

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

Background

1378. This Part provides for deductions allowed from earnings.
1379. The charge to tax on employment income is a charge to tax on two different categories of employment income: “general earnings” and “specific employment income” (see section 6(1)); and, in the case of “general earnings”, (a term defined in section 7(3)), the amount charged to income tax is the “net taxable earnings” from the employment in the tax year (see section 9(2)). Section 11 then provides that the net taxable earnings from an employment in a tax year consist of the total amount of the taxable earnings from the employment less the total amount of any deductions allowed from those earnings (as listed in section 327(3) to (5)). And it is with this final component of “net taxable earnings” that this Part of this Act is concerned.
1380. In ICTA, the deductions provisions are very difficult to unravel. Some individual provisions are straightforward. But there are many connections between provisions. They interact in ways which are not always easy to follow. Several fictions have been adopted to make the provisions work.
1381. One major source of complexity is that the expenses of an employee may be met in several possible ways, taxed under different sections of ICTA. The mechanism for making a deduction may vary according to the circumstances.
1382. For example, consider the position of a director making a train journey to attend a meeting. The table below shows some of the various ways in which the employer might fund the trip, how the director would be taxed and how the director might obtain a deduction in respect of the expenses of the train ticket. (References to sections are to sections of ICTA.)

<i>Employer funds trip by</i>	<i>Charging provision</i>	<i>Deduction allowable under</i>
round sum allowance	section 19(1)1	section 198
specific expense payment	section 153	section 198
buying the ticket	section 141	section 198 via section 141(3)

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

<i>Employer funds trip by</i>	<i>Charging provision</i>	<i>Deduction allowable under</i>
providing credit card for employee to use on ticket	section 142	section 198 via section 142(3)

1383. There are other possibilities. For example, if the same director travelled to the same meeting using private transport provided by the employer, the provision of the transport would be taxed under section 154 of ICTA, with a deduction allowable under section 198 via section 156(8). And if the business journey involved foreign travel, there are further deduction provisions that may apply.
1384. Another major source of complexity is that the central provision relating to deductions, section 198 of ICTA, is used by other provisions of ICTA and is used in different ways. For example:
- under section 156(8) of ICTA, the cost of a benefit provided is allowed as a deduction under section 198, or other provisions, if it would be allowed as a deduction if paid out of emoluments;
 - under section 193(3) of ICTA, certain travel expenses are treated as having been necessarily incurred in the performance of the duties of an overseas employment for the purposes of section 198(1);
 - under section 193(7) of ICTA, references to section 198, and to deductions under section 198, are treated as including references to section 193(3), and to deductions under that subsection; and
 - under section 200A(1) of ICTA, incidental overnight expenses are not regarded as emoluments if they would not be deductible under section 198.
1385. In this Act the number of provisions that cross-refer to other deductions provisions has been much reduced. The view has been taken that it is more helpful, in the case of each deduction provision, to set out in full the conditions that must be met. In setting out those conditions, Inland Revenue practice has been followed. As a result of this approach, sections 194(10) and 195(11) of ICTA, which provide for provisions to be construed with other provisions, have no direct successors in this Act.

Overview

1386. In this Part, in order to make each individual deduction provision as simple as possible, Chapter 1 states some general propositions about deductions. This saves those propositions having to be repeated in the individual provisions, so the deductions sections can then concentrate on the rules applying for the particular deduction in question.
1387. The provisions relating to deductions are then grouped in different chapters according to the type of deduction. So there are separate chapters for:
- deductions for employee's expenses (Chapter 2);
 - deductions from benefit code earnings for costs which would have been deductible if they had been paid by the employee (Chapter 3);
 - deductions for employee's expenses covered by fixed allowances (Chapter 4);
 - deductions for earnings which represent expenses borne by the employer (Chapter 5); and
 - deductions from seafarers' earnings (Chapter 6).
1388. Within Chapters 2 and 5, the provisions are then grouped according to the type of expense involved. For example, in Chapter 2, sections 337 to 342 deal with travel expenses.

1389. Within this Part, very many of the sections that allow deductions are drafted in accordance with the general formula that a deduction from earnings is allowed for an amount whose characteristics are then specified.

Chapter 1: Deductions allowed from earnings: general rules

Overview

1390. This is the first of six chapters dealing with deductions allowed in charging earnings to income tax.
1391. After the introductory section 327, this Chapter sets out some general propositions which are applicable to most of the deductions dealt with in the next five chapters. Those propositions relate to:
- the income from which deductions may be made (section 328);
 - the general prohibition on deductions exceeding earnings (section 329);
 - the prevention of double deductions (section 330); and
 - the order in which deductions are to be made (section 331).
1392. This Chapter concludes with section 332, which lists “the deductibility provisions”.

Section 327: Deductions from earnings: general

1393. This section sets the scene. It gives information about the contents of this Part, and places this Part within a wider context.
1394. The section is new, although it draws on material contained in section 131(1) of ICTA.
1395. *Subsection (1)* provides the essential link between this Part of this Act and section 11(1), which is in Part 2. The subsection states that this Part provides for deductions that are allowed from the taxable earnings from an employment in a tax year for the purpose of calculating the “net taxable earnings” from the employment in the tax year for the purposes of Part 2 of this Act.
1396. *Subsection (2)* sets out how two key expressions are used in this Part. References to the earnings from which deductions are allowed are references to the taxable earnings mentioned in subsection (1), and references to the tax year are references to the tax year mentioned there.
1397. *Subsection (3)* states that the deductions for which this Part provides are those allowed under Chapters 2 to 6; and the contents of those Chapters are indicated.
1398. *Subsection (4)* lists other provisions, not in this Part, which make further provision about deductions; and *subsection (5)* lists other provisions, not in this Part, which make further provision about deductions from income including employment income.

Section 328: The income from which deductions may be made

1399. This section is the first of four which sets out a general proposition relating to deductions from earnings. It deals with the income from which deductions may be made.
1400. The most important single source for this section is section 198(1) of ICTA, which includes the proposition that an amount paid “out of the emoluments of the office or employment ... may be deducted from the emoluments to be assessed”. This section also draws on a considerable number of other passages in Part 5 of ICTA and in section 50 of FA 1989.

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1401. *Subsection (1)* sets out the general rule that deductions under this Part are allowed from any earnings from the employment in question, but not from earnings from any other employment.
1402. An example of how this rule operates in practice is given in Inland Revenue guidance in SE 31658:
- An individual is employed as a teacher and separately employed as coach to a local youth football team. As coach she is paid £100 a year but she incurs expenses of £1,000 a year in travelling to away matches. She pays the expenses herself and is not reimbursed by her employer.
- She is only allowed a deduction of £100 for her travelling expenses under section 198(1) of ICTA. She cannot claim a loss for the remaining £900 and nor can she deduct that amount from her teaching income.
1403. The general rule is subject to a number of qualifications. These are dealt with in the rest of this section.
1404. *Subsection (2)* deals with one case where the general rule is not wide enough. Expenses of a minister of religion (see section 351) are allowed from earnings from any employment as a minister of a religious denomination.
1405. *Subsections (3) to (5)* deal with cases where the general rule is too wide: for example there are some cases where the deductions are allowed only from earnings with particular characteristics – either relating to the source of the earnings or to the manner in which the earnings are charged to tax.
1406. *Subsection (3)* provides that deductions under section 368 are only allowed from earnings payable out of the public revenue.
1407. *Subsections (4) and (5)* deal with “deductions limited to specified earnings”: for, in the cases of some provisions, deductions are allowed from earnings from the employment which qualify as taxable earnings under certain of the charging provisions of Chapters 4 and 5 of Part 2, but not from other earnings from the employment.

Section 329: Deductions from earnings not to exceed earnings

1408. This section is the second of four which sets out a general proposition relating to deductions from earnings. It deals with the proposition that deductions from earnings may not exceed earnings.
1409. As in the case of section 328 the most important single source for this section is section 198(1) of ICTA, which allows a deduction for an amount if “the holder of an office or employment is obliged to incur and defray [that amount] out of the emoluments of the office or employment”. This section also draws on a considerable number of other passages in Part 5 of ICTA and in section 50 of FA 1989.
1410. *Subsection (1)* sets out the general rule that deductions may not exceed the earnings from which they are deductible. That general rule is then elaborated in *subsections (2) to (4)*.
1411. Inland Revenue guidance makes it clear that the employee does not generally have to demonstrate that an expense has literally been paid out of the emoluments rather than out of some other source of money. It is generally sufficient that the emoluments charged to tax in a particular tax year are equal to, or greater than, the deductions to be made from those emoluments. As the Inland Revenue does not generally trace the source of funds used by the employee to pay expenses, the requirement that the employee must pay the expenses out of the emoluments of the employment is not stated in general terms in this Act. See *Change 81* in Annex 1.

1412. *Subsection (5)* deals with a matter which follows on from the fact that this Act does not reproduce any general requirement that expenses must be paid out of the emoluments of the employment. This Act rewrites numerous provisions that refer to expenses that would be allowable if the employee paid them out of the emoluments of the employment. Those provisions (“the deductibility provisions”) are listed in section 332. Since the general requirement in *subsection (1)* that deductions from earnings are not to exceed earnings is assumed to be met in the deductibility provisions (because of the references in them to the employee being assumed to have paid the amounts or expenses out of emoluments), this subsection provides that this section is to be disregarded for the purposes of the deductibility provisions.
1413. *Subsection (6)* provides a signpost to section 380 of ICTA, a section drafted on the basis that there may be Schedule E losses which may be set against other income of the tax year, or carried back to earlier tax years.

Section 330: Prevention of double deductions

1414. This section is the third of four which sets out a general proposition relating to deductions from earnings. It deals with the prevention of double deductions.
1415. The proposition in this section is not articulated in general terms in ICTA, although it seems true as a matter of income tax law. There are statements of this proposition in particular contexts in sections 194(9), 195(12) and 198(3) of ICTA.
1416. *Subsection (1)* sets out the general rule: a deduction from earnings under this Part is not allowed more than once in respect of the same costs or expenses.
1417. *Subsection (1)* is expressed to apply to “costs and expenses”. These words are intended to cover all potential deductions under this Part, even though the amount of the deduction may not be computed by reference to an actual amount of expenditure – as is the case under Chapter 4 of this Part, which deals with fixed allowances for employee’s expenses.
1418. *Subsection (2)* deals with the case where a cost or expense qualifies both for an allowance under Chapter 4 of this Part and for a deduction under some other provision. In such a case only one of the deductions is allowed. This provision codifies Inland Revenue practice on these topics. See *Change 82* in Annex 1.

Section 331: Order for making deductions

1419. This section is the last of four which sets out a general proposition relating to deductions from earnings. It deals with the order in which deductions may be made.
1420. *Subsection (1)* sets out the general rule that section 835 of ICTA, which provides for deductions to be allowed in the order which results in the greatest reduction of liability to income tax, applies in the present context.
1421. *Subsection (2)* qualifies the general rule. The subsection specifies two provisions which impose a requirement to consider deduction provisions in a particular order.

Section 332: Meaning of “the deductibility provisions”

1422. This Act rewrites numerous provisions that refer to amounts or expenses whose deduction would be allowed if the employee incurred and paid them out of the emoluments of the employment (or in some cases just incurred or just paid them). See *Change 81* in Annex 1.
1423. The provisions of the Act that rewrite these provisions are listed in this section, where they are defined as “the deductibility provisions”.
1424. The requirement that amounts or expenses be incurred and paid out of emoluments of the employment is not, in general, being rewritten: so the deductibility provisions do not

rewrite the words “out of the emoluments”. Instead, they refer to amounts or expenses that would be allowed as a deduction if the employee had incurred and paid them.

1425. Since the general requirement in section 329(1) that deductions from earnings are not to exceed earnings is assumed to be met in the deductibility provisions (because of the references in them to the employee being assumed to have paid the amounts or expenses out of emoluments), section 329(5) provides that section 329 is to be disregarded for the purposes of the deductibility provisions.
1426. In the case of the deduction under section 353, where the requirement for payment out of earnings has survived, 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 in question. (See section 353(4).)

Chapter 2: Deductions for employee’s expenses

Overview

1427. This Chapter deals with the most familiar situation in which deductions from earnings are allowed – where the employee has paid an expense of the employment. The Chapter also deals with the situation where someone else (usually the employer) pays the expense on the employee’s behalf. The Chapter therefore deals with section 198 of ICTA, with the related provisions in Schedule 12A of that Act, and with a number of other provisions, such as sections 201, 201AA and 201A of ICTA, which allow deductions for particular expenses paid by the employee.
1428. The Chapter may be divided into the following components:
- introductory provisions (sections 333 to 335);
 - the general rule governing the deduction of expenses (section 336);
 - further rules allowing the deduction of particular expenses, grouped according to the type of expense involved (sections 337 to 352);
 - special rules for earnings with a foreign element (sections 353 to 355); and
 - rules which prohibit or restrict deductions (sections 356 to 360).

Section 333: Scope of this Chapter: expenses paid by the employee

1429. This section sets out the distinguishing condition for the deductions allowed under this Chapter: the amount in question must have been paid by or on behalf of the employee.
1430. *Subsection (1)* sets out this basic proposition.
1431. The most important single source for this section is section 198(1) of ICTA, which allows a deduction for an amount where the holder of an office or employment is obliged to “incur and defray” that amount. There are also a number of other provisions in Part 5 of ICTA which have similar wording.
1432. There is, however, another point that arises in relation to this part of section 198(1) of ICTA and other corresponding provisions. A deduction may be allowed where the employee has incurred the expense but the actual liability is met by someone else, usually the employer. Where the employee’s pecuniary liability is met in this way it is an emolument. It is taxed under paragraph 1 of section 19(1) of ICTA. As the expense is met in a way that constitutes emoluments, it is accepted that it has been defrayed out of those emoluments. The employee, accordingly, is allowed a deduction if the liability met comes within the wording of section 198(1) of ICTA or some other corresponding provision. This, in practice, is how those provisions are operated. *Subsection (1)(b)* of this section therefore provides for a deduction to be allowed for such an amount if

that amount is paid on the employee's behalf by someone else and is included in the earnings. See *Note 36(A)* in Annex 2.

1433. The source legislation does not state explicitly that a deduction is allowed where the employee incurs the expense but the liability is met by someone else. *Subsection (2)* makes the position clearer by providing that the employee is treated as paying the expense where the actual liability is met by someone else and constitutes earnings of the employee.
1434. To be allowed a deduction under this Chapter, an employee must satisfy subsection (1), read, if necessary, with subsection (2), although there are some provisions where it is perhaps unlikely that subsection (2) will be in point. The inclusion of these propositions here means that it becomes unnecessary to say something to the same effect in each of the individual deduction provisions in this Chapter.
1435. *Subsection (3)* deals with the two exceptions to subsection (1). In the case of these two exceptions, subsection (2) is also disappplied.
1436. *Subsection (4)* consists of a signpost to the following Chapter. That Chapter deals with deductions from benefits code earnings for costs that would have been deductible if the employee had paid them. It therefore covers cases where an expense is met by the employer in the form of a taxable benefit.

Section 334: Effect of reimbursement etc.

1437. This section contains provisions dealing with the effect of reimbursement.
1438. Under the source legislation, a reimbursed amount is dealt with for income tax purposes in either of two ways:
- if the reimbursed amount constitutes part of the earnings from the employment, the deduction is allowed in full; or
 - if the reimbursed amount does not constitute part of the earnings from the employment, the deduction of the expense is not allowed to the extent that reimbursement is made. The speeches of Lord Guest and Lord Pearce in *Pook (HM Inspector of Taxes) v Owen (1969) 45 TC 571* envisage that a reimbursed amount may be dealt with in this way.
1439. Against this background, this section has been included in this Act with the object of making explicit provision for cases where an amount is reimbursed. This section is not derived directly from the source legislation, but it reflects Inland Revenue practice in cases where amounts deductible for income tax purposes are reimbursed. See *Note 36(B)* in Annex 2.
1440. This section also includes wording to ensure that the provisions of this Chapter apply where a payment is made to the employee in respect of the expenses in question, and that payment is included in the employee's earnings. This wording guards against the argument that, in such a case, it is the person making the payment to the employee who pays the amount in question, and not the employee.
1441. *Subsection (3)* provides that this section does not apply to expenses allowed under section 351 (expenses of ministers of religion).
1442. *Subsection (4)* provides that this section is disregarded for the purposes of the deductibility provisions (as defined in section 332).

Section 335: Application of deductions provisions: “earnings charged on receipt” and “earnings charged on remittance”

1443. This section provides that the availability of certain deductions under this Chapter depends on whether or not the earnings are “earnings charged on receipt” or “earnings charged on remittance”.
1444. The section is new, but it draws on material in section 198(2) of ICTA.
1445. The expressions “earnings charged on receipt” and “earnings charged on remittance” are defined in *subsection (4)* for the purposes of this Part of this Act. The ambit of the expression “earnings charged on receipt” is the same as that of Cases I and II of Schedule E in paragraph 1 of section 19(1) of ICTA; and the ambit of the expression “earnings charged on remittance” is the same as that of Case III of Schedule E in section 19(1) of that Act.

Section 336: Deductions for expenses: the general rule

1446. This section states the general rule relating to deductions allowed from earnings.
1447. The section derives from section 198(1)(b) of ICTA. This provision has been the subject of much litigation.
1448. *Subsection (1)* states the general rule: a deduction from earnings is allowed for an amount if the employee is obliged to incur and pay it as holder of the employment, and the amount is incurred wholly, exclusively and necessarily in the performance of the duties of the employment.
1449. *Subsection (2)*, which is new, provides that the following sections in this Chapter contain additional rules allowing deductions for particular kinds of expenses, and rules preventing particular kinds of expenses from being deductible. This subsection, accordingly, emphasises the fact that deductions under the later sections in this Chapter do not depend on this section being satisfied first.
1450. *Subsection (3)* provides that no deduction is allowed under this section for an amount that is deductible under sections 337 to 342 (travel expenses).

Section 337: Travel in performance of duties

1451. This section allows a deduction from earnings for travel expenses if the expenses are necessarily incurred on travelling in the performance of the duties of the employment.
1452. The section is the first of two dealing with the proposition, contained in section 198(1)(a) of ICTA, that a deduction is allowed for “qualifying travelling expenses”. This section deals with the part of that definition in section 198(1A)(a) of ICTA.
1453. Although the label “qualifying travel expenses” appears in section 198(1)(a) of ICTA, that label is used only at the beginning of section 198(1A) of that Act. The label is not used in this Act.
1454. *Subsection (1)* provides that a deduction is allowed from earnings for the travel expenses. In *subsection (1)(b)*, the word “incurred” has replaced the word “expended”; but the practical application of this section should be precisely the same as that of the legislation it replaces: *subsection (1)(a)* provides that the travel expenses must be both incurred and paid.
1455. *Subsection (2)* provides that this section needs to be read with section 359, which prohibits a deduction if a mileage allowance is paid or if mileage allowance relief is available.

Section 338: Travel for necessary attendance

1456. This section allows a deduction from earnings for travel expenses if the expenses are attributable to the employee's necessary attendance at any place in the performance of the duties of the employment. However, the deduction allowed by this section is not available for the expenses of "ordinary commuting" or "private travel".
1457. The section is the second of two dealing with the proposition that a deduction is allowed for qualifying travelling expenses. This section deals with the part of that definition in section 198(1A)(b) of ICTA. That provision mentions "ordinary commuting" and "private travel" in section 198(1A)(b)(ii) but those expressions are only defined in paragraph 2 of Schedule 12A to that Act. Paragraph 3 of that Schedule contains a gloss on paragraph 2 and this section also deals with that gloss.
1458. This section derives from section 198(1)(a) and (1A)(b) of ICTA and from paragraphs 2 and 3 of Schedule 12A to that Act. The statutory material has been reorganised so that the definitions of "ordinary commuting" and "private travel" are placed near the propositions to which they apply; and the gloss upon the definitions has been incorporated in the subsections setting out the effect of "ordinary commuting" and "private travel".
1459. *Subsection (6)* provides that this section needs to be read with section 359, which prohibits a deduction if a mileage allowance is paid or if mileage allowance relief is available.

Section 339: Meaning of "workplace" and "permanent workplace"

1460. This section defines the terms "workplace" and "permanent workplace", which are used in the definitions of "ordinary commuting" and "private travel" in section 338.
1461. The section derives from paragraphs 2(3) and 4 to 7 of Schedule 12A to ICTA.

Section 340: Travel between group employments

1462. This section allows a deduction from earnings for travel expenses where an employee, who has employments with more than one company in the same group, travels from a place of employment with one group company to another place of employment with another group company.
1463. The section derives from section 198(1B) of ICTA, which provides that the travel expenses are treated as necessarily expended in the performance of the duties to be performed at the destination.
1464. *Subsections (2) to (5)* set out all the conditions that need to be met for the deduction to be allowed. The condition that it is the holder of the employment who is obliged to incur the expenses has not been included, because the Inland Revenue does not rely on this condition before the deduction is allowed. See *Change 83* in Annex 1.
1465. *Subsection (6)* defines the term "group" for the purposes of this section. The definition is more concise than in the legislation from which this subsection derives.
1466. *Subsection (7)* does not set out the general proposition, to be found in the source legislation, that the travel expenses are necessarily expended in the performance of the duties to be performed at the destination. Instead, the operation of the provision has been confined to the two sections (mentioned in this subsection) where this proposition may have an impact.
1467. *Subsection (8)* provides that this section needs to be read with section 359, which prohibits a deduction if a mileage allowance is paid or if mileage allowance relief is available.

Section 341: Travel at start or finish of overseas employment

1468. This section allows a deduction from earnings for starting travelling expenses and finishing travelling expenses if the duties of the employment are performed wholly outside the United Kingdom.
1469. The section derives from section 193(2) and (3) of ICTA.
1470. Section 193(3) begins with the words “For the purposes of section 198(1)”. This section sets out all the conditions that have to be met in each case, as opposed to referring to section 336, the successor provision to section 198(1).
1471. *Subsections (2) to (4)*, however, do not reproduce the condition from section 198(1) that the holder of the employment is obliged to incur and defray the expenses, because the Inland Revenue does not rely on this condition before allowing the deduction from earnings. See *Change 83* in Annex 1.
1472. *Subsection (4)* is one of the provisions that make use of the new term “foreign employer”, defined in section 721 for the purposes of this Act as a whole.
1473. *Subsections (6) and (7)* derive from section 132(2) of ICTA. These subsections ensure that a deduction under this section is still available if duties of the employment are performed in the United Kingdom which are merely incidental to the duties of the employment performed outside the United Kingdom. See also *Change 101(B)* in Annex 1.
1474. *Subsection (8)* defines the new terms “starting travel expenses” and “finishing travel expenses”, which describe travel to take up an overseas employment and travel home after it has finished. This subsection also extends the meaning of the term “employee” to include a person who is to be, or has ceased to be, an employee.
1475. *Subsection (9)* provides that this section needs to be read with section 359, which prohibits a deduction if a mileage allowance is paid or if mileage allowance relief is available.

Section 342: Travel between employments where duties performed abroad

1476. This section allows a deduction from earnings for travel expenses where an employee, who has performed duties of one employment at the place of departure, travels to perform duties of another employment at the destination, and the place of departure or the destination, or both, are outside the United Kingdom.
1477. The section derives from section 193(5) and (6) of ICTA.
1478. Section 193(6) begins with the words “For the purposes of section 198(1)”. This section sets out all the conditions that have to be met in each case, as opposed to referring to section 336, the successor provision to section 198(1).
1479. *Subsections (2) to (7)*, however, do not reproduce the condition from section 198(1) that the holder of the employment is obliged to incur and defray the expenses, because the Inland Revenue does not rely on this condition before the deduction is allowed. See *Change 83* in Annex 1.
1480. *Subsection (7)* is one of the provisions that make use of the new term “foreign employer”, defined for the purposes of this Act as a whole in section 721.
1481. *Subsection (9)* provides that this section needs to be read with section 359, which prohibits a deduction if a mileage allowance is paid or if mileage allowance relief is available.

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. 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.

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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.

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.

Example

1537. Suppose that F, a Frenchman, is resident and ordinarily resident in France. He performs most of the duties of his employment in France where he receives the earnings for those duties. F does not remit any of those earnings to the United Kingdom, so they are not chargeable to income tax in the United Kingdom. As the holder of his employment, F is also obliged, while in France, to incur expenditure wholly, exclusively and necessarily in the performance of his duties there. However, F also performs a minority of the duties of his employment in the United Kingdom where he receives earnings for these other duties. These earnings are chargeable to income tax in the United Kingdom (see section 27). This section prohibits F from deducting the expenditure incurred in France from the income chargeable to tax in the United Kingdom.
1538. *Subsection (2)* applies if the earnings from an employment for a tax year include both earnings charged on remittance under section 26 and other earnings. The subsection prohibits a deduction under section 353 from the earnings charged on remittance if the expenses in question relate to the other earnings.
1539. *Subsection (3)* provides that this section is to be disregarded for the purposes of the deductibility provisions. See *Note 37* in Annex 2.

Section 355: Deduction for corresponding payments by non-domiciled employees with foreign employers

1540. This section provides for a non-domiciled employee with a foreign employer to claim a deduction if certain conditions are met.
1541. This section derives from section 192(1) and (3) of ICTA.
1542. *Subsections (2) to (5)* sets out the conditions that must be met:
- The employee must not be domiciled in the United Kingdom;
 - The employment must be with a foreign employer (a term defined in section 721(1));
 - The employee must have made a payment out of earnings from the employment; and

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

- The payment did not reduce the employee's liability to United Kingdom income tax, but was made in circumstances corresponding to those in which it would do so.

1543. *Subsection (6)* provides for the deduction to be allowed.

1544. Section 192(3) of ICTA provides for a successful claim to be allowed "as a deduction in computing the amount of the emoluments"; but this section provides for the claim to be allowed "as a deduction under this Chapter". See *Change 93* in Annex 1.

Section 356: Disallowance of business entertainment and gifts expenses

1545. This section prevents a deduction from earnings of expenses incurred in providing entertainment or a gift in connection with the employer's trade, business, profession or vocation. This general prohibition is subject to the exceptions in sections 357 and 358.

1546. This section derives from section 577(1)(b), (5), (7) and (8) of ICTA and contains new drafting material.

1547. *Subsection (1)* contains the general prohibition on deducting expenses incurred in providing entertainment or a gift.

1548. This section makes it clear that the trade, business, profession or vocation to which the business entertainment expenses relate is the trade etc of the employer. See *Change 94* in Annex 1.

1549. *Subsection (2)* refers to certain exceptions from the general prohibition in subsection (1).

1550. *Subsection (3)* extends the meaning of "entertainment" and brings incidental expenses within the scope of the section.

Section 357: Business entertainment and gifts: exception where employer's expenses disallowed

1551. This section contains an exception to the general prohibition on deducting business entertainment and gifts expenses in section 356. It derives from section 577(1)(a) and (3) of ICTA and contains new drafting material.

1552. *Subsection (1)* disapplies the prohibition on deducting entertaining and gifts expenditure in section 356 where certain conditions are met and refers to further alternative conditions in subsections (2), (3) and (4).

1553. *Subsection (2)* requires that the deduction of the expense must fall to be disallowed in calculating the employer's profits because of section 577 of ICTA where the employer is carrying on a trade, profession or vocation. In practice, this condition is treated as met where the expense would have been disallowed apart from any exemption in section 505(1)(e) of ICTA (exemption from tax under Schedule D in respect of the profits of any trade carried on by a charity where the profits are applied solely to the purposes of the charity etc.) or because of another relief applying to the profits of the employer. Subsection (2) spells out this treatment.

1554. *Subsection (3)* contains an alternative requirement that the expense must fall to be disallowed in calculating the employer's expenses of management because of section 577 of ICTA. Again, it is made clear that the fact the disallowance does not operate because a relief applies is ignored.

1555. *Subsection (4)* contains the other alternative requirement that the expense would fall to be disallowed in calculating the employer's "relevant shipping profits" apart from the making by the employer of a tonnage tax election. See *Change 95* in Annex 1.

1556. *Subsection (5)* contains cross-references to Schedule 22 to FA 2000 to explain the terms used in subsection (4) relating to tonnage tax.

1557. The reference in section 577(3)(b) of ICTA to “in whole or in part” has been omitted. See *Note 38* in Annex 2.

Section 358: Business entertainment and gifts: other exceptions

1558. This section contains the other exceptions from the general prohibition on deducting business entertaining and gifts expenses in section 356. It derives from section 577(5), (7)(c) and (8) of ICTA and contains new drafting material.
1559. *Subsection (1)* provides that the general prohibition on deducting expenses in section 356 does not apply, with some exceptions, if the sums are incurred in providing entertainment or gifts for the employer’s employees. But the prohibition in section 356 does still apply in the circumstances set out in paragraphs (a) and (b) of subsection (1) of section 358.
1560. *Subsection (2)* treats directors and persons engaged in the management of a company as employed by it for the purpose of this section.
1561. *Subsection (3)* provides that the general prohibition on deducting entertaining and gifts expenses in section 356 does not apply, with some exceptions, if the sums relate to the provision of a gift which incorporates a conspicuous advertisement for the employer. But the prohibition in section 356 does still apply in the circumstances set out in subsection (3)(a) or (b) of section 358.
1562. The subsection also provides that where the employer is a company, the general prohibition does not apply, with some exceptions, if the expenses are incurred in providing a gift which incorporates a conspicuous advertisement for another company which belongs to the same group as the employer. See *Change 96* in Annex 1. This exception will not apply, however, in the circumstances set out in subsection (3)(a) or (b) of this section.
1563. This subsection also removes any doubt there might be about whether an employee is excepted from the prohibition in section 356 where the terms of the exception are met. See *Change 96* in Annex 1.
1564. The word “donor” which appears towards the end of the introduction to section 577(8) of ICTA has been changed to “employer” in subsection (3) of section 358. See *Change 96* in Annex 1.
1565. The £50 limit in subsection (3)(b) of this section is fixed at that amount by the section. However, section 716(2)(h) of this Act provides that the £50 limit may be increased by an order made by the Treasury. See *Change 96* in Annex 1.
1566. *Subsection (4)* defines “group” for the purposes of subsection (3) of this section.

Section 359: Disallowance of travel expenses: mileage allowances and reliefs

1567. This section prohibits an employee from obtaining a deduction under the travel deduction provisions (defined as sections 337 to 342, 351, 370, 371, 373 and 374) if mileage allowance payments are made to the employee or mileage allowance relief is available. The section is necessary to establish the order in which the relevant provisions are to be applied and to ensure that there is no double relief.
1568. The section derives from section 198(5) of ICTA, added by Schedule 12, Part 2, paragraph 6 to FA 2001 (in so far as this section relates to the travel deductions provisions other than section 351); and from section 332(3A) and (3B) of ICTA, added by Schedule 12, Part 2, paragraph 10 to FA 2001 (in so far as this section relates to section 351).
1569. *Subsection (4)* contains the definitions of “mileage allowance payments” and “the travel deductions provisions” and contains signposts to the definitions of “company

vehicle” and “mileage allowance payments”. Mileage allowance relief is dealt with in section 231.

Section 360: Disallowance of certain accommodation expenses of MPs and other representatives

1570. This section prevents MPs and other representatives from obtaining a deduction from earnings for residential or overnight accommodation.
1571. The section derives from section 198(4) of ICTA.
1572. Section 198(4) is the counterpart to provisions contained in sections 200 and 200ZA of ICTA, from which sections 292 and 293 derive. Those sections provide that allowances for residential or overnight accommodation are exempt from income tax: and this present section accordingly provides that no deduction is allowed for the accommodation expenses in respect of which the allowances are paid.
1573. *Subsection (1)* provides that no deduction from earnings is allowed “under this Chapter”, and may, accordingly, be contrasted with section 198(4) of ICTA, which provided that no deductions should be made “under this section”. See *Change 97* in Annex 1.

Chapter 3: Deductions from benefits code earnings

Overview

1574. The sections in this Chapter allow deductions where goods or services are provided which are within the scope of the benefits code and deductions would have been allowed if the goods or services had been paid for by the employee. The sections derive from sections 141(3), 142(2), 145(3) and 156(8) of ICTA.
1575. All the sections in the Chapter refer to deductions under the whole of Chapter 2 and Chapter 5 of this Part instead of restricting them to the rewritten versions of the provisions referred to in sections 141(3), 142(2), 145(3) and 156(8) of ICTA. See *Change 99* in Annex 1.

Section 361: Scope of this Chapter: cost of benefits deductible as if paid by employee

1576. This section sets out the general proposition for a deduction to be allowed under this Chapter. A person’s earnings must include an amount treated as earnings under the relevant parts of the benefits code and a deduction must have been allowable if the employee had paid the cost of the goods or services. The sections in this Chapter are a change in approach to provisions from which they are derived. The changes in sections 362, 363, 364 and 365 are explained in detail in *Changes 98* and *99* in Annex 1.

Section 362: Deductions where non-cash voucher provided

1577. This section applies where goods or services are obtained by an employee in exchange for a non-cash voucher for which an amount is treated as earnings by virtue of section 87(1). It derives from section 141(3) of ICTA. If, had the goods or services been provided by the employee, a deduction would be allowable by the provisions of Chapter 2 or 5 of this Part a deduction is allowable by virtue of this section.
1578. *Subsection (1)* sets out the conditions which must apply if a deduction from earnings is to be allowed.
1579. *Subsection (2)* quantifies the amount of the deduction. A limit is placed on the amount of the deduction allowed rather than providing the deduction is only to be set against the amount treated as earnings.

Section 363: Deductions where credit-token provided

1580. This section applies where goods or services are provided using a credit-token. A deduction may be allowed where the earnings include an amount treated as earnings under section 94(1) and the token is used to obtain goods or services. If the employee would have been allowed a deduction under Chapter 2 or Chapter 5 of this Part if he had paid for the goods or services, a deduction is allowed by this section.
1581. *Subsection (1)* sets out the conditions which must apply if a deduction from earnings is to be allowed.
1582. *Subsection (2)* quantifies the amount of the deduction, with the same limit as described for section 362.
1583. The section derives from section 142(2) of ICTA.

Section 364: Deductions where living accommodation provided

1584. This section applies where the benefit provided is living accommodation. A deduction may be allowed where the earnings include an amount treated as earnings under Chapter 5 of Part 3. If the employee would have been allowed a deduction under Chapter 2 or Chapter 5 of this Part if he had paid for the accommodation, a deduction is allowed under this section. It derives from section 145(3) and 146(9) of ICTA.
1585. A limit is placed on the deduction to be made. The deduction will be calculated on the basis that the amount paid by the employee for the accommodation is equal to the amount treated as earnings in respect of that accommodation.
1586. *Subsection (1)* sets out the conditions which must apply if a deduction from earnings is to be allowed.
1587. *Subsection (2)* quantifies the amount of the deduction.

Section 365: Deductions where employment-related benefit provided

1588. This section applies where an unspecified benefit is provided. A deduction may be due where the earnings include an amount treated as earnings under Chapter 10 of Part 3 of this Act in respect of a benefit. If the employee would have been allowed a deduction under Chapter 2 or Chapter 5 of this Part if he had paid for the cost of the benefit, a deduction is allowed under this section. It derives from section 156(8) of ICTA.
1589. *Subsection (1)* sets out the conditions which must apply if a deduction from earnings is to be allowed.
1590. *Subsection (2)* quantifies the amount of the deduction with the same limit as described for section 362.
1591. *Subsection (3)* contains an explanation of the “cost of the benefit”.

Chapter 4: Fixed allowances for employee’s expenses

Overview

1592. This Chapter contains provisions that allow deductions from an employee’s earnings for amounts fixed by the Treasury.

Section 366: Scope of this Chapter: amounts fixed by Treasury

1593. This section sets out the scope of the Chapter – to allow deductions from earnings for a sum fixed by the Treasury by reference to the employee’s employment.

Section 367: Fixed sum deductions for repairing and maintaining work equipment

1594. This section allows a deduction from the earnings of certain classes of employees for a sum fixed by the Treasury.
1595. It derives from ESC A1. See *Change 100* in Annex 1.
1596. *Subsection (1)* allows a deduction from the earnings of an employee for a sum fixed by the Treasury as representing the average annual expense in respect of the repair and maintenance of work equipment incurred by employees of the class to which the employee belongs.
1597. *Subsection (2)* sets out the terms under which the Treasury may fix a sum for a class of employees.
1598. *Subsection (3)* prevents the allowance of the fixed-sum deduction if the expense in respect of which the sum is fixed is paid or reimbursed by the employer or would be if requested.
1599. *Subsection (4)* provides that where the employer meets part of the expenses (or would do if so requested) in respect of which the fixed-sum deduction is set, the deduction is reduced by that amount.
1600. *Subsection (5)* defines “work equipment” for subsections (1) and (2).
1601. *Subsection (6)* requires the section to be read with section 330(2) (prevention of double deductions). If an expense on work equipment were deductible under Chapter 2 of Part 5, it would not be deductible under this section. See *Change 82* in Annex 1.

Section 368: Fixed sum deductions from earnings payable out of public revenue

1602. This section allows for certain descriptions of employees a deduction of a sum fixed by the Treasury from earnings paid out of public revenue.
1603. It derives from section 199 of ICTA.
1604. *Subsection (1)* allows a deduction from earnings payable out of public revenue for fixed sum expenses relating to the duties that give rise to those earnings.
1605. *Subsection (2)* defines “fixed sum expenses”.
1606. *Subsection (3)* requires the section to be read with section 330(2) (prevention of double deductions). If the expense were deductible under Chapter 2 of Part 5, it would not be deductible under this section.

Chapter 5: Deductions for earnings representing benefits or reimbursed expenses

Background

1607. This Chapter deals with cases where the employer, or a third party, bears the cost of something that is taken into account as part of the employee’s earnings, but the employee is entitled to a deduction from those earnings in respect of that cost.
1608. This Chapter derives from provisions in sections 193 to 195 of ICTA and in sections 50 to 52 of FA 1989. In the majority of cases dealt with, the amount of such a deduction is expressed as being “equal to so much of that cost or, as the case may be, those expenses as fall to be included in those emoluments”. In the present Chapter, by contrast, it is possible to define the amount in question as “the included amount”, and then to say that “the deduction is equal to the included amount”.
1609. Another common thread in the provisions dealt with in this Chapter is that the amounts included in the employee’s earnings are generally expressed in terms of provision being made “by or on behalf of the employer” (or similar). It has not been possible to establish

the original policy reasons for limiting the scope of the deductions to provision made in this way. There may be circumstances where the provision is by or on behalf of someone other than the employer and the amount is still chargeable as part of the employee's earnings. As long as all the other conditions for the deductions are met, there seems no reason why a deduction should be withheld because the provision was made by a person other than the employer or someone acting on the employer's behalf. The words "by or on behalf of the employer" (or similar) which appear in the source legislation are therefore omitted. To the extent that this change has any practical effect, it will be in favour of the taxpayer. See *Change 101(A)* in Annex 1.

1610. This Chapter does not deal with a deduction for expenses incurred and paid by the employee without any reimbursement. That kind of deduction is dealt with in Chapter 2 of this Part.

Overview

1611. As in Chapter 2 of this Part, the sections have been grouped according to the type of expense involved. After section 369, which is introductory:
- sections 370 to 372 allow deductions for travel costs and expenses where the employee is resident and ordinarily resident in the United Kingdom, but the duties of the employment are performed abroad;
 - section 373 to 375 allow deductions for travel costs and expenses where the employee is not domiciled in the United Kingdom, but the duties of the employment are performed in the United Kingdom;
 - section 376 allows a deduction for costs and expenses in respect of accommodation or subsistence where the employee is resident and ordinarily resident in the United Kingdom, but working abroad;
 - section 377 allows a deduction for costs and expenses in respect of personal security assets and services.

Section 369: Scope of this Chapter: earnings representing benefits or reimbursed expenses

1612. This section deals with preliminary matters relevant for this Chapter.
1613. *Subsection (1)* brings together material contained in sections 193(4), 194(1) and 195(7) of ICTA and in section 50(2) and (3) of FA 1989. *Subsections (2)* and *(3)* are drafting additions.
1614. *Subsection (1)* states the general proposition that a deduction from a person's earnings is allowed under the following provisions of this Chapter where an amount has been included in the earnings in respect of provision made for the person or expenses reimbursed by another person. See *Change 101(A)* in Annex 1.
1615. *Subsection (2)* provides that the amount described in *subsection (1)* is referred to in this Chapter as "the included amount".
1616. *Subsection (3)* is concerned with the overlap between this Chapter and Chapter 3 of this Part. If the included amount is an amount treated as earnings by virtue of the benefits code, a deduction may be available under Chapter 3; and this subsection accordingly provides a signpost to that Chapter.

Travel costs and expenses where duties performed abroad

1617. The next three sections provide for deductions to be allowed from earnings for travel costs and expenses where the employee is resident and ordinarily resident in the United Kingdom but the duties of the employment are performed abroad. These sections derive from provisions in section 194 of ICTA.

Section 370: Travel costs and expenses where duties performed abroad: employee's travel

1618. This section provides that a deduction is allowed from earnings for travel costs and expenses where the journey in question is made by the employee.
1619. The section derives from provisions in section 194(1), (3), (4), (5), (6) and (8) of ICTA.
1620. *Subsection (1)* specifies the circumstances in which a deduction from earnings is allowed. See also *Change 101(A)* in Annex 1. The deduction is allowed if:
- the employee has earnings which are taxable earnings under section 15 or 21 (which apply if the employee is resident and ordinarily resident in the United Kingdom in the tax year);
 - the earnings include an amount in respect of the provision of travel facilities for a journey made by the employee, or the reimbursement of expenses incurred by the employee on such a journey; and
 - the requirements specified in one of cases A to C are met.
1621. *Subsection (2)* provides that the deduction is equal to the included amount; and cases A, B and C are set out in *subsections (3), (4) and (5)*.
1622. In the source legislation the provisions of section 132(2) of ICTA could affect the availability of this deduction. The application of section 132(2) would mean the disallowance of a deduction under this section where the duties performed in the United Kingdom were merely incidental to the performance of the other duties of the employment outside the United Kingdom. In practice deductions are allowed in these circumstances; and, accordingly, material deriving from section 132(2) of ICTA has not been included in this section. See *Change 101(B)* in Annex 1.

Section 371: Travel costs and expenses where duties performed abroad: visiting spouse's or child's travel

1623. This section provides that a deduction is allowed from earnings for travel costs and expenses where the journey in question is made by the employee's spouse or child.
1624. The section derives from provisions in section 194(1) and (2) of ICTA.
1625. *Subsection (1)* specifies the circumstances in which a deduction from earnings is allowed. See also *Change 101(A)* in Annex 1. The deduction is allowed if:
- the employee has earnings which are taxable earnings under section 15 or 21 (which apply if the employee is resident and ordinarily resident in the United Kingdom in the tax year);
 - the earnings include an amount in respect of the provision of travel facilities for a journey made by the employee's spouse or child, or the reimbursement of expenses incurred by the employee on such a journey; and
 - conditions A to C are met.
1626. *Subsection (2)* provides that the deduction is equal to the included amount; and conditions A, B and C are set out in *subsections (3), (4) and (5)*.

Section 372: Where seafarers' duties are performed

1627. This section provides that section 40(2) (certain duties treated as performed in the United Kingdom) does not apply for the purposes of determining whether duties performed on a vessel are performed in or outside the United Kingdom for the purposes of sections 370 and 371. It derives from section 194(7) of ICTA.

Travel costs and expenses of non-domiciled employees where duties performed in UK

1628. The next three sections provide for deductions to be allowed from earnings for travel costs and expenses where the employee is not domiciled in the United Kingdom, but the duties are performed there. These sections derive from provisions in section 195 of ICTA.

Section 373: Non-domiciled employee's travel costs and expenses where duties performed in UK

1629. This section provides that a deduction is allowed from earnings for travel costs and expenses where the journey in question is made by the employee.

1630. The section derives from provisions in section 195(1), (2), (5), (7), (8) and (9) of ICTA.

1631. *Subsection (1)* specifies the circumstances in which a deduction from earnings is allowed. See also *Change 101(A)* in Annex 1. The deduction is allowed if:

- the employee is not domiciled in the United Kingdom;
- the employee receives earnings from an employment for duties performed in the United Kingdom; and
- an amount is included in the earnings in respect of the provision of travel facilities for a journey made by the employee, or the reimbursement of expenses incurred by the employee on such a journey.

1632. *Subsection (2)* provides for the deduction from earnings to be allowed if:

- the earnings are earnings charged on receipt (a term defined in section 335(4)); and
- the conditions set out in *subsections (3) and (4)* are met.

1633. Condition A in *subsection (3)* reflects Inland Revenue practice in linking the five year period to the date when the journey was undertaken as opposed to the date when the expenditure was incurred. See *Change 102* in Annex 1.

1634. *Subsection (5)* provides that if the journey is wholly for the purpose specified in *subsection (4)*, the deduction allowed is equal to the included amount; and *subsection (6)* provides that if the journey is only partly for that purpose, the deduction allowed is only a proportion of the included amount.

1635. In section 195 of ICTA there are references to a person's "usual place of abode" and this expression is then defined (in section 195(9)) as "the country (outside the United Kingdom) in which he normally lives". The provisions in this Act take a simpler approach, referring just to "the country outside the United Kingdom in which the employee normally lives".

Section 374: Non-domiciled employee's spouse's or child's travel costs and expenses where duties performed in UK

1636. This section provides that a deduction is allowed from earnings for travel costs and expenses where the journey in question is made by the employee's spouse or child.

1637. The section derives from provisions in section 195(1), (2) and (6) to (10) of ICTA.

1638. *Subsection (1)* specifies the circumstances in which a deduction from earnings is allowed. See also *Change 101(A)* in Annex 1. The deduction is allowed if:

- the employee is not domiciled in the United Kingdom;
- the employee receives earnings from an employment for duties performed in the United Kingdom; and

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- an amount is included in the earnings in respect of the provision of travel facilities made by the employee's spouse or child, or the reimbursement of expenses incurred by the employee on such a journey.
1639. *Subsection (2)* provides for the deduction from earnings to be allowed if:
- the earnings are earnings charged on receipt (a term defined in section 335(4)); and
 - the conditions set out in *subsections (3) to (5)* are met.
1640. Condition A in *subsection (3)* reflects Inland Revenue practice in linking the five year period to the date when the journey was undertaken as opposed to the date when the expenditure was incurred. See *Change 102* in Annex 1.
1641. *Subsection (6)* provides that if the journey is wholly for the purpose specified in *subsection (5)*, the deduction allowed is equal to the included amount; and *subsection (7)* provides that if the journey is only partly for that purpose, the deduction allowed is only a proportion of the included amount.
1642. As in the case of section 373, references to an employee's "usual place of abode" have been replaced by references to the country outside the United Kingdom in which the employee normally lives.

Section 375: Meaning of "qualifying arrival date"

1643. This section explains the meaning of the expression "qualifying arrival date", which is used in sections 373 and 374. It derives from section 195(2), (3) and (4) of ICTA.
1644. *Subsection (4)* provides that if there are two or more dates in a tax year which are capable of being a "qualifying arrival date", the qualifying arrival date is the earliest of those dates.

Section 376: Foreign accommodation and subsistence costs and expenses (overseas employments)

1645. This section provides that a deduction is allowed for costs or expenses in respect of accommodation or subsistence while an employee is working abroad.
1646. The section derives from section 193(2) and (4) of ICTA.
1647. *Subsection (1)* specifies the circumstances in which a deduction from earnings is allowed. See also *Change 101(A)* in Annex 1. The deduction is allowed if:
- the duties of the employment are performed wholly outside the United Kingdom;
 - the employee is resident and ordinarily resident in the United Kingdom;
 - in a case where the employer is a foreign employer (see section 721(1)), the employee is domiciled in the United Kingdom; and
 - the earnings include an amount in respect of the provision of accommodation or subsistence outside the United Kingdom for the purpose of enabling the employee to perform the duties of the employment, or the earnings include an amount in respect of the reimbursement of expenses incurred by the employee on such accommodation or subsistence for that purpose.
1648. *Subsection (2)* provides that if the accommodation or subsistence is wholly for the purpose of enabling the employee to perform the duties of the employment, the deduction is equal to the included amount; and *subsection (3)* provides that if the accommodation or subsistence is only partly for that purpose, the deduction allowed is only a proportion of the included amount.

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1649. The expression “board and lodging” in section 193(4) of ICTA has been replaced in this Act by the expression “accommodation or subsistence”. It is not necessary for both elements mentioned in section 193(4) to be present for the deduction to be allowed.
1650. In the detail of the wording used, this section departs from the legislation it replaces to a significant extent. Some of these changes reflect the decision to dispense with the term “foreign emoluments” and to use the term “foreign employer”.
1651. *Subsections (4) and (5)* derive from section 132(2) of ICTA. These subsections ensure that a deduction under this section is still available if duties of the employment are performed in the United Kingdom which are merely incidental to the duties of the employment performed outside the United Kingdom. See also *Change 101(B)* in Annex 1.

Section 377: Costs and expenses in respect of personal security assets and services

1652. This section provides that a deduction is allowed for costs and expenses in respect of personal security assets and services.
1653. The section derives from sections 50 to 52 of FA 1989.
1654. *Subsection (1)* specifies the circumstances in which a deduction from earnings is allowed. See also *Change 101(A)* in Annex 1. The deduction is allowed if:
- there is a special threat to the employer’s personal physical security which arises wholly or mainly because of the employee’s employment;
 - an asset or service which improves personal security is provided for or used by the employee to meet the threat;
 - the employee’s earnings include an amount in respect of the asset or service because some or all of the costs are borne by the provider; and
 - the provider’s sole object in bearing the whole or part of the cost or reimbursing the expenses is meeting the threat.
1655. If the provider of an asset within subsection (1) intends that asset to be used solely for the purpose of improving personal physical security, a deduction equal to the included amount is allowed (*subsection (2)*). Use incidental to this purpose is ignored (*subsection (3)*). If the provider of the asset intends it to be used only partly to improve personal physical security, the deduction allowed is only a proportion of the included amount (*subsection (4)*). In determining whether or not this section applies, certain matters may be disregarded (*subsection (5)*).
1656. In the case of a service within subsection (1), if the benefit resulting to the employee consists wholly or mainly of an improvement of the employee’s physical security, a deduction equal to the included amount is allowed (*subsection (6)*).
1657. *Subsection (7)* provides that the fact that an asset or a service improves the personal physical security of a member of the employee’s family or household, as well as that of an employee, does not prevent a deduction being allowed under this section. In subsection (7) the expression “member of the employees’ family or household” is not defined in the source legislation; but in this Act this expression is covered by the general definitions in section 721(4) and (5). See *Note 39* in Annex 2.
1658. *Subsection (8)* omits the reference to “living accommodation” in section 52(3)(b) of FA 1989 on the basis that this expression is already encompassed by the word “dwelling”.

Chapter 6: Deductions from seafarers' earnings

1659. This Chapter rewrites section 192A of and Schedule 12 to ICTA. These provide a deduction, commonly called the Foreign Earnings Deduction (“FED”) for seafarers against earnings for a year in which the seafarer is resident and ordinarily resident in the United Kingdom. This deduction has something of the flavour of an exemption in that the amount deductible is equal to an amount of earnings rather than any costs or expenses incurred.

Section 378: Deduction from seafarers' earnings: eligibility

1660. This section sets out the conditions for eligibility for the deduction. Broadly speaking, seafarers must spend no less than half of a qualifying period of at least 365 days outside the United Kingdom and not more than 183 consecutive days in the United Kingdom during the qualifying period.

1661. It is possible to combine various periods of absence from the United Kingdom to determine whether the test has been satisfied. Paragraph 3 of Schedule 12 to ICTA deals with this by using the terms “qualifying period”, “relevant periods”, “a single qualifying period”, “the last qualifying period” and the “intervening period”. These concepts and their various combinations are difficult to follow.

1662. So, in *subsection (2)* the new term “eligible period”, which consists of either a period of continuous absence from the United Kingdom or a “combined period” (another new term which is itself defined in *subsection (3)*) has been introduced.

Section 379: Calculating the deduction

1663. This section sets out the amount of the deduction which may be allowed from the earnings attributable to the eligible period. *Subsection (1)* derives from section 192A(1) of ICTA.

1664. *Subsection (2)* derives from the rule in paragraph 3(3) Schedule 12 to ICTA concerning earnings for a period of leave immediately following an eligible period. That rule says that the emoluments for such a period of leave may be taken as attributable to the qualifying period, but only to the extent that this would not mean having to treat any emoluments for one tax year as belonging to a different tax year. Essentially this rule allows emoluments for a period of leave to be attributed to the qualifying period to the extent that they are emoluments for the tax year during which the qualifying period ends.

1665. *Subsection (3)* makes the deduction subject to the limit contained in the following section.

Section 380: Limit on deduction where UK duties etc. make amount unreasonable

1666. This section derives from paragraph 2 of Schedule 12 to ICTA. It contains anti-avoidance provisions against attempts to manipulate the amount of the earnings to take advantage of the relief.

1667. The rules in paragraph 2(3) of Schedule 12 to ICTA for determining associated employments end with the words “but paragraph (b) above shall not be construed as requiring an individual to be treated in any circumstances as under the control of another person”. These words did not appear to have any policy or practical purpose and have been omitted as unnecessary. The rules are now the same as in section 24 and rather than repeat them here *subsection (4)* contains a cross-reference to that section.

Section 381: Taking account of other deductions

1668. This section contains the rules for calculating the amount of the earnings for the purposes of this Chapter. It derives from paragraph 1A of Schedule 12 to ICTA.

1669. All the other employment income deductions are allowed against the full amount of earnings from the employment for the tax year in question. However, the deduction is only allowed in respect of the earnings from the employment which are attributable to an eligible period.
1670. This means that in some circumstances only a part of a seafarer's earnings for a year may be eligible for the deduction. If the deduction was computed and allowed by reference to the gross earnings for the eligible period, this would displace any other employment income deductions, with the effect that those other deductions, which were for a full year, would be allowed against the earnings for only part of the year.
1671. To prevent this, this section requires that the amount of the earnings for the eligible period is to be computed by first deducting all of the employment income deductions and any capital allowances from the gross earnings of the employment for the year. The net product of this calculation is then apportioned to find the earnings for both the eligible and non-eligible periods.
1672. Paragraph 1A of Schedule 12 to ICTA lists the deductions which are to be taken into account in determining the earnings for the purposes of the FED. However, this list is not complete. For example, it does not refer to deductions under sections 201AA or 201A of ICTA, or under sections 50 to 52 of FA 1989.
1673. This appears to be unintended. In practice, all the other employment income deductions and capital allowances are taken into account when calculating the earnings eligible for the FED. Accordingly the list has been extended to include all those which may be made under the appropriate employment income provisions. This is a minor change to the law. See *Change 103* in Annex 1.

Section 382: Duties on board ship

1674. This section determines whether duties performed on particular voyages are regarded as having been performed in or outside the United Kingdom. It derives from paragraph 5 of Schedule 12 to ICTA and section 132(4)(b) of ICTA.
1675. This section modifies one of the rules in section 132(4)(b) of ICTA, but only for the specific purpose of identifying the duties and earnings which are eligible for the FED. For all other purposes, the rules in section 40 are unaffected by this section.

Section 383: Place of performance of incidental duties

1676. This section derives from paragraph 6 of Schedule 12 to ICTA and sets out the rules (which apply only to the FED), regarding the performance of duties which are incidental to the main duties of the employment.
1677. Under section 132(2) of ICTA, if the duties of an employment are mainly performed outside the United Kingdom, any duties incidental to those performed in the United Kingdom are treated as being performed outside the United Kingdom. However, this rule does not apply when deciding whether or not a seafarer is absent from the United Kingdom to determine entitlement to the FED. This exception to the section 132(2) rule is in section 132(3) and has been rewritten in *subsection (4)* of this section.

Section 384: Meaning of employment "as a seafarer"

1678. This section defines what this means. It derives from section 192A(2) of ICTA. The exception for earnings from Crown employments derives from section 132(4)(a) of ICTA and ensures that those earnings do not qualify for the FED.

Section 385: Meaning of "ship"

1679. This section derives from section 192A(3) of ICTA. "Ship" takes its everyday meaning, subject to the exception in respect of an "offshore installation" as provided by the

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Mineral Workings (Offshore Installations) Act 1971. Further guidance on the meaning of those terms is given in the Inland Revenue Schedule E manual at paragraphs SE 33221 to 33222.