents required by section 180(1) to be produced.
- (3) *An application for the registration of a profit-related pay scheme under this Chapter shall be made within the period of six months ending immediately before the beginning of the profit period, or the first of the profit periods, to which the scheme relates*<sup>F130</sup>.
- (4) In subsection (1) above “minimum wage legislation” means the provisions relating to remuneration in<sup>F131</sup> . . . the<sup>F132</sup> . . . the<sup>M150</sup> Agricultural Wages Act 1948, the<sup>M151</sup> Agricultural Wages (Scotland) Act 1949 and the<sup>M152</sup> Agricultural Wages (Regulation) (Northern Ireland) Order 1977.

#### Textual Amendments

**F130** *Repealed by 1989 ss.61 and 187 and Schs.4 para.10(2)(a), and 17 Part IV.*

**F131** Words in s. 175(4) repealed (30.8.1993) by 1993 c. 19, s. 51, **Sch. 10**; S.I. 1993/1908, art. 2(2), **Sch. 1**

**F132** Words in s. 175(4) repealed (7.2.1994 except in so far as they relate to maternity rights or to the application of the No. 1 and No. 2 Orders to armed forces) by 1993/2668 (N.I. 11), art. 18(4), Sch.8; S.R. 1993/476, **art. 2**, Sch

#### Marginal Citations

**M149** Source—1987 (No.2) s.7

**M150** 1948 c. 47.



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M151 1949 c. 30.

M152 S.I. 1977/2151 (N.I. 22).

## 176 Registration.

- <sup>M153</sup>(1) If an application for registration of a profit-related pay scheme under this Chapter is made more than three months (*but not more than six months*) <sup>F133</sup> before the beginning of the profit period, or the first of the profit periods, to which the scheme relates, then subject to subsection (2) below, the Board shall register the scheme before the beginning of that period.
- (2) If the Board are not satisfied that an application made as mentioned in subsection (1) above complies with the requirements of this Chapter, they may within 30 days after the day on which they receive the application—
- (a) refuse the application; or
  - (b) by notice to the applicant either require him to amend the application or require him to give them such further information as may be specified in the notice, and in either case to do so within such time, not exceeding 30 days after the day on which the notice is given, as may be so specified.
- (3) If a notice under subsection (2) above is complied with and the Board are satisfied that the application complies with the requirements of this Chapter, the Board shall register the scheme before the beginning of the profit period.
- (4) If a notice under subsection (2) above is complied with but the Board remain not satisfied that the application complies with the requirements of this Chapter, the Board shall refuse the application.
- (5) If a notice under subsection (2) above is not complied with but the Board are before the beginning of the profit period satisfied that the application complies with the requirements of this Chapter, the Board may register the scheme before the beginning of the period; but if they do not do so, the application shall be regarded as having been refused.
- (6) If an application for registration of a profit-related pay scheme under this Chapter is made within the period of three months before the beginning of the profit period, or the first of the profit periods, to which the scheme relates, then—
- (a) if before the beginning of the profit period the Board are satisfied that the application complies with the requirements of this Chapter, they shall register the scheme before the beginning of the period; but
  - (b) in any other case, the application shall be regarded as having been refused.
- (7) After registering a scheme under this Chapter, the Board shall by notice inform the applicant that they have done so.
- (8) The Board shall give notice to the applicant if they refuse his application under subsection (2) or (4) above.
- (9) For the purposes of this section an application does not comply with the requirements of this Chapter if the scheme to which it relates does not comply with the requirements of Schedule 8.

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#### **Textual Amendments**

**F133** Repealed by 1989 ss.61 and 187 and Schs.4 para.10(2)(a), and 17 Part IV.

#### **Marginal Citations**

**M153** Source—1987 (No.2) s.8

### **177 Change of scheme employer.**

<sup>M154</sup>(1) Where—

- (a) a scheme employer ceases to fulfil the conditions which section 173 requires to be fulfilled by an applicant for registration of the scheme; and
- (b) he is succeeded by a person who would be eligible to apply for registration to the scheme; and
- (c) there is otherwise no other material change in the employment unit or in the circumstances relating to the scheme;

the scheme employer and his successor may make a joint written application to the Board under this section for the amendment of the registration of the scheme.

(2) If on receiving an application under this section the Board are satisfied—

- (a) that the conditions in subsection (1)(a), (b) and (c) above are fulfilled; and
- (b) that, apart from the change of scheme employer, there would be no grounds for cancelling the registration of the scheme,

the Board shall amend the registration of the scheme by substituting the successor for the previous scheme employer.

(3) An application under this section shall be made before the end of the period of one month beginning with the date of the succession.

(4) Where the Board amend the registration of a scheme under this section, this Chapter shall (subject to any necessary modifications) have effect as if the successor had been the scheme employer throughout.

(5) The Board shall give notice to the applicants if they refuse an application under this section.

#### **Marginal Citations**

**M154** Source—1987 (No.2) s.9

### <sup>F134</sup>**177A Death of scheme employer.**

(1) Where a scheme employer has died, his personal representatives may make a written application to the Board under this section for the amendment of the registration of the scheme.

(2) If on receiving an application under this section the Board are satisfied that, apart from the death of the scheme employer, there would be no grounds for cancelling the registration of the scheme, the Board shall amend the registration of the scheme by substituting the personal representatives for the deceased scheme employer.

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- (3) An application under this section shall be made before the end of the period of one month beginning with the date of the grant of probate or letters of administration or, in Scotland, confirmation of executors.
- (4) Where the Board amend the registration of a scheme under this section, this Chapter shall (subject to any necessary modifications) have effect as if the personal representatives had been the scheme employer throughout.
- (5) The Board shall give notice to the personal representatives if they refuse an application under this section.]

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**Textual Amendments**

**F134** Ss. 177A, 177B inserted by Finance Act 1989 (c. 26), Sch. 4 para. 3

**177B Alteration of scheme's terms.**

- (1) The alteration of the terms of a registered scheme shall not of itself invalidate the registration of the scheme.
- (2) Subsection (1) above is without prejudice to the power of cancellation conferred on the Board by section 178(3A); but the power conferred by section 178(3A) shall not be exercisable by virtue of an alteration registered in accordance with this section.
- (3) Where the terms of a registered scheme have been altered, the scheme employer may apply to the Board for the registration of the alteration.
- (4) An application under subsection (3) above—
  - (a) shall be in such form as the Board may prescribe;
  - (b) shall be made within the period of one month beginning with the day on which the alteration is made;
  - (c) shall contain a declaration by the applicant that the alteration is within subsection (8) below and that the scheme as altered complies with the requirements of Schedule 8 (either as that Schedule had effect when the scheme was registered, or as it then had effect but subject to one or more subsequent amendments specified in the declaration);
  - (d) shall be accompanied by a report by an independent accountant, in a form prescribed by the Board, to the effect that in his opinion the alteration is within subsection (8) below and the scheme as altered complies with the requirements of Schedule 8 (either as that Schedule had effect when the scheme was registered, or as it then had effect but subject to one or more subsequent amendments specified in the report).
- (5) The Board shall not more than three months after the day on which they receive an application under subsection (3) above either register the alteration or refuse the application; and in either case they shall give notice of their decision to the applicant.
- (6) Subject to subsection (7) below, the Board shall register an alteration on an application under subsection (3) above.
- (7) The Board may refuse an application under subsection (3) above if they are not satisfied—
  - (a) that the application complies with the requirements of subsection (4) above, or

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- (b) that the declaration referred to in subsection (4)(c) above is true.
- (8) An alteration is within this subsection if—
- (a) it relates to a term which is not relevant to the question whether the scheme complies with the requirements of Schedule 8; or
  - (b) it relates to a term identifying any person (other than the scheme employer) who pays the emoluments of employees to whom the scheme relates; or
  - (c) it consists of the addition of a term making provision for an abbreviated profit period of the kind referred to in paragraph 10(3) of Schedule 8; or
  - (d) it amends the provisions by reference to which the employees to whom the scheme relates may be identified, and does so only for the purposes of profit periods which begin after the date on which the alteration is made; or
  - (e) it relates to a provision of a kind referred to in paragraph 13(4) or (5) or 14(3), (4) or (5) of Schedule 8 (as those provisions have effect at the time of the application for registration of the alteration), and has effect only for the purposes of profit periods beginning after the date on which the alteration is made; or
  - (f) it amends the provisions as to when payments will be made to employees, and does so only for the purposes of profit periods beginning after the date on which the alteration is made; or
  - (g) the scheme did not comply with the requirements of Schedule 8 when it was registered, and the alteration—
    - (i) is made in order to bring the scheme into compliance with the requirements of that Schedule (either as it had effect when the scheme was registered or as it has effect at the time of the application for registration of the alteration), and
    - (ii) is made for the purposes of the first and any subsequent profit period to which the scheme relates, and
    - (iii) is made within two years of the beginning of the first profit period, and
    - (iv) does not invalidate (in whole or in part) any payment of profit-related pay already made under the scheme.

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

C31 S. 177B(8) extended (1.5.1995) by [Finance Act 1995 \(c. 4\), s. 136\(10\)](#)

**178 Cancellation of registration.**

- <sup>M155</sup>(1) If after a scheme has been registered under this Chapter it appears to the Board—
- (a) that the scheme has not been or will not be administered in accordance with [<sup>F135</sup>its terms or in accordance with] this Chapter in relation to a profit period; or
  - (b) that the circumstances relating to the scheme have during a profit period become such that (if it were not registered) an application to register it under this Chapter would be excluded by section 174; or
  - (c) in the case of a scheme which employs (as the method of determining the distributable pool for a profit period) the method described as method B in paragraph 14 of Schedule 8, that losses were incurred in a profit period or in the preceding period of 12 months; or

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- (d) that the undertaking given in compliance with section 175(1)(c) has not been complied with in relation to employment at any time during a profit period; the Board may cancel the registration and, subject to <sup>F136</sup>subsections (5) and (5A)] below, the cancellation shall have effect from the beginning of that profit period.
- (2) If after a scheme has been registered under this Chapter it appears to the Board—
- (a) that at the time of registration the scheme did not comply with the requirements of Schedule 8 or that the application did not comply with the requirements of this Chapter; or
- (b) *in the case of a scheme which employs (as the method of determining the distributable pool for a profit period) the method described as method A in paragraph 13 of Schedule 8, that losses were incurred in the base year specified in the scheme*<sup>F137</sup>;
- the Board may cancel the registration with effect from the beginning of the profit period (or first profit period) to which the scheme related.
- (3) If after a scheme has been registered under this Chapter the scheme employer fails to comply with the requirements of section 180 in relation to a profit period, the Board may cancel the registration with effect from the beginning of that profit period.
- <sup>F138</sup>(3A) Where the terms of a registered scheme have been altered, then, subject to section 177B(2), the Board may cancel the registration of the scheme with effect from the beginning of the profit period during which the alteration took effect or with effect from the beginning of any later profit period.
- (3B) If after an alteration of the terms of a scheme has been registered under section 177B it appears to the Board—
- (a) that the application for registration of the alteration did not comply with the requirements of subsection (4) of that section, or
- (b) that the declaration referred to in subsection (4)(c) of that section was false, the Board may cancel the registration of the scheme with effect from the beginning of the profit period during which the alteration took effect or with effect from the beginning of any later profit period.]
- (4) If the scheme employer by notice requests the Board to cancel the registration of the scheme with effect from the beginning of a profit period specified in the notice, the Board shall comply with the request.
- (5) Where—
- (a) the scheme employer has given to the Board in accordance with section 181(3) notice of a change in the employment unit, or in the circumstances relating to the scheme, which is a ground for cancellation of the registration of the scheme by virtue of subsection (1)(a) or (b) above, and
- (b) the Board are satisfied that the change is not brought about with a view to the registration of a new scheme, and
- (c) in the notice the scheme employer requests the Board to cancel the registration of the scheme with effect from the date of the change,
- then, if the notice is given before the end of the period of one month beginning with that day, the Board shall comply with the request.
- <sup>F138</sup>(5A) Where—
- (a) the scheme employer has died, and

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(b) his personal representatives by notice request the Board to cancel the registration of the scheme with effect from the date of death, then, if the notice is given before the end of the period of one month beginning with the date of the grant of probate or letters of administration or, in Scotland, confirmation of executors, the Board shall comply with the request.]

(6) The Board shall give notice to the scheme employer of the cancellation of a scheme's registration.

#### Textual Amendments

**F135** 1988(F) s.146 and Sch.13 para.4 (*deemed always to have had effect*).

**F136** 1989 s.61 and Sch.4 para.4(2). *Previously* "subsection (5)".

**F137** *Repealed by* 1989 ss.61 and 187 and Schs.4 para.10(2)(a) and 17 Part IV.

**F138** 1989 s.61 and Sch.4 paras.4(3), 4(4).

#### Marginal Citations

**M155** Source—1987 (No.2) s.10

### *Administration*

#### **179 Recovery of tax from scheme employer.**

<sup>M156</sup>(1) This section applies where—

- (a) payments of profit-related pay are made to an employee in accordance with a registered scheme; and
- (b) in consequence of the relief given by this Chapter in respect of registered schemes, less income tax is deducted from the payments in accordance with section 203 than would have been deducted if the scheme had not been registered; and
- (c) the registration of the scheme is subsequently cancelled with effect from a time before that relevant for the purposes of the relief.

(2) Where this section applies, an amount equal to the shortfall in the deductions made in accordance with section 203 shall be payable by the scheme employer to the Board; and regulations under that section may include provision as to the collection and recovery of any such amount.

[<sup>F139</sup>(3) Where—

- (a) the scheme employer has died, but
- (b) his personal representatives have not been substituted for him as the scheme employer by virtue of section 177A,

the reference in subsection (2) above to the scheme employer shall be construed as a reference to the personal representatives.

(4) Where—

- (a) a payment to which this section applies was made by a person other than the scheme employer, and
- (b) the scheme employer is not resident in the United Kingdom,

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then in relation to that payment the reference in subsection (2) above to the scheme employer shall include a reference to the person by whom the payment was made.]

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**Textual Amendments**

**F139** 1989 s.61 and Sch.4 para.5.

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**Marginal Citations**

**M156** Source—1987 (No.2) s.11

**180 Annual returns etc.**

<sup>M157</sup>(1) After every profit period of a registered scheme, the scheme employer shall, within the period allowed by subsection (2) below, send to the Board—

- (a) a return in such form and containing such information as the Board may prescribe; and
- (b) a report by an independent accountant in such form and containing such information as the Board may prescribe and stating that in his opinion the terms of the scheme have been complied with in respect of the profit period.

(2) Subject to subsection (3) below, the period allowed for complying with subsection (1) above is—

- (a) seven months from the end of the profit period if the employment unit to which the scheme relates is an undertaking or part of an undertaking of a public company; and
- (b) ten months from the end of the profit period in any other case.

(3) If before the end of the period allowed by subsection (2) above the scheme employer gives the Board notice that an extension of three months has been allowed under [<sup>F140</sup>section 244(3)] of the <sup>M158</sup>Companies Act 1985, or under Article 250(3) of the <sup>M159</sup>Companies (Northern Ireland) Order 1986, in relation to a financial year of the employer which corresponds with the profit period in question, then the period allowed by subsection (2) above shall be correspondingly extended.

(4) In subsection (2)(a) above, “public company” has the meaning given by section 1(3) of the Companies Act 1985 or Article 12(3) of the Companies (Northern Ireland) Order 1986.

[<sup>F141</sup>(5) Where—

- (a) the scheme employer has died, but
- (b) his personal representatives have not been substituted for him as the scheme employer by virtue of section 177A,

the reference in subsection (1) above to the scheme employer shall be construed as a reference to the personal representatives.]

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**Textual Amendments**

**F140** [Companies Act 1989 \(c.40\)](#) s.23 and Sch.10 para.38(2) in force on 1 April 1990 by virtue of S.I. 1990 No.355 (c.13), art.3 (not reproduced). Previously “section 242(3)”.

**F141** 1989 s.61 and Sch.4 para.6.

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### **Marginal Citations**

**M157** Source—1987 (No.2) s.12

**M158** 1985 c. 6.

**M159** S.I. 1986/1032 (N.I. 6).

## **181 Other information.**

- <sup>M160</sup>(1) The Board may by notice require any person to give them, within a period of 30 days or such longer period as may be specified in the notice, any information which is so specified and which—
- (a) that person has or can reasonably be required to obtain; and
  - (b) the Board consider they need to have in order to perform their functions under this Chapter.
- (2) Without prejudice to the generality of subsection (1)(b) above, the Board may in particular require a person under subsection (1) to give them—
- (a) information to enable them to determine whether the registration of a scheme should be cancelled;
  - (b) information to enable them to determine the liability to tax of any person who is or has been an employee to whom a registered scheme relates or who pays or has paid emoluments to such an employee;
  - (c) information about the administration of a profit-related pay scheme which is or has been a registered scheme;
  - (d) information about any change of person paying emoluments to employees to whom a registered scheme relates.
- (3) The scheme employer of a registered scheme shall by notice inform the Board without delay if he becomes aware of anything that is or may be a ground for cancellation of the registration of the scheme.
- [<sup>F142</sup>(4) Where the scheme employer has died, his personal representatives shall inform the Board of his death by notice given before the end of the period of one month beginning with the date of the grant of probate or letters of administration or, in Scotland, confirmation of executors.]

### **Textual Amendments**

**F142** 1989 s.61 and Sch.4 paras.7, 8(2), 8(3).

### **Marginal Citations**

**M160** Source—1987 (No.2) s.13

## **182 Appeals.**

- <sup>M161</sup>(1) An appeal to the Special Commissioners may be made by a scheme employer—
- (a) against a refusal by the Board under section 176(2) or (4) of an application for registration of the scheme;
  - (b) against a refusal by the Board of an application under section 177;
  - [<sup>F143</sup>(bb) against a refusal by the Board of an application under section 177B(3).]
  - (c) against the cancellation by the Board of the registration of the scheme.



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[<sup>F143</sup>(1A) An appeal to the Special Commissioners may be made by the personal representatives of a scheme employer against a refusal by the Board of an application under section 177A.]

(2) An appeal under this section shall be made by notice given to the Board within 30 days of the day on which the [<sup>F144</sup>appellant] was notified of the refusal or, as the case may be, the cancellation.

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**Textual Amendments**

**F143** 1989 s.61 and Sch.4 paras.7, 8(2), 8(3).

**F144** 1989 s.61 and Sch.4 para.8(4). Previously  
“scheme employer”.

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**Marginal Citations**

**M161** Source—1987 (No.2) s.15

*Supplementary*

**183 Partnerships.**

<sup>M162</sup>For the purposes of this Chapter the members of a partnership which is a scheme employer shall be treated as a single continuing body of persons notwithstanding any change in their identity.

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**Marginal Citations**

**M162** Source—1987 (No.2) s.16

**184 Independent accountants.**

<sup>M163</sup>(1) For the purposes of this Chapter, “independent accountant”, in relation to a profit-related pay scheme, means a person who—

- (a) [<sup>F145</sup>is eligible for appointment as a company auditor under section 25 of the Companies Act 1989][<sup>F146</sup>or Article 28 of the Companies (Northern Ireland) Order 1990]; and
- (b) is not excluded by subsections (2) to [<sup>F147</sup>(4)] below.

(2) A person is not an independent accountant in relation to a profit-related pay scheme if—

- (a) he is the employer of employees to whom the scheme relates; or
- (b) he is a partner [<sup>F148</sup>, or an officer] or an employee of, or partner of an employee of, a person within subsection (3) below; or
- (c) he is [<sup>F149</sup>a partner or]an employee of a person within paragraph (b) above.

(3) The persons within this subsection are—

- (a) any person having employees to whom the scheme relates;

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- (b) any body corporate which is the subsidiary or holding company of a body corporate within paragraph (a) above or a subsidiary of such a body’s holding company.
- (4) For the purposes of this section—
  - (a) an auditor of a company is not to be regarded as an <sup>F150</sup>officer or]employee of it; and
  - (b) “holding company” and “subsidiary” are to be construed in accordance with section 736 of the Companies Act 1985 or Article 4 of the Companies (Northern Ireland) Order 1986.
- (5) <sup>F151</sup> .....
- (6) <sup>F152</sup>For the purposes of this Chapter, “independent accountant”, in relation to a scheme, includes a Scottish firm all the partners of which are independent accountants in relation to the scheme.]

**Textual Amendments**

**F145** Words in s. 184(1)(a) substituted by S.I. 1991/1997, **reg. 68(a)** (with reg. 4)

**F146** Words in s. 184(1)(a) substituted (29.3.1993) by S.R. 1993/67, **reg. 2, Sch. para.18**

**F147** Word in s. 184(1)(b) substituted by S.I. 1991/1997, **reg. 68(b)** (with reg. 4)

**F148** Words in s. 184(2)(b) inserted by S.I. 1991/1997, **reg. 68(c)** (with reg. 4)

**F149** Words in s. 184(2)(c) inserted by S.I. 1991/1997, **reg. 68(d)** (with reg. 4)

**F150** Words in s. 184(4)(a) inserted by S.I. 1991/1997, **reg. 68(e)** (with reg. 4)

**F151** S. 184(5) omitted by virtue of S.I. 1991/1997, **reg. 68(f)** ( with reg. 4)

**F152** S. 184(6) repealed (E.W.S.) (23.5.1995) by The Companies Act 1989 Part II (Consequential Amendments) Regulations 1995 (S.I. 1995/1163), **reg. 3**

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**Marginal Citations**

**M163** Source—1987 (No.2) s.17

## CHAPTER IV

### OTHER EXEMPTIONS AND RELIEFS

#### *Share option and profit sharing schemes*

**185 Approved share option schemes.**

- (1) <sup>M164</sup>The provisions of this section shall apply where, in accordance with the provisions of an approved share option scheme, an individual obtains a right to acquire shares in a body corporate by reason of his office or employment as a director or employee of that or any other body corporate and he obtains that right—
  - (a) in the case of a savings-related share option scheme, on or after 15th November 1980; or
  - (b) in the case of any other share option scheme, on or after 6th April 1984.
- (2) <sup>F153M165</sup>Subject to subsections (6) to (6B) below], tax shall not be chargeable under any provision of the Tax Acts in respect of the receipt of the right.

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- (3) <sup>M166</sup>Subject to subsections (4) and, except where paragraph 27(3) of Schedule 9 applies, (5) below, if he exercises the right in accordance with the provisions of the scheme at a time when it is approved—
- (a) tax shall not be chargeable under any provision of the Tax Acts in respect of the exercise nor under <sup>F154</sup>section 78 or 79 of the Finance Act 1988 in respect of the shares];
  - (b) section <sup>F155</sup>17(1) of the 1992 Act] (assets deemed to be acquired at market value) shall not apply in calculating the consideration for the acquisition of the shares by him or for any corresponding disposal of them to him.
- (4) <sup>F156M167</sup>Subsection (3) above] shall not apply in respect of a right, obtained by a person under a scheme which is a savings-related share option scheme, which is exercised within three years of its being obtained by virtue of a provision included in a scheme pursuant to paragraph 21 of Schedule 9.
- (5) <sup>M168</sup>Subsection (3) above shall not apply in relation to the exercise by any person of a right in accordance with the provisions of a scheme which is not a savings-related share option scheme if—
- (a) the period beginning with his obtaining the right and ending with his exercising it is less than three, or greater than ten, years; or
  - (b) the right is exercised within three years of the date on which he last exercised (in circumstances in which subsection (3) above applied) any right obtained under the scheme or under any other approved share option scheme which is not a savings-related share option scheme (any such right exercised on the same day being disregarded).
- <sup>F157</sup>(6) Subsection (6A) below applies where—
- (a) a person obtains a right to acquire shares under a scheme which is not a savings-related share option scheme, and
  - (b) the price at which he may acquire shares by exercising the right is not applicable by virtue of provision included in the scheme pursuant to paragraph 29(2) of Schedule 9.
- (6A) Where the aggregate of—
- (a) the amount or value of any consideration given by him for obtaining the right, and
  - (b) the price at which he may acquire the shares by exercising the right,
- is less than the market value, at the time he obtains the right, of the same quantity of issued shares of the same class, he shall be chargeable to tax under Schedule E for the year of assessment in which he obtains the right on the amount of the difference; and the amount so chargeable shall be treated as earned income, whether or not it would otherwise fall to be so treated.
- (6B) Subsection (6A) above shall also apply where—
- (a) a person obtains a right to acquire shares under a scheme which is not a savings-related share option scheme, and
  - (b) the price at which he may acquire shares by exercising the right is applicable by virtue of provision included in the scheme pursuant to paragraph 29(2) of Schedule 9;
- but with the substitution for “the market value” of “85 per cent. of the market value”.]

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- (7) <sup>M169</sup>For the purposes of section [F15538(1)(a) of the 1992 Act] (computation of chargeable gains: allowable expenditure) the consideration given for shares acquired in the exercise of the right shall be taken to have included that part of any amount on which income tax is payable in accordance with subsection [F158(6A)] above which is attributable to the shares disposed of.

This subsection applies whether or not the exercise is in accordance with the provisions of the scheme and whether or not the scheme is approved at the time of the exercise.

- (8) Where a person is chargeable to tax under subsection [F158(6A)] above on any amount (the “amount of the discount”) and subsequently, in circumstances in which subsection (3) above does not apply—
- (a) <sup>M170</sup>he is chargeable to tax under section 135, the amount of the gain on which he is chargeable to tax under that section shall be reduced by that part of the amount of the discount which is attributable to the shares in question; or
  - (b) <sup>M171</sup>he is treated by virtue of section 162 as having had the benefit of a notional interest-free loan, the amount of the notional loan initially outstanding shall be reduced by that part of the amount of the discount which is attributable to the shares in question.
- (9) Where the provisions of a scheme which is not a savings-related share option scheme are approved in pursuance of an application made under paragraph 1 of Schedule 10 to the <sup>M172</sup>Finance Act 1984 before 1st January 1985 (and the approval has not been withdrawn), this section shall apply in relation to any right obtained before 1st July 1985 as if the scheme containing those provisions had been approved under that Schedule during the period beginning with the date on which that right was obtained and ending with the date on which those provisions were actually so approved.
- (10) In this section “savings-related share option scheme” has the meaning given by Schedule 9.

#### Textual Amendments

- F153** Words in s. 185(2) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 39(3)(8) (in relation to rights obtained on or after 1.1.1992)
- F154** 1988(F) s.89 *in respect of acquisitions on or after 26 October 1987. Previously* “section 138(1)(a) in respect of an increase in the market value of the shares”.
- F155** Words in s. 185(3)(b)(7) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, Sch. 10 para. 14(12) (with ss. 60, 101(1), 171, 201(3)).
- F156** Words in s. 185(4) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 39(4)(8) (in relation to rights obtained on or after 1.1.1992)
- F157** S. 185(6)(6A)(6B) substituted (1.1.1992) for s. 185(6) by Finance Act 1991 (c. 31, SIF 63:1), s. 39(5)(7)
- F158** Words in s. 185(7)(8) substituted (1.1.1992) by Finance Act 1991 (c. 31, SIF 63:1), s. 39(6)((7)

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

- C32** See 1988(F) s.68—*benefits derived by director etc. from public offers not treated as emolument.*
- C33** S. 185 applied (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss.120, 289 (with ss. 60, 101(1), 171, 201(3)).

#### Marginal Citations

- M164** Source—1980 s.47(1); 1984 s.38(1)

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**Status:** Point in time view as at 19/04/1996. This version of this part contains provisions that are not valid for this point in time.  
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**M165** Source—1980 s.47(1)(a); 1984 s.38(2)  
**M166** Source—1980 s.47(1)(b); 1981 s.90(3)(a); 1984 s.38(3)(a)  
**M167** Source—1980 s.47(2)  
**M168** Source—1984 s.38(4)  
**M169** Source—1984 s.38(6)  
**M170** Source—1984 s.38(7)(a), (8)  
**M171** Source—1984 s.38(7)(b), (9)  
**M172** 1984 Sch.10 1(5)

## 186 Approved profit sharing schemes.

- (1) <sup>M173</sup>The provisions of this section apply where, after 5th April 1979, the trustees of an approved profit sharing scheme appropriate shares—
  - (a) which have previously been acquired by the trustees, and
  - (b) as to which the conditions in Part II of Schedule 9 are fulfilled,to an individual who participates in the scheme (“the participant”).
- (2) <sup>M174</sup>Notwithstanding that, by virtue of such an appropriation of shares as is mentioned in subsection (1) above, the beneficial interest in the shares passes to the participant to whom they are appropriated—
  - (a) the value of the shares at the time of the appropriation shall be treated as not being income of his chargeable to tax under Schedule E; and
  - (b) he shall not be chargeable to income tax under that Schedule by virtue of <sup>F159</sup>section 78 or 79 of the Finance Act 1988 in respect of the shares] or by virtue of section 162 in any case where the shares are appropriated to him at an undervalue within the meaning of that section.
- (3) <sup>M175</sup>Subject to the provisions of this section and paragraph 4 of Schedule 10, if, in respect of or by reference to any of a participant’s shares, the trustees become or the participant becomes entitled, before the release date, to receive any money or money’s worth (“a capital receipt”), the participant shall be chargeable to income tax under Schedule E for the year of assessment in which the entitlement arises on the appropriate percentage (determined as at the time the trustees become or the participant becomes so entitled) of so much of the amount or value of the receipt as exceeds the appropriate allowance for that year, as determined under subsection (12) below.
- (4) <sup>M176</sup>If the trustees dispose of any of a participant’s shares at any time before the release date or, if it is earlier, the date of the participant’s death, then, subject to subsections (6) and (7) below, the participant shall be chargeable to income tax under Schedule E for the year of assessment in which the disposal takes place on the appropriate percentage of the locked-in value of the shares at the time of the disposal.
- (5) <sup>M177</sup>Subject to paragraphs 5 and 6(6) of Schedule 10, the locked-in value of a participant’s shares at any time is—
  - (a) if prior to that time he has become chargeable to income tax by virtue of subsection (3) above on a percentage of the amount or value of any capital receipt which is referable to those shares, the amount by which their initial market value exceeds the amount or value of that capital receipt or, if there has been more than one such receipt, the aggregate of them; and
  - (b) in any other case, their initial market value.

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- (6) Subject to subsection (7) below, if, on a disposal of shares falling within subsection (4) above, the proceeds of the disposal are less than the locked-in value of the shares at the time of the disposal, subsection (4) above shall have effect as if that locked-in value were reduced to an amount equal to the proceeds of the disposal.
- (7) If, at any time prior to the disposal of any of a participant's shares, a payment was made to the trustees to enable them to exercise rights arising under a rights issue, then, subject to subsection (8) below, subsections (4) and (6) above shall have effect as if the proceeds of the disposal were reduced by an amount equal to that proportion of that payment or, if there was more than one, of the aggregate of those payments which, immediately before the disposal, the market value of the shares disposed of bore to the market value of all the participant's shares held by the trustees at that time.
- (8) <sup>M178</sup>For the purposes of subsection (7) above—
- (a) no account shall be taken of any payment to the trustees if or to the extent that it consists of the proceeds of a disposal of rights arising under a rights issue; and
  - (b) in relation to a particular disposal the amount of the payment or, as the case may be, of the aggregate of the payments referred to in that subsection shall be taken to be reduced by an amount equal to the total of the reduction (if any) previously made under that subsection in relation to earlier disposals;
- and any reference in subsection (7) or paragraph (a) above to the rights arising under a rights issue is a reference to rights conferred in respect of a participant's shares, being rights to be allotted, on payment, other shares or securities or rights of any description in the same company.
- (9) <sup>M179</sup>If at any time the participant's beneficial interest in any of his shares is disposed of, the shares in question shall be treated for the purposes of the relevant provisions as having been disposed of at that time by the trustees for (subject to subsection (10) below) the like consideration as was obtained for the disposal of the beneficial interest; and for the purposes of this subsection there is no disposal of the participant's beneficial interest if and at the time when—
- (a) in England and Wales or Northern Ireland, that interest becomes vested in any person on the insolvency of the participant or otherwise by operation of law, or
  - (b) in Scotland, that interest becomes vested in a judicial factor, in a trustee on the participant's sequestrated estate or in a trustee for the benefit of the participant's creditors.
- (10) If—
- (a) a disposal of shares falling within subsection (4) above is a transfer to which paragraph 2(2)(c) of Schedule 9 applies, or
  - (b) the Board is of opinion that any other disposal falling within that sub-paragraph is not at arm's length and accordingly direct that this subsection shall apply, or
  - (c) a disposal of shares falling within that sub-paragraph is one which is treated as taking place by virtue of subsection (9) above and takes place within the period of retention,
- then for the purposes of the relevant provisions the proceeds of the disposal shall be taken to be equal to the market value of the shares at the time of the disposal.
- (11) <sup>M180</sup>Where the trustees of an approved scheme acquire any shares as to which the requirements of Part II of Schedule 9 are fulfilled and, within the period of 18

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months beginning with the date of their acquisition, those shares are appropriated in accordance with the scheme, section 686 shall not apply to income consisting of dividends on those shares received by the trustees; and, for the purpose of determining whether any shares are appropriated within that period, shares which were acquired at an earlier time shall be taken to be appropriated before shares of the same class which were acquired at a later time.

- (12) <sup>M181</sup>For the purposes of subsection (3) above, “the appropriate allowance”, in relation to any year of assessment, means a sum which, subject to a maximum of £100, is the product of multiplying £20 by 1 plus the number of years which fall within the period of five years immediately preceding the year in question and in which shares were appropriated to the participant under the scheme; and if in any year (and before the release date) the trustees become or the participant becomes entitled, in respect of or by reference to any of his shares, to more than one capital receipt, the receipts shall be set against the appropriate allowance for that year in the order in which they are received.

- (13) Schedule 10 shall have effect with respect to profit sharing schemes.

#### Textual Amendments

**F159** Words in s. 186(2)(b) substituted (in respect of acquisitions of shares on or after 26.10.1987) by Finance Act 1988 (c. 39), s. 89

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

**C34** S. 186 modified (29.4.1996) by Finance Act 1996 (c. 8), ss. 115(1), 116(3)

**C35** S. 186 modified (29.4.1996) by Finance Act 1996 (c. 8), s. 116(3)

#### Marginal Citations

**M173** Source—1978 s.53(1)

**M174** Source—1978 s.53(3)

**M175** Source—1978 s.56(1); 1982 s.42(1)

**M176** Source—1978 s.55(1)

**M177** Source—1978 s.55(2)-(4)

**M178** Source—1978 s.55(5), (9)

**M179** Source—1978 s.55(7), (8)

**M180** Source—1978 s.53(6)

**M181** Source—1978 s.56(6); 1980 s.46(6); 1982 s.42(2); 1985 s.45(4)

## 187 Interpretation of sections 185 and 186 and Schedules 9 and 10.

- (1) <sup>M182</sup>In sections 185 and 186, this section and Schedules 9 and 10 “the relevant provisions” means those sections (including this section) and Schedules.
- (2) For the purposes of the relevant provisions, except where the context otherwise requires—
- “appropriate percentage” shall be construed in accordance with paragraph 3 of Schedule 10;
  - “approved”, in relation to a scheme, means approved under Schedule 9;
  - “associated company” has the same meaning as in section 416, except that, for the purposes of paragraph 23 of Schedule 9, subsection (1) of that section

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shall have effect with the omission of the words “ or at any time within one year previously ”;

“bonus date” has the meaning given by paragraph 17 of Schedule 9;

“capital receipt” means money or money’s worth to which the trustees of or a participant in a profit sharing scheme become or becomes entitled as mentioned in section 186(3), but subject to paragraph 4 of Schedule 10;

“certified contractual savings scheme” has the meaning given by section 326;

“control” has the same meaning as in section 840;

“grantor”, in relation to any scheme, means the company which has established the scheme;

“group scheme” and, in relation to such a scheme, “participating company” have the meanings given by paragraph 1(3) and (4) of Schedule 9;

“initial market value”, in relation to shares in a profit sharing scheme, has the meaning given by paragraph 30(4) of Schedule 9;

“locked-in value”, in relation to any shares, shall be construed in accordance with section 186(5);

“market value” has the same meaning as in Part VIII of the <sup>[F160]</sup>1992 Act];

“new holding” has the meaning given by section <sup>[F160]</sup>126(1)(b) of the 1992 Act];

“participant”, in relation to a profit sharing scheme, means an individual to whom the trustees of the scheme have appropriated shares;

“participant’s shares”, in relation to a participant in a profit sharing scheme, means, subject to paragraph 5(4) of Schedule 10, shares which have been appropriated to the participant by the trustees;

<sup>F161</sup>

.....  
“period of retention” has the meaning given by paragraph 2 of Schedule 10;

“release date”, in relation to any of the shares of a participant in a profit sharing scheme, means the fifth anniversary of the date on which they were appropriated to him;

“relevant amount”, in relation to a participant in a profit sharing scheme, means an amount which is <sup>[F162]</sup>not less than £3,000 and not more than £8,000] but which, subject to that, is 10 per cent. of his salary (determined under subsection (5) below) for the year of assessment in question or the preceding year of assessment, whichever is the greater;

“relevant requirements” has the meaning given by paragraph 1 of Schedule 9;

“savings-related share option scheme” has the meaning given by paragraph 1 of Schedule 9;

“scheme” means a savings-related share option scheme, a share option scheme which is not a savings-related share option scheme or a profit sharing scheme, as the context may require;

“shares” includes stock;

<sup>[F163]</sup>“specified age”, in relation to a scheme, means the age specified in pursuance of paragraph 8A of Schedule 9 as the specified age for the purposes of the scheme;]

“the trustees”, in relation to an approved profit sharing scheme or the shares of a participant in such a scheme, means the body of persons for the



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establishment of which the scheme must provide as mentioned in paragraph 30 of Schedule 9; and

“just instrument”, in relation to an approved profit sharing scheme, means the instrument referred to in paragraph 30(1)(c) of Schedule 9.

(3) <sup>M183</sup>For the purposes of the application of the relevant provisions in relation to any share option scheme or profit sharing scheme, a person has a material interest [<sup>F164</sup> in a company if he, either on his own or with one or more associates, or if any associate of his with or without such other associates,—

(a) is the beneficial owner of, or able, directly or through the medium of other companies, or by any other indirect means to control, more than 25 per cent., or in the case of a share option scheme which is not a savings-related share option scheme more than 10 per cent., of the ordinary share capital of the company, or

(b) where the company is a close company, possesses, or is entitled to acquire, such rights as would, in the event of the winding-up of the company or in any other circumstances, give an entitlement to receive more than 25 per cent., or in the case of a share option scheme which is not a savings-related share option scheme more than 10 per cent., of the assets which would then be available for distribution among the participators.]

In this subsection “associate” has the meaning given by section 417(3) and (4) [<sup>F164</sup> and “participator” has the meaning given by section 417(1)].

(4) <sup>M184</sup>Subsection (3) above shall have effect subject to the provisions of Part VI of Schedule 9.

(5) <sup>M185</sup>For the purposes of subsection (2) above, a participant’s salary for a year of assessment means such of the emoluments of the office or employment by virtue of which he is entitled to participate in a profit sharing scheme as are liable to be paid in that year under deduction of tax pursuant to section 203 after deducting therefrom amounts included by virtue of Chapter II of this Part.

(6) <sup>M186</sup>Section 839 shall apply for the purposes of the relevant provisions.

(7) <sup>M187</sup>For the purposes of the relevant provisions 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 three-quarters of the other company’s ordinary share capital and each of which beneficially owns not less than one-twentieth of that capital.

(8) <sup>M188</sup>Where the disposal referred to in section 186(4) is made from a holding of shares which were appropriated to the participant at different times, then, in determining for the purposes of the relevant provisions—

- (a) the initial market value and the locked-in value of each of those shares, and
- (b) the percentage which is the appropriate percentage in relation to each of those shares,

the disposal shall be treated as being of shares which were appropriated earlier before those which were appropriated later.

(9) <sup>M189</sup>Any of the relevant provisions with respect to—

- (a) the order in which any of a participant’s shares are to be treated as disposed of for the purposes of those provisions, or
- (b) the shares in relation to which an event is to be treated as occurring for any such purpose,

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shall have effect in relation to a profit sharing scheme notwithstanding any direction given to the trustees with respect to shares of a particular description or to shares appropriated to the participant at a particular time.

(10) <sup>M190</sup>In the relevant provisions “workers’ cooperative” means a registered industrial and provident society, within the meaning of section 486, which is a cooperative society and the rules of which include provisions which secure—

- (a) that the only persons who may be members of it are those who are employed by, or by a subsidiary of, the society and those who are the trustees of its profit sharing scheme; and
- (b) that, subject to any provision about qualifications for membership which is from time to time made by the members of the society by reference to age, length of service or other factors of any description, all such persons may be members of the society;

and in this subsection “cooperative society” has the same meaning as in section 1 of the <sup>M191</sup>Industrial and Provident Societies Act 1965 or, as the case may be, the <sup>M192</sup>Industrial and Provident Societies Act (Northern Ireland) 1969.

#### Textual Amendments

- F160** Words in s. 187(2) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(13)** (with ss. 60, 101(1), 171, 201(3)).
- F161** S. 187(2): definition of “pensionable age” repealed (19.7.1995) by Pensions Act 1995 (c. 26), ss. 126, 177, 180(2)(a), Sch. 4 para. 12(a), **Sch. 7 Pt. 2**
- F162** Words in s. 187(2) substituted (for the year 1991-92 and subsequent years of assessment) by virtue of Finance Act 1991 (c. 31), **s. 41(1)(2)**
- F163** S. 187(2): definition of “specified age” inserted by Finance Act 1991 (c. 31), **s. 38(4)**
- F164** Words in s. 187(3) substituted (in relation to accounting periods beginning after 31.3.1989) by Finance Act 1989 (c. 26), **Sch. 12 para. 9**

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

- C36** S. 187 modified (29.4.1996) by Finance Act 1996 (c. 8), **ss. 115(1), 116(3)**

#### Marginal Citations

- M182** Source—1978 ss.53(2), 54(2), (4)(b), 6, 56(1), 57(1), (4), 61(1), Sch.9 1, 16; 1980 s.46(4), Sch.10 5(b), 8, 26(1); 1982 s.40(8); 1983 s.25(1); 1984 Sch.10 15(1), (2); 1985 s.45(2)
- M183** Source—1970 s.285(6); 1978 Sch.9 11(3)(b); 1980 Sch.10 26(2); 1984 Sch.10 4(4)
- M184** Source—1987 s.33(2)
- M185** Source—1978 s.61(4); 1983 s.25(2)
- M186** Source—1978 Sch.9 16; 1980 Sch.10 26(4); 1984 Sch.10 15(3)
- M187** Source—1978 Sch.9 17; 1980 Sch.10 26(5); 1984 Sch.10 15(4); 1986 s.23(5)
- M188** Source—1978 s.55(6)
- M189** Source—1978 s.61(2)
- M190** Source—1978 Sch.9 18; 1986 s.24(1)
- M191** 1965 c. 12.
- M192** 1969 c. 24. (N.I.).

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VALID FROM 28/07/2000

## *F165 Contributions in respect of share option gains*

### **Textual Amendments**

**F165** S. 187A and preceding cross-heading inserted (with application in accordance with s. 56(1) of the amending Act) by Finance Act 2000 (c. 17), s. 56(1)

### **187A Relief for contributions in respect of share option gains.**

- (1) Where a person (“the earner”) is chargeable to tax under section 135 on a gain, relief is available under this section if—
  - (a) an agreement has been entered into allowing the secondary contributor to recover from the earner the whole or part of any secondary Class 1 contributions in respect of the gain, or
  - (b) an election is in force which has the effect of transferring to the earner the whole or part of the liability to pay secondary Class 1 contributions in respect of the gain.
- (2) The amount of the relief is the total of—
  - (a) any amount that, in pursuance of any such agreement as is mentioned in subsection (1)(a), is recovered in respect of the gain by the secondary contributor not later than 60 days after the end of the year of assessment in which occurred the event giving rise to the charge to tax under section 135; and
  - (b) the amount of any liability in respect of that gain that, by virtue of any such election as is mentioned in subsection (1)(b), has become the earner’s liability.
- (3) Where notice of withdrawal of approval of any such election is given, relief under subsection (2)(b) is limited to so much of the earner’s liability in respect of the gain as is met before the end of the 60th day after the end of the year of assessment in which occurred the event giving rise to the charge under section 135.
- (4) Relief under this section shall be given by way of deduction from the amount of the gain on which the earner is chargeable to tax under section 135.
- (5) Any such deduction does not affect the amount of the gain for the purposes of—
  - (a) section 120(4) of the <sup>M193</sup>Taxation of Chargeable Gains Act 1992 (amount treated as consideration for acquisition of shares), or
  - (b) section 4(4)(a) of the Contributions and Benefits Act (amount treated as remuneration for contributions purposes).
- (6) The agreements and elections referred to in this section are those having effect under paragraph 3A or 3B of Schedule 1 to the Contributions and Benefits Act.

References to approval in relation to an election are to approval by the Inland Revenue under paragraph 3B of that Schedule.
- (7) In this section—

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“the Contributions and Benefits Act” means the <sup>M194</sup>Social Security Contributions and Benefits Act 1992 or the <sup>M195</sup>Social Security Contributions and Benefits (Northern Ireland) Act 1992; and  
 “secondary Class 1 contributions” and “secondary contributor” have the same meaning as in that Act.]

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

C37 S. 187A modified (retrospectively) by [Social Security Contributions \(Share Options\) Act 2001](#) (c. 20), s. 4(2)(3)

**Marginal Citations**

M193 1992 c. 12.  
 M194 1992 c. 4.  
 M195 1992 c. 7.

*Retirement benefits etc.*

**188 Exemptions from section 148.**

- (1) <sup>M196</sup>Tax shall not be charged by virtue of section 148 in respect of the following payments, that is to say—
- (a) any payment made in connection with the termination of the holding of an office or employment by the death of the holder, or made on account of injury to or disability of the holder of an office or employment;
  - (b) any sum chargeable to tax under section 313;
  - (c) <sup>F166</sup> .....
  - (d) a benefit paid in pursuance of any such scheme or fund as was described in section 221(1) and (2) of the 1970 Act or as is described in section 596(1);
  - (e) any terminal grant, gratuity or other lump sum paid under any Royal Warrant, Queen’s Order, or Order in Council relating to members of Her Majesty’s forces, and any payment made in commutation of annual or other periodical payments authorised by any such Warrant or Order;
  - (f) a payment of benefit under any superannuation scheme administered by the government of an overseas territory within the Commonwealth, or of compensation for loss of career, interruption of service or disturbance made in connection with any change in the constitution of any such overseas territory to persons who, before the change, were employed in the public services of that territory;
- and references in paragraph (f) above to an overseas territory, to the government of such a territory, and to employment in the public service of such a territory shall be construed as if they occurred in the <sup>M197</sup>Overseas Development and Cooperation Act 1980, and sections 10(2) and 13(1) and (2) of that Act (which relate to the construction of such references) shall apply accordingly.
- (2) <sup>M198</sup>Subsection (1)(d) above shall not apply to any compensation paid for loss of office or employment or for loss or diminution of emoluments unless the loss or diminution is due to ill-health; but this subsection shall not be taken to apply to any payment properly regarded as a benefit earned by past service.

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- (3) <sup>M199</sup>Tax shall not be charged by virtue of section 148 in respect of any payment in the case of which the following conditions are satisfied—
- (a) that the payment is in respect of an office or employment in which the holder's service included foreign service; and
  - (b) that the foreign service comprised either—
    - (i) in any case, three-quarters of the whole period of service down to the relevant date, or
    - (ii) where the period of service down to the relevant date exceeded ten years, the whole of the last ten years, or
    - (iii) where the period of service down to the relevant date exceeded 20 years, one-half of that period, including any ten of the last 20 years.
- (4) <sup>M200</sup>Tax shall not be charged by virtue of section 148 in respect of a payment of an amount not exceeding [<sup>F167</sup>£30,000] (“the exempt sum”) and, subject to subsection (5) below, in the case of a payment which exceeds that amount shall be charged only in respect of the excess.
- (5) Where two or more payments in respect of which tax is chargeable by virtue of section 148, or would be so chargeable apart from subsection (4) above, are made to or in respect of the same person in respect of the same office or employment, or in respect of different offices or employments held under the same employer or under associated employers, subsection (4) above shall apply as if those payments were a single payment of an amount equal to that aggregate amount; and the amount of any one payment chargeable to tax shall be ascertained as follows, that is to say—
- (a) where the payments are treated as income of different chargeable periods, the exempt sum shall be deducted from a payment treated as income of an earlier period before any payment treated as income of a later period; and
  - (b) subject to that, the exempt sum shall be deducted rateably from the payments according to their respective amounts.
- (6) <sup>M201</sup>The person chargeable to tax by virtue of section 148 in respect of any payment may make a claim for such relief in respect of the payment as is applicable thereto under Schedule 11.
- (7) For the purposes of this section and Schedule 11 offices or employments in respect of which payments to which section 148 applies are made shall be treated as held under associated employers if, on the date which is the relevant date in relation to any of those payments, one of those employers is under the control of the other or of a third person who controls or is under the control of the other on that or any other such date.
- In this subsection “control” has the meaning given by section 840.
- (8) In this section—
- (a) “the relevant date” and “foreign service” have the same meaning as in Schedule 11; and
  - (b) references to an employer or to a person controlling or controlled by an employer include references to his successors.

#### Textual Amendments

**F166** S. 188(1)(c) repealed (with effect in accordance with s. 108 of the repealing Act) by [Finance Act 1994 \(c. 9\)](#), s. 108(7), [Sch. 26 Pt. 5\(12\)](#), Note 1

**Status:** Point in time view as at 19/04/1996. This version of this part contains provisions that are not valid for this point in time.

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**F167** 1988(F) s.74 in respect of payments received on or after 6 April 1988—see s.74(3) for application.  
 Previously  
 “£25,000”.

#### Marginal Citations

**M196** Source—1970 s.188(1); 1971 Sch.6 24; 1970(F) Sch.5 Pt.III 12(1)  
**M197** 1980 c. 63.  
**M198** Source—1972 s.73  
**M199** Source—1970 s.188(2)(b); 1974 s.21(3)  
**M200** Source—1970 s.188(3); 1981 s.31(1)  
**M201** Source—1970 s.188(4)-(6)

### 189 Lump sum benefits on retirement.

<sup>M202</sup>A lump sum paid to a person [<sup>F168</sup>(whether on his retirement from an office or employment or otherwise)] shall not be chargeable to income tax under Schedule E if—

- (a) it is paid in pursuance of any such scheme or fund as was described in section 221(1) and (2) of the 1970 Act or as is described in section 596(1) and is neither a payment of compensation to which section 188(2) applies nor a payment chargeable to tax under section 600; or
- (b) <sup>F169</sup> .....
- (c) it is paid under approved personal pension arrangements (within the meaning of Chapter IV of Part XIV).

#### Textual Amendments

**F168** 1988(F) s.57 (which also amends 1973 s.14). Previously  
 “on his retirement from an office or employment”.

**F169** S. 189(b) repealed (with effect in accordance with s. 108 of the repealing Act) by Finance Act 1994 (c. 9), s. 108(7), Sch. 26 Pt. 5(12), Note 1

#### Marginal Citations

**M202** Source—1973 s.14; 1987 Sch.2 3

### 190 Payments to Members of Parliament, Representatives to the European Parliament and others.

<sup>M203</sup>Grants and other payments made—

- (a) in pursuance of a resolution of the House of Commons to a person ceasing to be a Member of that House on a dissolution of Parliament, or
- (b) under section 13 of the <sup>M204</sup>Parliamentary Pensions etc. Act 1984 [<sup>F170</sup>or section 4 of the Ministerial and other Pensions and Salaries Act 1991](grants to persons ceasing to hold certain Ministerial and other offices), or
- (c) under section 3 of the <sup>M205</sup>European Parliament (Pay and Pensions) Act 1979 (resettlement grants to persons ceasing to be Representatives),

shall be exempt from income tax under Schedule E as emoluments, but without prejudice to their being taken into account, to the extent permitted by section 188(4), under section 148.

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#### Textual Amendments

**F170** Words in s. 190(b) inserted by Ministerial and other [Pensions Act 1991 \(c. 5, SIF 89\)](#), s. 4(10)

#### Marginal Citations

**M203** Source—1972 s.72; 1984 s.29

**M204** 1984 c. 52.

**M205** 1979 c. 50.

### 191 Job release scheme allowances not to be treated as income.

<sup>M206</sup>(1) A payment on account of an allowance to which this section applies shall not be treated as income for any purposes of the Income Tax Acts.

(2) This section applies to any allowance paid since the beginning of 1977 by the Secretary of State or the Department of Economic Development under any scheme of the kind described in the <sup>M207</sup>Job Release Act 1977, being a scheme which provides for the payment of allowances for periods beginning not earlier than one year before the date on which the recipient attains pensionable age as defined in that Act.

#### Marginal Citations

**M206** Source—1977 s.30

**M207** 1977 c. 8.

*[<sup>F171</sup> Removal expenses and benefits]*

#### Textual Amendments

**F171** Ss. 191A, 191B and preceding cross-heading inserted (27.7.1993) by [Finance Act 1993 \(c. 34\)](#), s. 76, [Sch. 5 para.1](#)

### <sup>F171F172</sup>191A Removal expenses and benefits.

Schedule 11A to this Act (which relates to the payment of expenses, and the provision of benefits, in respect of removals) shall have effect.]

#### Textual Amendments

**F172** Ss. 191A, 191B and preceding cross-heading inserted (27.7.1993) by [Finance Act 1993 \(c. 34\)](#), s. 76, [Sch. 5 para.1](#)

### <sup>F171F173</sup>191B Removal benefits: beneficial loan arrangements.

(1) This section applies where—  
(a) there is a change in the residence of an employee,

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- (b) the conditions mentioned in paragraph 5(1) to (3) of Schedule 11A are fulfilled in relation to the change (construing the reference in paragraph 5(1) to paragraphs 3(2) and 4(2) of that Schedule as a reference to this subsection),
  - (c) a qualifying loan is raised by the employee in connection with the change and is made before the relevant day, and
  - (d) section 160(1) applies (or would apply apart from this section) in respect of the employee and the loan.
- (2) For the purposes of this section a loan is a qualifying loan if (and only if)—
- (a) the employee has an interest in his former residence,
  - (b) he disposes of that interest in consequence of the change of residence,
  - (c) he acquires an interest in his new residence, and
  - (d) the reason, or one of the reasons, for the loan being raised is that a period elapses between the date when expenditure is incurred in connection with the acquisition of the employee's interest in his new residence and the date when the proceeds of the disposal of the employee's interest in his former residence are available.
- (3) The reference in subsection (1) above to a loan raised by the employee includes a reference to a loan raised by one or more members of the employee's family or household or by the employee and one or more members of his family or household.
- (4) References in subsection (2) above to the employee having, disposing of or acquiring an interest in a residence include references to—
- (a) one or more members of the employee's family or household having, disposing of or acquiring such an interest;
  - (b) the employee and one or more members of his family or household having, disposing of or acquiring such an interest;
- and references to the employee's interest shall be construed accordingly.
- (5) This section does not apply unless the total of the amounts mentioned in subsection (6) below is less than the qualifying limit for the time being specified in paragraph 24(9) of Schedule 11A.
- (6) The amounts referred to in subsection (5) above are—
- (a) the aggregate of the amounts of any sums which, by reason of the employee's employment and in connection with the change of residence, are paid to him, or to another person on his behalf, in respect of qualifying removal expenses, and
  - (b) the aggregate of any amounts represented by qualifying removal benefits which, by reason of the employee's employment and in connection with the change of residence, are provided for him or for others being members of his family or household.
- (7) For the purposes of subsection (6) above—
- (a) references to qualifying removal expenses and qualifying removal benefits shall be construed in accordance with Schedule 11A, and
  - (b) the reference to any amounts represented by qualifying removal benefits shall be construed in accordance with paragraph 24 of that Schedule.
- (8) Where this section applies, for the purposes of section 160 and Schedule 7 the loan mentioned in subsection (1)(c) above shall be treated as if it had been made on the day after the day on which the relevant period expires; and the relevant period is a



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period, of the appropriate number of days, beginning with the day on which the loan is actually made.

- (9) Where the loan is discharged on or before the day on which the relevant period expires subsection (8) above shall not apply; and in such a case the loan shall be ignored for the purposes of section 160 and Schedule 7.
- (10) For the purposes of subsection (8) above the appropriate number is the number given by the following formula—

$$\frac{AyB}{CyD}$$

- (11) For the purposes of subsection (10) above—
  - A is the amount by which the qualifying limit for the time being specified in paragraph 24(9) of Schedule 11A exceeds the total mentioned in subsection (5) above;
  - B is 365;
  - C is the maximum amount of the loan outstanding in the period beginning with the time when the loan is actually made and ending with the end of the relevant day;
  - D is the official rate of interest, within the meaning given by section 160(5), in force at the time when the loan is actually made.
- (12) Where the number given by the formula set out in subsection (10) above is not a whole number, it shall be rounded up to the nearest whole number.
- (13) An assessment in respect of the loan for a year of assessment ending before the relevant day may be made or determined on the assumption that the condition mentioned in subsection (5) above will not be fulfilled in relation to the change of residence; but where an assessment has been made or determined on that assumption and that condition is fulfilled in relation to the change, on a claim in that behalf the assessment shall be adjusted accordingly.
- (14) <sup>F174</sup>.....
- (15) Any reference in this section to the relevant day is to the day which, by virtue of paragraph 6 of Schedule 11A, is the relevant day in relation to the change of residence concerned.
- (16) Paragraphs 25 to 27 of Schedule 11A apply for the purposes of this section as they apply for the purposes of that Schedule.]

**Textual Amendments**

**F173** Ss. 191A, 191B and preceding cross-heading inserted (27.7.1993) by [Finance Act 1993 \(c. 34\), s. 76, Sch. 5 para.1](#)

**F174** S. 191B(14) repealed (with effect in accordance with s. 88(6) of the repealing Act) by [Finance Act 1994 \(c. 9\), Sch. 26 Pt. 5\(5\)](#), Note

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*Foreign emoluments and earnings, pensions and certain travel facilities*

**192 Relief from tax for foreign emoluments.**

- (1) <sup>M208</sup>In this Part “foreign emoluments” means the emoluments of a person not domiciled in the United Kingdom from an office or employment under or with any person, body of persons or partnership resident outside, and not resident in, the United Kingdom, but shall be taken not to include the emoluments of a person resident in the United Kingdom from an office or employment under or with a person, body of persons or partnership resident in the Republic of Ireland.
- (2) <sup>M209</sup>Where the duties of an office or employment are performed wholly outside the United Kingdom and the emoluments from the office or employment are foreign emoluments, the emoluments shall be excepted from Case I of Schedule E.
- (3) <sup>M210</sup>If it appears to the Board on a claim made by the holder of an office or employment that out of any foreign emoluments from the office or employment he has made payments in circumstances corresponding to those in which the payments would have reduced his liability to income tax, the Board may allow those payments as a deduction in computing the amount of the emoluments.
- (4) <sup>M211</sup>Subject to subsection (2) above, there shall be allowed in charging tax on foreign emoluments from an office or employment under Case I or II of Schedule E for the year of assessment 1988-89 a deduction equal to one-quarter of the emoluments in any case where—
  - (a) the holder of the office or employment was in that year of assessment not resident in the United Kingdom or was not resident in the United Kingdom for at least two of the preceding ten years of assessment; and
  - (b) he—
    - (i) held an office or employment the emoluments of which were foreign emoluments chargeable under Case I or II of Schedule E at any time in the period beginning with 6th April 1983 and ending with 13th March 1984, or
    - (ii) in fulfilment of an obligation incurred before 14th March 1984, performed duties of such an office or employment in the United Kingdom before 1st August 1984, and he held such an office or employment in the year 1984-85 and in each subsequent year of assessment.
- (5) <sup>M212</sup>Paragraph 2(2) and (3) of Schedule 12 shall have effect with the necessary modifications in relation to the amount of emoluments to be excepted under subsection (2) above as they have effect in relation to the amount of emoluments in respect of which a deduction is allowed under section 193(1), and, subject to that, for the purposes of subsections (2) and (4) above the amount of any emoluments shall be taken to be the amount remaining after any capital allowance and after any deductions under subsection (3) above or section 193(4), 194(1), 195(7), 198, 199, 201, 332, 592 or 594.

**Marginal Citations**

**M208** 1970 s.181(1), Sch.12 Pt. III 3(3); 1974 s.21(1), (6)

**M209** Source—1974 Sch.2 4

**M210** Source—1974 Sch.2 6

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**M211** Source—1974 Sch.2 3(1), (2); 1984 s.30(9)-(12)

**M212** Source—1974 Sch.2 5; 1977 s.31(2), 32(8)

VALID FROM 31/07/1998

**[<sup>F175</sup>192A Foreign earnings deduction for seafarers.**

- (1) Where in any year of assessment—
  - (a) the duties of an employment as a seafarer are performed wholly or partly outside the United Kingdom, and
  - (b) any of those duties are performed in the course of a qualifying period (within the meaning of Schedule 12) which falls wholly or partly in that year and consists of at least 365 days,then, in charging tax under Case I of Schedule E on the amount of the emoluments from that employment attributable to that period, or to so much of it as falls in that year of assessment, there shall be allowed a deduction equal to the whole of that amount.
- (2) In subsection (1) 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).
- (3) For the purposes of this section a “ship” does not include—
  - (a) any offshore installation within the meaning of the <sup>M213</sup>Mineral Workings (Offshore Installations) Act 1971, or
  - (b) what would be such an installation if the references in that Act to controlled waters were to any waters.
- (4) Schedule 12 has effect for the purpose of supplementing this section.]

**Textual Amendments**

**F175** S. 192A inserted (with effect in accordance with s. 63(5) of the amending Act) by Finance Act 1998 (c. 36), s. 63(2) (with s. 63(6)(7))

**Marginal Citations**

**M213** 1971 c. 61.

**193 Foreign earnings and travel expenses.**

- (1) <sup>M214</sup>Where in any year of assessment—
  - (a) the duties of an office or employment are performed wholly or partly outside the United Kingdom; and
  - (b) any of those duties are performed in the course of a qualifying period (within the meaning of Schedule 12) which falls wholly or partly in that year and consists of at least 365 days;then, in charging tax under Case I of Schedule E on the amount of the emoluments from that employment attributable to that period, or to so much of it as falls in that year of assessment, there shall be allowed a deduction equal to the whole of that amount.

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Schedule 12 shall have effect for the purpose of supplementing this subsection.

- (2) <sup>M215</sup>Subsections (3) and (4) below apply where a person (“the employee”) who is resident and ordinarily resident in the United Kingdom holds an office or employment (“the overseas employment”) the duties of which are performed wholly outside the United Kingdom and the emoluments from which are not foreign emoluments.
- (3) <sup>M216</sup>For the purposes of section 198(1) there shall be treated as having been necessarily incurred in the performance of the duties of the overseas employment expenses of the employee in travelling from any place in the United Kingdom to take up the overseas employment and in travelling to any place in the United Kingdom on its termination; and if travel is partly for a purpose mentioned in this subsection and partly for another purpose this subsection applies only to such part of the expenses as is properly attributable to the former purpose.
- (4) <sup>M217</sup>Where, for the purpose of enabling the employee to perform the duties of the overseas employment—
- (a) board and lodging outside the United Kingdom is provided for him and the cost of it is borne by or on behalf of his employer; or
  - (b) he incurs expenses out of the emoluments of the employment on such board and lodging for himself and those expenses are reimbursed by or on behalf of his employer,
- there shall be allowed, in charging tax under Case I of Schedule E on the emoluments from that employment, a deduction of an amount equal to so much of that cost, or, as the case may be, those expenses as falls to be included in those emoluments.
- Where board and lodging is partly for the purpose mentioned in this subsection and partly for another purpose, this subsection applies only to such part of the cost or expenses as is properly attributable to the former purpose.
- (5) Subsection (6) below applies where a person resident and ordinarily resident in the United Kingdom—
- (a) holds two or more offices or employments the duties of one or more of which are performed wholly or partly outside the United Kingdom; and
  - (b) travels from one place having performed there duties of one office or employment to another place for the purpose of performing duties of another office or employment (the emoluments from which are not foreign emoluments);
- and either or both of those places is outside the United Kingdom.
- (6) For the purposes of section 198(1) expenses incurred by such a person on such travel shall be treated as having been necessarily incurred in the performance of the duties which he is to perform at his destination; and if travel is partly for the purpose of performing those duties and partly for another purpose this subsection applies only to such part of the expenses as is properly attributable to the former purpose.
- (7) <sup>M218</sup>References in the Income Tax Acts (including any provision of this Act, but without prejudice to any express reference to subsection (3) above) to section 198 and to deductions allowable under sections 198, 199, 201 or 332 shall be construed as including a reference to subsection (3) above and to deductions allowable under that subsection.

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#### Marginal Citations

- M214** Source—1977 Sch.1 1, 11  
**M215** Source—1977 s.32(1)  
**M216** Source—1977 s.32(2); 1986 s.34(2)  
**M217** Source—1977 s.32(3)-(5)  
**M218** Source—1977 s.32(8)

### 194 Other foreign travel expenses.

- (1) <sup>M219</sup>Where—
- (a) travel facilities are provided for any journey to which this subsection applies and the cost of them is borne by or on behalf of the employer; or
  - (b) expenses are incurred out of the emoluments of any office or employment mentioned in subsection (2), (3) or (5) below on any such journey and those expenses are reimbursed by or on behalf of the employer,
- there shall be allowed, in charging tax under Case I of Schedule E on the emoluments from that office or employment, a deduction of an amount equal to so much of that cost or, as the case may be, those expenses as falls to be included in those emoluments.
- (2) <sup>M220</sup>Subsection (1) above applies where a person is absent from the United Kingdom for a continuous period of 60 days or more for the purpose of performing the duties of one or more offices or employments and applies to travel of the following descriptions between any place in the United Kingdom and the place of performance of any of those duties outside the United Kingdom, that is to say—
- (a) any journey by his spouse or any child of his—
    - (i) accompanying him at the beginning of the period of absence; or
    - (ii) to visit him during that period;
  - (b) any return journey following a journey of a kind described in paragraph (a) above;
- but that subsection does not extend to more than two outward and two return journeys by the same person in any year of assessment.
- For the purposes of this subsection “child” includes a stepchild and an illegitimate child but does not include a person who is aged 18 or over at the beginning of the outward journey.
- (3) <sup>M221</sup>Where a person holds an office or employment the duties of which are performed partly outside the United Kingdom, subsection (1) above applies, subject to subsection (4) below, to any journey by him—
- (a) from any place in the United Kingdom to the place of performance of any of those duties outside the United Kingdom;
  - (b) from the place of performance of any of those duties outside the United Kingdom to any place in the United Kingdom.
- (4) Subsection (1) does not apply by virtue of subsection (3) unless the duties concerned can only be performed outside the United Kingdom and the journey is made wholly and exclusively for the purpose—
- (a) where the journey falls within subsection (3)(a), of performing the duties concerned; or

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- (b) where the journey falls within subsection (3)(b), of returning after performing the duties concerned.
- (5) Where a person is absent from the United Kingdom for the purposes of performing the duties of one or more offices or employments, subsection (1) above applies, subject to subsection (6) below, to—
  - (a) any journey by him from the place of performance of any of those duties outside the United Kingdom to any place in the United Kingdom;
  - (b) any return journey following a journey of a kind described in paragraph (a) above.
- (6) Subsection (1) does not apply by virtue of subsection (5) unless the duties concerned can only be performed outside the United Kingdom and the absence mentioned in subsection (5) was occasioned wholly and exclusively for the purpose of performing the duties concerned.
- (7) <sup>M222</sup>For the purpose of applying this section in a case where the duties of the office or employment or (as the case may be) any of the offices or employments are performed on a vessel, in section 132(4)(b) the words from “or which” to the end shall be ignored.
- (8) In such a case as is mentioned in subsection (7) above, subsection (4) above shall have effect as if “the duties concerned” in paragraphs (a) and (b) read “the duties concerned, or those duties and other duties of the office or employment”.
- (9) Where apart from this subsection a deduction in respect of any cost or expenses is allowable under a provision of this section or section 193 and a deduction in respect of the same cost or expenses is also allowable under another provision of this section or section 193 or of any other enactment, a deduction in respect of the cost or expenses may be made under either, but not both, of those provisions.
- (10) <sup>M223</sup>References in the Income Tax Acts (including any provision of this Act, but without prejudice to any express reference to subsection (1) above) to section 198 and to deductions allowable under sections 198, 199, 201 or 332 shall be construed as including a reference to subsection (1) above and to deductions allowable under that subsection.

#### **Marginal Citations**

- M219** Source—1977 s.32(7); 1986 s.34(5)
- M220** Source—1977 s.32(6); 1986 s.34(3)
- M221** Source—1977 s.32(6A)-(6D); 1986 s.34(4)
- M222** Source—1977 s.32(7A)-(7C); 1986 s.34(6)
- M223** Source—1977 s.32(8)

### **195 Travel expenses of employees not domiciled in the United Kingdom.**

- <sup>M224</sup>(1) Subject to subsection (2) below, this section applies in the case of an office or employment in respect of which a person (“the employee”) who is not domiciled in the United Kingdom is in receipt of emoluments for duties performed in the United Kingdom.
- (2) This section does not apply unless subsection (3) below is satisfied in respect of a date on which the employee arrives in the United Kingdom to perform duties of the office

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or employment; and where subsection (3) is so satisfied, this section applies only for a period of five years beginning with that date.

- (3) This subsection is satisfied in respect of a date if the employee—
- (a) was not resident in the United Kingdom in either of the two years of assessment immediately preceding the year of assessment in which the date falls; or
  - (b) was not in the United Kingdom for any purpose at any time during the period of two years ending with the day immediately preceding the date.
- (4) Where subsection (3) above is satisfied (by virtue of paragraph (a) of that subsection) in respect of more than one date in any year of assessment, only the first of those dates is relevant for the purposes of this section.
- (5) Subsection (7) below applies to any journey by the employee—
- (a) from his usual place of abode to any place in the United Kingdom in order to perform any duties of the office or employment there; or
  - (b) to his usual place of abode from any place in the United Kingdom after performing such duties there.
- (6) Where the employee is in the United Kingdom for a continuous period of 60 days or more for the purpose of performing the duties of one or more offices or employments in the case of which this section applies, subsection (7) below applies to any journey by his spouse, or any child of his, between his usual place of abode and the place of performance of any of those duties in the United Kingdom, if the journey—
- (a) is made to accompany him at the beginning of that period or to visit him during it; or
  - (b) is a return journey following a journey falling within paragraph (a) above;
- but subsection (7) as it applies by virtue of this subsection does not extend to more than two journeys to the United Kingdom and two return journeys by the same person in any year of assessment.
- (7) Subject to subsection (8) below, where—
- (a) travel facilities are provided for any journey to which this subsection applies and the cost of them is borne by or on behalf of a person who is an employer in respect of any office or employment in the case of which this section applies; or
  - (b) expenses are incurred out of the emoluments of any office or employment in the case of which this section applies on such a journey and those expenses are reimbursed by or on behalf of the employer;
- there shall be allowed, in charging tax under Case I or II of Schedule E on the emoluments from the office or employment concerned, a deduction of an amount equal to so much of that cost or, as the case may be, those expenses as falls to be included in those emoluments.
- (8) If a journey is partly for a purpose mentioned in subsection (5) or (6) above and partly for another purpose, only so much of the cost or expenses referred to in subsection (7) as is properly attributable to the former purpose shall be taken into account in calculating any deduction made under subsection (7) as it applies by virtue of subsection (5) or, as the case may be, (6).
- (9) For the purposes of this section a person's usual place of abode is the country (outside the United Kingdom) in which he normally lives.

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- (10) In subsection (6) above “child” includes a step-child and an illegitimate child but does not include a person who is aged 18 or over at the beginning of the journey to the United Kingdom.
- (11) References in the Income Tax Acts (including any provision of this Act, but without prejudice to any express reference to subsection (7) above) to section 198 and to deductions allowable under section 198, 199, 201 or 332 shall be construed as including a reference to subsection (7) above and to deductions allowable under it.
- (12) Where apart from this subsection a deduction in respect of any cost or expenses is allowable under a provision of this section and a deduction in respect of the same cost or expenses is also allowable under another provision of this section or of any other enactment, a deduction in respect of the cost or expenses may be made under either, but not both, of those provisions.
- (13) Where by virtue of subsection (3) of section 38 of the <sup>M225</sup>Finance Act 1986 any provision of section 37 of that Act applied in the case of any employee at any time during the year 1984-85 or 1985-86 (and that section applied to him immediately before 6th April 1988), this section shall apply in his case for the years 1988-89 to 1990-91 as if the following were substituted for subsections (2) to (4)—

“(2) This section does not apply after 5th April 1991.”.

**Marginal Citations**

**M224** Source—1986 s.37

**M225** 1986 s.38(4)

**196 Foreign pensions.**

<sup>M226</sup>A deduction of one-tenth of its amount shall be allowed in charging any pension or annuity to tax under paragraph 4 of Schedule E.

**Marginal Citations**

**M226** Source—1974 s.22(3)

**197 Leave travel facilities for the armed forces.**

<sup>M227</sup>(1) No charge to tax under Schedule E shall arise in respect of travel facilities provided for members of the naval, military or air forces of the Crown going on, or returning from, leave.

(2) Subsection (1) above applies whether the charge would otherwise have arisen under section 131, 141 or 154 and applies not only to travel vouchers and warrants for particular journeys but also to allowances and other payments for and in respect of leave travel, whether or not a warrant was available.

**Marginal Citations**

**M227** Source—1977 s.37(1), (2)



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## [<sup>F176</sup>197A] Car parking facilities

Any expenditure incurred in paying or reimbursing expenses in connection with the provision for, or use by, a person holding an office or employment of a car parking space at or near his place of work shall not be regarded as an emolument of the office or employment for any purpose of Schedule E.]

### Textual Amendments

**F176** S. 197A inserted (1988-89 and subsequent years of assessment) by [Finance Act 1988 \(c. 39\), s. 46\(4\)](#)

### Modifications etc. (not altering text)

**C38** See—1988 ss.157, 158, 159—*cars available for private use, car fuel and pooled cars*. 1988 s.327—*disabled persons' vehicle maintenance grant*.

**C39** S. 197A extended (with effect in accordance with s. 49(4) of the extending Act) by [Finance Act 1999 \(c. 16\), s. 49\(1\)\(2\)](#)

VALID FROM 27/07/1999

## [<sup>F177</sup>197A] Works bus services.

- (1) There is no charge to tax under section 154 (taxable benefits: general charging provision) in respect of the provision for employees of a works bus service.
- (2) A “works bus service” means a service provided by means of a bus for conveying employees of one or more employers on qualifying journeys.
- (3) For the purposes of this section—
  - “bus” means a road passenger vehicle with a seating capacity of 12 or more; and
  - “qualifying journey”, in relation to an employee, means a journey—
    - (a) between his home and workplace, or
    - (b) between one workplace and another,in connection with the performance of the duties of the employment.
- (4) The exemption conferred by this section is subject to the following conditions—
  - (a) the service must be available generally to employees of the employer (or each employer) concerned;
  - (b) the main use of the service must be for qualifying journeys by those employees.
- (5) The exemption is also subject to substantial compliance with the condition that the service must be used only by the employees for whom it is provided or their children.
  - For this purpose “children” includes stepchildren and illegitimate children but does not include children aged 18 or over.
- (6) If under this section there is no charge to tax under section 154 (or would be no charge if the employee were in employment to which Chapter II of Part V applies), there is no charge to tax under section 141 (non-cash vouchers) in respect of a voucher evidencing the employee’s entitlement to use the service.

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(7) In this section—

“employment” includes an office and related expressions have a corresponding meaning; and

“workplace” means a place at which the employee’s attendance is necessary in the performance of the duties of the employment.

(8) For the purposes of this section the seating capacity of a vehicle is determined in the same way as for the purposes of Part III of Schedule 1 to the <sup>M228</sup>Vehicle Excise and Registration Act 1994 (vehicle excise duty on buses), whether or not the vehicle is a bus within the meaning of that Part.]

#### Textual Amendments

**F177** Ss. 197AA, 197AB inserted (with effect in accordance with s. 48(2) of the amending Act) by Finance Act 1999 (c. 16), s. 48(1)

#### Marginal Citations

**M228** 1994 c.22.

VALID FROM 27/07/1999

#### **[<sup>F177</sup>197AB] Support for public transport road services.**

(1) There is no charge to tax under section 154 (taxable benefits: general charging provision) in respect of financial or other support for a public transport road service used by employees of one or more employers for qualifying journeys.

(2) For this purpose—

“public transport road service” means a public passenger transport service provided by means of a road vehicle; and

“qualifying journey”, in relation to an employee, means a journey—

- (a) between his home and workplace, or
- (b) between one workplace and another,

in connection with the performance of the duties of the employment.

(3) The exemption conferred by this section is subject to the following conditions—

- (a) the terms on which the service is available to the employees referred to in subsection (1) above must not be more favourable than those available to other passengers;
- (b) the service must be available generally to employees of the employer (or each employer) concerned.

(4) In this section—

“employment” includes an office and related expressions have a corresponding meaning; and

“workplace” means a place at which the employee’s attendance is necessary in the performance of the duties of the employment.]

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### Textual Amendments

**F177** Ss. 197AA, 197AB inserted (with effect in accordance with s. 48(2) of the amending Act) by Finance Act 1999 (c. 16), s. 48(1)

VALID FROM 27/07/1999

### [<sup>F178</sup> 197AC] **Provision of cycle or cyclist's safety equipment.**

- (1) There is no charge to tax under section 154 (taxable benefits: general charging provision) in respect of the provision for an employee of—
  - (a) a cycle, or
  - (b) cyclist's safety equipment,without any transfer of the property in the cycle or equipment.
- (2) In this section “cycle” has the meaning given by section 192(1) of the Road Traffic Act 1988, and “cyclist” has a corresponding meaning.
- (3) The exemption conferred by subsection (1) above is subject to the condition that the benefit or facility in question must be available generally to employees of the employer concerned.
- (4) The exemption is also subject to the condition that the employee must use the cycle or safety equipment mainly for qualifying journeys.

For this purpose “qualifying journey”, in relation to an employee, means a journey—

  - (a) between his home and workplace, or
  - (b) between one workplace and another,in connection with the performance of the duties of the employment.
- (5) If under this section there is no charge to tax under section 154 (or would be no charge if the employee were in employment to which Chapter II of Part V applies), there is no charge to tax under section 141 (non-cash vouchers) in respect of a voucher evidencing the employee's entitlement to use the cycle or safety equipment in question.
- (6) In this section—

“employment” includes an office and related expressions shall be construed accordingly; and

“workplace” means a place at which the employee's attendance is necessary in the performance of the duties of the employment.]

### Textual Amendments

**F178** S. 197AC inserted (with effect in accordance with s. 50(3) of the amending Act) by Finance Act 1999 (c. 16), s. 50(1)

**Status:** Point in time view as at 19/04/1996. This version of this part contains provisions that are not valid for this point in time.

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VALID FROM 11/05/2001

## *F<sup>179</sup> Mileage allowances*

### Textual Amendments

**F179** Ss. 197AD-197AH and preceding cross-heading inserted (with effect in accordance with s. 57(4) of the amending Act) by Finance Act 2001 (c. 9), s. 57(1)

### 197AD Mileage allowance payments

- (1) There is no charge to tax under Schedule E in respect of approved mileage allowance payments for a qualifying vehicle.
- (2) Mileage allowance payments are amounts (other than passenger payments within the meaning of section 197AE(2)) paid to an employee in respect of expenses in connection with the use by him for business travel of a qualifying vehicle.
- (3) Mileage allowance payments are approved only if, or to the extent that, for a tax year, the total amount of all the mileage allowance payments made to the employee for the kind of vehicle in question does not exceed the approved amount for mileage allowance payments applicable to that kind of vehicle.
- (4) Subsection (1) above does not apply if—
  - (a) the employee is a passenger in the vehicle, or
  - (b) the vehicle is a company vehicle.

### 197AE Passenger payments

- (1) There is no charge to tax under Schedule E in respect of approved passenger payments made to an employee for a car or van (whether or not it is a company vehicle) if—
  - (a) mileage allowance payments (within the meaning of section 197AD(2)) are made to the employee for the car or van, and
  - (b) if the car or van is made available to the employee by reason of his employment, he is chargeable to tax in respect of it under section 157 or 159AA (cars and vans made available for private use).
- (2) Passenger payments are amounts paid to an employee because, while using a car or van for business travel, he carries one or more qualifying passengers in it.
 

“Qualifying passenger” means a passenger who is also an employee for whom the travel is business travel.
- (3) Passenger payments are approved only if, or to the extent that, for a tax year, the total amount of all the passenger payments made to the employee does not exceed the approved amount for passenger payments.
- (4) Section 168(6) (when cars and vans are made available by reason of employment) applies for the purposes of subsection (1)(b) above.

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### **197AF Mileage allowance relief**

- (1) An employee is entitled to mileage allowance relief for a tax year if the employee uses a qualifying vehicle for business travel and—
  - (a) no mileage allowance payments are made to him for the kind of vehicle in question for the tax year, or
  - (b) the total amount of all the mileage allowance payments made to him for the kind of vehicle in question for the tax year is less than the approved amount for mileage allowance payments applicable to that kind of vehicle.
- (2) Subsection (1) above does not apply if—
  - (a) the employee is a passenger in the vehicle, or
  - (b) the vehicle is a company vehicle.
- (3) The amount of mileage allowance relief to which an employee is entitled for a tax year is—
  - (a) if subsection (1)(a) above applies, the approved amount for mileage allowance payments applicable to the kind of vehicle in question;
  - (b) if subsection (1)(b) above applies, the difference between the total amount of all the mileage allowance payments made to the employee for the kind of vehicle in question and the approved amount for mileage allowance payments applicable to that kind of vehicle.
- (4) In this section “mileage allowance payments” has the meaning given by section 197AD(2).

### **197AG Giving effect to mileage allowance relief**

- (1) Mileage allowance relief to which an employee is entitled for a tax year is given effect as follows.
- (2) Where any emoluments of the employment fall within Case I or II of Schedule E, the relief is allowed as a deduction from those emoluments in calculating the amount chargeable to tax for that tax year.
- (3) In the case of emoluments chargeable under Case III of Schedule E for a tax year there may be deducted from those emoluments 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 might have been deducted from the emoluments of the employment for the tax year for which the employee is entitled to the relief if those emoluments had been chargeable under Case I of Schedule E.
- (4) Subsection (3) above applies only to the extent that the mileage allowance relief cannot be deducted under subsection (2) above.
- (5) A deduction shall not be made twice, whether under subsection (2) or (3) above, in respect of the same mileage allowance relief.

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## 197AH Interpretation of sections 197AD to 197AG

Schedule 12AA to this Act defines terms used in sections 197AD to 197AG.]

### *[<sup>F180</sup> Mileage allowances]*

#### Textual Amendments

**F180** Ss. 197B-197F and preceding cross-heading inserted by Finance Act 1990 (c. 29), s. 23, Sch. 4

#### <sup>F181</sup> 197B Limit on chargeable mileage profit.

- (1) In a case where—
- (a) in the year 1989-90 (the base year) sums paid to a person by reason of an employment held by him are paid in respect of expenses incurred by him in travelling, in the course of the duties of the employment, in a motor vehicle provided by him,
  - (b) in a subsequent year of assessment (the year concerned) he makes a mileage profit as respects an employment,
  - (c) the amount of the mileage profit he makes in the year concerned or, where he makes a mileage profit in that year as respects more than one employment, the aggregate of the mileage profits he makes in that year would (apart from this section) be greater than the maximum amount for the year,
  - (d) section 197E does not prevent this section from applying, and
  - (e) a claim is made for relief under this section,
- the amount of the mileage profit he makes in the year concerned or, as the case may be, the aggregate of the mileage profits he makes in that year shall be treated as being equal to the maximum amount for the year.
- (2) In a case where the employee's relevant mileage for the year concerned is more than his relevant mileage for the base year, the maximum amount for the year concerned shall be found by applying the formula—

$$\left( A \times \frac{B}{C} \right) + D$$

- (3) In any other case, the maximum amount for the year concerned shall be found by applying the formula—

$$A + D$$

- (4) A is the taxed mileage profit for the base year.
- (5) B is the employee's relevant mileage for the year concerned.
- (6) C is the employee's relevant mileage for the base year.
- (7) D is—

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- (a) nil if the year concerned is 1990-91;
  - (b) an amount found by multiplying £1,000 by E if the year concerned is 1991-92 or a subsequent year of assessment.
- (8) E is 1 if the year concerned is 1991-92, 2 if it is 1992-93, 3 if it is 1993-94, and so on (adding 1 for each succeeding year of assessment).]]

#### Textual Amendments

**F181** 1990 s.23 and Sch.4.

### [197C Definition of mileage profit.

- (1) This section applies for the purposes of section 197B.
- (2) The employee makes a mileage profit in the year concerned as respects an employment if—
  - (a) by reason of the employment sums are paid to him in the year in respect of expenses incurred by him in travelling, in the course of the duties of the employment, in a motor vehicle provided by him, and
  - (b) subsection (3), (4) or (6) below applies.
- (3) This subsection applies if all or part of the sums mentioned in subsection (2)(a) above fall to be treated as emoluments of the employment for the year in accordance with an administrative scheme (such as a fixed profit car scheme).
- (4) This subsection applies if—
  - (a) subsection (3) above does not apply,
  - (b) the employment is employment to which Chapter II of this Part applies, and
  - (c) the amount of the sums mentioned in subsection (2)(a) above exceeds the aggregate deductible amount for the year concerned in relation to the employment.
- (5) For the purposes of subsection (4) above the aggregate deductible amount for the year concerned in relation to the employment is the aggregate of the following—
  - (a) any expenses of travelling in a vehicle provided by the employee which fall to be deducted from the emoluments of the employment for the year under section 198(1), and
  - (b) the amount of any allowance which, by virtue of Part II of the 1990 Act, falls to be made to the employee for the year in respect of expenditure incurred on the provision of a vehicle for use in the performance of the duties of the employment.
- (6) This subsection applies if—
  - (a) neither subsection (3) nor subsection (4) above applies, and
  - (b) all or part of the sums mentioned in subsection (2)(a) above fall to be treated as emoluments of the employment for the year.
- (7) If subsection (3) or (6) above applies, the amount of the mileage profit made by the employee in the year concerned as respects the employment is the amount of the sums mentioned in subsection (2)(a) above which fall to be treated as emoluments of the employment for the year.

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- (8) If subsection (4) above applies, the amount of the mileage profit made by the employee in the year concerned as respects the employment is the amount of the excess mentioned in subsection (4)(c).]

**[197D Definition of taxed mileage profit.**

- (1) This section applies for the purposes of section 197B.
- (2) Where in the base year the employee holds one employment to which this section applies, the taxed mileage profit for the year is the relevant amount for that employment determined in accordance with subsection (5) or (6) below.
- (3) Where in the base year the employee holds more than one employment to which this section applies, the taxed mileage profit for the year shall be determined by—
- (a) finding the relevant amount for each of those employments in accordance with subsection (5) or (6) below, and
  - (b) aggregating the amounts so found.
- (4) In subsections (2) and (3) above the references to employment to which this section applies are to employment by reason of which in the base year the employee is paid sums (relevant sums) in respect of expenses incurred by him in travelling, in the course of the duties of the employment, in a motor vehicle provided by him.
- (5) If—
- (a) the employment is not employment to which Chapter II of this Part applies, or
  - (b) the relevant sums paid to the employee in the base year by reason of the employment are sums in respect of which his liability to tax is determined by reference to an administrative scheme (such as a fixed profit car scheme),
- the relevant amount for the employment is the amount of such (if any) of the relevant sums paid to him in the base year by reason of the employment as are in fact treated as emoluments of the employment for that year.
- (6) If—
- (a) the employment is employment to which Chapter II of this Part applies, and
  - (b) the relevant sums paid to the employee in the base year by reason of the employment are not sums in respect of which his liability to tax is determined by reference to an administrative scheme (such as a fixed profit car scheme),
- the relevant amount for the employment is an amount found by deducting G from F, except that it can never be less than nil.
- (7) For the purposes of subsection (6) above F is the amount of such (if any) of the relevant sums paid to the employee in the base year by reason of the employment as are by virtue of section 153 in fact treated as emoluments of the employment for that year.
- (8) For the purposes of subsection (6) above G is the aggregate of the following—
- (a) any expenses of travelling in a vehicle provided by the employee in fact deducted from the emoluments of the employment for the base year under section 198(1), and
  - (b) the amount of any allowance in fact made to the employee for the year, by virtue of Chapter I of Part III of the Finance Act 1971 in respect of expenditure incurred on the provision of a vehicle for use in the performance of the duties of the employment.]



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

**C40** See 1989edition, Vol.3.

**[197E Exception from section 197B.**

- (1) If the sums paid to the employee in the year concerned in respect of expenses incurred by him in travelling, in the course of the duties of his employment or employments, in any motor vehicle provided by him exceed the sums paid to him in the base year in respect of expenses so incurred by him, section 197B shall not apply for the year concerned unless the whole of the excess can be justified by reference to allowable factors.
- (2) For the purpose of this section the following are allowable factors—
  - (a) an increase in motoring costs,
  - (b) a change by any employer of his practices so as more fully to reimburse motoring costs;
  - (c) any change of vehicle;
  - (d) a change in the employee’s relevant mileage.]

**[197F Other interpretative provisions.**

- (1) This section applies for the purposes of sections 197B to 197E.
- (2) The employee’s relevant mileage for a year of assessment is the number of miles by reference to which in that year he is paid sums in respect of expenses incurred by him in travelling, in the course of the duties of his employment or employments, in any motor vehicle provided by him.
- (3) “Employment” means an office or employment the emoluments of which fall to be assessed under Schedule E; and related expressions shall be construed accordingly.]

*[<sup>F182</sup> Sporting and recreational facilities]*

**Textual Amendments**

**F182** S. 197G and preceding cross-heading inserted (27.7.1993 with application for the year 1993-94 and subsequent years of assessment) by Finance Act 1993 (c. 34), s. 75(1)(2)

**[<sup>F182</sup>197G<sup>F183</sup> Sporting and recreational facilities.**

- (1) No charge to tax under Schedule E shall arise in respect of the provision to any person in employment with any employer, or to any member of the family or household of such a person, of—
  - (a) any benefit to which this section applies; or
  - (b) any non-cash voucher which is capable of being exchanged only for a benefit to which this section applies.
- (2) This section applies, subject to subsections (3) to (5) below, to any benefit consisting in, or in a right or opportunity to make use of, any sporting or other recreational

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facilities provided so as to be available generally to, or for use by, the employees of the employer in question.

(3) Except in such cases as may be prescribed, this section does not apply to any benefit consisting in—

- (a) an interest in, or the use of, any mechanically propelled vehicle;
- (b) an interest in, or the use of, any holiday or other overnight accommodation or any facilities which include, or are provided in association with, a right or opportunity to make use of any such accommodation;
- (c) a facility provided on domestic premises;
- (d) a facility provided so as to be available to, or for use by, members of the public generally;
- (e) a facility which is used neither wholly nor mainly by persons whose right or opportunity to use it derives from employment (whether with the same employer or with different employers); or
- (f) a right or opportunity to make use of any facility falling within any of the preceding paragraphs.

(4) For the purposes of subsection (3)(e) above a person's right or opportunity to use any facility shall be taken to derive from employment if, and only if—

- (a) it derives from his being or having been an employee of a particular employer or a member of the family or household of a person who is or has been such an employee; and
- (b) the facility is one which is provided so as to be available generally to the employees of that employer.

(5) The Treasury may by regulations provide—

- (a) that such benefits as may be prescribed shall not be benefits to which this section applies; and
- (b) that such other benefits as may be prescribed shall be benefits to which this section applies only where such conditions as may be prescribed are satisfied in relation to the terms on which, and the persons to whom, they are provided.

(6) In this section—

“domestic premises” means any premises used wholly or mainly as a private dwelling or any land or other premises belonging to, or enjoyed with, any premises so used;

“non-cash voucher” has the same meaning as in section 141;

“prescribed” means prescribed by regulations made by the Treasury;

“vehicle” includes any ship, boat or other vessel, any aircraft and any hovercraft;

and section 168(2) and (4) shall apply for the purposes of this section as it applies for the purposes of Chapter II of this Part.]

#### **Textual Amendments**

**F183** S. 197G and crossheading inserted (with application for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 75(1)(2)

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*Other expenses, subscriptions etc.*

**198 Relief for necessary expenses.**

- (1) <sup>M229</sup>If the holder of an office or employment is necessarily obliged to incur and defray out of the emoluments of that office or employment the expenses of travelling in the performance of the duties of the office or employment, or of keeping and maintaining a horse to enable him to perform those duties, or otherwise to expend money wholly, exclusively and necessarily in the performance of those duties, there may be deducted from the emoluments to be assessed the expenses so necessarily incurred and defrayed.
- (2) Subject to subsection (3) below, where the emoluments for any duties do not fall within Case I or II of Schedule E, then in relation to those or any other emoluments of the office or employment, subsection (1) above and [<sup>F184</sup>Part II of the 1990 Act] (capital allowances in respect of machinery and plant) shall apply as if the performance of those duties did not belong to that office or employment.
- (3) There may be deducted from any emoluments chargeable under Case III of Schedule E the amount of—
  - (a) any expenses defrayed out of those emoluments, and
  - (b) any other expenses defrayed in the United Kingdom in the chargeable period or in an earlier chargeable period in which the holder of the office or employment has been resident in the United Kingdom,being in either case expenses for which a deduction might have been made under subsection (1) above from emoluments of the office or employment if they had been chargeable under Case I of Schedule E for the chargeable period in which the expenses were incurred; but a deduction shall not be made twice, whether under this subsection or otherwise, in respect of the same expenses from emoluments of the office or employment.
- (4) No deduction shall be made under this section in respect of expenditure incurred by a Member of the House of Commons in, or in connection with, the provision or use of residential or overnight accommodation to enable him to perform his duties as such a Member in or about the Palace of Westminster or his constituency.

**Textual Amendments**

**F184** 1990(C) s.164 and Sch.1 para.8(10). *Previously*  
“Chapter II of Part I of the 1968 Act and Chapter I of Part III of the Finance Act 1971”.

**Marginal Citations**

**M229** Source—1970 s.189; 1984 s.28(2)(a); 1971 s.47(1)(ii)

VALID FROM 19/03/1997

<sup>F185</sup>**198A Interpretation of section 198.**

- (1) For the purposes of section 198 and this section ordinary commuting, in relation to the holder of an office or employment, is—

*Status: Point in time view as at 19/04/1996. This version of this part contains provisions that are not valid for this point in time.*

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- (a) travelling, in either direction, between a permanent workplace of his and a place mentioned in subsection (4) below (including any travel via another place so mentioned); or
  - (b) travelling between two places in a case where, because of the proximity of one place to another, the journey in question is, for practical purposes, the same as a journey which would constitute ordinary commuting by virtue of paragraph (a) above.
- (2) For the purposes of section 198 and this section a permanent workplace, in relation to the holder of an office or employment, is any place which—
- (a) he regularly attends in the performance of the duties of the office or employment and otherwise than for the purpose of performing a task of limited duration or for some other temporary purpose; and
  - (b) is not a place falling within subsection (4)(a) below.
- (3) The holder of an office or employment who does not have a permanent workplace apart from this subsection but is a person who—
- (a) in the performance of the duties of the office or employment, attends different places within a particular area, and
  - (b) performs his duties at places in that area because his duties (except so far as requiring his attendance at places outside that area for the purpose of carrying out tasks of limited duration or for other temporary purposes) are defined by reference to that area,
- shall be deemed for the purposes of section 198 and this section to have a permanent workplace comprising the whole area.
- (4) The places referred to in subsection (1) above, in relation to the holder of an office or employment, are—
- (a) his home or any other place which he uses, otherwise than in the performance of the duties of that office or employment, as a permanent or temporary place of residence,
  - (b) any place that he is visiting for social or personal reasons and otherwise than in the performance of the duties of that office or employment,
  - (c) any place that he attends, otherwise than in the performance of the duties of that office or employment, for the purposes of any trade, profession or vocation carried on by him, and
  - (d) any place that he attends in the performance of the duties of another office or employment held by him.
- (5) For the purposes of this section attendance for limited purposes at—
- (a) a place which forms the base from which a person works in the performance of the duties of his office or employment, or
  - (b) the place at which he is allocated the tasks that he is to carry out in the performance of those duties,
- shall not be taken to involve attendance at that place to perform a task of limited duration or for a temporary purpose.
- (6) For the purposes of this section, where on any occasion a person attends any place in the performance of the duties of any office or employment or performs those duties within a particular area—
- (a) the tasks which he carries out on that occasion at that place, or within that area, shall not be taken to be tasks of limited duration, and

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- (b) the purposes for which, on that occasion, he attends that place or performs duties within that area shall not be taken to be temporary purposes, if subsection (7) below applies to the place or area as respects that occasion.
- (7) This subsection applies to a place or area as respects any occasion on which a task is carried out, or duties are performed, by a person holding an office or employment if—
- (a) the task is carried out, or the duties are performed—
- (i) in the course of a period of continuous work at that place or within that area; or
- (ii) at a time which it would be reasonable, on that occasion, to assume will be included in such a period;
- and
- (b) the period of continuous work is one of which more than twenty-four months has expired before that occasion or is one which it would be reasonable, on that occasion, to assume will in due course be either—
- (i) a period of more than twenty-four months; or
- (ii) a period comprising all or almost all of the period for which the person holding the office or employment is likely to continue to hold it after that occasion.
- (8) The reference in subsection (7) above to a period of continuous work at a place or within an area is (subject to subsection (9) below) a reference to any continuous period throughout which the duties of the office or employment in question fall to be performed wholly or mainly at that place or, as the case may be, within that area.
- (9) For the purposes of subsection (8) above any actual or contemplated modification of the place at which, or of the area within which, the duties of any office or employment fall to be performed shall be disregarded unless it is such that it has had, or would have, a significant effect on the expenses of any travel by the person holding the office or employment to or from the place or area where those duties fall wholly or mainly to be performed.
- (10) For the purposes of this section, where a person holds any office or employment with a company, the reference in subsection (4)(d) above to another office or employment does not, in relation to that office or employment, include a reference to an office or employment with another company in the same group of companies.
- (11) For the purposes of subsection (10) above two companies shall be taken to be members of the same group if, and only if, one of them is a 51 per cent. subsidiary of the other or they are both 51 per cent. subsidiaries of a third company.]

#### Textual Amendments

**F185** S. 198A inserted (with effect in accordance with s. 62(5) of the amending Act) by [Finance Act 1997](#) (c. 16), s. 62(2)

### 199 Expenses necessarily incurred and defrayed from official emoluments.

- <sup>M230</sup>(1) Subject to the provisions of subsection (2) below, where the Treasury are satisfied with respect to any class of persons in receipt of any salary, fees or emoluments payable

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out of the public revenue that such persons are obliged to lay out and expend money wholly, exclusively and necessarily in the performance of the duties in respect of which such salary, fees or emoluments are payable, the Treasury may fix such sum as in the opinion of the Treasury represents a fair equivalent of the average annual amount laid out and so expended by persons of that class, and in charging income tax on that salary or those fees or emoluments there shall be deducted from the amount thereof the sums so fixed by the Treasury.

- (2) If any such person would, but for the provisions of subsection (1) above, be entitled to deduct a larger amount than the sum so fixed, that amount may be deducted instead of the sum so fixed.

#### Marginal Citations

**M230** Source—1970 s.191

#### **M231** 200 Expenses of Members of Parliament.

[<sup>F186</sup>(1)] An allowance—

- (a) which is paid to a Member of the House of Commons; and
- (b) for which provision is made by resolution of that House, and
- (c) which is expressed to be in respect of additional expenses necessarily incurred by the Member in staying overnight away from his only or main residence for the purpose of performing his parliamentary duties, either in the London area, as defined in such a resolution, or in his constituency,

shall not be regarded as income for any purpose of the Income Tax Acts.

- [<sup>F187</sup>(2)] A sum which is paid to a Member of the House of Commons in accordance with any resolution of that House providing for Members of that House to be reimbursed in respect of the cost of, and any additional expenses incurred in, travelling between the United Kingdom and any European Community institution in Brussels, Luxembourg or Strasbourg shall not be regarded as income for any purpose of the Income Tax Acts.]

#### Textual Amendments

**F186** S. 200 re-numbered as s. 200(1) (with application in relation to sums paid on or after 1.1.1992) by virtue of 1993 c. 34, s.124

**F187** S. 200(2) inserted (with application in relation to sums paid on or after 1.1.1992) by 1993 c. 34, s.124

#### Marginal Citations

**M231** Source—1984 s.28(1)

VALID FROM 27/07/1999

#### [<sup>F188</sup>200ZA] Expenses of members of Scottish Parliament, National Assembly for Wales or Northern Ireland Assembly.

- (1) This section applies to payments made—

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- (a) to members of the Scottish Parliament under section 81(2) of the <sup>M232</sup>Scotland Act 1998,
  - (b) to members of the National Assembly for Wales under section 16(2) of the <sup>M233</sup>Government of Wales Act 1998, or
  - (c) to members of the Northern Ireland Assembly under section 47(2) of the <sup>M234</sup>Northern Ireland Act 1998.
- (2) If a payment to which this section applies is expressed to be made in respect of necessary overnight expenses or EU travel expenses, the payment shall not be regarded as income for any purpose of the Income Tax Acts.
- (3) For the purposes of subsection (2) above—
- “necessary overnight expenses” are additional expenses necessarily incurred by the member for the purpose of performing duties as a member in staying overnight away from the member’s only or main residence, either in the area in which the body of which he is a member sits or in the constituency or region for which he has been returned, and
- “EU travel expenses” are the cost of, and any additional expenses incurred in, travelling between the United Kingdom and—
- (a) any European Union institution in Brussels, Luxembourg or Strasbourg, or
  - (b) the national parliament of another member State.]

#### Textual Amendments

**F188** S. 200ZA inserted (with effect in accordance with s. 52(2) of the amending Act) by Finance Act 1999 (c. 16), s. 52(1), **Sch. 5 para. 2(1)**

#### Marginal Citations

**M232** 1998 c.46.

**M233** 1998 c.38.

**M234** 1998 c.47.

VALID FROM 29/04/1996

#### **[<sup>F189</sup>200A] Accidental benefits for holders of certain offices etc.**

- (1) A person holding any of the offices mentioned in subsection (2) below shall not be charged to tax under Schedule E in respect of—
- (a) any transport or subsistence provided or made available by or on behalf of the Crown to the office-holder or any member of his family or household; or
  - (b) the payment or reimbursement by or on behalf of the Crown of any expenses incurred in connection with the provision of transport or subsistence to the office-holder or any member of his family or household.
- (2) Those offices are—
- (a) any office in Her Majesty’s Government in the United Kingdom, and
  - (b) any other office which is one of the offices and positions in respect of which salaries are payable under section 1 of the <sup>M235</sup>Ministerial and other Salaries

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Act 1975 (whether or not the person holding it is a person to whom a salary is paid or payable under the Act).

- (3) Nothing in this section shall prevent a person from being chargeable to tax under Schedule E in respect of the benefit of a mobile telephone (within the meaning of section 159A).
- (4) References in this section to a member of the family or household of an office-holder shall be construed in accordance with section 168(4).
- (5) References in this section to the provision of transport to any person include references to the following—
  - (a) the provision or making available to that person of any car (whether with or without a driver);
  - (b) the provision of any fuel for a car provided or made available to that person;
  - (c) the provision of any other benefit in connection with a car provided or made available to that person.
- (6) In this section—
 

“car” means any mechanically propelled road vehicle; and

“subsistence” includes food and drink and temporary living accommodation.]

#### Textual Amendments

**F189** S. 200AA inserted (with effect in accordance with s. 108(2) of the amending Act) by Finance Act 1996 (c. 8), s. 108(1)

#### Marginal Citations

**M235** 1975 c. 27.

#### <sup>F190</sup>200A Incidental overnight expenses.

- (1) Subject to subsection (2) below, sums paid to or on behalf of any person holding an office or employment, to the extent that they are paid wholly and exclusively for the purpose of defraying, or of being used for defraying, any expenses which—
  - (a) are incidental to that person’s being away from his usual place of abode during a qualifying absence from home, but
  - (b) would not be deductible under section 193, 194, 195, 198 or 332 if incurred out of that person’s emoluments,
 shall not be regarded as emoluments of the office or employment for any purpose of Schedule E.
- (2) Subsection (1) above shall not apply in the case of any qualifying absence in relation to which the authorised maximum is exceeded.
- (3) For the purposes of this section a qualifying absence from home, in relation to a person holding an office or employment, is any continuous period throughout which that person is obliged to stay away from his usual place of abode and during which he—
  - (a) has at least one overnight stay away from that place; but



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- (b) does not on any occasion stay overnight at a place other than a place the expenses of travelling to which are either—
  - (i) expenses incurred out of his emoluments and deductible, otherwise than by virtue of section 193(4), 194(2) or 195(6), under any of the provisions mentioned in subsection (1)(b) above, or
  - (ii) expenses which would be so deductible if so incurred.
- (4) In this section “the authorised maximum”, in relation to each qualifying absence from home by any person, means the aggregate amount equal to the sum of the following amounts—
  - (a) £5 for every night (if any) during that absence which is a night the whole of which is spent by that person in the United Kingdom; and
  - (b) £10 for every night (if any) during that absence which is a night the whole or any part of which is spent by that person outside the United Kingdom.
- (5) For the purposes of this section the authorised maximum is exceeded in relation to a qualifying absence from home by any person if that maximum is exceeded by the amount which, in the absence of subsection (2) above and of the other requirements of this Act that that maximum is not exceeded, would fall by virtue of this section and sections 141(6C), 142(3C) and 155(1B) to be disregarded, in relation to that qualifying absence, in determining the amount of that person’s emoluments.
- (6) The Treasury may by order increase either or both of the sums for the time being specified in subsection (4)(a) and (b) above; and such an order shall have effect for determining what emoluments are received by any person on or after the date when the order comes into force.]

#### Textual Amendments

**F190** S. 200A inserted (with effect in accordance with s. 93(5) of the amending Act) by Finance Act 1995 (c. 4), s. 93(4)

VALID FROM 19/03/1997

#### **[<sup>F191</sup>200B**Work-related training provided by employers.

- (1) This section applies for the purposes of Schedule E where any person (“the employer”) incurs expenditure on providing work-related training for a person (“the employee”) who holds an office or employment under him.
- (2) Subject to section 200C, the emoluments of the employee from the office or employment shall not be taken to include—
  - (a) any amount in respect of that expenditure; or
  - (b) any amount in respect of the benefit of the work-related training provided by means of that expenditure.
- (3) For the purposes of this section the employer shall be taken to incur expenditure on the provision of work-related training in so far only as he incurs expenditure in paying or reimbursing—
  - (a) the cost of providing any such training to the employee; or
  - (b) any related costs.

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- (4) In subsection (3) above “related costs”, in relation to any work-related training provided to the employee, means—
- (a) any costs which are incidental to the employee’s undertaking the training and are incurred wholly and exclusively as a result of his doing so;
  - (b) any expenses incurred in connection with an assessment (whether by examination or otherwise) of what the employee has gained from the training; and
  - (c) the cost of obtaining for the employee any qualification, registration or award to which he has or may become entitled as a result of undertaking the training or of undergoing such an assessment.
- (5) In this section “work-related training” means any training course or other activity which is designed to impart, instill, improve or reinforce any knowledge, skills or personal qualities which—
- (a) is or, as the case may be, are likely to prove useful to the employee when performing the duties of any relevant employment; or
  - (b) will qualify him, or better qualify him—
    - (i) to undertake any relevant employment; or
    - (ii) to participate in any charitable or voluntary activities that are available to be undertaken in association with any relevant employment.
- (6) In this section “relevant employment”, in relation to the employee, means—
- (a) any office or employment which he holds under the employer or which he is to hold under the employer or a person connected with the employer;
  - (b) any office or employment under the employer or such a person to which he has a serious opportunity of being appointed; or
  - (c) any office or employment under the employer or such a person as respects which he can realistically expect to have such an opportunity in due course.
- (7) Section 839 (meaning of “connected person”) applies for the purposes of this section.]

#### Textual Amendments

**F191** Ss. 200B-200D inserted (with application in accordance with s. 63(3) of the amending Act) by Finance Act 1997 (c. 16), s. 63(1)

VALID FROM 19/03/1997

#### **[<sup>F191</sup>200C Expenditure excluded from section 200B.**

- (1) Section 200B shall not apply in the case of any expenditure to the extent that it is incurred in paying or reimbursing the cost of any facilities or other benefits provided or made available to the employee for one or more of the following purposes, that is to say—
- (a) enabling the employee to enjoy the facilities or benefits for entertainment or recreational purposes unconnected with the imparting, instilling,

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- improvement or reinforcement of knowledge, skills or personal qualities falling within section 200B(5)(a) or (b);
- (b) rewarding the employee for the performance of the duties of his office or employment under the employer, or for the manner in which he has performed them;
  - (c) providing the employee with an employment inducement which is unconnected with the imparting, instilling, improvement or reinforcement of knowledge, skills or personal qualities falling within section 200B(5)(a) or (b).
- (2) Section 200B shall not apply in the case of any expenditure incurred in paying or reimbursing any expenses of travelling or subsistence, except to the extent that those expenses would be deductible under section 198 if the employee—
- (a) undertook the training in question in the performance of the duties of his office or employment under the employer; and
  - (b) incurred those expenses out of the emoluments of that office or employment.
- (3) Section 200B shall not apply in the case of any expenditure incurred in paying or reimbursing the cost of providing the employee with, or with the use of, any asset except where—
- (a) the asset is provided or made available for use only in the course of the training;
  - (b) the asset is provided or made available for use in the course of the training and in the performance of the duties of the employee's office or employment but not for any other use;
  - (c) the asset consists in training materials provided in the course of the training; or
  - (d) the asset consists in something made by the employee in the course of the training or incorporated into something so made.
- (4) Section 200B shall apply in the case of expenditure in connection with anything that is a qualifying course of training for the purposes of section 588 to the extent only that section 588(1) does not have effect.
- (5) Section 200B shall not apply in the case of any expenditure incurred in enabling the employee to meet, or in reimbursing him for, any payment in respect of which there is an entitlement to relief under section 32 of the <sup>M236</sup>Finance Act 1991 (vocational training).
- (6) In subsection (1) above the reference to enjoying facilities or benefits for entertainment or recreational purposes includes a reference to enjoying them in the course of any leisure activity.
- (7) In this section—
- “employment inducement”, in relation to the employee, means an inducement to remain in, or to accept, any office or employment with the employer or a person connected with the employer;
  - “subsistence” includes food and drink and temporary living accommodation; and
  - “training materials” means stationery, books or other written material, audio or video tapes, compact disks or floppy disks.

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(8) Section 839 (meaning of “connected person”) applies for the purposes of this section.]

#### Textual Amendments

**F191** Ss. 200B-200D inserted (with application in accordance with s. 63(3) of the amending Act) by Finance Act 1997 (c. 16), s. 63(1)

#### Marginal Citations

**M236** 1991 c. 31.

VALID FROM 19/03/1997

#### [<sup>F191</sup>200D] Other work-related training.

(1) For the purposes of Schedule E, where—

- (a) any person (“the employee”) who holds an office or employment under another (“the employer”) is provided by reason of that office or employment with any benefit,
- (b) that benefit consists in any work-related training or is provided in connection with any such training, and
- (c) the amount which (apart from this section and sections 200B and 200C) would be included in respect of that benefit in the emoluments of the employee (“the chargeable amount”) is or includes an amount that does not represent expenditure incurred by the employer,

the questions whether and to what extent those emoluments shall in fact be taken to include an amount in respect of that benefit shall be determined in accordance with those sections as if the benefit had been provided by means of a payment by the employer of an amount equal to the whole of the chargeable amount.

(2) In this section “work-related training” has the same meaning as in section 200B.]

#### Textual Amendments

**F191** Ss. 200B-200D inserted (with application in accordance with s. 63(3) of the amending Act) by Finance Act 1997 (c. 16), s. 63(1)

VALID FROM 28/07/2000

#### [<sup>F192</sup>200E] Education and training funded by employers.

(1) This section applies for the purposes of Schedule E where any person (in this section, and sections 200F and 200G, called “the employer”) incurs expenditure—

- (a) by making a payment to a person (“the provider”) in respect of the costs of any qualifying education or training provided by the provider to a fundable

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- employee of the employer (in this section, and sections 200F and 200G, called “the employee”), or
- (b) in paying or reimbursing any related costs.
- (2) Subject to sections 200F to 200H, the emoluments of the employee from the office or employment shall not be taken to include—
- (a) any amount in respect of that expenditure, or
- (b) any amount in respect of the benefit of the education or training provided by means of that expenditure.
- (3) In subsection (1) above “related costs”, in relation to any qualifying education or training provided to the employee, means—
- (a) any costs that are incidental to the employee’s undertaking the education or training and are incurred wholly and exclusively as a result of his doing so;
- (b) any expenses incurred in connection with an assessment (whether by examination or otherwise) of what the employee has gained from the education or training; and
- (c) the cost of obtaining for the employee any qualification, registration or award to which he has or may become entitled as a result of undertaking the education or training or of undergoing such an assessment.
- (4) In this section “qualifying education or training” means education or training of a kind that qualifies for grants whose payment is authorised by—
- (a) regulations under section 108 or 109 of the <sup>M237</sup>Learning and Skills Act 2000, or
- (b) regulations under section 1 of the <sup>M238</sup>Education and Training (Scotland) Act 2000.
- (5) For the purposes of this section, a person is a fundable employee of the employer if—
- (a) he holds, or has at any time held, an office or employment under the employer, and
- (b) he holds an account that qualifies under section 104 of the Learning and Skills Act 2000 or he is a party to qualifying arrangements.
- (6) In subsection (5) above “qualifying arrangements” means arrangements which qualify under—
- (a) section 105 or 106 of the Learning and Skills Act 2000, or
- (b) section 2 of the Education and Training (Scotland) Act 2000.]

#### Textual Amendments

**F192** Ss. 200E-200H, 200J inserted (with application in accordance with s. 58(3) of the amending Act) by Finance Act 2000 (c. 17), s. 58(1)

#### Marginal Citations

**M237** 2000 c. 21.

**M238** 2000 asp 8.

*Status: Point in time view as at 19/04/1996. This version of this part contains provisions that are not valid for this point in time.*

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VALID FROM 28/07/2000

**[<sup>F192</sup>200E] Section 200E: exclusion of expenditure not directly related to training.**

- (1) Section 200E shall not apply in the case of any expenditure to the extent that it is incurred in paying or reimbursing the cost of any facilities or other benefits provided or made available to the employee for either or both of the following purposes, that is to say—
  - (a) enabling the employee to enjoy the facilities or benefits for entertainment or recreational purposes;
  - (b) rewarding the employee for the performance of the duties of his office or employment under the employer, or for the manner in which he has performed them.
- (2) Section 200E shall not apply in the case of any expenditure incurred in paying or reimbursing any expenses of travelling or subsistence, except to the extent that those expenses would be deductible under section 198 if the employee—
  - (a) undertook the education or training in question in the performance of the duties of—
    - (i) his office or employment under the employer, or
    - (ii) where the employee no longer holds an office or employment under the employer, the last office or employment that he did hold under the employer; and
  - (b) incurred those expenses out of the emoluments of that office or employment.
- (3) Section 200E shall not apply in the case of any expenditure incurred in paying or reimbursing the cost of providing the employee with, or with the use of, any asset except where—
  - (a) the asset is provided or made available for use only in the course of the education or training;
  - (b) the asset is provided or made available for use in the course of the education or training and in the performance of the duties of the employee's office or employment but not to any significant extent for any other use;
  - (c) the asset consists in training materials provided in the course of the education or training; or
  - (d) the asset consists in something made by the employee in the course of the education or training or incorporated into something so made.
- (4) In subsection (1) above the reference to enjoying facilities or benefits for entertainment or recreational purposes includes a reference to enjoying them in the course of any leisure activity.
- (5) In this section—
 

“subsistence” includes food and drink and temporary living accommodation; and

“training materials” means stationery, books or other written material, audio or video tapes, compact disks or floppy disks.]

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### Textual Amendments

**F192** Ss. 200E-200H, 200J inserted (with application in accordance with s. 58(3) of the amending Act) by Finance Act 2000 (c. 17), s. 58(1)

VALID FROM 28/07/2000

### [<sup>F192</sup>200] **Section 200E: exclusion of expenditure if contributions not generally available to staff.**

- (1) Section 200E shall not apply to any expenditure incurred in respect of—
- (a) the costs of any education or training provided to the employee, or
  - (b) any related costs,
- unless the expenditure is incurred in giving effect to fair-opportunity arrangements that were in place at the time when the employer agreed to incur the expenditure.

In this subsection “related costs”, in relation to any education or training provided to the employee, has the meaning given by section 200E(3).

- (2) For the purposes of subsection (1) above “fair-opportunity arrangements” are in place at any time if at that time arrangements are in place that provide—
- (a) for the making of contributions by the employer to costs arising from qualifying education or training being undertaken by persons who hold, or have held, an office or employment under the employer, and
  - (b) for such contributions to be generally available, on similar terms, to the persons who at that time hold an office or employment under the employer.

In this subsection “qualifying education or training” has the same meaning as in section 200E.

- (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 office or employment; and such regulations may—
- (a) deem a description of Crown servants (or two or more such descriptions taken together) to be an entity for the purposes of the regulations;
  - (b) make different provision for different descriptions of Crown servants.

In this subsection “Crown servant” means a person holding an office or employment under the Crown.]

### Textual Amendments

**F192** Ss. 200E-200H, 200J inserted (with application in accordance with s. 58(3) of the amending Act) by Finance Act 2000 (c. 17), s. 58(1)

*Status: Point in time view as at 19/04/1996. This version of this part contains provisions that are not valid for this point in time.*

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VALID FROM 28/07/2000

**[<sup>F192</sup>200E] Section 200E: exclusion of expenditure otherwise relieved.**

Section 200E does not apply to expenditure to the extent that—

- (a) section 200B (expenditure on work-related training) applies to it, or
- (b) section 588(1) (expenditure on retraining courses) has effect in respect of it.]

**Textual Amendments**

**F192** Ss. 200E-200H, 200J inserted (with application in accordance with s. 58(3) of the amending Act) by Finance Act 2000 (c. 17), s. 58(1)

VALID FROM 28/07/2000

**[<sup>F192</sup>200J] Education or training funded by third parties.**

- (1) This section applies where—
  - (a) any person (“the employee”) who holds, or has at any time held, an office or employment under another (“the employer”) is provided by reason of that office or employment with any benefit,
  - (b) that benefit consists in any qualifying education or training or is provided in connection with any such education or training, and
  - (c) the amount which (apart from this section and sections 200E to 200H) would be included in respect of that benefit in the emoluments of the employee (“the chargeable amount”) is or includes an amount that does not represent expenditure incurred by the employer.
- (2) For the purposes of Schedule E, the questions whether and to what extent those emoluments shall be taken to include an amount in respect of that benefit shall be determined in accordance with sections 200E to 200H as if the benefit had been provided by means of a payment by the employer of an amount equal to the whole of the chargeable amount.
- (3) In this section “qualifying education or training” has the same meaning as in section 200E.]

**Textual Amendments**

**F192** Ss. 200E-200H, 200J inserted (with application in accordance with s. 58(3) of the amending Act) by Finance Act 2000 (c. 17), s. 58(1)



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## 201 Fees and subscriptions to professional bodies, learned societies etc.

- <sup>M239</sup>(1) Subject to the provisions of this section, the following may be deducted from the emoluments of any office or employment to be assessed to tax, if defrayed out of those emoluments, that is to say—
- (a) any fee or contribution mentioned in subsection (2) below, and
  - (b) any annual subscription paid to a body of persons approved for the purposes of this section by the Board.
- (2) The fees and contributions referred to in subsection (1)(a) above are—
- (a) the fee payable in respect of the retention of a name in the Register of Architects;
  - (b) the fee payable in respect of the retention of a name in the dentists register or in a roll or record kept for a class of ancillary dental workers;
  - (c) the fee payable in respect of the retention of a name in either of the registers of ophthalmic opticians or in the register of dispensing opticians;
  - (d) the annual fee payable by a registered patent agent;
  - (e) the fee payable in respect of the retention of a name in the register of pharmaceutical chemists;
  - (f) the fee and contribution to the Compensation Fund or Guarantee Fund payable on the issue of a solicitor's practising certificate; and
  - (g) the annual fee payable by a registered veterinary surgeon or by a person registered in the Supplementary Veterinary Register.
- (3) The Board may, on the application of the body, approve for the purposes of this section any body of persons not of a mainly local character whose activities are carried on otherwise than for profit and are solely or mainly directed to all or any of the following objects—
- (a) the advancement or spreading 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 any profession;
  - (c) the indemnification or protection of members of any profession against claims in respect of liabilities incurred by them in the exercise of their profession.
- (4) If the activities of a body approved for the purposes of this section are to a significant extent directed to objects other than those mentioned in subsection (3) above, the Board may determine that such specified part only of any annual subscription paid to the body may be deducted under this section as corresponds to the extent to which its activities are directed to objects mentioned in that subsection; and in doing so the Board shall have regard to all relevant circumstances and, in particular, to the proportions of the body's expenditure attributable to the furtherance of objects so mentioned and other objects respectively.
- (5) A fee, contribution or subscription shall not be deducted under this section from the emoluments of any office or employment unless—
- (a) the fee is payable in respect of a registration (or retention of a name in a roll or record) or certificate which is a condition, or one of alternative conditions, of the performance of the duties of the office or employment or, as the case may be, the contribution is payable on the issue of such a certificate; or

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- (b) the subscription is paid to a body the activities of which, so far as they are directed to the objects mentioned in subsection (3) above, are relevant to the office or employment, that is to say, the performance of the duties of the office or employment is directly affected by the knowledge concerned or involves the exercise of the profession concerned.
- (6) Any approval given and any determination made under this section may be withdrawn, and any such determination varied, so as to take account of any change of circumstances; and where a body is approved for the purposes of this section in pursuance of an application made before the end of any year of assessment, a deduction may be made under this section in respect of a subscription paid to the body in that year, whether the approval is given before or after the end of the year.
- (7) Any body aggrieved by the failure of the Board to approve the body for the purposes of this section, or by their withdrawal of the approval, or by any determination made by them under this section or the variation of or refusal to withdraw or vary such a determination may, by notice given to the Board within 30 days from the date on which the body is notified of their decision, require the matter to be determined by the Special Commissioners, and the Special Commissioners shall thereupon hear and determine the matter in like manner as an appeal.

#### **Marginal Citations**

M239 Source—1970 s.192

### **[<sup>F193</sup>201A] Employee liabilities and indemnity insurance.**

- (1) Subject to the provisions of this section, the following may be deducted from the emoluments of any office or employment to be assessed to tax, if defrayed out of those emoluments, that is to say—
  - (a) any amount paid in or towards the discharge of a qualifying liability of the person who is the holder of the office or employment;
  - (b) costs or expenses incurred in connection with any claim that that person is subject to such a liability or with any proceedings relating to or arising out of such a claim; and
  - (c) so much (if any) of any premium paid under a qualifying contract of insurance as relates to the indemnification of that person against a qualifying liability or to the payment of any such costs or expenses.
- (2) For the purposes of this section a liability is a qualifying liability, in relation to any office or employment, if it is imposed either—
  - (a) in respect of any acts or omissions of a person in his capacity as the holder of that office or employment or in any other capacity in which he acts in the performance of the duties of that office or employment; or
  - (b) in connection with any proceedings relating to or arising out of a claim that a person is subject to a liability imposed in respect of any such acts or omissions.
- (3) For the purposes of this section a qualifying contract of insurance is a contract of insurance which—
  - (a) so far as the risks insured against are concerned, relates exclusively to one or more of the matters mentioned in subsection (4) below;
  - (b) is not connected with any other contract;

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- (c) does not contain provision entitling the insured, in addition to cover for the risks insured against and any right to renew the policy, to receive any payment or other benefit the entitlement to which is something to which a significant part of the premium under the contract is reasonably attributable; and
  - (d) is a contract the period of insurance under which does not exceed two years (except by virtue of one or more renewals each for a period of two years or less) and is not a contract which the insured is required to renew for any period.
- (4) The matters referred to in subsection (3)(a) above in relation to any contract of insurance are the following, that is to say—
- (a) the indemnification of any person holding any office or employment against any qualifying liability;
  - (b) the indemnification of any person against any vicarious liability in respect of acts or omissions giving rise, in the case of another, to such a qualifying liability;
  - (c) the payment of some or all of the costs or expenses incurred by or on behalf of that or any other person in connection with any claim that a person is subject to a liability to which the insurance relates or with any proceedings relating to or arising out of such a claim; and
  - (d) the indemnification of any person against any loss from the payment by him (whether or not in discharge of any liability) to a person holding an office or employment under him of any amount in respect of a qualifying liability or of any such costs or expenses.
- (5) For the purposes of this section a contract of insurance is connected with another contract at any time at or after the time when they have both been entered into if—
- (a) either of them was entered into by reference to the other or with a view to enabling the other to be entered into on particular terms or to facilitating the other being entered into on particular terms; and
  - (b) the terms on which either of them was entered into would have been significantly different if it had not been entered into in anticipation of the other being entered into or if the other had not also been entered into.
- (6) Two or more contracts of insurance shall not be prevented by virtue of paragraph (b) of subsection (3) above from being qualifying contracts if—
- (a) they each satisfy the requirements of paragraphs (a), (c) and (d) of that subsection; and
  - (b) the only respects in which there is a significant difference between the terms on which any of those contracts is entered into and what would have been those terms if the other contract or contracts had not been entered into consist in such reductions of premium as are reasonably attributable to—
    - (i) the fact that, where different contracts have been entered into as part of a single transaction, the premium under each of the contracts has been fixed by reference to the appropriate proportion of what would have been the premium under a single contract relating to all the risks covered by the different contracts; or
    - (ii) the fact that the contract in question contains a right to renew or is entered into by way of renewal or in pursuance of such a right.
- (7) For the purpose of determining the different parts of any premium under any contract of insurance which are to be treated for the purposes of this section as paid in respect of the different risks, different persons and different offices and employments to which

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the contract relates, such apportionment of that premium shall be made as may be reasonable.

- (8) Where it would be unlawful for a person under whom any other person holds any office or employment to enter into a contract of insurance in respect of liabilities of any description or in respect of costs or expenses of any description, no deduction may be made under this section in respect of—
- (a) the discharge of any liability of that other person which is a liability of that description; or
  - (b) any costs or expenses incurred by or on behalf of that other person which are costs or expenses of that description.
- (9) References in this section to a premium, in relation to a contract of insurance, are references to any amount payable under the contract to the insurer.]

#### Textual Amendments

**F193** S. 201AA inserted (with effect in accordance with s. 91(3) of the amending Act) by Finance Act 1995 (c. 4), s. 91(1)

#### [<sup>F194</sup>201A] Expense of entertainers.

- (1) Where emoluments of an employment to which this section applies fall to be charged to tax for a year of assessment for which this section applies, there may be deducted from the emoluments of the employment to be charged to tax for the year—
- (a) fees falling within subsection (2) [<sup>F195</sup>or (2A)] below, and
  - (b) any additional amount paid by the employee in respect of value added tax charged by reference to those fees.
- (2) Fees fall within this subsection if—
- (a) they are paid by the employee to another person,
  - (b) they are paid under a contract made between the employee and the other person, who agrees under the contract to act as an agent of the employee in connection with the employment,
  - (c) at each time any of the fees are paid the other person carries on an employment agency with a view to profit <sup>F196</sup> . . . ,
  - (d) they are calculated as a percentage of the emoluments of the employment or as a percentage of part of those emoluments, and
  - (e) they are defrayed out of the emoluments of the employment falling to be charged to tax for the year concerned.
- [ Fees fall within this subsection if—
- <sup>F197</sup>(2A) (a) they are paid by the employee in pursuance of an arrangement under which a bona fide co-operative society agrees, or the members of such a society agree, to act as agent of the employee in connection with the employment,
- (b) they are calculated as a percentage of the emoluments of the employment or as a percentage of part of those emoluments, and
  - (c) they are defrayed out of the emoluments of the employment falling to be charged to tax for the year concerned.]

(3) For the purposes of subsection (2) above—

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- (a) “employment agency” means an employment agency within the meaning given by section 13(2) of the Employment Agencies Act 1973, <sup>F198</sup> . . .
- (b) <sup>F198</sup> . . . . .

<sup>F199</sup> [ Subsection (3) of section 1 of the Industrial and Provident Societies Act 1965 (co-operative society does not include profit-making society) shall apply for the purposes of subsection (2A)(a) above as it applies for the purposes of that section.]

(4) The amount which may be deducted by virtue of this section shall not exceed 17.5 per cent. of the emoluments of the employment falling to be charged to tax for the year concerned.

<sup>F200</sup> [ Subject to subsection (4) above, a deduction by virtue of this section as regards a particular employment and a particular year of assessment may be based on fees falling within subsection (2) above or fees falling within subsection (2A) above, or both.]

(5) This section applies to employment as an actor, singer, musician dancer or theatrical artist.

(6) This section applies for the year 1990-91 and subsequent years of assessment.]

#### Textual Amendments

- F194** S. 201A inserted by [Finance Act 1990 \(c. 29\), s. 77](#)
- F195** Words in s. 201A(1)(a) inserted (for the year 1990-91 and subsequent years of assessment) by [Finance Act 1991 \(c. 31, SIF 63:1\), s. 69\(2\)\(6\)](#)
- F196** Words in s. 201A(2)(c) repealed (3.1.1995) by [Deregulation and Contracting Out Act 1994 \(c. 40\), ss. 81, 82\(4\), Sch. 17; S.I. 1994/3188, arts 2, 3\(s\)\(x\)](#)
- F197** S. 201A(2A) inserted (for the year 1990-91 and subsequent years of assessment) by [Finance Act 1991 \(c. 31, SIF 63:1\), s. 69\(3\)\(6\)](#)
- F198** S. 201A(3)(b) and preceding word repealed (3.1.1995) by [Deregulation and Contracting Out Act 1994 \(c. 40\), ss. 81, 82\(4\), Sch. 17; S.I. 1994/3188, arts 2, 3\(s\)\(x\)](#)
- F199** S. 201A(3A) inserted (for the year 1990-91 and subsequent years of assessment) by [Finance Act 1991 \(c. 31, SIF 63:1\), s. 69\(4\)\(6\)](#)
- F200** S. 201A(4A) inserted (for the year 1990-91 and subsequent years of assessment) by [Finance Act 1991 \(c. 31, SIF 63:1\), s. 69\(5\)\(6\)](#)

## 202 Donations to charity: payroll deduction scheme.

- (1) <sup>M240</sup>This section applies where an individual (“the employee”) is entitled to receive payments from which income tax falls to be deducted by virtue of section 203 and regulations under that section, and the person liable to make the payments (“the employer”) withholds sums from them.
- (2) If the conditions mentioned in subsections (3) to (7) below are fulfilled the sums shall, in assessing tax under Schedule E, be allowed to be deducted as expenses incurred in the year of assessment in which they are withheld.
- (3) The sums must be withheld in accordance with a scheme which is (or is of a kind) approved by the Board at the time they are withheld and which either contains provisions falling within subsection (4)(a) below, or contains provisions falling within subsection (4)(a) below and provisions falling within subsection (4)(b) below.
- (4) The provisions are that—

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- (a) the employer is to pay sums withheld to a person (“the agent”) who is approved by the Board at the time they are withheld, and the agent is to pay them to a charity or charities;
  - (b) the employer is to pay sums withheld directly to a charity which (or charities each of which) is at the time the sums are withheld approved by the Board as an agent for the purpose of paying sums to other charities.
- (5) The sums must be withheld in accordance with a request by the employee that they be paid to a charity or charities in accordance with a scheme approved (or of a kind approved) by the Board.
- (6) The sums must constitute gifts by the employee to the charity or charities concerned, must not be paid by the employee under a covenant, and must fulfil any conditions set out in the terms of the scheme concerned.
- (7) The sums must not in any year of assessment exceed [<sup>F201</sup>£900] in the case of any employee (however many offices or employments he holds or has held).
- (8) <sup>M241</sup>The circumstances in which the Board may grant or withdraw approval of schemes (or kinds of schemes) or of agents shall be such as are prescribed by the Treasury by regulations; and the circumstances so prescribed (whether relating to the terms of schemes or the qualifications of agents or otherwise) shall be such as the Treasury think fit.
- (9) The Treasury may by regulations make provision—
- (a) that a participating employer or agent shall comply with any notice which is served on him by the Board and which requires him within a prescribed period to make available for the Board’s inspection documents of a prescribed kind or records of a prescribed kind;
  - (b) that a participating employer or agent shall in prescribed circumstances furnish to the Board information of a prescribed kind;
  - (c) for, and with respect to, appeals to the Special Commissioners against the Board’s refusal to grant, or their withdrawal of, approval of any scheme (or any kind of scheme) or agent;
  - (d) generally for giving effect to subsections (1) to (7) above.
- In this subsection “prescribed” means prescribed by the regulations.
- (10) For the purposes of subsection (9) above a person is a participating employer or agent if he is an employer or agent who participates, or has at any time participated, in a scheme under this section.
- (11) <sup>M242</sup>In this section “charity” has the same meaning as in section 506.

#### Textual Amendments

**F201** Word in s. 202(7) substituted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 68(1)(2)

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

**C41** See 1990 s.25—*donations to charity by individuals in respect of gifts made on or after 1 October 1990.*

**C42** For regulations see Part III Vol.5 (“Charitable deductions: approved schemes”).

#### Marginal Citations

**M240** Source—1986 s.27(1)-(7); 1987 s.32

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**M241** Source—1986 s.28(1)-(5)

**M242** Source—1986 s.27(8)

## CHAPTER V

### ASSESSMENT, COLLECTION, RECOVERY AND APPEALS

#### [<sup>F202</sup>202A Assessment on receipts basis.

- (1) As regards any particular year of assessment—
  - (a) income tax shall be charged under Cases I and II of Schedule E on the full amount of the emoluments received in the year in respect of the office or employment concerned;
  - (b) income tax shall be charged under Case III of Schedule E on the full amount of the emoluments received in the United Kingdom in the year in respect of the office or employment concerned.
- (2) Subsection (1) above applies—
  - (a) whether the emoluments are for that year or for some other year of assessment;
  - (b) whether or not the office or employment concerned is held at the time the emoluments are received or (as the case may be) received in the United Kingdom.
- (3) Where subsection (1) above applies in the case of emoluments received, or (as the case may be) received in the United Kingdom, after the death of the person who held the office or employment concerned, the charge shall be a charge on his executors or administrators; and accordingly income tax—
  - (a) shall be assessed and charged on the executors or administrators, and
  - (b) shall be a debt due from and payable out of the deceased's estate.
- (4) Section 202B shall have effect for the purposes of subsection (1)(a) above.]

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#### Textual Amendments

**F202** Ss. 202A, 202B inserted by Finance Act 1989 (c. 26), s. 37

#### **202B Receipts basis: meaning of receipt.**

- (1) For the purposes of section 202A(1)(a) emoluments shall be treated as received at the time found in accordance with the following rules (taking the earlier or earliest time in a case where more than one rule applies)—
  - (a) the time when payment is made of or on account of the emoluments;
  - (b) the time when a person becomes entitled to payment of or on account of the emoluments;
  - (c) in a case where the emoluments are from an office or employment with a company, the holder of the office or employment is a director of the company and sums on account of the emoluments are credited in the company's accounts or records, the time when sums on account of the emoluments are so credited;

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- (d) in a case where the emoluments are from an office or employment with a company, the holder of the office or employment is a director of the company and the amount of the emoluments for a period is determined before the period ends, the time when the period ends;
  - (e) in a case where the emoluments are from an office or employment with a company; the holder of the office or employment is a director of the company and the amount of the emoluments for a period is not known until the amount is determined after the period has ended, the time when the amount is determined.
- (2) Subsection 1(c), (d) or (e) above applies whether or not the office or employment concerned is that of director.
- (3) Paragraph (c), (d) or (e) of subsection (1) above applies if the holder of the office or employment is a director of the company at any time in the year of assessment in which the time mentioned in the paragraph concerned falls.
- (4) For the purposes of the rule in subsection (1)(c) above, any fetter on the right to draw the sums is to be disregarded.
- (5) In subsection (1) above “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 similar 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.
- (6) In subsection (1) above “director”, in relation to a company, also includes any person in accordance with whose directions or instructions the company’s directors (as defined in subsection (5) above) are accustomed to act; and for this purpose a person is not to be deemed to be a person in accordance with whose directions or instructions the company’s directors are accustomed to act by reason only that the directors act on advice given by him in a professional capacity.
- (7) Subsections (1) to (6) above shall have effect subject to subsections (8) to (11) below.
- (8) In a case where section 141(1)(a), 142(1)(a), 143(1)(a) or 148(4) treats a person as receiving or being paid an emolument or emoluments at a particular time, for the purposes of section 202A(1)(a) the emolument or emoluments shall be treated as received at that time; and in such a case subsections (1) to (6) above shall not apply.
- (9) In a case where section 145(1) treats a person as receiving emoluments, for the purposes of section 202A(1)(a) the emoluments shall be treated as received in the period referred to in section 145(1); and in such a case subsections (1) to (6) above shall not apply.
- (10) In a case where section 154(1), 157(1), 158(1), 160(1), 160(2), 162(6) or 164(1) treats an amount as emoluments, for the purposes of section 202A(1)(a) the emoluments shall be treated as received in the year referred to in section 154(1) or the other provision concerned; and in such a case subsections (1) to (6) above shall not apply.
- (11) In a case where—
- (a) emoluments take the form of a benefit not consisting of money, and
  - (b) subsection (8), (9) or (10) above does not apply,



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for the purposes of section 202A(1)(a) the emoluments shall be treated as received at the time when the benefit is provided; and in such a case subsections (1) to (6) above shall not apply .

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

**C43** See also 1989 ss.43(12), 44(11)—application of s.202Bin connection with certain Sch.D etc. computations.

**203 Pay as you earn.**

<sup>M243</sup>(1) On the making of any payment of, or on account of, any income assessable to income tax under Schedule E, income tax shall, subject to and in accordance with regulations made by the Board under this section, be deducted or repaid by the person making the payment, notwithstanding that when the payment is made no assessment has been made in respect of the income and notwithstanding that the income is in whole or in part income for some year of assessment other than the year during which the payment is made.

(2) The Board shall make regulations with respect to the assessment, charge, collection and recovery of income tax in respect of all income assessable thereto under Schedule E, and those regulations may, in particular, include provision—

- (a) for requiring any person making any payment of, or on account of, any such income, when he makes the payment, to make a deduction or repayment of income tax calculated by reference to tax tables prepared by the Board, and for rendering persons who are required to make any such deduction or repayment accountable to, or, as the case may be, entitled to repayment from, the Board;
- (b) for the production to and inspection by persons authorised by the Board of wages sheets and other documents and records for the purpose of satisfying themselves that income tax has been and is being deducted, repaid and accounted for in accordance with the regulations;
- (c) for the collection and recovery, whether by deduction from any such income paid in any later year or otherwise, of income tax in respect of any such income which has not been deducted or otherwise recovered during the year;

[<sup>F203</sup>(d) for requiring the payment of interest on sums due to the Board which are not paid by the due date, for determining the date (being not less than 14 days after the end of the year of assessment in respect of which the sums are due) from which such interest is to be calculated and for enabling the repayment or remission of such interest;

- (dd) for requiring the payment of interest on sums due from the Board and for determining the date <sup>F204</sup> . . . from which such interest is to be calculated;]
- (e) for the assessment and charge of income tax by the inspector in respect of income to which this section applies; and
- (f) for appeals with respect to matters arising under the regulations which would otherwise not be the subject of an appeal;

and any such regulations shall have effect notwithstanding anything in the Income Tax Acts.

(3) The deductions of income tax required to be made by regulations under subsection (2) (a) above may be required to be made at the basic rate or other rates in such cases or classes of cases as may be provided for by the regulations.

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- [<sup>F205</sup>(3A) Regulations under this section may include provision for income tax in respect of any of a person's income for the year 1989-90 or any earlier year of assessment to be collected and recovered (whether by deduction from income assessable under Schedule E or otherwise) from the person's spouse if—
- (a) the income was income to which section 279 applied, and
  - (b) the tax has not been deducted or otherwise recovered before 6th April 1990.]
- (4) *Any reference in this section to a payment of, or on account of, any income assessable under Schedule E includes a reference to anything which, in accordance with regulations under subsection (2) above, is to be treated as a payment of, or on account of, any such income*<sup>F206</sup>.
- (5) Regulations under this section shall not affect any right of appeal to the General or Special Commissioners which a person would have apart from the regulations.
- (6) The tax tables referred to in subsection (2)(a) above shall be constructed with a view to securing that so far as possible—
- (a) the total income tax payable in respect of any income assessable under Schedule E for any year of assessment is deducted from such income paid during that year; and
  - (b) the income tax deductible or repayable on the occasion of any payment of, or on account of, any such income is such that the total net income tax deducted since the beginning of the year of assessment bears to the total income tax payable for the year the same proportion that the part of the year which ends with the date of the payment bears to the whole year.
- (7) In subsection (6) above references to the total income tax payable for the year shall be construed as references to the total income tax estimated to be payable for the year in respect of the income in question, subject to a provisional deduction for allowances and reliefs, and subject also, if necessary, to an adjustment for amounts overpaid or remaining unpaid on account of income tax in respect of income assessable under Schedule E for any previous year.
- (8) For the purpose of estimating the total income tax payable as mentioned in subsection (6)(a) above, it may be assumed in relation to any payment of, or on account of, income assessable under Schedule E that the income paid in the part of the year of assessment which ends with the making of the payment will bear to the income for the whole of that year the same proportion as that part of the year bears to the whole year.
- [<sup>F207</sup>(9) Interest required to be paid by regulations under subsection (2) above shall be paid without any deduction of income tax and shall not be taken into account in computing any income, profits or losses for any tax purposes.]

### Textual Amendments

**F203** 1988(F) s.128(1). *Previously*

“(d) for requiring the payment of interest on sums due to the Board—(i) which are not paid by the due date; and (ii) of which the amount is determined by the inspector (before or after the due date) in accordance with the regulations; and for determining the date (being not less than 14 days after the end of the year of assessment in respect of which the sums are due) from which such interest is to be calculated;”.

**F204** Words in s. 203(2)(dd) repealed (with effect in accordance with s. 199(2) of the repealing Act) by Finance Act 1994 (c. 9), Sch. 19 para. 38, Sch. 26 Pt. 5(23); S.I. 1998/3173, art. 2

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**F205** 1988(F) s.35 and Sch.3 para.4.

**F206** Repealed by 1989 ss.45(3), 187 and Sch.17 Part IV.

**F207** 1988(F) s.128(2).

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

**C44** See—1970(M) s.35—assessment of emoluments received after year for which they are assessable. 1970(M) s.62(1A)—priority of claim for tax. 1970(M) s.63(3)—recovery of tax in Scotland. 1970(M) s.64(1A)—priority in cases of pointing in Scotland. 1970(M) s.93(3)—treatment of tax deducted from emoluments in computing penalties under s.93(2).

**C45** S. 203 modified (retrospectively) by Finance Act 1998 (c. 36), s. 64(6)(a)

**C46** For regulations see Part III Vol.5 (“Employments” and “Repayments to wives”). And see 1970(M) s.98A—special penalties in the case of certain returns; and 1988(F) s.130(7)(a)—payment of outstanding tax.

#### Marginal Citations

**M243** Source—1970 s.204; 1971 Sch.6 25; 1987 (No.2) s.92

#### [<sup>F208</sup>203 AP.A.Y.E.: meaning of payment.

- (1) For the purposes of section 203 and regulations under it a payment of, or on account of, any income assessable to income tax under Schedule E shall be treated as made at the time found in accordance with the following rules (taking the earlier or earliest time in a case where more than one rule applies)—
  - (a) the time when the payment is actually made;
  - (b) the time when a person becomes entitled to the payment;
  - (c) in a case where the income is income from an office or employment with a company, the holder of the office or employment is a director of the company and sums on account of the income are credited in the company’s accounts or records, the time when sums on account of the income are so credited;
  - (d) in a case where the income is income from an office or employment with a company, the holder of the office or employment is a director of the company and the amount of the income for a period is determined before the period ends, the time when the period ends;
  - (e) in a case where the income is income from an office or employment with a company, the holder of the office or employment is a director of the company and the amount of the income for a period is not known until the amount is determined after the period has ended, the time when the amount is determined.
- (2) Subsection (1)(c), (d) or (e) above applies whether or not the office or employment concerned is that of director.
- (3) Paragraph (c), (d) or (e) of subsection (1) above applies if the holder of the office or employment is a director of the company at any time in the year of assessment in which the time mentioned in the paragraph concerned falls.
- (4) For the purposes of the rule in subsection (1)(c) above, any fetter on the right to draw the sums is to be disregarded.
- (5) Subsections (5) and (6) of section 202B shall apply for the purposes of subsection (1) above as they apply for the purposes of section 202B(1).]

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#### Textual Amendments

**F208** S. 203A inserted by [Finance Act 1989 \(c. 26\), s. 37\(2\)\(4\)\(5\)](#)

#### [<sup>F209</sup>203BPAYE: payment by intermediary.

- (1) Subject to subsection (2) below, where any payment of, or on account of, assessable income of an employee is made by an intermediary of the employer, the employer shall be treated, for the purposes of PAYE regulations, as making a payment of that income of an amount equal to the amount determined in accordance with subsection (3) below.
- (2) Subsection (1) above does not apply if the intermediary (whether or not he is a person to whom section 203 and PAYE regulations apply) deducts income tax from the payment he 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 any income tax, the aggregate of the amount of that payment and the amount of any income tax due; and
  - (b) in any other case, the amount of the payment made by the intermediary.
- (4) For the purposes of this section, a payment of, or on account of, assessable 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 him; or
  - (b) by trustees holding property for any persons who include or class of persons which includes the employee.
- (5) Section 839 applies for the purposes of subsection (4) above.]

#### Textual Amendments

**F209** S. 203B inserted (3.5.1994) by [Finance Act 1994 \(c. 9\), s. 125](#)

#### [<sup>F210</sup>203CPAYE: employee of non-UK employer.

- (1) This subsection applies where—
  - (a) an employee during any period works for a person (“the relevant person”) who is not his employer;
  - (b) any payment of, or on account of, assessable income of the employee in respect of work done in that period is made by a person who is the employer or an intermediary of the employer;
  - (c) PAYE regulations do not apply to the person making the payment or, if he makes the payment as an intermediary of the employer, the employer; and
  - (d) income tax is not deducted or accounted for in accordance with the regulations by the person making the payment or, if he makes the payment as an intermediary of the employer, the employer.
- (2) Where subsection (1) above applies, the relevant person shall be treated, for the purposes of PAYE regulations, as making a payment of the assessable income of

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the employee of an amount equal to the amount determined in accordance with subsection (3) below.

- (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 any income tax, the aggregate of the amount of that payment and the amount of any income tax due; and
  - (b) in any other case, the amount of the payment actually made.
- (4) In this section and sections 203D and 203E “work”, in relation to an employee, means the performance of any duties of the office or employment of the employee and any reference to his working shall be construed accordingly.
- (5) Subsections (4) and (5) of section 203B apply for the purposes of this section as they apply for the purposes of that section.]

**Textual Amendments**

**F210** Ss. 203C-203E inserted (3.5.1994) by Finance Act 1994 (c. 9), s. 126

[<sup>F210</sup>**203DPAYE: employee non-resident, etc.**

- (1) This section applies in relation to an employee in a year of assessment only if—
  - (a) he is not resident or, if resident, not ordinarily resident in the United Kingdom; and
  - (b) he works or will work in the United Kingdom and also works or is likely to work outside the United Kingdom.
- (2) Where in relation to any year of assessment it appears to an officer of the Board that—
  - (a) some of the income of an employee to whom this section applies is assessable to income tax under Case II of Schedule E, but
  - (b) an as yet unascertainable proportion of the income may prove not to be assessable,the officer 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 shall be treated for the purposes of PAYE regulations as a payment of assessable income of the employee.
- (3) In this section “the appropriate person” means—
  - (a) the person designated by the employer for the purposes of this section; or
  - (b) if no person is so designated, the employer.
- (4) An application for a direction under subsection (2) above shall provide such information as is available and is relevant to the giving of the direction.
- (5) A direction under subsection (2) above—
  - (a) shall specify the employee to whom and the year of assessment to which it relates;
  - (b) shall 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.

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- (6) The date so specified may not be earlier than thirty days from the date on which the notice of the withdrawal is given.
- (7) Where—
- (a) a direction under subsection (2) above 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 in the year of assessment to which the direction relates,
- the proportion of the payment determined in accordance with the direction shall be treated for the purposes of PAYE regulations as a payment of assessable income of the employee.
- (8) Where in any year of assessment—
- (a) no direction under subsection (2) above has effect in relation to an employee to whom this section applies, and
  - (b) any payment is made of, or on account of, the income of the employee,
- the entire payment shall be treated for the purposes of PAYE regulations as a payment of assessable income of the employee.
- (9) Subsections (7) and (8) above 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 overpaid and any obligation to pay income tax underpaid.]

#### Textual Amendments

**F210 Ss. 203C-203E** inserted (3.5.1994) by [Finance Act 1994 \(c. 9\), s. 126](#)

#### [<sup>F210</sup>203EPAYE: mobile UK workforce.

- (1) This subsection applies where it appears to the Board 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”) shall in any period work for, but not as employees of, the relevant person;
  - (b) payments of, or on account of, assessable 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
  - (c) PAYE regulations would apply on the making of such payments but it is likely that income tax will not be deducted or accounted for in accordance with the regulations.
- (2) Where subsection (1) above applies, the Board may give a direction that, if—
- (a) any 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,
- income tax shall be deducted in accordance with the provisions of this section by the relevant person on making that payment.
- (3) A direction under subsection (2) above—

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- (a) shall specify the relevant person and the contractor to whom it relates;
  - (b) shall be given by notice to the relevant person; and
  - (c) may at any time be withdrawn by notice to the relevant person.
- (4) The Board shall take such steps as are reasonably practicable to ensure that the contractor is supplied with a copy of any notice given under subsection (3) above which relates to him.
- (5) Where—
- (a) a direction under subsection (2) above 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 shall, subject to and in accordance with PAYE regulations, 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 assessable income of that employee.]

#### Textual Amendments

**F210** Ss. 203C-203E inserted (3.5.1994) by Finance Act 1994 (c. 9), s. 126

#### [<sup>F211</sup>203FPAYE: tradeable assets.

- (1) Where any assessable income of an employee is provided in the form of a tradeable asset, the employer shall be treated, for the purposes of PAYE regulations, as making a payment of that income of an amount equal to the amount specified in subsection (3) below.
- (2) For the purposes of subsection (1) above “tradeable asset” means—
  - (a) any asset capable of being sold or otherwise realised on a recognised investment exchange (within the meaning of the Financial Services Act 1986) or the London Bullion Market;
  - (b) any asset capable of being sold or otherwise realised on any market for the time being specified in PAYE regulations; and
  - (c) any other asset for which, at the time when the asset is provided, trading arrangements exist.
- (3) The amount referred to is—
  - (a) in the case of an asset falling within subsection (2)(a) or (b) above, the amount for which it is capable of being sold or the amount for which it can be realised on the exchange or market in question; and
  - (b) in the case of an asset for which trading arrangements exist at the time when the asset is provided, the amount which is obtained under those arrangements.
- (4) For the purposes of subsection (2) above, “asset” does not include—
  - (a) any payment actually made of, or on account of, assessable income;
  - (b) any non-cash voucher, credit-token or cash voucher (as defined in sections 141 to 143); or
  - (c) any description of property for the time being excluded from the scope of this section by PAYE regulations.

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- (5) Subject to subsection (4) above, for the purposes of subsection (2) above “asset” includes any property and in particular any right or interest falling within any paragraph in Part I of Schedule 1 to the Financial Services Act 1986.]

#### Textual Amendments

**F211** S. 203F inserted (3.5.1994) by [Finance Act 1994 \(c. 9\), s. 127](#)

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

**C47** S. 203F modified (retrospective to 2.7.1997) by [Finance Act 1998 \(c. 36\), s. 64](#)

VALID FROM 31/07/1998

#### [<sup>F212</sup>~~F211~~203F] **PAYE: enhancing the value of an asset.**

- (1) Where—
- (a) any assessable 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 his family or household already has an interest, and
  - (b) that asset, with its value enhanced, would be treated as a readily convertible asset for the purposes of section 203F if assessable income were provided to the employee in the form of that asset at the time of the enhancement,
- that section shall have effect (subject to subsection (2) below) as if the employee had been provided, at that time, with assessable income in the form of the asset (with its value enhanced), instead of with whatever enhanced its value.
- (2) Where section 203F has effect in accordance with subsection (1) above, subsection (3) of that section shall apply as if the reference in subsection (3) of that section to the provision of the asset were a reference to the enhancement of its value.
- (3) Subject to subsection (4) below, any reference in this section to enhancing the value of an asset is a reference to—
- (a) the provision of any services by which that 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 in question 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 in question or to securing an increase in its value or in the value of any right or interest in it.
- (4) PAYE regulations may make provision excluding such 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.
- (5) Expressions used in this section and in section 203F have the same meanings in this section as in that section.]



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### Textual Amendments

**F212** S. 203FA inserted (with effect in accordance with s. 66(2) of the amending Act) by Finance Act 1998 (c. 36), s. 66(1) (with s. 66(3))

VALID FROM 31/07/1998

### <sup>F213</sup>203FBAYE: gains from share options etc.

- (1) This section applies where an event occurs by virtue of which an amount is assessable on any person (“the relevant person”) by virtue of section 135, 140A(4) or 140D.
- (2) If that event is the exercise of a right to acquire shares, section 203F shall have effect, subject to subsection (7) below, as if the relevant person were being provided—
  - (a) at the time he acquires the shares in exercise of that right, and
  - (b) in respect of the office or employment by reason of which he was granted the right,with assessable income in the form of those shares.
- (3) If that event is the assignment or release of a right to acquire shares, sections 203 to 203F shall have effect, subject to subsection (7) below—
  - (a) in so far as the consideration for the assignment or release takes the form of a payment, as if so much of that payment as does not exceed the amount assessable by virtue of section 135 were a payment of assessable income of the relevant person; and
  - (b) in so far as that consideration consists in the provision of an asset, as if the provision of that asset were the provision—
    - (i) to the relevant person, and
    - (ii) in respect of the office or employment by reason of which he was granted the right,of assessable income in the form of that asset.
- (4) If that event is an event falling within subsection (4)(a) or (b) of section 140A, sections 203 to 203F shall have effect, subject to subsection (7) below, as if—
  - (a) the provision to the relevant person of the employee’s interest in the shares included the provision to him at the time of the event of a further interest in those shares; and
  - (b) the further interest were not subject to any terms by virtue of which it would fall for the purposes of section 140A to be treated as only conditional.
- (5) If that event is an event falling within subsection (3) of section 140D, sections 203 to 203F shall have effect, subject to subsection (7) below, as if the original provision to the relevant person of the convertible shares or securities included the provision to him at the time of the event of the shares or securities into which they are converted.
- (6) Subsection (5) above shall apply in a case where the convertible shares or securities were themselves acquired by means of a taxable conversion (as defined in section 140D(7)), or by a series of such conversions, as if the reference to the original provision of the convertible shares or securities were a reference to the provision of the shares or securities which were converted by the earlier or earliest conversion.

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- (7) Where section 203F has effect in accordance with any of the preceding provisions of this section, subsection (3) of section 203F shall apply as if the reference in that subsection to the amount of income likely to be chargeable to tax under Schedule E in respect of the provision of the asset were a reference to the amount on which tax is likely to be chargeable by virtue of section 135, 140A or 140D in respect of the event in question.
- (8) PAYE regulations may make provision for excluding payments from the scope of subsection (3)(a) above in such circumstances as may be specified in the regulations.
- (9) In this section “asset” means—
- (a) any asset within the meaning of section 203F; or
  - (b) any non-cash voucher, credit-token or cash voucher (as defined for the purposes of section 141, 142 or, as the case may be, 143).
- (10) Expressions used in this section and in any of sections 135 and 140A to 140H have the same meanings in this section as in that section, and any reference in this section to—
- (a) an event falling within subsection (4)(a) or (b) of section 140A, or
  - (b) an event falling within subsection (3) of section 140D,
- includes a reference to an event which is treated for the purposes of that section as such an event by virtue of section 140A(8) or 140F(1).]

#### Textual Amendments

**F213** S. 203FB inserted (with effect in accordance with s. 67(2) of the amending Act) by Finance Act 1998 (c. 36), s. 67(1) (with s. 67(3))

#### [<sup>F214</sup>203CPAYE: non-cash vouchers.

- (1) Where a non-cash voucher to which this section applies is received by an employee, the employer shall be treated, for the purposes of PAYE regulations, as making a payment of assessable income of the employee of an amount equal to the amount ascertained in accordance with section 141(1)(a).
- (2) This section applies to a non-cash voucher to which section 141(1) applies if—
  - (a) either of the two conditions set out below is fulfilled 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 fulfilled with respect to a voucher if it is capable of being exchanged for goods—
  - (a) which, at the time when the voucher is provided, are capable of being sold or otherwise realised on an exchange or market falling within section 203F(2) (a) or (b); or
  - (b) for which, at the time when the voucher is provided, trading arrangements exist.
- (4) The second condition is fulfilled with respect to a voucher if, at the time when the voucher is provided, the voucher itself—

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- (a) is capable of being sold or otherwise realised on an exchange or market falling within section 203F(2)(a) or (b); or
- (b) is a voucher for which trading arrangements exist.]

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**Textual Amendments**

**F214** S. 203G inserted (3.5.1994) by Finance Act 1994 (c. 9), s. 128

[<sup>F215</sup>**203IPAYE: credit-tokens.**

- (1) Subject to subsection (3) below, on each occasion on which an employee uses a credit-token provided to him by reason of his employment to obtain—
  - (a) money, or
  - (b) goods falling within subsection (2) below,the employer shall be treated, for the purposes of PAYE regulations, as making a payment of assessable income of the employee of an amount equal to the amount ascertained in accordance with section 142(1)(a).
- (2) Goods fall within this subsection if, at the time when they are obtained, they are goods—
  - (a) which are capable of being sold or otherwise realised on an exchange or market falling within section 203F(2)(a) or (b); or
  - (b) for which trading arrangements exist.
- (3) PAYE regulations may make provision for excluding from the scope of this section any description of use of a credit-token.
- (4) In this section “credit-token” has the same meaning as in section 142.]

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**Textual Amendments**

**F215** S. 203H inserted (3.5.1994) by Finance Act 1994 (c. 9), s. 129

[<sup>F216</sup>**203IPAYE: cash vouchers.**

- (1) Subject to subsection (2) below, where a cash voucher to which section 143(1) applies is received by an employee, the employer shall be treated, for the purposes of PAYE regulations, as making a payment of assessable income of the employee of an amount equal to the amount ascertained in accordance with section 143(1)(a).
- (2) PAYE regulations may make provision for excluding from the scope of this section the provision of cash vouchers in such description of circumstances as may be specified in the regulations.]

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**Textual Amendments**

**F216** S. 203I inserted (3.5.1994) by Finance Act 1994 (c. 9), s. 130

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[<sup>F217</sup>**203JS.203B to s.203I: accounting for tax.**

- (1) Where an employer makes a notional payment of assessable income of an employee, the obligation to deduct income tax shall have effect as an obligation on the employer to deduct income tax at such time as may be prescribed by PAYE regulations from any payment or payments he actually makes of, or on account of, such income of that employee.
- (2) For the purposes of this section—
  - (a) a notional payment is a payment treated as made by virtue of any of sections 203B, 203C and 203F to 203I, other than a payment whose amount is determined in accordance with section 203B(3)(a) or 203C(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 203C(2).
- (3) Where, by reason of an insufficiency of payments actually made, the employer is unable to deduct the amount (or the full amount) of the income tax as required by virtue of subsection (1) above, the obligation to deduct income tax shall have effect as an obligation on the employer to account to the Board at such time as may be prescribed by PAYE regulations for an amount of income tax equal to the amount of income tax he is required, but is unable, to deduct.
- (4) 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 accounted for in respect of any notional payments;
  - (c) with respect to the collection and recovery of amounts accounted for in respect of notional payments.
- (5) Any amount which an employer deducts or for which he accounts as mentioned in subsections (1) and (3) above shall be treated as an amount paid by the employee in question in respect of his liability to income tax for such year of assessment as may be specified in PAYE regulations.]

**Textual Amendments**

**F217** Ss. 203J-203L inserted (3.5.1994) by [Finance Act 1994 \(c. 9\)](#), s. 131

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

**C48** S. 203J modified (retrospectively) by [Finance Act 1998 \(c. 36\)](#), s. 64(6)(a)

[<sup>F217</sup>**203KTrading arrangements.**

- (1) “Trading arrangements” in sections 203F to 203H shall be construed in accordance with this section.
- (2) Trading arrangements—
  - (a) for an asset, are arrangements for the purpose of enabling the person to whom the asset is provided to obtain an amount similar to the expense incurred in the provision of the asset;

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- (b) for goods for which a non-cash voucher is capable of being exchanged, are arrangements for the purpose of enabling the person to whom the voucher is provided to obtain an amount similar to the expense incurred in the provision of the goods;
  - (c) for a non-cash voucher, are arrangements for the purpose of enabling the person to whom the voucher is provided to obtain an amount similar to the expense incurred as mentioned in section 141(1)(a);
  - (d) for goods obtained by the use of a credit-token, are arrangements for the purpose of enabling the person to whom the credit-token is provided to obtain an amount similar to the expense incurred in the provision of the goods.
- (3) For the purposes of subsection (2) above—
- (a) any reference to enabling a person to obtain an amount includes—
    - (i) a reference to enabling a class or description of persons which includes that person to obtain the amount; and
    - (ii) a reference to enabling an amount to be obtained by any means, including in particular by using an asset or goods as security for a loan or an advance; and
  - (b) an amount is similar to an expense incurred if it is greater than, equal to or not substantially less than that expense.
- (4) PAYE regulations may exclude any description of arrangements from being trading arrangements for the purposes of sections 203F to 203H.]

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**Textual Amendments**

**F217** Ss. 203J-203L inserted (3.5.1994) by [Finance Act 1994 \(c. 9\), s. 131](#)

**[<sup>F217</sup>203LS.203B to s.203K: interpretation, etc.**

- (1) In sections 203B to 203J “employee” means a person holding an office or employment under or with any other person, and (subject to section 203J(2)(b)) any reference to the employer is a reference to that other person.
- (2) In sections 203B to 203J “assessable” means assessable to income tax under Schedule E.
- (3) In sections 203B to 203K and this section “PAYE regulations” means regulations under section 203.
- (4) PAYE regulations made by virtue of any of sections 203B to 203K may—
  - (a) make different provision for different classes of case;
  - (b) contain such incidental, consequential and supplementary provision as appears to the Board to be expedient.]

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**Textual Amendments**

**F217** Ss. 203J-203L inserted (3.5.1994) by [Finance Act 1994 \(c. 9\), s. 131](#)

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## 204 P.A.Y.E repayments.

<sup>M244</sup>Without prejudice to the generality of section 203, regulations under that section may provide that no repayment of income tax shall be made under that section to any person if at any time—

- (a) he has claimed unemployment benefit in respect of a period including that time; or
- (b) he has claimed a payment of income support under the <sup>M245</sup>Social Security Act 1986 or the <sup>M246</sup>Social Security (Northern Ireland) Order 1986 in respect of a period including that time and his right to that income support is subject to the condition specified in section 20(3)(d)(i) of that Act or, in Northern Ireland, Article 21(3)(d)(i) of that Order (availability for employment); or
- (c) he is disqualified at the time from receiving unemployment benefit by virtue of section 19 of the <sup>M247</sup>Social Security Act 1975 or of section 19 of the <sup>M248</sup>Social Security (Northern Ireland) Act 1975 (loss of employment due to stoppage of work) or would be so disqualified if he otherwise satisfied the conditions for entitlement;

and such regulations may make different provision with respect to persons falling within paragraph (c) above from that made with respect to other persons.

### Marginal Citations

**M244** Source—1981 s.29; 1987 Sch.3 7

**M245** 1986 c. 50.

**M246** S.I. 1986/1888 (N.I. 18).

**M247** 1975 c. 14.

**M248** 1975 c. 15.

## 205 Assessments unnecessary in certain circumstances.

[<sup>F218</sup>(1) Subject to the provisions of this section, no assessment need be made in respect of income assessable to income tax for any year of assessment if the income has been taken into account in the making of deductions or repayments of income tax by virtue of regulations made under section 203.

(2) Subsection (1) above does not apply if the total net tax deducted in the year in question from the income is not the same as it would have been if—

- (a) all the relevant circumstances had been known to all parties throughout the year;
- (b) deductions and repayments had throughout the year been made accordingly; and
- (c) the deductions and repayments had been so made by reference to cumulative tax tables.

(3) Nothing in this section shall be construed as preventing an assessment (whether under section 9 of the Management Act or otherwise) being made in respect of income assessable to income tax for any year of assessment.

(4) A person as regards whose income for a year of assessment deductions or repayments have been made may by notice, given not later than five years after the 31st October next following that year, require an officer of the Board to give him notice under section 8 of that Act in respect of that year.

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(5) In this section—

- (a) “cumulative tax tables” means tax tables prepared under section 203 which are so framed as to require the tax which is to be deducted or repaid on the occasion of each payment made in the year to be ascertained by reference to a total of emoluments paid in the year up to the time of making that payment; and
- (b) any reference to the total net tax deducted shall be construed as a reference to the total income tax deducted during the year by virtue of regulations made under section 203, less any income tax repaid by virtue of any such regulations.]

#### Textual Amendments

**F218** S. 205 substituted (with effect in accordance with s. 103(7) of the amending Act) by Finance Act 1995 (c. 4), s. 111(1)

#### 206 Additional provision for certain assessments.

<sup>M249</sup>Where an assessment to income tax <sup>F219</sup>. . . is made as respects income which—

- (a) has been taken into account in the making of deductions or repayments of tax under section 203, and
- (b) was received not less than 12 months before the beginning of the year of assessment in which the assessment is made,

then, if the assessment is made after the expiration of the period of 12 months immediately following the year of assessment for which it is made, it shall be made in accordance with the practice generally prevailing at the expiration of that period.

#### Textual Amendments

**F219** Words in s. 206 repealed (with effect in accordance with s. 103(7) of the repealing Act) by Finance Act 1995 (c. 4), s. 111(2), Sch. 29 Pt. 8(14), Note 2

#### Marginal Citations

**M249** Source—1970 s.206

VALID FROM 29/04/1996

#### <sup>F220</sup>206 PAYE settlement agreements.

- (1) PAYE regulations may make provision falling within subsection (2) below about the sums which, as sums in respect of income tax under Schedule E on emoluments of a person’s employees, are to be the sums for which the employer is to be accountable to the Board from time to time.
- (2) That provision is provision under which the accountability of the employer, and the sums for which he is to be accountable, are to be determined, to such extent as may be prescribed, in accordance with an agreement between the Board and the employer (“a

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PAYE settlement agreement”), instead of under PAYE regulations made otherwise than by virtue of this section.

- (3) PAYE regulations may provide for a PAYE settlement agreement to allow sums for which an employer is to be accountable to the Board in accordance with the agreement—
  - (a) to be computed, in cases where there are two or more persons holding 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, in accordance with the agreement, to be the aggregate of the cash equivalents and other amounts chargeable to tax in respect 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 the sums for which the employer is accountable do not necessarily represent an amount of income tax payable in respect of income which (apart from the regulations) is assessable under Schedule E on persons holding employments to which the agreement relates.
- (4) PAYE regulations may provide—
  - (a) for an employer who is accountable to the Board under a PAYE settlement agreement for any sum to be so accountable without that sum, or any other sum, being treated for any prescribed purpose as tax deducted from emoluments;
  - (b) for an employee to have no right to be treated as having paid tax in respect of sums for which his employer is accountable under such an agreement;
  - (c) for an employee to be treated, except—
    - (i) for the purposes of the obligations imposed on his employer by such an agreement, and
    - (ii) to such further extent as may be prescribed,
 as relieved from any prescribed obligations of his under the Income Tax Acts in respect of emoluments from an employment to which the agreement relates; and
  - (d) for such emoluments 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.
- (5) For the purposes of any PAYE regulations made by virtue of this section it shall be immaterial that any agreement to which they relate was entered into before the coming into force of the regulations.
- (6) PAYE regulations made by virtue of this section may—
  - (a) make different provision for different cases; and
  - (b) contain such incidental, supplemental, consequential and transitional provision as the Board may think fit.
- (7) Without prejudice to the generality of subsection (6) above, the transitional provision that may be made by virtue of that subsection includes transitional provision for any year of assessment which—



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- (a) for the purposes of the regulations, treats sums accounted for in that year before the coming into force of the regulations as accounted for in accordance with an agreement as respects which the regulations have effect after they come into force; and
- (b) provides, by reference to any provision made by virtue of paragraph (a) above, for income arising in that year before the coming into force of the regulations to be treated as income in relation to which modifications of the Income Tax Acts contained in the regulations apply.
- (8) Without prejudice to the generality of subsection (6) above, any power of the Board to make PAYE regulations with respect to sums falling to be accounted for under such regulations shall include power to make the corresponding provision with respect to sums falling, by virtue of this section, to be accounted for in accordance with a PAYE settlement agreement.
- (9) In this section—
- “employment” means any office or employment the emoluments from which are (or, apart from any regulations made by virtue of this section, would be) assessable to tax under Schedule E, and cognate expressions shall be construed accordingly;
- “PAYE regulations” means regulations under section 203;
- “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, for the purposes of Chapter II of this Part, a member of his family or household;
- and references in this section to a time before the coming into force of any regulations include references to a time before the commencement of section 110 of the Finance Act 1996 (by virtue of which this section was inserted in this Act).]

#### Textual Amendments

**F220** S. 206A inserted (29.4.1996) by [Finance Act 1996 \(c. 8\), s. 110](#)

## 207 Disputes as to domicile or ordinary residence.

<sup>M250</sup>Where a dispute arises under paragraph 1 of Schedule E or under section 192 whether a person is or has been ordinarily resident or domiciled in the United Kingdom, the question shall be referred to and determined by the Board; but any person who is aggrieved by their decision on the question may, by notice to that effect given to them within three months from the date on which notice is given to him, make an application to have the question heard and determined by the Special Commissioners, and where such an application is so made, the Special Commissioners shall hear and determine the question in like manner as an appeal.

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

**C49** S. 207 applied (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\), ss. 9\(2\), 289](#) (with ss. 60, 101(1), 171, 201(3)).

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**Marginal Citations**

**M250** Source—1970 s.207

**Status:**

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