

INCOME TAX (EARNINGS AND PENSIONS) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Glossary

Part 2: Employment income: charge to tax

Chapter 1: Introduction

Section 3: Structure of employment income Parts

35. This section sets out what is in Parts 2 to 7 of this Act and provides “the employment income Parts” as a collective label for them. It is new.

Section 4: “Employment” for the purposes of the employment income Parts

36. This section is new. It casts some light on what is meant by “employment”. It is not an attempt to delineate the boundary between employment and self-employment. That boundary depends on fact and the degree to which a number of indicators exist. This section is simply intended to confirm that employments that are clearly nowhere near that boundary are squarely within this Act, by providing a non-exhaustive definition.
37. This change of approach is explained in detail in *Note 1* in Annex 2.

Section 5: Application to offices and office-holders

38. This section sets out that the employment income Parts apply to offices and office-holders in the same way as they apply to employments and employees.
39. *Subsection (3)* provides a non-exhaustive definition of the term “office”. It is based on guidelines derived from case law. This change in approach is explained in detail in *Note 1* in Annex 2.

Chapter 2: Tax on employment income

Section 6: Nature of charge to tax on employment income

40. This section provides in *subsection (1)* that the charge to tax on employment income under Part 2 is split into a charge to tax on “general earnings” and “specific employment income”. The labels “employment income”, “general earnings” and “specific employment income” are new, and are explained in section 7.
41. *Subsection (2)* provides a signpost to section 9 which sets out how to work out the amount of general earnings or specific employment income that is charged to tax in a particular tax year.

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42. *Subsection (3)* is a pointer to Chapters 4 and 5 which derive from the Cases of Schedule E. Those Chapters set out the rules relating to residence, domicile etc that apply to general earnings. Those Chapters have no application to “specific employment income”.
43. *Subsection (4)* provides a signpost to section 13 which in turn makes clear who is liable for tax under this Part.
44. Subsections (1) to (4) are new, although subsection (1) derives in part from paragraphs 1 and 5 of section 19(1) of ICTA.
45. *Subsection (5)* provides the one exception to the basic rule that employment income is charged to tax on income from employments. This Act replaces all charges to tax under Schedule E, but there is one category of income from employment that is not charged to tax under Schedule E. The employment duties of specified types of divers and diving supervisors are treated as if they constitute a trade and are charged to tax under Schedule D. Subsection (5) of this section reflects the effect of section 314(1) of ICTA in removing the income from employment of those divers and diving instructors from the scope of Schedule E.

Section 7: Meaning of “employment income”, “general earnings” and “specific employment income”

46. This section sets out the definitions of these terms introduced in the preceding section. It is new. See *Notes 2 and 3* in Annex 2.
47. Those Notes explain in full why it is necessary to distinguish between the two elements to the employment income charged in this Part. The first element is “general earnings”, which relate to “emoluments” brought into charge by paragraph 1 of section 19(1) of ICTA. The basis of assessment for “general earnings” depends on the residence, ordinary residence and domicile status of the employee. The second element, “specific employment income”, relates to the free-standing charges under Schedule E, chargeable under paragraph 5 of section 19(1) of ICTA. The basis of assessment for “specific employment income” is blind to issues of residence, ordinary residence and domicile.

Section 8: Meaning of “exempt income”

48. This section provides the definition of exempt income for the purposes of the employment income Parts. It is new.

Chapter 3: Operation of tax charge

Section 9: Amount of employment income charged to tax

49. This is a new section that explains what amounts are charged to tax for each stream of employment income. *Subsection (2)* sets out that for earnings, the amount charged to tax is “net taxable earnings” – this is another new label. It describes the amount of income from the employment that has been allocated to a particular tax year by reference to the timing rules as determined by the Cases of Schedule E in section 19(1) of ICTA (now contained in Chapters 4 and 5 of this Part), less any available deductions.
50. *Subsection (3)* explains where to find the mechanics of how to calculate net taxable earnings in the following provisions of Part 2.
51. *Subsection (4)* sets out that, for specific employment income, the amount charged to tax is “net taxable specific income” – this is another new label. It is the amount allocated to that year by the relevant provisions less any available deductions.
52. *Subsection (5)* explains where to find the mechanics of how to calculate net taxable specific income in the following provisions of this Chapter.

53. *Subsection (6)* makes it clear that tax may only be charged under this Chapter for a particular year on taxable earnings and taxable specific income. *Paragraph (a)* derives from the closing words of paragraph 1 of section 19(1) of ICTA. *Paragraph (b)* is new.

Section 10: Meaning of “taxable earnings” and “taxable specific income”

54. “Taxable earnings” and “taxable specific income” are two more new labels to help identify income at the various stages from when it arises to when it becomes chargeable to tax in a particular tax year. This section explains each of those terms, setting out where to find the other provisions that set out particular rules for arriving at either “taxable earnings” or “taxable specific income”.

Section 11: Calculation of “net taxable earnings”

55. *Subsection (1)* sets out how to calculate “net taxable earnings” in a tax year.
56. This explicit explanation of the calculation is new. See *Note 4* in Annex 2.
57. The definition of “DE” is a pointer to the comprehensive list of all deductions available from earnings which appears in the opening Chapter of the Part dealing with deductions.
58. *Subsection (3)* is a signpost to what happens in the exceptional case that loss relief is available.
59. *Subsection (4)* gives effect to the general proposition that deductions may only be made from the earnings of the employment to which they relate. For example, section 198(1) says:
- (1) If the holder of an office or employment is obliged to incur and defray out of the emoluments of the office or employment
 - (a) qualifying travelling expenses, or
 - (b) any amount (other than qualifying travelling expenses) expended wholly, exclusively and necessarily in the performance of the duties of the employment,
 - (c) there may be deducted from the emoluments to be assessed the amount so incurred and defrayed.
60. It is clear from such wording that in order to arrive at “net taxable earnings” where there is more than one employment, there must be a separate calculation for each employment.

Section 12: Calculation of “net taxable specific income”

61. This section performs a similar function to section 11 but in respect of specific employment income, and so uses different letters of the alphabet to designate the two elements of the calculation. Like section 11, it is new. See *Note 4* in Annex 2.

Section 13: Person liable for tax

62. This section identifies the person liable for tax on the various kinds of employment income, and the various circumstances in which that tax charge arises. *Subsections (1)* to *(3)* are new. See *Note 5* in Annex 2.
63. Although the idea of identifying the person liable for tax on employment income is new, it does not change the current position where the employer has the primary liability to deduct tax under the PAYE provisions. Under ICTA employees *are* liable for the tax, but are entitled to pay only the net amount after taking off payments on account and deductions at source (see section 59B of TMA 1970).

64. *Subsections (4) and (5)* set out who is liable for tax on earnings received or remitted to the United Kingdom after the employee's death. They derive from section 202A(3) of ICTA.

Chapter 4: Taxable earnings: rules applying to employee resident, ordinarily resident and domiciled in UK

Overview

65. This Chapter sets out how to work out the amount of general earnings from an employment which are charged to tax in a particular tax year if the employee is resident, ordinarily resident and domiciled in the United Kingdom. Under ICTA such employees come within Case I of Schedule E.
66. This category of employees represents the vast majority of the people who are taxed in the United Kingdom on their employment income. All the rules relating to such employees appear together in one Chapter, leaving all the provisions for cases involving a non-UK element, such as non-resident employees or income representing chargeable overseas earnings ("foreign emoluments" in the language of ICTA), to be covered in Chapter 5. This means that the bulk of employees and their advisers will have to read no further than Chapter 4 of this Part to determine the amount of general earnings charged to tax in a year.
67. This approach does mean that some of the supplementary rules (for example about the meaning of receipt of money earnings) appear in both Chapters 4 and 5. The aim is that the reader will only have to look at one chapter to be able to work out what are the taxable earnings in any given year for any given employment.

Section 14: Taxable earnings under this Chapter: introduction

68. This introductory section sets out how the Chapter deals with the calculation of the taxable earnings in a year for an employee who is resident, ordinarily resident and domiciled in the United Kingdom. It is new.

Section 15: Earnings for year when employee resident, ordinarily resident and domiciled in UK

69. This section sets out the basic rule that the taxable earnings in such a year are all general earnings received in that year. It derives from Case I of Schedule E as set out in paragraph 1 of section 19(1) and section 202A(1) of ICTA.
70. *Subsection (3)* sets out the rule that the receipts basis is not affected by the fact that earnings may relate to a different tax year to that in which they are received or to a year when the employment is not held. It derives from section 202A(2) of ICTA.

Section 16: Meaning of earnings "for" a tax year

71. This section explains what is meant by earnings "for" a tax year. It is a new section in response to requests made during the consultation leading up to this Act which suggested that it would be a good idea to have this kind of clarification about what earnings are "for" a tax year. See *Note 6* in Annex 2.
72. *Subsection (2)* identifies the period that the earnings are "for", and *subsections (3) and (4)* explain how to work out the tax year that the earnings are "for" on the basis of the period determined in subsection (2). If the period spans more than one tax year then the earnings for that period should be apportioned between those years on a just and reasonable basis.
73. Some of the provisions in Part 3 that operate to treat income as earnings specify the year "for" which the income should be so treated. *Subsection (5)* makes it clear that section 16 does not displace the effect of those provisions in Part 3.

Section 17: Treatment of earnings for year in which employment not held

74. This section sets out how earnings from an employment should be treated if they would otherwise be considered as earnings for a year before or after that employment is held. It derives from paragraph 4A of section 19(1).
75. The rule in section 17 applies only to “general earnings”, ie emoluments or amounts treated as emoluments, thus subject to the Cases of Schedule E as set out in paragraph 1 of section 19(1) of ICTA.
76. Where the Schedule E legislation provides that an amount shall be treated as an emolument of an employment only if provided in a year when the employment is held, this Act reproduces that limitation. The sections in the benefits code make it clear that such amounts or benefits will only be treated as earnings if they are paid/provided in a year in which the employment is held. If they are paid/provided at any other time they will not be treated as earnings and will be outside the “general earnings” to which section 17 applies. *Subsection (4)* makes it clear that this section does not apply in connection with determining amounts to be treated as earnings under the benefits code. See *Note 7* in Annex 2.

Section 18: Receipt of money earnings

77. This section sets out the rules for determining when money earnings should be treated as received, providing for the first time a single rule for all money earnings. It derives from the first half of section 202B of ICTA. See also *Change 1* in Annex 1.
78. *Subsection (3)* provides the definition of “director” used for this purpose. It derives from section 202B(5) of ICTA.

Section 19: Receipt of non-money earnings

79. This section sets out the rules for determining when non-money earnings should be treated as received, excluding any money earnings. The section derives from section 202B (7) to (11) of ICTA. The exclusion of money earnings is new. See also *Change 2* in Annex 1.

Chapter 5: Taxable earnings: rules applying to employee resident, ordinarily resident or domiciled outside UK

Overview

80. This Chapter sets out, in cases not covered by Chapter 4, how to determine what general earnings from an employment are within the charge to UK tax in any particular year. The rules are set out for each category of employee in succession.
81. The residence, ordinary residence or domicile status and the place of and, in some cases, nature of duties are all relevant in determining the tax treatment of earnings. In the Schedule E legislation these factors and their consequences are somewhat condensed and do not appear in any logical order. This Chapter is organised so that an employee can easily see which sections apply to the earnings for a year because they all contain in the heading a description of which residence, ordinary residence or domicile conditions apply and (if applicable) what type of earnings the section applies to.

Section 20: Taxable earnings under this Chapter: introduction

82. This introductory section sets out how the Chapter deals with the calculation of taxable earnings in a year when the employee is resident, ordinarily resident or domiciled *outside* the United Kingdom, showing which section applies in which combination of circumstances. For example, an employee who is resident and ordinarily resident, but not domiciled, in the United Kingdom, can see from *subsection (1)(a)* and *(b)* that sections 21 and 22 are the sections to use in calculating taxable earnings for the year. The

list in subsection (1) also makes it clear that there are separate rules in separate sections to deal with chargeable overseas earnings, UK-based earnings and foreign earnings. Each of these terms is defined in the section dealing with that kind of earnings. This introductory material is new.

Section 21: Earnings for year when employee resident and ordinarily resident, but not domiciled, in UK, except chargeable overseas earnings

83. This section deals with those earnings that are, under the Schedule E legislation, still within Case I because they are not excepted from it as “foreign emoluments” by the operation of section 192 of ICTA. The label “overseas earnings” replaces “foreign emoluments” to describe earnings for a year in which the employee is resident and ordinarily resident but not domiciled in the United Kingdom that are from an employment with a foreign employer where the duties are all performed outside the United Kingdom.
84. This section derives from section 202A(1) of ICTA and appears as a separate category for the first time here. See *Note 8* in Annex 2.
85. *Subsection (3)* sets out the rule that the receipts basis is not affected by the fact that earnings may relate to a different tax year to that in which they are received or to a year when the employment is not held. It derives from section 202A(2) of ICTA.
86. *Subsection (4)* is a signpost to section 23 which describes how to calculate the amount of *chargeable* overseas earnings to be excluded from this section.

Section 22: Chargeable overseas earnings for year when employee resident and ordinarily resident, but not domiciled, in UK

87. This section deals with those earnings that the Schedule E legislation excepts from Case I as “foreign emoluments” by virtue of section 192 of ICTA.
88. *Subsections (1)* and *(2)* explain that, where this section applies, “taxable earnings” are the full amount of overseas chargeable earnings that are remitted to the UK. See *Note 9* in Annex 2.
89. *Subsection (3)* sets out the rule that the remittance basis is not affected by the fact that the earnings may relate to a different tax year to that in which they are remitted or to a year when the employment is not held. It derives from section 202A(2) of ICTA. It also includes a signpost to possible relief under section 35 in the cases of delayed remittances.
90. *Subsection (4)* is a signpost to section 23 which describes how to calculate the amount of chargeable overseas earnings within this section.
91. Normally, any deductions available would be subtracted from taxable earnings, under section 11 to give “net taxable earnings” – the amount chargeable to tax in that year. However, deductions have already been taken off in arriving at the amount of “chargeable overseas earnings” according to the calculation set out in section 23. *Subsection (5)* sets out that deductions taken off in arriving at “chargeable overseas earnings” should not be taken off again in arriving at the “net taxable earnings” relating to those chargeable overseas earnings.
92. Those deductions are, however, still available to set against any taxable earnings that remain subject to section 21. See *Note 8* in Annex 2.

Section 23: Calculation of “chargeable overseas earnings”

93. This section sets out what overseas earnings are and how to calculate “chargeable overseas earnings”. It derives from the description of “foreign emoluments” set out in section 192 of ICTA.

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94. Section 192(5) of ICTA says that the *amount* of the excepted emoluments is the amount remaining after any capital allowance and after any deductions under a series of listed provisions. Those listed provisions do not include all the provisions under which deductions could be allowed if one were simply computing an amount of taxable income. It is not clear why some provisions are mentioned and others not.
95. Section 192(5) has therefore been rewritten in section 23(3) of the Act to allow a person's "overseas earnings" to be reduced by *any* deductions. See *Change 3* in Annex 1. An example may serve to illustrate the effect of this change:
96. Suppose a taxpayer has foreign emoluments (overseas earnings) of £1,000, and deductions within the section 192(5) list of £200 plus other deductions of £100.
97. Under section 192(5) of ICTA the amount of foreign emoluments excluded from Case I would be £800, leaving £200 chargeable under Case I against which £200 of the taxpayer's total £300 deductions can be set. The net result is Case I charge = Nil, Case III charge = £800.
98. Under the rewritten legislation the amount of chargeable overseas earnings within section 22 would be £700, leaving £300 within section 21 against which all of the taxpayer's total £300 deductions can be set. The net result is section 21 charge = Nil, section 22 charge = £700.
99. The outcome is clearly in the taxpayer's favour.

Section 24: Limit on chargeable overseas earnings where duties of associated employment performed in UK

100. This section contains the anti-avoidance rules for earnings from associated employments. They derive from paragraph 2 of Schedule 12 to ICTA.
101. The effect of these rules is to limit the amount of overseas earnings taxed on the remittance basis because of the operation of sections 22 and 23 in cases where there are associated employments. The reference in *subsection (3)* to "section 23(3)" means that this section adopts the same approach as described in paragraph 95. See *Change 3* in Annex 1.
102. Where this section does apply a limit to the amount of general earnings computed under section 23 to be within section 22, any excess of the overseas earnings above that limit falls within section 21. This is set out in *subsection (7)*.

Section 25: UK-based earnings for year when employee resident, but not ordinarily resident, in UK

103. This section sets out how to calculate the taxable earnings in a year when the employee is resident but not ordinarily resident in the UK, and whose earnings are in respect of duties performed in the UK or from overseas Crown employment subject to UK tax (defined in section 28).
104. These rules derive from paragraph 1 of section 19(1) (Case II of Schedule E), section 132(4)(a) and section 202A(1)(a) of ICTA. See also *Note 10* in Annex 2.
105. *Subsection (3)* sets out the rule that the receipts basis is not affected by the fact that the earnings may relate to a different tax year to that in which they are received or to a tax year when the employment is not held. It derives from section 202A(2) of ICTA.

Section 26: Foreign earnings for year when employee resident, but not ordinarily resident, in UK

106. This section sets out how to calculate the taxable earnings in a year when the employee is resident but not ordinarily resident in the United Kingdom, when those earnings are

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neither in respect of duties performed in the United Kingdom nor from overseas Crown employment subject to UK tax, and so not within section 25.

107. These rules derive from paragraph 1 of section 19(1) (Case III of Schedule E) and section 202A(1)(b) of ICTA. See also *Note 9* in Annex 2.
108. *Subsection (3)* sets out the rule that the remittance basis is not affected by the fact that the earnings may relate to a different tax year to that in which they are remitted or to a year when the employment is not held. It derives from section 202A(2) of ICTA.

Section 27: UK-based earnings for year when employee not resident in UK

109. This section sets out what earnings are taxable earnings in a year when the employee is not resident in the United Kingdom. These rules derive from paragraph 1 of section 19(1) (Case II of Schedule E), section 132(4)(a) and section 202A(1)(a) of ICTA. See also *Note 10* in Annex 2.
110. *Subsection (3)* sets out the rule that the receipts basis is not affected by the fact that the earnings may relate to a different tax year to that in which they are received or to a tax year when the employment is not held. It derives from section 202A(2) of ICTA.

Section 28: Meaning of “general earnings from overseas Crown employment subject to UK tax”

111. This section explains what is meant by “qualifying earnings from overseas Crown employment subject to UK tax” in sections 25 to 27. It derives from section 132(4)(a) of ICTA. See also *Note 10* in Annex 2.
112. *Subsections (5) to (8)* derive from ESC A25. That concession operates to remove from the scope of UK income tax locally engaged low paid staff employed overseas by the Crown, in accordance with long-standing practice and in keeping with international treaty obligations. See *Change 4* in Annex 1.

Section 29: Meaning of earnings “for” a tax year

113. This section explains what is meant by earnings “for” a tax year. It is a new section in response to requests made during the consultation leading up to this Act which suggested that it would be a good idea to have this kind of clarification about what earnings are “for” a tax year. See *Note 6* in Annex 2. The counterpart to this section in Chapter 4 is section 16.
114. *Subsection (2)* identifies the period that the earnings are “for”, and *subsections (3) and (4)* explain how to work out the tax year that the earnings are “for” on the basis of the period determined in subsection (2). If the period spans more than one tax year then the earnings for that period should be apportioned between those years on a just and reasonable basis.
115. Some of the provisions in Part 3 that operate to treat income as earnings specify the year “for” which the income should be so treated. *Subsection (5)* makes it clear that section 29 does not displace the effect of those provisions in Part 3.

Section 30: Treatment of earnings for year in which employment not held

116. This section sets out how earnings from an employment should be treated if they would otherwise be considered as earnings for a year before or after that employment is held. It derives from paragraph 4A of section 19(1) of ICTA. Its counterpart in Chapter 4 is section 17.
117. Where the Schedule E legislation provides that an amount shall be treated as an emolument of an employment only if provided in a year when the employment is held, this Act reproduces that limitation. The sections in the benefits code make it clear that

such amounts or benefits will only be treated as earnings if they are paid/provided in a year in which the employment is held. If they are paid/provided at any other time they will not be treated as earnings and will be outside “general earnings” to which section 30 applies. *Subsection (4)* makes it clear that this section does not apply in connection with determining amounts to be treated as earnings under the benefits code. See *Note 7* in Annex 2.

Section 31: Receipt of money earnings

118. This section sets out the rules for determining when money earnings should be treated as received, providing for the first time a single rule for all money earnings. It derives from the first half of section 202B of ICTA. See also *Change 1* in Annex 1. Its counterpart in Chapter 4 is section 18.

Section 32: Receipt of non-money earnings

119. This section sets out the rules for determining when non-money earnings should be treated as received, excluding any money earnings. The section derives from section 202B(7) to (11) of ICTA. The exclusion of money earnings is new. See *Change 2* in Annex 1. The counterpart to this section in Chapter 4 is section 19.

Section 33: Earnings remitted to the UK

120. This section deals with the remittance of general earnings to the United Kingdom. This is relevant for general earnings charged under section 22 (chargeable overseas earnings for year when employee resident and ordinarily resident, but not domiciled, in the United Kingdom) and general earnings charged under section 26 (foreign earnings for year when employee resident, but not ordinarily resident, in the United Kingdom).
121. *Subsection (2)* derives from section 132(5) of ICTA. Apart from using the term “remitted to” in place of “received in”, the conditions are expressed in the same language. General earnings are treated as remitted to the United Kingdom if they are paid, used or enjoyed in the United Kingdom, or transmitted or brought to the United Kingdom in any manner or form.
122. *Section 132(5)* also contains a cross-reference to certain anti-avoidance measures contained in section 65(6) to (9) of ICTA dealing with constructive remittances to the United Kingdom that would not otherwise fall to be taxed under the general rule.
123. Instead of a cross-reference to those provisions, section 65(6) to (9) of ICTA have specifically rewritten, as they apply to remittances of general earnings, in *subsections (3) to (7)* of this section, and in section 34.
124. The provisions are concerned with anti-avoidance measures to counter the practice of taking out loans in the United Kingdom and subsequently arranging for the debt (or interest on the debt) to be repaid abroad out of unremitted general earnings. They also apply to loans taken out outside the United Kingdom, where the money borrowed is subsequently received in the United Kingdom. The provisions only apply if the taxpayer is ordinarily resident in the United Kingdom.
125. *Subsection (3)* states that the general earnings of a person who is ordinarily resident in the United Kingdom will be treated as remitted to the United Kingdom at the time when the general earnings are used outside the United Kingdom in or towards satisfying a UK-linked debt.
126. *Subsection (4)* explains what is meant by this new label “UK-linked debt”. It is: (a) a debt for money lent to the employee in the United Kingdom, or for the interest on money so lent; (b) a debt for money lent to the employee outside the United Kingdom and received in the United Kingdom or (c) a debt incurred satisfying a debt falling within (a) or (b).

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127. *Subsection (5)* states that, for debts falling within subsection (4)(b) or (c), it is immaterial whether the money lent is received into the United Kingdom before or after the general earnings are used to repay the debt. But, in the case of money received into the United Kingdom after the general earnings are used to repay the debt, the general earnings will not be treated as being remitted to the United Kingdom until the money lent is received there.
128. *Subsection (6)* extends the meaning of the reference to money being “received” in the United Kingdom in subsections (4) and (5) to include money being “brought to” the United Kingdom.
129. *Subsection (7)* is a pointer to the provisions of section 34, which also concern UK-linked debts.

Section 34: Earnings remitted to the UK: further provisions about UK-linked debts

130. This section contains more provisions about UK-linked debts.
131. *Subsection (2)* sets out the rules for determining when a person, defined as the “borrower”, will be treated for the purposes of the section as using the earnings towards satisfying a debt. Two conditions must be met, Conditions A and B.
132. Condition A is that the earnings are so dealt with that the lender holds money or property representing the earnings in such a way that the money or property is available to the lender to satisfy, or reduce, the debt. This is set out in *subsection (3)*.
133. *Subsection (4)* sets out Condition B, that there is an arrangement between borrower and lender such that the quantum of the outstanding debt or the timing of the repayment of the debt depends on the amount or value the lender holds as mentioned in subsection (3).
134. *Subsection (5)* explains when a debt for money lent can be treated as incurred towards satisfying another debt.
135. *Subsection (6)* extends the meaning of lender to include any person for the time being entitled to repayment and *subsection (7)* extends the meaning of “satisfy” (also for the purposes of section 33) to mean satisfy wholly or in part.

Section 35: Relief for delayed remittances

136. This section provides relief for employees whose earnings are taxable when remitted to the United Kingdom and who have been unable to remit their earnings in an earlier year because of local law or the impossibility of obtaining currency that could be transferred to the United Kingdom.
137. It derives from section 585 of ICTA.
138. *Subsection (1)* allows a claim for relief for delayed remittances. The claim may be for all or part of the delayed remittances. See *Change 5* in Annex 1.
139. *Subsection (2)* defines “delayed remittances” as earnings which are taxable when remitted to the United Kingdom, were received in an earlier year but remitted to the United Kingdom in a later year and which could not have been remitted before that later year.
140. Section 585 refers to income “arising”. This becomes “income received” in this section to reflect the receipts basis used for Schedule E. See *Change 6* in Annex 1.
141. In section 585(1)(c) the third condition for a claim to be made is that the inability to transfer the income to the United Kingdom “was not due to any want of reasonable endeavours” on the part of the employee. This condition has been omitted in rewriting this subsection. See *Change 5* in Annex 1.

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142. The final condition in section 585(1)(b) is the impossibility of obtaining foreign currency in that territory. “Foreign currency” has been rewritten in subsection 2(c)(iii) as “currency other than the currency of that country or territory”. See *Note 11* in Annex 2.
143. In rewriting that same condition the words “that could be transferred to the United Kingdom” have been added. See *Change 5* in Annex 1.
144. *Subsection (3)* explains the result of the claim for relief. The amount chargeable for the tax year in which the delayed remittances are received in the United Kingdom is reduced and the amount of the reduction becomes chargeable for an earlier year. The amount allocated to earlier years is in accordance with either subsection (4) or an election under section 36 (election in respect of delayed remittances).
145. *Subsection (4)* sets out the allocation to tax years if no election is made. In cases where the employment income of only one year cannot be remitted the amount of the income remitted in a later year is treated as if it had been remitted in the year in which it was received. The same applies when there is more than one year in which the income was received.

Section 36: Election in respect of delayed remittances

146. This section sets out in detail how the election allowed by section 35(3)(b) operates. It is new. See *Change 7* in Annex 1.
147. *Subsection (1)* explains that the section applies when a claim is made and the claimant has blocked earnings.
148. *Subsection (2)* defines “blocked earnings”.
149. *Subsection (3)* allows the claimant to decide to which year the delayed remittances are to be allocated.
150. *Subsection (4)* places a restriction on the tax year to which the income can be allocated.
151. *Subsection (5)* requires the amount to be allocated to a particular year to be specified in the election if more than one year is specified.
152. *Subsection (6)* requires that the amounts allocated to an earlier year must not exceed the amount of earnings which could not be remitted in that year.
153. *Subsection (7)* makes the election part of the claim and irrevocable.
154. *Subsection (8)* ensures that personal representatives are able to make the election.

Section 37: Claims for relief on delayed remittances

155. This section sets out the administrative provisions regarding the claim under section 35.
156. It derives from section 585 of ICTA.
157. *Subsection (1)* sets out the time limit within which the claim must be made.
158. *Subsection (2)* allows tax adjustments to be made for earlier years to implement the claim and election.
159. *Subsection (3)* overrides anything in the Income Tax Acts which would otherwise prevent the adjustments from being made, such as time limits.
160. *Subsection (4)* allows the claim to be made by the personal representatives of someone who would have been entitled to make it.
161. *Subsection (5)* provides for the collection and repayment of tax in the case of someone who has died. The personal representatives are liable in respect of the tax which has

become chargeable for an earlier year. This is the case, because of subsection (3), even where that year is otherwise time-barred.

162. *Subsection (6)* provides for additional tax to be assessed on the personal representatives and to be a debt of the estate.

Section 38: Earnings for period of absence from employment

163. The place where the duties of an employment are performed is relevant in determining which section in Chapter 5 applies for the purposes of calculating the taxable earnings for the year. This section sets out how to treat earnings for a period of absence from the employment, when there are, of course, no duties performed. It derives from section 132(1) of ICTA.

Section 39: Duties in UK merely incidental to duties outside UK

164. This section sets out that if the duties of the employment are performed outside the United Kingdom but there are some incidental duties performed in the United Kingdom, then those incidental duties are to be treated as being performed outside the United Kingdom. This section does not apply to employees claiming a deduction from seafarer's earnings, for which a separate rule appears in the Chapter dealing with that deduction. This section derives from section 132(2) and (3) of ICTA.

Section 40: Duties on board vessel or aircraft

165. This section sets out the rules for deciding where duties should be treated as being performed if they take place on a vessel or an aircraft. It derives from section 132(4)(b) of ICTA. Subsections (3) to (6) set out the rule for the treatment of seafarers carrying out duties on a ship. This derives from paragraph 5 of Schedule 12 to ICTA.
166. "Ship" takes its everyday meaning, subject to the exception in respect of an "offshore installation" as provided by the Mineral Workings (Offshore Installations) Act 1971. Further guidance on the meaning of those terms is given in the Inland Revenue Schedule E manual at paragraphs SE 33221 to 33222.

Section 41: Employment in UK sector of continental shelf

167. This section sets out that earnings from certain activities performed in the United Kingdom sector of the continental shelf are to be treated as earnings from duties performed in the United Kingdom. It derives from section 830(5) of ICTA.

Chapter 6: Disputes as to domicile or residence

Overview

168. The two sections 42 and 43 provide the means for an appeal against a decision by the Board of Inland Revenue concerning a person's ordinary residence or domicile status in the United Kingdom. The sections derive from section 207 of ICTA.

Section 42: Board to determine dispute as to domicile or ordinary residence

169. *Subsection (1)* introduces the purpose of the section. The phrase "is or has been" caters for the possibility that the dispute may relate to the person's domicile or residence status in a tax year prior to the dispute arising.
170. *Subsection (2)* provides the means to start the process of reconciling a disagreement about the status of the employee. Either side can ask for reference to the Board of Inland Revenue. A ruling would then be issued giving the Board's decision on the matter.
171. *Subsection (3)* lists the provisions which rewrite paragraph 1 of Schedule E – and section 192 of ICTA. In rewriting Schedule E a structure has been applied which

uses residence, domicile and place of performance of duties to identify the basis of chargeability and year of charge. The term “foreign emoluments” is not used, nor an equivalent to that label, as used in section 192 of ICTA. Instead a full description of the status of employer and employee is given, which leads to certain earnings being excluded from chargeability. This subsection includes a list of all those provisions which rewrite or are dependent on “foreign emoluments” as well as those which rewrite the Cases of Schedule E. Three of the provisions based on section 192(1) of ICTA also contain a reference to “ordinary residence” which is not derived from that section, nor from paragraph 1 of Schedule E.

172. Disputes relating to all these provisions will now be covered by section 42. See *Change 8* in Annex 1.

Section 43: Appeal against Board’s decision on domicile or ordinary residence

173. This section provides an appeal procedure where someone is aggrieved by the ruling of the Board of Inland Revenue made under section 42. Under section 207 of ICTA an application may be made for the question to be heard and determined by the Special Commissioners in “like manner as an appeal”.
174. On the grounds that similar processes should be the same (ie they should all be appeals), *subsection (1)* gives the right of appeal to a person who has received notice of the Board’s decision. This allows the person in question to take the matter further. The change to a straightforward appeal procedure is intended to simplify matters. Section 48(2) of TMA 1970 provides that various provisions of that Act as regards proceedings before the Commissioners apply to “appeals other than appeals against assessments” and to “proceedings...to be heard and determined in the same way as an appeal”. There is no real difference in law or practice between provisions that refer to an appeal and those that refer to proceedings where the Special Commissioners shall “hear and determine the matter in like manner as an appeal”. See *Change 9* in Annex 1.

Chapter 7: Application of provisions to agency workers

Overview

175. In broad terms, workers must normally be engaged under either a contract of service (in which case they are employed) or a contract for services (in which case they are self-employed). However, some workers may be contracted to an agency to perform duties for the agency’s client. This Chapter, deriving from section 134 of ICTA, provides that the remuneration of such agency workers is treated as if it is employment income.
176. The rules have been restructured into four sections. There is an increased focus in *subsection (2)(a)* of section 44 on the agency contract (defined in section 47) under which the services provided to the client are treated as duties of an employment held by the worker with the agency. The agency pays the remuneration in a normal case.

Section 44: Treatment of workers supplied by agencies

177. This section derives from section 134(1), (4) and (5) of ICTA.
178. The conditions are set out in *subsection (1)*. These have been set out in more colloquial English (personally providing services instead of rendering personal services) and in the case of *subsection (1)(c)*, it has been made more obvious that the person supervising the manner of the work is not specified.
179. If all of the conditions in this Chapter are satisfied, then it operates so that:
- the services provided by the worker under an agency contract are treated as the performance of the duties of an employment with the agency; and
 - the remuneration receivable is treated as earnings from that employment.

*These notes refer to the Income Tax (Earnings and Pensions)
Act 2003 (c.1) which received Royal Assent on 6th March 2003*

180. The words in brackets in *subsection (2)(b)*, which provide that the remuneration which is treated as earnings of an employment includes any remuneration paid by the client, derive from section 134(4) of ICTA.
181. The extra focus on the agency contract is achieved by the definition of this being taken to section 47 and more significantly by the words “with the agency” in the last part of section 44(2)(a). The duties (the services provided to the client) are the deemed duties of an employment held with the agency. See *Change 10* in Annex 1.

Section 45: Arrangements with agencies

182. This derives from section 134(5), (the reference to “excluded services”), and from section 134(6) of ICTA. The provision is aimed at remuneration paid by the agency while an agency worker is on their books, for a period in which the worker is not assigned to any particular client.
183. This section refers to “a third person (“the agency”)” in place of the phrase “another person” used in ICTA. See *Change 11* in Annex 1.

Section 46: Cases involving unincorporated bodies etc.

184. This section ensures that the agency rules apply in circumstances where the worker is a partner or member of an unincorporated body. They also apply in the situation in which the worker is a member of the agency itself, eg a professional association.
185. It derives from section 134(2) and (3) of ICTA.

Section 47: Interpretation of this Chapter

186. This section provides definitions of terms used in this Chapter. The agency contract is defined in terms deriving from section 134(1)(a) and (b). The scope of excluded services is set out in *subsection (2)* and derives from section 134(5) of ICTA.
187. There is a definition of remuneration in *subsection (3)* which derives from section 134(7) of ICTA. This section draws on the language of section 62, which defines earnings in relation to an employment, but with its reference to “every form of payment” the scope appears wider. The section 62 definition is limited to money or money’s worth. The definition here is restricted, however, by the words of *subsection (3)(a)*. This makes it clear that the purpose is to capture remuneration that would have been taxed had the worker been an employee of the agency or the client, but no more than that.
188. As with section 62 the language of this definition has been modernised, for example removing the word “perquisites”, while retaining the import of the source legislation.

Chapter 8: Application of provisions to workers under arrangements made by intermediaries

Overview

189. The provisions in this Chapter are commonly known as the “service company provisions”.
190. The material in this Chapter derives from Schedule 12 to FA 2000 and follows much the same order as that Schedule. References in the notes on this Chapter to paragraphs are all references to paragraphs of Schedule 12 to FA 2000 unless otherwise stated.
191. This Chapter does not include anything in respect of paragraphs 17 or 18, which concern the computation of profits of the intermediary and are to be dealt with in the rewrite of the trading income provisions.

192. This Chapter also excludes the material from paragraph 23, which is a transitional provision.

Section 48: Scope of this Chapter

193. *Subsection (1)* of this section provides for the Chapter to have effect where the services of a worker are provided through an intermediary.
194. *Subsection (2)* sets out that Chapter 7 of this Part, treatment of workers supplied by agencies, and section 555 of ICTA, payments to non-resident entertainers or sportsmen, both have priority over this Chapter. It derives from paragraphs 6 and 24.

Section 49: Engagements to which this Chapter applies

195. *Subsection (1)* sets out when the provisions of the Chapter apply. It derives from paragraph 1(1). There are three elements to be satisfied in order for the Chapter to apply:
- an individual (“the worker”) personally performs, or is under an obligation to perform, services for the purposes of a business carried on by another person (“the client”)
 - the services are provided not under a contract directly between the client and the worker but under arrangements involving a third party (“the intermediary”), and
 - the circumstances are such that, if the services were provided under a contract directly between the worker and the client, the worker would be regarded for income tax purposes as an employee of the client.
196. *Subsection (2)* expands on the interpretation of “business” given in section 61 for the purposes of subsection (1)(a). That interpretation only extends to trades, professions, vocations and Schedule A businesses. This would not normally include the activities of, say, a Government Department delivering public services, so subsection (2) is needed to bring in the other instances where individuals provide services through intermediaries. It derives from paragraph 1(2).
197. *Subsection (3)* expands on the meaning of “third party” used in subsection (1)(b). If the intermediary is a partnership, the worker would be a member of that partnership – subsection (3) is needed to make sure that such a partnership (or other unincorporated association) counts as a third party for the purposes of subsection (1)(b). This material derives from the paragraph 1(1)(b).
198. *Subsection (4)* ensures that the wide phrase “the circumstances” used in subsection (1)(c) can include the terms on which the services are provided and the contractual arrangements under which they are provided throughout the whole chain of relationships between worker and client, rather than focusing only on the contract to which the worker is a party. This provision is drawn from paragraph 1(4).
199. This Chapter does not include the material in paragraph 1(5). That sub-paragraph said:
The fact that the worker holds an office with the client does not affect the application of this Schedule.
200. Even without such a statement, the fact that a worker holds an office with the client has no relevance to the operation of these provisions. See *Note 12* in Annex 2.
201. *Subsection (5)* brings forward the explanation of the label “engagement to which this Chapter applies”. In Schedule 12 to FA 2000 the equivalent term is not explained until paragraph 21(1), although it is used several times in the early paragraphs of that Schedule.

Section 50: Worker treated as receiving earnings from employment

202. *Subsection (1)* describes what happens when all the relevant conditions (as set out in sections 51, 52 and 53) are met and the provisions of the Chapter apply. Where there is, in any tax year, a payment (or right to receive such payment) for services in circumstances as set out in section 49, and that payment is not chargeable to tax as employment income, then the intermediary is treated as making a deemed payment to the worker. That deemed payment is chargeable to income tax as earnings. (Later sections in this Chapter explain how to calculate the deemed payment).
203. The most notable change in this subsection from its source in paragraph 2(1) of Schedule 12 to FA 2000 is the new name for what was “the deemed Schedule E payment”, which has been shortened in common usage of that legislation to “the deemed payment”. To chime in with the language of Chapter 2 of this Part, this is now “the deemed employment payment”.
204. *Subsection (2)* sets out that a single deemed employment payment is treated as being made in respect of all engagements in relation to which the intermediary is treated as making a payment to the worker during the year. This derives from paragraph 2(3).
205. *Subsection (3)* sets out when the single payment mentioned in subsection (2) should be treated as being made. This derives from paragraph 2(2).
206. *Subsection (4)* introduces the label “relevant engagements”, which means any engagements in relation to which the intermediary is treated as making a payment to the worker during the year. This derives from paragraph 2(3).

Section 51: Conditions of liability where intermediary is a company

207. As suggested by the heading, this section is only of interest if the intermediary is a company. It derives from paragraph 3.
208. *Subsection (1)* sets out one negative condition and two alternative positive conditions. The negative condition is that the intermediary should not be an associated company of the client. If the intermediary is associated with the client then this Chapter will not apply.
209. *Subsection (2)* sets out a special test for whether the company is associated with the client for the purposes of this paragraph. It derives from paragraph 3(2).
210. It incorporates a minor change to the law. The normal meaning of “associated company” is given in section 416 of ICTA. That definition says that two companies are associated if one has control of the other, or if they are both controlled by the same person or persons. It is imported for the purposes of this Chapter by section 61. But paragraph 3(2) only envisages common control under a maximum of two people - the worker and another person. This subsection widens the definition of “associated company” for the purposes of section 51 to include companies that are under the common control of the worker together with more than one other person. See *Change 12* in Annex 1.
211. One of the positive conditions mentioned in subsection (1) is that the worker has a material interest in the company. This catches the most obvious cases where a company is being used as an intermediary, where the worker has some say in the operation of the company. *Subsection (4)* sets out the definition of “material interest” for this purpose. That definition includes a reference to “a participator”, a term which is defined in *subsection (5)*.

Section 52: Conditions of liability where intermediary is a partnership

212. As suggested by the heading, this section is only of interest if the intermediary is a partnership. It derives from paragraph 4.

213. *Subsection (2)* sets out the situations where liability may arise because the worker has a say in the operation of the partnership, whether that is because:
- the worker (alone or with relatives) is entitled to more than 60% of the profits of the partnership;
 - most of the profits of the partnership come from one client (or that client's associates) in respect of services provided by the worker to which this Chapter applies; or
 - the worker is a member of the partnership whose share of partnership profits is based on the amount of income generated by his/her provision of services to which this Chapter applies.
214. The alternative test set out in *subsection (3)* is designed to catch the cases where the worker is not paid as a member of the intermediary partnership, but rather as an individual. This condition looks at what is actually going on between the worker, the intermediary and the client. It is satisfied if the worker receives (or is entitled to receive) direct from the intermediary something that can reasonably be taken to be remuneration for services provided to the client.

Section 53: Conditions of liability where intermediary is an individual

215. This section is only of interest where the intermediary is an individual. It is drawn from paragraph 4. The condition looks at what is actually going on between the worker, the intermediary and the client. It is satisfied if the worker receives (or is entitled to receive) direct from the intermediary something that can reasonably be taken to be remuneration for services provided to the client.

Section 54: Calculation of deemed employment payment

216. *Subsection (1)* sets out a method statement to show how to calculate the deemed employment payment. It derives from paragraph 7.
217. *Steps 1* and *2* contain a cross-reference to section 55, so that readers know where to find out what amount should be taken into account in respect of any benefits.
218. After *Step 2*, all the remaining steps deduct various amounts. *Step 3* contains a statement to the effect that if the result of that, or any later step, is nil or a negative amount, then there is no deemed employment payment.
219. *Step 3* also contains a cross-reference to the deductions provisions in Chapters 1 to 5 of Part 5 so that the reader can see where to look to find out what kind of expenses may be deducted.
220. *Step 8* of the method statement explains the operations involved in deducting the notional national insurance contributions.
221. The method statement concludes with a statement that the result represents the deemed employment payment.
222. *Subsection (2)* explains what to include in *Step 1* of the calculation of the deemed payment if the intermediary has received amounts under deduction of tax because of the operation of section 559 of ICTA (sub-contractors in the construction industry). It is drawn from paragraph 8.
223. *Subsection (3)* provides that amounts deducted at *Step 3* of the method statement may include certain reimbursed expenses. This derives from section 38(2) of FA 2002.
224. *Subsection (4) and (5)* provide that mileage allowance relief may be included in amounts deducted at *Step 3* of the method statement. This derives from paragraph 7B as introduced by section 38(2) of FA 2002.

225. *Subsection (6)* is new. It applies for the purposes of working out the amount to be deducted at *Step 3* of the method statement in respect of travel expenses. Entitlement to travel expenses depends on whether or not a workplace is “temporary” and where the worker is based over the course of the employment. *Subsection (6)* allows such travel expenses to be deducted at *Step 3* as would have been available during the combined period of all the relevant engagements as if that combined period was a continuous employment with the intermediary. This new rule is a minor change to the law. See *Change 13* in Annex 1.
226. *Subsection (7)* allows for mileage allowance payments or passenger payments to be deducted at *Step 7* of the method statement. This derives from paragraph 7B as introduced by section 38(2) of FA 2002.
227. It is quite likely that the intermediary will receive payments from the client to cover the services of more than one worker or to cover the services of a worker and other things (such as materials, reimbursed fees to third parties etc). *Subsection (8)* sets out that in such a case any apportionment required to arrive at the amount attributable to the services of a single worker should be on a just and reasonable basis. It derives from paragraph 9.

Section 55: Application of rules relating to earnings from employment

228. This section explains how to arrive at the amounts to be used in the various steps of the method statement outlined in section 54(1). It derives from paragraph 10. Broadly it specifies that the normal rules for computing employment income should apply when working out the amounts to go into the method statement.
229. One place where paragraph 10 departs slightly from the normal rule for employment income is in sub-paragraph (5), which deals with the time that a payment or benefit should be treated as received. This reads:
- ((5) A payment or benefit is treated as received-
- (a) in the case of a payment or cash benefit, when payment is made of or account of the payment or benefit;
- in the case of a non-cash benefit, when it is used or enjoyed.
230. *Subsection (5)* of this section provides a more detailed explanation of when a non-cash benefit should be treated as received. This is a minor change to the law. See *Change 14* in Annex 1.

Section 56: Application of Income Tax Acts in relation to deemed employment

231. This section ensures that the deemed employment payment is treated in exactly the same manner as if it were an actual payment of salary made by the intermediary, as employer, to the worker as employee. It derives from paragraph 11.

Section 57: Earlier date of deemed employment payment in certain cases

232. As set out in section 50(3) the basic timing rule for the deemed payment is that it is treated as being made at the end of the tax year in question. This section sets out what earlier date should be taken for payment of the deemed payment if there is a break in the worker-intermediary relationship during the tax year in question. It derives from paragraph 12, as amended by section 38(3) of FA 2002.
233. *Subsection (1)* sets the scene and says that where there is such a break (relevant event), then the deemed payment is treated as being made immediately before it, or before the first of them if there are more than one.
234. *Subsection (2)* lists the kinds of break in the worker-intermediary relationship that count as relevant events if the intermediary is a company. *Subsections (3)* and *(4)* list the

kinds of break in the worker-intermediary relationship that count as relevant events where the intermediary is a partnership and where the intermediary is an individual.

235. *Subsection (5)* emphasises that this section only affects the time at which the deemed payment is treated as being made. It does not affect the calculation of the deemed payment, which is still based on amounts received in the tax year.

Section 58: Relief in case of distributions by intermediary

236. Where the intermediary is a company, it may pay distributions to the worker if the worker is a shareholder in the company. Since April 1999, UK companies have not had to pay ACT on distributions made. But the recipient of any distributions is taxable on them under Schedule F. So there is a possibility of double taxation in that the worker might have to pay tax under Schedule E on the deemed payment as well as on the actual amount of any distributions received. This section allows an intermediary that is a company to make a claim for relief to remove the possibility of double taxation. It derives from paragraph 13.
237. *Subsection (2)* describes how a claim to relief under this section should be made. It includes a statement of the time limit for such a claim. There is no specified time limit for making the claim in Schedule 12. This means the default time limit for claims (in section 43 of TMA 1970) applies, so that the claim must be made not more than five years following the 31 January following the tax year during which the distribution is made. That time limit is reproduced here to save users having to refer to another Act.
238. *Subsection (3)* describes the method of delivery of the relief claimed. It allows the Inland Revenue to direct that the relief be given by whatever means appears appropriate.
239. *Subsection (4)* makes it clear that in a case where there is a distribution and a deemed employment payment, it is the distribution that is reduced, by setting the employment income payment against it.

Section 59: Provisions applicable to multiple intermediaries

240. There may be a chain of intermediaries between the worker and the client.
241. *Subsections (2)* and *(3)* contain provisions derived from paragraph 16 concerning the intermediaries' responsibility to operate PAYE on deemed payments made to the worker. *Subsection (2)* makes all the relevant intermediaries involved in the same relevant engagement jointly and severally liable for amounts due as a result of the operation of PAYE on the deemed payment in respect of the engagement common to all the intermediaries, plus (if applicable) any other relevant engagements. *Subsection (3)* provides a get-out for any intermediaries who have not received any payments or benefits in respect of the common relevant engagement or any other relevant engagement.
242. *Subsections (4)* and *(5)* prevent any double counting of amounts when calculating the deemed payments of the intermediaries where there is more than one intermediary. It applies where there has been some kind of payment (or benefit provided) from one relevant intermediary to another in respect of a relevant engagement. In such a case, a reduction is made in the amount to be taken into account at *Steps 1* and *2* of the deemed payment calculation. This material derives from paragraph 15.
243. *Subsection (6)* says that, subject to subsections (2) to (5), the Chapter applies to each intermediary separately. *Subsection (7)* explains the label "relevant intermediary", used in this section. These two subsections derive from paragraph 14.

Section 60: Meaning of "associate"

244. This section deals with the meaning of "associate". This term is used in sections 50(1)(b), 51(3)(a) and (b) and 52(2)(b)(ii). It derives from paragraph 19.

245. The definition of an employee benefit trust now appears in Chapter 11 of Part 7.

Section 61: Interpretation

246. This interpretative section derives from paragraph 21.
247. *Subsection (1)* points out where the various terms used in the Chapter are defined.
248. *Subsection (2)* ensures that any payments or benefits received or receivable from a partnership or unincorporated association include any that a person is or may be entitled to receive in his capacity as a member of that partnership or association.
249. *Subsection (3)* treats anything done by or in relation to an associate of an intermediary as if it were done by or in relation to the intermediary. It also treats anything provided to an individual's family or household as if it were provided to the individual.
250. *Subsection (4)* treats (for the purposes of this Chapter) a man and a woman who live together as husband and wife as if they were married to each other. This extends into the definition of "associate" (defined in section 60(1) as having the same meaning as in section 417(3) and (4) of ICTA).