

*These notes refer to the Income Tax (Earnings and Pensions)  
Act 2003 (c.1) which received Royal Assent on 6th March 2003*

# **INCOME TAX (EARNINGS AND PENSIONS) ACT 2003**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### *Omitted material*

#### *Chapter 6: Miscellaneous and supplemental*

#### **Overview**

2864. *Section 708* provides for the PAYE regulations to suspend the normal system of in-year repayments to persons getting jobseeker's allowance or engaged in a trade dispute.
2865. *Section 709* provides that an assessment made more than 12 months after the end of a tax year must, for some income dealt with under PAYE, be made in accordance with the generally prevailing practice at the end of that 12 months.
2866. *Section 710* sets out how employers must try to deduct tax, and must account for it whether or not they can deduct, in respect of "notional payments".
2867. *Section 711* gives a person, who has suffered deduction of tax under PAYE, a right to make a tax return.
2868. *Section 712* defines terms used in this Part and applies section 5 for the purposes of this Part (so it applies to offices as to employments).

#### *Section 708: PAYE repayments*

2869. This section allows the PAYE regulations to deny PAYE repayments to persons in two cases. It derives from part of section 204 of ICTA.
2870. *Subsection (1)* gives the two cases in which regulations can prevent PAYE repayments being made to a person. The first case is during periods for which the person has claimed jobseeker's allowance. The second case is when the person is not entitled to jobseeker's allowance solely because of some connection with a trade dispute.
2871. *Subsection (2)* allows regulations to treat the two cases differently.
2872. *Subsection (3)* defines "the trade disputes provisions". This term has been introduced to make the section easier to read than section 204(d). Subsection (3) also sets out what the corresponding enactment in Northern Ireland is (which could not be done at the time section 204(d) was introduced).
2873. Section 204(a), (b) and (c) of ICTA are omitted from this Act as they have no application to the years to which it applies. See *Note 60* in Annex 2.

**Section 709: Additional provision for certain assessments**

2874. This section provides that assessments must be made on the basis of generally prevailing practice in certain circumstances. It derives from section 206 of ICTA.
2875. The origin of section 206 was section 28(1) of FA 1961. Schedule 4 to the Income Tax Management Act 1964 extended section 28(1) of FA 1961 so that it applied to an assessment under Schedule E where it had previously applied to an assessment in respect of “emoluments”. Section 28(1) of FA 1961 was consolidated first as section 206 of ICTA 1970 and later as section 206 of ICTA. Section 111(2) of FA 1995 removed “under Schedule E” after the words “an assessment to income tax” in section 206 of ICTA.
2876. *Subsection (1)* sets out the circumstances in which the section applies.
2877. *Subsection (2)* sets out the consequences of the section applying.
2878. *Subsection (3)* defines “relevant income” – a term used to make the earlier subsections easier to read.
2879. Section 28(1) of FA 1961 was intended to put individuals who did not receive income tax assessments (because it was thought that all their tax had been settled under PAYE) on a similar footing to others who had received assessments. People who did not get assessments previously had an advantage over other taxpayers. Their tax affairs were not final so they had a much longer period after the end of a tax year in which to take advantage of a Court decision overturning what had earlier been the generally accepted practice. Section 28(1) accordingly set out circumstances in which a “late” assessment to income tax had to be made on the basis of earlier generally accepted practice. This could work to the disadvantage of individuals compared to their position prior to section 28(1). It could also work to their advantage by preventing the individual from being assessed on the basis of a later Court decision that was less favourable than earlier generally accepted practice. In short, it gave them broadly the same finality they would have had with an assessment.
2880. Section 206 of ICTA 1970 was considered in *Walters v Tickner* (1993) 66 TC 174. That case decided that section 206 could operate as a provision that charges income tax, but it could not do so in relation to an unqualified statutory exemption given to scholarship income.
2881. Since that case was decided the framework within which section 206 operates has been altered by Self Assessment. When the case was decided the Inland Revenue were obliged, subject to the pre-Self Assessment version of 205(1) of ICTA, to make assessments when returns of income were made which were considered to be correct and complete. But under Self Assessment, assessments are normally:
- made by the taxpayer rather than the Inland Revenue; and
  - single assessments on all income rather than multiple assessments made on income split into separate Schedules.
2882. Section 111(2) of FA 1995 made a minor amendment to section 206 of ICTA in connection with the imminent start of Self Assessment. The amendment removed the words “under Schedule E” after the opening words “Where an assessment”. That minor amendment arguably introduced some uncertainties about how section 206 of ICTA operates under Self Assessment. This section removes those uncertainties, relating to the income in an assessment that must be based on earlier generally accepted practice. See *Note 61* in Annex 2.

**Section 710: Notional payments: accounting for tax**

2883. This section sets out how an employer must account for tax on a “notional payment”. It derives from section 203J of ICTA.

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2884. *Subsection (1)* (with the definition of relevant time in subsection (7)) requires the employer to deduct any tax due on a notional payment from actual payments made at the same time or later in the income tax period.
2885. *Subsection (2)* defines notional payment and extends references to employer in this section.
2886. *Subsections (3) and (4)* require the employer to account for tax which cannot be deducted from actual payments.
2887. *Subsection (5)* provides power for PAYE regulations to determine the time when any notional payment is made, to apply any provisions of the regulations to notional payments (with or without modifications), and to deal with matters about the collection and recovery of amounts accounted for in respect of notional payments.
2888. *Subsection (6)* provides for the employee to be treated as having paid the tax accounted for on a notional payment. It also provides *when* the employee is treated as having paid the tax: see *Change 153* in Annex 1.
2889. *Subsection (7)* derives from regulations 7 and 8 of the [Income Tax \(Employments\) \(Notional Payments\) Regulations, SI 1994 No 1212](#). It defines the relevant time for subsections (1) and (4).
2890. *Subsection (8)* derives from regulation 2 of the [Income Tax \(Employments\) Regulations 1993, SI 1993 No 744](#). It provides that “income tax period” takes the same meaning as in the PAYE regulations. It is the tax month or (for some small employers) quarter.

***Section 711: Right to make a return***

2891. This section gives a person a right to a notice under section 8 of TMA 1970 if that person has had PAYE deductions or repayments. A notice under section 8 of TMA 1970 in turn obliges that person to make a tax return. The section derives from section 205(4) of ICTA.
2892. *Subsection (1)* sets out the conditions that must be satisfied for a person to give notice to the Inland Revenue.
2893. *Subsection (2)* provides a time limit within which notice can be given to the Inland Revenue.
2894. *Note 62* in Annex 2 explains why section 205(1) to (3) and (5) of ICTA are not needed and are not rewritten in this Act. Section 205(4) ICTA is however rewritten in response to requests made during consultation leading up to this Act. The requests were to preserve, as a matter of principle, any rights to make a tax return that it gives to some taxpayers until such time as there is an explicit general right for all taxpayers to submit a tax return.

***Section 712: Interpretation of this Part***

2895. This section provides definitions and interpretation. It derives from section 203L(1) of ICTA.
2896. *Subsection (1)* provides various definitions for the purposes of this Part. The definitions of “employee” and “employer” are different from those used elsewhere in this Act in order to relate a notional payment to a particular employment with a particular employer or former employer.
2897. *Subsection (2)* applies sections 4 and 5 to this Part so that “employment” has the same meaning as in the employment income Parts of this Act (see *Note 1* in Annex 2); and that references to employees include office-holders and so on.