



Income Tax (Earnings and Pensions) Act 2003

2003 CHAPTER 1

PART 2

EMPLOYMENT INCOME: CHARGE TO TAX

CHAPTER 5

[^{F1}TAXABLE EARNINGS: REMITTANCE BASIS RULES AND RULES FOR NON-UK RESIDENT EMPLOYEES]

[^{F2}Remittance basis rules for [^{F3}employees outside section 26]]

Textual Amendments

- F2** S. 21 cross-heading substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 12](#)
- F3** Words in cross-heading substituted (with effect in accordance with Sch. 46 para. 25 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 7\(2\)\(b\)](#) (with [Sch. 46 para. 26](#))

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—

Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Cross Heading: Remittance basis rules for employees outside section 26. (See end of Document for details)

- (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 ^{F4}remittance basis applies and employee ^{F5}outside section 26]]

- (1) This section applies to general earnings for a tax year^{F6}, to the extent that they are chargeable overseas earnings for that year, if—
- (a) section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the employee for that year, and
 - ^{F7}(b) the employee does not meet the requirement of section 26A 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.
- ^{F8}(3) Subsection (2) applies whether or not the employment is held when the earnings are remitted.]
- (4) Section 23 applies for calculating how much of an employee’s general earnings are “chargeable overseas earnings” for a tax year ^{F9}....
- (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 ^{F10}section 15].
- ^{F11}(6) See Chapter A1 of Part 14 of ITA 2007 for the meaning of “remitted to the United Kingdom” etc.
- ^{F12}(7) Section 15(1) does not apply to general earnings within subsection (1).]]

Textual Amendments

- F4** Words in s. 22 heading substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 14\(7\)](#) (with [Sch. 7 para. 82](#))
- F5** Words in s. 22 heading substituted (with effect in accordance with Sch. 46 para. 25 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 7\(2\)\(a\)](#) (with [Sch. 46 para. 26](#))
- F6** Words in s. 22(1) substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 14\(2\)](#) (with [Sch. 7 para. 82](#))
- F7** S. 22(1)(b) substituted (with effect in accordance with Sch. 46 para. 25 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 7\(1\)](#) (with [Sch. 46 para. 26](#))
- F8** S. 22(3) substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 14\(3\)](#) (with [Sch. 7 para. 82](#))
- F9** Words in s. 22(4) omitted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 14\(4\)](#) (with [Sch. 7 para. 82](#))

Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Cross Heading: Remittance basis rules for employees outside section 26. (See end of Document for details)

- F10** Words in s. 22(5)(b) substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 14\(5\)](#) (with [Sch. 7 para. 82](#))
- F11** S. 22(6)(7) inserted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 14\(6\)](#) (with [Sch. 7 para. 82](#))
- F12** S. 22(7) substituted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 59](#)

Modifications etc. (not altering text)

- C3** S. 22 applied by 2007 c. 3, s. 809F(2) (as inserted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 1](#) (with [s. 809F\(6\)](#)))

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 ^{F13}[section] 22.

^{F14}(1A) But none of an employee's general earnings from an employment for a tax year are to be “chargeable overseas earnings” if section 24A applies in relation to the employment for the tax year.]

- (2) General earnings for a tax year are “overseas earnings” for that year if—
- ^{F15}(a) section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the employee for that year,
 - ^{F16}(aa) the employee does not meet the requirement of section 26A for that year,]]
 - (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—

^{F17}Step 1

Identify—

- (a) in the case of a tax year that is not a split year, the full amount of the overseas earnings for that year, and
- (b) in the case of a split year, so much of the full amount of the overseas earnings for that year as is attributable to the UK part of the year.]

Step 2

Subtract any amounts that would (assuming they were taxable earnings) be allowed to be deducted from ^{F18}[the earnings identified under step 1] under—

- (a) section 232 or Part 5 (deductions allowed from earnings),
- ^{F19}(b) sections 188 to 194 of FA 2004 (contributions to registered pension 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.

Changes to legislation: *There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Cross Heading: Remittance basis rules for employees outside section 26. (See end of Document for details)*

[^{F20}(4) Any attribution required for the purposes of step 1 or step 2 in subsection (3) is to be done on a just and reasonable basis.]

Textual Amendments

- F13** Word in s. 23(1) substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), **Sch. 7 para. 15(2)**
- F14** S. 23(1A) inserted (with effect in accordance with Sch. 3 para. 7(1) of the amending Act) by [Finance Act 2014 \(c. 26\)](#), **Sch. 3 para. 2**
- F15** S. 23(2)(a)(aa) substituted for s. 23(2)(a) (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), **Sch. 7 para. 15(3)**
- F16** S. 23(2)(aa) substituted (with effect in accordance with Sch. 46 para. 25 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), **Sch. 46 para. 8** (with [Sch. 46 para. 26](#))
- F17** Words in s. 23(3) substituted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), **Sch. 45 para. 60(2)**
- F18** Words in s. 23(3) substituted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), **Sch. 45 para. 60(3)**
- F19** Words in s. 23(3) substituted (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), s. 284(1), **Sch. 35 para. 55** (with [Sch. 36](#))
- F20** S. 23(4) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), **Sch. 45 para. 60(4)**

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.
- [^{F21}(2A) If the tax year is a split year as respects the employee, subsection (2) has effect as if for “the aggregate earnings for that year from all the employments concerned” there were substituted “so much of the aggregate earnings for that year from all the employments concerned as is attributable to the UK part of that year ”.]
- (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).

Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Cross Heading: Remittance basis rules for employees outside section 26. (See end of Document for details)

[^{F22}(3A) Any attribution required for the purposes of subsection (2A) is to be done on a just and reasonable basis.]

(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 [^{F23}section 995 of ITA 2007] (in accordance with section 719 of this Act), and
- (b) in rule C “control” means control within the meaning [^{F24}given by sections 450 and 451 of CTA 2010] (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 [^{F25}section 15(1)].

Textual Amendments

- F21** S. 24(2A) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\), Sch. 45 para. 61\(2\)](#)
- F22** S. 24(3A) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\), Sch. 45 para. 61\(3\)](#)
- F23** Words in s. 24(6)(a) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 428](#) (with [Sch. 2](#))
- F24** Words in s. 24(6)(b) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 379](#) (with [Sch. 2](#))
- F25** Words in s. 24(7) substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\), Sch. 7 para. 16](#)

[^{F26}**24A Restrictions on remittance basis**

(1) This section applies in relation to an employment (“the relevant employment”) for a tax year (“the relevant tax year”) if—

Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Cross Heading: Remittance basis rules for employees outside section 26. (See end of Document for details)

- (a) one or more of the paragraphs in subsection (5) applies,
 - (b) conditions 1 to 4 are met, and
 - (c) condition 5 is not met.
- (2) The consequences of this section applying are set out in sections 23(1A), 41C(4A), 41H(5) and 554Z9(1A).
- (3) But, for the purpose of determining if, and the extent to which, any provision of Part 11 (PAYE), or of PAYE regulations, applies in relation to any income, the application of any provision mentioned in subsection (2) in relation to the income is to be ignored.
- (4) In this section—
- (a) “the relevant employee” means the employee in respect of the relevant employment,
 - (b) “the relevant employer” means the employer in respect of the relevant employment, and
 - (c) “UK employment” means an employment the duties of which are not performed wholly outside the United Kingdom and “UK employer” is to be read accordingly,
- and the rules in section 24(5) (“associated” persons) apply for the purposes of this section.
- (5) The paragraphs referred to in subsection (1)(a) are—
- (a) general earnings from the relevant employment which are for the relevant tax year would, apart from section 23(1A) and step 3 in section 23(3), be “chargeable overseas earnings” under section 23(3);
 - (b) employment income in respect of the relevant employment which is treated as accruing in the relevant tax year under section 41C(2) would, apart from sections 41C(4A), 41D and 41E, be “foreign” under section 41C(3);
 - (c) employment income in respect of the relevant employment which is treated as accruing in the relevant tax year under section 41H(2) would, apart from sections 41H(5), 41I and 41L, be “chargeable foreign securities income” under section 41H(3);
 - (d) section 554Z9(2) would, apart from section 554Z9(1A) and (4) and (5), apply to employment income in respect of the relevant employment which corresponds to the value of a relevant step, or a part of the value of a relevant step, which is “for” the relevant tax year as determined under section 554Z4.
- (6) Condition 1 is that the relevant employee holds a UK employment—
- (a) at a time in the relevant tax year when the relevant employee also holds the relevant employment, or
 - (b) if the relevant tax year is a split year as respects the relevant employee, at a time in the UK part of the relevant tax year when the relevant employee also holds the relevant employment.
- (7) Condition 2 is that the UK employer is the same as, or is associated with, the relevant employer.
- (8) Condition 3 is that the UK employment and the relevant employment are related to each other.

Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Cross Heading: Remittance basis rules for employees outside section 26. (See end of Document for details)

- (9) Without prejudice to the generality of subsection (8), the UK employment and the relevant employment are to be assumed to be related to each other if one or more of the following paragraphs applies—
- (a) it is reasonable to suppose that—
 - (i) the relevant employee would not hold one employment without holding the other employment, or
 - (ii) the employments will cease at the same time or one employment will cease in consequence of the other employment ceasing;
 - (b) the terms of one employment operate to any extent by reference to the other employment;
 - (c) the performance of duties of one employment is (wholly or partly) dependent upon, or otherwise linked (directly or indirectly) to, the performance of duties of the other employment;
 - (d) the duties of the employments are wholly or mainly of the same type (ignoring the fact that they may be performed (wholly or partly) in different locations);
 - (e) the duties of the employments involve (wholly or partly) the provision of goods or services to the same customers or clients;
 - (f) the relevant employee is—
 - (i) a director (as defined in section 67) of the UK employer or the relevant employer who has a material interest (as defined in section 68) in the UK employer or the relevant employer,
 - (ii) a senior employee of the UK employer or the relevant employer, or
 - (iii) one of the employees of the UK employer or the relevant employer who receives the higher or highest levels of remuneration.
- (10) In subsection (9)(f) references to the UK employer or the relevant employer include references to—
- (a) any person with which the UK employer or the relevant employer (as the case may be) is associated, and
 - (b) if the UK employer or the relevant employer (as the case may be) is a company, the following companies taken together as if they were one company—
 - (i) the UK employer or the relevant employer (as the case may be), and
 - (ii) all the companies with which the UK employer or the relevant employer (as the case may be) is associated.
- (11) The Treasury may by regulations amend this section so as to add to, reduce or modify the cases in which the UK employment and the relevant employment are to be assumed to be related to each other.
- (12) A statutory instrument containing regulations under subsection (11) may not be made unless a draft has been laid before, and approved by a resolution of, the House of Commons.
- (13) Condition 4 is that X% is less than Y%.
- (14) “X%” is given by the following formula—

$$\frac{C}{I} \times 100\%$$

See section 24B for the definitions of “C” and “I”.

Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Cross Heading: Remittance basis rules for employees outside section 26. (See end of Document for details)

- (15) “Y%” is 65% of the additional rate for the relevant tax year.
- (16) The Treasury may by regulations amend this section so as to amend the definition of “Y%”.
- (17) Condition 5 is that—
- (a) were the duties of the relevant employment to be duties of the UK employment instead, all or substantially all of them could not lawfully be performed in the relevant territory (whether on the meeting of any condition or otherwise) by virtue of any regulatory requirements imposed by or under the law of that territory, and
 - (b) were the UK duties of the UK employment to be duties of the relevant employment instead, all or substantially all of them could not lawfully be performed in the part of the United Kingdom in which they are performed (whether on the meeting of any condition or otherwise) by virtue of any regulatory requirements imposed by or under the law of that part of the United Kingdom.
- (18) In subsection (17)—
- “the relevant territory” means the territory in which the duties of the relevant employment are performed, and
- “UK duties” means duties performed in the United Kingdom.

Textual Amendments

F26 Ss. 24A, 24B inserted (17.7.2014) by [Finance Act 2014 \(c. 26\)](#), [Sch. 3 para. 3](#)

24B Definitions of “C” and “I” for the purposes of section 24A(14)

- (1) This section applies for the purposes of section 24A(14).
- (2) “C” is the total amount of credit which would be allowed under section 18(2) of TIOPA 2010 (double taxation relief by way of credit) against income tax in respect of all the employment income falling within section 24A(5)(a) to (d) were none of that income to be, as relevant—
 - (a) “chargeable overseas earnings”,
 - (b) “foreign”,
 - (c) “chargeable foreign securities income”, or
 - (d) income to which section 554Z9(2) applies.
- (3) For this purpose, assume—
 - (a) that all relief is claimed within the applicable time limit given by section 19 of TIOPA 2010, and
 - (b) that all reasonable steps are taken to minimise any amounts of tax payable as mentioned in section 33 of that Act.
- (4) “I” is the total amount of all the employment income falling within section 24A(5) (a) to (d).]

Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Cross Heading: Remittance basis rules for employees outside section 26. (See end of Document for details)

.....

Textual Amendments

F26 Ss. 24A, 24B inserted (17.7.2014) by [Finance Act 2014 \(c. 26\)](#), **Sch. 3 para. 3**

Changes to legislation:

There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Cross Heading: Remittance basis rules for employees outside section 26.