



Income Tax (Earnings and Pensions) Act 2003

2003 CHAPTER 1

PART 4

EMPLOYMENT INCOME: EXEMPTIONS

[^{F1}CHAPTER 7A

EXEMPTIONS: AMOUNTS WHICH WOULD OTHERWISE BE DEDUCTIBLE

Textual Amendments

- F1** Pt. 4 Ch. 7A inserted (with effect in accordance with s. 11(2) of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [s. 11\(1\)](#)

289A Exemption for paid or reimbursed expenses

- (1) No liability to income tax arises by virtue of Chapter 3 of Part 3 (taxable benefits: expenses payments) in respect of an amount (“amount A”) paid or reimbursed by a person to an employee (whether or not an employee of the person) in respect of expenses if—
- (a) an amount equal to or exceeding amount A would (ignoring this section) be allowed as a deduction from the employee's earnings under Chapter 2 or 5 of Part 5 in respect of the expenses, and
 - (b) the payment or reimbursement is not provided pursuant to relevant salary sacrifice arrangements.
- (2) No liability to income tax arises in respect of an amount paid or reimbursed by a person (“the payer”) to an employee (whether or not an employee of the payer) in respect of expenses if—

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- (a) the amount has been calculated and paid or reimbursed in an approved way (see subsection (6)),
- (b) the payment or reimbursement is not provided pursuant to relevant salary sacrifice arrangements, and
- (c) conditions A and B are met.

[No liability to income tax arises in respect of an amount paid or reimbursed by a person^{F2}(2A) (“the payer”) to an employee (whether or not an employee of the payer) for expenses in the course of qualifying travel if—

- (a) the amount has been calculated and paid or reimbursed in accordance with regulations made by the Commissioners for Her Majesty's Revenue and Customs,
- (b) the payment or reimbursement is not provided pursuant to relevant salary sacrifice arrangements, and
- (c) condition C is met.]

(3) Condition A is that the payer or another person operates a system for checking—

- (a) that the employee is, or employees are, in fact incurring and paying amounts in respect of expenses of the same kind, and
- (b) that a deduction would (ignoring this section) be allowed under Chapter 2 or 5 of Part 5 in respect of those amounts.

(4) Condition B is that neither the payer nor any other person operating the system knows or suspects, or could reasonably be expected to know or suspect—

- (a) that the employee has not incurred and paid an amount in respect of the expenses, or
- (b) that a deduction from the employee's earnings would not be allowed under Chapter 2 or 5 of Part 5 in respect of the amount.

[Condition C is that—

- ^{F3}(4A) (a) the payer or another person operates a system for checking that the employee has undertaken the qualifying travel in relation to which the amount is paid or reimbursed, and
- (b) neither the payer nor any other person operating the system knows or suspects, or could reasonably be expected to know or suspect, that the travel was not undertaken.]

(5) [^{F4}In this section “relevant ”], in relation to an employee to whom an amount is paid or reimbursed [^{F5}for or] in respect of expenses, means arrangements (whenever made, whether before or after the employment began) under which—

- (a) the employee gives up the right to receive an amount of general earnings or specific employment income in return for the payment or reimbursement, or
- (b) the amount of other general earnings or specific employment income received by the employee depends on the amount of the payment or reimbursement.

[In this section “qualifying travel” means travel for which a deduction from the^{F6}(5A) employee's earnings would be allowed under Chapter 2 or 5 of Part 5.]

(6) For the purposes of [^{F7}subsection (2)] , a sum is calculated and paid or reimbursed in an approved way if—

- (a) it is calculated and paid or reimbursed in accordance with regulations made by the Commissioners for Her Majesty's Revenue and Customs, or

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- (b) it is calculated and paid or reimbursed in accordance with an approval given under section 289B.
- (7) Regulations made under subsection [F⁸(2A)(a) or] (6)(a) may make different provision for different purposes.
- [Regulations made under subsection (2A)(a) may contain provision about calculating F⁹(8) amounts that is framed by reference to rates (for expenses) published from time to time by the Commissioners for Her Majesty's Revenue and Customs.]

Textual Amendments

- F2** S. 289A(2A) inserted (with effect in accordance with s. 10(9) of the amending Act) by [Finance Act 2019 \(c. 1\), s. 10\(2\)](#)
- F3** S. 289A(4A) inserted (with effect in accordance with s. 10(9) of the amending Act) by [Finance Act 2019 \(c. 1\), s. 10\(3\)](#)
- F4** Words in s. 289A(5) substituted (with effect in accordance with s. 10(9) of the amending Act) by [Finance Act 2019 \(c. 1\), s. 10\(4\)\(a\)](#)
- F5** Words in s. 289A(5) inserted (with effect in accordance with s. 10(9) of the amending Act) by [Finance Act 2019 \(c. 1\), s. 10\(4\)\(b\)](#)
- F6** S. 289A(5A) inserted (with effect in accordance with s. 10(9) of the amending Act) by [Finance Act 2019 \(c. 1\), s. 10\(5\)](#)
- F7** Words in s. 289A(6) substituted (with effect in accordance with s. 10(9) of the amending Act) by [Finance Act 2019 \(c. 1\), s. 10\(6\)](#)
- F8** Words in s. 289A(7) inserted (with effect in accordance with s. 10(9) of the amending Act) by [Finance Act 2019 \(c. 1\), s. 10\(7\)](#)
- F9** S. 289A(8) inserted (with effect in accordance with s. 10(9) of the amending Act) by [Finance Act 2019 \(c. 1\), s. 10\(8\)](#)

289B Approval to pay or reimburse expenses at a flat rate

- (1) A person (“the applicant”) may apply to Her Majesty's Revenue and Customs for approval to pay or reimburse expenses of the applicant's employees, or employees of another person, at a rate set out in the application (“the proposed rate”).
- (2) An officer of Revenue and Customs may give the approval if satisfied that any calculation of a payment or reimbursement of expenses in accordance with the proposed rate, or such other rate as is agreed between the applicant and the officer, would be a reasonable estimate of the amount of expenses actually incurred.
- (3) An approval under subsection (2) takes effect in accordance with a notice (an “approval notice”) given to the applicant by an officer of Revenue and Customs.
- (4) An approval notice must specify—
- the rate at which expenses may be paid or reimbursed,
 - the day from which the approval takes effect, that day not being earlier than the day on which the approval notice is given,
 - the day on which the approval ceases to have effect, that day not being later than the end of the period of 5 years beginning with the day on which the approval takes effect, and
 - the type of expenses to which the approval relates.

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- (5) An approval notice may specify that the approval is subject to conditions specified or described in the notice.
- (6) An application for an approval under this section must be in such form and manner, and contain such information, as is specified by Her Majesty's Revenue and Customs.

289C Revocation of approvals

- (1) An officer of Revenue and Customs may, if in the officer's opinion there is reason to do so, revoke an approval given under section 289B by giving a further notice (a "revocation notice") to either or both of the following—
 - (a) the person who applied for the approval, and
 - (b) the person who is paying or reimbursing expenses in accordance with the approval.
- (2) A revocation notice may revoke the approval from—
 - (a) the day on which the approval took effect, or
 - (b) a later day specified in the notice.
- (3) A revocation under subsection (1) may be in relation to all expenses or expenses of a description specified in the revocation notice.
- (4) If the revocation notice revokes the approval from the day on which the approval took effect—
 - (a) any liability to tax that would have arisen in respect of the payment or reimbursement of expenses if the approval had never been given in relation to such expenses is to be treated as having arisen, and
 - (b) any person who has made, and any employee who has received, a payment or reimbursement of expenses calculated in accordance with the approval must make all the returns which they would have had to make if the approval had never been given in relation to such expenses.
- (5) If the revocation notice revokes the approval from a later day—
 - (a) any liability to tax that would have arisen in respect of the payment or reimbursement of expenses if the approval had ceased to have effect on that day in relation to such expenses is to be treated as having arisen, and
 - (b) any person who has made, and any employee who has received, a payment or reimbursement of expenses calculated in accordance with the approval must make all the returns which they would have had to make if the approval had ceased to have effect in relation to such expenses on that day.

289D Exemption for other benefits

- (1) No liability to income tax arises by virtue of any provision of the benefits code in respect of an amount ("amount A") treated as earnings of an employee as a result of the provision of a benefit if—
 - (a) an amount equal to amount A would (ignoring this section) be allowed as a deduction from the employee's earnings under Chapter 3 of Part 5 in respect of the provision of the benefit, and
 - (b) the benefit is not provided pursuant to relevant salary sacrifice arrangements.

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- (2) “Relevant salary sacrifice arrangements”, in relation to an employee to whom a benefit is provided, means arrangements (whenever made, whether before or after the employment began) under which—
- (a) the employee gives up the right to receive an amount of general earnings or specific employment income in return for the provision of the benefit, or
 - (b) the amount of other general earnings or specific employment income received by the employee depends on the provision of the benefit.

289E Anti-avoidance

- (1) This section applies if conditions A to C are met.
- (2) Condition A is that, pursuant to arrangements, an amount—
 - (a) is paid or reimbursed to an employee in respect of expenses, or
 - (b) is treated as earnings of an employee as a result of the provision of a benefit, which, in the absence of this section, would have been exempt from income tax.
- (3) Condition B is that, in the absence of those arrangements, the employee would have received a greater amount of general earnings or specific employment income in respect of which—
 - (a) tax would have been chargeable, or
 - (b) national insurance contributions would have been payable (whether by the employee or another person).
- (4) Condition C is that the main purpose, or one of the main purposes, of the arrangements is the avoidance of tax or national insurance contributions.
- (5) If this section applies—
 - (a) the exemption conferred by section 289A does not apply in respect of the amount paid or reimbursed as mentioned in subsection (2)(a), and
 - (b) the exemption conferred by section 289D does not apply in respect of the amount treated as earnings as mentioned in subsection (2)(b).
- (6) In this section “arrangements” includes any scheme, transaction or series of transactions, agreement or understanding, whether or not legally enforceable.]

Changes to legislation:

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