

INCOME TAX (EARNINGS AND PENSIONS) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Example 3

£150(Pe) – £50(E) = £100

Chapter 10: Taxable benefits: residual liability to charge

Special rules for scholarships

Overview

829. This group of sections derives from section 165 of ICTA.

Section 211: Special rules for scholarships: introduction

830. This is mainly an introductory section which explains the layout and provides the meaning of scholarship.

Section 212: Scholarships provided under arrangements entered into by employer or connected person

831. This section extends the circumstances in which a scholarship is a benefit provided by reason of the employment.

832. *Subsection (1)* derives from section 165(2) of ICTA. A scholarship is an employment-related benefit by virtue of section 201 of this Act if it is provided by reason of the employment. That would not be the case if the provision of the scholarship did not fall within the normal meaning of “by reason of the employment” because of the way in which it was provided. This section extends the meaning of “by reason of the employment”.

833. *Subsection (2)* derives from the closing words of section 165(2) of ICTA. It prevents claims being made that the scholarship is not within subsection (2)(b) because no cost to the employer or connected person is involved.

834. *Subsection (3)* is a minor change to the law. It is possible that the extended meaning of “by reason of the employment” could result in arrangements made by individuals to provide for the education of members of their family or household being employment-related benefits because of the terms of subsection (1) of this section. An example would be an educational trust set up by a grandparent and the parent of someone who benefited from the trust was an employee in the grandparent’s business. See *Change 39* in Annex 1.

835. *Subsection (4)* prevents subsection (1) from disapplying the opening words of section 201(3) of this Act.

Section 213: Exception for certain scholarships under trusts or schemes

836. This section, which derives from section 165(3) of ICTA, provides an exception for certain full-time scholarships. This may apply where the scholar is a member of the employee's family or household but where the scholarship has been awarded on merit and is one which satisfies the conditions of section 331 of ICTA.
837. *Subsection (1)* derives from the opening words of section 165(3) of ICTA.
838. *Subsection (2)* derives from section 165(3)(c). It states one of the conditions which must be met for the exception to apply. That condition is that if the opening words of section 201(3) of this Act were disregarded, or the extension to the usual definition of "by reason of the employment" in section 212 were disregarded, the scholarship would not be an employment-related benefit.
839. *Subsection (3)* derives from section 165(3)(b) and provides the terms to satisfy the condition.
840. *Subsection (4)* derives from section 165(3)(a). The exception can apply only to scholarships provided from a trust fund or scheme.
841. *Subsection (5)* derives from the closing words of section 165(3). It ensures that for the exception to apply only a limited amount of the total amount paid out is on scholarships for members of the household or family of employees. The scholarships included are those provided by reason of any employee's employment. For this purpose subsection (6) explains the meaning of employment.
842. *Subsection (6)* derives from section 165(6)(b). "Employment" for the purposes of condition D has a special meaning. It includes all employments even if the employee is not resident and not ordinarily resident in the United Kingdom and performs the duties of the employment outside the United Kingdom. It also includes scholarships which are payable by reason of "excluded" employments.
843. *Subsection (7)* provides definitions of terms used in the section.

Section 214: Scholarships: cost of the benefit

844. This section derives from SE 30003 in the Inland Revenue Schedule E Manual. It provides a special rule for determining the cost of the benefit of an employment-related scholarship which is provided from a trust fund. Incorporating this practice is a minor change to the law. See *Change 40* in Annex 1. The application of the normal rule for the cost of the benefit in section 204 of this Act could result in the whole of the amount of capital paid into such a trust fund being taken into account. This section prevents that and provides that the cost of the benefit is to be the total of payments made to the scholar.

Section 215: Limitation of exemption for scholarship income in section 331 of ICTA

845. This section derives from section 165(1) of ICTA. Section 331 of ICTA gives exemption from income tax for scholarship income where the holder of the scholarship is in full-time education. The cases of *Wicks v Firth* and *Johnson v Firth* (1982) 56 TC 318 in the House of Lords decided that scholarship income was exempt from all income tax charges if it fulfilled the conditions in section 331. This section prevents section 331 from applying to a scholarship which is an employment-related benefit within section 212 if the scholar is not an employee.