

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

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## **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.

***Chapter 2: Benefits from non-approved schemes***

**Overview**

1694. This Chapter applies to benefits provided by non-approved retirement benefits schemes.

***Section 393: Application of this Chapter***

1695. This section defines the scope of the Chapter. The Chapter applies to any benefit provided by a non-approved retirement benefits scheme other than pensions and annuities within the pension income Part. *Subsection (1)* derives from section 596A(1) of ICTA. *Subsection (2)* derives from section 596A(6) of ICTA.

1696. Section 596A(7) of ICTA has not been rewritten in this Act. See *Note 40* in Annex 2.

***Section 394: Charge on benefit to which this Chapter applies***

1697. This section establishes the charge and the basis of assessment. It ensures that the charge has priority over all other charges in this Act.

1698. *Subsection (1)* applies if an individual receives the benefit. It derives from section 596A(2) of ICTA. The benefit counts as employment income of the individual for the tax year in which the benefit is received.

1699. *Subsection (2)* applies if a person other than an individual receives the benefit. It derives from section 596A(3) of ICTA. There is a charge under Schedule D Case VI on the scheme administrator for the tax year in which the benefit is received. This charge is not employment income. Therefore it does not need to be excluded from the definition of “PAYE employment income” in section 683.

1700. *Subsection (4)* specifies the rate of tax for the Schedule D Case VI charge. It derives from section 596A(5) of ICTA.

1701. *Subsection (5)* establishes the order of priority. The charge under this Chapter takes priority over all other charges in this Act. In its application to lump sums the section derives from section 596A(8) of ICTA. It also legislates the interpretation that the specific charge in section 596A takes priority over a general charge under Schedule E.

***Section 395: Application of sections 396 and 397: general rules***

1702. This section applies if the benefit received is a lump sum. It derives from section 596A(8), (9) and (15) of ICTA.

1703. The section has two functions.

1704. First, it introduces sections 396 and 397. Section 396 exempts the charge under section 394 if certain conditions are met. Section 397 modifies the charge under section 394 if certain conditions are met.

1705. Second, it sets out the condition that is common to both sections 396 and 397 and which must be met if either section is to apply.

1706. The common condition is given in *subsection (4)*. It derives from sections 596A(8) and (9) of ICTA. The employer has to have paid a contribution or contributions with a view to providing the benefit and the employee has to have been assessed to tax in respect of that contribution or contributions. The assessment may be under section 595 of ICTA or section 386(1) of this Act depending on when the contribution was made.

1707. *Subsection (5)* puts the onus on the taxpayer to show that the conditions in *subsection (4)* are satisfied. It derives from the assumptions in section 596A(15) of ICTA.

***Section 396: Certain lump sums not taxed by virtue of section 394***

1708. This section exempts lump sum benefits if:

- all the profits on the scheme investments are brought into charge to tax, and;
- the lump sum has been provided to one of the persons listed in *subsection (1)(b)*.

1709. The section derives from sections 596A(8) and (15) of ICTA.

1710. A further requirement for the exemption to apply is that the condition in section 395(4) is met; see section 395(2).

1711. In *subsection (1)(a)* the phrase “brought into charge to tax” means brought into charge to United Kingdom tax.

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1712. *Subsection (2)* puts the onus on the taxpayer to show that the income and gains of the scheme are brought into charge to tax. It derives from the assumptions in section 596A(15) of ICTA.

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

1713. This section allows a deduction from the amount of the lump sum that is charged to tax if:

- any of the profits on the scheme investments are not brought into charge to tax, and;
- the condition in section 395(3) is satisfied.

1714. The section derives from sections 591D(6) and 596A(9) to (17) of ICTA. It rewrites section 596A(9) as a free-standing provision. See *Change 106* in Annex 1.

1715. *Subsection (3)* gives the amount of the deduction. It is the total of:

- any contribution the employee has paid, and;
- any contribution the employer has paid that has been taxed on the employee.

1716. *Subsection (3)* derives from section 596A(10) and is subject to *subsection (4)*. *Subsection (4)* applies the formula in *subsection (6)* if any of the persons listed in *subsection (5)* has the right to receive, or expectation of receiving, a further lump sum or sums. *Subsections (4), (5) and (6)* derive from sections 596A(11) to (13) of ICTA.

1717. *Subsection (7)* prevents double deductions. It derives from section 596A(14) of ICTA.

1718. *Subsection (8)* derives from the assumptions in section 596A(15) of ICTA.

1719. *Subsection (9)* derives from section 591D of ICTA. It prevents a claim that the scheme funds have been brought into charge to tax because they have suffered a charge under section 591C of ICTA (cessation of approval: tax on certain schemes).

1720. *Subsection (10)* gives the meaning of “market value”. It derives from section 596A(17) of ICTA and cross-refers to sections 272 and 273 of TCGA 1992. The reference to section 273 of TCGA 1992 is new. See *Note 41* in Annex 2.

***Section 398: Valuation of benefits***

1721. This section provides the rules for calculating the value of the benefit.

1722. It derives from section 596A(4) and section 596B of ICTA.

1723. The language in section 596A(4) and section 596B of ICTA is almost identical to that in two other provisions:

- paragraph 12 of Schedule 11 to ICTA, which deals with the valuation of benefits paid on the termination of employment; and
- paragraph 10(3) of Schedule 12 to FA 2000, which deals with the provision of services through an intermediary.

1724. Paragraph 12 of Schedule 11 to ICTA has been rewritten as section 415 of this Act. Paragraph 10(3) of Schedule 12 to FA 2000 has been rewritten as section 55 of this Act. The rewrite of the three sections reflects the similarities.

1725. *Subsection (1)* gives the rule if the benefit is paid in cash. It derives from section 596A(4)(a) of ICTA.

1726. *Subsection (2)* gives the rule if the benefit is not paid in cash. It derives from section 596A(4)(b) of ICTA.

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1727. *Subsection (5)* provides that references to the employer in the benefits code include the former employer. This subsection is needed because most employees will have retired before the benefit is paid and their employer will be a former employer.
1728. *Subsection (6)* adapts the benefits code if the benefit provided is accommodation costing over £75,000 and the person receiving the benefit makes good an amount that exceeds the rental value. It overrides the rule in section 106(3) that the taxpayer is allowed to deduct only the excess amount of rent paid. The taxpayer is allowed a deduction for the full amount of the excess.
1729. In the source legislation dealing with benefits the rules for calculating the value of living accommodation costing over £75,000 do not apply if the accommodation was first occupied before 31 March 1983. This rule has been rewritten as a saving; see paragraph 21 of Schedule 7 to this Act. The rule does not apply to section 596B of ICTA. So paragraph 21 of Schedule 7 does not apply for the purposes of this Chapter.

***Section 399: Employment-related loans: interest treated as paid***

1730. This section applies if the benefit provided is a loan at a rate of interest lower than the official rate.
1731. It derives from section 596C of ICTA.
1732. Tax is charged on the cash equivalent of the loan. This is calculated using the official interest rate. But the cash equivalent is not in fact interest. The section treats the taxpayer as having paid interest. The taxpayer can then claim tax relief on the deemed payment if real interest would have qualified for relief. The language in section 596C of ICTA is almost identical to that in paragraph 13 of Schedule 11 to ICTA, which deals with benefits paid on the termination of employment. That provision has been rewritten as section 416 of this Act.
1733. *Subsection (4)* prevents the notional interest being treated as income of the lender or as mortgage interest payable under deduction of tax in the hands of the payer.

***Section 400: Interpretation***

1734. This section gives the meaning of various terms used in the Chapter.
1735. It derives from definitions in Chapter 1 of Part 14 of ICTA.
1736. *Subsection (1)* includes a clarification of the meaning of “employee” and the definitions of “administrator”, “relevant benefits” and “ex-spouse”.
1737. Section 611AA of ICTA defines “administrator” as follows:
- (1) In this Chapter references to the administrator, in relation to a retirement benefits scheme, are to the person who is, or the persons who are, for the time being the administrator of the scheme by virtue of the following provisions of this section.
  - (2) Subject to subsection (7) below, where—
    - (a) the scheme is a trust scheme, and
    - (b) at any time the trustee, or any of the trustees, is or are resident in the United Kingdom,the administrator of the scheme at that time shall be the trustee or trustees of the scheme.
  - (3) Subject to subsection (7) below, where—
    - (a) the scheme is a non-trust scheme, and
    - (b) at any time the scheme sponsor, or any of the scheme sponsors, is or are resident in the United Kingdom,

the administrator of the scheme at that time shall be the scheme sponsor or scheme sponsors.

((4) At any time when the trustee of a trust scheme is not resident in the United Kingdom or (if there is more than one trustee) none of the trustees is so resident, the trustee or trustees shall ensure that there is a person, or there are persons—

- (a) resident in the United Kingdom, and
- (b) appointed by the trustee or trustees to be responsible for the discharge of all duties relating to the scheme which are imposed on the administrator under this Chapter.

((5) At any time when the scheme sponsor of a non-trust scheme is not resident in the United Kingdom or (if there is more than one scheme sponsor) none of the scheme sponsors is so resident, the scheme sponsor or scheme sponsors shall ensure that there is a person, or there are persons—

- (a) resident in the United Kingdom, and
- (b) appointed by the scheme sponsor or scheme sponsors to be responsible for the discharge of all duties relating to the scheme which are imposed on the administrator under this Chapter.

((6) Without prejudice to subsections (4) and (5) above—

- (a) the trustee or trustees of a trust scheme, or
- (b) the scheme sponsor or scheme sponsors of a non-trust scheme,

may at any time appoint a person who is, or persons who are, resident in the United Kingdom to be responsible for the discharge of all duties relating to the scheme which are imposed on the administrator under this Chapter.

((7) Where at any time there is or are a person or persons—

- (a) for the time being appointed under subsection (4), (5) or (6) above as regards a scheme, and
- (b) resident in the United Kingdom,

the administrator of the scheme at that time shall be that person or those persons (and no other person).

((8) Any appointment under subsection (4), (5) or (6) above—

- (a) must be in writing, and
- (b) if made after the time when the scheme is established, shall constitute an alteration of the scheme for the purposes of section 591B(2).

((9) In this section—

- (a) references to a trust scheme are to a retirement benefits scheme established under a trust or trusts;
- (b) references to the trustee or trustees, in relation to a trust scheme and to a particular time, are to the person who is the trustee, or the persons who are the trustees, of the scheme at that time;
- (c) references to a non-trust scheme are to a retirement benefits scheme not established under a trust or trusts, and
- (d) references to the scheme sponsor or scheme sponsors, in relation to a retirement benefits scheme and to a particular time, are references to any person who established the scheme and is in existence at that time or, if more than one, all such persons.

1738. Section 612(1) of ICTA provides that “employee”
- (a) in relation to a company, includes any officer of the company, any director of the company and any other person taking part in the management of the affairs of the company, and
  - (b) in relation to any employer, includes a person who is to be or has been an employee.
1739. The definition of “ex-spouse” derives from section 659D of ICTA as inserted by section 79 and paragraph 17 of Schedule 10 to Finance Act 2000.
1740. Section 612(1) of ICTA defines “relevant benefits” as follows:
- ‘relevant benefits’ means any pension, lump sum, gratuity or other like benefit given or to be given on retirement or on death, or by virtue of a pension sharing order or provision, or in anticipation of retirement, or, in connection with past service, after retirement or death, or to be given on or in anticipation of or in connection with any change in the nature of the service of the employee in question, except that it does not include any benefit which is to be afforded solely by reason of the disablement by accident of a person occurring during his service or of his death by accident so occurring and for no other reason.

### ***Chapter 3: Payments and benefits on termination of employment etc.***

#### **Overview**

1741. This Chapter contains another of the free-standing Schedule E charges covered by paragraph 5 of section 19(1) of ICTA. It derives from section 148 of, and Schedule 11 to, ICTA. The provisions apply to charge to tax payments made and benefits provided when an employment ends or the terms of it are changed. As such payments and provision of benefits may continue for a period after the event, the charge to tax continues year by year as long as they continue.

#### ***Section 401: Application of this Chapter***

1742. *Subsection (1)* derives from section 148(1) of, and paragraph 2(1) of Schedule 11 to, ICTA. It sets out the circumstances in which payments and benefits come within the provisions of the Chapter. The reference to “relative” has been expanded to make it clear that only “blood relatives” are included.
1743. “Personal representatives” is a defined term in section 721 of this Act. It is not defined in paragraph 2(1) of Schedule 11 to ICTA. This is a minor change to the law. See *Change 159* in Annex 1.
1744. Section 148(5) of ICTA has not been rewritten in this Chapter. The reason for that is explained in *Note 42* in Annex 2.
1745. *Subsection (2)* is a signpost to the exceptions which may apply.
1746. *Subsection (3)* prevents a double charge to tax in cases where there may be some doubt as to whether a benefit or payment is within this Chapter or is within another charge to tax. It also ensures that anything which is not chargeable by virtue of the provisions in Part 3 of this Act will be within the provisions of this Chapter if there is a cessation of or change in the employment. It derives from part of the end-words of section 148(1) of ICTA.
1747. *Subsection (4)* derives from section 148(6) of, and paragraph 2(2) of Schedule 11 to, ICTA. It provides that payments to people other than the employee may be within the scope of this Chapter. It also provides that throughout the provisions which this Chapter uses to determine what and how much is chargeable, any references to employee and employer include the person whose employment has terminated and his former



employer. This means that those provisions do not need to refer to former employees and former employers.

### **Section 402: Meaning of “benefit”**

1748. This section derives from section 148(2), (2A) and (3) of ICTA and includes a minor change to the law. See *Change 107* in Annex 1.
1749. *Subsection (1)* explains which benefits are within the scope of this Chapter. Subsection (1)(a) defines them as any benefits received by the employee or former employee which are received as set out in subsection (1) and which, if received as an employee for performing the duties of the employment, would be taxable earnings from the employment. This will include any benefit which would come within the definition of earnings in section 62 of this Act and any benefit for which an amount is treated as earnings by a provision in the benefits code. Subsection (1)(b) includes those benefits which would be within subsection (1)(a) but to which an “earnings-only exemption” applies.
1750. “Earnings-only exemption” is defined in section 227 of this Act. Part 4 of this Act contains most of those exemptions. Section 227(4) lists exemptions that are contained in Part 7 and apply in respect of general earnings. Some of these may be “earnings-only” exemptions. Section 227(1) and (2) may be used to identify which are “earnings-only” exemptions and which are “employment income” exemptions.
1751. Subsection (1)(b) means that the only benefits that do not come within the scope of this Chapter are those which are subject to an exemption other than an “earnings-only exemption”. These wider exemptions are labelled “employment income exemptions”, defined in section 227, and serve to exempt payments and benefits from any charge under this Chapter, provided any conditions for the exemption to apply are met.
1752. There are some benefits to which an earnings-only exemption applies, but which are not to be chargeable under this Chapter in the case of a termination of the employment. These are listed in *subsection (2)*.
1753. *Subsection (3)* identifies a benefit which is exempt from the scope of this Chapter in the case of a change in the terms or remuneration of the employment. This prevents the exempted removal benefits falling into this Chapter.
1754. Not all the benefits listed in section 148(2A) of ICTA are included in subsections (2) and (3) of this section. That is because there is no need to include those benefits that are now subject to “employment income exemptions” (which operate to exempt them from all charges under the employment income Parts of this Act).

### **Section 403: Charge on payment or other benefit**

1755. This section contains the charge to tax on termination payments and benefits where they exceed the £30,000 threshold.
1756. *Subsections (1)* and *(4)* set out the basis of the charge, the threshold and when amounts are to be taken as exceeding it. These provisions derive from section 148(1) and (3) of, and paragraphs 7(2) and 14(1) of Schedule 11 to, ICTA. Amounts brought into charge by virtue of this section come within “specific employment income” in section 7(4) of this Act. Section 6(3) of this Act provides that the rules in Chapters 4 and 5 of Part 2 do not apply to specific employment income. That derives from section 19(1), paragraph 5 of ICTA and the case of *Nichols v Gibson* CA 1996 at 68 TC 611.
1757. *Subsections (2)* and *(3)* set out the rules for the timing of the charge to tax, and the time when benefits are treated as received. The rules are similar to the receipts basis for earnings. In cases where payments are made over a period of time, or benefits are provided for some time after the employment has terminated, once the £30,000 threshold has been exceeded, there will be continuing liability as long as payments



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continue to be made or benefits provided. These provisions derive from section 148(3) and (4) of ICTA.

1758. *Subsections (5) and (6)* make clear who is liable for a tax charge arising by virtue of this Chapter, both in the ordinary course of events and if a payment or benefit is received after the death of the employee or former employee. The latter circumstances are covered by subsection (5), which derives from paragraph 14(2) of Schedule 11 to ICTA. “Personal representatives” is defined in section 721 of this Act. See *Change 159* in Annex 1.

#### ***Section 404: How the £30,000 threshold applies***

1759. This section deals with two aspects of the £30,000 threshold. The first concerns the payments and other benefits that are to be aggregated. The second concerns the way the £30,000 is to be allocated between payments and benefits received at different times. *Subsections (1) to (3)* deal with the first aspect, and derive from section 148(1) and (6) of, and paragraphs 7, 8 and 16 of Schedule 11 to, ICTA. *Subsections (4) and (5)* relate to the second aspect and derive from section 148(1) of, and paragraph 7 of Schedule 11 to, ICTA.
1760. *Subsection (1)(c)* sets out the circumstances in which the payments and benefits from more than one employer are aggregated. Only one sum of £30,000 is available in respect of an employment, different employments with the same employer and employments with employers who are associated.
1761. *Subsection (2)* explains when employers are “associated” for this purpose. *Subsection (3)(a)* treats the successors to the employer or the person looked at to determine control as if they were the original employer or person. Successors are not defined anywhere in the Tax Acts so the normal meaning applies, being someone who takes the place of another person to perform a like role and duties. *Subsection (3)(b)* defines the time at which one has to consider whether employers are associated to be the “termination or change date”.
1762. *Subsections (4) and (5)* explain how the £30,000 threshold is attributed to the payments and benefits in the order in which they are received.

#### ***Section 405: Exception for certain payments exempted when received as earnings.***

1763. This section provides that certain payments which would otherwise fall within this Chapter are not to be included. It derives from section 148(2A) of ICTA.
1764. *Subsection (1)* sets out the exemption which is to be taken to apply for this Chapter in the case of a termination of employment.
1765. *Subsection (2)* sets out the exemption which is to be taken to apply for this Chapter in the case of a change in the terms or remuneration of the employment.
1766. Not all the payments listed in section 148(2A) of ICTA are included in subsections (1) and (2) of this section. That is because there is no need to include those benefits that are now subject to “employment income” exemptions which operate to exempt them from all charges under the employment income Parts of this Act or those that are excluded by section 402(2) or (3) of this Act.

#### ***Section 406: Exception for death or disability payments and benefits***

1767. This section provides an exception where the payment or benefit is due to death, injury or disability. It derives from paragraph 3 of Schedule 11 to ICTA.

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***Section 407: Exception for payments and benefits under tax-exempt pension schemes***

1768. This section provides an exception where the payment is made or benefit provided through certain pension schemes and is due to a change in or termination of employment owing to ill health. This exception derives from paragraph 4 of Schedule 11 to ICTA.
1769. The payment or benefit referred to in *subsection (1)(b)* will usually be a commutation payment calculated by reference to past service.

***Section 408: Exception for contributions to tax-exempt pension schemes***

1770. This section derives from Inland Revenue Statement of Practice 2/1981, which excepts special contributions to approved schemes and payments for the purchase of an annuity under an approved transaction.
1771. *Subsection (1)* sets out the type of contribution which is excepted.
1772. *Subsection (2)* provides signposts to the definitions of terms used.
1773. This is a minor change to the law. See *Change 108* in Annex 1.

***Section 409: Exception for payments and benefits in respect of employee liabilities and indemnity insurance***

1774. This section covers the treatment of a payment or benefit received by an employee in connection with a liability arising after the employee's employment has ceased and its interaction with this Chapter. The payments or benefits in *subsection (1)* are not within this Chapter if the conditions in *subsections (3) to (5)* are met. The section derives from section 92(10) of FA 1995.

***Section 410: Exception for payments and benefits in respect of employee liabilities and indemnity insurance: individual deceased***

1775. This section covers the treatment of a similar payment or benefit to that described in respect of section 409 where the employee has died. It does not matter whether the former employee's death gave rise to the cessation of the former employment or simply occurred after that cessation. The payment is specifically excluded from any charge to tax on the personal representatives of the deceased former employee arising by virtue of this Chapter. The section derives from section 92(10) of FA 1995.
1776. "Personal representatives" is defined in section 721 of this Act. See *Change 159* in Annex 1.

***Section 411: Exception for payments and benefits for forces***

1777. This section provides an exception for certain payments and benefits for members of the armed forces. It derives from paragraph 5 of Schedule 11 to ICTA.

***Section 412: Exception for payments and benefits provided by foreign governments etc.***

1778. This section provides an exception which is limited to those employed by foreign governments and to particular circumstances. It derives from paragraph 6 of Schedule 11 to ICTA.

***Section 413: Exception in certain cases of foreign service***

1779. This section provides an exception for payments made in certain cases of "foreign service". The exception depends on the length of the foreign service up to the date of the termination of, or change in, employment, compared with the whole period of service.

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1780. As the period involved exceeds 20 years it is necessary to define “foreign service” in a number of different ways because of the changes in the Schedule E charge over that period. This section derives from paragraphs 9 and 10 of Schedule 11 to ICTA.
1781. *Subsection (3)* deals with the period in which this Act will have effect.
1782. *Subsection (4)* deals with the period in which the “foreign earnings deduction” (in sections 192A or 193(1) of ICTA) was applicable.
1783. *Subsection (6)* deals with the period before the foreign earnings deduction became available and before the Cases of Schedule E were introduced. This ensures that all periods of overseas service are included.

***Section 414: Reduction in other cases of foreign service***

1784. The exception for foreign service in section 413 may not apply because the length of service is insufficient. If so, the amount charged to tax may be reduced under this section, which derives from paragraphs 9 and 11 of Schedule 11 to ICTA. The amount of the reduction depends on the length of foreign service compared with the total length of service.
1785. The reduction is applied to the amount which remains above the £30,000 threshold.
1786. There is, however, a limitation to the reduction. This is intended to ensure that where tax is deducted from a payment – for example a gift aid payment – enough tax remains in charge to satisfy the tax on the payment. *Subsection (4)* has the effect that any personal reliefs and the reduction added together must not bring the income tax payable below an amount equal to the tax on the gift aid payment.
1787. This is a change from the limit in ICTA that would “reduce the amount of income on which the taxable person is chargeable below the amount of income tax which the taxable person is entitled” to charge or deduct. It is a minor change to the law. See *Change 109* in Annex 1.

***Section 415: Valuation of benefits***

1788. This section sets out how to value the benefits chargeable under this Chapter. It derives from paragraph 12 of Schedule 11 to ICTA. It applies the valuation rules of the benefits code as set out in Chapters 2 to 10 of Part 3 of this Act.
1789. *Subsection (1)* provides the rule for arriving at the amount of cash benefits.
1790. *Subsection (2)* provides the same rule as that in section 64 of this Act (relationship between earnings and benefits code). The amount of any earnings is considered first, and the cash equivalent under the benefits code “tops up” the earnings with the excess. This link to the benefits code is a minor change to the law. See *Change 110* in Annex 1. The benefits are considered on the basis of what would be chargeable if section 15 of this Act applied.
1791. *Subsections (3) to (7)* of this section modify the valuation provisions used in the benefits code so that they can apply properly to work out the valuation of benefits brought into the charge to tax under this Chapter. These provisions derive from section 596B of ICTA.
1792. *Subsection (4)* allows the valuation of the cash equivalent to be made by reference to the person chargeable or the recipient of the benefit.
1793. *Subsection (5)* disapplies, for valuation purposes, section 401(4) which treats the employee as the recipient in certain circumstances.
1794. *Subsection (7)* applies where the benefit is living accommodation and an amount has been made good. It overrides the limitation in section 106 of this Act which restricts

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

the deduction to the rent paid, and so allows a deduction of the whole of the amount made good for the purposes of this Chapter.

1795. One of the modifications to the benefit of provided living accommodation is that section 146(8) of ICTA does not apply for the purposes of this Chapter. This refers to accommodation first occupied by the employer before 31 March 1983. In view of the length of time since that date, the provision has been removed from section 107 of this Act. The disapplication of it has also been removed from this section. It is in paragraph 21(2) of Schedule 7 to this Act.

***Section 416: Notional interest treated as paid if amount charged for beneficial loan***

1796. This section is the equivalent of section 184 of this Act (interest treated as paid) in the benefits code and is written in the same terms.
1797. It allows relief in respect of the benefit of a loan which falls within this Chapter, but prevents it from being treated as real interest paid under deduction of tax.