



Income Tax (Earnings and Pensions) Act 2003

2003 CHAPTER 1

PART 2

EMPLOYMENT INCOME: CHARGE TO TAX

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—
 - (a) section 21 (earnings for year when employee resident and ordinarily resident, but not domiciled, in UK, except chargeable overseas earnings),
 - (b) section 22 (chargeable overseas earnings for year when employee resident and ordinarily resident, but not domiciled, in UK),
 - (c) section 25 (UK-based earnings for year when employee resident, but not ordinarily resident, in UK),
 - (d) section 26 (foreign earnings for year when employee resident, but not ordinarily resident, in UK),
 - (e) section 27 (UK-based earnings for year when employee not resident in UK).
- (2) In this Chapter—
 - (a) sections 29 and 30 deal with the year for which general earnings are earned,

- (b) sections 31 to 34 deal with the time when general earnings are received or remitted,
 - (c) sections 35 to 37 deal with relief for delayed remittances, and
 - (d) 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).

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.
- (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.
- (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”.

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) The Board of Inland Revenue 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 Board 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.

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.
- (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.
 - (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),
 - Chapter 8 of Part 3 (taxable benefits: notional loans in respect of acquisitions of shares),
 - Chapter 9 of Part 3 (taxable benefits: disposals of shares for more than market value),
 - 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.

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—
 - (a) paid, used, or enjoyed in the United Kingdom, or
 - (b) 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) a debt for money lent to the employee in the United Kingdom, or for interest on money so lent, or
 - (b) a debt for money lent to the employee outside the United Kingdom and received in the United Kingdom, or
 - (c) a debt incurred for satisfying—
 - (i) a debt falling within paragraph (a) or (b), or
 - (ii) 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—
 - (a) 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
 - (b) 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.
- (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
 - (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.
- (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.

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;
 - (b) “ship” does not include—
 - (i) any offshore installation within the meaning of the Mineral Workings (Offshore Installations) Act 1971 (c. 61), or
 - (ii) what would be such an installation if the references in that Act to controlled waters were to any waters;
 - (c) the areas designated under section 1(7) of the Continental Shelf Act 1964 (c. 29) are treated as part of the United Kingdom.

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