



# 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.

*Payments and benefits treated as employment income*

#### [<sup>F1</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

**F1** 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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## 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>F2</sup>(a) is treated as an amount of earnings of the employee, or former employee, from the employment <sup>F3</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.

### Textual Amendments

- F1** 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\(3\)](#)
- F2** 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\(6\)\(a\)](#)
- F3** 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.

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### Textual Amendments

- F1** 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

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>F4</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>F5</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.

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[ In any other case where the last pay period of the employee to end before the trigger  
<sup>F6</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,

(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**

**F1** 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\(3\)](#)

**F4** 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\(7\)\(a\)](#)

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- F5** 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\(7\)\(b\)](#)
- F6** 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.
- (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—

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“(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

**F1** 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\(3\)](#)

### 403 Charge on payment or other benefit [<sup>F7</sup>where threshold applies]

- (1) The amount of a payment or benefit to which this [<sup>F8</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>F9</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>F10</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>F11</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>F12</sup>or,

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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

- F7** 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\(4\)\(f\)](#)
- F8** 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\(4\)\(a\)](#)
- F9** 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\(4\)\(b\)](#)
- F10** 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\(4\)\(c\)](#)
- F11** 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\(4\)\(d\)](#)
- F12** 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>F13</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.



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- [<sup>F14</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**

- F13** 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\(5\)\(a\)](#)
- F14** 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\(5\)\(b\)](#)

[<sup>F15</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.]

**Textual Amendments**

- F15** S. 404A inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 437](#) (with [Sch. 2](#))

[<sup>F16</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.]

**Textual Amendments**

- F16** 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\(6\)](#)



**Changes to legislation:**

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