

- 27.1 Settlements made on termination of employment may include the provision of benefits in non-cash form. Non-cash benefits may also be provided under an employer-financed retirement benefits scheme.

For example, a former employee is allowed to use a company car for a period after the termination. Another example is where instead of paying cash in settlement, property is transferred.

Chapter 2 Part 7A

This chapter may tax sums funded through or provided under a 'third party' employer-financed retirement benefit scheme. The chapter contains provisions to avoid double charging of tax – see paragraph 1.26.

This section taxes relevant benefits provided under an employer-financed retirement benefit scheme that are not primarily taxable under Chapter 2 of Part 7A. If tax is charged on the benefit under Section 394 ITEPA 2003 then there is no charge to tax on the benefit under any other provision of ITEPA providing the 394 charge arose as a fall-back from any other charges under general earnings of Chapter 2 of Part 7A. 'Relevant benefits' are defined in Section 393B ITEPA 2003. If the benefit provided is not a relevant benefit and was not charged under Chapter 2 of Part 7A it is not taxable under this section 394 but may be taxed elsewhere.

Section 401

This section taxes benefits made in connection with termination of employment - but only if they are not taxed under any other section.

For example, where it is part of the employment contract that property is transferred on termination, that is taxed elsewhere and so not under this section.

This section applies to benefits made available by anyone in connection with termination of an employment.

Sections 401(1) and 401(4)

Where such benefits are made to the employee's spouse, relative or dependant, their value is taxed on the employee. Any such benefits made on the employee's behalf or instructed by the employee are also taxed on the employee.

Section 58 Finance Act 1998

- 27.2 Finance Act 1998 introduced new rules for valuing such non-cash benefits received on or after 6 April 1998.

Section 398 ITPA 2003

- 27.3 Similar rules apply to non-cash relevant benefits received from an employer-financed retirement benefits scheme (see EIM15120 and EIM15025).

The basic rule for valuing non-cash relevant benefits under Sections 401 and 393 ITEPA 2003

Sections 415 and 398

- 27.4 The taxable value of the non-cash benefit is the greater of:

- its convertible value,
- its cash equivalent.

In practice, **convertible value** only needs to be considered if the benefit has grown in value since being acquired by the person providing it - for example, if a former employer transfers to the former employee property worth £75,000 at termination (its convertible value) which cost £30,000. Otherwise, the employee need only consider the 'cash equivalent' of the benefit. The 'cash equivalent' of the benefit is found by applying rules in the benefits code (Part 3 ITEPA 2003).

If you have 'made good' some of the cost of the benefit, this is deducted in arriving at the taxable value.

Cash equivalent of benefits (excluding provided accommodation)

Part 3

- 27.5 The **cash equivalent** is found by applying the appropriate rules from Part 3 ITEPA 2003 which are relevant to the type of benefit provided.

For example, where the benefit is the use of a car the rules in Chapter 11 of this booklet 'Cars and vans available for private use' would be appropriate.

But some adjustment to those rules is necessary. For example:

- the rules here apply to **all** taxpayers - **not** just to directors and those earning £8,500 or more (see paragraph 1.7)
- some provisions in Part 3 ITEPA 2003 will not apply because they deal specifically with circumstances during employment
- for 'employee' read 'former employee' as necessary
- only those rules in Part 3 ITEPA 2003 which deal with determining the 'cash equivalent' of benefits apply. Other rules are not relevant.

These adjustments must be borne in mind when using rules elsewhere in this booklet.

The appropriate rules in this booklet for some particular benefits are:

- other benefits Chapter 6 (page 14)
- use of a car Chapter 11 (page 21)
- car fuel Chapter 13 (page 32)
- beneficial loan Chapter 17 (page 39)
- mobile telephone Chapter 22 (page 55).

*Sections 398(6)
and 415(7)*

Cash equivalent of provided accommodation

27.6 The rules in Chapter 21 of this booklet apply – with one modification.

If the 'cost of providing the accommodation' (as defined in 21.5) is £75,000 or less, the tax charge is the same as in 21.9. If the 'cost of providing the accommodation' (as defined in 21.5) is more than £75,000, and the 'sum made good' by the employee exceeds the greater of (1) the 'annual value' (as defined in 21.9) and (2) the rent paid by the employee, then, the amount to be subtracted in 21.11(c) is that excess.

*Section 684 and
Regulations 91/93
and 96 Income Tax
(PAYE) Regulations
2003 (SI2003/2682)*

Reporting: termination benefits

27.7 Under regulations brought in by the Finance Act 1998, the former employer reports to HMRC all the termination settlement details within 92 days of the end of the tax year.

The former employer must give you a copy of that report within the same time limit.

27.8 Any figures for benefit values in the report will be based on those in force for the year of the termination. These may need to be updated to those in force for the year in which you actually receive or enjoy the benefit: follow the guidance above to do this.

*Section 251(1) to (2)
(e)–(f) FA2004
(SI2005/3453)*

Reporting: employer-financed retirement benefits schemes

27.9 Under regulations brought in by Finance Act 2004 the person appointed to deal with the scheme tax liabilities must:

- notify HMRC when a scheme comes into operation by 31 January following the end of the year of assessment in which it first comes into operation
- report details of relevant benefits provided by 7 July following the end of the tax year in which they are provided.

Exemptions and reliefs

27.10 The main exceptions and reliefs from tax in respect of charges within Section 401 ITEPA 2003 are for:

Section 403(1)

- the first £30,000 in respect of an employment (note that all charges within the Section for that employment, and for any other employment with the same or an associated employer, must be added together before applying the exception)
- payments and benefits made on death
- payments and benefits made on account of injury or disability
- for 'foreign service' – this may apply if you were not Resident and Ordinarily Resident in the UK during the employment. Your HMRC office can advise.

*Section 406(a)
Section 406(b)
Section 413-414*

27.11 The main exceptions and reliefs from tax for charges within Section 393 ITEPA 2003 are for:

*Section 393B (2)-(3)
ITEPA 2003 Paragraphs
53 and 54 Schedule 36
Finance Act 2004
Section 395 ITEPA 2003*

- benefits given by reason of ill-health or disablement whilst an employee
- benefits given by reason of death by accident whilst an employee
- benefits chargeable under Part 9 ITEPA (pension income)
- benefits resulting from employer contributions made before 6 April 2006 provided that those contributions have been taxed on the employee and the scheme's income and gains are all taxed in the UK
- benefits of a description set down in regulations.