



# Finance (No. 2) Act 2017

## 2017 CHAPTER 32

### PART 1

#### DIRECT TAXES

##### *Income tax: employment and pensions*

#### **5 Termination payments etc: amounts chargeable on employment income**

- (1) ITEPA 2003 is amended in accordance with subsections (2) to (9).
- (2) In section 7(5) (list of provisions under which amounts are treated as earnings), before the “or” at the end of paragraph (c) insert—
  - “(ca) section 402B (termination payments, and other benefits, that cannot benefit from section 403 threshold).”
- (3) Before section 403 (charge on payments and benefits in excess of £30,000 threshold) insert—

#### **“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).

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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 is treated as an amount of earnings of the employee, or former employee, from the employment.
- (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.

### **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.

### **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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- 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) and (6)—
- 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, 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.
- (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),

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- (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.

**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

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- (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)).”
- (4) In section 403 (charges on payments and benefits which can benefit from threshold)—
  - (a) in subsection (1), for “Chapter” substitute “section”,
  - (b) in subsection (3), after “Chapter” insert “(but see section 402B(3))”,
  - (c) in subsection (4), for the words from “when” to “exceeds” substitute “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

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(ii) to which this Chapter applied in the tax year of receipt,

it exceeds”,

- (d) in subsection (5)(a), for “Chapter” substitute “section”,
- (e) in subsection (6), after “employment income” insert “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”, and
- (f) in the heading, at the end insert “where threshold applies”.

(5) In section 404 (how the threshold applies)—

- (a) in subsection (3)(b) (meaning of “termination or change date”), for “this Chapter” substitute “section 403”, and
- (b) after subsection (5) insert—

“(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.”

(6) After section 404A insert—

**“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.”

(7) In section 406 (exception in cases of death, injury or disability)—

- (a) the existing text becomes subsection (1), and
- (b) after that subsection insert—

“(2) Although “injury” in subsection (1) includes psychiatric injury, it does not include injured feelings.”

(8) In section 414(2) (proportionate reduction for foreign service in certain cases), for “otherwise count as employment income under this Chapter” substitute “otherwise—

- (a) be treated as earnings by section 402B(1), or
- (b) count as employment income as a result of section 403”.

(9) In section 717(4) (regulations etc not subject to negative procedure), before “or section 681F(3)” insert “, section 402D(10) (meaning of basic pay for purpose of

calculating charge on termination award), section 404B(4) (reduction of tax-free threshold for employment-termination etc payments)”).

- (10) The amendments made by this section have effect for the tax year 2018-19 and subsequent tax years.