



Income Tax (Earnings and Pensions) Act 2003

2003 CHAPTER 1

PART 8

FORMER EMPLOYEES: DEDUCTIONS FOR LIABILITIES

Deductions from total income

555 Former employee entitled to deduction from total income

- (1) This Part applies if—
 - (a) a former employee makes a deductible payment, or
 - (b) a former employer makes a deductible payment on behalf of a former employee and the payment is treated—
 - (i) as a relevant retirement benefit, or
 - (ii) as post-employment earnings,
of the former employee.
- (2) A deduction of the amount of the deductible payment may be made when computing the former employee's total income for the tax year in which the payment is made.
- (3) Subsection (2) applies only if the former employee makes a claim to the deduction.
- (4) The entitlement to a deduction under this section is subject to sections 556 and 557.
- (5) For the application of this Part in relation to former office-holders, see section 564.
- (6) For relief from capital gains tax where the amount of the deduction allowed under this section exceeds total income, see section 263ZA of TCGA 1992.

556 Deductible payments made outside the time limits allowed

- (1) No deduction may be made under section 555 if the deductible payment is made—

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- (a) on or before the day on which the former employee ceased to hold the former employment, or
 - (b) after the end of the sixth tax year following the tax year in which the former employee ceased to hold the former employment.
- (2) If subsection (1)(a) applies, see section 346 (deduction for employee liabilities).

557 Deductible payments wholly or partly borne by the former employer etc.

- (1) This section applies if—
- (a) a deductible payment is made by the former employee (and not by the former employer on behalf of the former employee), but
 - (b) the whole or a part of the cost of making the payment is borne—
 - (i) by the former employer, or
 - (ii) out of the proceeds of a contract of insurance.
- (2) No deduction of the amount of the cost borne as mentioned in subsection (1)(b) (the “relevant amount”) may be made under section 555.
- (3) But this is subject to subsection (4) if the whole or a part of the relevant amount is treated—
- (a) as a relevant retirement benefit of the former employee, or
 - (b) as post-employment earnings of the former employee.
- (4) In such a case, a deduction of so much of the relevant amount as is treated in that way may be made under section 555.

Interpretation

558 Meaning of “deductible payment”

- (1) For the purposes of this Part each of the following is a deductible payment—
1. Payment in or towards the discharge of a liability related to the former employment.
 2. 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.
 3. 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.
- (2) But a payment which falls within paragraph A or B 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.

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—

1. 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.
2. 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,
 - (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).
- (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—

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- (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.

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—
 - (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,

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- (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) which is received by the former employee under a retirement benefits scheme of which he is a member in respect of the former employment, and
- (b) which, under Chapter 2 of Part 6 (benefits from non-approved pension schemes), counts as employment income of the former employee.

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.