



# 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.

#### *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**

- [<sup>F1</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.]

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

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[<sup>F2</sup>(2) Although “injury” in subsection (1) includes psychiatric injury, it does not include injured feelings.]

#### Textual Amendments

- F1** 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\(7\)\(a\)](#)
- F2** 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>F3</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>F4</sup>(3) .....

#### Textual Amendments

- F3** 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](#))
- F4** 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>F5</sup>registered pension schemes]

- (1) This Chapter does not apply to a contribution to a [<sup>F6</sup>registered pension scheme][<sup>F7</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
  - (b) in order to provide benefits for the person in accordance with the terms of the scheme or approved personal pension arrangements.

<sup>F8</sup>(2) .....

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

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### Textual Amendments

- F5** 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](#))
- F6** 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](#))
- F7** 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\(2\)](#)
- F8** 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>F9</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—
  - (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 [<sup>F10</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—

  - (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.

### Textual Amendments

- F9** 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\(4\)\(a\)](#)
- F10** 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*, Cross Heading: *Exceptions and reductions*. (See end of Document for details)

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**410 Exception for payments and benefits in respect of [<sup>F11</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>F12</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**

- F11** 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\(5\)\(a\)](#)
- F12** 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>F13</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>F14</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**

- F13** 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\(1\)](#)
- F14** 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, Cross Heading: Exceptions and reductions. (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>F15</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>F16</sup>(2A),] (3), (4) or (6) applies.

[<sup>F17</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>F18</sup>but before the tax year 2013-14] such that—

[<sup>F19</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*, Cross Heading: *Exceptions and reductions*. (See end of Document for details)

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[<sup>F20</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>F21</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

- F15** S. 413(A1) inserted (with effect in accordance with s. 10(5) of the amending Act) by [Finance Act 2018 \(c. 3\)](#), [s. 10\(2\)](#)
- F16** 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](#))
- F17** 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](#))
- F18** 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](#))
- F19** 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\(2\)](#)
- F20** 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, Cross Heading: Exceptions and reductions. (See end of Document for details)

**F21** 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>F22</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>F23</sup>settlement] agreement between the employer and the employee and —
    - (i) the [<sup>F23</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—

**F24**  
...

“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**

- F22** 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\(3\)](#)
- F23** 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))
- F24** 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>F25</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>F26</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*, Cross Heading: *Exceptions and reductions*. (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>F27</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

- F25** 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\(3\)\(a\)](#)
- F26** 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\(3\)\(b\)](#)
- F27** 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>F28</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

- F28** 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>F29</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, Cross Heading: Exceptions and reductions. (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

**F29** 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, Cross Heading: Exceptions and reductions. (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**

**F29** Ss. 414B, 414C inserted (with effect in accordance with s. 10(5) of the amending Act) by [Finance Act 2018 \(c. 3\), s. 10\(4\)](#)

**Changes to legislation:**

There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Cross Heading: Exceptions and reductions.