



Income Tax (Earnings and Pensions) Act 2003

2003 CHAPTER 1

PART 3

EMPLOYMENT INCOME: EARNINGS AND BENEFITS ETC. TREATED AS EARNINGS

CHAPTER 10

TAXABLE BENEFITS: RESIDUAL LIABILITY TO CHARGE

Introduction

201 Employment-related benefits

- (1) This Chapter applies to employment-related benefits.
- (2) In this Chapter—
 - “benefit” means a benefit or facility of any kind;
 - “employment-related benefit” means a benefit, other than an excluded benefit, which is provided in a tax year—
 - (a) for an employee, or
 - (b) for a member of an employee’s family or household,by reason of the employment. For the definition of “excluded benefit” see section 202.
- (3) A benefit provided by an employer is to be regarded as provided by reason of the employment unless—
 - (a) the employer is an individual, and
 - (b) the provision is made in the normal course of the employer’s domestic, family or personal relationships.

Status: Point in time view as at 16/11/2017.

Changes to legislation: Income Tax (Earnings and Pensions) Act 2003, Chapter 10 is up to date with all changes known to be in force on or before 22 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)

- (4) For the purposes of this Chapter it does not matter whether the employment is held at the time when the benefit is provided so long as it is held at some point in the tax year in which the benefit is provided.
- (5) References in this Chapter to an employee accordingly include a prospective or former employee.

202 Excluded benefits

- (1) A benefit is an “excluded benefit” for the purposes of this Chapter if—
 - (a) any of Chapters 3 to 9 of the benefits code applies to the benefit,
 - (b) any of those Chapters would apply to the benefit but for an exception, or
 - (c) the benefit consists in the right to receive, or the prospect of receiving, sums treated as earnings under section 221 (payments where employee absent because of sickness or disability).

[^{F1}(1A) But a benefit provided to an employee or member of an employee's family or household is to be taken not to be an excluded benefit by virtue of subsection (1)(c) so far as it is provided under optional remuneration arrangements.]

- (2) In this section “exception”, in relation to the application of a Chapter of the benefits code to a benefit, means any enactment in the Chapter which provides that the Chapter does not apply to the benefit.

But for this purpose section 86 (transport vouchers under pre-26th March 1982 arrangements) is not an exception.

Textual Amendments

- F1** S. 202(1A) inserted (with effect in accordance with Sch. 2 para. 62 of the amending Act) by [Finance Act 2017 \(c. 10\)](#), [Sch. 2 para. 47](#)

Cash equivalent of benefit treated as earnings

203 Cash equivalent of benefit treated as earnings

- (1) The cash equivalent of an employment-related benefit is to be treated as earnings from the employment for the tax year in which it is provided.
- (2) The cash equivalent of an employment-related benefit is the cost of the benefit less any part of that cost made good by the employee [^{F2}, to the persons providing the benefit, on or before 6 July following the tax year in which it is provided].
- (3) The cost of an employment-related benefit is determined in accordance with section 204 unless—
 - (a) section 205 provides that the cost is to be determined in accordance with that section, or
 - (b) section 206 provides that the cost is to be determined in accordance with that section.

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Textual Amendments

- F2** Words in s. 203(2) substituted (with effect in accordance with s. 1(14) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 1\(13\)](#)

[^{F3}203A Employment-related benefit provided under optional remuneration arrangements

- (1) Where an employment-related benefit is provided pursuant to optional remuneration arrangements—
 - (a) the relevant amount is to be treated as earnings from the employment for the tax year in which the benefit is provided, and
 - (b) section 203(1) does not apply.
- (2) To find the relevant amount, first determine which (if any) is the greater of—
 - (a) the cost of the employment-related benefit, and
 - (b) the amount foregone with respect to the benefit (see section 69B).
- (3) If the cost of the employment-related benefit is greater than or equal to the amount foregone, the “relevant amount” is the cash equivalent (see section 203(2)).
- (4) Otherwise, the “relevant amount” is—
 - (a) the amount foregone with respect to the employment-related benefit, less
 - (b) any part of the cost of the benefit made good by the employee, to the persons providing the benefit, on or before 6 July following the tax year in which it is provided.
- (5) For the purposes of subsections (2) and (3), assume that the cost of the employment-related benefit is zero if the condition in subsection (6) is met.
- (6) The condition is that the employment-related benefit would be exempt from income tax but for section 228A (exclusion of certain exemptions).
- (7) Where it is necessary for the purposes of subsections (2)(b) and (4) to apportion an amount of earnings to the benefit provided in the tax year, the apportionment is to be made on a just and reasonable basis.

In this subsection “earnings” is to be interpreted in accordance with section 69B(5).]

Textual Amendments

- F3** [S. 203A](#) inserted (with effect in accordance with Sch. 2 para. 62 of the amending Act) by [Finance Act 2017 \(c. 10\), Sch. 2 para. 48](#)

Determination of the cost of the benefit

204 Cost of the benefit: basic rule

The cost of an employment-related benefit is the expense incurred in or in connection with provision of the benefit (including a proper proportion of any expense relating partly to provision of the benefit and partly to other matters).

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205 Cost of the benefit: asset made available without transfer

(1) The cost of an employment-related benefit (“the taxable benefit”) is determined in accordance with this section if—

- [^{F4}(a) the benefit consists in an asset being made available for private use, and]
- (b) there is no transfer of the property in the asset.

[^{F5}(1A) In this section and section 205A, “private use” means private use by the employee or a member of the employee’s family or household.

(1B) For the purposes of subsection (1) and sections 205A and 205B, an asset made available in a tax year for use by the employee or a member of the employee’s family or household is to be treated as made available throughout the year for private use unless—

- (a) at all times in the year when it is available for use by the employee or a member of the employee’s family or household, the terms under which it is made available prohibit private use, and
- (b) no private use is made of it in the year.

(1C) The cost of the taxable benefit is—

- (a) the annual cost of the benefit determined in accordance with subsection (2), less
- (b) any amount required to be deducted by section 205A (deduction for periods when asset unavailable for private use).

(1D) In certain cases, the cost of the taxable benefit is calculated under this section in accordance with section 205B (reduction of cost of taxable benefit where asset is shared).]

(2) The [^{F6}annual cost of the] benefit is the higher of—

- (a) the annual value of the use of the asset, and
- (b) the annual amount of the sums, if any, paid by those providing the benefit by way of rent or hire charge for the asset,

together with the amount of any additional expense.

(3) For the purposes of subsection (2), the annual value of the use of an asset is—

- (a) in the case of land, its annual rental value;
- (b) in any other case, 20% of the market value of the asset at the time when those providing the taxable benefit first applied the asset in the provision of an employment-related benefit (whether or not the person provided with that benefit is also the person provided with the taxable benefit).

If those providing the taxable benefit first applied the asset in the provision of an employment-related benefit before 6th April 1980, paragraph (b) is to be read as if the reference to 20% were a reference to 10%.

(4) In this section “additional expense” means the expense incurred in or in connection with provision of the taxable benefit (including a proper proportion of any expense relating partly to provision of the benefit and partly to other matters), other than—

- (a) the expense of acquiring or producing the asset incurred by the person to whom the asset belongs, and
- (b) any rent or hire charge payable for the asset by those providing the asset.

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Textual Amendments

- F4** S. 205(1)(a) substituted (with effect in accordance with s. 8(5) of the amending Act) by [Finance Act 2017 \(c. 10\), s. 8\(2\)\(a\)](#)
- F5** S. 205(1A)-(1D) inserted (with effect in accordance with s. 8(5) of the amending Act) by [Finance Act 2017 \(c. 10\), s. 8\(2\)\(b\)](#)
- F6** Words in s. 205(2) substituted (with effect in accordance with s. 8(5) of the amending Act) by [Finance Act 2017 \(c. 10\), s. 8\(2\)\(c\)](#)

[^{F7}205A Deduction for periods when asset unavailable for private use

- (1) A deduction is to be made under section 205(1C)(b) if the asset mentioned in section 205(1) has been unavailable for private use on any day during the tax year concerned.
- (2) For the purposes of this section an asset is “unavailable” for private use on any day if—
- (a) that day falls before the day on which the asset is first available to the employee,
 - (b) that day falls after the day on which the asset is last available to the employee,
 - (c) for more than 12 hours during that day the asset—
 - (i) is not in a condition fit for use,
 - (ii) is undergoing repair or maintenance,
 - (iii) could not lawfully be used,
 - (iv) is in the possession of a person who has a lien over it and who is not the employer, not a person connected with the employer, not the employee, not a member of the employee's family and not a member of the employee's household, or
 - (v) is used in a way that is neither use by, nor use at the direction of, the employee or a member of the employee's family or household, or
 - (d) on that day the employee—
 - (i) uses the asset in the performance of the duties of the employment, and
 - (ii) does not use the asset otherwise than in the performance of the duties of the employment.

- (3) The amount of the deduction is given by—

$$U Y \times A$$

where—

U is the number of days, in the tax year concerned, on which the asset is unavailable for private use,

Y is the number of days in that year, and

A is the annual cost of the benefit of the asset determined under section 205(2).

- (4) The reference in subsection (2)(a) to the time when the asset is first available to the employee is to the earliest time when the asset is made available, by reason of the employment and without any transfer of the property in it, for private use.

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- (5) The reference in subsection (2)(b) to the time when the asset is last available to the employee is to the last time when the asset is made available, by reason of the employment and without any transfer of the property in it, for private use.

Textual Amendments

- F7** Ss. 205A, 205B inserted (with effect in accordance with s. 8(5) of the amending Act) by [Finance Act 2017 \(c. 10\)](#), s. 8(3)

205B Reduction of cost of taxable benefit where asset is shared

- (1) This section applies where the cost of an employment-related benefit (“the taxable benefit”) is to be determined under section 205.
- (2) If, for the whole or part of the tax year concerned, the same asset is available for more than one employee's private use at the same time, the total of the amounts which are the cost of the taxable benefit for each of those employees is to be limited to the annual cost of the benefit of the asset determined in accordance with section 205(2).
- (3) The cost of the taxable benefit for each employee is determined by taking the amount given by section 205(1C) and then reducing that amount on a just and reasonable basis.
- (4) For the purposes of this section, an asset is available for an employee's private use if it is available for private use by the employee or a member of the employee's family or household.]

Textual Amendments

- F7** Ss. 205A, 205B inserted (with effect in accordance with s. 8(5) of the amending Act) by [Finance Act 2017 \(c. 10\)](#), s. 8(3)

206 Cost of the benefit: transfer of used or depreciated asset

- (1) The cost of an employment-related benefit is determined in accordance with this section if—
 - (a) the benefit consists in the transfer of an asset, and
 - (b) the asset has been used, or has depreciated, since the person transferring the asset (“the transferor”) acquired or produced it.
- (2) The cost of the benefit is the market value of the asset at the time of the transfer.
- (3) But the cost of the benefit (“the current benefit”) is the higher of the market value of the asset at the time of the transfer and the amount calculated in accordance with subsection (5) if—
 - (a) the asset is not [^{F8}an excluded asset (see subsection (6))],
 - (b) the asset has previously been applied in the provision of a relevant employment-related benefit (whether or not the person provided with that benefit is also the transferee), and
 - (c) the transferor first applied the asset in the provision of an employment-related benefit after 5th April 1980.

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(4) In this section “relevant employment-related benefit” means an employment-related benefit the cost of which was to be determined in accordance with section 205.

(5) The amount referred to in subsection (3) is calculated in accordance with the following steps—

Step 1

Determine the tax years in which the asset was applied in the provision of a relevant employment-related benefit (including, if appropriate, the current tax year).

Step 2

Determine the cost of the benefit for each of those tax years in accordance with section 205.

Step 3

Calculate the total of the amounts determined under step 2.

Step 4

Calculate the market value of the asset at the time when the transferor first applied it in the provision of an employment-related benefit.

Step 5

Deduct the total calculated under step 3 from the market value calculated under step 4.

The result is the amount referred to in subsection (3).

[^{F9}(6) An excluded asset is—

- (a) a car (within the meaning of Chapter 6),
- (b) computer equipment that has previously been applied as mentioned in subsection (3)(b) in circumstances in which the conditions set out in section 320 were met, or
- (c) a cycle or cyclist's safety equipment that has previously been so applied in circumstances in which the conditions set out in section 244 were met.]

Textual Amendments

F8 Words in s. 206(3)(a) substituted (with effect in accordance with s. 17(4) of the amending Act) by [Finance Act 2005 \(c. 7\), s. 17\(2\)](#)

F9 S. 206(6) inserted (with effect in accordance with s. 17(4) of the amending Act) by [Finance Act 2005 \(c. 7\), s. 17\(3\)](#)

Supplementary provisions

207 Meaning of “annual rental value”

(1) For the purposes of this Chapter the “annual rental value” of land is the rent which might reasonably be expected to be obtained on a letting from year to year if—

- (a) the tenant undertook to pay all taxes, rates and charges usually paid by a tenant, and

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

208 Meaning of “market value”

For the purposes of this Chapter the market value of an asset at any time is the price which the asset might reasonably be expected to fetch on a sale in the open market at that time.

209 Meaning of “persons providing benefit”

For the purposes of this Chapter the persons providing a benefit are the person or persons at whose cost the benefit is provided.

210 Power to exempt minor benefits

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

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Special rules for scholarships

211 Special rules for scholarships: introduction

- (1) Sections 212 to 214 supplement the preceding provisions of this Chapter in the following ways—
 - section 212 provides for certain scholarships provided under arrangements entered into by an employer or a connected person to be regarded as provided by reason of an employment;
 - section 213 provides that this Chapter does not apply to certain scholarships provided under a trust fund or a scheme;
 - section 214 provides a different method of determining the cost of an employment-related benefit if it consists in the provision of a scholarship from a trust fund.
- (2) Section 215 limits the extent to which [^{F10}section 776(1) of ITTOIA 2005] (exemption for scholarship income) applies to a scholarship whose provision constitutes an employment-related benefit.
- (3) In this section and sections 212 to 215 “scholarship” includes a bursary, exhibition or other similar educational endowment.

Textual Amendments

- F10** Words in s. 211(2) substituted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 8 para. 298](#) (with [Sch. 9 paras. 1-9, 22](#))

212 Scholarships provided under arrangements entered into by employer or connected person

- (1) A scholarship which is provided for a member of an employee’s family or household is to be regarded for the purposes of this Chapter as provided by reason of the employment if it is provided under arrangements entered into by—
 - (a) the employer, or
 - (b) a person connected with the employer.
- (2) Subsection (1) applies whether or not the arrangements require the employer or the connected person to contribute directly or indirectly to the cost of providing the scholarship.
- (3) A scholarship is not to be regarded as provided by reason of an employment by virtue of subsection (1) if—
 - (a) the employer is an individual, and
 - (b) the arrangements are made in the normal course of the employer’s domestic, family or personal relationships.
- (4) This section is without prejudice to section 201(3).

213 Exception for certain scholarships under trusts or schemes

- (1) This Chapter does not apply to an employment-related benefit consisting in the provision of a scholarship if conditions A, B, C and D are met.

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- (2) Condition A is that the scholarship would not be regarded as provided by reason of the employment if section 201(3) and section 212 were disregarded.
- (3) Condition B is that the holder of the scholarship is a full-time student.
- (4) Condition C is that the scholarship is provided from a trust fund or under a scheme.
- (5) Condition D is that, in the tax year in which the scholarship is provided, not more than 25% of the total amount of relevant payments is attributable to scholarships provided by reason of a person's employment.
- (6) For the purposes of conditions B and D "full-time student" means a person who is in full-time education at a university, college, school or other educational establishment.
- (7) For the purposes of condition D—
 - "employment" includes any employment within the meaning of the employment income Parts (see section 4), whether or not it is a taxable employment under Part 2;
 - "relevant payments" means the payments made from the fund or scheme mentioned in condition C in respect of scholarships held by full-time students.

214 Scholarships: cost of the benefit

If an employment-related benefit consists in the provision of a scholarship from a trust fund—

- (a) section 204 does not apply, and
- (b) the cost of the benefit is the total of the payments made from the fund to the person holding the scholarship.

215 Limitation of exemption for scholarship income in [F11]section 776(1) of ITTOIA 2005]

If an employment-related benefit consists in the provision of a scholarship, [F12]section 776(1) of ITTOIA 2005] (exemption for scholarship income) applies only in relation to the holder of the scholarship.

Textual Amendments

- F11** Words in s. 215 heading substituted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 8 para. 299](#) (with [Sch. 9 paras. 1-9, 22](#))
- F12** Words in s. 215 substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 590](#) (with [Sch. 2](#))

Status:

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Changes to legislation:

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