



# Income Tax (Earnings and Pensions) Act 2003

## 2003 CHAPTER 1

### [<sup>F1</sup>PART 7A

EMPLOYMENT INCOME PROVIDED THROUGH THIRD PARTIES

### [<sup>F1</sup>CHAPTER 3

UNDERTAKINGS GIVEN BY EMPLOYERS ETC IN RELATION TO RETIREMENT BENEFITS ETC

#### Textual Amendments

**F1** Pt. 7A inserted (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 1](#)

#### 554Z16 Application etc

- (1) This Chapter applies if there is an undertaking (“the relevant undertaking”) that a contribution to which subsection (2) would apply will be paid.
- (2) This subsection applies to a contribution if—
  - (a) the contribution is paid to an arrangement which is not a registered pension scheme,
  - (b) in connection with that arrangement (directly or indirectly), relevant benefits are to be provided (directly or indirectly) out of the contribution by a relevant third person,
  - (c) the provision of the relevant benefits would be a relevant step, and
  - (d) the contribution is neither a tax-relieved contribution nor tax-exempt provision.
- (3) In subsection (2)—

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“relevant benefits” has the same meaning as in Chapter 2 of Part 6, but ignoring section 393B(2)(a),

“relevant third person” means a person within section 554A(7)(a) to (c) (ignoring this Chapter), and

“tax-exempt provision” and “tax-relieved contribution” have the meaning given by paragraph 3(3) and (4) of Schedule 34 to FA 2004.

- (4) In this Chapter references to an undertaking include references to—
- (a) an undertaking which is not legally enforceable, and
  - (b) an undertaking which is to be performed only on or following the meeting of a condition (including a condition which might never be met).

### **554Z17 Employer etc to be treated as relevant third person etc**

- (1) If B takes a step within section 554Z18 or 554Z19, Chapters 1 and 2 have effect in relation to the step—
  - (a) as if B were a relevant third person for the purposes of section 554A(1)(d), and
  - (b) as if the step were a relevant step within section 554B (if it would not otherwise be).
- (2) For the purpose of determining whether Chapter 2 applies by reason of the step, Chapter 1 has effect—
  - (a) as if sections 554F to 554O, 554S to 554U, 554W and 554X were omitted,
  - (b) if the step is within section 554Z18, as if sections 554Q(2)(d), (3) and (4) and 554R(1)(c) and (d), (2) and (3) were omitted, and
  - (c) if the step is within section 554Z19, as if sections 554Q and 554R were omitted.
- (3) If Chapter 2 applies by reason of the step, Chapter 2 has effect as if sections 554Z7 to 554Z12 were omitted.
- (4) If Chapter 2 does not apply by reason of the step by virtue of section 554E(3) or (6), section 554E(10) and (11) does not apply in relation to the step.
- (5) For further modifications of Chapters 1 and 2, see sections 554Z18(3) and (4), 554Z19(5) and (6), 554Z20 and 554Z21.
- (6) Regulations under section 554Y may (in particular) make provision covering cases in which Chapters 1 and 2 have effect as provided for by this section.
- (7) In this Chapter—
  - (a) references to B do not include references to B acting as a trustee,
  - (b) if B is a company and is a member of a group of companies, references to B are to be read as including references to any other company which is a member of that group, and
  - (c) if B is a limited liability partnership, references to B are to be read as including references to any company which is a wholly-owned subsidiary (as defined in section 1159(2) of the Companies Act 2006) of B.

### **554Z18 Earmarking etc**

- (1) B takes a step within this section if—

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- (a) a sum of money or asset held by or on behalf of B is earmarked (however informally) by B with a view to the relevant undertaking being performed at a later time (wholly or partly) out of—
    - (i) that sum of money or asset, or
    - (ii) any sum of money or asset which may arise or derive (directly or indirectly) from it, or
  - (b) a sum of money or asset otherwise starts being held by or on behalf of B, specifically with a view, so far as B is concerned, to the relevant undertaking being performed at a later time (wholly or partly) out of—
    - (i) that sum of money or asset, or
    - (ii) any sum of money or asset which may arise or derive (directly or indirectly) from it.
- (2) For the purposes of subsection (1)(b) it does not matter whether or not the sum of money or asset in question has previously been held by or on behalf of B on a basis which is different to that mentioned in subsection (1)(b).
- (3) Subsection (4) applies if, in the application of section 554Q or 554R in any case, the relevant step mentioned in section 554Q(2)(a) or 554R(6)(a) is a step within this section taken by B.
- (4) In section 554Q(2)(c) or 554R(6)(c) (as the case may be) the reference to section 554B(1)(a) or (b) is to be read as a reference to subsection (1)(a) or (b) above.

#### **554Z19 Provision of security**

- (1) B takes a step within this section if B provides security for the performance of the relevant undertaking.
- (2) For the purposes of this Part, the sum of money or asset which is the subject of the step is to be taken to be—
- (a) any sums of money which, as at the time the step is taken, are the subject of the security, and
  - (b) any assets which, as at that time, are the subject of the security,
- and references to the sum of money or asset which is the subject of a relevant step are to be read accordingly.
- (3) If, when the step is taken, the security covers other undertakings as well as the relevant undertaking, the sums of money and assets within subsection (2)(a) and (b) are to be apportioned between the relevant undertaking and the other undertakings on a just and reasonable basis.
- (4) Subsections (2) and (3) are subject to section 554Z20(7).
- (5) Section 554Q does not apply in any case in which the relevant step mentioned in section 554Q(2)(a) would be a step within this section taken by B.
- (6) Section 554R(6) does not apply in any case in which the relevant step mentioned in section 554R(6)(a) would be a step within this section taken by B.
- (7) In this Chapter references to providing security for the performance of an undertaking are references to providing such security in any way, however informal.

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### **554Z20 Valuation of step within section 554Z19**

- (1) This section applies if, by virtue of section 554Z17, Chapter 2 applies by reason of a step taken by B within section 554Z19.
- (2) Section 554Z3 has effect as if subsections (3) and (4) below were substituted for subsections (1) to (6) of that section.
- (3) The value of the relevant step is—
  - (a) the amount to be paid as a contribution under the relevant undertaking determined, as at the time the step is taken, on a just and reasonable basis assuming that any condition to be met before any payment is made will be met, or
  - (b) if lower, the value of the security.
- (4) For the purposes of subsection (3)(b) the value of the security—
  - (a) consists of—
    - (i) the total amount of the sums of money included in the subject of the step (see section 554Z19(2)(a)), and
    - (ii) the total market value, as at the time the step is taken, of the assets included in the subject of the step (see section 554Z19(2)(b)), but
  - (b) is to be subject to a just and reasonable reduction to take account of any term of the security which limits the total amount which may be made available under the security for the performance of the relevant undertaking to an amount which is lower than the amount determined under paragraph (a).
- (5) The following subsections apply if, as at the end of the day of an anniversary of the taking of the step (“the anniversary day”), B continues to provide the security for the performance of the relevant undertaking.
- (6) This Part has effect as if B's continuing to provide the security were a new step (“the anniversary step”) within section 554Z19—
  - (a) which is taken by B at the end of the anniversary day, and
  - (b) by reason of which Chapter 2 is to apply by virtue of section 554Z17 (subject only to section 554A(4)).
- (7) If the total amount of the sums of money which are the subject of the security (“the security sums”) varies from time to time, for the purpose of determining the sums of money included in the subject of the anniversary step, in section 554Z19(2)(a) the reference to the time the step is taken is to be read as a reference to the time during the preceding year at which the total amount of the security sums is at its highest.
- (8) For the purposes of subsection (4)(a)(ii) the market value of any asset included in the subject of the anniversary step may be determined as at any time during the preceding year (so long as the asset is the subject of the security, or one of the assets which is the subject of the security, as at that time).
- (9) In subsections (7) and (8) “the preceding year” means the year ending with the anniversary day.

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### **554Z21 Relief for earmarking or security not followed by contribution or relevant benefit**

- (1) This section applies if, by virtue of section 554Z17, Chapter 2 applies by reason of a step taken by B within section 554Z18 or 554Z19.
- (2) Section 554Z14 has effect in relation to the step with the following modifications.
- (3) Subsection (1)(b) has effect as if for “not a relevant step in relation to a relevant sum or asset” there were substituted “neither the payment of the relevant contribution (or any part of it) nor the provision of any relevant benefit”.
- (4) Subsection (1)(c) has effect as if for the words from “no further relevant step” to “any relevant sum or asset” there were substituted “the relevant contribution (or any part of it) will not be paid or a relevant benefit will not be provided”.
- (5) Subsection (1) has effect as if subsection (6) below were substituted for subsection (3).
- (6) In subsection (1)—
  - (a) “the relevant contribution” means the contribution to be paid under the relevant undertaking (within the meaning of Chapter 3), and
  - (b) “relevant benefit” means a relevant benefit to be provided out of the relevant contribution as mentioned in section 554Z16(2)(b) and (c).]

**Changes to legislation:**

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