TAXREP 7/01

TAX LAW REWRITE:
EMPLOYMENT INCOME: PART 2

Memorandum submitted in April 2001 by the Tax Faculty of the Institute of Chartered Accountants in England and Wales to the Inland Revenue in response to Exposure Draft No. 11 entitled: Employment Income: Part 2 issued in January 2001

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A General comments

Introduction

1. We welcome the opportunity to comment on Exposure Draft No. 11 ('ED11') Employment Income: Part 2 (Volumes 1 and 2) issued in January 2001, the second in the series on employment income following on from Exposure Draft No. 6 ('ED6') (on which we commented in September 1999 in TAXREP 25/99) and concentrating on deductions and exemptions. We note that a further Exposure Draft to be published will contain the remaining Part 4 Chapters.

2. The identification of those Chapters in Part 4 published in ED6 and those not yet published, in the table on pages i and ii, was helpful to a review of ED11; as was the italicised identification, on pages iii-xv in the full table, of clauses not included in ED11.

Ordering

3. The order of the Chapters in Part 4 appears appropriate (Commentary 5.3 - 5.7). We agree the relocation of Chapter 4.50 (Chargeability and Year of Charge for Earnings) after Chapter 4.14 to precede the deduction Chapters, for the reasons set out in Commentary 5.8. We approve the arrangement of the provisions on deductions and exemptions in short Chapters each dealing with a separate topic and the arrangement of clauses within the Chapters (Commentary 5.11).

Changes in approach

4. We welcome the overall changes in approach, in pursuit of a cohesive structure for the rewritten material and a common approach wherever possible, through stating a general proposition only once at the beginning of each relevant group of rewritten provisions and seeking to standardise and simplify the wording used for deductions and exemptions so far as possible (Commentary 5.12 – 5.14).

Changes with wide-ranging effect

5. We agree the proposed rewrite changes with wide-ranging effect, referred to in Commentary 5.16 – 5.44, and comment on these as follows.

6. Setting out in Chapter 4.16 propositions of general application to the deductions provisions is clearly sensible, as saving repetition and simplifying certain of those provisions. It is helpful to make clear that the employee does not have to demonstrate that an expense has literally been paid out of particular emoluments, and can be paid out of his financial resources generally; together with the general proposition that deductions from earnings are not to exceed earnings.

7. For the purposes of Chapter 4.17 (Deductions for employee's expenses) the provision in 4.17.1(2) that the employee is treated as paying an expense, where he incurs it but the actual liability is met by someone else and it constitutes earnings of the employee, is helpful. Similarly, the explicit allowance of a deduction allowable under Chapter 4 for an expenses payment by an employee to the extent that the amount of its reimbursement or recovery is included in his earnings, again enacting present practice.

8. The proposal to rewrite ICTA ss 198(1B), 193(3) and 193(6) independently of ICTA ss 198(1) and (1A) to operate independently as respectively 4.17.7 (Travel between group employments), 4.17.8 (Travel at start or finish of overseas employment) and 4.17.9 (Travel between employments where duties performed abroad), subject to fulfilling the general deduction rules in 4.17.1 or 4.17.2, is appropriate. We agree that it will no longer be necessary to deem the expenses to have been necessarily incurred in performing employment duties, except in the case of 4.17.7(2).

9. We agree that drafting complexity of the kind referred to in Commentary 5.31 – 5.33 is better avoided.

10. The proposal to operate the provisions allowing a deduction of an amount equal to an amount included in the employee's earnings (in respect of costs or expenses borne by others) in Chapter 4.20 (Deductions for earnings representing benefits or reimbursed expenses) by reference to 'the included amount' is sensible.

11. We also agree the proposal to abandon the label 'foreign emoluments', and the consequential change to continue to exclude certain deductions otherwise available where the employee is not domiciled in the United Kingdom (Commentary 5.39), as making 4.50.3, 4.17.8, 4.17.9, 4.17.21 and 4.20.8 more self-contained and easier to understand.

12. The proposal to standardise the form of words used in the exemptions clauses to indicate that income is exempt from income tax, as proposed in Commentary 5.43, is appropriate.

13. We agree the proposal in Commentary 5.44 to gather together into two single clauses, 4.33.1 and 4.33.2, the exceptions from the charges relating to non-cash vouchers and credit-tokens where the vouchers or tokens are used for benefits that are themselves exempt.

Obsolete ESCs

14. We clearly have no objection to the omission of the obsolete or imminently obsolete ESCs listed in Commentary 5.46, and understand the omission of those ESCs of very limited application listed in Commentary 5.47. However, it is not immediately obvious from their length and content that ESCs A4, A37, A61, A68 and A81 are too complex to legislate, particularly A61 (Clergymen's heating and lighting etc. expenses); having regard to the intention to rewrite ESC A85, which appears no more complex or longer than these, in a later Exposure Draft. Perhaps this might be looked at again since, as a matter of principle, we would prefer to see relevant ESCs legislated wherever possible even though this adds to the length of an Income Tax

Bill. Nevertheless, we do commend the rewrite team for having already introduced a large number of ESCs into the drafting of ED6 and ED11. Please, however, also see our comments on ESC A74 under 4.42.2 in section C below.

Income taxed as employment income

15. 4.1.1 (Income taxed as employment income) is a good introduction to Part 4, clearly making the distinction between 'earnings' and 'other amounts'. We accept the use of the descriptive word 'earnings'; but it is unfortunate that its meaning does not coincide with its meaning in the context of National Insurance Contributions. We note that 4.1.4 may be moved to a less prominent position, and that 4.1.1A(2) is likely to be further rewritten.

Deductions

16. The grouping of the provisions for deductions allowed from earnings, in separate Chapters in 4.17 – 4.21 according to the type of deduction, is helpful to the reader; as is the grouping of the provisions according to the type of expense etc involved within Chapters 4.17 and 4.20.

17. We agree that grouping the ED6 clauses 4.6.17, 4.7.17 and 4.12.7 together in Chapter 4.18 as 4.18.1 – 4.18.4 and putting them alongside the other deductions clauses, and the approach of limiting the amount of the deduction (Commentary 5.252 – 5.254), is appropriate. 4.18.2 and 4.18.4 can result in an amount lower than 'the included amount' which is the basis adopted in Chapter 4.20, so that their separation from that Chapter is justified. However, whilst we hold no strong view, there may be a case for including 4.18.3 in Chapter 4.20, as it operates in the same way as the clauses in that Chapter. In view of 4.18.3(1)(b)(ii) this would still maintain the approach in Chapter 4.18 that the deduction must not exceed the amount treated as earnings, in order to prevent any deduction against other earnings. See also our comments in C on 4.20.1(3).

Exemptions

18. The collecting together of various exemption provisions and those ESCs which it is proposed to legislate, and their arrangement according to subject, is helpful.

19. We agree with the separate treatment of the work-related training and individual learning account training provisions (Commentary 5.467). As regards work-related training provision, we also agree the amalgamation of ICTA ss 200B and 200D, and the consequential reference to expenditure by a person other than the employee. We welcome PRC56, making clear that training funded by a third party is exempt to the same extent as if the employer had incurred the expenditure; PRC57, requiring only that amounts should be necessarily (rather than wholly, exclusively and necessarily) expended on travelling and subsistence; and PRC58, widening the reference to travelling and subsistence expenses deductible under Part 4, with these three PRCs applying in the cases of both work-related training provision and for contributions to individual learning account training.

20. In Chapter 4.32 (Exemptions: Recreational Benefits) the structure of clauses 4.32.1 – 3 (recreational facilities) does make the exemption for the provision of recreational benefits easier to follow. We also accept the use of the word 'facilities' throughout Chapter 4.32.

21. We consider that it is useful to the reader to deal with the exemptions for non-cash vouchers and credit-tokens in the separate Chapter 4.33 (Commentary 5.528). The usefulness of Chapter 4.33 might be improved by including suitable cross-references to 4.32.4(4) (Annual parties and functions) and to 4.35.7 (Armed forces' leave travel facilities) as the only other exemptions outside that Chapter which apply to non-cash vouchers and credit-tokens. The reader could then confidently deduce that anything else is not exempt if provided by way of a non-cash voucher or credit-token. We note that when all the employment income provisions are brought together, the Chapter 4.6 charging provisions (Taxable benefits: vouchers and credit-tokens) will contain a cross-reference to Chapter 4.33.

22. We consider that the use of general clauses such as 4.33.1 (Exemption of non-cash vouchers for exempt benefits) and 4.33.2 (Exemption of credit-tokens used for exempt benefits) is helpful (Commentary 5.533 and 5.538).

23. In Chapter 4.34 (Exemptions: Removal Benefits and Expenses) we agree that it is appropriate to deal with benefits and reimbursed expenses together wherever possible.

Cross-references and abbreviations

24. In this document references are to the three-part draft clause numbers in ED11 Volume 2, unless otherwise stated. References to 'Part 4' are to Part 4 (Employment Income) of the Updated Framework For Income Tax For Individuals contained in Appendix 1 of ED11 Volume1.

25. 'Commentary' refers to the Commentary in ED11 Volume 1.

26. 'ICTA' means the Income and Corporation Taxes Act 1988.

27. 'ESC' means Extra-Statutory Concession.

28. References to the masculine include references to the feminine.

29. There are various references to definitions in ICTA. These will require re-referencing as the various separate rewrite Acts emerge. The matter of cross-referencing generally will need to be kept under review as the rewrite progresses.

B Proposed Rewrite Changes (PRCs) and Questions raised

We agree to the PRCs listed on pages 15–26 in Volume 1: Introduction and Commentary, subject to the comments and exceptions listed below. Page and paragraph references are to those in Volume 1 of ED11.

1. Changes in approach but not in the underlying law

We agree PRCs (1) – (8).

2. Changes to the law and policy

Page : Para

112 5.593 PRC(20). The benefits and expenses in 4.34.13 (Replacement of domestic goods) will not be exempt to the extent that the 4.34.15 limit on exemption is exceeded. The net amount of the benefit and expenses therefore has a relevance, and PRC(20) will not be in favour of the taxpayer. We would prefer the law to be rewritten to also take into account the sale proceeds of the replaced goods where the employer provides the replacement goods. This would rewrite the law in accordance with ICTA, Schedule 11A, paragraph 14(2); but will require a PRC in respect of the rewriting of ICTA, Schedule 11A, paragraph 22. It is fairer to have regard to the net rather than the gross amount involved.

3. Changes to the law but not to policy

50 5.138 PRC(32). 4.16.8 (Business entertainment and gifts: other exceptions). As a policy matter, the £10 limit in 4.16.8(3)(b) should be reviewed and increased.

57 5.187 PRC(9). We consider that provision for the Revenue to register a body would be a change in the law that is detrimental to taxpayers. Currently if the Revenue approves a body but omit to enter it in their list of approved bodies the taxpayer is nevertheless entitled to a deduction. He will not be if registration rather than approval becomes the trigger that gives rise to the deduction. Please also see our comments on Commentary 5.197 below.

19 5.158 PRC(35). 4.17.3 (Deductions for expenses: the basic rule).
We see the merit in grouping the travel expenses provisions together; but the established 'necessarily incurred' (only) requirement in 4.17.4 is so fundamentally different to the 'wholly, exclusively and necessarily' rule in 4.17.3(1)(b) that it looks inappropriate to set out the latter as the basic rule and then follow it with a more liberal requirement in 4.17.4. If 4.17.3 and 4.17.4 are to be kept separate, we would prefer 4.17.3(1)(b) to be qualified at its start along the lines of 'subject to 4.17.4 (the amount is incurred wholly, ...)'. Alternatively (but not our preference) the 'necessarily' rule for travel expenses should be incorporated into 4.17.3 as part of the basic rule, with 4.17.4 being amended accordingly.

20 5.361 PRC(48). 4.22.1(Payments into non-approved retirement benefit schemes treated as employment income).
As Commentary 5.357 concedes, circumstances within ICTA s 595 can arise in an ICTA s 148 context. Whilst Inland Revenue practice is to charge income tax under ICTA s 595, this has not been tested in the courts. Where the payment to a non-approved pension scheme is made in connection with either a significant change in the terms or conditions of an employment or, particularly, with its termination, then there is a case for ICTA s 148 taking priority.

If the Revenue practice is correct, s 595 appears to be the only provision which can catch the same payment as s 148 where the s 148 charge does not take precedence. It is difficult to see any logical reason for this.

Rather than ICTA s 595 being given priority always over ICTA s 148, as 4.22.1(3) proposes, we consider that the opportunity should instead be taken to remove this anomaly by giving ICTA s 148 priority in circumstances where it was also applicable; thereby allowing the taxpayer access to the £30,000 exemption in 4.23.1.

112 5.589 PRC(65).
In principle we accept the method statement in 4.34.12; but Step 2 is not reader friendly. It would be simpler to say that 'the eligible loan' is equal to the qualifying amount or, if lower, the market value of the employee's interest in the former residence at the time of acquisition of the new residence.

4. Removal of unnecessary material
We agree PRCs (84) – (98).

Apart from the responses dealt with in section A, the Commentary also invites response to the following.

58 5.197 In the context of the proposed registration system, as regards decisions of the Board under 4.17.12, whilst it might appear appropriate that a professional body should be required to notify an event which might cause the Board to review that body's registration status, we would emphasise that no entity ever carries on its activities in exactly the same manner for year after year. Professional bodies are always looking to provide new benefits for their members. It would be wholly impractical to require a body either to notify every single change that it makes in its activities or to guess what changes might lead the Revenue to want to withdraw approval. Any requirement to notify would therefore be extremely burdensome.

As a policy matter, in a shrinking world more and more employees are joining international organisations and, where their duties involve overseas work, foreign organisations. The requirement that approval can be sought only by the body is unreasonable in these circumstances.

A non-United Kingdom based organisation will not be prepared to incur the time and expense of seeking approval where only a handful of its members are overseas residents. It is equally unfair that the employee should not be able to obtain a deduction for a subscription to an overseas professional body that he has joined solely because this will enable him better to perform the duties of his employment. If it is a body established in another EU country it is also probably in breach of EU law.

Our understanding of current law is that it is possible for such a subscription to fall within ICTA s 198 and that s 201 was intended to provide an additional chance of obtaining relief if a professional subscription does not meet the wholly exclusively and necessarily test. The rewrite appears to eliminate this possibility, as 4.17.3(2) appears to override rather than supplement the general rule in relation to the particular types of expense to which it refers.

83 5.377 The structure of Chapter 4.23 (Other employment income: payments and benefits on termination of employment) is appropriate.

117 5.617 The rearrangement of the material in ICTA ss 200 and 200ZA between 4.35.3 (Overnight expenses allowances of MPs), 4.35.4 (Overnight expenses of other elected representatives) and 4.35.5 (EU travel expenses of MPs and other representatives) does make the legislation easier to use.

125 5.680 We agree the inclusion of the charge on discount provisions, in the case of the exemptions for priority share allocations, as 4.39.2 and 4.39.4 within Chapter 4.39, and the proposed restructuring of the legislation within that Chapter (Commentary 5.681 – 5.683) is also acceptable as a more logical layout.

127 5.701 The approach of applying the legislation concerning exemptions for priority share allocations in Chapter 4.39 to a director as it applies to an employee, through 4.39.7, is helpful. 4.39.7 comes towards the end of the Chapter, which is unavoidable in the context of its structure; but this does mean that the reader comes late to this realisation. It might assist here if the italicised heading on page 97 before 4.39.1 read as 'Exception where single offer made to public, employees, directors and other office-holders' and if the italicised heading before 4.39.3 read as 'Exemption where offer to employees, directors and other office-holders separate from public offer'.

132 5.727 We agree that it is more helpful to place the recovery of tax provisions, where the exemption is withdrawn, alongside the provisions relating to the 4.41.3 (Retraining courses) exemption.

Responses invited concerning particular clauses are included in sections C and D.

C Specific comments on matters of principle

4 EMPLOYMENT INCOME

4.12 Taxable Benefits: Residual Liability to Charge

4.12.6A Power to exempt minor benefits

(3) We note that 4.12.6A(3) will not be required if a provision equivalent to ICTA s 828 is included in the proposed Income Tax Act (similarly 4.31.9(5), 4.32.3(2), 4.34.14(5), 4.42.1(7) and 4.48.1(5)).

4.14 Payments treated as earnings

4.14.5 Payments for restrictive undertakings

(7) ICTA s 313 applies only to offices or employments the emoluments of which are chargeable to income tax under Schedule E Case I or II. 4.14.5(7)(a) covers the Schedule E Case I earnings of employees resident and ordinarily resident in the United Kingdom. 4.14.5(7)(b) covers Schedule E Case II as concerns the earnings in respect of duties performed in the United Kingdom or from overseas Crown employment subject to United Kingdom income tax of employees resident but not ordinarily resident in the United Kingdom; and 4.14.5(7)(c) covers the similar earnings of Schedule E Case II employees not resident in the United Kingdom.

4.14.5(7)(c) does not make clear that it covers the same types of earnings as 4.14.5(7)(b), and 4.14.5(7)(b) does not make clear that it applies only to employees who are resident but not ordinarily resident in the United Kingdom.

4.16 Deductions allowed from earnings: General rules

General Chapter 4.16 proceeds generally in 4.16.1 on the basis that deductions 'are allowed'. It is not clear whether this is mandatory or on a claim by the taxpayer. Presumably it is the latter, which would then, for example, enable the employee to make a choice under 4.19.2(6) (see comments on 4.19.2 below) or 4.19.3(3) or to choose any sum smaller than the fixed allowance in 4.19.2 or 4.19.3 (Commentary 5.278 and 5.281). This needs to be made clearer.

4.16.5 Prevention of double deductions

(2) It needs to be made clearer that the employee can choose whether to take a deduction under 2(a) or 2(b). Perhaps 'as determined by the employee' could be added after 'allowed' at the end of the sentence. See also comments on 4.19.2 and 4.19.3 below.

4.19 Fixed Allowances for employee's expenses

4.19.2 Fixed sum deductions for repairing and maintaining work equipment

The cross-reference in 4.19.2(6) does not really make it clear that the employee has a choice. He is put on notice that only one deduction is allowed; but not that he has a choice. It would also be helpful if a form of wording indicating that the employee can alternatively deduct the whole or part of his actual expenses was also included in 4.19.2(6).

Similar comments apply to 4.19.3(3) (Fixed sum deductions from earnings payable out of public revenue).

4.20 Deductions for earnings representing benefits or reimbursed expenses

4.20.1 Scope of this Chapter: earnings representing benefits or reimbursed expenses

(3) This sub-clause does not make clear that the employee has (presumably) a choice of a deduction under Chapter 4.18 or 4.20 (but, in the case of 4.18.2 and 4.18.4 only where 4.18.2(2)(a) or 4.18.4(2)(a) apply). As the effect of the deduction for 'the included amount' will be the same under either Chapter, nothing seems to turn on this; but the choice open to the employee might be more clearly stated. It would also be preferable to replace the word 'available' by 'allowed'.

4.21 Deductions from seafarers' earnings

4.21.4 Taking account of other deductions

(2) We note that further deductions may be included in the list.

4.23 Other employment income: payments and benefits on termination of employment

4.23.13 Notional interest treated as paid if amount charged for beneficial loan

We do not understand the purpose of this provision. ICTA s 161A (introduced by FA2000) excludes a qualifying loan from the charge under s 160. If no cash equivalent benefit arises, 4.23.13 could only apply to non-qualifying loans. Why then is treating interest as paid on such a loan of any relevance?

An alternative interpretation is that, because the exemption is ignored by 4.23.1(4)(a)(ii), then cash equivalents on qualifying loans do remain within the scope of 4.23.1; so that 4.23.13 then becomes relevant. Even so, if the benefit of the beneficial loan (the cash equivalent) applied for a qualifying purpose is not wholly or partially extinguished by the first £30,000 slice exemption in 4.23.1(1), the whole or balance remaining of it will be

extinguished by the same whole or part amount of the cash equivalent of the loan treated as interest paid; so why not simply exempt such a benefit from 4.23.1 in the first place?

Is the intention that the cash equivalent of a qualifying loan (before any deduction for corresponding interest treated as paid) should first be taken into account in the 4.23.1(1) aggregate amount. In that case the timing of its receipt becomes important, if it might precede another chargeable part of the aggregate which did not fall to be treated similarly to itself.

Under 4.50.11(4) of ED6 a cash equivalent under Chapter 4.9 (taxable benefits: loans) is treated as received "in the year referred to in the provision concerned" (i.e. in Chapter 4.9). 4.9.3(1) of ED6 states that if the loan is outstanding for the whole or part of a tax year, then the cash equivalent is treated as earnings of the employee's employment "for that year". It is not clear at what time in that year, and this will presumably depend upon whether it is repaid during the tax year or is still outstanding at the end of it. If the latter, does the taxpayer have any right to treat this income as a non-cash benefit arising *after* all other payments or benefits received in a tax year in which the £30,000 threshold is exceeded, so that the benefit to him of that threshold will be maximised by being first set against other payments and benefits within 4.23.1(1)? If the Chapter 4.9 benefit would otherwise finally be nil, this would appear to be the fair approach.

This clause needs to be rewritten intelligibly.

4.30 Exemptions: Transport, Travel and Subsistence

4.30.9 ***Travelling and subsistence during public transport strikes***
We support the proposal to legislate ESC A58(Commentary 5.451)

(2)(d) Probably contrary to its intention, the reference to 'such transport' appears strictly to be to the transport in 2(c) only, being transport provided for the employee. Doesn't ESC A58 also cover the extra costs of travelling to and from work by any transport means, whether provided for the employee or not; for example via more circuitous routes where transport facilities might be operating?

4.30.9 applies where the employee is working at his permanent workplace. Commentary 5.453 states that if the employee is instead working at a temporary workplace, or is on a training course, then costs incurred in the provision of transport, accommodation and subsistence will instead be deductible under Chapter 4.17 in these particular strike circumstances. ESC A58 did not deal with such costs but where does Chapter 4.17 deal with them? It does not appear to provide for accommodation and subsistence expenses and 4.17.4 and 4.17.5 would not apply to ordinary commuting expenses of this type. It is arguable that travel from home to a temporary workplace or training location is 'travel between any two places that is for

practical purposes substantially ordinary commuting' within 4.30.9(2)(c); but this is contrary to the Commentary 5.453 interpretation.

It may be the Revenue view that, if the employee is working at a temporary workplace or is on a training course, the extra expense of getting there during a public transport strike is travel within 4.17.5(1) so that no special rule is necessary. If so, we would be concerned at the use of the word "obliged" in 4.17.5(1) and would feel more comfortable with a special rule. Also, this would not answer our query in respect of associated accommodation and subsistence costs.

4.30.10 Transport to work for disabled employees

We support the proposals to legislate ESC A59 and to also incorporate the Inland Revenue practices.

General The reference to transport 'to work' in the clause's title is however misleading, where the concession refers to travelling *to and from* the place of employment and also to and from a place where training is provided. Is the reference in 4.30.10(2) to 'travel between any two places that is for practical purposes substantially ordinary commuting' in fact intended to cover travel to temporary workplaces and to training locations? In the case of the similar wording in 4.30.9(2)(c), it appears from Commentary 5.453 that this was not the intention; but ESC A59 does specifically refer to travel to a place where training is provided.

4.30.11 Transport home: late night working and failure of car-sharing arrangements

We support the proposal to legislate ESC A66.

With reference to Commentary 5.464, we agree that it is better to leave phrases such as 'not . . . . reasonable to expect' and 'unforeseen and exceptional circumstances' as matters open to judgement. As regards the former, apart from the potentially longer time taken, to which ESC A66 refers, there are for example also concerns nowadays over the personal safety of staff.

4.32 Exemptions: Recreational benefits

4.32.4 Annual parties and functions

(4) With reference to Commentary 5.520 it is probably more consistent with the structure of Part 4 to include 4.32.4(4) within 4.33.1 (Exemption of non-cash vouchers for exempt benefits); but we hold no strong view on this, and it is more reader-friendly to locate it in 4.32.4. As stated above, however, Chapter 4.33 might be improved by including a suitable cross-reference to 4.32.4(4).

The wording of 4.32.4 does not satisfactorily reproduce ESC A70B in the following respects.

In 4.32.4(1) "available to all of them" (i.e. to all of an employer's employees) is not the same thing as "open to the staff generally". For example, if an employer holds a party in London for all of his London staff and a separate party in Edinburgh for all of his Scottish staff, then both functions are within the ESC; but neither would satisfy 4.32.4.

The ESC talks of not imposing a benefit on an individual employee where the expenditure is modest. If an employer holds a Summer party costing £30 per head and a Christmas party costing £50 per head, then the ESC would apparently exempt any employee who attends only one of those functions. However, whilst this may well be its intention, the actual wording of 4.32.4(3) does not appear to lead to this result as it operates by reference to the aggregate cost per head of the exempt *parties* in the plural.

The ESC also covers a party provided for staff and accompanying persons whereas 4.32.4 only covers the case where it is provided for staff alone.

As a policy matter, it would be fairer to employees to provide that the first £75 of benefits relating to annual parties and functions in any tax year should be exempt. As with ESC A70B, where two parties in a year have costs per head of £35 and £41 for example then only the latter is exempt. This presupposes that the more costly of the two would be exempt, which 4.32.4(3) does not (but should) make clear.

4.33 Exemptions: Non-cash vouchers and credit-tokens

4.33.2 Exemption of credit-tokens used for exempt benefits

(2) We note Commentary 5.537, which explains why the list of benefits which could be obtained using a credit-token does not contain all those listed for non-cash vouchers. Amongst those not listed is section 4.42.2 (subsidised meals) which originates from ESC A74 (Meals provided for employees). ESC A74 is, however, listed in the Table of Origins for 4.33.2. Either this is a mistake, or this particular benefit should be listed in 4.33.2(2).

4.33.4 Exemption where benefits or money obtained in connection with taxable car or van or heavy goods vehicle

(1) As a policy matter in the case of a taxable car or van, although correctly rewriting ICTA s 157(3)(b) (Cars available for private use) and ICTA s 159AA(3)(b) (Vans available for private use), it seems anomalous that this exemption is restricted to use only by the employee whereas the benefit of these vehicles can also be enjoyed by members of the employee's family or household. In practice, having regard to the type of benefit involved, this has not created any concern. However, in contrast, the 4.33.1 and 4.33.2 exemptions evidently do apply to benefits enjoyed by members of the employee's family or household in the case of 4.33.1(2)(d), 4.33.1(4)(b) and 4.33.2(2)(e) and by his children in the case of 4.33.1(3)(a).

In this context, the drafting of 4.33.5 (Exemption for small gifts from third parties) also appears sufficient to include non-cash vouchers and credit-tokens given to a member of the employee's family or household, which ESC A70 treated as a gift made to the employee.

4.34 Exemptions: Removal benefits and Expenses

4.34.1 Exemption of removal benefits and expenses: general

General ICTA, Schedule 11A, paragraph 1(1)(c) extends the provision of qualifying removal benefits to members of the employee's family or household; whereas this extension does not apply to qualifying removal expenses. This is not as clearly stated in 4.34.1(1); but the same effect appears to be achieved by applying the 4.34.1 exemption to removal benefits and expenses 'to which (Chapter 4.34) applies'. The specific benefits apply to the employee's family or household where appropriate.

4.42 Miscellaneous exemptions

4.42.2 Subsidised meals

General ESC A74 expressly stated that the concession also applied to light refreshments as well as to meals, drawing a distinction between the two. This extension of the interpretation of 'meals' is not incorporated into 4.42.2.

As Commentary 5.731 indicates, ESC A74 covered the provision of free or subsidised meals regardless of where those meals are obtained. 4.42.2 does not provide for this; under 4.42.2(1) the meals must be provided in a canteen or on the employer's business premises. Is this restriction intended?

In principle we are in favour of legislating ESC A74; but, as a prerequisite, has its scope been properly considered? We have been referred to an example where the Revenue are refusing to apply the concession because although meals are available to all the employer's permanent staff they are not available (in the sense of not offered to) temporary staff who are engaged to work outside the office. The same problem could arise with a company that has a number of branches. Is the company's canteen in London available to staff "generally" even though it is clearly impractical for its staff in Edinburgh to use it? Probably but not necessarily. The essential point here is that with an ESC one can look at the spirit of the concession, rather than seek to interpret the words as if they were legislation. The spirit of the concession is that meals should not be available only to directors and executives. The legislation ought to reflect the spirit of the concession rather than try to reproduce its exact wording. ESC A74 is clearly on the borderline between an acceptably enactable concession, and those where the necessary flexibility means that a concession is better left as such.

4.42.4 Limited exemption for computer equipment

(4)(a) Having regard to Commentary 5.736, the distinction between coincidental and deliberate provision of computer equipment to directors only might more clearly be made by inserting 'deliberately' before 'confined'. In a section at great pains to exclude 'directors only' situations this clarification is necessary, as the availability of the exemption in coincidental situations is not obvious to the reader.

4.42.5 Overseas medical treatment

(1) In the case of a provision dealing with an exemption, it will not be obvious to the reader that in appropriate circumstances chargeability can arise under 4.1.1(3)(a), Chapter 4.5 or Chapter 4.6. It would be helpful to alert the reader to this (Commentary 5.738).

(2) It would be helpful to include an alert that reimbursement of a premium for overseas medical insurance paid by the employee is not within the exemption (Commentary 5.739).

4.42.10 Long service awards

(3)(iv) For the avoidance of any confusion, it would be better to rephrase this as 'shares not within paragraph (b) or securities'. This then links back to (b), which only refers to shares in the employer company or a company in the same group, and makes clear that securities of any company are in point.

As a policy matter, the £20 per annum figure has applied since 1984 and ought to be increased.

(3)(v) Is it intended that an interest in or rights over shares within (b) should also be excepted from the exemption?

4.42.11 Small gifts from third parties

(2) Are the words 'including any VAT payable on the supply of the gifts to the donor' equivalent in meaning to 'any VAT paid whether or not it is reclaimable'? Could it be argued that no VAT is 'payable' if the employer could recover it as input VAT?

4.43 Exemptions: Supplementary provisions

4.43.2 Exempted amounts not to be treated as earnings or emoluments

We note that 4.43.2(1) and (2) are markers only, and that further related work remains to be done (Commentary 5.782 – 5.784). It is not readily apparent why 4.30.4(1) and 4.41.3 are listed in 4.43.2(2), as these are rewritten as 'exempt from income tax' without the additional qualification 'as earnings'.

D Detailed comments on drafting

Arrangement of clauses

Attention will be needed to the sequence of the Chapter and clause numbering. The suffix lettering employed in 4.1.1A, 4.9.17A (and 4.9.17B) and 4.12.6A appears cumbersome. There is no Chapter 4.3 or 4.10, whilst there are Chapters numbered 4.9A and 4.9B. It would be preferable to number the Chapters consecutively throughout, which is presumably the intention? 4.9.17A and 4.9.17B will require renumbering if left in Chapter 4.9 as will the later Chapter 4.9 clauses. 4.12.6A should preferably be 4.12.7. Chapter [4.50] will presumably become 4.15 if left in its present location, with consequential cross-referencing amendments.

4.9 Taxable Benefits: Loans

4.9.17A Exception for certain bridging loans connected with employment moves

General The need to refer to the signposted sections in 4.9.17A(2)(a), (3)(a), (3)(b) and 7 do not make for easy reading; but this results from the complexity of the legislation, and 4.9.17A is rewritten well structurally. Similar comments apply to 4.9.17B.

(4) Although the same applies to 'D' in the ICTA s 191B(10) formula, it is not readily apparent that 'C' is itself (as a percentage) effectively a fraction. Possibly this might be clearer if 'percentage' was added after 'interest' in the definition of 'C' on page 3?

4.14 Payments treated as earnings

4.14.4 Payments to non-approved personal pension arrangements

(1) ICTA s 648 refers to 'his' employee in relation to the employer. Should this specific relationship be retained, by changing 'the employee' in the second line to 'his employee'?

4.50 Chargeability and Year of Charge for Earnings

4.50.3 Earnings excepted from section 4.50.2

(4) We note that further deductions may be included in the list.

4.16 Deductions allowed from Earnings: General Rules

4.16.1 Deductions from earnings: general

(2),(3) We note that both of these subsections will be revisited.

4.16.2 The income from which deductions may be made

(3) Although correctly and neatly drafted, subclause (3) can clearly be understood only by reading through the relevant signposts. In the case of 4.17.3 and 4.17.7 this involves reading 4.17.19(1) and 4.17.20 which contain further signposts. Text of this type is not easily intelligible.

4.16.3 Deductions from earnings not to exceed earnings

(1) Subclause (1) needs to be made subject to subclause (2)(a), which provides for specific instances where deductions from earnings do exceed those earnings.

(1)(b) It is not clear whether the words 'fall to be allowed' are to apply on a mandatory basis. Read literally this seems to be the meaning. If other allowances are available, do these words mean that those other allowances have to take priority; or do they 'fall to be allowed' only as a consequence of the taxpayer's choice, applying ICTA s 835(3) and (4)? If the former, there will be a conflict with 4.16.4(1).

4.17 Deductions for employee's expenses

4.17.3 Deductions for expenses: the basic rule

(1) The words "if the employee" do not relate to (b) and should therefore be part of (a), not of the introductory wording.

4.17.13 Deduction for employee liabilities

We note that FA95 s 92 has not yet been rewritten (Commentary 5.202).

4.17.14 Deduction for indemnity insurance

(2)(a) If a deduction is to be allowed for a "premium" paid in circumstances where several different insurance terms are used to describe payments, it does appear necessary to retain an appropriate definition of "premium" (Commentary 5.205).

4.22 Other employment income: Payments to non-approved pension schemes

4.22.1 Payments into non-approved retirement benefit schemes treated as employment income

In this clause heading payments are inconsistently referred to as 'into' schemes rather than 'to' schemes as in the Chapter heading.

We note that ICTA s 595(1)(b) will either not be repealed or ICTA s 226 will be amended to give effect to it (Commentary 5.365).

(3) In the third line 'would apply' is duplicated.

(4) It might be neater to say ' "director" and "relevant benefits" have the same meaning as in section 612(1) of ICTA'.

(6)(a) In the description fo 4.22.7 the word 'are' does not appear in the clause 4.22.7 title.

4.22.3 Apportionment of payments in respect of more than one employee

(2) The formula is helpful (Commentary 5.368).

4.23 Other employment income: payments and benefits on termination of employment

4.23.1 Termination payments and benefits treated as employment income

(2) If 'relative' has a restrictive meaning, it would be preferable to define it for the purposes of this Chapter.

(4)(a)(ii) We note that further work has to be done to determine whether or not the 4.43.2 benefits exempted are to be included in the charge under Chapter 4.23.

4.23.2 Charge to tax in year of receipt

Rather than leave the matter to case law, the rewrite should include a provision that the Chapter 4.23 charge is independent of the residence status rules which apply to earnings. This is the type of practical point which it is desirable that the rewrite should make clear. We would prefer the matter to be made plain in this Chapter, rather than in the part of the rewrite which deals with residence issues (Commentary 5.388).

4.23.4 How the £30,000 threshold applies

General We agree that the rearrangement of ICTA, Schedule 11A, paragraphs 7 and 8 does make 4.23.4 easier to follow (Commentary 5.391).

(1) Having regard to Commentary 5.394, it might be helpful to insert 'including those provided at any time on any earlier application of section 4.23.1 in respect of employment with the same or an associated employer' at the end of 4.23.4(1).

(3)(b) Consideration might be given to introducing a definition of 'successors' as a PRC (Commentary 5.395).

4.23.6 Exception for payments and benefits under tax-exempt pension schemes

(2)(a) Specifying the retirement benefits schemes is helpful (Commentary 5.400).

4.23.7 Exception for employee liabilities indemnity insurance payments and benefits

General We agree that it is appropriate to include this clause in Chapter 4.23 (Commentary 5.401)

4.30 Exemptions: Transport, Travel and Subsistence

4.30.7 Support for public bus services

(3) The cross-reference should more accurately be to 4.30.6(2) ("qualifying journey").

4.30.8 Cycles and cyclist's safety equipment

(3) The cross-reference should more accurately be to 4.30.6(2) ("qualifying journey").

4.30.10 Transport to work for disabled employees

(3)(b)ii) It is not clear whether the words 'incurred in connection with it' refer to the fuel or to the car. It appears to be the latter, in which case we suggest substituting 'with the car' for 'with it'.

4.31 Exemptions: Education and Training

4.31.2 Meaning of "work-related training"

(1)(a) It would be more accurate to rewrite ICTA s 200B(5)(a) as 'is or are' (likely to prove useful . . .).

(1)(b)(ii) The word 'undertaken' as employed in ICTA s 200B(5)(b)(ii) seems more appropriate in the context than 'performed'.

4.31.8 Exception where unrelated assets are provided

(2)(a)(i) It is now less obvious that 'training' (as used throughout 4.31.8) includes 'education' as in ICTA s 200F(3), although this can be deduced from the definition of individual learning account training in 4.31.6.

4.32 Exemptions: recreational benefits

General The structure used does make the provision dealing with the exemption of recreational benefits (in 4.32.1 – 4.32.3) easier to follow (Commentary 5.501). The use of the word "facilities", to denote that the meaning is the tangible facilities and not the opportunity to use them, is appropriate as correctly rewriting the ICTA s 197G meaning and makes the legislation easier to understand (Commentary 5.503).

4.35 Exemptions: Special kinds of employees

4.35.1 Accommodation benefits of ministers of religion

(6) Does 'Measure' included in the definition of "statutory amount" and "statutory deduction" itself require definition?

4.35.2 Termination payments to MPs and others ceasing to hold office

(1) Can it be stated more positively that 4.23.1 (payments and benefits on termination etc of employment treated as employment income) still applies to these grants and payments, in place of the negative wording 'This does not affect any charge . . . '?

4.35.10 Crown employees' foreign service allowances

(3) Should the Secretary of State for Scotland be added to the list?

4.35.11 Consuls

(2) Can this subclause be deleted, and 4.35.11 instead be listed in 4.43.1? Similar comments apply to 4.35.12(2).

4.35.13 Consular employees

(3) In the definition of 'reciprocal arrangements' the words 'and section 322 of ICTA' should be removed.

4.39 Exemptions: Priority share allocations

4.39.7 Application to directors and other shareholders

(3) We note that the definition of "director" will be revisited in due course (Commentary 5.703).

4.39.8 Minor definitions

We note that the definition of "shares" will be revisited in due course (Commentary 5.706).

4.41 Exemptions: Termination of employment

4.41.1 Limited exemption for statutory redundancy payments

(3) It would be clearer to rephrase this to state positively that payments within 4.41.1(1) are to be taken into account under Chapter 4.23 (payments and benefits on termination of employment).

4.41.2 Counselling and other outplacement services

(3)(c)(ii) In view of Commentary 5.20, is it necessary to include the words 'out of earnings from it'? A similar comment applies to 4.41.3(5)(b) (Retraining courses).

4.42 Miscellaneous exemptions

4.42.2 Subsidised meals

(1) The words "and the following conditions are met" in (b) probably need to apply to (a) as well.

4.42.6 Care for children

(4) The word 'and' at the end of (i) should be 'or'.

4.43 Exemptions: Supplementary provisions

4.43.2 Exempted amounts not to be treated as earnings or emoluments

(3),(4) Subclauses (3) and (4) could be merged, without loss of clarity. We note, however, that further work remains to be done concerning these (Commentary 5.786).

4.48 Supplementary

4.48.1 Alteration of amounts by Treasury order

(2)(b) The title of 4.30.5 includes 'and benefits'.

4.48.3 Index of defined expressions

General Is an index of this type necessary? Whilst the index makes it easier for the reader to access the expressions listed, will he normally wish to do this? A reader is more likely to search the Arrangement of Clauses for particular provisions, rather than try to locate them through the definition or explanation of particular expressions. Certainly there is a case for listing those expressions not defined elsewhere within Part 4 where the definitions are in ICTA or another Act; but it is difficult to see, for example, what value there is to the reader in being directed to 'the included amount' in 4.20.1(2). He will need to read Chapter 4.20 to realise in the first place that he needs to know this, and could then find the definition in 4.20.1(2) without needing to refer to the Index.

In a number of instances an expression listed is cross-referenced to a list of provisions. This is the function of an index; but what does the reader gain from it? For example, in the case of 'child, children' apart from the reference to ICTA S 832(5) all the references are to definitions specific to the respective purpose of each section listed and these definitions are not interchangeable between these sections. The reader has no need to go beyond the particular section itself into the Index, and is unlikely in practice to be working back from the Index. The reference to ICTA s 832(5) is, however, helpful because it states the wide interpretation of 'child' as including a reference to an adopted child. This would not be evident from an initial reading of the particular sections affected themselves as the reader has no signpost in them to ICTA s 832(5); and it would require unusual awareness on a reader's part that he should always interpret 'child' with ICTA s 832(5) in mind. This of course supports including a reference to that section in the Index, and perhaps the only practical way is to do so alongside references to the specific sections where an understanding of the term 'child' or 'children' is required in order to draw a reader's attention to it; but our concern is that the present approach is not fully effective. In this particular instance a better approach might be to exclude the expression 'child, children' from the Index and include a reference to an adopted child in the particular sections affected.

Whilst it is perhaps unlikely in the context of Part 4 that a reader might search for references to 'child, children', we accept that he may be more likely to need an Index's help in looking for references to 'consul' or 'colliery worker', for example, but we feel that many of the expressions could be removed from the Index without loss of clarity. In the context of clarity, we note also for example that in 4.1.3(1)(b) the reference to 'employed' is specifically in the context of an officeholder treated as being employed, rather than the section giving a general definition of 'employed' which the reader might expect.

Altogether, we would prune the Index and convert it substantially into a smaller list of terms defined only in other Acts.

As concerns 'group', we note that the 4.17.7(3) definition refers to 'a company' whilst the 4.42.10(6) definition uses the term 'a body corporate' (and its 51% subsidiaries).

The expression 'public road transport system' is attributed to 4.30.7(3), whereas that section refers to a 'public transport road service'.

The bracketed reference after 'scholarship' should be to 'Chapter 4.11' and not to 'Chapter 11'.

The 4.34.9(4) definition of 'subsistence' differs from those in 4.31.1(4) and 4.31.5(5) in using the word 'means' rather than 'includes'. In 4.35.6 the terminology used is 'food and drink . . .' rather than 'food, drink . . .' as in the other definitions. There seems to be no good reason for these small differences.

The bracketed reference after 'taxable cheap loan' should be to 'Chapter 4.9' and not to 'Chapter 9'.

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