

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 1: Earnings

Section 62: Earnings

251. This section sets out what constitutes the primary ingredient of employment income: earnings. It derives from section 131 of ICTA. The “money’s worth” principle incorporated in *subsection (2)* derives from long-established case law. See *Note 13* in Annex 2.
252. The definition of earnings incorporates several suggestions received during the consultation process leading up to this Act to bring the language more up to date. In particular “emolument” does not now appear until *subsection (2)(c)*.

Chapter 2: Taxable benefits: the benefits code

Overview

253. Before 1948 there was no legislation specific to benefits. Benefits were only chargeable to tax if they fell within the definition of emoluments, that is if they were “perquisites and profits whatsoever”.
254. It was established by case law in *Tennant v Smith (1892) 3 TC 158* that a non-cash benefit given by an employer to an employee because of the employment would only be a chargeable emolument if it was “money’s worth”.
255. Finance Act 1948 brought in the first charge based on the cost of provision of benefits. Over the years that followed many additional provisions were introduced dealing with specific benefits, plus a number of ESCs and statements of practice. Many of the benefits provisions apply only to those with annual earnings of £8,500 or more.
256. The benefits code, set out in Chapters 2 to 11 of this Part, provides a coherent structure for all those provisions. There is now only a minority of employees earning less than £8,500. Accordingly, it seems more logical to apply the rules to everyone and then to exclude the “lower-paid”.
 - Chapter 2 provides the introduction to the benefits code
 - Chapters 3 to 9 contain the provisions that identify a specific type of benefit and explain how to calculate the appropriate taxable amount.

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- Chapter 10 is a “sweep-up” provision, bringing in anything not in Chapters 3 to 9.
 - Chapter 11 identifies employees who count as “lower-paid” and explains which chapters do not apply to them.
257. The introduction of a coherent benefits code, applying to all except the “lower-paid” is new.
258. The sections of ICTA which treat amounts as emoluments and from which Chapters 3 – 10 and sections 222 and 223 of this Act derive make no mention of the year “for” which they are so treated other than in section 162(5) and section 162(6). Instead a variety of terms are used. In Chapter 2 of Part 5 of ICTA the term is “treated as an emolument and accordingly chargeable to income tax under Schedule E”. In those sections which are not in Chapter 2 of Part 5 the terms used are “treated as having received an emolument” – sections 141 and 142, “assessable to income tax under Schedule E” – section 144A and “treated for the purposes of Schedule E as being in receipt of an emolument” – sections 145 and 146.
259. All of these terms provide the route into the Cases of Schedule E, so that either the receipts or remittance basis applies to the emoluments. The structure of Chapter 3 of Part 2 of this Act requires identification of what are general earnings for a tax year so that the provisions of Chapter 4 or 5 of Part 2 can be used to find the tax year in which the earnings are received or remitted.
260. What is implicit in the relevant sections of ICTA has been made explicit in this Act by stating for which year the amounts are treated as earnings in the following provisions:-
- Section 72 (Sums in respect of expenses treated as earnings)
 - Section 81 (Benefit of cash voucher treated as earnings)
 - Section 87 (Benefit of non-cash voucher treated as earnings)
 - Section 94 (Benefit of credit-token treated as earnings)
 - Section 102 (Benefit of living accommodation treated as earnings)
 - Section 120 (Benefit of car treated as earnings)
 - Section 149 (Benefit of car fuel treated as earnings)
 - Section 154 (Benefit of van treated as earnings)
 - Section 175 (Benefit of taxable cheap loan treated as earnings)
 - Section 188 (Release or writing off of loan treated as earnings)
 - Section 193 (Application of section 175 to notional loan)
 - Section 203 (Cash equivalent of benefit treated as earnings)
 - Section 222 (Payments by employer on account of tax)
 - Section 223 (Payments on account of director’s tax)
261. This change in approach is described more fully in *Note 7* in Annex 2.

Section 63: The benefits code

262. This section explains which chapters of this Part come together to form the benefits code. It is new.

Section 64: Relationship between earnings and benefits code

263. This section provides a rule for the case where two amounts would otherwise be treated as earnings in respect of the same benefit, one under section 62 (earnings) of this Act and the other under the benefits code.
264. *Subsections (1) and (2)* derive from Inland Revenue practice, as set out in SE 21640. See *Change 15* in Annex 1.
265. *Subsections (3) to (5)* deal with the exceptions to the rule in subsections (1) and (2), giving the provisions which apply within the relevant chapters of the benefits code.

Section 65: Dispensations relating to benefits within provisions not applicable to lower-paid employment

266. This section, in defined circumstances and subject to certain conditions being met, disapplies the provisions of the benefits code for specified payments, benefits or facilities provided for employees. That reduces the administrative burden on the person responsible for dealing with the payroll aspects of the employee's employment and on the Inland Revenue. It also means that less information needs to be included in the employee's self-assessment return. This section derives from section 166 of ICTA.
267. This section is in Chapter 2 of Part 3, which is headed "Taxable benefits: the benefits code". That is an appropriate location because a dispensation is closely linked with the benefits code and is only applicable to an employee who is not lower-paid.
268. In *subsection (1)* the reference to "the inspector" in the source legislation has been replaced by the reference to "the Inland Revenue". See *Change 158* in Annex 1.
269. *Subsection (1)(a)* has the words "to or" inserted before "for", in relation to payments made to employees. That reflects how the Inland Revenue apply the source legislation, even though it is not quite so worded.
270. *Subsection (4)* uses the term "dispensation" for the notice that the Inland Revenue gives to the person who has sought it, to authorise the application of this section to the specified payments, benefits or facilities. The section also characterises the dispensation as a notice, which, by virtue of the definition of that word in section 832(1) of ICTA, means that it must be in writing. Taken together these two changes formalise the common name for the authorisation given and confirm the current practice that it must be in writing. See *Change 16* in Annex 1.
271. *Subsection (6)* has a minor change to the process for the revocation of a dispensation that has been given. Instead of requiring notice of the change to be "served" on the person to whom the dispensation was given the provision now requires it to be "given". See *Change 16* in Annex 1.

Section 66: Meaning of "employment" and related expressions

272. This section sets out the meaning of "employment" and related expressions for the purposes of the benefits code. It derives from section 168(2) of ICTA.

Section 67: Meaning of "director" and "full-time working director"

273. This section provides definitions of "director" and "full-time working director" for the purposes of the benefits code. It derives from section 168(8) to (10) of ICTA.

Section 68: Meaning of "material interest" in a company

274. This section provides the definition of "material interest" in a company for the purposes of the benefits code. It derives from section 168(11) of ICTA.

Section 69: Extended meaning of “control”

275. This section provides the definition of “control” for the purposes of the benefits code. It derives from section 168(12) of ICTA.

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.
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.

Chapter 4: Taxable benefits: vouchers and credit-tokens

Overview

287. This Chapter sets out the amount charged on the benefit of certain cash vouchers, non-cash vouchers and credit-tokens which are provided by reason of an employee's employment. The cash equivalent of the benefit is treated as earnings from the employment.
288. The sections in this Chapter derive from sections 141 to 144 of ICTA.
289. Chapter 6 of Part 4 of this Act contains a number of exemptions from the charge on the benefit of vouchers and credit-tokens.
290. This Chapter is not listed in section 216 of this Act (provisions not applicable to lower-paid employments). Lower-paid employees are therefore not excluded from the charge.

Section 73: Cash vouchers to which this Chapter applies

291. This section sets out the cash vouchers to which this Chapter applies. It derives from section 143(1) of ICTA.
292. If an employer who is an individual provides such a voucher for personal reasons, it is not regarded as provided by reason of the employment. The disregard of vouchers provided by an individual for personal reasons is a minor change to the law. See *Change 18* in Annex 1.
293. *Subsection (3)* determines the time of receipt for a cash voucher appropriated to the employee. This is particularly relevant for the operation of PAYE.

Section 74: Provision for, or receipt by, member of employee's family

294. This section extends provision for or receipt by the employee of a cash voucher to provision for or receipt by a member of the employee's family. It derives from section 144(4) of ICTA.
295. "Members of the employee's family" is defined in section 721(4) of this Act.

Section 75: Meaning of "cash voucher"

296. This section defines "cash voucher" for the purposes of this Chapter. It derives from section 143(3) of ICTA.
297. *Subsection (1)* sets out the definition. It does not require a cash voucher to be exchangeable wholly for cash. The amount of cash must be "not substantially less than" the cost to the employer. "Substantially" is not defined.
298. The section makes it explicit that the "voucher" provided at the expense of the person bearing the cost includes a "stamp or similar document". This is implicit in ICTA by virtue of section 143(3). See *Note 15* in Annex 2.
299. *Subsection (2)* further clarifies what is or is not a cash voucher for the purposes of this Chapter. A voucher which is not a "cash voucher" may be a "non-cash voucher" to which section 82 of this Act applies.

Section 76: Sickness benefits-related voucher

300. This section modifies the meaning of "cash voucher" where the expense incurred by the provider of the voucher includes costs of providing sickness benefits and the sum of money for which the voucher can be exchanged is substantially less than the total cost to the provider. It derives from section 143(4) of ICTA.

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301. The modification effectively removes the sickness benefits element when testing whether the voucher is a cash voucher.
302. *Subsection (1)* sets out the circumstances in which the section applies.
303. *Subsection (2)* provides two formulae to be used in determining whether the voucher is a cash voucher. The use of the formulae is best illustrated by examples:-

Example 1

The exchange sum E is £60.

The provision expense PE is £150

The cost of providing the sickness benefits is £90.

$$\mathbf{£150(PE) - £60(E) = £90}$$

The cost of providing the sickness benefits is £90, so $D = £90$.

Putting these values into the formula: $£150(PE) - £90(D) = £60$

$£60(E) = £150(PE) - £90(D)$, so the voucher is a cash voucher.