

INCOME TAX (EARNINGS AND PENSIONS) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Example 3

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

Part 9: Pension Income

Overview

Chapter 13: Return of surplus employee additional voluntary contributions

Overview

2472. Members of retirement benefits schemes can boost the pensions they will receive by making additional voluntary contributions (AVCs). They may make AVCs to their employer's scheme or to a separate "free-standing" AVCs scheme. If these schemes are "approved" by the Inland Revenue the member is entitled to tax relief on the payments and the investment income of the scheme is exempt. If a scheme does particularly well it is possible for the total benefits available to a member to exceed the maximum benefits permitted under the approval rules. The scheme administrator then has to return surplus AVCs to the member. In paying back the surplus the administrator has to deduct a special tax charge (see section 599A(2) of ICTA) designed to recover the tax relief in respect of both the AVCs and the investment income.
2473. This Chapter is concerned with the treatment of the scheme member. If the scheme administrator has to return surplus AVCs the member is treated by section 595A(5) as having received the payment net of basic rate tax. This Chapter rewrites this charge as pension income. See *Change 139* in Annex 1.

Section 623: Return of surplus employee additional voluntary contributions

2474. This section identifies a return of surplus funds to a member of an exempt approved retirement benefits scheme or a relevant statutory scheme as pension income. It derives from sections 599A(1), (5), (9) and (10) of ICTA.
2475. *Subsection (4)* requires the payment to be to or for the benefit of an employee. The meaning of "employee" is extended by section 612(1) of ICTA to include future and former employees. This is made clear in section 628(1).
2476. Section 599A(1) of ICTA applies to payments made to or for the benefit of employees or their personal representatives. But section 599A(5) of ICTA applies only to payments made to or for the benefit of employees. For this reason the section makes no mention of personal representatives.

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2477. *Subsection (5)* prevents the payments also being taxed as a repayment of the employee's contributions or as a commutation of the pension. It derives from section 599A(9) of ICTA. The section uses the same language as section 583(6). The regulations referred to in subsection (3)(b) apply to superannuation funds approved before 6 April 1980. These regulations are not yet obsolete.
2478. Section 599A(9) of ICTA gives this section priority over any charge under section 600 of ICTA. That rule has been included in the rewrite of section 600 as section 583(2).

Section 624: Taxable pension income

2479. This section sets out the basis of assessment. It identifies the amount of taxable pension income, which feeds into the computation of net taxable pension income in section 567.
2480. It derives from section 599A(5). Tax is charged on the grossed up amount of the payments made in the tax year.

Section 625: Person liable for tax

2481. This section identifies the person chargeable. It derives from section 599A(5) and (8) of ICTA.

Section 627: Meaning of "grossing up"

2482. This section explains what is meant by "grossing up". It is new. Although the concept of grossing up is familiar it is not explained in ICTA.

Section 628: Interpretation

2483. This section cross-refers to various definitions in ICTA. It derives from the interpretations given in Chapter 1 of Part 14 of ICTA.
2484. Subsection (1) clarifies the meaning of "employee". It gives the meaning of "exempt approved scheme" and "relevant statutory scheme" by cross-reference.
2485. "Exempt approved scheme" is defined in section 592(1) of ICTA as follows:
This section has effect as respects -
(a) any approved scheme which is shown to the satisfaction of the Board to be established under irrevocable trusts; or
(b) any other approved scheme as respects which the Board, having regard to any special circumstances, direct that this section shall apply;
and any scheme which is for the time being within paragraph (a) or (b) above is in this Chapter referred to as an 'exempt approved scheme'.
2486. "Relevant statutory scheme" is defined in section 611A(1) of ICTA as follows:
In this Chapter any reference to a relevant statutory scheme is to -
(a) a statutory scheme established before 14th March 1989, or
(b) a statutory scheme established on or after that date and entered in the register maintained by the Board for the purposes of this section, or
(c) a parliamentary pension scheme.
2487. *Subsection (2)* derives from the definition of "director" in section 612(1) of ICTA.
2488. *Subsection (3)* derives from section 599A(10) of ICTA and the definition of employee in section 612(1) of ICTA.

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2489. *Subsection (4)* applies the definition of “office” in section 5(3) in Part 2 (Employment Income: charge to tax).