



# Income Tax (Earnings and Pensions) Act 2003

## 2003 CHAPTER 1

### PART 6

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

### CHAPTER 3

PAYMENTS AND BENEFITS ON TERMINATION OF EMPLOYMENT ETC.

#### *Preliminary*

#### **401 Application of this Chapter**

- (1) This Chapter applies to payments and other benefits which are received directly or indirectly in consideration or in consequence of, or otherwise in connection with—
  - (a) the termination of a person's employment,
  - (b) a change in the duties of a person's employment, or
  - (c) a change in the earnings from a person's employment,by the person, or the person's spouse, blood relative, dependant or personal representatives.
- (2) Subsection (1) is subject to subsection (3) and sections 405 to 413 (exceptions for certain payments and benefits).
- (3) This Chapter does not apply to any payment or other benefit chargeable to income tax apart from this Chapter.
- (4) For the purposes of this Chapter—

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- (a) a payment or other benefit which is provided on behalf of, or to the order of, the employee or former employee is treated as received by the employee or former employee, and
- (b) in relation to a payment or other benefit—
  - (i) any reference to the employee or former employee is to the person mentioned in subsection (1), and
  - (ii) any reference to the employer or former employer is to be read accordingly.

#### **402 Meaning of “benefit”**

- (1) In this Chapter “benefit” includes anything in respect of which, were it received for performance of the duties of the employment, an amount—
- (a) would be taxable earnings from the employment, or
  - (b) would be such earnings apart from an earnings-only exemption.

This is subject to subsections (2) to (4).

- (2) In this Chapter “benefit” does not include a benefit received in connection with the termination of a person’s employment that is a benefit which, were it received for performance of the duties of the employment, would fall within—
- (a) section 239(4) (exemption of benefits connected with taxable cars and vans and exempt heavy goods vehicles), so far as that section applies to a benefit connected with a car or van,
  - (b) section 269 (exemption where benefits or money obtained in connection with taxable car or van or exempt heavy goods vehicle),
  - (c) section 319 (mobile telephones), or
  - (d) section 320 (limited exemption for computer equipment).
- (3) In this Chapter “benefit” does not include a benefit received in connection with any change in the duties of, or earnings from, a person’s employment to the extent that it is a benefit which, were it received for performance of the duties of the employment, would fall within section 271(1) (limited exemption of removal benefits and expenses).
- (4) The right to receive a payment or benefit is not itself a benefit for the purposes of this Chapter.

#### *Payments and benefits treated as employment income*

#### **403 Charge on payment or other benefit**

- (1) The amount of a payment or benefit to which this Chapter applies counts as employment income of the employee or former employee for the relevant tax year if and to the extent that it exceeds the £30,000 threshold.
- (2) In this section “the relevant tax year” means the tax year in which the payment or other benefit is received.
- (3) For the purposes of this Chapter—
- (a) a cash benefit is treated as received—
    - (i) when it is paid or a payment is made on account of it, or

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- (ii) when the recipient becomes entitled to require payment of or on account of it, and
  - (b) a non-cash benefit is treated as received when it is used or enjoyed.
- (4) For the purposes of this Chapter the amount of a payment or benefit in respect of an employee or former employee exceeds the £30,000 threshold if and to the extent that, when it is aggregated with other such payments or benefits to which this Chapter applies, it exceeds £30,000 according to the rules in section 404 (how the £30,000 threshold applies).
- (5) If it is received after the death of the employee or former employee—
  - (a) the amount of a payment or benefit to which this Chapter applies counts as the employment income of the personal representatives for the relevant year if or to the extent that it exceeds £30,000 according to the rules in section 404, and
  - (b) the tax is accordingly to be assessed and charged on them and is a debt due from and payable out of the estate.
- (6) In this Chapter references to the taxable person are to the person in relation to whom subsection (1) or (5) provides for an amount to count as employment income.

#### **404 How the £30,000 threshold applies**

- (1) For the purpose of the £30,000 threshold in section 403(4) and (5), the payments and other benefits provided in respect of an employee or former employee which are to be aggregated are those provided—
  - (a) in respect of the same employment,
  - (b) in respect of different employments with the same employer, and
  - (c) in respect of employments with employers who are associated.
- (2) For this purpose employers are “associated” if on a termination or change date—
  - (a) one of them is under the control of the other, or
  - (b) one of them is under the control of a third person who on that termination or change date or another such date controls or is under the control of the other.
- (3) In subsection (2)—
  - (a) references to an employer, or to a person controlling or controlled by an employer, include the successors of the employer or person, and
  - (b) “termination or change date” means a date on which a termination or change occurs in connection with which a payment or other benefit to which this Chapter applies is received in respect of the employee or former employee.
- (4) If payments and other benefits are received in different tax years, the £30,000 is set against the amount of payments and other benefits received in earlier years before those received in later years.
- (5) If more than one payment or other benefit is received in a tax year in which the threshold is exceeded—
  - (a) the £30,000 (or the balance of it) is set against the amounts of cash benefits as they are received, and
  - (b) any balance at the end of the year is set against the aggregate amount of non-cash benefits received in the year.

### *Exceptions and reductions*

#### **405 Exception for certain payments exempted when received as earnings**

- (1) This Chapter does not apply to any payment received in connection with the termination of a person's employment which, were it received for the performance of the duties of the employment, would fall within section 308 (exemption of contributions to approved personal pension arrangements).
- (2) This Chapter does not apply to any payment received in connection with any change in the duties of, or earnings from, a person's employment to the extent that, were it received for the performance of the duties of the employment, it would fall within section 271(1) (limited exemption of removal benefits and expenses).

#### **406 Exception for death or disability payments and benefits**

This Chapter does not apply to a payment or other benefit provided—

- (a) in connection with the termination of employment by the death of an employee, or
- (b) on account of injury to, or disability of, an employee.

#### **407 Exception for payments and benefits under tax-exempt pension schemes**

- (1) This Chapter does not apply to a payment or other benefit provided under a tax-exempt pension scheme if—
  - (a) the payment or other benefit is by way of compensation—
    - (i) for loss of employment, or
    - (ii) for loss or diminution of earnings, and the loss or diminution is due to ill-health, or
  - (b) the payment or other benefit is properly regarded as earned by past service.
- (2) For this purpose “tax-exempt pension scheme” means—
  - (a) a retirement benefits scheme which is—
    - (i) an approved scheme,
    - (ii) a relevant statutory scheme, or
    - (iii) a scheme set up by a government outside the United Kingdom for the benefit of its employees or primarily for their benefit, or
  - (b) any such scheme or fund as was described in section 221(1) and (2) of ICTA 1970 (schemes to which payments could be made without charge to tax under section 220 of ICTA 1970).
- (3) In this section—
 

“approved scheme” has the meaning given by section 612(1) of ICTA,  
 “relevant statutory scheme” has the meaning given by section 611A of ICTA, and  
 “retirement benefits scheme” has the meaning given by section 611 of ICTA.

#### **408 Exception for contributions to tax-exempt pension schemes**

- (1) This Chapter does not apply to a contribution to a tax-exempt pension scheme or approved personal pension arrangements if the contribution is made—
  - (a) as part of an arrangement relating to the termination of a person’s employment, and
  - (b) in order to provide benefits for the person in accordance with the terms of the scheme or approved personal pension arrangements.
- (2) For this purpose—
  - “tax-exempt pension scheme” has the same meaning as in section 407(2), and
  - “approved” and “personal pension arrangements” have the meaning given by section 630(1) of ICTA.

#### **409 Exception for payments and benefits in respect of employee liabilities and indemnity insurance**

- (1) This Chapter does not apply to a payment or other benefit received by an individual if or to the extent that—
  - (a) in the case of a cash benefit, it is provided for meeting the cost of a deductible amount, or
  - (b) in the case of a non-cash benefit, it is or represents a benefit equivalent to the cost of paying a deductible amount.
- (2) For the purposes of this section “deductible amount” means an amount which meets conditions A to C.
- (3) Condition A is that the amount is paid by the individual.
- (4) Condition B is that a deduction for the amount would have been allowed under section 346 from earnings from the relevant employment, if the individual still held the employment when the amount was paid.
- (5) Condition C is that the amount is paid at a time which falls within the run-off period.
- (6) In this section and section 410—
  - “relevant employment” means the employment mentioned in section 401(1);
  - “run-off period” means the period which—
    - (a) starts with the day on which the relevant employment terminated, and
    - (b) ends with the last day of the sixth tax year following the tax year in which the period started.

#### **410 Exception for payments and benefits in respect of employee liabilities and indemnity insurance: individual deceased**

- (1) This Chapter does not apply to a payment or other benefit received by an individual’s personal representatives if or to the extent that—
  - (a) in the case of a cash benefit, it is provided for meeting the cost of a deductible amount, or
  - (b) in the case of a non-cash benefit, it is or represents a benefit equivalent to the cost of paying a deductible amount.

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- (2) For the purposes of this section “deductible amount” means an amount which meets conditions A to C.
- (3) Condition A is that the amount is paid by the individual’s personal representatives.
- (4) Condition B is that a deduction for the amount would have been allowed under section 346 from earnings from the relevant employment, if—
  - (a) the individual had not died,
  - (b) the amount had been paid by the individual, and
  - (c) the individual still held the employment when the amount was paid.
- (5) Condition C is that the amount is paid at a time which falls within the run-off period.

#### **411 Exception for payments and benefits for forces**

This Chapter does not apply to a payment or other benefit provided—

- (a) under a Royal Warrant, Queen’s Order or Order in Council relating to members of Her Majesty’s forces, or
- (b) by way of payment in commutation of annual or other periodical payments authorised by any such Warrant or Order.

#### **412 Exception for payments and benefits provided by foreign governments etc.**

- (1) This Chapter does not apply to—
  - (a) a benefit provided under a pension scheme administered by the government of an overseas territory within the Commonwealth, or
  - (b) a payment of compensation for loss of career, interruption of service or disturbance made—
    - (i) in connection with any change in the constitution of any such overseas territory, and
    - (ii) to a person who was employed in the public service of the territory before the change.
- (2) References in subsection (1) to—
  - (a) an overseas territory,
  - (b) the government of such a territory, and
  - (c) employment in the public service of such a territory,
 have the meanings given in section 615 of ICTA.

#### **413 Exception in certain cases of foreign service**

- (1) This Chapter does not apply if the service of the employee or former employee in the employment in respect of which the payment or other benefit is received included foreign service comprising—
  - (a) three-quarters or more of the whole period of service ending with the date of the termination or change in question, or
  - (b) if the period of service ending with that date exceeded 10 years, the whole of the last 10 years, or
  - (c) if the period of service ending with that date exceeded 20 years, one-half or more of that period, including any 10 of the last 20 years.

- (2) In subsection (1) “foreign service” means service to which subsection (3), (4) or (6) applies.
- (3) This subsection applies to service in or after the tax year 2003-04 such that—
- (a) the earnings from the employment were not general earnings to which section 15 or 21 applies (earnings for year when employee resident and ordinarily resident in UK), or would not have been had there been any, or
  - (b) a deduction equal to the whole amount of the earnings from the employment was or would have been allowable under Chapter 6 of Part 5 (deductions from seafarers' earnings).
- (4) This subsection applies to service before the tax year 2003-04 and after the tax year 1973-74 such that—
- (a) the emoluments from the employment were not chargeable under Case I of Schedule E, or would not have been so chargeable had there been any, or
  - (b) a deduction equal to the whole amount of the emoluments from the employment was or would have been allowable under a foreign earnings deduction provision.
- (5) In subsection (4) “foreign earnings deduction provision” means—
- (a) paragraph 1 of Schedule 2 to FA 1974,
  - (b) paragraph 1 of Schedule 7 to FA 1977, or
  - (c) section 192A or 193(1) of ICTA.
- (6) This subsection applies to service before the tax year 1974-75 such that tax was not chargeable in respect of the emoluments of the employment—
- (a) in the tax year 1956-57 or later, under Case I of Schedule E, or
  - (b) in earlier tax years, under Schedule E,
- or it would not have been so chargeable had there been any such emoluments.

#### **414 Reduction in other cases of foreign service**

- (1) This section applies if—
- (a) the service of the employee or former employee in the employment in respect of which the payment or other benefit is received includes foreign service, and
  - (b) section 413 (exception in certain cases of foreign service) does not apply.
- (2) The taxable person may claim relief in the form of a proportionate reduction of the amount that would otherwise count as employment income under this Chapter.
- (3) The proportion is that which the length of the foreign service bears to the whole length of service in the employment before the date of the termination or change in question.
- (4) A person's entitlement to relief under this section is limited as mentioned in subsection (5) if the person is entitled—
- (a) to deduct, retain or satisfy income tax out of a payment which the person is liable to make, or
  - (b) to charge any income tax against another person.
- (5) The relief must not reduce the amount of income tax for which the person is liable below the amount the person is entitled so to deduct, retain, satisfy or charge.
- (6) In this section “foreign service” has the same meaning as in section 413(2).

*General and supplementary provisions*

**415 Valuation of benefits**

- (1) In the case of a cash benefit, for the purposes of this Chapter the amount of a payment or other benefit is taken to be the amount received.
- (2) In the case of a non-cash benefit, for the purposes of this Chapter the amount of a payment or other benefit is taken to be the greater of—
  - (a) the amount of earnings (as defined in Chapter 1 of Part 3) that the benefit would give rise to if it were received by an employee within section 15 for performance of the duties of an employment (money's worth), and
  - (b) the cash equivalent of the benefit under the benefits code if it were so received and the code applied to it.
- (3) For the purposes of subsection (2), the benefits code has effect with the modifications in subsections (4), (6) and (7).
- (4) References in the benefits code to the employee are to be taken as references to the taxable person and any other person by whom the benefit is received.
- (5) For the purposes of subsection (4), section 401(4)(a) is to be disregarded.
- (6) References in the benefits code to the employer are to be taken as including references to the former employer.
- (7) Where—
  - (a) section 106 (cash equivalent: cost of accommodation over £75,000) applies, and
  - (b) the sum referred to in section 105(2)(b) (the sum made good) exceeds the amount referred to in section 105(2)(a) (the rental value),
 the amount to be subtracted under paragraph (b) of step 4 of the calculation in section 106(2) is that excess (and not only the excess rent referred to there).

**416 Notional interest treated as paid if amount charged for beneficial loan**

- (1) This section applies if an amount (“the taxable amount”) consisting of, or including, an amount representing the benefit of a loan counts as a person’s employment income in a tax year under section 403.
- (2) That person is to be treated for the purposes of the Tax Acts (other than this Chapter) as having paid interest on the loan in the tax year equal to the lesser of—
  - (a) the amount representing the cash equivalent of the loan, and
  - (b) the taxable amount.
- (3) The interest is to be treated—
  - (a) as accruing during the period in the tax year during which the loan is outstanding, and
  - (b) as paid at the end of the period.
- (4) The interest is not to be treated—
  - (a) as income of the person making the loan, or
  - (b) as relevant loan interest to which section 369 of ICTA applies (mortgage interest payable under deduction of tax).