

INCOME TAX (EARNINGS AND PENSIONS) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Example 3

£150(Pe) – £50(E) = £100

Chapter 5: Taxable benefits: living accommodation

Overview

373. This Chapter deals with the benefit which arises from the provision of living accommodation. It begins by defining in what circumstances the Chapter applies. It then sets out the circumstances in which it does not apply, so that anyone who falls within the exceptions does not need to go any further. The Chapter then deals with the method of calculating the cash equivalent of the benefit. It derives from sections 145, 146 and 146A of ICTA.

Section 97: Living accommodation to which this Chapter applies

374. This section sets out the general statement to indicate that when living accommodation is provided for an employee this Chapter applies.

375. *Subsection (2)* prevents a charge arising on family and household members living at home who are employed by the home-owner who is an individual. It also covers the case where the living accommodation is not the family home, and the employer is providing the accommodation in a capacity other than as employer.

376. This section derives from sections 145(1), (6), (7), 146(1)(a) and (10) of ICTA.

Section 98: Accommodation provided by local authority

377. This section provides for an exception to prevent a charge where a local authority employee is provided with accommodation and the conditions are met.

378. It derives from sections 145(7)(b) and 146(10) of ICTA.

Section 99: Accommodation provided for performance of duties

379. This section sets out two exemptions from the charge on provided living accommodation. The exemptions derive from sections 145(4)(a) and (b) of ICTA.

380. These exemptions apply to directors only if the conditions set out in *subsections (3) to (5)* are met. This rider to the exemptions derives from section 145(5) and (8) of ICTA.

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

381. When the exemptions in this section or that in section 98 of this Act apply, there are further exemptions which may be available by virtue of sections 314 and 315 in Part 4 of this Act.

Section 100: Accommodation provided as result of security threat

382. This section ensures that living accommodation provided because of a special threat to an employee does not give rise to a charge to tax. It derives from section 145(4)(c) of ICTA.

Section 101: Chevening House

383. This section provides an exemption from a charge to tax on provided living accommodation for a nominated person occupying Chevening House. It derives from section 147 of ICTA.

Section 102: Benefit of living accommodation treated as earnings

384. This section makes the cash equivalent of the benefit of the living accommodation chargeable to tax, by treating it as earnings. It derives from sections 145(1) and 146(1) of ICTA.
385. *Subsection (1)* sets out the year for which the cash equivalent is to be treated as earnings. See *Note 7* in Annex 2.
386. The period for which the cash equivalent is calculated is given the label “the taxable period”. See *Note 16* in Annex 2.

Section 103: Method of calculating cash equivalent

387. This is a signpost section, introducing sections 104 to 106. It also sets out where to find the meaning of various terms used throughout this Chapter. It is new.

Section 104: General rule for calculating cost of providing accommodation

388. This section sets out the method for determining whether the cost of providing the accommodation exceeds £75,000. It contains material deriving from section 146(4), (5) and (11) of ICTA.

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

389. This section sets out how to calculate the cash equivalent of the benefit of provided living accommodation costing no more than £75,000. It derives from section 145(1) and (2) of ICTA.

Section 106: Cash equivalent: cost of accommodation over £75,000

390. This section sets out how to calculate the cash equivalent of the benefit of provided living accommodation costing more than £75,000 by means of a method statement as set out in *subsection (2)*. It derives from section 146(1) to (5) and (11) of ICTA.
391. *Step 1* calculates the basic charge under section 105 of this Act. This includes taking into account any sums made good by the employee, as provided for in section 105(5).
392. *Step 2* calculates the additional yearly rent of the accommodation based on the extent to which the cost of providing the property exceeds £75,000.
393. *Step 3* reduces the additional yearly rent to that for “the taxable period”.
394. *Step 4* brings together the results of *Steps 1* and *3* and also allows any excess of rent paid to be brought into account.

395. *Subsection (3)* defines excess rent and sets out the circumstances in which it can be taken into account at *Step 4*.

Section 107: Special rule for calculating cost of providing accommodation

396. If a property has been owned for some time before the year in which the benefit of provided living accommodation arises, the value of the property may have risen significantly. This section substitutes market value for cost in certain circumstances. It derives from section 146(4) to (6) and (11) of ICTA.
397. This rule applies only for the purposes of the calculation in section 106 of this Act, and does not have any application to accommodation within section 105 of this Act.
398. *Subsection (3)* sets out how to calculate the cost of providing the accommodation. Consultation leading up to this Act has resulted in the addition in paragraph (a) to the definition of P in respect of payments made. See *Change 21* in Annex 1.
399. Section 146(8) of ICTA provides that section 146(6) does not apply if the employee first occupied the property before 1983. Due to the length of time since that date the provision is now in paragraph 21(1) of Schedule 7 to this Act.

Section 108: Cash equivalent: accommodation provided for more than one employee

400. This section allows an apportionment of the cash equivalent when the accommodation is provided for more than one employee. It derives from ESC A91A. See *Change 22* in Annex 1.

Section 109: Priority of this Chapter over Chapter 1 of this Part

401. This section applies in the event that there is a possibility of a charge both under Chapter 1 and under this Chapter in respect of the same living accommodation.
402. This section ensures that the charge under this Chapter takes precedence. If the amount of earnings that would be chargeable by virtue of section 62 of this Act is less than the amount of the cash equivalent under this Chapter, then the cash equivalent applies. If the earnings exceed the cash equivalent, only the excess is treated as earnings. The section derives from section 146A of ICTA.

Section 110: Meaning of “annual value”

403. This section defines “annual value” for the purposes of this Chapter. It derives from section 837 of ICTA which in turn draws on section 23 of the General Rate Act 1967 (although that Act was repealed in 1988).
404. This section does not affect the Inland Revenue practice of using the gross rateable value as a proxy for “annual value”. That practice will continue. The main use of this section is to provide guidance on how to arrive at the annual value of properties for which rent is not paid and in practice is only needed in cases where no gross rateable value can be found.
405. *Subsection (1)* defines “annual value”. Section 837(1) refers to “rates and taxes” on the premises. This section includes a fuller and more updated description of domestic property charges: “taxes, rates or charges”. See *Change 24* in Annex 1.
406. The following subsections set out the adjustments to make in order to arrive at the rent to be used for living accommodation. They derive from section 23 of the General Rate Act 1967 which was repealed in 1988. As a consequence of that repeal the reference to that Act in section 837(2) has not been included in this section. Instead the general thrust of the rules has been rewritten here. See *Change 23* in Annex 1.

407. *Subsection (2)* applies in relation to subsection (1). It ensures that the annual value does not include the cost of anything which is not provided in the case of unfurnished property. This is important in cases where the only available comparisons are rents paid for fully furnished and serviced properties. If, in considering what the rent of the accommodation would be, the nearest comparison is rent for a property for which services are provided at an inclusive rent, in order to reduce the rent to that for unfurnished, non-serviced accommodation the cost of the services provided are deducted. This means that if there is a profit element in the provision of the services it is treated as rent in arriving at the annual value.
408. *Subsections (3) and (4)* extend the process of comparison and adjustment. They follow the thrust of section 23(3) and (4) of General Rate Act 1967 which ensured that when a property is valued by reference to comparative rents of similar properties the value was not distorted by the existence (in the comparative case) of separate payments for services in addition to what one might call the basic rent. In particular it added the separate payments to the rental payments and allowed for certain deductions to be made. It did not allow any deduction in computing the value based on a comparative rent for amounts paid in respect of repairs, insurance or maintenance of other property belonging to or occupied by the landlord. In the case of payments for other types of services only the cost element of them was deducted. These subsections follow that method of comparison and adjustment.
409. *Subsection (5)* has the effect that the services whose cost of provision may be deducted are those which are not normally met by a landlord in the provision of unfurnished property. Again, the wording is not derived directly from section 23 of the General Rate Act 1967 but follows the general thrust of provisions of that section.
410. This section does not affect the limited exemption in section 315 which applies to the amount of earnings or the amount treated as earnings based on the cost of certain services

Section 111: Disputes as to annual value

411. This section sets out the procedure for resolution of disputes about the annual value of accommodation for the purposes of this Chapter. It derives from section 837(3) of ICTA.

Section 112: Meaning of “person involved in providing the accommodation”

412. This definition makes it clear that it is necessary to look beyond the employer and the apparent owner of an interest in the accommodation. This is anti-avoidance legislation to counter schemes which depress the cost to the employer by using intermediate owners of interests. It derives from section 146(7) of ICTA.

Section 113: Meaning of “the property”

413. This section simply confirms that “the property” means the living accommodation in question. It derives from section 146(11) of ICTA.