



# Income and Corporation Taxes Act 1988

## 1988 CHAPTER 1

### PART V

#### PROVISIONS RELATING TO THE SCHEDULE E CHARGE

#### CHAPTER I

#### SUPPLEMENTARY CHARGING PROVISIONS OF GENERAL APPLICATION

##### *Living accommodation*

#### **145 Living accommodation provided for employee.**

- <sup>M1</sup>(1) Subject to the provisions of this section, where living accommodation is provided for a person in any period by reason of his employment, <sup>F1</sup> . . . he is to be treated for the purposes of Schedule E as being in receipt of emoluments of an amount equal to the value to him of the accommodation for the period, less so much as is properly attributable to that provision of any sum made good by him to those at whose cost the accommodation is provided.
- (2) The value of the accommodation to the employee in any period is the rent which would have been payable for the period if the premises had been let to him at an annual rent equal to their annual value as ascertained under section 837; but for a period in which those at whose cost the accommodation is provided pay rent at an annual rate greater than the annual value as so ascertained, the value of the accommodation to the employee is an amount equal to the rent payable by them for the period.
- (3) From any amount to be treated as emoluments under subsection (1) above there are deductible under section 198 or 332(3) such amounts (if any) as would have been so deductible if the accommodation had been paid for by the employee out of his emoluments.
- (4) Subject to subsection (5) below, subsection (1) above does not apply to accommodation provided for the employee in any of the following cases—

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- (a) where it is necessary for the proper performance of the employee's duties that he should reside in the accommodation;
  - (b) where the accommodation is provided for the better performance of the duties of his employment, and his is one of the kinds of employment in the case of which it is customary for employers to provide living accommodation for employees;
  - (c) where there is a special threat to his security, special security arrangements are in force and he resides in the accommodation as part of those arrangements;
- and in any such case there is no charge to tax under Schedule E (either by virtue of this section or under section 131 or otherwise) in respect of a liability for rates on the premises being discharged for or on behalf of the employee or the employee being reimbursed for the discharge of that liability.
- (5) If the accommodation is provided by a company and the employee is a director of the company or of an associated company, then, except in a case where paragraph (c) of subsection (4) above applies, no exemption is given by virtue of that subsection unless, for each employment of his which is employment as director of the company or an associated company, the following conditions are fulfilled, that is—
- (a) he has no material interest in the company, and
  - (b) either his employment is as a full-time working director or the company is non-profit-making (meaning that neither does it carry on a trade nor do its functions consist wholly or mainly in the holding of investments or other property) or is established for charitable purposes only.
- (6) If by reason of a person's employment accommodation is provided for others being members of his family or household, he is to be treated under subsections (1) to (3) above as if it were accommodation provided for him.
- (7) For the purposes of this section, living accommodation provided for an employee, or for members of his family or household, by his employer is deemed to be provided by reason of his employment unless—
- (a) the employer is an individual, and <sup>F2</sup> . . . he makes the provision in the normal course of his domestic, family or personal relationships; or
  - (b) the accommodation is provided by a local authority for an employee of theirs, and <sup>F3</sup> . . . the terms on which it is provided are no more favourable than those on which similar accommodation is provided by the authority for persons who are not their employees but are otherwise similarly circumstanced.
- (8) For the purposes of this section—
- (a) a company is associated with another if one has control of the other or both are under the control of the same person; and
  - (b) the expressions “employment”, “family or household”, “director”, “full-time working director”, “material interest” and (in relation to a body corporate) “control” shall be construed in accordance with subsections (2), (4) and (8) to (12) of section 168 as if this section were included in Chapter II of this Part.

#### Textual Amendments

**F1** Words in s. 145(1) repealed (with effect in accordance with s. 106(3) of the repealing Act) by [Finance Act 1996 \(c. 8\)](#), ss. 106(1), 205, [Sch. 41 Pt. 5\(4\)](#), Note

**F2** Words in s. 145(7)(a) repealed (with effect in accordance with s. 134(2) of the repealing Act) by [Finance Act 1996 \(c. 8\)](#), ss. 134(1), 205, [Sch. 20 para. 7](#), [Sch. 41 Pt. 5\(10\)](#), Note

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**F3** Words in s. 145(7)(b) repealed (with effect in accordance with s. 134(2) of the repealing Act) by Finance Act 1996 (c. 8), ss. 134(1), 205, Sch. 20 para. 7, **Sch. 41 Pt. 5(10)**, Note

**Modifications etc. (not altering text)**

**C1** See S.I. 1973 No.334, regn.31 (db) (in Part III Vol.5)—returns by employers.

**C2** S. 145 modified (retrospectively) by Finance Act 2008 (c. 9), s. 45(3)

**Marginal Citations**

**M1** Source—1977 s.33(1)-(8)

**146 Additional charge in respect of certain living accommodation.**

<sup>M2</sup>(1) This section applies where—

- (a) living accommodation is provided for a person in any period, by reason of his employment;
  - (b) by virtue of section 145 he is treated for the purposes of Schedule E as being in receipt of emoluments of an amount calculated by reference to the value to him of that accommodation, or would be so treated if there were disregarded any sum made good by him to those at whose cost the accommodation is provided; and
  - (c) the cost of providing the accommodation exceeds £75,000.
- (2) Where this section applies, the employee shall be treated for the purposes of Schedule E as being in receipt of emoluments (in addition to those which he is treated as receiving by virtue of section 145) of an amount equal to the additional value to him of the accommodation for the period, less so much of any rent paid by the employee, in respect of the accommodation, to the person providing it as exceeds the value to the employee of the accommodation for the period (as determined under section 145).
- (3) The additional value of the accommodation to the employee in any period is the rent which would have been payable for that period if the premises had been let to him at an annual rent equal to the appropriate percentage of the amount by which the cost of providing the accommodation exceeds £75,000.
- (4) For the purposes of this section, the cost of providing any living accommodation shall be taken to be the aggregate of—
- (a) the amount of any expenditure incurred in acquiring the estate or interest in the property held by a relevant person; and
  - (b) the amount of any expenditure incurred by a relevant person before the year of assessment in question on improvements to the property.
- (5) The aggregate amount mentioned in subsection (4) above shall be reduced by the amount of any payment made by the employee to a relevant person, so far as that amount represents a reimbursement of any such expenditure as is mentioned in paragraph (a) or (b) of that subsection or represents consideration for the grant to the employee of a tenancy of the property.
- (6) Subject to subsection (8) below, where throughout the period of six years ending with the date when the employee first occupied the property, any estate or interest in the property was held by a relevant person (whether or not it was the same estate, interest or person throughout), the additional value shall be calculated as if in subsection (4) above—

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- (a) the amount referred to in paragraph (a) were the market value of that property as at that date; and
  - (b) the amount referred to in paragraph (b) did not include expenditure on improvements made before that date.
- (7) In this section, “relevant person” means any of the following—
- (a) the person providing the accommodation;
  - (b) where the person providing the accommodation is not the employee’s employer, that employer;
  - (c) any person, other than the employee, who is connected with a person falling within paragraph (a) or (b) above.
- (8) Subsection (6) above does not apply where the employee first occupied the property before 31st March 1983.
- (9) Any amount which is deductible, by virtue of section 145(3), from an amount to be treated as emoluments under that section may, to the extent to which it exceeds the amount of those emoluments, be deductible from the amount to be treated as emoluments under this section.
- (10) For the purposes of this section, living accommodation shall be treated as provided for a person by reason of his employment if it is so treated for the purposes of section 145; and “employment” has the same meaning in this section as in that.
- (11) In this section—
- “the appropriate percentage” means the rate [<sup>F4</sup> applicable for the purposes of section 160] as at the beginning of the year of assessment in question;
  - “property”, in relation to any living accommodation, means the property consisting of that accommodation;
  - “market value”, in relation to any property, means the price which that property might reasonably be expected to fetch on a sale in the open market with vacant possession, no reduction being made, in estimating the market value, on account of any option in respect of the property held by the employee, or a person connected with him, or by any of the persons mentioned in subsection (7) above; and
  - “tenancy” includes a sub-tenancy;
- and section 839 shall apply for the purposes of this section.

#### **Textual Amendments**

- F4** 1989 s.179(5) and S.I. 1989 No.1298 (in Part III Vol.5) in relation to years of assessment beginning after 18 August 1989. Previously “prescribed by the Treasury under section 160(5)”. And see S.I. 1989 No.1297 for regulations made, and interest rate set, under 1989 s.178.

#### **Modifications etc. (not altering text)**

- C3** See S.I. 1973 No.334, regn.31 (db) (in Part III Vol.5)—returns by employers.

#### **Marginal Citations**

- M2** Source—1977 s.33A; 1983 s.21(1)

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### [<sup>F5</sup>146A Priority of rules applying to living accommodation.

- (1) This section applies where, within the meaning of section 145, living accommodation is provided in any period for any person by reason of his employment.
- (2) The question whether the employee is to be treated under section 145 or 146 as in receipt of emoluments in respect of the provision of the accommodation shall be determined before any other question whether there is an amount falling to be treated in respect of the provision of that accommodation as emoluments.
- (3) Tax under Schedule E in respect of the provision of the accommodation shall be chargeable on the employee otherwise than in pursuance of sections 145 and 146 to the extent only that the amount on which it is chargeable by virtue of those sections is exceeded by the amount on which it would be chargeable apart from those sections.]

#### Textual Amendments

- F5** S. 146A inserted (with application in accordance with s. 106(3) of the amending Act) by [Finance Act 1996 \(c. 8\), s. 106\(2\)](#)

### 147 Occupation of Chevening House.

<sup>M3</sup>Section 145 shall not apply in relation to the occupation of Chevening House or any other premises held on the trusts of the trust instrument set out in the Schedule to the <sup>M4</sup>Chevening Estate Act 1959 by a person nominated in accordance with those trusts.

#### Marginal Citations

- M3** Source—1973 s.43; 1977 Sch.8 4  
**M4** 1959 c. 49.

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