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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) [^{F3}, or that would be charged to tax under that Part but for section 573(2A) or (2B), 646D or 646E],
 - (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—
 - [^{F4}(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 ^{F5}—
- (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).

[Regulations under subsection (3)(d) may include provision having effect in relation ^{F6}(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

- 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** Words in s. 393B(2)(a) inserted (26.3.2015) by [Finance Act 2015 \(c. 11\)](#), **Sch. 4 para. 18**
- F4** 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](#)))
- F5** 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](#)))
- F6** 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.

^{F7}(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 ^{F8}person who is (or persons who are) the responsible person in relation to] the scheme under which the benefit is provided is chargeable ^{F9}to income tax] on the amount of the benefit for the relevant tax year.
- (3) In ^{F10}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 ^{F11}45%] or such other rate as may for the time being be specified by the Treasury by order.

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- [^{F12}(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,
 - (b) an amount which counts as employment income of the employee or former employee under Chapter 2 of Part 7A,^{F13}...
- [^{F14}(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]
- [^{F15}(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.

[^{F16}(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

- F7** S. 394(1A) inserted (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), **ss. 249(5)**, 284(1) (with [Sch. 36](#))
- F8** Words in s. 394(2) substituted (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), **ss. 249(6)**, 284(1) (with [Sch. 36](#))
- F9** 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](#))
- F10** Words in s. 394(3) substituted (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), **ss. 249(7)**, 284(1) (with [Sch. 36](#))
- F11** 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)**
- F12** 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)**
- F13** 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)**
- F14** 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)**
- F15** 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)**
- F16** 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)**

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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](#))

[^{F17}**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.
- (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

- F17** 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](#)

[^{F18}**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

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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 [^{F19}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

- F18** S. 395 substituted for ss. 395-397 (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), **ss. 249(8)**, 284(1) (with [Sch. 36](#))
- F19** 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](#))

[^{F20}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

- F20** 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

[^{F21}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,

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- (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.
- (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 413(2).]

Textual Amendments

F21 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)**

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F18 396 Certain lump sums not taxed by virtue of section 394

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Textual Amendments

F18 S. 395 substituted for ss. 395-397 (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), **ss. 249(8)**, 284(1) (with [Sch. 36](#))

F18 397 Certain lump sums: calculation of amount taxed by virtue of section 394

.....

Textual Amendments

F18 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).

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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 [^{F22}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 ^{F23}... under section 394(2).
- (2) The individual or the [^{F24}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

F22 Words in s. 399(1) substituted (6.4.2006) by Finance Act 2004 (c. 12), ss. 249(9), 284(1) (with Sch. 36)

F23 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)

F24 Words in s. 399(2) substituted (6.4.2006) by Finance Act 2004 (c. 12), ss. 249(10), 284(1) (with Sch. 36)

Interpretation

[^{F25}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

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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

F25 Ss. 399A, 400 substituted for s. 400 (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), **ss. 249(11), 284(1)** (with [Sch. 36](#))

[^{F25}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

F25 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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