



# Income Tax (Earnings and Pensions) Act 2003

## 2003 CHAPTER 1

### PART 3

EMPLOYMENT INCOME: EARNINGS AND BENEFITS ETC. TREATED AS EARNINGS

### CHAPTER 7

TAXABLE BENEFITS: LOANS

*Benefit of taxable cheap loan treated as earnings*

#### **175 Benefit of taxable cheap loan treated as earnings**

[<sup>F1</sup>(A1) This section applies where an employment-related loan is a taxable cheap loan in relation to a tax year.

- (1) The cash equivalent of the benefit of the loan is to be treated as earnings from the employee's employment for the tax year.
- (1A) If the benefit of the loan is provided pursuant to optional remuneration arrangements and the condition in subsection (1B) is met—
  - (a) subsection (1) does not apply, and
  - (b) the relevant amount (see section 175A) is to be treated as earnings from the employee's employment for the tax year.
- (1B) The condition is that the amount foregone with respect to the benefit of the loan for the tax year (see section 69B) is greater than the modified cash equivalent of the benefit of the loan for the tax year (see section 175A).]
- (2) For the purposes of this Chapter an employment-related loan is a “taxable cheap loan” in relation to a particular tax year if—

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- (a) there is a period consisting of the whole or part of that year during which the loan is outstanding and the employee holds the employment,
  - (b) no interest is paid on it for that year, or the amount of interest paid on it for that year is less than the interest that would have been payable at the official rate, and
  - (c) none of the exceptions in sections 176 to 179 apply.
- (3) The cash equivalent of the benefit of an employment-related loan for a tax year is the difference between—
- (a) the amount of interest that would have been payable on the loan for that year at the official rate, and
  - (b) the amount of interest (if any) actually paid on the loan for that year.
- (4) If there are two or more employment-related loans, this section applies to each separately.
- (5) This section is subject to—
- section 180 (threshold for benefit of loan to be treated as earnings);
  - section 186 (replacement loans).

#### **Textual Amendments**

- F1** [S. 175\(A1\)-\(1B\)](#) substituted for s. 175(1) (with effect in accordance with Sch. 2 para. 62 of the amending Act) by [Finance Act 2017 \(c. 10\)](#), [Sch. 2 para. 43](#)

#### **[<sup>F2</sup>175A Optional remuneration arrangements: “relevant amount” and “modified cash equivalent”**

- (1) In section 175(1A) “the relevant amount”, in relation to a loan the benefit of which is provided pursuant to optional remuneration arrangements, means the difference between—
- (a) the amount foregone (see section 69B) with respect to the benefit of the loan, and
  - (b) the amount of interest (if any) actually paid on the loan for the tax year.
- (2) For the purposes of section 175 the “modified cash equivalent” of the benefit of an employment-related loan for a tax year is the amount which would be the cash equivalent if section 175(3) had effect with the following modifications—
- (a) in the opening words, omit “the difference between”;
  - (b) omit paragraph (b) and the “and” before it.
- (3) But the modified cash equivalent of the benefit of the loan is to be taken to be zero if the condition in subsection (4) is met.
- (4) The condition is that the benefit of the loan for the tax year would be exempt from income tax but for section 228A (exclusion of certain exemptions).
- (5) For the purpose of calculating the modified cash equivalent of the benefit of an employment-related loan, assume that section 186(2) (replacement loans: aggregation) and section 187(3) (aggregation of loans by close company to a director) do not have effect.

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- (6) Where it is necessary for the purposes of section 175(1B) and subsection (1) of this section to apportion an amount of earnings to the benefit of the loan for the tax year, the apportionment is to be made on a just and reasonable basis.

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

#### Textual Amendments

- F2** S. 175A inserted (with effect in accordance with Sch. 2 para. 62 of the amending Act) by [Finance Act 2017 \(c. 10\)](#), [Sch. 2 para. 44\(1\)](#)

### 176 Exception for loans on ordinary commercial terms

- (1) A loan on ordinary commercial terms is not a taxable cheap loan.
- (2) In this section a “loan on ordinary commercial terms” means a loan—
- (a) made by a person (“the lender”) in the ordinary course of a business carried on by the lender which includes—
    - (i) the lending of money, or
    - (ii) the supplying of goods or services on credit, and
  - (b) in relation to which condition A, B or C is met.
- (3) Condition A is met if—
- (a) at the time the loan was made comparable loans were available to all those who might be expected to avail themselves of the services provided by the lender in the course of the lender’s business,
  - (b) a substantial proportion of the loans (consisting of the loan in question and the comparable loans) made by the lender at or about the time the loan in question was made were made to members of the public,
  - (c) the loan in question is held on the same terms as comparable loans generally made by the lender to members of the public at or about the time the loan in question was made, and
  - (d) where those terms differ from the terms applicable immediately after the loan in question was first made, they were imposed in the ordinary course of the lender’s business.
- (4) For the purposes of condition A a loan is comparable to another loan if it is made for the same or similar purposes and on the same terms and conditions.
- (5) Condition B is met if—
- (a) the loan has been varied before 6th April 2000,
  - (b) a substantial proportion of the relevant loans were made to members of the public,
  - (c) the loan in question is held on the same terms as relevant loans generally made by the lender to members of the public at or about the relevant time, and
  - (d) where those terms differ from the terms applicable immediately after the relevant time, they were imposed in the ordinary course of the lender’s business.
- (6) Condition C is met if—
- (a) the loan has been varied on or after 6th April 2000,

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- (b) a substantial proportion of the relevant loans were made to members of the public,
  - (c) at the relevant time members of the public who had loans from the lender for similar purposes had a right to vary their loans on the same terms and conditions as applied in relation to the variation of the loan in question,
  - (d) the loan in question as varied is held on the same terms as any existing loans so varied, and
  - (e) where those terms differ from the terms applicable immediately after the relevant time, they were imposed in the ordinary course of the lender's business.
- (7) For the purposes of condition B and C—
- (a) the “relevant time” is the time of the variation of the loan in question, and
  - (b) the “relevant loans” are—
    - (i) the loan in question,
    - (ii) any existing loans which were varied at or about the relevant time so as to be held on the same terms as the loan in question after it was varied, and
    - (iii) any new loans which were made by the lender at or about that time and are held on those terms.
- (8) No account is to be taken of amounts which are incurred on fees, commission or other incidental expenses by the person to whom a loan is made for the purpose of obtaining the loan—
- (a) in determining for the purposes of condition A whether loans made by a lender before 1st June 1994 are made or held on the same terms or conditions, or
  - (b) in determining for the purposes of condition B or C whether rights to vary loans are exercisable on the same terms and conditions or loans are held on the same terms.
- (9) No account is to be taken of amounts which are incurred on penalties, interest or similar amounts by the person to whom a loan is made as a result of varying the loan in determining for the purposes of condition B or C whether rights to vary loans are exercisable on the same terms and conditions or loans are held on the same terms.
- (10) For the purposes of this section a “member of the public” means a member of the public at large with whom the lender deals at arm's length.

## **177 Exceptions for loans at fixed rate of interest**

- (1) A fixed rate loan made on or after 6th April 1978 is not a taxable cheap loan by reason only of an increase in the official rate of interest since the year in which the loan was made if the condition in subsection (2) is met.
- (2) The condition in this subsection is met if the amount of interest paid on the loan for the tax year in which it was made was equal to or greater than the interest that would have been payable at the official rate for that year.
- (3) A fixed rate loan made before 6th April 1978 is not a taxable cheap loan if the condition in subsection (4) is met.
- (4) The condition in this subsection is met if the rate of interest for the loan is equal to or greater than the rate which could have been expected to apply to a loan made—

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- (a) at the same time as the loan in question,
  - (b) on the same terms (other than as to the rate of interest), and
  - (c) between persons not connected with each other dealing at arm's length.
- (5) In this section a “fixed rate loan” means a loan—
- (a) made for a fixed period which cannot be changed, and
  - (b) made at a fixed rate of interest which cannot be changed during that period.

## 178 Exception for loans where interest qualifies for tax relief

A loan is not a taxable cheap loan in relation to a particular tax year if, assuming interest is paid on the loan for that year (whether or not it is in fact paid), the whole of that interest—

- (a) is eligible for relief under section 353 of ICTA<sup>F3</sup> or section 383 of ITA 2007 (relief for interest payments)],
- (b) would be eligible for relief under [<sup>F4</sup>section 353 of ICTA] but for the fact that it is a payment of relevant loan interest to which section 369 of ICTA applies (mortgage interest payable under deduction of tax),
- (c) is deductible in computing the amount of the profits to be charged [<sup>F5</sup>to tax] in respect of a trade, profession or vocation carried on [<sup>F6</sup>wholly or partly in the United Kingdom] by the person to whom the loan is made, or
- (d) is deductible in computing the amount of the profits to be charged [<sup>F7</sup>to tax in respect of a UK property business [<sup>F8</sup>(within the meaning of Chapter 2 of Part 3 of ITTOIA 2005 or Chapter 2 of Part 4 of CTA 2009)]] carried on by that person.

### Textual Amendments

- F3** Words in s. 178(a) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 431\(a\)](#) (with [Sch. 2](#))
- F4** Words in s. 178(b) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 431\(b\)](#) (with [Sch. 2](#))
- F5** Words in s. 178(c) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 587\(a\)\(i\)](#) (with [Sch. 2](#))
- F6** Words in s. 178(c) inserted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 587\(a\)\(ii\)](#) (with [Sch. 2](#))
- F7** Words in s. 178(d) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 587\(b\)](#) (with [Sch. 2](#))
- F8** Words in s. 178(d) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 550](#) (with [Sch. 2 Pts. 1, 2](#))

## 179 Exception for certain advances for necessary expenses

- (1) An advance by an employer to an employee for the purpose of paying for—
- (a) necessary expenses, or
  - (b) incidental overnight expenses,
- is not a taxable cheap loan in relation to a particular tax year if the following conditions are met.
- (2) The conditions are—

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- (a) that at all times in the tax year in question the amount outstanding on such advances made by the employer to the employee does not exceed £1,000,
  - (b) that the advance is spent within 6 months after the date on which it is made, and
  - (c) that the employee accounts to the employer at regular intervals for the expenditure of the amount advanced.
- (3) If, on an application made by the employer, [<sup>F9</sup>an officer of Revenue and Customs is] satisfied that there is good reason to do so in the case of a particular advance, [<sup>F10</sup>the officer] may authorise that either or both of the following limits are increased in relation to that advance—
- (a) the sum of money specified in subsection (2)(a);
  - (b) the time limit specified in subsection (2)(b).
- (4) An application under subsection (3)—
- (a) must be in writing, and
  - (b) must contain such particulars and be supported by such evidence as [<sup>F11</sup>an officer of Revenue and Customs] may require.
- (5) In this section “necessary expenses” are expenses (including travel expenses) which—
- (a) the employee is obliged to incur and pay as holder of the employment, and
  - (b) are necessarily incurred in the performance of the duties of the employment.
- (6) In this section “incidental overnight expenses” are expenses which—
- (a) are incidental to the employee’s absence from the place where the employee normally lives,
  - (b) relate to a continuous period of such absence in relation to which the overnight stay conditions are met, and
  - (c) would not be deductible under Part 5 if the employee incurred and paid them and Chapter 2 of Part 4 (mileage allowances and passenger payments) did not apply.
- (7) In subsection (6)(b) “the overnight stay conditions” has the same meaning as in section 240 (exemption for incidental overnight expenses) (see section 240(4)).

#### Textual Amendments

- F9** Words in s. 179(3) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\), s. 53\(1\), Sch. 4 para. 109](#); S.I. 2005/1126, art. 2(2)(h)
- F10** Words in s. 179(3) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\), s. 53\(1\), Sch. 4 para. 103\(1\)\(e\)](#); S.I. 2005/1126, art. 2(2)(h)
- F11** Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\), s. 53\(1\), Sch. 4 para. 102\(1\)](#); S.I. 2005/1126, art. 2(2)(h)

### 180 Threshold for benefit of loan to be treated as earnings

- (1) [<sup>F12</sup>Section 175 does not have effect in relation to an employee and a tax year—]
- (a) if the normal [<sup>F13</sup>£10,000] threshold is not exceeded, or
  - (b) where the loan is a non-qualifying loan and that threshold is exceeded, if the [<sup>F13</sup>£10,000] threshold for non-qualifying loans is not exceeded.

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- (2) The normal [<sup>F14</sup>£10,000] threshold is not exceeded if at all times in the year the amount outstanding on the loan (or, if two or more employment-related loans which are taxable cheap loans are outstanding in the year, the aggregate of the amount outstanding on them) does not exceed [<sup>F14</sup>£10,000].
- (3) The [<sup>F14</sup>£10,000] threshold for non-qualifying loans is not exceeded if at all times in the year the amount outstanding on the loan (or if two or more employment-related loans which are non-qualifying loans are outstanding in the year, the aggregate of the amounts outstanding on them) does not exceed [<sup>F14</sup>£10,000].
- (4) In this section a “non-qualifying loan” means a taxable cheap loan which is not a qualifying loan.
- (5) For the purposes of this section a loan is a “qualifying loan” in relation to a particular tax year if, assuming interest is paid on the loan for that year (whether or not it is in fact paid), the whole or part of that interest—
  - (a) is eligible for relief under section 353 of ICTA [<sup>F15</sup>or section 383 of ITA 2007 (relief for interest payments)],
  - (b) would be eligible for relief under [<sup>F16</sup>section 353 of ICTA] but for the fact that it is a payment of relevant loan interest to which section 369 of ICTA applies (mortgage interest payable under deduction of tax),
  - (c) is deductible in computing the amount of the profits to be charged [<sup>F17</sup>to tax] in respect of a trade, profession or vocation carried on [<sup>F18</sup>wholly or partly in the United Kingdom] by the person to whom the loan is made, or
  - (d) is deductible in computing the amount of the profits to be charged [<sup>F19</sup>to tax in respect of a UK property business [<sup>F20</sup>(within the meaning of Chapter 2 of Part 3 of ITTOIA 2005 or Chapter 2 of Part 4 of CTA 2009)]] carried on by that person.

#### Textual Amendments

- F12** Words in s. 180(1) substituted (with effect in accordance with Sch. 2 para. 62 of the amending Act) by [Finance Act 2017 \(c. 10\), Sch. 2 para. 45](#)
- F13** Word in s. 180(1)(a)(b) substituted (with effect in accordance with s. 22(2) of the amending Act) by [Finance Act 2014 \(c. 26\), s. 22\(1\)](#)
- F14** Word in s. 180(2)(3) substituted (with effect in accordance with s. 22(2) of the amending Act) by [Finance Act 2014 \(c. 26\), s. 22\(1\)](#)
- F15** Words in s. 180(5)(a) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 432\(a\)](#) (with [Sch. 2](#))
- F16** Words in s. 180(5)(b) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 432\(b\)](#) (with [Sch. 2](#))
- F17** Words in s. 180(5)(c) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 588\(a\)\(i\)](#) (with [Sch. 2](#))
- F18** Words in s. 180(5)(c) inserted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 588\(a\)\(ii\)](#) (with [Sch. 2](#))
- F19** Words in s. 180(5)(d) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 588\(b\)](#) (with [Sch. 2](#))
- F20** Words in s. 180(5)(d) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 551](#) (with [Sch. 2 Pts. 1, 2](#))

**Changes to legislation:**

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