



# Income and Corporation Taxes Act 1988

## 1988 CHAPTER 1

### PART V

#### PROVISIONS RELATING TO THE SCHEDULE E CHARGE

#### CHAPTER IV

#### OTHER EXEMPTIONS AND RELIEFS

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

#### **185 Approved share option schemes.**

- (1) <sup>M1</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>F1M2</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.
- (3) <sup>M3</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>F2</sup>section 78 or 79 of the Finance Act 1988 in respect of the shares];
  - (b) section [<sup>F3</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.

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- (4) <sup>F4M4</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>M5</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>F5</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”.]
- (7) <sup>M6</sup>For the purposes of section <sup>F3</sup>38(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 <sup>F6</sup>(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 <sup>F6</sup>(6A)] above on any amount (the “amount of the discount”) and subsequently, in circumstances in which subsection (3) above does not apply—

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- (a) <sup>M7</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>M8</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>M9</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

- F1** 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)
- F2** 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”.
- F3** 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)).
- F4** 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)
- F5** 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)
- F6** 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)

- C1** See 1988(F) s.68—benefits derived by director etc. from public offers not treated as emolument.
- C2** 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

- M1** Source—1980 s.47(1); 1984 s.38(1)
- M2** Source—1980 s.47(1)(a); 1984 s.38(2)
- M3** Source—1980 s.47(1)(b); 1981 s.90(3)(a); 1984 s.38(3)(a)
- M4** Source—1980 s.47(2)
- M5** Source—1984 s.38(4)
- M6** Source—1984 s.38(6)
- M7** Source—1984 s.38(7)(a), (8)
- M8** Source—1984 s.38(7)(b), (9)
- M9** 1984 Sch.10 1(5)

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## 186 Approved profit sharing schemes.

- (1) <sup>M10</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>M11</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 [F7 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>M12</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>M13</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>M14</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.
- (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,

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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>M15</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>M16</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>M17</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 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>M18</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

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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

**F7** 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)

**C3** S. 186 modified (29.4.1996) by Finance Act 1996 (c. 8), ss. 115(1), 116(3)

**C4** S. 186 modified (29.4.1996) by Finance Act 1996 (c. 8), s. 116(3)

#### Marginal Citations

**M10** Source—1978 s.53(1)

**M11** Source—1978 s.53(3)

**M12** Source—1978 s.56(1); 1982 s.42(1)

**M13** Source—1978 s.55(1)

**M14** Source—1978 s.55(2)-(4)

**M15** Source—1978 s.55(5), (9)

**M16** Source—1978 s.55(7), (8)

**M17** Source—1978 s.53(6)

**M18** 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>M19</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 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;

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“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 [F81992 Act];

“new holding” has the meaning given by section [F8126(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;

“pensionable age” has the meaning given by Schedule 20 to the <sup>M20</sup>Social Security Act 1975;

“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 [F9not 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;

[F10“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 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>M21</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 [F11in 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

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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 participants.]

In this subsection “associate” has the meaning given by section 417(3) and (4) [F11] and “participant” has the meaning given by section 417(1)].

- (4) <sup>M22</sup>Subsection (3) above shall have effect subject to the provisions of Part VI of Schedule 9.
- (5) <sup>M23</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>M24</sup>Section 839 shall apply for the purposes of the relevant provisions.
- (7) <sup>M25</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>M26</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>M27</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,
- 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>M28</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,



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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>M29</sup>Industrial and Provident Societies Act 1965 or, as the case may be, the <sup>M30</sup>Industrial and Provident Societies Act (Northern Ireland) 1969.

#### Textual Amendments

- F8** 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)).
- F9** 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)**
- F10** S. 187(2): definition of “specified age” inserted by Finance Act 1991 (c. 31), **s. 38(4)**
- F11** 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**

#### Marginal Citations

- M19** 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)
- M20** 1975 c. 14.
- M21** Source—1970 s.285(6); 1978 Sch.9 11(3)(b); 1980 Sch.10 26(2); 1984 Sch.10 4(4)
- M22** Source—1987 s.33(2)
- M23** Source—1978 s.61(4); 1983 s.25(2)
- M24** Source—1978 Sch.9 16; 1980 Sch.10 26(4); 1984 Sch.10 15(3)
- M25** Source—1978 Sch.9 17; 1980 Sch.10 26(5); 1984 Sch.10 15(4); 1986 s.23(5)
- M26** Source—1978 s.55(6)
- M27** Source—1978 s.61(2)
- M28** Source—1978 Sch.9 18; 1986 s.24(1)
- M29** 1965 c. 12.
- M30** 1969 c. 24. (N.I.).

VALID FROM 28/07/2000

### *F<sup>12</sup> Contributions in respect of share option gains*

#### Textual Amendments

- F12** 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

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- (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>M31</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—
- “the Contributions and Benefits Act” means the <sup>M32</sup>Social Security Contributions and Benefits Act 1992 or the <sup>M33</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)**

- C5 S. 187A modified (retrospectively) by [Social Security Contributions \(Share Options\) Act 2001 \(c. 20\), s. 4\(2\)\(3\)](#)

**Marginal Citations**

- M31 1992 c. 12.  
 M32 1992 c. 4.  
 M33 1992 c. 7.

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*Retirement benefits etc.*

**188 Exemptions from section 148.**

- (1) <sup>M34</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) a benefit provided in pursuance of a retirement benefits scheme within the meaning of Chapter II of Part IX of the 1970 Act or Chapter I of Part XIV of this Act or of an agreement as described in section 220(2) of the 1970 Act, where under section 220 of that Act or section 595 of this Act the holder of the office or employment was chargeable to tax in respect of sums paid, or treated as paid, with a view to the provision of the benefit;
  - (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>M35</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>M36</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.
- (3) <sup>M37</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.

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- (4) <sup>M38</sup> Tax shall not be charged by virtue of section 148 in respect of a payment of an amount not exceeding [<sup>F13</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>M39</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**

**F13** 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**

**M34** Source—1970 s.188(1); 1971 Sch.6 24; 1970(F) Sch.5 Pt.III 12(1)  
**M35** 1980 c. 63.  
**M36** Source—1972 s.73  
**M37** Source—1970 s.188(2)(b); 1974 s.21(3)  
**M38** Source—1970 s.188(3); 1981 s.31(1)  
**M39** Source—1970 s.188(4)-(6)

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## 189 Lump sum benefits on retirement.

<sup>M40</sup>A lump sum paid to a person [<sup>F14</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) it is a benefit paid in pursuance of any such scheme or arrangement as was referred to in section 220 of the 1970 Act or a retirement benefits scheme within the meaning of section 611 of this Act and the person to whom it is paid was chargeable to tax under section 220 of the 1970 Act or section 595 of this Act in respect of sums paid, or treated as paid, with a view to the provision of the benefit; or
- (c) it is paid under approved personal pension arrangements (within the meaning of Chapter IV of Part XIV).

### Textual Amendments

**F14** 1988(F) s.57 (which also amends 1973 s.14). Previously  
“on his retirement from an office or employment”.

### Marginal Citations

**M40** Source—1973 s.14; 1987 Sch.2 3

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

<sup>M41</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>M42</sup>Parliamentary Pensions etc. Act 1984 [<sup>F15</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>M43</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.

### Textual Amendments

**F15** Words in s. 190(b) inserted by Ministerial and other Pensions Act 1991 (c. 5, SIF 89), s. 4(10)

### Marginal Citations

**M41** Source—1972 s.72; 1984 s.29

**M42** 1984 c. 52.

**M43** 1979 c. 50.

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

- <sup>M44</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>M45</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

**M44** Source—1977 s.30

**M45** 1977 c. 8.

VALID FROM 27/07/1993

### *[<sup>F16</sup> Removal expenses and benefits]*

#### Textual Amendments

**F16** Ss. 191A, 191B and preceding cross-heading inserted (27.7.1993) by [Finance Act 1993 \(c. 34\)](#), s. 76, [Sch. 5 para.1](#)

### <sup>F16F17</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

**F17** Ss. 191A, 191B and preceding cross-heading inserted (27.7.1993) by [Finance Act 1993 \(c. 34\)](#), s. 76, [Sch. 5 para.1](#)

### <sup>F16F18</sup>**191B Removal benefits: beneficial loan arrangements.**

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

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- (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 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—

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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) Nothing in subsection (8) above shall affect the operation of paragraph 10 of Schedule 7 in relation to the priority given by that paragraph to a loan falling within sub-paragraph (1)(b) of that paragraph.
- (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**

**F18** Ss. 191A, 191B and preceding cross-heading inserted (27.7.1993) by [Finance Act 1993 \(c. 34\)](#), s. 76, [Sch. 5 para.1](#)

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

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

- (1) <sup>M46</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.



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- (2) <sup>M47</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>M48</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>M49</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>M50</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

- M46** 1970 s.181(1), Sch.12 Pt. III 3(3); 1974 s.21(1), (6)  
**M47** Source—1974 Sch.2 4  
**M48** Source—1974 Sch.2 6  
**M49** Source—1974 Sch.2 3(1), (2); 1984 s.30(9)-(12)  
**M50** Source—1974 Sch.2 5; 1977 s.31(2), 32(8)

VALID FROM 31/07/1998

#### <sup>F19</sup>192A Foreign earnings deduction for seafarers.

- (1) Where in any year of assessment—

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- (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>M51</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

**F19** 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

**M51** 1971 c. 61.

### 193 Foreign earnings and travel expenses.

- (1) <sup>M52</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.

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

- (2) <sup>M53</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>M54</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

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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>M55</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>M56</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.

#### Marginal Citations

- M52** Source—1977 Sch.1 1, 11  
**M53** Source—1977 s.32(1)  
**M54** Source—1977 s.32(2); 1986 s.34(2)  
**M55** Source—1977 s.32(3)-(5)  
**M56** Source—1977 s.32(8)

## 194 Other foreign travel expenses.

- (1) <sup>M57</sup>Where—

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- (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>M58</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>M59</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
  - (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

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subsection (5) was occasioned wholly and exclusively for the purpose of performing the duties concerned.

- (7) <sup>M60</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>M61</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

- M57** Source—1977 s.32(7); 1986 s.34(5)  
**M58** Source—1977 s.32(6); 1986 s.34(3)  
**M59** Source—1977 s.32(6A)-(6D); 1986 s.34(4)  
**M60** Source—1977 s.32(7A)-(7C); 1986 s.34(6)  
**M61** Source—1977 s.32(8)

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

- <sup>M62</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 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.

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- (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.
- (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

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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>M63</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**

**M62** Source—1986 s.37

**M63** 1986 s.38(4)

**196 Foreign pensions.**

<sup>M64</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**

**M64** Source—1974 s.22(3)

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

<sup>M65</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**

**M65** Source—1977 s.37(1), (2)

[<sup>F20</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**

**F20** S. 197A inserted (1988-89 and subsequent years of assessment) by Finance Act 1988 (c. 39), s. 46(4)

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

- C6** See—1988 ss.157, 158, 159—cars available for private use, car fuel and pooled cars. 1988 s.327—disabled persons' vehicle maintenance grant.
- C7** 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>F21</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.
- (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>M66</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.]



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#### Textual Amendments

**F21** 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

**M66** 1994 c.22.

VALID FROM 27/07/1999

#### [<sup>F21</sup>197A] **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.]

#### Textual Amendments

**F21** 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)

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VALID FROM 27/07/1999

**[<sup>F22</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**

**F22** S. 197AC inserted (with effect in accordance with s. 50(3) of the amending Act) by Finance Act 1999 (c. 16), s. 50(1)

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VALID FROM 11/05/2001

## <sup>F23</sup> Mileage allowances

### Textual Amendments

**F23** 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>F24</sup> Mileage allowances]

#### Textual Amendments

**F24** Ss. 197B-197F and preceding cross-heading inserted by Finance Act 1990 (c. 29), s. 23, Sch. 4

#### [<sup>F25</sup> 197B] **Limit on chargeable mileage profit.**

- (1) In a case where—
- 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,
  - in a subsequent year of assessment (the year concerned) he makes a mileage profit as respects an employment,
  - 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,
  - section 197E does not prevent this section from applying, and
  - 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—

$$A + D$$

- A is the taxed mileage profit for the base year.
- B is the employee's relevant mileage for the year concerned.
- C is the employee's relevant mileage for the base year.
- 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**

**F25** 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—
- finding the relevant amount for each of those employments in accordance with subsection (5) or (6) below, and
  - 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—
- the employment is not employment to which Chapter II of this Part applies, or
  - 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—
- the employment is employment to which Chapter II of this Part applies, and
  - 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—
- 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
  - 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)**

**C8** 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.]

VALID FROM 27/07/1993

*[<sup>F26</sup> Sporting and recreational facilities]*

**Textual Amendments**

**F26** 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>F26</sup>197G<sup>F27</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.



*Status: Point in time view as at 06/03/1992. This version of this chapter contains provisions that are not valid for this point in time.*

**Changes to legislation:** *Income and Corporation Taxes Act 1988, CHAPTER IV is up to date with all changes known to be in force on or before 09 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (2) 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 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.]

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### Textual Amendments

**F27** 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)

*Other expenses, subscriptions etc.*

## 198 Relief for necessary expenses.

- (1) <sup>M67</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>F28</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

**F28** 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

**M67** Source—1970 s.189; 1984 s.28(2)(a); 1971 s.47(1)(ii)

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VALID FROM 19/03/1997

**[<sup>F29</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—
  - (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,

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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
- (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.]

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### Textual Amendments

- F29** 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>M68</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 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

- M68** Source—1970 s.191

## 200 Expenses of Members of Parliament.

- <sup>M69</sup>An allowance—
- which is paid to a Member of the House of Commons; and
  - for which provision is made by resolution of that House, and
  - 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.

### Marginal Citations

- M69** Source—1984 s.28(1)

VALID FROM 27/07/1999

## <sup>F30</sup>~~200Z~~ Expenses of members of Scottish Parliament, National Assembly for Wales or Northern Ireland Assembly.

- (1) This section applies to payments made—
- to members of the Scottish Parliament under section 81(2) of the <sup>M70</sup>Scotland Act 1998,

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- (b) to members of the National Assembly for Wales under section 16(2) of the <sup>M71</sup>Government of Wales Act 1998, or
- (c) to members of the Northern Ireland Assembly under section 47(2) of the <sup>M72</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

**F30** 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

**M70** 1998 c.46.  
**M71** 1998 c.38.  
**M72** 1998 c.47.

VALID FROM 29/04/1996

#### <sup>F31</sup>200A Incidental 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>M73</sup>Ministerial and other Salaries Act 1975 (whether or not the person holding it is a person to whom a salary is paid or payable under the Act).

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- (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

**F31** 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

**M73** 1975 c. 27.

VALID FROM 01/05/1995

#### [<sup>F32</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—

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- (a) has at least one overnight stay away from that place; but
  - (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

**F32** 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>F33</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—



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- (a) the cost of providing any such training to the employee; or
  - (b) any related costs.
- (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

**F33** 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>F33</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—

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- (a) enabling the employee to enjoy the facilities or benefits for entertainment or recreational purposes unconnected with the imparting, instilling, 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>M74</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

**F33** 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

**M74** 1991 c. 31.

VALID FROM 19/03/1997

#### [<sup>F33</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

**F33** 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>F34</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>M75</sup>Learning and Skills Act 2000, or
- (b) regulations under section 1 of the <sup>M76</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

**F34** 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

**M75** 2000 c. 21.

**M76** 2000 asp 8.

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VALID FROM 28/07/2000

**[<sup>F34</sup>200F 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

**F34** 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>F34</sup>200G 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

**F34** 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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VALID FROM 28/07/2000

**[<sup>F34</sup>200H 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**

**F34** 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>F34</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**

**F34** 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>M77</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

M77 Source—1970 s.192

VALID FROM 01/05/1995

#### <sup>F35</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.

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- (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;
  - (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

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- 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 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

**F35** 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>F36</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>F37</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 and holds a current licence for the agency,
- (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>F38</sup>(2A)

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- (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—
- (a) “employment agency” means an employment agency within the meaning given by section 13(2) of the Employment Agencies Act 1973, and
  - (b) a person holds a current licence for an employment agency if he holds a current licence under that Act authorising him to carry on the agency.
- [ Subsection (3) of section 1 of the Industrial and Provident Societies Act 1965 (co-  
<sup>F39</sup>(3A) 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.
- [ Subject to subsection (4) above, a deduction by virtue of this section as regards a  
<sup>F40</sup>(4A) 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

- F36** S. 201A inserted by [Finance Act 1990 \(c. 29\), s. 77](#)
- F37** 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\(2\)\(6\)](#)
- F38** 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\(3\)\(6\)](#)
- F39** 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\(4\)\(6\)](#)
- F40** 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>M78</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.

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- (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—
  - (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>F41</sup>£600] in the case of any employee (however many offices or employments he holds or has held).
- (8) <sup>M79</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>M80</sup>In this section “charity” has the same meaning as in section 506.

#### Textual Amendments

**F41** 1990 s.24 for 1990-91 and subsequent years; previously “£120” for 1987-88, “£240”

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*for 1988-89 and £480 for 1989-90.*

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

**C9** See 1990 s.25—*donations to charity by individuals in respect of gifts made on or after 1 October 1990.*

**C10** For regulations see Part III Vol.5 (“Charitable deductions: approved schemes”).

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**Marginal Citations**

**M78** Source—1986 s.27(1)-(7); 1987 s.32

**M79** Source—1986 s.28(1)-(5)

**M80** Source—1986 s.27(8)

**Status:**

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