INCOME TAX (EARNINGS AND PENSIONS) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Example 3

Ne = £5,000; Da = 183; De = 183; Smg = 0

Part 6: Employment income: income which is not earnings or share-related

Chapter 1: Payments to non-approved pension schemes

Overview

1680. This Chapter sets out the charge to tax on an employee whose employer makes payments to a non-approved pension scheme. It derives from section 595 of ICTA. It is one of the free-standing Schedule E charges presently covered by paragraph 5 of section 19(1) of ICTA and now brought into charge as "specific employment income".

Section 386: Charge on payments to non-approved retirement benefits schemes

1681. This section derives from section 595(1) of ICTA and sets out the charge to tax on an employee where the employer makes certain payments to non-approved pension ("retirement benefits") schemes. *Subsections (1), (2)* and *(3)* derive from section 595(1) and (1)(a) of ICTA.

1682. *Subsection (4)* reflects the amendment made to section 595 by paragraph 6 of Schedule 6 to FA 2002. This resolved the order of priority between section 595 and section 148 of ICTA.

1683. *Subsection (5)* derives from section 612 of ICTA. The other provisions in Chapter I of Part XIV of ICTA are not exclusively relevant to employment income and will be rewritten at a later stage. This subsection applies the definitions of "employee" and "director" which are in section 612(1).

1684. *Subsection (6)* derives from section 595(5) of ICTA. It may be noted that the reference in that subsection applies to section 595 only. In the new section the reference is applied to the whole Chapter which ensures that relief under section 596(3) of ICTA is available in cases where the benefits are intended to be provided to persons other than the employee. This is a minor change to the law. See *Change 104* in Annex 1.

1685. *Subsection (7)* acts as a signpost to the reliefs available under section 392 and section 266A of ICTA. The latter is a new provision inserted by paragraph 36 of Schedule 6 to this Act and derives from section 595(1)(b) of ICTA.

Section 387: Meaning of “non-approved retirement benefits scheme”

1686. This section defines such a scheme. It derives from section 596(1) of ICTA.

Section 388: Apportionment of payments in respect of more than one employee

1687. This section derives from section 596(4) of ICTA. It provides that where a single payment is made to a non-approved scheme in respect of more than one employee, that payment is apportioned between the employees. Each is taxed only on an appropriate share of the payment.

1688. *Subsection (2)* introduces a formula for making the apportionment.

Section 389: Exception: employments where earnings charged on remittance

1689. This section derives from section 596(2)(a) of ICTA, which provides an exception from the charge where the employee’s earnings are chargeable under Case III of Schedule E. That charge is now dealt with in sections 22 and 26.

Section 390: Exception: non-domiciled employees with foreign employers

1690. This section derives from section 595(2)(b) of ICTA and provides a further exception from the charge under section 386 of this Act. This is where the earnings are (in the terminology of ICTA) “foreign emoluments” and the payment is to a retirement benefits scheme which corresponds to approved or relevant statutory schemes etc. As the term “foreign emoluments” has been dropped this section instead sets out the relevant circumstances for the exception to apply.

Section 391: Exception: seafarers with overseas earnings

1691. This section legislates the Inland Revenue’s practice of exempting payments from the charge when they are made to seafarers who have no net chargeable earnings from the employment in question for the year as a result of the foreign earnings deduction set out in Chapter 6 of Part 5 of this Act. This is a minor change to the law. See *Change 105* in Annex 1.

Section 392: Relief where no benefits are paid or payable

1692. This section derives from section 596(3) and (4) of ICTA and allows an application for relief where the relevant benefits are not subsequently received from the scheme. Under this section the application is made to and considered by the Inland Revenue rather than the Board. *See Change 158* in Annex 1.

1693. The source legislation provides for an application for relief only from the employee. However, some benefits might not be due until after the employee has died. In practice the Inland Revenue have always accepted applications by the employee’s personal representatives. *Subsection (3)* legislates that practice. It is a minor change to the law. See *Change 104* in Annex 1.