



# Income Tax (Earnings and Pensions) Act 2003

## 2003 CHAPTER 1

### PART 6

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

#### <sup>F1</sup>CHAPTER 1

PAYMENTS TO NON-APPROVED PENSION SCHEMES

##### Textual Amendments

**F1** Pt. 6 Ch. 1 repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), ss. 247, 284(1), [Sch. 42 Pt. 3](#) (with [Sch. 36](#))

**<sup>F1</sup>386** Charge on payments to non-approved retirement benefits schemes

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**<sup>F1</sup>387** Meaning of “non-approved retirement benefits scheme”

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**<sup>F1</sup>388** Apportionment of payments in respect of more than one employee

.....

**<sup>F1</sup>389** Exception: employments where earnings charged on remittance

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*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Part 6. (See end of Document for details)*

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**<sup>F1</sup>390 Exception: non-domiciled employees with foreign employers**

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**<sup>F1</sup>391 Exception: seafarers with overseas earnings**

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**<sup>F1</sup>392 Relief where no benefits are paid or payable**

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## CHAPTER 2

### BENEFITS FROM [<sup>F2</sup>EMPLOYER-FINANCED RETIREMENT BENEFITS]

**Textual Amendments**

**F2** Words in Pt. 6 Ch. 2 heading substituted (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), **ss. 249(2)**, 284(1) (with [Sch. 36](#))

#### *Benefits treated as employment income*

**[<sup>F3</sup>393 Application of this Chapter**

- (1) This Chapter applies to relevant benefits provided under an employer-financed retirement benefits scheme.
- (2) Section 393A defines “employer-financed retirement benefits scheme” and section 393B defines “relevant benefits”.]

**Textual Amendments**

**F3** Ss. 393-393B substituted for s. 393 (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), **ss. 249(3)**, 284(1) (with [Sch. 36](#))

**[<sup>F3</sup>393A Employer-financed retirement benefits scheme**

- (1) In this Chapter “employer-financed retirement benefits scheme” means a scheme for the provision of benefits consisting of or including relevant benefits to or in respect of employees or former employees of an employer.
- (2) But neither—
  - (a) a registered pension scheme, nor
  - (b) a section 615(3) scheme,
 is an employer-financed retirement benefits scheme.
- (3) “Section 615(3) scheme” means a superannuation fund to which section 615(3) of ICTA applies.

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*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Part 6. (See end of Document for details)*

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- (4) “Scheme” includes a deed, agreement, series of agreements, or other arrangements.

#### Textual Amendments

- F3** Ss. 393-393B substituted for s. 393 (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), [ss. 249\(3\)](#), [284\(1\)](#) (with [Sch. 36](#))

### 393B Relevant benefits

- (1) In this Chapter “relevant benefits” means any lump sum, gratuity or other benefit (including a non-cash benefit) provided (or to be provided)—
- (a) on or in anticipation of the retirement of an employee or former employee,
  - (b) on the death of an employee or former employee,
  - (c) after the retirement or death of an employee or former employee in connection with past service,
  - (d) on or in anticipation of, or in connection with, any change in the nature of service of an employee, or
  - (e) to any person by virtue of a pension sharing order or provision relating to an employee or former employee.
- (2) But—
- (a) benefits charged to tax under Part 9 (pension income) <sup>[F4]</sup>, or that would be charged to tax under that Part but for section 573(2A) or (2B), 646D or 646E] <sup>[F5]</sup> or any deductions under section 574A(3)] ,
  - (b) benefits chargeable to tax by virtue of Schedule 34 to FA 2004 (which applies certain charges under Part 4 of that Act in relation to non-UK schemes), and
  - (c) excluded benefits,
- are not relevant benefits.
- (3) The following are “excluded benefits”—
- (a) benefits in respect of ill-health or disablement of an employee during service,
  - (b) benefits in respect of the death by accident of an employee during service,
  - (c) benefits under a relevant life policy, and
  - (d) benefits of any description prescribed by regulations made by the Board of Inland Revenue.
- (4) In subsection (3)(c) “relevant life policy” means—
- <sup>[F6]</sup>(a) an excepted group life policy as defined in section 480 of ITTOIA 2005,]
  - (b) a policy of life insurance the terms of which provide for the payment of benefits on the death of a single individual and with respect to which <sup>[F7]</sup>—
    - (i) condition A in section 481 of that Act would be met if paragraph (a) in that condition referred to the death, in any circumstances or except in specified circumstances, of that individual (rather than the death in any circumstances of each of the individuals insured under the policy) and if the condition did not include paragraph (b), and
    - (ii) conditions C and D in that section and conditions A and C in section 482 of that Act are met, or]

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- (c) a policy of life insurance that would be within paragraph (a) or (b) but for the fact that it provides for a benefit which is an excluded benefit under or by virtue of paragraph (a), (b) or (d) of subsection (3).

[ Regulations under subsection (3)(d) may include provision having effect in relation <sup>F8</sup>(4A) to times before they are made.]

- (5) In subsection (1)(e) “pension sharing order or provision” means any such order or provision as is mentioned in section 28(1) of WRPA 1999 or Article 25(1) of WRP(NI)O 1999.]

#### Textual Amendments

- F3** Ss. 393-393B substituted for s. 393 (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), **ss. 249(3)**, 284(1) (with [Sch. 36](#))
- F4** Words in s. 393B(2)(a) inserted (26.3.2015) by [Finance Act 2015 \(c. 11\)](#), **Sch. 4 para. 18**
- F5** Words in s. 393B(2)(a) inserted (with effect in accordance with Sch. 3 para. 13(2) of the amending Act) by [Finance Act 2017 \(c. 10\)](#), **Sch. 3 para. 13(1)**
- F6** S. 393B(4)(a) substituted by 2004 c. 12, s. 249(3) (as amended (6.4.2006) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), **Sch. 1 para. 651(2)(a)**, [Sch. 2 para. 161](#) (with [Sch. 2](#)))
- F7** Words in s. 393B(4)(b) substituted by 2004 c. 12, s. 249(3) (as amended (6.4.2006) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), **Sch. 1 para. 651(2)(b)**, [Sch. 2 para. 161](#) (with [Sch. 2](#)))
- F8** S. 393B(4A) inserted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), **Sch. 20 paras. 21, 24(3)**

### 394 Charge on benefit to which this Chapter applies

- (1) If a benefit to which this Chapter applies is received by an individual, the amount of the benefit counts as employment income of the individual for the relevant tax year.

[<sup>F9</sup>(1A) Subsection (1) does not apply in relation to the benefit if the total amount of the benefits to which this Chapter applies received by the individual in the relevant tax year does not exceed £100.]

- (2) If a benefit to which this Chapter applies is received by a person who is not an individual, the [<sup>F10</sup>person who is (or persons who are) the responsible person in relation to] the scheme under which the benefit is provided is chargeable [<sup>F11</sup>to income tax] on the amount of the benefit for the relevant tax year.

- (3) In [<sup>F12</sup>this section] the “relevant tax year” is the tax year in which the benefit is received.

- (4) For the purposes of subsection (2), the rate of tax is [<sup>F13</sup>45%] or such other rate as may for the time being be specified by the Treasury by order.

[<sup>F14</sup>(4A) Subsection (4B) applies if the receipt of a benefit to which this Chapter applies gives rise to other relevant income of the employee, or the former employee, to or in respect of whom the benefit is provided.

- (4B) Subsection (1) or (2) (as the case may be) applies to the amount of the benefit only so far as that amount exceeds the other relevant income.

(4C) In subsections (4A) and (4B) “other relevant income” means—

- (a) general earnings of the employee or former employee which are chargeable to income tax,

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- (b) an amount which counts as employment income of the employee or former employee under Chapter 2 of Part 7A,<sup>F15</sup>...
- [<sup>F16</sup>(ba) an amount which would count as employment income of the employee or former employee under that Chapter but for the application of section 554Z5 (overlap with earlier relevant step), or]
- [<sup>F17</sup>(c) an amount which would be within paragraph (a), (b) or (ba) apart from—
- (i) the employee or former employee having been non-UK resident for any tax year, or
  - (ii) any tax year having been a split year as respects the employee or former employee.]]

(5) No liability to income tax arises by virtue of any other provision of this Act in respect of a benefit to which this Chapter applies.

[<sup>F18</sup>(6) Subsection (5) does not affect—

    - (a) any liability to income tax on general earnings, or
    - (b) any liability to income tax on an amount which counts as employment income under Chapter 2 of Part 7A.]

#### Textual Amendments

- F9** S. 394(1A) inserted (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), **ss. 249(5)**, 284(1) (with [Sch. 36](#))
- F10** Words in s. 394(2) substituted (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), **ss. 249(6)**, 284(1) (with [Sch. 36](#))
- F11** Words in s. 394(2) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), **Sch. 1 para. 595** (with [Sch. 2](#))
- F12** Words in s. 394(3) substituted (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), **ss. 249(7)**, 284(1) (with [Sch. 36](#))
- F13** Word in s. 394(4) substituted (with effect in accordance with s. 1(6) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), **s. 1(4)**
- F14** S. 394(4A)-(4C) inserted (with effect in accordance with [Sch. 2](#) paras. 52-59, 60 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), **Sch. 2 para. 14(2)**
- F15** Word in s. 394(4C)(b) omitted (with effect in accordance with [Sch. 45](#) para. 153(2) of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), **Sch. 45 para. 65(2)**
- F16** S. 394(4C)(ba) inserted (with effect in accordance with [Sch. 45](#) para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), **Sch. 45 para. 65(2)**
- F17** S. 394(4C)(c) substituted (with effect in accordance with [Sch. 45](#) para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), **Sch. 45 para. 65(3)**
- F18** S. 394(6) inserted (with effect in accordance with [Sch. 2](#) paras. 52-59, 60 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), **Sch. 2 para. 14(3)**

#### Modifications etc. (not altering text)

- C1** S. 394 restricted (22.7.2004) by [Finance Act 2004 \(c. 12\)](#), [Sch. 36](#) paras. 54(2)(3)(a), **55(2)** (with s. 283(5), [Sch. 36](#))

#### [<sup>F19</sup>394A Temporary non-residents

- (1) This section applies if an individual is temporarily non-resident.
- (2) Any benefits within subsection (3) are to be treated for the purposes of section 394(1) as if they were received by the individual in the period of return.

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- (3) A benefit is within this subsection if—
- (a) this Chapter applies to it,
  - (b) it is in the form of a lump sum,
  - (c) it is received by the individual in the temporary period of non-residence, and
  - (d) ignoring this section—
    - (i) no charge to tax arises by virtue of section 394(1) in respect of it, but
    - (ii) such a charge would arise if the existence of any double taxation relief arrangements were disregarded.
- (4) Subsection (3)(d)(i) includes a case where the charge could be prevented by making a DTR claim, even if no claim is in fact made.
- (5) Subsection (2) does not affect the operation of section 394(1A) (and, accordingly, “the relevant tax year” for the purposes of section 394(1A) remains the tax year in which the benefit is actually received).
- (6) Nothing in any double taxation relief arrangements is to be read as preventing the individual from being chargeable to income tax in respect of any benefit treated by virtue of this section as received in the period of return (or as preventing a charge to that tax from arising as a result).
- (7) Part 4 of Schedule 45 to FA 2013 (statutory residence test: anti-avoidance) explains—
- (a) when an individual is to be regarded as “temporarily non-resident”, and
  - (b) what “the temporary period of non-residence” and “the period of return” mean.
- (8) In this section—
- “double taxation relief arrangements” means arrangements that have effect under section 2(1) of TIOPA 2010;
- “DTR claim” means a claim for relief under section 6 of that Act.]

#### **Textual Amendments**

**F19** S. 394A inserted (with effect in accordance with Sch. 45 para. 153(3) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 125](#)

### **[<sup>F20</sup>395 Reduction where employee has contributed**

- (1) This section applies in relation to a relevant benefit under an employer-financed retirement benefits scheme in the form of a lump sum where, under the scheme, an employee has paid any sum or sums by way of contribution to the provision of the lump sum.
- (2) The amount which, by virtue of section 394, counts as employment income, or is chargeable to tax under [<sup>F21</sup>subsection (2) of that section], is the amount of the lump sum reduced by the sum, or the aggregate of the sums, paid by the employee by way of contribution to the provision of the lump sum.
- (3) A reduction under this section may not be claimed in respect of the same contribution in relation to more than one lump sum.

*Changes to legislation:* There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Part 6. (See end of Document for details)

- (4) It is to be assumed, unless the contrary is shown, that no reduction is applicable under this section.]

#### Textual Amendments

**F20** S. 395 substituted for ss. 395-397 (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), **ss. 249(8)**, 284(1) (with [Sch. 36](#))

**F21** Words in s. 395 substituted by 2004 c. 12, s. 249(8) (as amended (6.4.2006) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), **Sch. 1 para. 651(3)**, [Sch. 2 para. 161](#) (with [Sch. 2](#)))

#### Modifications etc. (not altering text)

**C2** S. 395 modified (22.7.2004) by [Finance Act 2004 \(c. 12\)](#), **Sch. 36 paras. 54(3)(b)**, **55(3)** (with s. 283(5), [Sch. 36](#))

### [<sup>F22</sup>395A Benefits under old section 222 schemes not taxed by virtue of section 394

Section 394 does not apply to a benefit provided under an employer-financed retirement benefits scheme if—

- (a) immediately before 6th April 1980 the scheme was approved under section 222 of ICTA 1970,
- (b) the scheme was not approved under Chapter II of Part II of FA 1970,
- (c) no material changes have been made to the terms on which benefits are provided under the scheme after 5th April 1980, and
- (d) no contributions have been paid under the scheme after that date.]

#### Textual Amendments

**F22** S. 395A inserted (with effect in accordance with art. 2(2) of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2009 \(S.I. 2009/730\)](#), arts. 1(1), 2

### [<sup>F23</sup>395B Exemption or reduction for foreign service

(1) This section applies if—

- (a) a benefit to which this Chapter applies is provided to or in respect of an employee or former employee in the form of a lump sum,
- (b) the employer-financed retirement benefits scheme under which the lump sum is provided is established in a country or territory outside the United Kingdom,
- (c) the lump sum is received by the employee or former employee or a related person,

[<sup>F24</sup>(ca) the recipient is not resident in the United Kingdom in the tax year in which the lump sum is received,]

- (d) all or part of the lump sum (“the relevant part”) would, but for this section, count as employment income by virtue of section 394(1) or be chargeable to income tax under section 394(2) (account having been taken of section 394(4B) and section 395), and
- (e) the service in respect of which rights to receive the relevant part of the lump sum accrued (referred to as “reckonable service”) is or includes foreign service.

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*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Part 6. (See end of Document for details)*

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- (2) Section 394(1) or, as the case may be, section 394(2) does not apply to the relevant part of the lump sum if the condition in subsection (3) is met.
- (3) The condition is that—
- (a) three-quarters or more of the period of reckonable service is made up of foreign service,
  - (b) if the period of reckonable service exceeds 10 years, the whole of the last 10 years of that period is made up of foreign service, or
  - (c) if the period of reckonable service exceeds 20 years, one-half or more of that period, including any 10 of the last 20 years, is made up of foreign service.
- (4) If the condition in subsection (3) is not met, the amount that counts as employment income by virtue of section 394(1) or, as the case may be, is chargeable to income tax under section 394(2) is to be reduced by the appropriate proportion.
- (5) The appropriate proportion is a proportion of the relevant part of the lump sum equal to the proportion that the period of foreign service included in the reckonable service bears to the period of reckonable service.
- (6) In determining the service in respect of which rights to receive the relevant part of the lump sum accrued—
- (a) service in a previous employment or with a previous employer is to be taken into account if rights to receive the relevant part of the lump sum also accrued in respect of that service, and
  - (b) it does not matter if the rights originally accrued under a different employer-financed retirement benefits scheme (whether one established in the United Kingdom or in a country or territory outside the United Kingdom).
- (7) “Related person”, in relation to an employee or former employee (E), means any of the following—
- (a) E’s spouse or civil partner or E’s widow or widower or surviving civil partner,
  - (b) a person who is financially dependent on E, whose financial relationship with E is one of mutual dependence or who is dependent on E because of physical or mental impairment (or, if the lump sum is paid after E’s death, anyone who was such a person at the time of E’s death), and
  - (c) E’s personal representatives.
- (8) In this section “foreign service” has the meaning given by section [F<sup>25</sup>395C].]

#### **Textual Amendments**

- F23** S. 395B inserted (with effect in accordance with art. 6 of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2014 \(S.I. 2014/211\)](#), arts. 1, **5(2)**
- F24** S. 395B(1)(ca) inserted (with effect in accordance with Sch. 3 para. 5(4) of the amending Act) by [Finance Act 2017 \(c. 10\)](#), **Sch. 3 para. 5(2)**
- F25** Word in s. 395B(8) substituted (with effect in accordance with Sch. 3 para. 5(4) of the amending Act) by [Finance Act 2017 \(c. 10\)](#), **Sch. 3 para. 5(3)**

#### **[F<sup>26</sup>395C] Meaning of “foreign service” in section 395B**

- (1) In section 395B “foreign service” means service to which subsection (2), (3), (6) or (8) applies.



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*Changes to legislation:* There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Part 6. (See end of Document for details)

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- (2) This subsection applies to service in or after the tax year 2013–14—
- (a) to the extent that it consists of duties performed outside the United Kingdom in respect of which earnings would not be relevant earnings, or
  - (b) if 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).
- (3) This subsection applies to service in or after the tax year 2003–04 but before the tax year 2013–14 such that—
- (a) any earnings from the employment would not be relevant earnings, 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) In subsection (2) “relevant earnings” means earnings for a tax year that are earnings to which section 15 applies and to which that section would apply even if the employee made a claim under section 809B of ITA 2007 (claim for remittance basis) for that year.
- (5) In subsection (3) “relevant earnings” means—
- (a) for service in or after the tax year 2008–09, earnings—
    - (i) which are for a tax year in which the employee is ordinarily UK resident,
    - (ii) to which section 15 applies, and
    - (iii) to which that section would apply even if the employee made a claim under section 809B of ITA 2007 (claim for remittance basis) for that year, and
  - (b) for service before the tax year 2008–09, general earnings to which section 15 or 21 as originally enacted applies.
- (6) 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.
- (7) In subsection (6) “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.
- (8) 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.]

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*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Part 6. (See end of Document for details)*

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**Textual Amendments**

**F26** S. 395C inserted (27.4.2017) by [Finance Act 2017 \(c. 10\)](#), [Sch. 3 para. 6](#)

**<sup>F20</sup>396 Certain lump sums not taxed by virtue of section 394**

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**Textual Amendments**

**F20** S. 395 substituted for ss. 395-397 (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), [ss. 249\(8\)](#), 284(1) (with [Sch. 36](#))

**<sup>F20</sup>397 Certain lump sums: calculation of amount taxed by virtue of section 394**

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**Textual Amendments**

**F20** S. 395 substituted for ss. 395-397 (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), [ss. 249\(8\)](#), 284(1) (with [Sch. 36](#))

*Valuation of benefits etc.*

**398 Valuation of benefits**

- (1) In the case of a cash benefit, for the purposes of this Chapter the amount of a 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 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 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) to (6).
- (4) References in the benefits code to the employee are to be taken as references to the person by whom the benefit is received.
- (5) References in the benefits code to the employer are to be taken as including references to the former employer.
- (6) Where—
  - (a) section 106 (cash equivalent: cost of accommodation over £75,000) applies, and

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(b) the amount 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).

### **399 Employment-related loans: interest treated as paid**

- (1) This section applies if—
- (a) an amount consisting of, or including, an amount representing the benefit of a loan (“a taxable amount”) counts as employment income of an individual in a tax year under section 394(1), or
  - (b) the [<sup>F27</sup>person who is (or any of the persons who are) the responsible person in relation to] a scheme is charged to tax on a taxable amount <sup>F28</sup>... under section 394(2).
- (2) The individual or the [<sup>F29</sup>responsible person] is to be treated for all purposes of the Tax Acts (other than this Chapter) as having paid interest on the loan in the tax year equal to the amount representing the cash equivalent of the loan.
- (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).

#### **Textual Amendments**

- F27** Words in s. 399(1) substituted (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), **ss. 249(9)**, 284(1) (with [Sch. 36](#))
- F28** Words in s. 399(1)(b) repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), [s. 883\(1\)](#), [Sch. 1 para. 597](#), **Sch. 3** (with [Sch. 2](#))
- F29** Words in s. 399(2) substituted (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), **ss. 249(10)**, 284(1) (with [Sch. 36](#))

#### *Interpretation*

#### **[<sup>F30</sup>399A Responsible person**

- (1) The following heads specify the person who is, or persons who are, the responsible person in relation to an employer-financed retirement benefits scheme for the purposes of this Chapter.
- (2) But if a person is, or persons are, the responsible person in relation to the scheme by virtue of being specified under one head, no-one is the responsible person in relation to the scheme by virtue of being specified under a later head.

#### *Head 1*

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*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Part 6. (See end of Document for details)*

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If there are one or more trustees of the scheme who are resident in the United Kingdom, that trustee or each of those trustees.

*Head 2*

If there are one or more persons who control the management of the scheme, that person or each of those persons.

*Head 3*

If alive or still in existence, the employer, or any of the employers, who established the scheme and any person by whom that employer, or any of those employers, has been directly or indirectly succeeded in relation to the provision of benefits under the scheme.

*Head 4*

Any employer of employees to or in respect of whom benefits are, or are to be, provided under the scheme.

*Head 5*

If there are one or more trustees of the scheme who are not resident in the United Kingdom, that trustee or each of those trustees.]

**Textual Amendments**

**F30** Ss. 399A, 400 substituted for s. 400 (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), **ss. 249(11), 284(1)** (with [Sch. 36](#))

**[<sup>F30</sup>400 Interpretation**

In this Chapter—

“employer-financed retirement benefits scheme” has the meaning given by section 393A;

“relevant benefits” has the meaning given by section 393B; and

“responsible person” has the meaning given by section 399A.]

**Textual Amendments**

**F30** Ss. 399A, 400 substituted for s. 400 (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), **ss. 249(11), 284(1)** (with [Sch. 36](#))

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*Changes to legislation:* There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Part 6. (See end of Document for details)

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## 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 [<sup>F31</sup>or civil partner], blood relative, dependant or personal representatives.
- (2) Subsection (1) is subject to subsection (3) and sections 405 to [<sup>F32</sup>414A] (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—
  - (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.

#### **Textual Amendments**

- F31** Words in s. 401(1) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **152**
- F32** Word in s. 401(2) substituted (with effect in accordance with art. 6 of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2014 \(S.I. 2014/211\)](#), arts. 1, **5(3)(a)**

#### **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—

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*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Part 6. (See end of Document for details)*

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- (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*

**[<sup>F33</sup> 402A Split of payments and other benefits between sections 402B and 403**

- (1) In this Chapter “termination award” means a payment or other benefit to which this Chapter applies because of section 401(1)(a).
- (2) Section 402B (termination awards not benefiting from threshold treated as earnings) applies to termination awards to the extent determined under section 402C.
- (3) Section 403 (charge on payment or benefit where threshold applies) applies to termination awards so far as they are not ones to which section 402B applies.
- (4) Section 403 also applies to payments and other benefits to which this Chapter applies because of section 401(1)(b) or (c) (change in duties or earnings).

**Textual Amendments**

**F33** Ss. 402A-402E inserted (with effect in accordance with s. 5(10) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 5\(3\)](#)

**402B Termination awards not benefiting from threshold to be treated as earnings**

- (1) The amount of a termination award to which this section applies—
  - [<sup>F34</sup>(a)] is treated as an amount of earnings of the employee, or former employee, from the employment [<sup>F35</sup>, but
  - (b) is not capable of being an amount to which section 27 applies by virtue of subsection 1(a) or (b) of that section (UK-based taxable earnings for year when employee not resident in UK).]
- (2) See also section 7(3)(b) and (5)(ca) (which cause amounts treated as earnings under this section to be included in general earnings).
- (3) Section 403(3) (when benefits are received) does not apply in relation to payments or other benefits to which this section applies.

*Changes to legislation:* There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Part 6. (See end of Document for details)

#### Textual Amendments

- F33** Ss. 402A-402E inserted (with effect in accordance with s. 5(10) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 5\(3\)](#)
- F34** Words in s. 402B(1) renumbered as s. 402B(1)(a) (with effect in accordance with s. 22(8) of the amending Act) by [Finance Act 2021 \(c. 26\), s. 22\(6\)\(a\)](#)
- F35** S. 402B(1)(b) and word inserted (with effect in accordance with s. 22(8) of the amending Act) by [Finance Act 2021 \(c. 26\), s. 22\(6\)\(b\)](#)

### 402C The termination awards to which section 402B applies

- (1) This section has effect for the purpose of identifying the extent to which section 402B applies to termination awards in respect of the termination of the employment of the employee.
- (2) In this section “relevant termination award” means a termination award that is neither—
  - (a) a redundancy payment, nor
  - (b) so much of an approved contractual payment as is equal to or less than the amount which would have been due if a redundancy payment had been payable.
- (3) If the post-employment notice pay (see section 402D) in respect of the termination is greater than, or equal to, the total amount of the relevant termination awards in respect of the termination, section 402B applies to all of those relevant termination awards.
- (4) If the post-employment notice pay in respect of the termination is less than the total amount of the relevant termination awards in respect of the termination but is not nil—
  - (a) section 402B applies to a part of those relevant termination awards, and
  - (b) the amount of that part is equal to the post-employment notice pay.
- (5) Section 309(4) to (6) (meaning of “redundancy payment” and “approved contractual payment” etc) apply for the purposes of subsection (2) as they apply for the purposes of section 309.

#### Textual Amendments

- F33** Ss. 402A-402E inserted (with effect in accordance with s. 5(10) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 5\(3\)](#)

### 402D “Post-employment notice pay”

- (1) “The post-employment notice pay” in respect of a termination is (subject to subsection (11)) given by—

$$\left( \frac{BP \times D}{P} \right) - T$$

where—

BP, D and P are given by subsections (3) to (7), and

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*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Part 6. (See end of Document for details)*

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T is the total of the amounts of any payment or benefit received in connection with the termination which—

- (a) would fall within section 401(1)(a) but for section 401(3),
- (b) is taxable as earnings under Chapter 1 of Part 3,
- (c) is not pay in respect of holiday entitlement for a period before the employment ends, and
- (d) is not a bonus payable for termination of the employment.

(2) If the amount given by the formula in subsection (1) is a negative amount, the post-employment notice pay is nil.

(3) Subject to subsections (5) [<sup>F36</sup>, (6) and (6A)]—

BP is the employee's basic pay (see subsection (7)) from the employment in respect of the last pay period of the employee to end before the trigger date,

P is the number of days in that pay period, and

D is the number of days in the post-employment notice period.

(4) See section 402E for the meaning of “trigger date” and “post-employment notice period”.

(5) If there is no pay period of the employee which ends before the trigger date then—

BP is the employee's basic pay from the employment in respect of the period starting with the first day of the employment and ending with the trigger date,

P is the number of days in that period, and

D is the number of days in the post-employment notice period.

(6) If the last pay period of the employee to end before the trigger date is a month, [<sup>F37</sup>the employee's basic pay is paid in equal monthly instalments,] the minimum notice (see section 402E) is given by contractual terms and is expressed to be a whole number of months, and the post-employment notice period is equal in length to the minimum notice or is otherwise a whole number of months, then—

BP is the employee's basic pay from the employment in respect of the last pay period of the employee to end before the trigger date,

P is 1, and

D is the length of the post-employment notice period expressed in months.

[ In any other case where the last pay period of the employee to end before the trigger <sup>F38</sup>(6A) date is a month and the employee's basic pay is paid in equal monthly instalments, then—

BP is the employee's basic pay from the employment in respect of the last pay period of the employee to end before the trigger date,

P is 30.42, and

D is the number of days in the post-employment notice period.]

(7) In this section “basic pay” means—

- (a) employment income of the employee from the employment but disregarding—
  - (i) any amount received by way of overtime, bonus, commission, gratuity or allowance,
  - (ii) any amount received in connection with the termination of the employment,



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**Changes to legislation:** There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Part 6. (See end of Document for details)

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- (iii) any amount treated as earnings under Chapters 2 to 10 of Part 3 (the benefits code) or which would be so treated apart from section 64,
  - (iv) any amount which is treated as earnings under Chapter 12 of Part 3 (amounts treated as earnings),
  - (v) any amount which counts as employment income by virtue of Part 7 (income relating to securities and securities options), and
  - (vi) any employment-related securities that constitute earnings under Chapter 1 of Part 3 (earnings), and
- (b) any amount which the employee has given up the right to receive but which would have fallen within paragraph (a) had the employee not done so.
- (8) In subsection (7) “employment-related securities” has the same meaning as it has in Chapter 1 of Part 7 (see section 421B).
- (9) The Treasury may by regulations amend this section for the purpose of altering the meaning of “basic pay”.
- (10) A statutory instrument containing regulations under subsection (9) may not be made unless a draft of it has been laid before, and approved by a resolution of, the House of Commons.
- (11) Where the purpose, or one of the purposes, of any arrangements is the avoidance of tax by causing the post-employment notice pay calculated under subsection (1) to be less than it would otherwise be, the post-employment notice pay is to be treated as the amount which the post-employment notice pay would have been but for the arrangements.
- (12) In subsection (11) “arrangements” includes any scheme, arrangement or understanding of any kind, whether or not legally enforceable, involving a single transaction or two or more transactions.

#### Textual Amendments

- F33** Ss. 402A-402E inserted (with effect in accordance with s. 5(10) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 5\(3\)](#)
- F36** Words in s. 402D(3) substituted (with effect in accordance with s. 22(8) of the amending Act) by [Finance Act 2021 \(c. 26\), s. 22\(7\)\(a\)](#)
- F37** Words in s. 402D(6) inserted (with effect in accordance with s. 22(8) of the amending Act) by [Finance Act 2021 \(c. 26\), s. 22\(7\)\(b\)](#)
- F38** S. 402D(6A) inserted (with effect in accordance with s. 22(8) of the amending Act) by [Finance Act 2021 \(c. 26\), s. 22\(7\)\(c\)](#)

#### 402E Meaning of “trigger date” and “post-employment notice period” in section 402D

- (1) Subsections (2) and (4) to (6) have effect for the purposes of section 402D (and subsection (4) has effect also for the purposes of this section).
- (2) The “trigger date” is—
- (a) if the termination is not a notice case, the last day of the employment, and
  - (b) if the termination is a notice case, the day the notice is given.

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*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Part 6. (See end of Document for details)*

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- (3) For the purposes of this section, the termination is a “notice case” if the employer or employee gives notice to the other to terminate the employment, and here it does not matter—
- (a) whether the notice is more or less than, or the same as, the minimum notice, or
  - (b) if the employment ends before the notice expires.
- (4) The “minimum notice” is the minimum notice required to be given by the employer to terminate the employee's employment by notice in accordance with the law and contractual terms effective—
- (a) where the termination is not a notice case—
    - (i) immediately before the employment ends, or
    - (ii) where the employment ends by agreement entered into after the start of the employment, immediately before the agreement is entered into, and
  - (b) where the termination is a notice case, immediately before the notice is given.
- (5) The “post-employment notice period” is the period—
- (a) beginning at the end of the last day of the employment, and
  - (b) ending with the earliest lawful termination date.
- (But see subsection (8) for provision about limited-term contracts.)
- (6) If the earliest lawful termination date is, or precedes, the last day of the employment, the number of days in the post-employment notice period is nil.
- (7) “The earliest lawful termination date” is the last day of the period which—
- (a) is equal in length to the minimum notice, and
  - (b) begins at the end of the trigger date.
- (8) In the case of a contract of employment which is a limited-term contract and which does not include provision for termination by notice by the employer, the post-employment notice period is the period—
- (a) beginning at the end of the last day of the employment, and
  - (b) ending with the day of the occurrence of the limiting event.
- (9) If, in a case to which subsection (8) applies, on the last day of the employment the day of the occurrence of the limiting event is not ascertained or ascertainable (because, for example, the limiting event is the performance of a task), then subsection (8) has effect as if for paragraph (b) there were substituted—
- “(b) ending with the day on which notice would have expired if the employer had, on the last day of the employment, given to the employee the minimum notice required to terminate the contract under section 86 of the Employment Rights Act 1996 (assuming that that section applies to the employment).”
- (10) In this section “limited-term contract” and “limiting event” have the same meaning as in the Employment Rights Act 1996 (see section 235(2A) and (2B)).]

#### **Textual Amendments**

**F33** Ss. 402A-402E inserted (with effect in accordance with s. 5(10) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 5\(3\)](#)

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*Changes to legislation:* There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Part 6. (See end of Document for details)

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#### **403 Charge on payment or other benefit [<sup>F39</sup> where threshold applies]**

- (1) The amount of a payment or benefit to which this [<sup>F40</sup>section] 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 [<sup>F41</sup>(but see section 402B(3))] —
  - (a) a cash benefit is treated as received—
    - (i) when it is paid or a payment is made on account of it, or
    - (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, [<sup>F42</sup>when aggregated with—
  - (a) other payments or benefits in respect of the employee or former employee that are payments or benefits to which this section applies, and
  - (b) other payments or benefits in respect of the employee or former employee that are payments or benefits—
    - (i) received in the tax year 2017-18 or an earlier tax year, and
    - (ii) to which this Chapter applied in the tax year of receipt,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 [<sup>F43</sup>section] 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 [<sup>F44</sup>or, as the case may be, in relation to whom section 402B(1) provides for an amount to be treated as an amount of earnings] .

#### **Textual Amendments**

- F39** Words in s. 403 heading inserted (with effect in accordance with s. 5(10) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 5\(4\)\(f\)](#)
- F40** Word in s. 403(1) substituted (with effect in accordance with s. 5(10) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 5\(4\)\(a\)](#)
- F41** Words in s. 403(3) inserted (with effect in accordance with s. 5(10) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 5\(4\)\(b\)](#)
- F42** Words in s. 403(4) substituted (with effect in accordance with s. 5(10) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 5\(4\)\(c\)](#)
- F43** Word in s. 403(5)(a) substituted (with effect in accordance with s. 5(10) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 5\(4\)\(d\)](#)

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*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Part 6. (See end of Document for details)*

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**F44** Words in s. 403(6) inserted (with effect in accordance with s. 5(10) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), s. 5(4)(e)

#### **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 [<sup>F45</sup>section 403] 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.
- [<sup>F46</sup>(6) In subsection (3)(b), the reference to a payment or other benefit to which section 403 applies includes a reference to a payment or other benefit—
  - (a) received in the tax year 2017-18 or an earlier tax year, and
  - (b) to which this Chapter applied in the tax year of receipt.]

#### **Textual Amendments**

- F45** Words in s. 404(3)(b) substituted (with effect in accordance with s. 5(10) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), s. 5(5)(a)
- F46** S. 404(6) inserted (with effect in accordance with s. 5(10) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), s. 5(5)(b)

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*Changes to legislation:* There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Part 6. (See end of Document for details)

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#### [<sup>F47</sup> 404A Amounts charged to be treated as highest part of total income

- (1) A payment or other benefit which counts as a person's employment income as a result of section 403 is treated as the highest part of the person's total income.
- (2) Subsection (1) has effect for all income tax purposes except the purposes of sections 535 to 537 of ITTOIA 2005 (gains from contracts for life insurance etc: top slicing relief).
- (3) See section 1012 of ITA 2007 (relationship between highest part rules) for the relationship between—
  - (a) the rule in subsection (1), and
  - (b) other rules requiring particular income to be treated as the highest part of a person's total income.]

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#### Textual Amendments

**F47** S. 404A inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 1 para. 437** (with [Sch. 2](#))

#### [<sup>F48</sup> 404B Power to vary threshold

- (1) The Treasury may by regulations amend the listed provisions by substituting, for the amount for the time being mentioned in those provisions, a different amount.
- (2) The listed provisions are—
  - subsections (1), (4) and (5) of section 403, and
  - subsections (1), (4) and (5) of section 404 and its heading.
- (3) Regulations under this section may include transitional provision.
- (4) A statutory instrument containing regulations under this section which reduce the mentioned amount may not be made unless a draft of it has been laid before, and approved by a resolution of, the House of Commons.]

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#### Textual Amendments

**F48** S. 404B inserted (with effect in accordance with s. 5(10) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), s. 5(6)

### *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).

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Part 6. (See end of Document for details)*

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

- [<sup>F49</sup>(1) 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.]
- [<sup>F50</sup>(2) Although “injury” in subsection (1) includes psychiatric injury, it does not include injured feelings.]

##### Textual Amendments

- F49** S. 406 renumbered as s. 406(1) (with effect in accordance with s. 5(10) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 5\(7\)\(a\)](#)
- F50** S. 406(2) inserted (with effect in accordance with s. 5(10) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 5\(7\)\(b\)](#)

#### 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—
- [<sup>F51</sup>(a) a registered pension scheme,
    - (aa) a scheme set up by a government outside the United Kingdom for the benefit of 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).

<sup>F52</sup>(3) . . . . .

##### Textual Amendments

- F51** S. 407(2)(a)(aa) substituted for s. 407(2)(a) (6.4.2006) by [Finance Act 2004 \(c. 12\), s. 284\(1\), Sch. 35 para. 62\(2\)](#) (with [Sch. 36](#))
- F52** S. 407(3) repealed (6.4.2006) by [Finance Act 2004 \(c. 12\), s. 284\(1\), Sch. 35 para. 62\(3\), Sch. 42 Pt. 3](#) (with [Sch. 36](#))

#### 408 Exception for contributions to [<sup>F53</sup>registered pension schemes]

- (1) This Chapter does not apply to a contribution to a [<sup>F54</sup>registered pension scheme][<sup>F55</sup>or an employer-financed retirement benefit scheme] if the contribution is made—
- (a) as part of an arrangement relating to the termination of a person’s employment, and

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- (b) in order to provide benefits for the person in accordance with the terms of the scheme or approved personal pension arrangements.

<sup>F56</sup>(2) .....

#### Textual Amendments

- F53** Words in s. 408 heading substituted (6.4.2006) by Finance Act 2004 (c. 12), s. 284(1), **Sch. 35 para. 63(4)** (with Sch. 36)
- F54** Words in s. 408(1) substituted (6.4.2006) by Finance Act 2004 (c. 12), s. 284(1), **Sch. 35 para. 63(2)** (with Sch. 36)
- F55** Words in s. 408(1) inserted (with effect in relation to any time on or after 6.4.2006 in accordance with art. 1(2) of the amending S.I.) by The Taxation of Pension Schemes (Consequential Amendments) (No. 2) Order 2006 (S.I. 2006/1963), arts. 1(1), **2(2)**
- F56** S. 408(2) repealed (6.4.2006) by Finance Act 2004 (c. 12), s. 284(1), Sch. 35 para. 63(3), **Sch. 42 Pt. 3** (with Sch. 36)

#### 409 Exception for payments and benefits in respect of [<sup>F57</sup>certain legal expenses etc] 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—
- in the case of a cash benefit, it is provided for meeting the cost of a deductible amount, or
  - 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 [<sup>F58</sup>or by the employer or former employer on behalf of 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—
- starts with the day on which the relevant employment terminated, and
  - ends with the last day of the sixth tax year following the tax year in which the period started.

#### Textual Amendments

- F57** Words in s. 409 heading substituted (with effect in accordance with s. 4(8) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), s. **4(4)(a)**
- F58** Words in s. 409(3) inserted (with effect in accordance with s. 4(8) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), s. **4(4)(b)**

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*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Part 6. (See end of Document for details)*

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#### **410 Exception for payments and benefits in respect of [<sup>F59</sup>certain legal expenses etc] 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.
- (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 [<sup>F60</sup>or by the former employer on behalf of 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.

##### **Textual Amendments**

- F59** Words in s. 410 heading substituted (with effect in accordance with s. 4(8) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 4\(5\)\(a\)](#)
- F60** Words in s. 410(3) inserted (with effect in accordance with s. 4(8) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 4\(5\)\(b\)](#)

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

- [<sup>F61</sup>(1)] 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.
- [<sup>F62</sup>(2) This Chapter does not apply to a payment or other benefit provided under a scheme established by an order under section 1(1) of the Armed Forces (Pensions and Compensation) Act 2004.]

##### **Textual Amendments**

- F61** S. 411 renumbered as s. 411(1) (with effect in accordance with s. 63(2) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 63\(1\)](#)
- F62** S. 411(2) inserted (with effect in accordance with s. 63(2) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 63\(1\)](#)



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*Changes to legislation:* There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Part 6. (See end of Document for details)

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#### **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**

- [<sup>F63</sup>(A1) This section applies to a payment or other benefit if—
- (a) the payment or other benefit is within section 401(1)(a), and the employee or former employee is non-UK resident for the tax year in which the employment terminates, or
  - (b) the payment or other benefit is within section 401(1)(b) or (c).]
- (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 [<sup>F64</sup>(2A),] (3), (4) or (6) applies.
- [<sup>F65</sup>(2A) This subsection applies to service in or after the tax year 2013-14—
- (a) to the extent that it consists of duties performed outside the United Kingdom in respect of which earnings would not be relevant earnings, or
  - (b) if 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).]
- (3) This subsection applies to service in or after the tax year 2003-04 [<sup>F66</sup>but before the tax year 2013-14] such that—
- [<sup>F67</sup>(a) any earnings from the employment would not be relevant earnings, 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).

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*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Part 6. (See end of Document for details)*

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[<sup>F68</sup>(3ZA) In subsection (2A)(a) “relevant earnings” means earnings for a tax year that are earnings to which section 15 applies and to which that section would apply even if the employee made a claim under section 809B of ITA 2007 (claim for remittance basis) for that year.]

[<sup>F69</sup>(3A) In subsection (3)(a) “relevant earnings” means—

- (a) for service in or after the tax year 2008-09, earnings—
  - (i) which are for a tax year in which the employee is ordinarily UK resident,
  - (ii) to which section 15 applies, and
  - (iii) to which that section would apply, even if the employee made a claim under section 809B of ITA 2007 (claim for remittance basis) for that year, and
- (b) for service before the tax year 2008-09, general earnings to which section 15 or 21 as originally enacted applies.]

(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.

#### Textual Amendments

- F63** S. 413(A1) inserted (with effect in accordance with s. 10(5) of the amending Act) by [Finance Act 2018 \(c. 3\)](#), [s. 10\(2\)](#)
- F64** Word in s. 413(2) inserted (with effect in accordance with Sch. 46 para. 72 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 38\(2\)](#) (with [Sch. 46 para. 73](#))
- F65** S. 413(2A) inserted (with effect in accordance with Sch. 46 para. 72 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 38\(3\)](#) (with [Sch. 46 para. 73](#))
- F66** Words in s. 413(3) inserted (with effect in accordance with Sch. 46 para. 72 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 38\(4\)](#) (with [Sch. 46 para. 73](#))
- F67** S. 413(3)(a) substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 30\(2\)](#)
- F68** S. 413(3ZA) inserted (with effect in accordance with Sch. 46 para. 72 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 38\(5\)](#) (with [Sch. 46 para. 73](#))

*Changes to legislation:* There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Part 6. (See end of Document for details)

**F69** S. 413(3A) inserted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 30\(3\)](#)

### **[<sup>F70</sup>413A] Exception for payment of certain legal costs**

- (1) This Chapter does not apply to a payment which meets conditions A and B.
- (2) Condition A is that the payment meets the whole or part of legal costs incurred by the employee exclusively in connection with the termination of the employee's employment.
- (3) Condition B is that either—
  - (a) the payment is made pursuant to an order of a court or tribunal, or
  - (b) the termination of the employee's employment results in a [<sup>F71</sup>settlement] agreement between the employer and the employee and—
    - (i) the [<sup>F71</sup>settlement] agreement provides for the payment to be made by the employer, and
    - (ii) the payment is made directly to the employee's lawyer.
- (4) In this section—

<sup>F72</sup>  
...

“lawyer” has the same meaning as “qualified lawyer” in section 203(4) of the Employment Rights Act 1996 or article 245(4) of the Employment Rights (Northern Ireland) Order 1996;

“legal costs” means fees payable for the services and disbursements of a lawyer.]

#### **Textual Amendments**

- F70** S. 413A inserted (with effect in accordance with art. 10(4) of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2011 \(S.I. 2011/1037\)](#), arts. 1, [10\(3\)](#)
- F71** Word in s. 413A(3)(b) substituted (1.3.2013) by [The Enactment of Extra-Statutory Concessions Order 2013 \(S.I. 2013/234\)](#), arts. 1, [3\(1\)\(a\)](#) (with art. 3(2))
- F72** Words in s. 413A(4) omitted (1.3.2013) by virtue of [The Enactment of Extra-Statutory Concessions Order 2013 \(S.I. 2013/234\)](#), arts. 1, [3\(1\)\(b\)](#) (with art. 3(2))

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

- (1) This section applies if—
  - <sup>F73</sup>(za) either—
    - (i) the payment or other benefit is within section 401(1)(a), and the employee or former employee is non-UK resident for the tax year in which the employment terminates, or
    - (ii) the payment or other benefit is within section 401(1)(b) or (c),]
  - (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
  - <sup>F74</sup>(b) section 413(1) does not except the payment or other benefit from the application of this Chapter.]

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*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Part 6. (See end of Document for details)*

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- (2) The taxable person may claim relief in the form of a proportionate reduction of the amount that would [<sup>F75</sup>otherwise—
  - (a) be treated as earnings by section 402B(1), or
  - (b) count as employment income as a result of section 403]
- (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).

#### Textual Amendments

- F73** S. 414(1)(za) inserted (with effect in accordance with s. 10(5) of the amending Act) by [Finance Act 2018 \(c. 3\), s. 10\(3\)\(a\)](#)
- F74** S. 414(1)(b) substituted (with effect in accordance with s. 10(5) of the amending Act) by [Finance Act 2018 \(c. 3\), s. 10\(3\)\(b\)](#)
- F75** Words in s. 414(2) substituted (with effect in accordance with s. 5(10) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 5\(8\)](#)

#### [<sup>F76</sup>414A] **Exception for payments and benefits under section 615(3) schemes**

- (1) This Chapter does not apply to a payment or other benefit provided in the form of a lump sum under a section 615(3) scheme.
- (2) In this section, “section 615(3) scheme” means a superannuation fund to which section 615(3) of ICTA applies.]

#### Textual Amendments

- F76** S. 414A inserted (with effect in accordance with art. 6 of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2014 \(S.I. 2014/211\), arts. 1, 5\(3\)\(b\)](#)

#### [<sup>F77</sup>414B] **Exception in certain cases of foreign service as seafarer**

- (1) This section applies to a payment or other benefit if—
  - (a) the payment or other benefit is within section 401(1)(a), and
  - (b) the employee or former employee is UK resident for the tax year in which the employment terminates.
- (2) 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 seafaring service comprising—

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*Changes to legislation:* There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Part 6. (See end of Document for details)

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- (a) three-quarters or more of the whole period of service ending with the date of the termination 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.
- (3) In subsection (2) “foreign seafaring service” means service to which subsection (4), (5) or (7) applies.
- (4) This subsection applies to service in or after the tax year 2003-04 such that 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).
- (5) This subsection applies to service before the tax year 2003-04 and after the tax year 1973-74 such that a deduction equal to the whole amount of the emoluments from the employment was or would have been allowable under a seafarers' earnings deduction provision.
- (6) In subsection (5) “seafarers' earnings deduction provision” means—
- (a) paragraph 1 of Schedule 2 to FA 1974 so far as relating to employment as a seafarer,
  - (b) paragraph 1 of Schedule 7 to FA 1977 so far as relating to employment as a seafarer,
  - (c) section 192A of ICTA, or
  - (d) section 193(1) of ICTA so far as relating to employment as a seafarer.
- (7) This subsection applies to service before the tax year 1974-75 in an employment as a seafarer 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.
- (8) In this section “employment as a seafarer” is to be read in accordance with section 384.

#### Textual Amendments

**F77** Ss. 414B, 414C inserted (with effect in accordance with s. 10(5) of the amending Act) by [Finance Act 2018 \(c. 3\), s. 10\(4\)](#)

### 414C Reduction in other cases of foreign service as seafarer

- (1) This section applies if—
- (a) the payment or other benefit is within section 401(1)(a),
  - (b) the employee or former employee is UK resident for the tax year in which the employment terminates,
  - (c) 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
  - (d) section 414B(2) does not except the payment or other benefit from the application of this Chapter.

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*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Part 6. (See end of Document for details)*

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- (2) The taxable person may claim relief in the form of a proportionate reduction of the amount that would otherwise—
  - (a) be treated as earnings by section 402B(1), or
  - (b) count as employment income as a result of section 403.
- (3) The proportion is that which the length of the foreign seafaring service bears to the whole length of service in the employment before the date of the termination 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 seafaring service” has the same meaning as in section 414B(2).]

#### **Textual Amendments**

**F77** Ss. 414B, 414C inserted (with effect in accordance with s. 10(5) of the amending Act) by [Finance Act 2018 \(c. 3\), s. 10\(4\)](#)

### *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—

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**Changes to legislation:** There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Part 6. (See end of Document for details)

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- (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).

**Changes to legislation:**

There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Part 6.