



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

[^{F1}402D “Post-employment notice pay”

- (1) “The post-employment notice pay” in respect of a termination is (subject to subsection (11)) given by—

$$(BP \times DP) - T$$

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.

Changes to legislation: *Income Tax (Earnings and Pensions) Act 2003, Section 402D is up to date with all changes known to be in force on or before 05 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- (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) [^{F2}, (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, [^{F3}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.
- [In any other case where the last pay period of the employee to end before the trigger
^{F4}(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

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- (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\(3\)](#)
- F2** 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\(7\)\(a\)](#)
- F3** 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\(7\)\(b\)](#)
- F4** S. 402D(6A) inserted (with effect in accordance with s. 22(8) of the amending Act) by [Finance Act 2021 \(c. 26\), s. 22\(7\)\(c\)](#)

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 452(2)(aa) inserted by [2013 c. 29 Sch. 23 para. 11](#)
- s. 707A inserted by [2024 c. 3 s. 36\(4\)](#)