



Income Tax (Earnings and Pensions) Act 2003

2003 CHAPTER 1

PART 6

EMPLOYMENT INCOME: INCOME WHICH IS NOT EARNINGS OR SHARE-RELATED

CHAPTER 1

PAYMENTS TO NON-APPROVED PENSION SCHEMES

386 Charge on payments to non-approved retirement benefits schemes

- (1) A sum paid by an employer—
 - (a) in accordance with a non-approved retirement benefits scheme, and
 - (b) with a view to the provision of relevant benefits for or in respect of an employee of the employer,counts as employment income of the employee for the relevant tax year.
- (2) The “relevant tax year” is the tax year in which the sum is paid.
- (3) Subsection (1) does not apply if or to the extent that the sum is chargeable to income tax as the employee’s income apart from this section.
- (4) But if, apart from this section, the payment of the sum would be a payment to which Chapter 3 of this Part (payments and benefits on termination of employment etc.) would apply, subsection (1) applies to the sum (and accordingly that Chapter does not apply to it).
- (5) In this Chapter—
 - (a) “employee” includes a person who is to be or has been an employee,

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- (b) section 5(1) (application to offices) does not apply, but “employee”, in relation to a company, includes any officer or director of the company and any other person taking part in the management of the affairs of the company,
 - (c) “employer” and “employment” have meanings corresponding to the meaning of “employee” given by paragraphs (a) and (b),
 - (d) “director” has the meaning given by section 612(1) of ICTA, and
 - (e) “relevant benefits” has the meaning given by that section, and section 612(2) of ICTA applies to references in this Chapter to the provision of relevant benefits as it applies to such references in Chapter 1 of Part 14 of ICTA.
- (6) For the purposes of this Chapter benefits are provided in respect of an employee if they are provided for the employee’s spouse, widow or widower, children, dependants or personal representatives.
- (7) Any liability to tax arising by virtue of this section is subject to the reliefs given under—
- (a) section 392 (relief where no benefits are paid or payable), and
 - (b) section 266A of ICTA (life assurance premiums paid by employer).

387 Meaning of “non-approved retirement benefits scheme”

- (1) In this Chapter “retirement benefits scheme” has the meaning given by section 611 of ICTA.
- (2) For the purposes of this Chapter, a retirement benefits scheme is “non-approved” unless it is—
- (a) an approved scheme,
 - (b) a relevant statutory scheme, or
 - (c) a scheme set up by a government outside the United Kingdom for the benefit of its employees or primarily for their benefit.
- (3) In this section—
- “approved scheme” has the meaning given by section 612(1) of ICTA, and
 - “relevant statutory scheme” has the meaning given by section 611A of ICTA.

388 Apportionment of payments in respect of more than one employee

- (1) If a sum within section 386 is paid for or in respect of two or more employees, part of it is treated as paid in respect of each of them.
- (2) The amount treated as paid in respect of each employee is—

$$A \times \frac{B}{C}$$

where—

A is the sum paid,

B is the amount which would have had to be paid to secure the benefits to be provided in respect of the employee in question, and

C is the total amount which would have had to be paid to secure the benefits to be provided in respect of all the employees if separate payments had been made in the case of each of them.

389 Exception: employments where earnings charged on remittance

- (1) Section 386 does not apply if in the tax year in which the sum is paid the earnings from the employment are earnings charged on remittance (or would be if there were any earnings).
- (2) In subsection (1) “earnings charged on remittance” means earnings which are taxable earnings under—
 - (a) section 22 (chargeable overseas earnings for year when employee resident and ordinarily resident, but not domiciled, in UK), or
 - (b) section 26 (foreign earnings for year when employee resident, but not ordinarily resident, in UK).

390 Exception: non-domiciled employees with foreign employers

Section 386 does not apply if—

- (a) the employee is not domiciled in the United Kingdom in the tax year in which the sum is paid,
- (b) the employment is with a foreign employer, and
- (c) on a claim made by the employee the Board of Inland Revenue are satisfied that the scheme corresponds to a scheme within section 387(2)(a), (b) or (c).

391 Exception: seafarers with overseas earnings

Section 386 does not apply if—

- (a) the sum is paid in a period that is an eligible period in relation to the employee’s employment for the purposes of Chapter 6 of Part 5 (deductions from seafarers’ earnings) (see section 378(2)), and
- (b) a deduction is allowed under section 378 from the employee’s earnings that are attributable to that period.

392 Relief where no benefits are paid or payable

- (1) An application for relief may be made to the Inland Revenue if—
 - (a) a sum is charged to tax by virtue of section 386 in respect of the provision of any benefits,
 - (b) no payment in respect of, or in substitution for, the benefits has been made, and
 - (c) an event occurs by reason of which no such payment will be made.
- (2) The application must be made within 6 years from the time when the event occurs.
- (3) The application must be made by the employee or, if the employee has died, the employee’s personal representatives.
- (4) If the Inland Revenue are satisfied that the conditions in subsection (1) are met in relation to the whole sum, they must give relief in respect of tax on it by repayment or otherwise as appropriate, unless subsection (6) applies.

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- (5) If the Inland Revenue are satisfied that the conditions in subsection (1) are met in relation to part of the sum, they may give such relief in respect of tax on it as is just and reasonable, unless subsection (6) applies.
- (6) This subsection applies if—
- (a) the reason why no payment has been made in respect of, or in substitution for, the benefits, or
 - (b) the event by reason of which there will be no such payment,
- is a reduction or cancellation of the employee's rights in respect of the benefits, or part of the benefits, as a consequence of a pension sharing order or provision.
- (7) In subsection (6) “pension sharing order or provision” means any such order or provision as is mentioned in—
- (a) section 28(1) of WRPA 1999 (rights under pension sharing arrangements), or
 - (b) Article 25(1) of WRP(NI)O 1999 (provision for Northern Ireland corresponding to section 28(1) of WRPA 1999).