



Income Tax (Earnings and Pensions) Act 2003

2003 CHAPTER 1

PART 2

EMPLOYMENT INCOME: CHARGE TO TAX

CHAPTER 1

INTRODUCTION

3 Structure of employment income Parts

- (1) The structure of the employment income Parts is as follows—
- this Part imposes the charge to tax on employment income, and sets out—
 - (a) how the amount charged to tax for a tax year is to be calculated, and
 - (b) who is liable for the tax charged;
 - Part 3 sets out what are earnings and provides for amounts to be treated as earnings;
 - Part 4 deals with exemptions from the charge to tax under this Part (and, in some cases, from other charges to tax);
 - Part 5 deals with deductions from taxable earnings;
 - Part 6 deals with employment income other than earnings or share-related income; and
 - Part 7 deals with [^{F1}income and exemptions relating to securities and securities options acquired in connection with an employment].
- (2) In this Act “the employment income Parts” means this Part and Parts 3 to 7.

Status: Point in time view as at 05/12/2005.

Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Part 2. (See end of Document for details)

Textual Amendments

- F1** Words in s. 3(1) substituted (16.4.2003 with effect in accordance with Sch. 22 para. 16(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 16\(1\)](#)

4 “Employment” for the purposes of the employment income Parts

- (1) In the employment income Parts “employment” includes in particular—
 - (a) any employment under a contract of service,
 - (b) any employment under a contract of apprenticeship, and
 - (c) any employment in the service of the Crown.
- (2) In those Parts “employed”, “employee” and “employer” have corresponding meanings.

5 Application to offices and office-holders

- (1) The provisions of the employment income Parts that are expressed to apply to employments apply equally to offices, unless otherwise indicated.
- (2) In those provisions as they apply to an office—
 - (a) references to being employed are to being the holder of the office;
 - (b) “employee” means the office-holder;
 - (c) “employer” means the person under whom the office-holder holds office.
- (3) In the employment income Parts “office” includes in particular any position which has an existence independent of the person who holds it and may be filled by successive holders.

CHAPTER 2

TAX ON EMPLOYMENT INCOME

6 Nature of charge to tax on employment income

- (1) The charge to tax on employment income under this Part is a charge to tax on—
 - (a) general earnings, and
 - (b) specific employment income.

The meaning of “employment income”, “general earnings” and “specific employment income” is given in section 7.
- (2) The amount of general earnings or specific employment income which is charged to tax in a particular tax year is set out in section 9.
- (3) The rules in Chapters 4 and 5 of this Part, which are concerned with—
 - (a) the residence and domicile of an employee in a tax year, and
 - (b) the tax year in which amounts are received or remitted to the United Kingdom,
 apply for the purposes of the charge to tax on general earnings but not that on specific employment income.

Status: Point in time view as at 05/12/2005.

Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Part 2. (See end of Document for details)

- (4) The person who is liable for any tax charged on employment income is set out in section 13.
- (5) Employment income is not charged to tax under this Part if it is within the charge to tax under [F2Part 2 of ITTOIA 2005 (trading income) by virtue of section 15 of that Act] (divers and diving supervisors).

Textual Amendments

F2 Words in s. 6(5) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 585](#) (with [Sch. 2](#))

7 Meaning of “employment income”, “general earnings” and “specific employment income”

- (1) This section gives the meaning for the purposes of the Tax Acts of “employment income”, “general earnings” and “specific employment income”.
- (2) “Employment income” means—
- earnings within Chapter 1 of Part 3,
 - any amount treated as earnings (see subsection (5)), or
 - any amount which counts as employment income (see subsection (6)).
- (3) “General earnings” means—
- earnings within Chapter 1 of Part 3, or
 - any amount treated as earnings (see subsection (5)),
excluding in each case any exempt income.
- (4) “Specific employment income” means any amount which counts as employment income (see subsection (6)), excluding any exempt income.
- (5) Subsection (2)(b) or (3)(b) refers to any amount treated as earnings under—
- Chapters 7 and 8 of this Part (application of provisions to agency workers and workers under arrangements made by intermediaries),
 - Chapters 2 to 11 of Part 3 (the benefits code),
 - Chapter 12 of Part 3 (payments treated as earnings), or
 - section 262 of CAA 2001 (balancing charges to be given effect by treating them as earnings).
- (6) Subsection (2)(c) or (4) refers to any amount which counts as employment income by virtue of—
- Part 6 (income which is not earnings or share-related),
 - Part 7 [F3(income and exemptions relating to securities and securities options)], or
 - any other enactment.

Textual Amendments

F3 Words in s. 7(6)(b) substituted (16.4.2003 with effect in accordance with Sch. 22 para. 17(2) of the amending Act) by [Finance Act 2003 \(c. 14\), Sch. 22 para. 17\(1\)](#)

Status: Point in time view as at 05/12/2005.

Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Part 2. (See end of Document for details)

8 Meaning of “exempt income”

For the purposes of the employment income Parts, an amount of employment income within paragraph (a), (b) or (c) of section 7(2) is “exempt income” if, as a result of any exemption in Part 4 or elsewhere, no liability to income tax arises in respect of it as such an amount.

CHAPTER 3

OPERATION OF TAX CHARGE

9 Amount of employment income charged to tax

- (1) The amount of employment income which is charged to tax under this Part for a particular tax year is as follows.
- (2) In the case of general earnings, the amount charged is the net taxable earnings from an employment in the year.
- (3) That amount is calculated under section 11 by reference to any taxable earnings from the employment in the year (see section 10(2)).
- (4) In the case of specific employment income, the amount charged is the net taxable specific income from an employment for the year.
- (5) That amount is calculated under section 12 by reference to any taxable specific income from the employment for the year (see section 10(3)).
- (6) Accordingly, no amount of employment income is charged to tax under this Part for a particular tax year unless—
 - (a) in the case of general earnings, they are taxable earnings from an employment in that year, or
 - (b) in the case of specific employment income, it is taxable specific income from an employment for that year.

10 Meaning of “taxable earnings” and “taxable specific income”

- (1) This section explains what is meant by “taxable earnings” and “taxable specific income” in the employment income Parts.
- (2) “Taxable earnings from an employment in a tax year are to be determined in accordance with—
 - (a) Chapter 4 of this Part (rules applying to employees resident, ordinarily resident and domiciled in the UK), or
 - (b) Chapter 5 of this Part (rules applying to employees resident, ordinarily resident or domiciled outside the UK).
- (3) “Taxable specific income from an employment for a tax year means the full amount of any specific employment income which, by virtue of Part 6 or 7 or any other enactment, counts as employment income for that year in respect of the employment.

Status: Point in time view as at 05/12/2005.

Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Part 2. (See end of Document for details)

11 Calculation of “net taxable earnings”

- (1) For the purposes of this Part the “net taxable earnings” from an employment in a tax year are given by the formula—

$$TE - DE$$

where—

TE means the total amount of any taxable earnings from the employment in the tax year, and

DE means the total amount of any deductions allowed from those earnings under provisions listed in section 327(3) to (5) (deductions from earnings: general).

- (2) If the amount calculated under subsection (1) is negative, the net taxable earnings from the employment in the year are to be taken to be nil instead.
- (3) Relief may be available under section 380(1) of ICTA (set-off against general income)—
- (a) where TE is negative, or
 - (b) in certain exceptional cases where the amount calculated under subsection (1) is negative.
- (4) If a person has more than one employment in a tax year, the calculation under subsection (1) must be carried out in relation to each of the employments.

12 Calculation of “net taxable specific income”

- (1) For the purposes of this Part the “net taxable specific income” from an employment for a tax year is given by the formula—

$$TSI - DSI$$

where—

TSI means the amount of any taxable specific income from the employment for the tax year, and

DSI means the total amount of any deductions allowed from that income under provisions of the Tax Acts not included in the lists in section 327 (3) and (4) (deductions from earnings: general).

- (2) If the amount calculated under subsection (1) is negative, the net taxable specific income from the employment for the year is to be taken to be nil instead.
- (3) If a person has more than one kind of specific employment income from an employment for a tax year, the calculation under subsection (1) must be carried out in relation to each of those kinds of specific employment income; and in such a case the “net taxable specific income” from the employment for that year is the total of all the amounts so calculated.

Status: Point in time view as at 05/12/2005.

Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Part 2. (See end of Document for details)

13 Person liable for tax

- (1) The person liable for any tax on employment income under this Part is the taxable person mentioned in subsection (2) or (3).

This is subject to subsection (4).

- (2) If the tax is on general earnings, “the taxable person” is the person to whose employment the earnings relate.
- (3) If the tax is on specific employment income, “the taxable person” is the person in relation to whom the income is, by virtue of Part 6 or 7 or any other enactment, to count as employment income.
- (4) If the tax is on general earnings received, or remitted to the United Kingdom, after the death of the person to whose employment the earnings relate, the person’s personal representatives are liable for the tax.
- (5) In that event the tax is accordingly to be assessed on the personal representatives and is a debt due from and payable out of the estate.

CHAPTER 4

TAXABLE EARNINGS: RULES APPLYING TO EMPLOYEE RESIDENT, ORDINARILY RESIDENT AND DOMICILED IN UK

Taxable earnings

14 Taxable earnings under this Chapter: introduction

- (1) This Chapter sets out for the purposes of this Part what are taxable earnings from an employment in a tax year in cases where section 15 (earnings for year when employee resident, ordinarily resident and domiciled in UK) applies to general earnings for a tax year.
- (2) In this Chapter—
- (a) sections 16 and 17 deal with the year for which general earnings are earned, and
 - (b) sections 18 and 19 deal with the time when general earnings are received.
- (3) In the employment income Parts any reference to the charging provisions of this Chapter is a reference to section 15.

Employees resident, ordinarily resident and domiciled in UK

15 Earnings for year when employee resident, ordinarily resident and domiciled in UK

- (1) This section applies to general earnings for a tax year in which the employee is resident, ordinarily resident and domiciled in the United Kingdom.
- (2) The full amount of any general earnings within subsection (1) which are received in a tax year is an amount of “taxable earnings” from the employment in that year.

- (3) Subsection (2) applies—
- (a) whether the earnings are for that year or for some other tax year, and
 - (b) whether or not the employment is held at the time when the earnings are received.

Year for which general earnings are earned

16 Meaning of earnings “for” a tax year

- (1) This section applies for determining whether general earnings are general earnings “for” a particular tax year for the purposes of this Chapter.
- (2) General earnings that are earned in, or otherwise in respect of, a particular period are to be regarded as general earnings for that period.
- (3) If that period consists of the whole or part of a single tax year, the earnings are to be regarded as general earnings “for” that tax year.
- (4) If that period consists of the whole or parts of two or more tax years, the part of the earnings that is to be regarded as general earnings “for” each of those tax years is to be determined on a just and reasonable apportionment.
- (5) This section does not apply to any amount which is required by a provision of Part 3 to be treated as earnings for a particular tax year.

17 Treatment of earnings for year in which employment not held

- (1) This section applies for the purposes of this Chapter in a case where general earnings from an employment would otherwise fall to be regarded as general earnings for a tax year in which the employee does not hold the employment.
- (2) If that year falls before the first tax year in which the employment is held, the earnings are to be treated as general earnings for that first tax year.
- (3) If that year falls after the last tax year in which the employment was held, the earnings are to be treated as general earnings for that last tax year.
- (4) This section does not apply in connection with determining the year for which amounts are to be treated as earnings under Chapters 2 to 11 of Part 3 (the benefits code).

When general earnings are received

18 Receipt of money earnings

- (1) General earnings consisting of money are to be treated for the purposes of this Chapter as received at the earliest of the following times—

Rule 1

The time when payment is made of or on account of the earnings.

Rule 2

The time when a person becomes entitled to payment of or on account of the earnings.

Status: Point in time view as at 05/12/2005.

Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Part 2. (See end of Document for details)

Rule 3

If the employee is a director of a company and the earnings are from employment with the company (whether or not as director), whichever is the earliest of—

- (a) the time when sums on account of the earnings are credited in the company's accounts or records (whether or not there is any restriction on the right to draw the sums);
 - (b) if the amount of the earnings for a period is determined by the end of the period, the time when the period ends;
 - (c) if the amount of the earnings for a period is not determined until after the period has ended, the time when the amount is determined.
- (2) Rule 3 applies if the employee is a director of the company at any time in the tax year in which the time mentioned falls.
- (3) In this section “director” means—
- (a) in relation to a company whose affairs are managed by a board of directors or similar body, a member of that body,
 - (b) in relation to a company whose affairs are managed by a single director or similar person, that director or person, and
 - (c) in relation to a company whose affairs are managed by the members themselves, a member of the company,
- and includes any person in accordance with whose directions or instructions the directors of the company (as defined above) are accustomed to act.
- (4) For the purposes of subsection (3) a person is not to be regarded as a person in accordance with whose directions or instructions the directors of the company are accustomed to act merely because the directors act on advice given by that person in a professional capacity.
- (5) Where this section applies—
- (a) to a payment on account of general earnings, or
 - (b) to sums on account of general earnings,
- it so applies for the purpose of determining the time when an amount of general earnings corresponding to the amount of that payment or those sums is to be treated as received for the purposes of this Chapter.

19 Receipt of non-money earnings

- (1) General earnings not consisting of money are to be treated for the purposes of this Chapter as received at the following times.
- (2) If an amount is treated as earnings for a particular tax year under any of the following provisions, the earnings are to be treated as received in that year—
 - section 81 (taxable benefits: cash vouchers),
 - section 94 (taxable benefits: credit-tokens),
 - Chapter 5 of Part 3 (taxable benefits: living accommodation),
 - Chapter 6 of Part 3 (taxable benefits: cars, vans and related benefits),
 - Chapter 7 of Part 3 (taxable benefits: loans),
 - F4
 - ...
 - F4
 - ...

Status: Point in time view as at 05/12/2005.

Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Part 2. (See end of Document for details)

Chapter 10 of Part 3 (taxable benefits: residual liability to charge),
 section 222 (payments treated as earnings: payments on account of tax where deduction not possible),
 section 223 (payments treated as earnings: payments on account of director's tax).

- (3) If an amount is treated as earnings under section 87 (taxable benefits: non-cash vouchers), the earnings are to be treated as received in the tax year mentioned in section 88.
- (4) If subsection (2) or (3) does not apply, the earnings are to be treated as received at the time when the benefit is provided.

Textual Amendments

- F4** S. 19(2) entries repealed (with effect in accordance with Sch. 22 para. 18(2) of the amending Act) by Finance Act 2003 (c. 14), Sch. 22 para. 18(1), **Sch. 43 Pt. 3(4)**

CHAPTER 5

TAXABLE EARNINGS: RULES APPLYING TO EMPLOYEE RESIDENT, ORDINARILY RESIDENT OR DOMICILED OUTSIDE UK

Taxable earnings

20 Taxable earnings under this Chapter: introduction

- (1) This Chapter sets out for the purposes of this Part what are taxable earnings from an employment in a tax year in cases where any of the following sections applies to general earnings for a tax year—
- section 21 (earnings for year when employee resident and ordinarily resident, but not domiciled, in UK, except chargeable overseas earnings),
 - section 22 (chargeable overseas earnings for year when employee resident and ordinarily resident, but not domiciled, in UK),
 - section 25 (UK-based earnings for year when employee resident, but not ordinarily resident, in UK),
 - section 26 (foreign earnings for year when employee resident, but not ordinarily resident, in UK),
 - section 27 (UK-based earnings for year when employee not resident in UK).
- (2) In this Chapter—
- sections 29 and 30 deal with the year for which general earnings are earned,
 - sections 31 to 34 deal with the time when general earnings are received or remitted,
 - sections 35 to 37 deal with relief for delayed remittances, and
 - sections 38 to 41 deal with the place where the duties of an employment are performed.
- (3) In the employment income Parts any reference to the charging provisions of this Chapter is a reference to any of the sections listed in subsection (1).

Status: Point in time view as at 05/12/2005.

Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Part 2. (See end of Document for details)

Employees resident and ordinarily resident in UK

21 Earnings for year when employee resident and ordinarily resident, but not domiciled, in UK, except chargeable overseas earnings

- (1) This section applies to general earnings for a tax year in which the employee is resident and ordinarily resident, but not domiciled, in the United Kingdom except to the extent that they are chargeable overseas earnings for that year.
- (2) The full amount of any general earnings within subsection (1) which are received in a tax year is an amount of “taxable earnings” from the employment in that year.
- (3) Subsection (2) applies—
 - (a) whether the earnings are for that year or for some other tax year, and
 - (b) whether or not the employment is held at the time when the earnings are received.
- (4) Section 23 applies for calculating how much of an employee’s general earnings are “chargeable overseas earnings” for a tax year, and are therefore within section 22(1) rather than subsection (1) above.

22 Chargeable overseas earnings for year when employee resident and ordinarily resident, but not domiciled, in UK

- (1) This section applies to general earnings for a tax year in which the employee is resident and ordinarily resident, but not domiciled, in the United Kingdom to the extent that the earnings are chargeable overseas earnings for that year.
- (2) The full amount of any general earnings within subsection (1) which are remitted to the United Kingdom in a tax year is an amount of “taxable earnings” from the employment in that year.
- (3) Subsection (2) applies—
 - (a) whether the earnings are for that year or for some other tax year, and
 - (b) whether or not the employment is held at the time when the earnings are remitted;
 but that subsection has effect subject to any relief given under section 35 (delayed remittances: claim for relief).
- (4) Section 23 applies for calculating how much of an employee’s general earnings are “chargeable overseas earnings” for a tax year, and are therefore within subsection (1) rather than section 21(1).
- (5) Where any chargeable overseas earnings are taxable earnings under subsection (2), any deduction taken into account under section 23(3) in calculating the amount of the chargeable overseas earnings—
 - (a) cannot then be deducted under section 11 from those taxable earnings, but
 - (b) may be deducted under that section from any taxable earnings under section 21.

23 Calculation of “chargeable overseas earnings”

- (1) This section applies for calculating how much of an employee’s general earnings for a tax year are “chargeable overseas earnings” for the purposes of sections 21 and 22.
- (2) General earnings for a tax year are “overseas earnings” for that year if—
 - (a) in that year the employee is resident and ordinarily resident, but not domiciled, in the United Kingdom,
 - (b) the employment is with a foreign employer, and
 - (c) the duties of the employment are performed wholly outside the United Kingdom.
- (3) To calculate the amount of “chargeable overseas earnings” for a tax year—

Step 1

Identify the full amount of the overseas earnings for that year under subsection (2).

Step 2

Subtract any amounts that would (assuming they were taxable earnings) be allowed to be deducted from those earnings under—

- (a) section 232 or Part 5 (deductions allowed from earnings),
- (b) section 592(7) of ICTA (contributions to exempt approved schemes),
- (c) section 594 of ICTA (contributions to exempt statutory schemes), or
- (d) section 262 of CAA 2001 (capital allowances to be given effect by treating them as deductions from earnings).

Step 3

Apply any limit imposed by section 24 (limit where duties of associated employment performed in UK).

The result is the chargeable overseas earnings for the tax year.

24 Limit on chargeable overseas earnings where duties of associated employment performed in UK

- (1) This section imposes a limit on how much of an employee’s general earnings are chargeable overseas earnings for a tax year under section 23 if—
 - (a) in that year the employee holds associated employments as well as the employment to which subsection (2) of that section applies (“the relevant employment”), and
 - (b) the duties of the associated employments are not performed wholly outside the United Kingdom.
- (2) The limit is the proportion of the aggregate earnings for that year from all the employments concerned that is reasonable having regard to—
 - (a) the nature of and time devoted to each of the following—
 - (i) the duties performed outside the United Kingdom, and
 - (ii) those performed in the United Kingdom, and
 - (b) all other relevant circumstances.

Status: Point in time view as at 05/12/2005.

Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Part 2. (See end of Document for details)

- (3) For the purposes of subsection (2) “the aggregate earnings for a year from all the employments concerned” means the amount produced by aggregating the full amount of earnings from each of those employments for the year mentioned in subsection (1) so far as remaining after subtracting any amounts of the kind mentioned in step 2 in section 23(3).
- (4) In this section—
- (a) “the employments concerned” means the relevant employment and the associated employments;
 - (b) “associated employments” means employments with the same employer or with associated employers.
- (5) The following rules apply to determine whether employers are associated—
- Rule A*
- An individual is associated with a partnership or company if that individual has control of the partnership or company.
- Rule B*
- A partnership is associated with another partnership or with a company if one has control of the other or both are under the control of the same person or persons.
- Rule C*
- A company is associated with another company if one has control of the other or both are under the control of the same person or persons.
- (6) In subsection (5)—
- (a) in rules A and B “control” has the meaning given by section 840 of ICTA (in accordance with section 719 of this Act), and
 - (b) in rule C “control” means control within the meaning of section 416 of ICTA (meaning of expressions relating to close companies).
- (7) If an amount of chargeable overseas earnings is reduced under step 3 in section 23(3) as a result of applying any limit imposed by this section, the amount of general earnings corresponding to the reduction remains an amount of general earnings within section 21(1).

Employees resident but not ordinarily resident in UK

25 UK-based earnings for year when employee resident, but not ordinarily resident, in UK

- (1) This section applies to general earnings for a tax year in which the employee is resident but not ordinarily resident in the United Kingdom if they are—
- (a) general earnings in respect of duties performed in the United Kingdom, or
 - (b) general earnings from overseas Crown employment subject to United Kingdom tax.
- (2) The full amount of any general earnings within subsection (1) which are received in a tax year is an amount of “taxable earnings” from the employment in that year.

Status: Point in time view as at 05/12/2005.

Changes to legislation: *There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Part 2. (See end of Document for details)*

- (3) Subsection (2) applies—
 - (a) whether the earnings are for that year or for some other tax year, and
 - (b) whether or not the employment is held at the time when the earnings are received.
- (4) Section 28 explains what is meant by “general earnings from overseas Crown employment subject to United Kingdom tax”.

26 Foreign earnings for year when employee resident, but not ordinarily resident, in UK

- (1) This section applies to general earnings for a tax year in which the employee is resident, but not ordinarily resident, in the United Kingdom if they are neither—
 - (a) general earnings in respect of duties performed in the United Kingdom, nor
 - (b) general earnings from overseas Crown employment subject to United Kingdom tax.
- (2) The full amount of any general earnings within subsection (1) which are remitted to the United Kingdom in a tax year is an amount of “taxable earnings” from the employment in that year.
- (3) Subsection (2) applies—
 - (a) whether the earnings are for that year or for some other tax year, and
 - (b) whether or not the employment is held at the time when the earnings are remitted;but that subsection has effect subject to any relief given under section 35 (delayed remittances: claim for relief).
- (4) Section 28 explains what is meant by “general earnings from overseas Crown employment subject to United Kingdom tax”.

Employees not resident in UK

27 UK-based earnings for year when employee not resident in UK

- (1) This section applies to general earnings for a tax year in which the employee is not resident in the United Kingdom if they are—
 - (a) general earnings in respect of duties performed in the United Kingdom, or
 - (b) general earnings from overseas Crown employment subject to United Kingdom tax.
- (2) The full amount of any general earnings within subsection (1) which are received in a tax year is an amount of “taxable earnings” from the employment in that year.
- (3) Subsection (2) applies—
 - (a) whether the earnings are for that year or for some other tax year, and
 - (b) whether or not the employment is held at the time when the earnings are received.
- (4) Section 28 explains what is meant by “general earnings from overseas Crown employment subject to United Kingdom tax”.

Status: Point in time view as at 05/12/2005.

Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Part 2. (See end of Document for details)

Special class of earnings for purposes of sections 25 to 27

28 Meaning of “general earnings from overseas Crown employment subject to UK tax”

- (1) This section explains for the purposes of sections 25 to 27 what is meant by “general earnings from overseas Crown employment subject to United Kingdom tax”.
- (2) “Crown employment” means employment under the Crown—
 - (a) which is of a public nature, and
 - (b) the earnings from which are payable out of the public revenue of the United Kingdom or of Northern Ireland.
- (3) “General earnings from overseas Crown employment” means general earnings from such employment in respect of duties performed outside the United Kingdom.
- (4) Such earnings are to be taken as being “subject to United Kingdom tax” unless they fall within any exception contained in an order under subsection (5).
- (5) [^{F5}the Commissioners for Her Majesty’s Revenue and Customs] may make an order excepting from the operation of sections 25(2) and 27(2)—
 - (a) general earnings of any description of employee specified in the order;
 - (b) general earnings from any description of employment so specified.
- (6) The [^{F6}Commissioners] may make the order if they consider that such earnings should not be subject to those provisions having regard to the international obligations of Her Majesty’s Government and such other matters as appear to them to be relevant.
- (7) An order may make provision by reference to all or any of the following—
 - (a) the residence or nationality of the employee;
 - (b) whether the employee was engaged in or outside the United Kingdom;
 - (c) the nature of the post, the rate of remuneration and any other terms and conditions applying to it.
- (8) Subsection (7) does not affect the generality of the power to make provision by reference to such factors as the Board consider appropriate.

Textual Amendments

- F5** Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 102\(2\)](#); S.I. 2005/1126, art. 2(2)(h)
- F6** Words in s. 28(6) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 102\(3\)\(a\)](#); S.I. 2005/1126, art. 2(2)(h)

Year for which general earnings are earned

29 Meaning of earnings “for” a tax year

- (1) This section applies for determining whether general earnings are general earnings “for” a particular tax year for the purposes of this Chapter.
- (2) General earnings that are earned in, or otherwise in respect of, a particular period are to be regarded as general earnings for that period.

Status: Point in time view as at 05/12/2005.

Changes to legislation: *There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Part 2. (See end of Document for details)*

- (3) If that period consists of the whole or part of a single tax year, the earnings are to be regarded as general earnings “for” that tax year.
- (4) If that period consists of the whole or parts of two or more tax years, the part of the earnings that is to be regarded as general earnings “for” each of those tax years is to be determined on a just and reasonable apportionment.
- (5) This section does not apply to any amount which is required by a provision of Part 3 to be treated as earnings for a particular tax year.

30 Treatment of earnings for year in which employment not held

- (1) This section applies for the purposes of this Chapter in a case where general earnings from an employment would otherwise fall to be regarded as general earnings for a tax year in which the employee does not hold the employment.
- (2) If that year falls before the first tax year in which the employment is held, the earnings are to be treated as general earnings for that first tax year.
- (3) If that year falls after the last tax year in which the employment was held, the earnings are to be treated as general earnings for that last tax year.
- (4) This section does not apply in connection with determining the year for which amounts are to be treated as earnings under Chapters 2 to 11 of Part 3 (the benefits code).

When general earnings are received or remitted

31 Receipt of money earnings

- (1) General earnings consisting of money are to be treated for the purposes of this Chapter as received at the earliest of the following times—

Rule 1

The time when payment is made of or on account of the earnings.

Rule 2

The time when a person becomes entitled to payment of or on account of the earnings.

Rule 3

If the employee is a director of a company and the earnings are from employment with the company (whether or not as director), whichever is the earliest of—

- (a) the time when sums on account of the earnings are credited in the company’s accounts or records (whether or not there is any restriction on the right to draw the sums);
 - (b) if the amount of the earnings for a period is determined by the end of the period, the time when the period ends;
 - (c) if the amount of the earnings for a period is not determined until after the period has ended, the time when the amount is determined.
- (2) Rule 3 applies if the employee is a director of the company at any time in the tax year in which the time mentioned falls.

Status: Point in time view as at 05/12/2005.

Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Part 2. (See end of Document for details)

- (3) In this section “director” means—
- (a) in relation to a company whose affairs are managed by a board of directors or similar body, a member of that body,
 - (b) in relation to a company whose affairs are managed by a single director or similar person, that director or person, and
 - (c) in relation to a company whose affairs are managed by the members themselves, a member of the company,
- and includes any person in accordance with whose directions or instructions the directors of the company (as defined above) are accustomed to act.
- (4) For the purposes of subsection (3) a person is not to be regarded as a person in accordance with whose directions or instructions the directors of the company are accustomed to act merely because the directors act on advice given by that person in a professional capacity.
- (5) Where this section applies—
- (a) to a payment on account of general earnings, or
 - (b) to sums on account of general earnings,
- it so applies for the purpose of determining the time when an amount of general earnings corresponding to the amount of that payment or those sums is to be treated as received for the purposes of this Chapter.

32 Receipt of non-money earnings

- (1) General earnings not consisting of money are to be treated for the purposes of this Chapter as received at the following times.
- (2) If an amount is treated as earnings for a particular tax year under any of the following provisions, the earnings are to be treated as received in that year—
 - section 81 (taxable benefits: cash vouchers),
 - section 94 (taxable benefits: credit-tokens),
 - Chapter 5 of Part 3 (taxable benefits: living accommodation),
 - Chapter 6 of Part 3 (taxable benefits: cars, vans and related benefits),
 - Chapter 7 of Part 3 (taxable benefits: loans),
 - F7 ...
 - F7 ...
 - Chapter 10 of Part 3 (taxable benefits: residual liability to charge),
 - section 222 (payments treated as earnings: payments on account of tax where deduction not possible),
 - section 223 (payments treated as earnings: payments on account of director’s tax).
- (3) If an amount is treated as earnings under section 87 (taxable benefits: non-cash vouchers), the earnings are to be treated as received in the tax year mentioned in section 88.
- (4) If subsection (2) or (3) does not apply, the earnings are to be treated as received at the time when the benefit is provided.

Status: Point in time view as at 05/12/2005.

Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Part 2. (See end of Document for details)

Textual Amendments

- F7** S. 32(2) entries repealed (with effect in accordance with Sch. 22 para. 19(2) of the amending Act) by Finance Act 2003 (c. 14), Sch. 22 para. 19(1), **Sch. 43 Pt. 3(4)**

33 Earnings remitted to UK

- (1) This section explains what is meant for the purposes of this Chapter by general earnings being remitted to the United Kingdom.
- (2) If general earnings are—
- paid, used, or enjoyed in the United Kingdom, or
 - transmitted or brought to the United Kingdom in any manner or form,
- they are to be treated as remitted to the United Kingdom at the time when they are so paid, used or enjoyed or dealt with as mentioned in paragraph (b).
- (3) If, in the case of an employee who is ordinarily resident in the United Kingdom, general earnings are used outside the United Kingdom to satisfy a UK-linked debt, they are to be treated as remitted to the United Kingdom at the time when they are so used.

This is subject to subsection (5)(b).

- (4) In subsection (3) “UK-linked debt, in relation to an employee, means—
- a debt for money lent to the employee in the United Kingdom, or for interest on money so lent, or
 - a debt for money lent to the employee outside the United Kingdom and received in the United Kingdom, or
 - a debt incurred for satisfying—
 - a debt falling within paragraph (a) or (b), or
 - another debt falling within this paragraph.
- (5) In the case of a debt (within subsection (4)(b) or (c)) for money lent to the employee outside the United Kingdom—
- it does not matter whether the money lent is received in the United Kingdom before or after the general earnings are used to satisfy the debt, but
 - if the money lent is not received in the United Kingdom until after the general earnings are used to satisfy the debt, the general earnings are to be treated as remitted to the United Kingdom at the time when the money lent is received there (instead of at the time provided in subsection (3)).
- (6) In subsections (4) and (5) any reference to money lent being received in the United Kingdom includes a reference to its being brought there.
- (7) Section 34 (further provisions about UK-linked debts) applies for the purposes of subsections (3) to (5).

34 Earnings remitted to UK: further provisions about UK-linked debts

- (1) This section applies for the purposes of the provisions of section 33 which relate to general earnings that are used to satisfy a UK-linked debt.

Status: Point in time view as at 05/12/2005.

Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Part 2. (See end of Document for details)

- (2) General earnings are to be treated as used to satisfy a debt for money lent to a person (“the borrower”) if conditions A and B are met.
- (3) Condition A is that the earnings are dealt with in such a way that the lender holds money or property representing the earnings on behalf of or on account of the borrower in such circumstances that it is available to the lender to satisfy or reduce the debt (by set-off or otherwise).
- (4) Condition B is that under an arrangement between the borrower and the lender—
 - (a) the amount for the time being owed by the borrower to the lender, or
 - (b) the time at which the debt is to be wholly or partly repaid,
 depends in any respect, directly or indirectly, on the amount or value the lender holds on behalf of or on account of the borrower as mentioned in subsection (3).
- (5) If and to the extent that money lent is used to satisfy a debt, the debt for the money lent is to be treated as incurred for satisfying that other debt.
- (6) In this section “lender” includes, in relation to any money lent, any person for the time being entitled to repayment.
- (7) In this section and section 33 “satisfy”, in relation to a debt, means satisfy wholly or in part.

Relief for delayed remittances

35 Relief for delayed remittances

- (1) A person may make a claim for relief under this section for a tax year in respect of delayed remittances from an employment.
- (2) “Delayed remittances” are general earnings of the person which—
 - (a) were received in a country or territory outside the United Kingdom before the tax year for which relief is claimed,
 - (b) were not remitted to the United Kingdom until that tax year,
 - (c) could not have been transferred by the person to the United Kingdom before that tax year because of—
 - (i) the laws of the country or territory where they were received,
 - (ii) executive action of its government, or
 - (iii) the impossibility of obtaining there currency (other than the currency of that country or territory) that could be transferred to the United Kingdom, and
 - (d) constitute taxable earnings from the employment in that tax year under section 22(2) or 26(2) (general earnings which are taxable earnings if remitted to UK).
- (3) If a person claims relief for a tax year in respect of delayed remittances from an employment, the amount of the remittances—
 - (a) is to be deducted from the person’s general earnings which constitute taxable earnings from the employment in that year under section 22(2) or 26(2); and
 - (b) is instead to constitute taxable earnings from the employment under that provision in one or more earlier tax years in accordance with—
 - (i) subsection (4), or

Status: Point in time view as at 05/12/2005.

Changes to legislation: *There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Part 2. (See end of Document for details)*

(ii) alternatively, section 36 where an election is made under that section.

(4) Where this subsection applies—

- (a) the amount referred to in subsection (3)(b) is to be treated as taxable earnings from the employment in the tax year in which it was received, or
- (b) if it consists of general earnings received in two or more tax years, so much of the amount as was received in each of those years is to be treated as taxable earnings from the employment in that year.

36 Election in respect of delayed remittances

(1) This section applies if—

- (a) a person (“the claimant”) claims relief under section 35 for a tax year in respect of delayed remittances from an employment, and
- (b) at the end of that year the claimant had blocked earnings from that employment for one or more previous tax years.

(2) General earnings are “blocked earnings” for a tax year if they—

- (a) were received in a country or territory outside the United Kingdom in that year,
- (b) could not be transferred by the claimant to the United Kingdom in that year because of any of the things mentioned in section 35(2)(c), and
- (c) would have constituted taxable earnings from the employment in that year under section 22(2) or 26(2) (general earnings which are taxable earnings if remitted to UK) if they had been so transferred.

(3) The claimant may elect for the purposes of section 35(3)(b) to have the amount of the delayed remittances treated as taxable earnings from the employment in one or more tax years specified in the election.

(4) A claimant may only specify a particular tax year if—

- (a) there were blocked earnings of the claimant for that year from the employment, and
- (b) it is a year prior to the tax year for which relief is claimed.

(5) If more than one year is specified, the election must indicate the amount which is to be treated as taxable earnings in each of those years.

(6) However the amount of the delayed remittances which the claimant elects to be treated as taxable earnings in a particular tax year must not exceed—

BE- PC

where—

BE is the amount of blocked earnings of the claimant for that year from the employment, and

PC is the amount of remittances treated as taxable earnings from the employment in that year as a result of a previous claim by the claimant under section 35.

(7) An election under this section—

- (a) must be made as part of the claim under section 35, and
- (b) is irrevocable.

Status: Point in time view as at 05/12/2005.

Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Part 2. (See end of Document for details)

- (8) A person's personal representatives may make any election under this section which the person might have made.

37 Claims for relief on delayed remittances

- (1) A claim under section 35 must be made on or before the fifth anniversary of the normal self-assessment filing date for the tax year for which relief is claimed.
- (2) All adjustments (by way of repayment of tax, assessment or otherwise) are to be made which are necessary to give effect to section 35.
- (3) Those adjustments may be made at any time, despite anything to the contrary in the Income Tax Acts.
- (4) A person's personal representatives may make any claim under section 35 which the person might have made.
- (5) If a person dies—
- (a) any tax paid by the person and repayable because of a claim under section 35 is to be repaid to the person's personal representatives, and
 - (b) the person's personal representatives are liable for any additional tax which arises because of a claim under that section.
- (6) Where subsection (5)(b) applies, the additional tax—
- (a) is to be assessed on the personal representatives, and
 - (b) is a debt due from and payable out of the estate.

Place of performance of duties of employment

38 Earnings for period of absence from employment

- (1) This section applies if a person ordinarily performs the whole or part of the duties of an employment in the United Kingdom.
- (2) General earnings for a period of absence from the employment are to be treated for the purposes of this Chapter as general earnings for duties performed in the United Kingdom except in so far as they would, but for that absence, have been general earnings for duties performed outside the United Kingdom.

39 Duties in UK merely incidental to duties outside UK

- (1) This section applies if in a tax year an employment is in substance one whose duties fall to be performed outside the United Kingdom.
- (2) Duties of the employment performed in the United Kingdom whose performance is merely incidental to the performance of duties outside the United Kingdom are to be treated for the purposes of this Chapter as performed outside the United Kingdom.
- (3) This section does not affect any question as to—
- (a) where any duties are performed, or
 - (b) whether a person is absent from the United Kingdom,
- for the purposes of section 378 (deduction from seafarers' earnings: eligibility), and section 383 (place of performance of incidental duties) applies instead.

Status: Point in time view as at 05/12/2005.

Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Part 2. (See end of Document for details)

40 Duties on board vessel or aircraft

- (1) Duties which a person performs on a vessel engaged on a voyage not extending to a port outside the United Kingdom are to be treated for the purposes of this Chapter as performed in the United Kingdom.
- (2) Duties which a person resident in the United Kingdom performs on a vessel or aircraft engaged—
 - (a) on a voyage or journey beginning or ending in the United Kingdom, or
 - (b) on a part beginning or ending in the United Kingdom of any other voyage or journey,
 are to be treated as performed in the United Kingdom for the purposes of this Chapter.
- (3) Subsection (2) does not, however, apply for the purposes of section 24(1)(b) (limit on chargeable overseas earnings under section 23 where duties of associated employment performed in UK) in relation to any duties of a person’s employment if—
 - (a) the employment is as a seafarer, and
 - (b) the duties are performed on a ship.
- (4) Instead, any duties of the employment which are performed on a ship engaged—
 - (a) on a voyage beginning or ending outside the United Kingdom (but excluding any part of it beginning and ending there), or
 - (b) on a part beginning or ending outside the United Kingdom of any other voyage,
 are to be treated as performed outside the United Kingdom for the purposes of section 24(1)(b).
- (5) For the purposes of subsections (3) and (4)—
 - (a) employment “as a seafarer” means an employment consisting of the performance of duties on a ship or of such duties and others incidental to them;
 - ^{F8}(b) “ship” does not include an offshore installation;]
 - (c) the areas designated under section 1(7) of the Continental Shelf Act 1964 (c. 29) are treated as part of the United Kingdom.

Textual Amendments

- F8** S. 40(5)(b) substituted (with effect in accordance with Sch. 27 para. 16 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 27 para. 12](#)

41 Employment in UK sector of continental shelf

- (1) General earnings in respect of duties performed in the UK sector of the continental shelf in connection with exploration or exploitation activities are to be treated for the purposes of this Chapter as general earnings in respect of duties performed in the United Kingdom.
- (2) In this section—

“the UK sector of the continental shelf” means the areas designated under section 1(7) of the Continental Shelf Act 1964, and

“exploration or exploitation activities” means activities carried on in connection with the exploration or exploitation of so much of the seabed and

Status: Point in time view as at 05/12/2005.

Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Part 2. (See end of Document for details)

subsoil and their natural resources as is situated in the United Kingdom or the UK sector of the continental shelf.

CHAPTER 6

DISPUTES AS TO DOMICILE OR ORDINARY RESIDENCE

42 [F9 Commissioners] to determine dispute as to domicile or ordinary residence

- (1) This section applies if, in connection with any of the provisions listed in subsection (3), there is a dispute as to whether a person is or has been ordinarily resident or domiciled in the United Kingdom.
- (2) The question whether the person is or has been so resident or domiciled is to be referred to and decided by [F5 the Commissioners for Her Majesty’s Revenue and Customs] .
- (3) The provisions referred to in subsection (1) are—
 - section 15 (earnings for year when employee resident, ordinarily resident and domiciled in UK);
 - section 21 (earnings for year when employee resident and ordinarily resident, but not domiciled, in UK, except chargeable overseas earnings);
 - section 22 (chargeable overseas earnings for year when employee resident and ordinarily resident, but not domiciled, in UK);
 - section 23 (calculation of “chargeable overseas earnings”);
 - section 25 (UK-based earnings for year when employee resident, but not ordinarily resident, in UK);
 - section 26 (foreign earnings for year when employee resident, but not ordinarily resident, in UK);
 - section 341 (deduction for travel expenses at start or finish of overseas employment);
 - section 342 (deduction for travel expenses between employments where duties performed abroad);
 - section 355 (deduction for corresponding payments by non-domiciled employees with foreign employers);
 - section 376 (deduction for foreign accommodation and subsistence costs etc. where overseas employment);
 - section 390 (exception for payments to non-approved pension schemes if non-domiciled employees with foreign employers).

Textual Amendments

- F5** Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 102\(2\)](#); S.I. 2005/1126, art. 2(2)(h)
- F9** Word in s. 42 title substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 102\(3\)\(b\)](#); S.I. 2005/1126, art. 2(2)(h)

Modifications etc. (not altering text)

- C1** S. 42 applied by [1988 c. 1, s. 645\(4C\)](#) (as inserted (6.4.2003 with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), s. 723, [Sch. 6 para. 93\(4\)](#) (with [Sch. 7](#)))

Status: Point in time view as at 05/12/2005.

Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Part 2. (See end of Document for details)

43 Appeal against [^{F10}Commissioners'] decision on domicile or ordinary residence

- (1) A person who has been given notice of [^{F11}the decision of the Commissioners for Her Majesty's Revenue and Customs] on a question under section 42 may, if aggrieved by that decision, appeal to the Special Commissioners.
- (2) The notice of appeal must be given to the [^{F12}Commissioners] within 3 months after the date on which the person is given notice of the [^{F12}Commissioners'] decision.

Textual Amendments

- F10** Words in s. 43 title substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\), s. 53\(1\), Sch. 4 para. 102\(3\)\(c\)](#); S.I. 2005/1126, art. 2(2)(h)
- F11** Words in s. 43(1) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\), s. 53\(1\), Sch. 4 para. 104](#); S.I. 2005/1126, art. 2(2)(h)
- F12** Words in s. 43(2) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\), s. 53\(1\), Sch. 4 para. 102\(3\)\(d\)](#); S.I. 2005/1126, art. 2(2)(h)

Modifications etc. (not altering text)

- C2** S. 43 applied by [1988 c. 1, s. 645\(4C\)](#) (as inserted (6.4.2003 with effect in accordance with [s. 723\(1\)\(a\)\(b\)](#) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\), s. 723, Sch. 6 para. 93\(4\)](#) (with [Sch. 7](#))

CHAPTER 7

APPLICATION OF PROVISIONS TO AGENCY WORKERS

Agency workers

44 Treatment of workers supplied by agencies

- (1) This section applies if—
 - (a) an individual (“the worker”) personally provides, or is under an obligation personally to provide, services (which are not excluded services) to another person (“the client”),
 - (b) the services are supplied by or through a third person (“the agency”) under the terms of an agency contract,
 - (c) the worker is subject to (or to the right of) supervision, direction or control as to the manner in which the services are provided, and
 - (d) remuneration receivable under or in consequence of the agency contract does not constitute employment income of the worker apart from this Chapter.
- (2) If this section applies—
 - (a) the services which the worker provides, or is obliged to provide, to the client under the agency contract are to be treated for income tax purposes as duties of an employment held by the worker with the agency, and
 - (b) all remuneration receivable under or in consequence of the agency contract (including remuneration which the client pays or provides in relation to the services) is to be treated for income tax purposes as earnings from that employment.

Status: Point in time view as at 05/12/2005.

Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Part 2. (See end of Document for details)

45 Arrangements with agencies

If—

- (a) an individual (“the worker”), with a view to personally providing services (which are not excluded services) to another person (“the client”), enters into arrangements with a third person (“the agency”), and
- (b) the arrangements are such that the services (if and when they are provided) will be treated for income tax purposes under section 44 as duties of an employment held by the worker with the agency,

any remuneration receivable under or in consequence of the arrangements is to be treated for income tax purposes as earnings from that employment.

46 Cases involving unincorporated bodies etc.

(1) Section 44 also applies—

- (a) if the worker personally provides, or is under an obligation to personally provide, the services in question as a partner in a firm or a member of an unincorporated body;
- (b) if the agency in question is an unincorporated body of which the worker is a member.

(2) In a case within subsection (1)(a), remuneration receivable under or in consequence of the agency contract is to be treated for income tax purposes as income of the worker and not as income of the firm or body.

Supplementary

47 Interpretation of this Chapter

(1) In this Chapter “agency contract” means a contract made between the worker and the agency under the terms of which the worker is obliged to personally provide services to the client.

(2) In this Chapter “excluded services” means—

- (a) services as an actor, singer, musician or other entertainer or as a fashion, photographic or artist’s model, or
- (b) services provided wholly—
 - (i) in the worker’s own home, or
 - (ii) at other premises which are neither controlled or managed by the client nor prescribed by the nature of the services.

(3) For the purposes of this Chapter “remuneration”—

- (a) does not include anything that would not have constituted employment income of the worker if it had been receivable in connection with an employment apart from this Chapter, but
- (b) subject to paragraph (a), includes every form of payment, gratuity, profit and benefit.

Status: Point in time view as at 05/12/2005.

Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Part 2. (See end of Document for details)

CHAPTER 8

APPLICATION OF PROVISIONS TO WORKERS UNDER ARRANGEMENTS MADE BY INTERMEDIARIES

Application of this Chapter

48 Scope of this Chapter

- (1) This Chapter has effect with respect to the provision of services through an intermediary.
- (2) Nothing in this Chapter—
 - (a) affects the operation of Chapter 7 of this Part, or
 - (b) applies to payments subject to deduction of tax under section 555 of ICTA (payments to non-resident entertainers and sportsmen).

49 Engagements to which this Chapter applies

- (1) This Chapter applies where—
 - (a) an individual (“the worker”) personally performs, or is under an obligation personally to perform, services [^{F13}for another person] (“the client”),
 - (b) the services are provided not under a contract directly between the client and the worker but under arrangements involving a third party (“the intermediary”), and
 - (c) the circumstances are such that, if the services were provided under a contract directly between the client and the worker, the worker would be regarded for income tax purposes as an employee of the client.

^{F14}(2)

- (3) The reference in subsection (1)(b) to a “third party” includes a partnership or unincorporated body of which the worker is a member.
- (4) The circumstances referred to in subsection (1)(c) include the terms on which the services are provided, having regard to the terms of the contracts forming part of the arrangements under which the services are provided.
- (5) In this Chapter “engagement to which this Chapter applies” means any such provision of services as is mentioned in subsection (1).

Textual Amendments

F13 Words in s. 49(1)(a) substituted (with effect in accordance with s. 136(4) of the amending Act) by [Finance Act 2003 \(c. 14\), s. 136\(2\)](#)

F14 S. 49(2) repealed (with effect in accordance with s. 136(4) of the amending Act) by [Finance Act 2003 \(c. 14\), s. 136\(3\)\(a\), Sch. 43 Pt. 3\(1\)](#)

50 Worker treated as receiving earnings from employment

- (1) If, in the case of an engagement to which this Chapter applies, in any tax year—

Status: Point in time view as at 05/12/2005.

Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Part 2. (See end of Document for details)

- (a) the conditions specified in section 51, 52 or 53 are met in relation to the intermediary, and
- (b) the worker, or an associate of the worker—
 - (i) receives from the intermediary, directly or indirectly, a payment or benefit that is not employment income, or
 - (ii) has rights which entitle, or which in any circumstances would entitle, the worker or associate to receive from the intermediary, directly or indirectly, any such payment or benefit,
 the intermediary is treated as making to the worker, and the worker is treated as receiving, in that year a payment which is to be treated as earnings from an employment (“the deemed employment payment”).
- (2) A single payment is treated as made in respect of all engagements in relation to which the intermediary is treated as making a payment to the worker in the tax year.
- (3) The deemed employment payment is treated as made at the end of the tax year, unless section 57 applies (earlier date of deemed payment in certain cases).
- (4) In this Chapter “the relevant engagements”, in relation to a deemed employment payment, means the engagements mentioned in subsection (2).

51 Conditions of liability where intermediary is a company

- (1) Where the intermediary is a company the conditions are that the intermediary is not an associated company of the client that falls within subsection (2) and either—
 - (a) the worker has a material interest in the intermediary, or
 - (b) the payment or benefit mentioned in section 50(1)(b)—
 - (i) is received or receivable by the worker directly from the intermediary, and
 - (ii) can reasonably be taken to represent remuneration for services provided by the worker to the client.
- (2) An associated company of the client falls within this subsection if it is such a company by reason of the intermediary and the client being under the control—
 - (a) of the worker, or
 - (b) of the worker and other persons.
- (3) A worker is treated as having a material interest in a company if—
 - (a) the worker, alone or with one or more associates of the worker, or
 - (b) an associate of the worker, with or without other such associates, has a material interest in the company.
- (4) For this purpose a material interest means—
 - (a) beneficial ownership of, or the ability to control, directly or through the medium of other companies or by any other indirect means, more than 5% of the ordinary share capital of the company; or
 - (b) possession of, or entitlement to acquire, rights entitling the holder to receive more than 5% of any distributions that may be made by the company; or
 - (c) where the company is a close company, possession of, or entitlement to acquire, rights that would in the event of the winding up of the company, or in any other circumstances, entitle the holder to receive more than 5% of the assets that would then be available for distribution among the participants.

Status: Point in time view as at 05/12/2005.

Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Part 2. (See end of Document for details)

(5) In subsection (4)(c) “participator” has the meaning given by section 417(1) of ICTA.

52 Conditions of liability where intermediary is a partnership

- (1) Where the intermediary is a partnership the conditions are as follows.
- (2) In relation to any payment or benefit received or receivable by the worker as a member of the partnership the conditions are—
- (a) that the worker, alone or with one or more relatives, is entitled to 60% or more of the profits of the partnership; or
 - (b) that most of the profits of the partnership concerned derive from the provision of services under engagements to which this Chapter applies—
 - (i) to a single client, or
 - (ii) to a single client together with associates of that client; or
 - (c) that under the profit sharing arrangements the income of any of the partners is based on the amount of income generated by that partner by the provision of services under engagements to which this Chapter applies.

In paragraph (a) “relative” means [^{F15}spouse or civil partner] , parent or child or remoter relation in the direct line, or brother or sister.

- (3) In relation to any payment or benefit received or receivable by the worker otherwise than as a member of the partnership, the conditions are that the payment or benefit—
- (a) is received or receivable by the worker directly from the intermediary, and
 - (b) can reasonably be taken to represent remuneration for services provided by the worker to the client.

Textual Amendments

F15 Words in s. 52(2) substituted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), 138

53 Conditions of liability where intermediary is an individual

Where the intermediary is an individual the conditions are that the payment or benefit—

- (a) is received or receivable by the worker directly from the intermediary, and
- (b) can reasonably be taken to represent remuneration for services provided by the worker to the client.

The deemed employment payment

54 Calculation of deemed employment payment

- (1) The amount of the deemed employment payment for a tax year (“the year”) is the amount resulting from the following steps—

Step 1

Status: Point in time view as at 05/12/2005.

Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Part 2. (See end of Document for details)

Find (applying section 55) the total amount of all payments and benefits received by the intermediary in the year in respect of the relevant engagements, and reduce that amount by 5%.

Step 2

Add (applying that section) the amount of any payments and benefits received by the worker in the year in respect of the relevant engagements, otherwise than from the intermediary, that—

- (a) are not chargeable to income tax as employment income, and
- (b) would be so chargeable if the worker were employed by the client.

Step 3

Deduct (applying Chapters 1 to 5 of Part 5) the amount of any expenses met in the year by the intermediary that would have been deductible from the taxable earnings from the employment if—

- (a) the worker had been employed by the client, and
- (b) the expenses had been met by the worker out of those earnings.

If the result at this or any later point is nil or a negative amount, there is no deemed employment payment.

Step 4

Deduct the amount of any capital allowances in respect of expenditure incurred by the intermediary that could have been deducted from employment income under section 262 of CAA 2001 (employments and offices) if the worker had been employed by the client and had incurred the expenditure.

Step 5

Deduct any contributions made in the year for the benefit of the worker by the intermediary to a scheme approved under Chapter 1 or 4 of Part 14 of ICTA that if made by an employer for the benefit of an employee would not be chargeable to income tax as income of the employee.

This does not apply to excess contributions made and later repaid.

Step 6

Deduct the amount of any employer's national insurance contributions paid by the intermediary for the year in respect of the worker.

Step 7

Deduct the amount of any payments and benefits received in the year by the worker from the intermediary—

- (a) in respect of which the worker is chargeable to income tax as employment income, and
- (b) which do not represent items in respect of which a deduction was made under step 3.

Step 8

Status: Point in time view as at 05/12/2005.

Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Part 2. (See end of Document for details)

Assume that the result of step 7 represents an amount together with employer's national insurance contributions on it, and deduct what (on that assumption) would be the amount of those contributions.

The result is the deemed employment payment.

- (2) If [^{F16}section 61 of the Finance Act 2004] applies (sub-contractors in the construction industry: payments to be made under deduction), the intermediary is treated for the purposes of step 1 of subsection (1) as receiving the amount that would have been received had no deduction been made under that section.
- (3) In step 3 of subsection (1), the reference to expenses met by the intermediary includes—
 - (a) expenses met by the worker and reimbursed by the intermediary, and
 - (b) where the intermediary is a partnership and the worker is a member of the partnership, expenses met by the worker for and on behalf of the partnership.
- (4) In step 3 of subsection (1), the expenses deductible include the amount of any mileage allowance relief for the year which the worker would have been entitled to in respect of the use of a vehicle falling within subsection (5) if—
 - (a) the worker had been employed by the client, and
 - (b) the vehicle had not been a company vehicle (within the meaning of Chapter 2 of Part 4).
- (5) A vehicle falls within this subsection if—
 - (a) it is provided by the intermediary for the worker, or
 - (b) where the intermediary is a partnership and the worker is a member of the partnership, it is provided by the worker for the purposes of the business of the partnership.
- (6) Where, on the assumptions mentioned in paragraphs (a) and (b) of step 3 of subsection (1), the deductibility of the expenses is determined under sections 337 to 342 (travel expenses), the duties performed under the relevant engagements are treated as duties of a continuous employment with the intermediary.
- (7) In step 7 of subsection (1), the amounts deductible include any payments received in the year from the intermediary that—
 - (a) are exempt from income tax by virtue of section 229 or 233 (mileage allowance payments and passenger payments), and
 - (b) do not represent items in respect of which a deduction was made under step 3.
- (8) For the purposes of subsection (1) any necessary apportionment is to be made on a just and reasonable basis of amounts received by the intermediary that are referable—
 - (a) to the services of more than one worker, or
 - (b) partly to the services of the worker and partly to other matters.

Textual Amendments

F16 Words in s. 54(2) substituted (with effect in accordance with s. 77 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 12 para. 17\(2\)](#)

Status: Point in time view as at 05/12/2005.

Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Part 2. (See end of Document for details)

Modifications etc. (not altering text)

- C3** S. 54(1) applied in part (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Pension Protection Fund \(Tax\) \(2005-06\) Regulations 2005 \(S.I. 2005/1907\)](#), regs. 1(1), 13

55 Application of rules relating to earnings from employment

- (1) The following provisions apply in relation to the calculation of the deemed employment payment.
- (2) A “payment or benefit” means anything that, if received by an employee for performing the duties of an employment, would be earnings from the employment.
- (3) The amount of a payment or benefit is taken to be—
 - (a) in the case of a payment or cash benefit, the amount received, and
 - (b) in the case of a non-cash benefit, the cash equivalent of the benefit.
- (4) The cash equivalent of a non-cash benefit is taken to be—
 - (a) the amount that would be earnings if the benefit were earnings from an employment, or
 - (b) in the case of living accommodation, whichever is the greater of that amount and the cash equivalent determined in accordance with section 398(2).
- (5) A payment or benefit is treated as received—
 - (a) in the case of a payment or cash benefit, when payment is made of or on account of the payment or benefit;
 - (b) in the case of a non-cash benefit that is calculated by reference to a period within the tax year, at the end of that period;
 - (c) in the case of a non-cash benefit that is not so calculated, when it would have been treated as received for the purposes of Chapter 4 or 5 of this Part (see section 19 or 32) if—
 - (i) the worker had been an employee, and
 - (ii) the benefit had been provided by reason of the employment.

56 Application of Income Tax Acts in relation to deemed employment

- (1) The Income Tax Acts (in particular, the PAYE provisions) apply in relation to the deemed employment payment as follows.
- (2) They apply as if—
 - (a) the worker were employed by the intermediary, and
 - (b) the relevant engagements were undertaken by the worker in the course of performing the duties of that employment.
- (3) The deemed employment payment is treated in particular—
 - (a) as taxable earnings from the employment for the purpose of securing that any deductions under Chapters 2 to 6 of Part 5 do not exceed the deemed employment payment; and
 - (b) as taxable earnings from the employment for the purposes of section 232.
- (4) The worker is not chargeable to tax in respect of the deemed employment payment if, or to the extent that, by reason of any combination of the factors mentioned in subsection (5), the worker would not be chargeable to tax if—

Status: Point in time view as at 05/12/2005.

Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Part 2. (See end of Document for details)

- (a) the client employed the worker,
 - (b) the worker performed the services in the course of that employment, and
 - (c) the deemed employment payment were a payment by the client of earnings from that employment.
- (5) The factors are—
- (a) the worker being resident, ordinarily resident or domiciled outside the United Kingdom,
 - (b) the client being resident or ordinarily resident outside the United Kingdom, and
 - (c) the services in question being provided outside the United Kingdom.
- (6) Where the intermediary is a partnership or unincorporated association, the deemed employment payment is treated as received by the worker in the worker's personal capacity and not as income of the partnership or association.
- (7) Where—
- (a) the worker is resident in the United Kingdom, [^{F17} and]
 - (b) the services in question are provided in the United Kingdom, ^{F18} ...
 - ^{F18}(c)
- the intermediary is treated as having a place of business in the United Kingdom, whether or not it in fact does so.
- (8) The deemed employment payment is treated as relevant earnings of the worker for the purposes of section 644 of ICTA (relevant earnings for purposes of permissible pension contributions).

Textual Amendments

F17 Words in s. 56(7)(a) inserted (with effect in accordance with s. 136(4) of the amending Act) by Finance Act 2003 (c. 14), s. 136(3)(b)(i)

F18 S. 56(7)(c) and word repealed (with effect in accordance with s. 136(4) of the amending Act) by Finance Act 2003 (c. 14), s. 136(3)(b)(ii), Sch. 43 Pt. 3(1)

Supplementary provisions

57 Earlier date of deemed employment payment in certain cases

- (1) If in any tax year—
- (a) a deemed employment payment is treated as made, and
 - (b) before the date on which the payment would be treated as made under section 50(2) any relevant event (as defined below) occurs in relation to the intermediary,
- the deemed employment payment for that year is treated as having been made immediately before that event or, if there is more than one, immediately before the first of them.
- (2) Where the intermediary is a company the following are relevant events—
- (a) the company ceasing to trade;

Status: Point in time view as at 05/12/2005.

Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Part 2. (See end of Document for details)

- (b) where the worker is a member of the company, the worker ceasing to be such a member;
 - (c) where the worker holds an office with the company, the worker ceasing to hold such an office;
 - (d) where the worker is employed by the company, the worker ceasing to be so employed.
- (3) Where the intermediary is a partnership the following are relevant events—
- (a) the dissolution of the partnership or the partnership ceasing to trade or a partner ceasing to act as such;
 - (b) where the worker is employed by the partnership, the worker ceasing to be so employed.
- (4) Where the intermediary is an individual and the worker is employed by the intermediary, it is a relevant event if the worker ceases to be so employed.
- (5) The fact that the deemed employment payment is treated as made before the end of the tax year does not affect what receipts and other matters are taken into account in calculating its amount.

58 Relief in case of distributions by intermediary

- (1) A claim for relief may be made under this section where the intermediary—
- (a) is a company,
 - (b) is treated as making a deemed employment payment in any tax year, and
 - (c) either in that tax year (whether before or after that payment is treated as made), or in a subsequent tax year, makes a distribution (a “relevant distribution”).
- (2) A claim for relief under this section must be made—
- (a) by the intermediary by notice to ^[F19]an officer of Revenue and Customs], and
 - (b) within 5 years after the 31st January following the tax year in which the distribution is made.
- (3) If on a claim being made ^[F19]an officer of Revenue and Customs] ^[F20]is] satisfied that relief should be given in order to avoid a double charge to tax, ^[F21]the officer] must direct the giving of such relief by way of amending any assessment, by discharge or repayment of tax, or otherwise, as appears to ^[F21]the officer] appropriate.
- (4) Relief under this section is given by setting the amount of the deemed employment payment against the relevant distribution so as to reduce the distribution.
- (5) In the case of more than one relevant distribution, ^[F19]an officer of Revenue and Customs] must exercise the power conferred by this section so as to secure that so far as practicable relief is given by setting the amount of a deemed employment payment—
- (a) against relevant distributions of the same tax year before those of other years,
 - (b) against relevant distributions received by the worker before those received by another person, and
 - (c) against relevant distributions of earlier years before those of later years.
- (6) Where the amount of a relevant distribution is reduced under this section, the amount of any associated tax credit is reduced accordingly.

Status: Point in time view as at 05/12/2005.

Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Part 2. (See end of Document for details)

Textual Amendments

- F19** Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\), s. 53\(1\), Sch. 4 para. 102\(1\)](#); S.I. 2005/1126, art. 2(2)(h)
- F20** Word in s. 58(3) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\), s. 53\(1\), Sch. 4 para. 105](#); S.I. 2005/1126, art. 2(2)(h)
- F21** Words in s. 58(3) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\), s. 53\(1\), Sch. 4 para. 103\(1\)\(a\)](#); S.I. 2005/1126, art. 2(2)(h)

59 Provisions applicable to multiple intermediaries

- (1) The provisions of this section apply where in the case of an engagement to which this Chapter applies the arrangements involve more than one relevant intermediary.
- (2) All relevant intermediaries in relation to the engagement are jointly and severally liable, subject to subsection (3), to account for any amount required under the PAYE provisions to be deducted from a deemed employment payment treated as made by any of them—
 - (a) in respect of that engagement, or
 - (b) in respect of that engagement together with other engagements.
- (3) An intermediary is not so liable if it has not received any payment or benefit in respect of that engagement or any such other engagement as is mentioned in subsection (2)(b).
- (4) Subsection (5) applies where a payment or benefit has been made or provided, directly or indirectly, from one relevant intermediary to another in respect of the engagement.
- (5) In that case, the amount taken into account in relation to any intermediary in step 1 or step 2 of section 54(1) is reduced to such extent as is necessary to avoid double-counting having regard to the amount so taken into account in relation to any other intermediary.
- (6) Except as provided by subsections (2) to (5), the provisions of this Chapter apply separately in relation to each relevant intermediary.
- (7) In this section “relevant intermediary” means an intermediary in relation to which the conditions specified in section 51, 52 or 53 are met.

60 Meaning of “associate”

- (1) In this Chapter “associate”—
 - (a) in relation to an individual, has the meaning given by section 417(3) and (4) of ICTA, subject to the following provisions of this section;
 - (b) in relation to a company, means a person connected with the company; and
 - (c) in relation to a partnership, means any associate of a member of the partnership.
- (2) Where an individual has an interest in shares or obligations of the company as a beneficiary of an employee benefit trust, the trustees are not regarded as associates of the individual by reason only of that interest except in the following circumstances.
- (3) The exception is where—

Status: Point in time view as at 05/12/2005.

Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Part 2. (See end of Document for details)

- (a) the individual, either alone or with any one or more associates of the individual, or
 - (b) any associate of the individual, with or without other such associates,
- has at any time on or after 14th March 1989 been the beneficial owner of, or able (directly or through the medium of other companies or by any other indirect means) to control more than 5% of the ordinary share capital of the company.
- (4) In subsection (3) “associate” does not include the trustees of an employee benefit trust as a result only of the individual’s having an interest in shares or obligations of the trust.
 - (5) Sections 549 to 554 (attribution of interests in companies to beneficiaries of employee benefit trusts) apply for the purposes of subsection (3) as they apply for the purposes of the provisions listed in section 549(2).
 - (6) In this section “employee benefit trust” has the meaning given by sections 550 and 551.

61 Interpretation

- (1) In this Chapter—
 - “associate” has the meaning given by section 60;
 - “associated company” has the meaning given by section 416 of ICTA;
 - “business” means any trade, profession or vocation and includes a [^{F22}UK property business or] Schedule A business;
 - “company” means a body corporate or unincorporated association, and does not include a partnership;
 - “employer’s national insurance contributions” means secondary Class 1 or Class 1A national insurance contributions;
 - “engagement to which this Chapter applies” has the meaning given by section 49(5);
 - “national insurance contributions” means contributions under Part 1 of SSCBA 1992 or Part 1 of SSCB(NI)A 1992;
 - “PAYE provisions” means the provisions of Part 11 or PAYE regulations;
 - “the relevant engagements” has the meaning given by section 50(4).
- (2) References in this Chapter to payments or benefits received or receivable from a partnership or unincorporated association include payments or benefits to which a person is or may be entitled in the person’s capacity as a member of the partnership or association.
- (3) For the purposes of this Chapter—
 - (a) anything done by or in relation to an associate of an intermediary is treated as done by or in relation to the intermediary, and
 - (b) a payment or other benefit provided to a member of an individual’s family or household is treated as provided to the individual.
- (4) For the purposes of this Chapter a man and a woman living together as husband and wife are treated as if they were married to each other.
- [^{F23}(5) For the purposes of this Chapter two people of the same sex living together as if they were civil partners of each other are treated as if they were civil partners of each other.

Status: Point in time view as at 05/12/2005.

Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Part 2. (See end of Document for details)

For the purposes of this Chapter, two people of the same sex are to be regarded as living together as if they were civil partners if, but only if, they would be regarded as living together as husband and wife were they instead two people of the opposite sex.]

Textual Amendments

F22 Words in s. 61(1) inserted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 586](#) (with [Sch. 2](#))

F23 S. 61(5) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), [139](#)

Status:

Point in time view as at 05/12/2005.

Changes to legislation:

There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Part 2.