

INCOME TAX (EARNINGS AND PENSIONS) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Glossary

Part 3: Employment income: earnings and benefits etc. treated as earnings

Chapter 3: Taxable benefits: expenses payments

Overview

276. This Chapter deals with the charge to tax on expenses as taxable benefits. The Chapter applies to any employee other than those excluded under Chapter 11 of Part 3 of this Act.

Section 70: Sums in respect of expenses

277. This section derives from section 153 of ICTA and gives the two occasions when the charge to tax on sums paid in respect of expenses applies.

278. *Subsection (1)*, which derives from section 153(1), deals with the first occasion. It states that this Chapter applies to a sum paid in respect of expenses to an employee in a tax year. The sum must be paid “by reason of the employment”. That expression is defined in section 71 of this Act.

279. *Subsection (2)*, which derives from section 153(3), deals with the second occasion. It states that this Chapter applies when a sum is “paid away” by an employee in a tax year where the conditions set out in paragraphs (a), (b) and (c) apply. The condition under (c) refers to the fact that the sum is paid away “in respect of expenses”. See *Change 17* in Annex 1.

280. If all or part of the sum which is put at the disposal of the employee in respect of expenses is paid away, but not in respect of expenses, the tax charge may be as earnings in section 62 of this Act or as an amount treated as earnings by virtue of Chapter 10 of Part 3 of this Act (Taxable benefits: residual liability to charge).

281. *Subsections (3) and (4)* apply for the purposes of sums paid under subsection (1) or paid away under subsection (2). They make it explicit that, if the employment is held at some time in the tax year in which the sum is paid to the employee or paid away by the employee, it is immaterial whether or not the employment is held at the time of payment. Subsection (4) further clarifies this proposition by stating that references to an employee may therefore include a former or a prospective employee. These provisions derive from and clarify the meaning of the words “where in any year a person is employed” found in section 153(1). See *Note 14* in Annex 2.

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

282. *Subsection (5)* derives from the words in section 153(1) “apart from this section, are not chargeable to tax as his income”. The most likely charge will be as earnings by virtue of section 62 of this Act. An example of this is a round sum expenses allowance.

Section 71: Meaning of paid or put at disposal by reason of the employment

283. This section derives from section 168(3) of ICTA. It provides a definition of the words “by reason of the employment” for the purposes of this Chapter.

Section 72: Sums in respect of expenses treated as earnings

284. This section derives from section 153(1) and (2) of ICTA.
285. *Subsection (1)* derives from part of section 153(1). In addition, the tax year for which the sums are treated as earnings is specified here. See *Note 7* in Annex 2.
286. *Subsections (2)* and *(3)* derive from section 153(2) and indicate that deductions allowed by the provisions listed in subsection (3) may be claimed in respect of the sums treated as earnings.