



Income Tax (Earnings and Pensions) Act 2003

2003 CHAPTER 1

PART 3

EMPLOYMENT INCOME: EARNINGS AND BENEFITS ETC. TREATED AS EARNINGS

CHAPTER 2

TAXABLE BENEFITS: THE BENEFITS CODE

The benefits code

63 The benefits code

- (1) In the employment income Parts “the benefits code” means—
 - this Chapter,
 - Chapter 3 (expenses payments),
 - Chapter 4 (vouchers and credit-tokens),
 - Chapter 5 (living accommodation),
 - Chapter 6 (cars, vans and related benefits),
 - Chapter 7 (loans),
 - Chapter 8 (notional loans in respect of acquisitions of shares),
 - Chapter 9 (disposals of shares for more than market value),
 - Chapter 10 (residual liability to charge), and
 - Chapter 11 (exclusion of lower-paid employments from parts of benefits code).
- (2) If an employment is an excluded employment, the general effect of section 216(1) (provisions not applicable to lower-paid employments) is that only the following Chapters apply to the employment—
 - this Chapter,

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Chapter 4 (vouchers and credit-tokens),
 Chapter 5 (living accommodation), and
 Chapter 11 (exclusion of lower-paid employments from parts of benefits code).

- (3) Section 216(5) and (6) explain and restrict the effect of section 216(1).
- (4) In the benefits code “excluded employment” means an employment to which the exclusion in section 216(1) applies.

64 Relationship between earnings and benefits code

- (1) This section applies if, apart from this section, the same benefit would give rise to two amounts (“A” and “B”)—
 - (a) A being an amount of earnings as defined in Chapter 1 of this Part, and
 - (b) B being an amount to be treated as earnings under the benefits code.
- (2) In such a case—
 - (a) A constitutes earnings as defined in Chapter 1 of this Part, and
 - (b) the amount (if any) by which B exceeds A is to be treated as earnings under the benefits code.
- (3) This section does not apply in connection with living accommodation to which Chapter 5 of this Part applies.
- (4) In that case section 109 applies to determine the relationship between that Chapter and Chapter 1 of this Part.
- (5) This section does not apply if section 193 (notional loan where acquisition of shares made for less than market value) applies.
- (6) In that case sections 194 (amount of notional loan) and 196 (effects on other income tax charges) apply to determine the relationship between Chapters 1 and 8 of this Part.

65 Dispensations relating to benefits within provisions not applicable to lower-paid employment

- (1) This section applies for the purposes of the listed provisions where a person (“P”) supplies the Inland Revenue with a statement of the cases and circumstances in which—
 - (a) payments of a particular character are made to or for any employees, or
 - (b) benefits or facilities of a particular kind are provided for any employees, whether they are employees of P or some other person.
- (2) The “listed provisions” are the provisions listed in section 216(4) (provisions of the benefits code which do not apply to lower-paid employments).
- (3) If the Inland Revenue are satisfied that no additional tax is payable by virtue of the listed provisions by reference to the payments, benefits or facilities mentioned in the statement, they must give P a dispensation under this section.
- (4) A “dispensation” is a notice stating that the Inland Revenue agree that no additional tax is payable by virtue of the listed provisions by reference to the payments, benefits or facilities mentioned in the statement supplied by P.

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- (5) If a dispensation is given under this section, nothing in the listed provisions applies to the payments, or the provision of the benefits or facilities, covered by the dispensation or otherwise has the effect of imposing any additional liability to tax in respect of them.
- (6) If in their opinion there is reason to do so, the Inland Revenue may revoke a dispensation by giving a further notice to P.
- (7) That notice may revoke the dispensation from—
 - (a) the date when the dispensation was given, or
 - (b) a later date specified in the notice.
- (8) If the notice revokes the dispensation from the date when the dispensation was given—
 - (a) any liability to tax that would have arisen if the dispensation had never been given is to be treated as having arisen, and
 - (b) P and the employees in question must make all the returns which they would have had to make if the dispensation had never been given.
- (9) If the notice revokes the dispensation from a later date—
 - (a) any liability to tax that would have arisen if the dispensation had ceased to have effect on that date is to be treated as having arisen, and
 - (b) P and the employees in question must make all the returns which they would have had to make if the dispensation had ceased to have effect on that date.

General definitions for benefits code

66 Meaning of “employment” and related expressions

- (1) In the benefits code—
 - (a) “employment” means a taxable employment under Part 2, and
 - (b) “employed”, “employee” and “employer” have corresponding meanings.
- (2) Where a Chapter of the benefits code applies in relation to an employee—
 - (a) references in that Chapter to “the employment” are to the employment of that employee, and
 - (b) references in that Chapter to “the employer” are to the employer in respect of that employment.
- (3) For the purposes of the benefits code an employment is a “taxable employment under Part 2” in a tax year if the earnings from the employment for that year are (or would be if there were any) general earnings to which the charging provisions of Chapter 4 or 5 of Part 2 apply.
- (4) In subsection (3)—
 - (a) the reference to an employment includes employment as a director of a company, and
 - (b) “earnings” means earnings as defined in Chapter 1 of this Part.

67 Meaning of “director” and “full-time working director”

- (1) In the benefits code “director” means—

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- (a) in relation to a company whose affairs are managed by a board of directors or similar body, a member of that body,
 - (b) in relation to a company whose affairs are managed by a single director or similar person, that director or person, and
 - (c) in relation to a company whose affairs are managed by the members themselves, a member of the company,
- and includes any person in accordance with whose directions or instructions the directors of the company (as defined above) are accustomed to act.
- (2) For the purposes of subsection (1) a person is not to be regarded as a person in accordance with whose directions or instructions the directors of the company are accustomed to act merely because the directors act on advice given by that person in a professional capacity.
- (3) In the benefits code “full-time working director” means a director who is required to devote substantially the whole of his time to the service of the company in a managerial or technical capacity.

68 Meaning of “material interest” in a company

- (1) For the purposes of the benefits code a person has a material interest in a company if condition A or B is met.
- (2) Condition A is that the person (with or without one or more associates) or any associate of that person (with or without one or more such associates) is—
- (a) the beneficial owner of, or
 - (b) able to control, directly or through the medium of other companies or by any other indirect means,
- more than 5% of the ordinary share capital of the company.
- (3) Condition B is that, in the case of a close company, the person (with or without one or more associates) or any associate of that person (with or without one or more such associates), possesses or is entitled to acquire, such rights as would—
- (a) in the event of the winding-up of the company, or
 - (b) in any other circumstances,
- give an entitlement to receive more than 5% of the assets which would then be available for distribution among the participators.
- (4) In this section—
- “associate” has the meaning given by section 417(3) of ICTA except that, for this purpose, “relative” in section 417(3) has the meaning given by subsection (5) below, and
 - “participator” has the meaning given by section 417(1) of ICTA.
- (5) For the purposes of this section a person (“A”) is a relative of another (“B”) if A is—
- (a) B’s spouse,
 - (b) a parent, child or remoter relation in the direct line either of B or of B’s spouse,
 - (c) a brother or sister of B or of B’s spouse, or
 - (d) the spouse of a person falling within paragraph (b) or (c).

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69 Extended meaning of “control”

- (1) The definition of “control” in section 840 of ICTA (which is applied for the purposes of this Act by section 719) is extended as follows.
- (2) For the purposes of the benefits code that definition applies (with the necessary modifications) in relation to an unincorporated association as it applies in relation to a body corporate.