Income Tax (Earnings and Pensions) Act 2003

2003 CHAPTER 1

PART 3 U.K.

EMPLOYMENT INCOME: EARNINGS AND BENEFITS ETC. TREATED AS EARNINGS

CHAPTER 5 U.K.

TAXABLE BENEFITS: LIVING ACCOMMODATION

Living accommodation

97 Living accommodation to which this Chapter applies U.K.

(1) This Chapter applies to living accommodation provided for—

(a) an employee, or

(b) a member of an employee's family or household,

by reason of the employment.

[F1(1A) Where this Chapter applies to any living accommodation—

(a) the living accommodation is a benefit for the purposes of this Chapter (and accordingly it is immaterial whether the terms on which it is provided to any of those persons constitute a fair bargain), and

(b) sections 102 to 108 provide for **[**F2an amount in respect of**]** the benefit of the living accommodation to be treated as earnings.**]**

(2) Living accommodation provided for any of those persons by the employer is to be regarded as provided by reason of the employment unless—

(a) the employer is an individual, and

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(b) the provision is made in the normal course of the employer's domestic, family or personal relationships.

Textual Amendments

F1 S. 97(1A) inserted (with effect in accordance with s. 7(9) of the amending Act) by Finance Act 2016 (c. 24), **s. 7(2)**

F2 Words in s. 97(1A)(b) substituted (with effect in accordance with Sch. 2 para. 62 of the amending Act) by Finance Act 2017 (c. 10), **Sch. 2 para. 7**

Exceptions

98 Accommodation provided by local authority U.K.

[F3In 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

F3 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**

99 Accommodation provided for performance of duties U.K.

(1) **[**F4In 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) **[**F5In 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

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(ii) the company is non-profit-making or is **[**F6a 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

F4 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)**

F5 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)**

F6 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 U.K.

[F7In 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.

Textual Amendments

F7 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**

[F8**100A Homes outside UK owned through company etc** U.K.

(1) **[**F9In 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.

***Changes to legislation:** There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Chapter 5. (See end of Document for details)*

(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

F8 Ss. 100A,100B inserted (retrospectively) by Finance Act 2008 (c. 9), **s. 45**

F9 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**

100B Section 100A(1): exceptions U.K.

(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

F8 Ss. 100A,100B inserted (retrospectively) by Finance Act 2008 (c. 9), **s. 45**

101 Chevening House U.K.

[F10In 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

(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

F10 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**

Benefit of living accommodation treated as earnings

102 Benefit of living accommodation treated as earnings U.K.

(1) **[**F11This section applies if living accommodation to which this Chapter applies is provided in any period ("the taxable period") — **]**

(a) which consists of the whole or part of a tax year, and

(b) throughout which the employee holds the employment,

[F12(1A) the cash equivalent of the benefit of the accommodation is to be treated as earnings from the employment for that year.**]**

***Changes to legislation:** There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Chapter 5. (See end of Document for details)*

[F13(1B) If the benefit of the accommodation is provided pursuant to optional remuneration arrangements—

(a) subsection (1A) does not apply, and

(b) the relevant amount is to be treated as earnings from the employment for that tax year.**]**

F14(2) . . . . . .

(3) Section 103 indicates how the cash equivalent is calculated.

[F15(4) Section 103A indicates how the relevant amount is determined.**]**

Textual Amendments

F11 Words in s. 102(1) substituted (with effect in accordance with Sch. 2 para. 62 of the amending Act) by Finance Act 2017 (c. 10), **Sch. 2 para. 13(2)**

F12 Words in s. 102(1) renumbered as s. 102(1A) (with effect in accordance with Sch. 2 para. 62 of the amending Act) by Finance Act 2017 (c. 10), **Sch. 2 para. 13(3)**

F13 S. 102(1B) inserted (with effect in accordance with Sch. 2 para. 62 of the amending Act) by Finance Act 2017 (c. 10), **Sch. 2 para. 13(4)**

F14 S. 102(2) omitted (with effect in accordance with Sch. 2 para. 62 of the amending Act) by virtue of Finance Act 2017 (c. 10), **Sch. 2 para. 13(5)**

F15 S. 102(4) inserted (with effect in accordance with Sch. 2 para. 62 of the amending Act) by Finance Act 2017 (c. 10), **Sch. 2 para. 13(6)**

Calculation of cash equivalent

103 Method of calculating cash equivalent U.K.

(1) The cash equivalent is calculated—

(a) under section 105 if the cost of providing the living accommodation does not exceed £75,000; and

(b) under section 106 if the cost of providing the living accommodation exceeds £75,000.

(2) Section 104 (general rule) sets out how to calculate the cost of providing living accommodation for the purpose of determining whether or not it exceeds £75,000.

(3) In this Chapter—

"annual value",

"person involved in providing accommodation", and

"the property",

have the meaning given by sections 110 to 113, and "the taxable period" has the meaning given by section **[**F16102(1)**]** .

Textual Amendments

F16 Word in s. 103(3) substituted (with effect in accordance with Sch. 2 para. 62 of the amending Act) by Finance Act 2017 (c. 10), **Sch. 2 para. 14**

***Changes to legislation:** There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Chapter 5. (See end of Document for details)*

[F17 103A Accommodation provided pursuant to optional remuneration arrangements: relevant amount U.K.

(1) To find the relevant amount, first determine which (if any) is the greater of—

(a) the modified cash equivalent of the benefit of the accommodation (see sections 105(2A) and 106(2A)), and

(b) the amount foregone with respect to the benefit of the accommodation (see section 69B).

(2) If the amount mentioned in subsection (1)(a) is greater than or equal to the amount mentioned in subsection (1)(b), the "relevant amount" is the cash equivalent of the benefit of the accommodation (see section 103).

(3) Otherwise, the "relevant amount" is the difference between—

(a) the amount foregone with respect to the benefit of the accommodation, and

(b) the deductible amount (see subsections (7) and (8)).

(4) If the amount foregone with respect to the benefit of the accommodation does not exceed the deductible amount, the relevant amount is taken to be zero.

(5) For the purposes of subsections (1) and (2), assume that the modified cash equivalent of the benefit of the accommodation is zero if the condition in subsection (6) is met.

(6) The condition is that the benefit of the accommodation would be exempt from income tax but for section 228A (exclusion of certain exemptions).

(7) If the cost of providing the living accommodation does not exceed £75,000, the "deductible amount" means any sum made good, on or before 6 July following the tax year which contains the taxable period, by the employee to the person at whose cost the accommodation is provided that is properly attributable to its provision.

(8) If the cost of providing the living accommodation exceeds £75,000, the "deductible amount" means the total of amounts A and B where—

A is equal to so much of MG as does not exceed RV;

B is the amount of any excess rent paid by the employee in respect of the taxable period;

MG is the total of any sums made good, on or before 6 July following the tax year which contains the taxable period, by the employee to the person at whose cost the accommodation is provided that are properly attributable to its provision (in the taxable period);

RV is the rental value of the accommodation for the taxable period as set out in section 105(3) or (4A)(b) (as applicable).

(9) In subsection (8) "excess rent" means so much of the rent in respect of the taxable period paid—

(a) by the employee,

(b) in respect of the accommodation,

(c) to the person providing it, and

(d) on or before 6 July following the tax year which contains the taxable period,

as exceeds the rental value of the accommodation.

(10) Where it is necessary for the purposes of subsection (1)(b) and (3)(a) to apportion an amount of earnings to the benefit of the accommodation in the taxable period, the apportionment is to be made on a just and reasonable basis.

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In this subsection "earnings" is to be interpreted in accordance with section 69B(5).**]**

Textual Amendments

F17 S. 103A inserted (with effect in accordance with Sch. 2 para. 62 of the amending Act) by Finance Act 2017 (c. 10), **Sch. 2 para. 15**

104 General rule for calculating cost of providing accommodation U.K.

For any tax year the cost of providing living accommodation is given by the formula—

$$A + 1 - P$$

where—

A is any expenditure incurred in acquiring the estate or interest in the property held by a person involved in providing the accommodation,

I is any expenditure incurred on improvements to the property which has been incurred before the tax year in question by a person involved in providing the accommodation, and

P is so much of any payment or payments made by the employee to a person involved in providing the accommodation as represents—

(a) reimbursement of A or I, or

(b) consideration for the grant to the employee of a tenancy or sub-tenancy of the property.

Accommodation costing £75,000 or less

105 Cash equivalent: cost of accommodation not over £75,000 U.K.

(1) The cash equivalent **[**F18or modified cash equivalent**]** is to be calculated under this section if the cost of providing the living accommodation does not exceed £75,000.

(2) The cash equivalent is the difference between—

(a) the rental value of the accommodation for the taxable period, and

(b) any sum made good **[**F19, on or before 6 July following the tax year which contains the taxable period,**]** by the employee to the person at whose cost the accommodation is provided that is properly attributable to its provision.

[F20(2A) The modified cash equivalent is equal to the rental value of the accommodation for the taxable period.**]**

(3) The "rental value of the accommodation" for the taxable period is **[**F21(subject to subsections (4) and (4A))**]** the rent which would have been payable for that period if the property had been let to the employee at an annual rent equal to the annual value.

[F22(4) Subsection (4A) applies where—

(a) a rental amount is payable by the person ("P") at whose cost the accommodation is provided in respect of the whole or part of the taxable period ("the relevant period"), and

(b) the amount so payable is payable at an annual rate greater than the annual value.

(4A) Where this subsection applies—

(a) subsection (3) does not apply to the relevant period, and

(b) instead the "rental value of the accommodation" for the relevant period is the rental amount payable by P in respect of the relevant period.

(4B) A reference in subsection (4) or (4A) to a rental amount payable by P in respect of the relevant period is to the sum of—

(a) any rent for the period payable by P, and

(b) any amount attributed to the period in respect of a lease premium (see sections 105A and 105B).**]**

(5) If the rental value of the accommodation for the taxable period does not exceed any sum made good by the employee as mentioned in subsection (2)(b), the cash equivalent is nil.

Textual Amendments

F18 Words in s. 105(1) inserted (with effect in accordance with Sch. 2 para. 62 of the amending Act) by Finance Act 2017 (c. 10), **Sch. 2 para. 16(2)**

F19 Words in s. 105(2)(b) inserted (with effect in accordance with s. 1(14) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **s. 1(5)**

F20 S. 105(2A) inserted (with effect in accordance with Sch. 2 para. 62 of the amending Act) by Finance Act 2017 (c. 10), **Sch. 2 para. 16(3)**

F21 Words in s. 105(3) inserted (with effect in accordance with s. 71(4)-(6) of the amending Act) by Finance Act 2009 (c. 10), **s. 71(2)(a)**

F22 S. 105(4)-(4B) substituted for s. 105(4) (with effect in accordance with s. 71(4)-(6) of the amending Act) by Finance Act 2009 (c. 10), **s. 71(2)(b)**

[F23 105A Lease premiums U.K.

(1) For the purposes of section 105(4B)(b) an amount is attributed to the relevant period "in respect of a lease premium" if—

(a) the property consists of premises, or a part of premises, that are subject to a lease,

(b) the premises are not mainly used by P for a purpose other than the provision of living accommodation to which this Chapter applies,

(c) the lease is for a term of 10 years or less, and

(d) the net amount payable by P in relation to the lease by way of lease premium is greater than zero.

(2) The amount so attributed is—

$$\frac{A}{B} \times C$$

where—
A is the relevant period (in days),
B is the term of the lease (in days), and

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C is the net amount payable by P in relation to the lease by way of lease premium.

(3) For provision about the application of this section in relation to certain leases with break clauses, see section 105B.

(4) For the purposes of this section the net amount payable by P in relation to a lease by way of lease premium is—

(a) the total amount (if any) that has been paid, or is or will become payable, by P in relation to the lease by way of lease premium, less

(b) any amount within paragraph (a) that has been repaid or is or will become repayable.

(5) In this section and section 105B "lease premium" means any premium payable—

(a) under a lease, or

(b) otherwise under the terms on which a lease is granted.

(6) In the application of this section to Scotland "premium" includes a grassum.

Textual Amendments

F23 Ss. 105A, 105B inserted (with effect in accordance with s. 71(4)-(6) of the amending Act) by Finance Act 2009 (c. 10), **s. 71(3)**

105B Lease premiums in the case of leases with break clauses U.K.

(1) This section applies to a lease ("the original lease") that contains one or more relevant break clauses.

(2) For the purposes of this section—

(a) "break clause" means a provision of a lease that gives a person a right to terminate it so that its term is shorter than it otherwise would be, and

(b) a break clause contained in the original lease is "relevant" if the right to terminate the lease that it confers is capable of being exercised in such a way that the term of the original lease is 10 years or less.

(3) For the purposes of section 105A—

(a) the term of the original lease, and

(b) the net amount payable by P in relation to the lease by way of lease premium,

are to be determined on the assumption that any relevant break clause is exercised in such a way that the term of the lease is as short as possible.

(4) If a relevant break clause is not in fact exercised in such a way that the term of the original lease is as short as possible, the parties to the lease are treated for the purposes of section 105A as if they were parties to another lease (a "notional lease") the term of which—

(a) begins immediately after the time at which the term of the original lease would have ended, if that break clause had been so exercised, and

(b) ends at the time mentioned in subsection (5).

(5) The term of a notional lease ends—

(a) at the time the term of the original lease would end, on the assumption that any relevant break clause that is exercisable only after the beginning of the term

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of the notional lease is exercised in such a way that the term of the original lease is as short as possible, or

(b) if earlier, the tenth anniversary of the beginning of the term of the original lease.

(6) For the purposes of section 105A the net amount payable by P in relation to a notional lease by way of lease premium is, in the case of a notional lease the term of which ends under paragraph (a) of subsection (5)—

(a) the net amount that would be payable by P in relation to the original lease by way of lease premium on the assumption mentioned in that paragraph, less

(b) any part of that amount that has already been attributed to a period in respect of a lease premium under section 105(4B)(b).

(7) For the purposes of section 105A the net amount payable by P in relation to a notional lease by way of lease premium is, in the case of a notional lease the term of which ends under paragraph (b) of subsection (5), the relevant proportion of—

(a) the net amount that would be payable by P in relation to the original lease by way of lease premium, on the assumption that no break clause is exercised, less

(b) any part of that amount that has already been attributed to a period in respect of a lease premium under section 105(4B)(b).

(8) In subsection (7) "the relevant proportion" means—

$$\frac{D}{E}$$

where—
D is the term of the notional lease (in days), and
E is the sum of—

(a) the term of the notional lease (in days), and

(b) the number of days by which the term of the original lease would exceed 10 years, on the assumption that no break clause is exercised.**]**

Textual Amendments

F23 Ss. 105A, 105B inserted (with effect in accordance with s. 71(4)-(6) of the amending Act) by Finance Act 2009 (c. 10), **s. 71(3)**

Accommodation costing more than £75,000

106 Cash equivalent: cost of accommodation over £75,000 U.K.

(1) The cash equivalent **[**F24or modified cash equivalent**]** is calculated under this section if the cost of providing the living accommodation exceeds £75,000.

(2) To calculate the cash equivalent—

Step 1

Calculate the amount that would be the cash equivalent if section 105 applied (cash equivalent: cost of accommodation not over £75,000).

***Changes to legislation:** There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Chapter 5. (See end of Document for details)*

Step 2

Calculate the following amount ("the additional yearly rent")—

$$\text{ORI} \times (C - £75{,}000)$$

where—

ORI is the official rate of interest in force for the purposes of Chapter 7 of this Part (taxable benefits: loans) on 6th April in the tax year, and

C is the cost of providing the accommodation calculated—

(a) in accordance with section 104 (general rule for calculating cost of accommodation), or

(b) in a case where section 107 applies (special rule for calculating cost of providing accommodation), in accordance with that section instead.

Step 3

Calculate the rent which would have been payable for the taxable period if the property had been let to the employee at the additional yearly rent calculated under step 2.

Step 4

Calculate the cash equivalent by—

(a) adding together the amounts calculated under steps 1 and 3, and

(b) (if allowed by subsection (3)) subtracting from that total the excess rent paid by the employee.

[F25(2A) To calculate the modified cash equivalent—

(a) apply steps 1 to 3 in subsection (2), as if the words "cash equivalent" in step 1 were "modified cash equivalent (for the purposes of section 105)";

(b) calculate the modified cash equivalent by adding together the amounts calculated under steps 1 and 3 as applied by paragraph (a).**]**

(3) In step 4—

(a) paragraph (b) only applies if, in respect of the taxable period, the rent **[**F26paid —

(i) by the employee,

(ii) in respect of the accommodation,

(iii) to the person providing it, and

(iv) on or before 6 July following the tax year which contains the taxable period,

exceeds**]** the rental value of the accommodation for that period as set out in section 105(3) or (4)(b), as applicable, and

(b) "the excess rent" means the total amount of that excess.

Textual Amendments

F24 Words in s. 106(1) inserted (with effect in accordance with Sch. 2 para. 62 of the amending Act) by Finance Act 2017 (c. 10), **Sch. 2 para. 17(2)**

F25 S. 106(2A) inserted (with effect in accordance with Sch. 2 para. 62 of the amending Act) by Finance Act 2017 (c. 10), **Sch. 2 para. 17(3)**

F26 Words in s. 106(3)(a) substituted (with effect in accordance with s. 1(14) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **s. 1(6)**

107 Special rule for calculating cost of providing accommodation U.K.

(1) This section contains a special rule for calculating the cost of providing living accommodation which—

(a) operates for the purposes of step 2 of section 106(2) (calculating the additional yearly rent), and

(b) accordingly only operates where the cost of provision for the purposes of section 106(1) (as calculated under section 104) exceeds £75,000.

(2) This section applies if, throughout the period of 6 years ending with the date when the employee first occupied the accommodation ("the initial date"), an estate or interest in the property was held by a person involved in providing the accommodation.

It does not matter whether it was the same estate, interest or person throughout.

(3) For any tax year the cost of providing the living accommodation for the purposes mentioned in subsection (1)(a) is given by the formula—

$$MV + I - P$$

where—

MV is the price which the property might reasonably be expected to have fetched on a sale in the open market with vacant possession as at the initial date,

I is any expenditure incurred on improvements to the property which has been incurred during the period—

(a) beginning with the initial date, and

(b) ending with the day before the beginning of the tax year,

by a person involved in providing the accommodation, and

P is so much of any payment or payments made by the employee to a person involved in providing the accommodation as represents—

(a) reimbursement (up to an amount not exceeding MV) of any expenditure incurred in acquiring the estate or interest in the property held on the initial date,

(b) reimbursement of I, or

(c) consideration for the grant to the employee of a tenancy or sub-tenancy of the property.

(4) In estimating MV no reduction is to be made for an option in respect of the property held by—

(a) the employee,

(b) a person connected with the employee, or

(c) a person involved in providing the accommodation.

***Changes to legislation:** There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Chapter 5. (See end of Document for details)*

Apportionment of cash equivalent

108 Cash equivalent: accommodation provided for more than one employee U.K.

(1) If, for the whole or part of a tax year, the same living accommodation is provided for more than one employee at the same time, the total of the cash equivalents for all of the employees is to be limited to the amount that would be the cash equivalent if the accommodation was provided for one employee.

(2) The cash equivalent for each of the employees is to be such part of that amount as is just and reasonable.

Other tax implications

109 Priority of this Chapter over Chapter 1 of this Part U.K.

(1) This section applies if—

(a) under this Chapter **[**F27an amount**]** is to be treated as earnings from an employee's employment for a tax year, and

(b) under Chapter 1 of this Part an amount would, apart from this section, constitute earnings from the employment for the year in respect of the provision of the accommodation.

(2) The full amount **[**F28mentioned in subsection (1)(a)**]** is to be treated as earnings from the employment for that year under this Chapter.

(3) The amount mentioned in subsection (1)(b) is to constitute earnings from the employment for the year under Chapter 1 of this Part only to the extent that it exceeds the amount mentioned in subsection (2).

[F29(4) In a case where the **[**F30amount mentioned in subsection (1)(a)**]** is nil—

(a) subsections (2) and (3) do not apply, and

(b) the full amount mentioned in subsection (1)(b) constitutes earnings from the employment for the year under Chapter 1.**]**

Textual Amendments

F27 Words in s. 109(1)(a) substituted (with effect in accordance with Sch. 2 para. 62 of the amending Act) by Finance Act 2017 (c. 10), **Sch. 2 para. 18(2)**

F28 Words in s. 109(2) substituted (with effect in accordance with Sch. 2 para. 62 of the amending Act) by Finance Act 2017 (c. 10), **Sch. 2 para. 18(3)**

F29 S. 109(4) inserted (with effect in accordance with s. 7(9) of the amending Act) by Finance Act 2016 (c. 24), **s. 7(3)**

F30 Words in s. 109(4) substituted (with effect in accordance with Sch. 2 para. 62 of the amending Act) by Finance Act 2017 (c. 10), **Sch. 2 para. 18(4)**

***Changes to legislation:** There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Chapter 5. (See end of Document for details)*

Supplementary

110 Meaning of "annual value" U.K.

(1) For the purposes of this Chapter the "annual value" of living accommodation is the rent which might reasonably be expected to be obtained on a letting from year to year if—

(a) the tenant undertook to pay all taxes, rates and charges usually paid by a tenant, and

(b) the landlord undertook to bear the costs of the repairs and insurance and the other expenses (if any) necessary for maintaining the property in a state to command that rent.

(2) For the purposes of subsection (1) that rent—

(a) is to be taken to be the amount that might reasonably be expected to be so obtained in respect of the letting of the accommodation, and

(b) is to be calculated on the basis that the only amounts that may be deducted in respect of services provided by the landlord are amounts in respect of the cost to the landlord of providing any relevant services.

(3) If living accommodation is of a kind that might reasonably be expected to be let on terms under which—

(a) the landlord is to provide any services which are either—

(i) relevant services, or

(ii) the repair, insurance or maintenance of any premises which do not form part of the accommodation but belong to or are occupied by the landlord, and

(b) amounts are payable in respect of the services in addition to the rent,

the rent to be established under subsection (1) in respect of the accommodation is to be increased under subsection (4).

(4) That rent is to include—

(a) where the services are relevant services, so much of the additional amounts as exceeds the cost to the landlord of providing the services;

(b) where the services are within subsection (3)(a)(ii), the whole of the additional amounts.

(5) In this section "relevant service" means a service other than the repair, insurance or maintenance of the accommodation or of any other premises.

111 Disputes as to annual value U.K.

(1) This section applies if there is a dispute as to the amount of the annual value of living accommodation for the purposes of this Chapter.

F31(2) . . . . . .

[F32(3) An application for the tribunal to determine the question is to be subject to the relevant provisions of Part 5 of TMA 1970 (see, in particular, section 48(2)(b) of that Act), and each of the persons concerned is entitled to be a party to the proceedings on the application.**]**

***Changes to legislation:** There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Chapter 5. (See end of Document for details)*

Textual Amendments

F31 S. 111(2) omitted (1.4.2009) by virtue of The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 336(2)**

F32 S. 111(3) substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 336(3)**

112 Meaning of "person involved in providing the accommodation" U.K.

For the purposes of this Chapter "person involved in providing the accommodation" means any of the following—

(a) the person providing the accommodation;

(b) the employee's employer (if not within paragraph (a));

(c) any person, other than the employee, who is connected with a person within paragraph (a) or (b).

113 Meaning of "the property" U.K.

For the purposes of this Chapter "the property", in relation to living accommodation, means the property consisting of that accommodation.

Changes to legislation:
There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Chapter 5.