

INCOME TAX (EARNINGS AND PENSIONS) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Example 3

Ne = £5,000; Da = 183; De = 183; Smg = 0

Part 5: Employment income: deductions allowed from earnings

Fees and Subscriptions

Overview

1482. The following three sections rewrite section 201 of ICTA. The sorts of fees and contributions that are covered by section 201(2) have to be paid before an employee can, lawfully, begin to practise the particular profession or occupation to which the fees relate. They do not therefore meet the “in the performance of the duties” test in section 198 of ICTA, rewritten in section 336(1)(b) of this Act. The subscriptions covered by section 201(3) are voluntary in nature, in the sense that employees do not have to join the body concerned, and so do not meet the “necessarily” test in section 198, again rewritten in section 336(1)(b).
1483. There is another distinction between the expenses allowable under those two subsections. Section 201(2) of ICTA lists the fees paid that qualify for deduction. Section 201(3) gives a general description of the sorts of bodies that are eligible to apply to the Board of Inland Revenue for approval under that subsection, by reference to their character and the activities they pursue.
1484. The names of the bodies that the Board approves are published in a booklet called “Fees and subscriptions paid to Professional Bodies and Learned Societies (List 3)”. That information is also published on the Inland Revenue’s web site. The vast majority of the bodies in List 3 have been approved under section 201(3). Where fees paid to a body qualify for deduction under section 201(2) their entry in List 3 normally records that fact.

Section 343: Deduction for professional membership fees

1485. This section provides for a deduction for fees paid by employees to enable them, lawfully, to pursue their professions or occupations. The section derives from parts of section 201(1), (2) and (5) of ICTA.
1486. *Subsection (1)* states the basic principle that a deduction from earnings is allowed for certain specified payments. Each such payment is described as a “professional fee”. The requirement in the source legislation that, to be allowable, the payment must have been made “out of the emoluments of the employment” has not been reproduced here.

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Instead that general requirement is stated in the introduction to the provisions relating to deductions in Part 5 of this Act. See *Change 81* in Annex 1.

1487. *Subsection (2)* defines what is meant by “professional fee”. More fees are listed there than appeared in section 201(2) of ICTA. See *Change 84* in Annex 1.
1488. This Act presents the different types of fees payable in a table. The fees are grouped by reference to the occupational sectors to which they relate.
1489. *Subsections (3)* and *(4)* together provide a new power for the Board of Inland Revenue to make an order adding a new, qualifying fee to the Table in subsection (2). See *Change 85* in Annex 1.

Section 344: Deduction for annual subscriptions

1490. This section provides for a deduction for annual subscriptions to bodies having certain specified characteristics, established for stated objects related to the advancement of knowledge, the maintenance or improvement of standards of conduct within the profession and the protection of its members against claims. The section derives from parts of section 201(1), (3), (4), (5) and (6) of ICTA.
1491. *Subsection (1)* states the basic principle of the availability of a deduction from earnings for subscriptions paid to approved bodies. As in section 343(1), the requirement in the source legislation that, to be allowable, the payment must have been made “out of the emoluments of the employment” has not been reproduced here. See *Change 81* in Annex 1.
1492. *Subsection (2)* describes the types of bodies, by reference to their activities, whose subscriptions are eligible, subject to approval of the body by the Inland Revenue, to be deducted.
1493. *Subsection (3)* provides for the Inland Revenue to approve a body of persons. This reflects the practice on the application of section 201(3) whereby the power of the Board of Inland Revenue to approve such bodies is delegated to the technical specialist. See *Change 158* in Annex 1.
1494. The requirement in *subsection (4)* that the Inland Revenue give notice of their decision on an application simply enacts the existing Inland Revenue practice. See *Change 86* in Annex 1.
1495. *Subsections (5)* and *(6)* give the Inland Revenue the power to determine the part of a subscription that is allowable under subsection (1). That reflects the existing practice on how the power of the Board of Inland Revenue to make such a determination is exercised. See *Change 158* in Annex 1.
1496. The rule in *subsection (7)* about when a payment is treated as having been made to an approved body makes clear how the Inland Revenue have always allowed such payments. See *Change 87* in Annex 1.

Section 345: Decisions of the Inland Revenue under section 344

1497. This section provides powers for the Inland Revenue to withdraw or vary any approval given to or any determination made in respect of a body. The section derives from section 201(6) and (7) of ICTA.
1498. In *subsection (1)* the power to vary a decision on the approval or otherwise of a body for the purposes of section 344 rests with the Inland Revenue as opposed to the Board in the source legislation. See *Change 158* in Annex 1.
1499. This Act requires the Inland Revenue to give notice of their decision. See *Change 88* in Annex 1.

1500. In *subsections (2) and (3)* the move to a straightforward appeal procedure is intended to simplify matters. Section 48(2) of TMA 1970 provides that various provisions of that Act as regards proceedings before the Commissioners apply to “appeals other than appeals against assessments” and to “proceedings...to be heard and determined in the same way as an appeal”. There is therefore no real difference in law or practice in this instance between provisions that refer to an appeal and those that refer to proceedings where the Special Commissioners shall “hear and determine the matter in like manner as an appeal”. See *Changes 158 and 89* in Annex 1.

Section 346: Deduction for employee liabilities

1501. This is the first of a group of five sections that give relief for payments made against liabilities arising from an office or employment. It provides for a deduction for certain employee liabilities. The section derives from section 201AA(7), (8) and (9) and part of section 201AA(1) of ICTA.
1502. *Subsections (1) and (2)* define the payments for which a deduction may be claimed.
1503. *Subsection (3)* defines “premium” and provides some explanatory detail.

Section 347: Payments made after leaving the employment

1504. This section provides that deductions allowable under section 346 are restricted to those relating to liabilities arising in a current employment. It also gives a signpost to the corresponding provisions that deal with payments made after the employee has ceased the particular employment in relation to which the liability to make a payment arises. The section derives from part of section 201AA(1) of ICTA.

Section 348: Liabilities related to the employment

1505. This section defines the types of liability that can give rise to payments that qualify for relief. It derives from section 201AA(2) of ICTA.

Section 349: Meaning of “qualifying insurance contract”

1506. This section defines “qualifying insurance contract”. It derives from section 201AA(3) (a) to (d) and (4) of ICTA.
1507. *Subsections (2) to (5)* state the conditions that have to be met for an insurance contract to come within section 346(1).

Section 350: Connected contracts

1508. This section provides rules to determine whether insurance contracts are connected for the purposes of section 349. It derives from section 201AA (5) and (6) of ICTA.
1509. *Subsections (1) to (3)* define when insurance contracts are connected.
1510. *Subsections (4) to (7)* provide for such a connection to be ignored in certain circumstances.

Section 351: Expenses of ministers of religion

1511. This section allows a deduction for expenses from the earnings of a minister of religion. These include a proportion of the rent of a house used in the performance of the duties and, where premises are occupied in which a charity or ecclesiastical corporation holds an interest and those premises are used in the performance of the duties, a proportion of the expenses arising in connection with them.
1512. The section derives from section 332 of ICTA.

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1513. Unlike section 332 this section does not allow an expense incurred in respect of the profession of a minister to be deducted from any income from an employment or office as a minister. Deductions are restricted to one particular class of income. See *Change 90* in Annex 1.
1514. *Subsection (1)* allows a deduction from the earnings of a minister for amounts incurred wholly, exclusively and necessarily in the performance of the duties.
1515. *Subsection (2)* allows a deduction from earnings for a quarter of the rent paid where a part of the house is used mainly and substantially in carrying out the duties of a minister. Where the part of the house so used is less than one quarter of the whole house an appropriate, lower proportion of the rent paid may be deducted.
1516. Section 332(3) allows a deduction for “such part of the rent as the inspector by whom the assessment is made allows”. The inspector’s decision is subject to appeal to the Commissioners. Since this rule does not fit comfortably with Self Assessment the provision in this section makes the deduction available without reference to the inspector on a just and reasonable apportionment basis. See *Change 91* in Annex 1.
1517. *Subsection (3)* provides for a deduction from earnings for part of the expenses borne by the minister in connection with premises which are owned by a charity or ecclesiastical corporation and in which he resides for the purposes of carrying out his duties.
1518. *Subsection (4)* gives the formula for the deduction allowable under the previous subsection.
1519. *Subsection (5)* defines “charity”. The definition of “charity” is the same as that in section 506(1) of ICTA. See *Note 34* in Annex 2.
1520. *Subsection (6)* requires subsection (1) to be read with section 359 (disallowance of travel expenses: mileage allowances and reliefs) which prevents a deduction where mileage allowance payments are received.

Section 352: Limited deduction for agency fees paid by entertainers

1521. This section provides for a deduction for entertainers in respect of fees paid to their agents for finding them work. The section derives from part of section 201A of ICTA.
1522. Section 201A was introduced to allow entertainers who are in employment to get relief for the fees they pay to their agents for finding them work. Such fees are not deductible under the general rule for the deduction of expenses in section 198(1) of ICTA (rewritten in section 336 of this Act) for two reasons. First, they are paid to put the performer in the position to earn from the employment. They are not, therefore, expended “in the performance of the duties of the employment”. Secondly, as not every entertainer uses the services of an agent, the expense does not pass the “necessarily” test.
1523. *Subsection (1)* states the basic principle that a deduction is allowed, subject to certain conditions being met.
1524. In *subsection (2)* the way the limit of 17.5% of the taxable earnings is expressed differs slightly from the source legislation. See *Change 92* in Annex 1.
1525. *Subsection (4)* defines “entertainer” for the purposes of this section.
1526. *Subsection (5)* defines “agency fees”, by reference to the contract or arrangement under which the entertainer pays them. The use of the word “paid” in this subsection means that it is not sufficient for the employee only to have incurred the liability to pay the fee. The employee has to have transferred value to the agent by way of payment for the deduction to be allowed.

1527. *Subsection (6)* restricts the scope of what counts as a “co-operative society” for the purposes of the section. It also gives a signpost to the external definition of “employment agency”.
1528. Section 201A(6), which contains the commencement date, has not been reproduced because it is now spent.

Section 353: Deductions from earnings charged on remittance

1529. This section deals with deductions from earnings charged on remittance, an expression defined in section 335(4).
1530. The section derives from section 198(3) of ICTA.
1531. *Subsection (1)* provides for a deduction to be allowed from earnings charged on remittance for expenses within *subsection (2)* if the condition in *subsection (3)* is met.
1532. *Subsection (2)* specifies the expenses to which this section applies. Paragraph (a) refers both to expenses paid by the employee out of the relevant earnings and to expenses paid on the employee’s behalf by another person and included in those earnings. This wording did not appear in the source legislation, but it corresponds to the wording used in section 333 (scope of this Chapter). See *Note 36* in Annex 2.
1533. *Subsection (3)* states a condition that must be met before this section may operate: that the earnings would have been deductible under sections 336 to 342 if the earnings had been earnings charged on receipt in the tax year in which the expenses were incurred. (The expression “earnings charged on receipt” is defined in section 335(4)). The reference to “sections 336 to 342” derives from the reference to “subsection (1)” in section 198(3) of ICTA. Sections 341 and 342 do not derive directly from section 198(1) of ICTA, but these have been included in the new reference because the provisions from which they do derive (section 193(3) and (6) of ICTA) operate through section 198(1).
1534. *Subsection (4)*, which is a drafting addition, deals with the relationship between this section and the deductibility provisions (listed in section 332). In the case of deductions under this section the requirement for payment out of earnings has survived, so it is provided that, for the purposes of the deductibility provisions, the expenses are to be assumed to have been paid out of the earnings charged on remittance. See *Change 81* in Annex 1.

Section 354: Disallowance of expenses relating to earnings taxed on different basis or untaxed

1535. This section applies in certain cases where some of the earnings are taxed on one basis while the remainder are either taxed on a different basis or are not within the charge to income tax. This section prevents a deduction relating to earnings in the first category from being given against earnings in the second category in those cases. The section derives from provisions in section 198(2) of ICTA.
1536. *Subsection (1)* prohibits a deduction under sections 336 to 342 if the expenses relate to earnings from the employment which are either not liable to income tax or are taxed on the remittance basis under section 26.