



# Income Tax (Earnings and Pensions) Act 2003

## 2003 CHAPTER 1

### PART 3

EMPLOYMENT INCOME: EARNINGS AND BENEFITS ETC. TREATED AS EARNINGS

### CHAPTER 5

TAXABLE BENEFITS: LIVING ACCOMMODATION

#### *Exceptions*

#### **98 Accommodation provided by local authority**

[<sup>F1</sup>In section 102 (benefit of accommodation treated as earnings) subsection (1A) (accommodation provided otherwise than pursuant to optional remuneration arrangements)] does not apply to living accommodation provided for an employee if—

- (a) the employer is a local authority,
- (b) it is provided for the employee by the authority, and
- (c) 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 whose circumstances are otherwise similar to those of the employee.

---

#### **Textual Amendments**

- F1** Words in s. 98 substituted (with effect in accordance with Sch. 2 para. 62 of the amending Act) by Finance Act 2017 (c. 10), **Sch. 2 para. 8**

---

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Cross Heading: Exceptions. (See end of Document for details)*

---

## 99 Accommodation provided for performance of duties

- (1) [<sup>F2</sup>In section 102 (benefit of accommodation treated as earnings) subsection (1A) (accommodation provided otherwise than pursuant to optional remuneration arrangements)] does not apply to living accommodation provided for an employee if it is necessary for the proper performance of the employee’s duties that the employee should reside in it.
- (2) [<sup>F3</sup>In section 102 (benefit of accommodation treated as earnings) subsection (1A)] does not apply to living accommodation provided for an employee if—
- (a) it is provided for the better performance of the duties of the employment, and
  - (b) the employment is one of the kinds of employment in the case of which it is customary for employers to provide living accommodation for employees.
- (3) But if the accommodation is provided by a company and the employee (“E”) is a director of the company or of an associated company, the exception in subsection (1) or (2) only applies if, in the case of each company of which E is a director—
- (a) E has no material interest in the company, and
  - (b) either—
    - (i) E’s employment is as a full-time working director, or
    - (ii) the company is non-profit-making or is [<sup>F4</sup>a charitable company].
- (4) “Non-profit-making” means that the company does not carry on a trade and its functions do not consist wholly or mainly in the holding of investments or other property.
- (5) A company is “associated” with another if—
- (a) one has control of the other, or
  - (b) both are under the control of the same person.

### Textual Amendments

- F2** Words in s. 99(1) substituted (with effect in accordance with Sch. 2 para. 62 of the amending Act) by [Finance Act 2017 \(c. 10\), Sch. 2 para. 9\(2\)](#)
- F3** Words in s. 99(2) substituted (with effect in accordance with Sch. 2 para. 62 of the amending Act) by [Finance Act 2017 \(c. 10\), Sch. 2 para. 9\(3\)](#)
- F4** Words in s. 99(3)(b)(ii) substituted (coming into force for the tax year 2012-13 and subsequent tax years) by [Finance Act 2010 \(c. 13\), Sch. 6 paras. 17\(2\), 34\(2\); S.I. 2012/736, art. 13](#)

## 100 Accommodation provided as result of security threat

- [<sup>F5</sup>In section 102 (benefit of accommodation treated as earnings) subsection (1A) (accommodation provided otherwise than pursuant to optional remuneration arrangements)] does not apply to living accommodation provided for an employee if—
- (a) there is a special threat to the security of the employee,
  - (b) special security arrangements are in force, and
  - (c) the employee resides in the accommodation as part of those arrangements.

---

**Changes to legislation:** There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Cross Heading: Exceptions. (See end of Document for details)

---

### Textual Amendments

- F5** Words in s. 100 substituted (with effect in accordance with Sch. 2 para. 62 of the amending Act) by Finance Act 2017 (c. 10), **Sch. 2 para. 10**

### [<sup>F6</sup>100A Homes outside UK owned through company etc

- (1) [<sup>F7</sup>In section 102 (benefit of accommodation treated as earnings) subsection (1A) (accommodation provided otherwise than pursuant to optional remuneration arrangements)] does not apply to living accommodation outside the United Kingdom provided by a company for a director or other officer of the company (“D”) or a member of D's family or household if—
- (a) the company is wholly owned by D or D and other individuals (and no interest in the company is partnership property), and
  - (b) the company has been the holding company of the property at all times after the relevant time.
- (2) The company is “the holding company of the property” when—
- (a) it owns a relevant interest in the property,
  - (b) its main or only asset is that interest, and
  - (c) the only activities undertaken by it are ones that are incidental to its ownership of that interest.
- (3) The company is also “the holding company of the property” when—
- (a) a company (“the subsidiary”) which is wholly owned by the company meets the conditions in paragraphs (a) to (c) of subsection (2),
  - (b) the company's main or only asset is its interest in the subsidiary, and
  - (c) the only activities undertaken by the company are ones that are incidental to its ownership of that interest.
- (4) “Relevant interest in the property” means an interest under the law of any territory that confers (or would but for any inferior interest confer) a right to exclusive possession of the property at all times or at certain times.
- (5) “The relevant time” is the time the company first owned a relevant interest in the property; but this is subject to subsection (6).
- (6) If—
- (a) none of D's interest in the company was acquired directly or indirectly from a person connected with D, and
  - (b) the company owned a relevant interest in the property at the time D first acquired an interest in the company,
- “the relevant time” is the time D first acquired such an interest.

### Textual Amendments

- F6** Ss. 100A, 100B inserted (retrospectively) by Finance Act 2008 (c. 9), s. 45
- F7** Words in s. 100A(1) substituted (with effect in accordance with Sch. 2 para. 62 of the amending Act) by Finance Act 2017 (c. 10), **Sch. 2 para. 11**

---

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Cross Heading: Exceptions. (See end of Document for details)*

---

## **100B Section 100A(1): exceptions**

- (1) Section 100A(1) does not apply if subsection (2), (3) or (4) applies.
- (2) This subsection applies if—
  - (a) the company's interest in the property was acquired directly or indirectly from a connected company at an undervalue, or
  - (b) the company's interest in the property derives from an interest that was so acquired.
- (3) This subsection applies if, at any time after the relevant time—
  - (a) expenditure in respect of the property has been incurred directly or indirectly by a connected company, or
  - (b) any borrowing of the company directly or indirectly from a connected company has been outstanding (but see subsection (7)).
- (4) This subsection applies if the living accommodation is provided in pursuance of an arrangement the main purpose, or one of the main purposes, of which is the avoidance of tax or national insurance contributions.
- (5) In subsection (2) references to the acquisition of an interest include the grant of an interest.
- (6) For the purposes of that subsection, an interest is acquired at an undervalue if the total consideration for it is less than that which might reasonably have been expected to be obtained on a disposal of the interest on the open market; and “consideration” here means consideration provided at any time (and, for example, includes payments by way of rent).
- (7) For the purposes of subsection (3)(b), no account is to be taken of—
  - (a) any borrowing at a commercial rate, or
  - (b) any borrowing which results in D being treated under Chapter 7 (taxable benefits: loans) as receiving earnings.
- (8) In subsection (4) “arrangement” includes any scheme, agreement or understanding, whether or not enforceable.
- (9) In this section “connected company” means—
  - (a) a company connected with D, with a member of D's family or with an employer of D, or
  - (b) a company connected with such a company.]

### **Textual Amendments**

**F6** Ss. 100A,100B inserted (retrospectively) by [Finance Act 2008 \(c. 9\), s. 45](#)

## **101 Chevening House**

[<sup>F8</sup>In section 102 (benefit of accommodation treated as earnings) subsection (1A) (accommodation provided otherwise than pursuant to optional remuneration arrangements)] does not apply to living accommodation provided for an employee if the accommodation is—

- (a) Chevening House, or

---

**Changes to legislation:** There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Cross Heading: Exceptions. (See end of Document for details)

---

(b) any other premises held on the trusts of the trust instrument set out in the Schedule to the Chevening Estate Act 1959 (c. 49),  
and the employee is a person nominated in accordance with those trusts.

---

**Textual Amendments**

**F8** Words in s. 101 substituted (with effect in accordance with Sch. 2 para. 62 of the amending Act) by Finance Act 2017 (c. 10), **Sch. 2 para. 12**

**Changes to legislation:**

There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Cross Heading: Exceptions.