

INCOME TAX (EARNINGS AND PENSIONS) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Example 3

£150(Pe) – £50(E) = £100

Part 4: Employment income: exemptions

Chapter 2: Exemptions: mileage allowances and passenger payments

Overview

924. This Chapter rewrites the provisions for the exemption from tax as earnings of mileage allowance payments and passenger payments. Section 57 of FA 2001 introduced those provisions, which are effective from 2002-03 onwards. The Chapter also rewrites the provisions relating to mileage allowance relief that section 57 introduced. Given that those latter provisions mean that employees can get a deduction from their earnings if their circumstances permit, it might be thought that they should more properly appear among the travel-related expenses in Chapter 2 of Part 5 of this Act. The provisions for mileage allowance relief appear in this Chapter for the following reasons:

- The relief provided does not depend upon the employees having incurred any expenditure. It ensures that the employees receive the maximum relief that is approved for mileage allowance payments against their earnings, even if the mileage allowance payments made by the employer are less than that maximum amount. For that reason the relief would not sit comfortably in Chapter 2 of Part 5 of this Act, which is headed “Deductions for employee’s expenses”; and
- Keeping the payments and relief provisions together means that the terms or labels for these related provisions only have to be defined once. That has resulted in a considerable saving of length and a compactness of presentation.

925. The provisions that, by virtue of Part 1 of Schedule 12 to FA 2001, were introduced as Schedule 12AA to ICTA have been incorporated in the rewritten sections. That accords with the policy of avoiding the use of schedules, if possible.

926. The consequential amendments in Part 2 of Schedule 12 to FA 2001 have been incorporated into the rewritten sections as relevant.

Section 229: Mileage allowance payments

927. This section sets out the basic availability of the exemption for approved mileage allowance payments. The section derives from section 197AD of ICTA.

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928. *Subsection (1)* has a reordered wording compared with the source legislation. When terms or labels first appear in this and subsequent subsections signposts to where they are defined accompany them.
929. *Subsection (2)* explains what are mileage allowance payments, in the process excluding passenger payments from them.
930. *Subsection (3)* explains what are approved mileage allowance payments.
931. *Subsection (4)* gives details of two circumstances in which the exemption does not apply.

Section 230: The approved amount for mileage allowance payments

932. This section gives details of the approved amount for mileage allowance payments. The several ideas contained in paragraph 4(2) of Schedule 12AA to ICTA now appear in separate subsections. The section derives from paragraph 4 of Schedule 12AA.
933. *Subsection (1)* gives a formula to calculate the approved amount for mileage allowance payments for a given type of vehicle.
934. In *subsection (2)* the mileage rate information has been converted to tabular form.
935. *Subsection (3)* qualifies what is meant by the expression “the first 10,000 miles” in subsection (2), dealing particularly with the possibility that the same person might undertake business travel in respect of two or more associated employments.
936. *Subsection (4)* gives details of when one employment is associated with another.
937. In *subsection (5)* the reference to the definition of “control” is now direct, rather than diverting the user to section 168(12) of ICTA, only to find that that in turn refers to section 840 of ICTA.
938. *Subsection (6)* provides the Treasury with powers to make regulations to alter the rates or rate bands in subsection (2).

Section 231: Mileage allowance relief

939. This section explains what mileage allowance relief is and how the employee may be entitled to it. The section derives from section 197AF of ICTA.
940. *Subsection (1)* describes the circumstances in which entitlement to mileage allowance relief can arise.
941. *Subsection (2)* states how to calculate the amount of mileage allowance relief to which the employee is entitled.
942. *Subsection (3)* gives details of two circumstances in which mileage allowance relief is not available.

Section 232: Giving effect to mileage allowance relief

943. This section deals with the mechanics of giving effect to mileage allowance relief. The main difference between it and the source legislation is the absence of any reference to the Cases of Schedule E. The consequences of this are most evident in *subsections (2)* and *(3)*. The section derives from section 197AG of ICTA.
944. *Subsection (1)* relates the deduction to a tax year.
945. *Subsection (2)* corresponds with the references to Cases I and II of Schedule E in section 197AG(2).
946. *Subsection (3)* corresponds with the references to Case III of Schedule E in section 197AG(3).

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- 947. *Subsection (4)* contains some assumptions supplementary to the operation of subsection (3).
- 948. *Subsection (5)* gives an order of precedence as between deductions available under subsections (2) and (3).
- 949. *Subsection (6)* prevents a double deduction.
- 950. *Subsection (7)* defines two terms used in this section by reference to provisions in another Part of this Act.

Section 233: Passenger payments

- 951. This section sets out the basic availability of the exemption for passenger payments. The section derives from section 197AE of ICTA.
- 952. *Subsection (1)* gives details of the circumstances in which the exemption for passenger payments is available.
- 953. *Subsection (2)* qualifies part of the provisions in subsection (1).
- 954. *Subsection (3)* explains what are passenger payments.
- 955. *Subsection (4)* explains what are approved passenger payments.
- 956. *Subsection (5)* supplies additional information in relation to subsection (2).

Section 234: The approved amount for passenger payments

- 957. This section gives details of the approved amount for passenger payments. The section derives from paragraph 5 of Schedule 12AA to ICTA.
- 958. *Subsection (1)* gives a formula to calculate the approved amount for passenger payments.
- 959. *Subsection (2)* explains how the calculation is affected if there are times in the tax year when two or more passengers for whom the employee is entitled to passenger payments are carried concurrently.
- 960. *Subsection (3)* provides the Treasury with powers to make regulations to alter the rate in subsection (1).

Section 235: Vehicles to which this Chapter applies

- 961. This section defines the vehicles to which this Chapter applies. The section derives from paragraph 3 of Schedule 12AA to ICTA.
- 962. *Subsection (1)* simply names the types of vehicle within the Chapter.
- 963. *Subsections (4)* and *(5)* contain definitions of the meanings of “motor cycle” and “cycle” that refer to the Road Traffic Act 1988. When this Act was published as a draft Bill for consultation it included an expanded version of this section in which those definitions were reproduced in full. If either of the Road Traffic Act 1988 definitions were to change then, assuming the policy is to keep the definitions aligned, an amendment to the rewritten legislation would be required to maintain that alignment. That would have to be done by way of primary legislation, for which it might be difficult to find parliamentary time. That is an undesirable side effect of the expanded definitions. The Act therefore reverts to definitions that refer to the Road Traffic Act 1988.
- 964. As at February 2003, the definition of “motor cycle” in section 185(1) of the Road Traffic Act 1988 is as follows:

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“motor cycle” means a mechanically propelled vehicle, not being an invalid carriage, with less than four wheels and the weight of which unladen does not exceed 410 kilograms;

965. and the definition of “cycle” in section 192 of that Act is as follows:

“cycle” means a bicycle, a tricycle or a cycle having four or more wheels, not being in any case a motor vehicle.

966. *Subsection (6)* contains some additional definitions of terms used in subsection (3).

Section 236: Interpretation of this Chapter

967. This section contains additional information needed to interpret the provisions in this Chapter. The presentation of this material varies slightly from the source legislation to make it easier to use. The section derives from parts of paragraph 1 and paragraphs 2 and 6 of Schedule 12AA to ICTA.

968. *Subsection (1)* gives signposts to three definitions used in this Chapter.

969. *Subsection (2)* defines what is a “company vehicle” by reference to other provisions in this Act.

970. *Subsection (3)* gives signposts to the provisions that define what is meant by when cars and vans are made available for private use and when they are made available by reason of the employment.