



Income Tax (Earnings and Pensions) Act 2003

2003 CHAPTER 1

PART 3

EMPLOYMENT INCOME: EARNINGS AND BENEFITS ETC. TREATED AS EARNINGS

CHAPTER 12

PAYMENTS TREATED AS EARNINGS

221 Payments where employee absent because of sickness or disability

- (1) This section applies if—
 - (a) an employee is absent from work because of sickness or disability, and
 - (b) a qualifying sickness payment is made in respect of the employee's absence from work.
- (2) But this section does not apply if the qualifying sickness payment constitutes earnings from the employment by virtue of any other provision.
- (3) The qualifying sickness payment is to be treated as earnings from the employment in respect of the period of absence.
- (4) If the qualifying sickness payment is made from funds to which the employer and the employer's employees have made contributions, only the amount of the payment which it is just and reasonable to attribute to the employer's contributions is treated as earnings under this section.
- (5) In this section "qualifying sickness payment" means a payment which meets conditions A and B.
- (6) Condition A is that the payment is made—
 - (a) to the employee or to a member of the employee's family,

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- (b) to the order of such a person, or
 - (c) to the benefit of such a person.
- (7) Condition B is that the payment is made—
- (a) by reason of the employment, and
 - (b) as a result of arrangements entered into by the employer.

222 Payments by employer on account of tax where deduction not possible

- (1) This section applies if—
- (a) an employer is treated by virtue of sections 687, 689 and 693 to 700 as having made a payment of income of an employee (“the notional payment”),
 - (b) the employer is required by virtue of section 710(4) to account to the Inland Revenue for an amount of income tax (“the due amount”) in respect of the notional payment, and
 - (c) the employee does not, before the end of the period of 30 days beginning with the date on which the employer is treated as making the notional payment, make good the due amount to the employer.
- (2) The due amount is to be treated as earnings from the employment for the tax year in which the date mentioned in subsection (1)(c) falls.
- (3) In this section “employer”, in relation to any provision of sections 687, 689, 693 to 700 or 710, means the person taken to be the employer for the purposes of that provision.

It also includes a person who is treated as making a payment of PAYE income by virtue of section 689(2) (payments by person for whom employee works but who is not the employer).

223 Payments on account of director’s tax other than by the director

- (1) This section applies if in a tax year—
- (a) a person (“P”) makes a payment to another person who is employed as the director of a company,
 - (b) the payment is of, or on account of, earnings from the director’s employment,
 - (c) PAYE regulations require P to deduct an amount of income tax (“the deductible tax”),
 - (d) P deducts none, or only some, of the deductible tax, and
 - (e) either or both of the following occur—
 - (i) P accounts to the Board of Inland Revenue for some or all of the deductible tax (whether or not P has actually deducted the amount accounted for);
 - (ii) one or more persons other than P (apart from the director) account to the Board of Inland Revenue for some or all of the deductible tax.
- (2) For the purposes of this section it does not matter whether the director’s employment is held at the time when P makes the payment mentioned in subsection (1)(a) so long as it is held at some point in the tax year in which the payment is made.
- (3) References in this section to employment as a director accordingly include prospective or past employment as a director.

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- (4) The deductible tax accounted for to the Board of Inland Revenue is to be treated as earnings of the director from the director's employment for the tax year in which it is accounted for.
- (5) But if—
- (a) the deductible tax is accounted for after the director's employment has ceased, and
 - (b) the employment ceased in a tax year before the one in which the deductible tax is accounted for,
- the deductible tax is treated as earnings for the tax year in which the director's employment ceased.
- (6) The following rules apply to the calculation of the amount to be treated as earnings under this section—
- (a) any amount accounted for after the death of the director is to be disregarded;
 - (b) if P deducts some of the deductible tax, the amount treated as earnings is reduced by the amount deducted;
 - (c) if the director makes good to P or to another person some or all of the deductible tax which P or the other person accounts for, the amount treated as earnings is reduced by the amount made good.
- (7) This section does not apply if the director has no material interest in the company and either—
- (a) the director is employed as a full-time working director of the company, or
 - (b) the company is—
 - (i) non-profit-making, or
 - (ii) established for charitable purposes only.
- (8) In this section—
- “director” has the same meaning as in the benefits code (see section 67);
 - “director's employment”, in relation to a person who is employed as a director, means that employment;
 - “full-time working director” has the same meaning as in the benefits code (see section 67);
 - “material interest” has the same meaning as in the benefits code (see section 68);
 - “non-profit-making”, in relation to a company, means that—
 - (a) the company does not carry on a trade, and
 - (b) its functions do not consist wholly or mainly in the holding of investments or other property.

224 Payments to non-approved personal pension arrangements

- (1) Contributions paid by an employer under non-approved personal pension arrangements made by the employee are to be treated as earnings from the employment for the tax year in which they are paid.
- (2) Subsection (1) does not apply if or to the extent that the contributions are chargeable to income tax as the employee's income apart from this section.
- (3) For the purposes of this section—

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- (a) “personal pension arrangements” has the meaning given by section 630(1) of ICTA, and
- (b) arrangements are “non-approved” if they are not “approved” within the meaning of that section.

225 Payments for restrictive undertakings

- (1) This section applies where—
 - (a) an individual gives a restrictive undertaking in connection with the individual’s current, future or past employment, and
 - (b) a payment is made in respect of—
 - (i) the giving of the undertaking, or
 - (ii) the total or partial fulfilment of the undertaking.
- (2) It does not matter to whom the payment is made.
- (3) The payment is to be treated as earnings from the employment for the tax year in which it is made.
- (4) Subsection (3) does not apply if the payment constitutes earnings from the employment by virtue of any other provision.
- (5) A payment made after the death of the individual who gave the undertaking is treated for the purposes of this section as having been made immediately before the death.
- (6) This section applies only where—
 - (a) the earnings from the employment are general earnings to which any of the provisions mentioned in subsection (7) apply, or
 - (b) if there were general earnings from the employment they would be general earnings to which any of those provisions apply.
- (7) The provisions are—
 - (a) section 15 (earnings of employee resident, ordinarily resident and domiciled in the UK),
 - (b) section 21 (earnings of employee resident and ordinarily resident, but not domiciled, in UK, except chargeable overseas earnings),
 - (c) section 25 (UK-based earnings of employee resident but not ordinarily resident in UK), and
 - (d) section 27 (UK-based earnings of employee not resident in UK).
- (8) In this section “restrictive undertaking” means an undertaking which restricts the individual’s conduct or activities.

For this purpose it does not matter whether or not the undertaking is legally enforceable or is qualified.

226 Valuable consideration given for restrictive undertakings

- (1) In a case where—
 - (a) an individual gives a restrictive undertaking in connection with the individual’s current, future or past employment, and
 - (b) valuable consideration that is not in the form of money is provided in respect of—

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(i) the giving of the undertaking, or
(ii) the total or partial fulfilment of the undertaking,
section 225 applies as it would if a payment of an amount equal to the value of the consideration had been made instead.

(2) For this purpose—

- (a) merely assuming an obligation to make over or provide valuable property, rights or advantages is not valuable consideration, but
- (b) wholly or partially discharging such an obligation is.