



# Income Tax (Earnings and Pensions) Act 2003

## 2003 CHAPTER 1

### PART 8

#### FORMER EMPLOYEES: DEDUCTIONS FOR LIABILITIES

##### *Interpretation*

#### **558 Meaning of “deductible payment”**

(1) For the purposes of this Part each of the following is a deductible payment—

- A. Payment in or towards the discharge of a liability related to the former employment.
- B. Payment of any costs or expenses incurred in connection with—
  - (a) a claim that the former employee is subject to a liability related to the former employment, or
  - (b) proceedings relating to or arising out of a claim that the former employee is subject to a liability related to the former employment.

[<sup>F1</sup>BA Payment of any costs or expenses not falling within paragraph B which are incurred in connection with the former employee giving evidence about matters related to the former employment in, or for the purposes of—

- (a) a proceeding or other process (whether or not involving the former employee), or
- (b) an investigation (whether or not likely to lead to any proceeding or other process involving the former employee).

BB Payment of any costs or expenses not falling within paragraph B or BA which are incurred in connection with a proceeding or other process, or an investigation, in which—

- (a) acts of the former employee related to the former employment, or

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(b) any other matters related to the former employment, are being or are likely to be considered.]

C. Payment of a premium under a qualifying insurance contract, but only to the extent that the premium relates to—

- (a) provision in the contract for the former employee to be indemnified against a payment falling within paragraph A, or
- (b) provision in the contract for the payment of any costs or expenses falling within paragraph B [<sup>F2</sup>, BA or BB] .

(2) But a payment which falls within paragraph A [<sup>F3</sup>B, BA or BB] is not a deductible payment if it would have been unlawful for the former employer to enter into a contract of insurance in respect of the liability, or costs or expenses, in question.

(3) In this Part—

- (a) “premium”, in relation to a qualifying insurance contract, means an amount payable to the insurer under the contract, and
- (b) where a qualifying insurance contract relates to more than one person, employment or risk, the part of the premium to be treated as relating to each of them is to be determined by apportionment on a just and reasonable basis.

[<sup>F4</sup>(4) In this section and section 560—

- (a) “acts” includes failures to act and acts are “related to the former employment” if the former employee was acting—
  - (i) in the employee's capacity as holder of the former employment, or
  - (ii) in any other capacity in which the former employee was acting in the performance of the duties of that employment,
- (b) “giving evidence” includes making a formal or informal statement or answering questions,
- (c) “proceeding or other process” includes any civil, criminal or arbitration proceedings, any disciplinary or regulatory proceedings of any kind and any process operated for resolving disputes or adjudicating on complaints, and
- (d) references to a proceeding or other process or an investigation include a reference to a proceeding or other process or an investigation that is likely to take place.]

#### **Textual Amendments**

- F1** Words in s. 558(1) inserted (with effect in accordance with s. 4(8) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 4\(6\)\(a\)](#)
- F2** Words in s. 558(1) inserted (with effect in accordance with s. 4(8) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 4\(6\)\(b\)](#)
- F3** Words in s. 558(2) substituted (with effect in accordance with s. 4(8) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 4\(6\)\(c\)](#)
- F4** S. 558(4) inserted (with effect in accordance with s. 4(8) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 4\(6\)\(d\)](#)

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## **559 Liabilities related to the former employment**

For the purposes of this Part each of the following kinds of liability is related to the former employment—

A. Liability imposed upon the former employee because he did an act, or failed to do an act—

- (a) in his capacity as holder of the former employment, or
- (b) in any other capacity in which he acted in the performance of the duties of the former employment.

B. Liability imposed upon the former employee in connection with any proceedings relating to, or arising from, a claim that he is subject to a liability because he did an act, or failed to do an act—

- (a) in his capacity as holder of the former employment, or
- (b) in any other capacity in which he acted in the performance of the duties of the former employment.

## **560 Meaning of “qualifying insurance contract”**

(1) In section 558 “qualifying insurance contract” means a contract of insurance which meets conditions A, B, C and D.

(2) Condition A is that, so far as the risks insured against are concerned, the contract only relates to one or more of the following—

- (a) the indemnification of a former employee against a liability related to the former employment,
- (b) the indemnification of a person against vicarious liability in respect of a liability related to another person’s employment,
- (c) the payment of costs or expenses incurred—
  - (i) in connection with a claim that a person is subject to a liability to which the insurance relates, or
  - (ii) in connection with any proceedings relating to or arising out of a claim that a person is subject to a liability to which the insurance relates,

[<sup>F5</sup>(ca) the payment of costs or expenses incurred in connection with a former employee giving evidence about matters related to the former employment in, or for the purposes of—

- (i) a proceeding or other process (whether or not involving the former employee), or
  - (ii) an investigation (whether or not likely to lead to any proceeding or other process involving the former employee).
- (cb) the payment of any costs or expenses incurred in connection with a proceeding or other process, or an investigation, in which—
- (i) acts of a former employee related to the employment, or
  - (ii) any other matters related to the former employment of a former employee,

are being or are likely to be considered,]

(d) the indemnification of an employer against loss from a payment made by the employer to a former employee in respect of—

- (i) a liability related to the former employment, or
- (ii) any costs or expenses incurred as mentioned in paragraph (c) [<sup>F6</sup>, (ca) or (cb)] .

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- (3) Condition B is that—
- (a) the period of insurance under the contract does not exceed 2 years or, if it does, it does so only because of one or more renewals, each for a period of 2 years or less, and
  - (b) the insured is not required to renew the contract for any period.
- (4) Condition C is—
- (a) that the insured is not entitled under the contract to receive any payment or other benefit in addition to—
    - (i) cover for the risks insured against, and
    - (ii) any right to renew the contract, or
  - (b) if the insured is so entitled, that the part of the premium reasonably attributable to the entitlement is not a significant part of the whole premium.
- (5) Condition D is that the contract is not connected with another contract.

#### **Textual Amendments**

- F5** S. 560(2)(ca)(cb) inserted (with effect in accordance with s. 4(8) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 4\(7\)\(a\)](#)
- F6** Words in s. 560(2)(d) inserted (with effect in accordance with s. 4(8) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 4\(7\)\(b\)](#)

## **561 Connected contracts**

- (1) An insurance contract is connected with another contract for the purposes of section 560 if conditions E and F are met—
  - (a) at the time when both contracts are first in force, or
  - (b) at any time after that time.
- (2) Condition E is that one of the contracts was entered into—
  - (a) by reference to the other, or
  - (b) with a view to enabling or facilitating entry into the other on particular terms.
- (3) Condition F is that the terms on which one of the contracts was entered into are significantly different from what they would have been if—
  - (a) it had not been entered into in anticipation of the other being entered into, or
  - (b) the other had not also been entered into.
- (4) If—
  - (a) there is only one such significant difference in terms, and
  - (b) the contracts meet conditions A, B and C specified in section 560,
 the difference may be disregarded in the following cases.
- (5) The first case is where the difference is a reduction in premiums under the contract that is reasonably attributable only to the contract—
  - (a) containing a right to renew, or
  - (b) being entered into by way of renewal.
- (6) The second case is where—

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- (a) two or more contracts have been entered into as part of a single transaction, and
  - (b) the difference is reductions in their premiums that are reasonably attributable only to the premium under each of them having been fixed by reference to the appropriate proportion of the combined premium.
- (7) In subsection (6) “the combined premium” means the amount that would have been the total premium under a single contract relating to all the risks covered by the contracts.

## **562 Meaning of “former employee” and “employment”**

- (1) In this Part “former employee” means an individual who has ceased to hold an employment.
- (2) In this Part “employment” includes in particular—
- (a) any employment under a contract of service,
  - (b) any employment under a contract of apprenticeship, and
  - (c) any employment in the service of the Crown.

“Employee” and “employer” have corresponding meanings.

## **563 Other interpretation**

In this Part each of the following expressions, when used in relation to a former employee, has the meaning given—

“former employment” means the employment which the former employee has ceased to hold;

“former employer” means—

- (a) the person under whom the former employee held the former employment,
- (b) a person for the time being carrying on the whole or any part of the business or other undertaking for the purposes of which the former employee held the former employment,
- (c) a person who is for the time being subject to any of the liabilities with respect to that business or other undertaking of the person mentioned in paragraph (a), and
- (d) a person who is connected with a person falling within paragraph (a), (b) or (c);

“post-employment earnings” means so much of any amount received after the former employee has ceased to hold the former employment as constitutes general earnings for the purposes of the employment income Parts;

“relevant retirement benefit” means a benefit—

- (a) [F7 which is received by the former employee under an employer-financed retirement benefits scheme, and
- (b) which, under Chapter 2 of Part 6, counts as employment income of the former employee.]

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**Textual Amendments**

- F7** Words in s. 563 substituted (6.4.2006) by Finance Act 2004 (c. 12), s. 284(1), **Sch. 35 para. 64** (with Sch. 36)

**564 Application of this Part to office-holders**

- (1) The provisions of this Part are expressed to apply to former employees but they apply equally to former office-holders.
- (2) In those provisions as they apply to a former office-holder—
  - (a) references to holding a former employment are to holding the office;
  - (b) “former employment” means the office held;
  - (c) “former employer” means the person under whom the person held the office.
- (3) In this Part “office” includes in particular any position which has an existence independent of the person who holds it and may be filled by successive holders.

**Changes to legislation:**

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