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# Income Tax (Earnings and Pensions) Act 2003

## 2003 CHAPTER 1

### PART 3

EMPLOYMENT INCOME: EARNINGS AND BENEFITS ETC. TREATED AS EARNINGS

### CHAPTER 5

TAXABLE BENEFITS: LIVING ACCOMMODATION

*Accommodation costing £75,000 or less*

#### **105 Cash equivalent: cost of accommodation not over £75,000**

- (1) The cash equivalent [<sup>F1</sup>or modified cash equivalent] is to be calculated under this section if the cost of providing the living accommodation does not exceed £75,000.
- (2) The cash equivalent is the difference between—
  - (a) the rental value of the accommodation for the taxable period, and
  - (b) any sum made good by the employee to the person at whose cost the accommodation is provided that is properly attributable to its provision.
- [<sup>F2</sup>(2A) The modified cash equivalent is equal to the rental value of the accommodation for the taxable period.]
- (3) The “rental value of the accommodation” for the taxable period is [<sup>F3</sup>(subject to subsections (4) and (4A))] the rent which would have been payable for that period if the property had been let to the employee at an annual rent equal to the annual value.
- [<sup>F4</sup>(4) Subsection (4A) applies where—

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- (a) a rental amount is payable by the person (“P”) at whose cost the accommodation is provided in respect of the whole or part of the taxable period (“the relevant period”), and
  - (b) the amount so payable is payable at an annual rate greater than the annual value.
- (4A) Where this subsection applies—
- (a) subsection (3) does not apply to the relevant period, and
  - (b) instead the “rental value of the accommodation” for the relevant period is the rental amount payable by P in respect of the relevant period.
- (4B) A reference in subsection (4) or (4A) to a rental amount payable by P in respect of the relevant period is to the sum of—
- (a) any rent for the period payable by P, and
  - (b) any amount attributed to the period in respect of a lease premium (see sections 105A and 105B).]
- (5) If the rental value of the accommodation for the taxable period does not exceed any sum made good by the employee as mentioned in subsection (2)(b), the cash equivalent is nil.

#### Textual Amendments

- F1** Words in s. 105(1) inserted (with effect in accordance with Sch. 2 para. 62 of the amending Act) by [Finance Act 2017 \(c. 10\)](#), [Sch. 2 para. 16\(2\)](#)
- F2** [S. 105\(2A\)](#) inserted (with effect in accordance with Sch. 2 para. 62 of the amending Act) by [Finance Act 2017 \(c. 10\)](#), [Sch. 2 para. 16\(3\)](#)
- F3** Words in s. 105(3) inserted (with effect in accordance with s. 71(4)-(6) of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [s. 71\(2\)\(a\)](#)
- F4** [S. 105\(4\)-\(4B\)](#) substituted for s. 105(4) (with effect in accordance with s. 71(4)-(6) of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [s. 71\(2\)\(b\)](#)

#### [<sup>F5</sup>105A Lease premiums

- (1) For the purposes of section 105(4B)(b) an amount is attributed to the relevant period “in respect of a lease premium” if—
- (a) the property consists of premises, or a part of premises, that are subject to a lease,
  - (b) the premises are not mainly used by P for a purpose other than the provision of living accommodation to which this Chapter applies,
  - (c) the lease is for a term of 10 years or less, and
  - (d) the net amount payable by P in relation to the lease by way of lease premium is greater than zero.
- (2) The amount so attributed is—

$$AC \times C$$

where—

A is the relevant period (in days),

B is the term of the lease (in days), and

C is the net amount payable by P in relation to the lease by way of lease premium.

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- (3) For provision about the application of this section in relation to certain leases with break clauses, see section 105B.
- (4) For the purposes of this section the net amount payable by P in relation to a lease by way of lease premium is—
  - (a) the total amount (if any) that has been paid, or is or will become payable, by P in relation to the lease by way of lease premium, less
  - (b) any amount within paragraph (a) that has been repaid or is or will become repayable.
- (5) In this section and section 105B “lease premium” means any premium payable—
  - (a) under a lease, or
  - (b) otherwise under the terms on which a lease is granted.
- (6) In the application of this section to Scotland “premium” includes a grassum.

#### Textual Amendments

- F5** Ss. 105A, 105B inserted (with effect in accordance with s. 71(4)-(6) of the amending Act) by [Finance Act 2009 \(c. 10\), s. 71\(3\)](#)

### **105B Lease premiums in the case of leases with break clauses**

- (1) This section applies to a lease (“the original lease”) that contains one or more relevant break clauses.
- (2) For the purposes of this section—
  - (a) “break clause” means a provision of a lease that gives a person a right to terminate it so that its term is shorter than it otherwise would be, and
  - (b) a break clause contained in the original lease is “relevant” if the right to terminate the lease that it confers is capable of being exercised in such a way that the term of the original lease is 10 years or less.
- (3) For the purposes of section 105A—
  - (a) the term of the original lease, and
  - (b) the net amount payable by P in relation to the lease by way of lease premium, are to be determined on the assumption that any relevant break clause is exercised in such a way that the term of the lease is as short as possible.
- (4) If a relevant break clause is not in fact exercised in such a way that the term of the original lease is as short as possible, the parties to the lease are treated for the purposes of section 105A as if they were parties to another lease (a “notional lease”) the term of which—
  - (a) begins immediately after the time at which the term of the original lease would have ended, if that break clause had been so exercised, and
  - (b) ends at the time mentioned in subsection (5).
- (5) The term of a notional lease ends—
  - (a) at the time the term of the original lease would end, on the assumption that any relevant break clause that is exercisable only after the beginning of the term

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- of the notional lease is exercised in such a way that the term of the original lease is as short as possible, or
- (b) if earlier, the tenth anniversary of the beginning of the term of the original lease.
- (6) For the purposes of section 105A the net amount payable by P in relation to a notional lease by way of lease premium is, in the case of a notional lease the term of which ends under paragraph (a) of subsection (5)—
- (a) the net amount that would be payable by P in relation to the original lease by way of lease premium on the assumption mentioned in that paragraph, less
- (b) any part of that amount that has already been attributed to a period in respect of a lease premium under section 105(4B)(b).
- (7) For the purposes of section 105A the net amount payable by P in relation to a notional lease by way of lease premium is, in the case of a notional lease the term of which ends under paragraph (b) of subsection (5), the relevant proportion of—
- (a) the net amount that would be payable by P in relation to the original lease by way of lease premium, on the assumption that no break clause is exercised, less
- (b) any part of that amount that has already been attributed to a period in respect of a lease premium under section 105(4B)(b).
- (8) In subsection (7) “the relevant proportion” means—
- DE
- where—
- D is the term of the notional lease (in days), and
- E is the sum of—
- (a) the term of the notional lease (in days), and
- (b) the number of days by which the term of the original lease would exceed 10 years, on the assumption that no break clause is exercised.]

#### **Textual Amendments**

**F5** Ss. 105A, 105B inserted (with effect in accordance with s. 71(4)-(6) of the amending Act) by [Finance Act 2009 \(c. 10\), s. 71\(3\)](#)

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