Income Tax (Earnings and Pensions) Act 2003

2003 CHAPTER 1

PART 6

EMPLOYMENT INCOME: INCOME WHICH IS NOT EARNINGS OR SHARE-RELATED

CHAPTER 2

BENEFITS FROM NON-APPROVED PENSION SCHEMES

Benefits treated as employment income

393 Application of this Chapter

(1) This Chapter applies to any benefit provided under a non-approved retirement benefits scheme.

(2) But this Chapter does not apply to a benefit which is charged to tax under Part 9 (pension income).

394 Charge on benefit to which this Chapter applies

(1) If a benefit to which this Chapter applies is received by an individual, the amount of the benefit counts as employment income of the individual for the relevant tax year.

(2) If a benefit to which this Chapter applies is received by a person who is not an individual, the administrator of the scheme under which the benefit is provided is chargeable to tax under Case VI of Schedule D on the amount of the benefit for the relevant tax year.

(3) In subsections (1) and (2) the "relevant tax year" is the tax year in which the benefit is received.

(4) For the purposes of subsection (2), the rate of tax is 40% or such other rate as may for the time being be specified by the Treasury by order.

(5) No liability to income tax arises by virtue of any other provision of this Act in respect of a benefit to which this Chapter applies.

395 Application of sections 396 and 397: general rules

(1) Section 394 is subject to—
- (a) section 396 (which provides that certain lump sums are not taxed by virtue of section 394), and
- (b) section 397 (which provides for the calculation of the amount taxed by virtue of section 394 in relation to certain lump sums).

(2) Section 396 applies in relation to a lump sum only if the condition in subsection (4) below is met.

(3) Section 397 applies in relation to a lump sum only if—
- (a) the condition in subsection (4) below is met, or
- (b) an employee has paid any sum or sums with a view to the provision of any relevant benefits under the scheme under which the lump sum is provided.

(4) The condition mentioned in subsections (2) and (3)(a) is that—
- (a) an employer has paid any sum or sums with a view to the provision of any relevant benefits under the scheme under which the lump sum is provided, and
- (b) an employee has been assessed to tax in respect of the sum or sums so paid—
  - (i) by virtue of section 595(1) of ICTA, or
  - (ii) by virtue of the sum or sums counting as employment income of the employee under section 386(1) of this Act.

(5) For the purposes of this section it must be assumed that, unless the contrary is shown—
- (a) no sums have been paid with a view to the provision of relevant benefits, and
- (b) an employee has not been assessed in respect of a sum or sums as mentioned in subsection (4)(b).

396 Certain lump sums not taxed by virtue of section 394

(1) Section 394 does not apply to a lump sum if—
- (a) all of the income and gains accruing to the scheme under which the lump sum is provided are brought into charge to tax, and
- (b) the lump sum is provided to—
  - (i) the employee mentioned in section 395(4)(b),
  - (ii) a relative of that employee,
  - (iii) the personal representatives of that employee,
  - (iv) an ex-spouse of that employee, or
  - (v) any other individual designated by that employee.

(2) For the purposes of this section it must be assumed that, unless the contrary is shown, the income and gains accruing to the scheme are not brought into charge to tax.

397 Certain lump sums: calculation of amount taxed by virtue of section 394

(1) In a case where—

(a) section 394 applies to a lump sum, and

(b) any of the income or gains accruing to the scheme under which the lump sum is provided is not brought into charge to tax,

the amount which by virtue of that section counts as employment income, or is chargeable to tax under Case VI of Schedule D, is determined in accordance with this section.

(2) That amount is the amount of the lump sum reduced by the deduction applicable under subsection (3) or (4).

(3) Subject to subsection (4), the deduction applicable is the aggregate of—

(a) the sum or sums mentioned in section 395(3)(b) (if any), and

(b) the sum or sums mentioned in section 395(4)(b) (if any),

which in either case were paid by way of contribution to the provision of the lump sum.

(4) The deduction applicable is calculated in accordance with the formula in subsection (6) if—

(a) the lump sum is provided under the scheme on the disposal of a part of any asset or the surrender of any part of or share in any rights in any asset, and

(b) a person falling within subsection (5) has a right to receive, or any expectation of receiving, a further lump sum or further lump sums under the scheme on a further disposal of any part of the asset or a further surrender of any part of or share in any rights in the asset.

(5) The persons referred to in subsection (4)(b) are—

(a) the employee,

(b) a relative of that employee,

(c) the personal representatives of that employee, or

(d) any person connected with that employee.

(6) The formula referred to in subsection (4) is—

$$D = S \times \frac{LS}{MVA}$$

where—

D is the deduction applicable;

S is the aggregate amount of any sum or sums of a description mentioned in paragraphs (a) and (b) of subsection (3);

LS is the amount of the lump sum received in relation to which the deduction applicable falls to be determined;

MVA is the market value of the asset in relation to which the disposal or surrender occurred, on the assumption that the valuation is made immediately before the disposal or surrender.

(7) An individual may not claim that a deduction is applicable in relation to a lump sum more than once.

(8) For the purposes of this section it must be assumed that, unless the contrary is shown—

(a) the income and gains accruing to the scheme are not brought into charge to tax, and

(b) no deduction is applicable under subsection (3) or (4).

(9) For the purposes of this section income and gains accruing to the scheme are not to be regarded as brought into charge to tax merely because tax is charged in relation to the scheme in accordance with section 591C of ICTA.

(10) In this section "market value" is to be construed in accordance with sections 272 and 273 of TCGA 1992.

Valuation of benefits etc.

398 Valuation of benefits

(1) In the case of a cash benefit, for the purposes of this Chapter the amount of a benefit is taken to be the amount received.

(2) In the case of a non-cash benefit, for the purposes of this Chapter the amount of a benefit is taken to be the greater of—

(a) the amount of earnings (as defined in Chapter 1 of Part 3) that the benefit would give rise to if it were received for performance of the duties of an employment (money's worth), and

(b) the cash equivalent of the benefit under the benefits code if it were so received and the code applied to it.

(3) For the purposes of subsection (2) the benefits code has effect with the modifications in subsections (4) to (6).

(4) References in the benefits code to the employee are to be taken as references to the person by whom the benefit is received.

(5) References in the benefits code to the employer are to be taken as including references to the former employer.

(6) Where—

(a) section 106 (cash equivalent: cost of accommodation over £75,000) applies, and

(b) the amount referred to in section 105(2)(b) (the sum made good) exceeds the amount referred to in section 105(2)(a) (the rental value),

the amount to be subtracted under paragraph (b) of step 4 of the calculation in section 106(2) is that excess (and not only the excess rent referred to there).

399 Employment-related loans: interest treated as paid

(1) This section applies if—

(a) an amount consisting of, or including, an amount representing the benefit of a loan ("a taxable amount") counts as employment income of an individual in a tax year under section 394(1), or

(b) the administrator of a scheme is charged to tax on a taxable amount under Case VI of Schedule D under section 394(2).

(2) The individual or the administrator is to be treated for all purposes of the Tax Acts (other than this Chapter) as having paid interest on the loan in the tax year equal to the amount representing the cash equivalent of the loan.

(3) The interest is to be treated—

(a) as accruing during the period in the tax year during which the loan is outstanding, and

(b) as paid at the end of the period.

(4) The interest is not to be treated—

(a) as income of the person making the loan, or

(b) as relevant loan interest to which section 369 of ICTA applies (mortgage interest payable under deduction of tax).

Interpretation

400 Interpretation

(1) In this Chapter—

"administrator", in relation to a scheme, has the same meaning as in section 611AA of ICTA;

"employee" has the same meaning as in Chapter 1 of Part 14 of ICTA (see section 612(1) of ICTA);

"ex-spouse" means a party to a marriage that has been dissolved or annulled and, in relation to any person, means the other party to a marriage with that person that has been dissolved or annulled;

"non-approved retirement benefits scheme" has the same meaning as in Chapter 1 of this Part (see section 387);

"relative", in relation to an individual, means—

(a) the wife or husband of the individual,

(b) the widow or widower of the individual,

(c) a child of the individual, and

(d) a dependant of the individual;

"relevant benefits" has the same meaning as in section 612(1) of ICTA.

(2) Section 612(2) of ICTA applies to the references in this Chapter to the provision of relevant benefits as it applies to such references in Chapter 1 of Part 14 of ICTA.