



# Finance Act 1948

## 1948 CHAPTER 49

### PART IV

#### INCOME TAX (EXPENSES ALLOWANCES, ETC.).

#### **38 Expenses allowances, etc.**

- (1) Subject to the provisions of this Part of this Act, any sum paid in respect of expenses by a body corporate to any of its directors or to any person employed by it in an employment to which this Part of this Act applies shall, if not otherwise chargeable to income tax as income of that director or employee, be treated for the purposes of Rule I of the Rules applicable to Schedule E as a perquisite of the office or employment of that director or employee and included in the emoluments thereof assessable to income tax accordingly :

Provided that nothing in this subsection shall prevent a claim for a deduction being made under Rule 9 of the said Rules in respect of any money expended wholly, exclusively and necessarily in performing the duties of the office or employment.

- (2) In this section, and, in relation to any director or person employed in an employment to which this Part of this Act applies, in section nineteen of the Finance Act, 1939 (which requires employers in certain cases to give particulars of payments to directors and employed persons in respect of expenses), any reference to a sum paid in respect of expenses includes a reference to any sum put by a body corporate at the disposal of a director or employee and paid away by him.

#### **39 Benefits in kind to be taken into account.**

- (1) Subject to the following provisions of this Part of this Act, where a body corporate incurs expense in or in connection with the provision, for any of its directors or for any person employed by it in an employment to which this Part of this Act applies, of living or other accommodation, of entertainment, of domestic or other services or of other benefits or facilities of whatsoever nature, and, apart from this section, the expense would not be chargeable to income tax as income of the director or employee, Rules 1 and 9 of the Rules applicable to Schedule E and section one hundred and five of the

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Income Tax Act, 1918 (which, as extended by section nineteen of the Finance Act, 1939, requires employers in certain cases to give particulars of sums paid to directors and employed persons in respect of expenses) shall have effect in relation to so much of the said expense as is not made good to the body corporate by the director or employee as if the expense had been incurred by the director or employee and the amount thereof had been refunded to him by the body corporate by means of a payment in respect of expenses.

- (2) The provisions of subsection (1) of this section shall not apply to expense incurred by the body corporate in or in connection with the provision for a director or employee, in any of its business premises, of any accommodation, supplies or services provided for the director or employee himself and used by him solely in performing the duties of his office or employment.
- (3) The provisions of subsection (1) of this section shall not apply to expense incurred by the body corporate in or in connection with the provision of living accommodation for an employee in part of any of its business premises which include living accommodation if the employee is, for the purpose of enabling him properly to perform his duties, required by the terms of his employment to reside in the accommodation and either—
  - (a) the accommodation is provided in accordance with a practice which, since before the beginning of the twenty years ending with the passing of this Act, has commonly prevailed in trades of the class in question as respects employees of the class in question ; or
  - (b) it is necessary, in the case of trades of the class in question, that employees of the class in question should reside on premises of the class in question:

Provided that this subsection shall not apply where the employee is a director of the body corporate in question or of any other body corporate over which that body corporate has control or which has control over that body corporate or which is under the control of a person who also has control over that body corporate.

- (4) The provisions of subsection (1) of this section shall not apply to expense incurred by the body corporate in or in connection with the provision of meals in any canteen in which meals are provided for the staff generally.
- (5) The provisions of subsection (1) of this section shall not apply to expense incurred by the body corporate in or in connection with the provision for a director or employee himself, or for his spouse, children or dependants, of any pension, annuity, lump sum, gratuity or other like benefit to be given on his death or retirement.
- (6) Any reference in this section to expense incurred in or in connection with any matter includes a reference to a proper proportion of any expense incurred partly in or in connection with that matter.

#### **40 Valuation of benefits in kind.**

- (1) Any expense incurred by a body corporate in the acquisition or production of an asset which remains its own property shall be left out of account for the purposes of the last preceding section.
- (2) Where the making of any such provision as is mentioned in subsection (1) of the last preceding section takes the form of a transfer of the property in any asset of the body corporate, and, since the acquisition or production thereof by the body corporate, the asset has been used or has depreciated, the body corporate shall be deemed to have

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incurred in the making of the said provision expense equal to the value of the asset at the time of the transfer.

- (3) Where a body corporate is assessable under Schedule A in respect of any premises the whole or any part of which is made available by it as living or other accommodation for any of its directors or employees, and either the body corporate pays no rent in respect of the premises or the annual amount of the rent paid by it is less than the amount of the assessment on the premises as reduced for the purposes of collection, the provisions of the last preceding section shall have effect as if the body corporate paid in respect of the premises an annual rent equal to the amount of the assessment as so reduced.
- (4) Where an asset which continues to belong to the body corporate is used wholly or partly in the making of any such provision as is mentioned in subsection (1) of the last preceding section, and the asset is not premises in respect of which the body corporate is assessable under Schedule A, the body corporate shall be deemed for the purposes of the last preceding section to incur (in addition to any other expense incurred by it in connection with" the asset, not being expense to which subsection (1) of this section applies) annual expense in connection therewith of an amount equal to the annual value of the use of the asset :

Provided that where any sum by way of rent or hire is payable by the body corporate in respect of the asset—

- (a) if the annual amount of the rent or hire is equal to or greater than the annual value of the use of the asset, this subsection shall not apply ; and
- (b) if the annual amount of the rent or hire is less than the annual value of the use of the asset, the rent or hire shall be left out of account for the purposes of the last preceding section.
- (5) Any reference in this section to a body corporate which is assessable under Schedule A in respect of any premises shall be deemed to include a reference to a body corporate which would be so assessable if a state of affairs which subsists during any part of the year had subsisted for the whole of the year.

#### **41 Meaning of " director ", " employment " and " employment to which this Part of this Act applies ".**

- (1) In this Part of this Act, the expression " director " means—
- (a) in relation to a body corporate the affairs whereof are managed by a board of directors or similar body, a member of that board or similar body ;
- (b) in relation to a body corporate the affairs whereof are managed by a single director or similar person, that director or person ;
- (c) in relation to a body corporate the affairs whereof are managed by the members themselves, a member of the body corporate,

and includes any person in accordance with whose directions or instructions the directors of a body corporate, defined in accordance with the preceding provisions of this subsection, are accustomed to act :

Provided that a person shall not, within the meaning of this subsection, be deemed to be a person in accordance with whose directions or instructions the directors of a body corporate are accustomed to act by reason only that the said directors act on advice given by him in a professional capacity.

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- (2) In this Part of this Act, the expression "employment " means an employment such that any emoluments thereof would fall to be assessed under Schedule E, and references to persons employed by, or employees of, a body corporate include any person who takes part in the management of the affairs of the body corporate and is not a director thereof.
- (3) Subject to the provisions of this and the two next succeeding subsections, the employments to which this Part of this Act applies are employments the emoluments of which, calculated on the basis that they are employments to which this Part of this Act applies, and without any deduction being made under Rule 9 of the Rules applicable to Schedule E in respect of money expended in performing the duties thereof, are at the rate of two thousand pounds a year or more :

Provided that—

- (a) where a person is employed in several employments by the same body corporate, and the total of the emoluments of those employments, calculated as aforesaid, is at the rate of two thousand pounds a year or more, all those employments shall be treated as employments to which this Part of this Act applies ; and
- (b) where a person is a director of a body corporate, all employments in which he is employed by the body corporate shall be treated as employments to which this Part of this Act applies.
- (4) All the directors of, and persons employed by, a body corporate over which another body corporate has control shall be treated for the purposes of the proviso to the last preceding subsection (but not for any other purpose) as if they were directors of, or, as the case may be, as if the employment were an employment by, that other body corporate.
- (5) Notwithstanding anything in the preceding provisions of this section, no employment of a person by a body corporate at a school or other educational establishment carried on by that body corporate shall be an employment to which this Part of this Act applies or be taken into account in determining whether any other employment is an employment to which this Part of this Act applies.

## **42 Saving for certain payments and expenses.**

If a body corporate furnishes to the surveyor a statement of the cases and the circumstances in which payments of a particular nature are made or things of a particular nature are provided for any of its directors or employees and the surveyor is satisfied that no additional tax would fall to be paid if this Part of this Act were to apply in relation to payments made or things provided by the body corporate in accordance with the statement, he shall notify the body corporate accordingly and, where such a notification is given, this Part of this Act shall not apply in relation to payments made or things provided by the body corporate in accordance with the statement:

Provided that the surveyor may, if in his opinion there is reason so to do, by notice in writing served on the body corporate, revoke any such notification, either as from the date of the making of the notification or as from such later date as may be specified in the notice, and thereupon all such tax shall become chargeable, and all such returns shall be made by the body corporate and by the directors or employees in question, as would have been chargeable or would have had to have been made in the first instance if the notification had never been given, or, as the case may be, if it had ceased to have effect on the specified date.

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#### **43 Additional provisions as to information.**

- (1) In subsection (2) of section one hundred and five of the Income Tax Act, 1918 (which subsection declares, amongst other things, that a director of a company, or person engaged in the management of a company, shall be deemed for the purposes of returns as to remuneration of employees to be a person employed), the references to a company shall be deemed to include references to any body corporate and the expression "director" shall have the same meaning as in this Part of this Act.
- (2) Where, for the purposes of a return under the said section one hundred and five, a body corporate apportions expenses incurred partly in or in connection with a particular matter and partly in or in connection with other matters, the return shall contain a statement that the sum included in the return is the result of such an apportionment and the body corporate, if required so to do by notice from the surveyor, shall prepare and deliver to the surveyor, within the time limited by the notice, a return containing full particulars as to the amount apportioned and the manner in which and the grounds on which the apportionment has been made.
- (3) The provisions of the Income Tax Acts relating to returns under the said section one hundred and five shall apply in relation to any return required under subsection (2) of this section.

#### **44 Charities and non-trading bodies.**

This Part of this Act shall not apply in relation to any body corporate established for charitable purposes only, or to any other body corporate unless it carries on a trade or its functions consist wholly or mainly in the holding of investments or other property, or, except in relation to persons employed by it in an employment to which this Part of this Act applies wholly or mainly for the purposes of a trade carried on by it, to any local authority as denned for the purposes of section twenty-one of the Finance (No. 2) Act, 1945.

#### **45 Interpretation of previous provisions of Part IV.**

- (1) In the preceding provisions of this Part of this Act, the expression "business premises," in relation to a body corporate, includes all premises occupied by that body for the purpose of any trade carried on by it :  

Provided that, except where the reference is expressly to premises which include living accommodation, the said expression does not include so much of any such premises as aforesaid as is used wholly or mainly as living accommodation for any of the directors of the body corporate or for any persons employed by the body corporate in any employment to which this Part of this Act applies.
- (2) Any reference in the preceding provisions of this Part of this Act to anything provided for a director or employee shall, unless the reference is expressly to something provided for the director or employee himself, be construed as including a reference to anything provided for the spouse, family, servants, dependants or guests of that director or employee, and the reference in the proviso to subsection (1) of this section to living accommodation for directors or employees shall be construed accordingly.
- (3) In the preceding provisions of this Part of this Act, the expression "control" in relation to a body corporate has the meaning assigned to it by section sixty-eight of the Income Tax Act, 1945.

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#### **46 Unincorporated bodies and partnerships.**

- (1) The preceding provisions of this Part of this Act shall apply in relation to unincorporated societies and other bodies as they apply in relation to bodies corporate, and, in connection with the said preceding provisions, the definition of the expression "control" in section sixty-eight of the Income Tax Act, 1945, shall, with the necessary adaptations, also so apply.
- (2) Subject to the provisions of this subsection, the preceding provisions of this Part of this Act shall apply in relation to any partnership carrying on any trade, profession or vocation as they would apply in relation to a body corporate carrying on a trade, if so much thereof as relates to directors of the body corporate or persons taking part in the management of the affairs of the body corporate were omitted :

Provided that—

- (a) the expression "control" has, in relation to a partnership, the meaning assigned to it by section sixty-eight of the Income Tax Act, 1945, in relation to a partnership ;
- (b) where such a partnership as aforesaid has control over a body corporate to which this Part of this Act applies.—
  - (i) any employment of any director of that body corporate by the partnership shall be an employment to which this Part of this Act applies ; and
  - (ii) all the employments of any person who is employed both by the partnership and by the body corporate (being employments by the partnership or the body corporate) shall, for the purpose of seeing whether those employments or any of them are employments to which this Part of this Act applies, be treated as if they were employments by the body corporate.
- (3) The provisions of the last preceding subsection shall apply in relation to individuals as they apply in relation to partnerships :

Provided that nothing in this subsection shall be construed as requiring an individual to be treated in any circumstances as under the control of another person.