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Income Tax (Earnings and Pensions) Act 2003

2003 CHAPTER 1

PART 6

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

CHAPTER 2

BENEFITS FROM ^[F1]EMPLOYER-FINANCED RETIREMENT BENEFITS]

Textual Amendments

- F1** 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

^[F2]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

- F2** Ss. 393-393B substituted for s. 393 (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), **ss. 249(3)**, 284(1) (with [Sch. 36](#))

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[^{F2}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.
- (4) “Scheme” includes a deed, agreement, series of agreements, or other arrangements.

Textual Amendments

F2 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),
 - (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—
 - [^{F3}(a) an excepted group life policy as defined in section 480 of ITTOIA 2005,]

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- (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 ^{F4}—
- (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]
- (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).
- (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

- F2** Ss. 393-393B substituted for s. 393 (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), **ss. 249(3)**, 284(1) (with [Sch. 36](#))
- F3** 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](#)))
- F4** 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](#)))

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.
- ^{F5}(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 ^{F6}person who is (or persons who are) the responsible person in relation to] the scheme under which the benefit is provided is chargeable ^{F7}to income tax] on the amount of the benefit for the relevant tax year.
- (3) In ^{F8}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 40% or such other rate as may for the time being be specified by the Treasury by order.
- (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.

Textual Amendments

- F5** S. 394(1A) inserted (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), **ss. 249(5)**, 284(1) (with [Sch. 36](#))
- F6** Words in s. 394(2) substituted (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), **ss. 249(6)**, 284(1) (with [Sch. 36](#))

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F7 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)

F8 Words in s. 394(3) substituted (6.4.2006) by [Finance Act 2004 \(c. 12\), ss. 249\(7\), 284\(1\)](#) (with Sch. 36)

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)

[^{F9}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 [^{F10}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.
- (4) It is to be assumed, unless the contrary is shown, that no reduction is applicable under this section.]

Textual Amendments

F9 S. 395 substituted for ss. 395-397 (6.4.2006) by [Finance Act 2004 \(c. 12\), ss. 249\(8\), 284\(1\)](#) (with Sch. 36)

F10 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)

^{F9}396 Certain lump sums not taxed by virtue of section 394

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Textual Amendments

F9 S. 395 substituted for ss. 395-397 (6.4.2006) by [Finance Act 2004 \(c. 12\), ss. 249\(8\), 284\(1\)](#) (with Sch. 36)

^{F9}397 Certain lump sums: calculation of amount taxed by virtue of section 394

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Textual Amendments

- F9** 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
 - (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 [^{F11}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 ^{F12}... under section 394(2).
- (2) The individual or the [^{F13}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—

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- (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

- F11** Words in s. 399(1) substituted (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), **ss. 249(9)**, 284(1) (with [Sch. 36](#))
- F12** 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](#))
- F13** Words in s. 399(2) substituted (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), **ss. 249(10)**, 284(1) (with [Sch. 36](#))

Interpretation

[^{F14}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

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

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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

F14 Ss. 399A, 400 substituted for s. 400 (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), **ss. 249(11)**, 284(1) (with [Sch. 36](#))

[^{F14}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

F14 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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