



Finance (No. 2) Act 2017

2017 CHAPTER 32

PART 1

DIRECT TAXES

Disguised remuneration

34 Employment income provided through third parties

- (1) In section 554XA of ITEPA 2003 (employment income provided through third parties: exclusion for payments in respect of a tax liability), in subsection (2), omit paragraphs (a) and (b).
- (2) The amendment made by subsection (1) has effect in relation to relevant steps taken on or after 21 July 2017.
- (3) Schedule 11 makes provision about the application of Part 7A of ITEPA 2003 in relation to loans and quasi-loans that are outstanding on 5 April 2019.

35 Trading income provided through third parties

- (1) ITTOIA 2005 is amended as follows.
- (2) After section 23 insert—

“Trading income provided through third parties

23A Application of section 23E: conditions

- (1) Section 23E (tax treatment of relevant benefits) applies if Conditions A to E are met.
- (2) Condition A is that a person (“T”) is or has been carrying on a trade (the “relevant trade”) alone or in partnership.

Status: This is the original version (as it was originally enacted).

- (3) Condition B is that—
- (a) there is an arrangement (“the arrangement”) in connection with the relevant trade to which T is a party or which otherwise (wholly or partly) covers or relates to T, and
 - (b) it is reasonable to suppose that, in essence—
 - (i) the arrangement, or
 - (ii) the arrangement so far as it covers or relates to T,
 is (wholly or partly) a means of providing, or is otherwise concerned with the provision of, relevant benefits.
- (4) Condition C is that—
- (a) a relevant benefit arises to T, or a person who is or has been connected with T, in pursuance of the arrangement, or
 - (b) a relevant benefit arises to any other person in pursuance of the arrangement and any of the enjoyment conditions (see section 23F) is met in relation to the relevant benefit.
- (5) Condition D is that it is reasonable to suppose that the relevant benefit (directly or indirectly) represents, or has arisen or derives from, or is otherwise connected with, the whole or part of a qualifying third party payment.
- (6) Condition E is that it is reasonable to suppose that a tax advantage would be obtained by T, or a person who is or has been connected with T, as a result of the arrangement.
- (7) For the purposes of subsection (3) in particular, all relevant circumstances are to be taken into account in order to get to the essence of the matter.
- (8) In this section and sections 23B to 23H, “this group of sections” means this section and those sections.
- (9) The provisions of this group of sections apply to professions and vocations as they apply to trades.
- (10) See Schedule 12 to F(No.2)A 2017 for provision about the application of this group of sections in relation to loans and quasi-loans that are outstanding on 5 April 2019.

23B Meaning of “relevant benefit”

- (1) The following provisions apply for the purposes of this group of sections.
- (2) “Relevant benefit” means any payment (including a payment by way of a loan), a transfer of money’s worth, or any other benefit.
- (3) The assumption of a liability of T by another person is to be treated as the provision of a relevant benefit to T.
- (4) The assumption, by a person other than T, of a liability of a person (“C”) who is or has been connected with T, is to be treated as the provision of a relevant benefit to C.
- (5) “Loan” includes—
 - (a) any form of credit;

- (b) a payment that is purported to be made by way of a loan.

23C Meaning of “qualifying third party payment”

- (1) The following provisions apply for the purposes of this group of sections.
- (2) A payment is a “third party payment” if it is made (by T or another person) to—
 - (a) T acting as trustee, or
 - (b) any person other than T.
- (3) A third party payment is a “qualifying third party payment” if the deduction condition or the trade connection condition is met in relation to the payment.
- (4) The “deduction condition” is met in relation to a payment if—
 - (a) a deduction for the payment is made in calculating the profits of the relevant trade, or
 - (b) where the relevant trade is or has been carried on in partnership, a deduction for the payment is made in calculating the amount on which T is liable to income tax in respect of the profits of the trade.
- (5) The “trade connection condition” is met in relation to a payment if it is reasonable to suppose that in essence—
 - (a) the payment is by way of consideration for goods or services provided in the course of the relevant trade, or
 - (b) there is some other connection (direct or indirect) between the payment and the provision of goods or services in the course of the relevant trade.
- (6) For the purposes of subsection (5) in particular, all relevant circumstances are to be taken into account in order to get to the essence of the matter.

23D Other definitions

- (1) The following provisions apply for the purposes of this group of sections.
- (2) “Arrangement” includes any agreement, understanding, scheme, settlement, trust, transaction or series of transactions (whether or not legally enforceable).
- (3) A “tax advantage” includes—
 - (a) relief or increased relief from tax,
 - (b) repayment or increased repayment of tax,
 - (c) avoidance or reduction of a charge to tax or an assessment to tax,
 - (d) avoidance of a possible assessment to tax,
 - (e) deferral of a payment of tax or advancement of a repayment of tax, and
 - (f) avoidance of an obligation to deduct or account for tax.
- (4) Section 993 of ITA 2007 (meaning of “connected” persons) applies for the purposes of this group of sections as if subsection (4) of that section 993 were omitted.

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23E Tax treatment of relevant benefits

- (1) Where this section applies (see section 23A), the relevant benefit amount is to be treated for income tax purposes as profits of the relevant trade for—
 - (a) the tax year in which the relevant benefit arises, or
 - (b) if T has ceased to carry on the relevant trade in a tax year (the “earlier tax year”) before the tax year referred to in paragraph (a), the earlier tax year.
- (2) For the purposes of this section, “the relevant benefit amount” means—
 - (a) if the relevant benefit is a payment otherwise than by way of a loan, an amount equal to the amount of the payment,
 - (b) if the relevant benefit is a payment by way of loan, an amount equal to the principal amount lent, or
 - (c) in any other case, an amount equal to the value of the relevant benefit.
- (3) For the purposes of subsection (2)(c), the value of a relevant benefit is—
 - (a) its market value at the time it arises, or
 - (b) if higher, the cost of providing it.
- (4) In subsection (3) “market value” has the same meaning as it has for the purposes of TCGA 1992 by virtue of Part 8 of that Act.

23F Relevant benefits: persons other than T

- (1) For the purposes of section 23A(4), the enjoyment conditions are—
 - (a) that the relevant benefit, or part of it, is in fact so dealt with by any person as to be calculated at some time to enure for the benefit of T;
 - (b) that the arising of the relevant benefit operates to increase the value to T of any assets—
 - (i) which T holds, or
 - (ii) which are held for the benefit of T;
 - (c) that T receives, or is entitled to receive, at any time any benefit provided or to be provided out of, or deriving or to be derived from, the relevant benefit (or part of it);
 - (d) where the relevant benefit is the payment of a sum of money (including a payment by way of loan), that T may become entitled to the beneficial enjoyment of the sum or part of the sum if one or more powers are exercised or successively exercised (and for these purposes it does not matter who may exercise the powers or whether they are exercisable with or without the consent of another person);
 - (e) where the relevant benefit is the payment of a sum of money (including a payment by way of loan), that T is able in any manner to control directly or indirectly the application of the sum or part of the sum.
- (2) Where an enjoyment condition is met in relation to part only of a relevant benefit, that part is to be treated as a separate benefit for the purposes of section 23A(4).

- (3) In subsection (1) references to T include references to a person who is or has been connected with T.
- (4) In determining whether any of the enjoyment conditions is met in relation to a relevant benefit, regard must be had to the substantial result and effect of all the relevant circumstances.

23G Anti-avoidance

- (1) In determining whether section 23E applies in relation to a relevant benefit, no regard is to be had to any arrangements the main purpose, or one of the main purposes, of which is to secure that section 23E does not apply in relation to the whole, or any part, of—
 - (a) the relevant benefit, or
 - (b) the relevant benefit and one or more other relevant benefits (whether or not all arising to the same person).
- (2) Where arrangements are disregarded under subsection (1), and a relevant benefit (or part of it)—
 - (a) would, if the arrangements were not disregarded, arise before 6 April 2017, but
 - (b) would, when the arrangements are disregarded, arise on or after that date,the relevant benefit (or part) is to be regarded for the purposes of this group of sections as arising on the date on which it would arise apart from the arrangements.

23H Double taxation

- (1) This section applies where—
 - (a) income tax is charged on an individual by virtue of the application of section 23E in relation to a relevant benefit amount, and
 - (b) at any time, a tax (whether income tax or another tax) is charged on the individual or another person otherwise than by virtue of the application of section 23E in relation to the relevant benefit concerned.
- (2) In order to avoid a double charge to tax, the individual may make a claim for one or more consequential adjustments to be made in respect of the tax charged as mentioned in subsection (1)(b).
- (3) On a claim under this section an officer of Revenue and Customs must make such of the consequential adjustments claimed (if any) as are just and reasonable.
- (4) The value of any consequential adjustments must not exceed the lesser of—
 - (a) the income tax charged on the individual as mentioned in subsection (1)(a), and
 - (b) the tax charged as mentioned in subsection (1)(b).
- (5) Consequential adjustments may be made—
 - (a) in respect of any period,

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- (b) by way of an assessment, the modification of an assessment, the amendment of a claim, or otherwise, and
 - (c) despite any time limit imposed by or under any enactment.”
- (3) In section 7(2) (income charged: profits of a tax year) at the end insert “(including amounts treated as profits of the tax year under section 23E(1)).
- (4) The amendments made by this section have effect in relation to relevant benefits arising on or after 6 April 2017.
- (5) Schedule 12 contains provision about the application of new sections 23A to 23H of ITTOIA 2005 in relation to loans and quasi-loans that are outstanding on 5 April 2019.

36 Disguised remuneration schemes: restriction of income tax relief

- (1) Section 38 of ITTOIA 2005 (restriction of deductions: employee benefit contributions) is amended in accordance with subsections (2) to (5).
- (2) After subsection (1) insert—
- “(1A) No deduction is allowed under this section in respect of employee benefit contributions for a period of account which starts more than 5 years after the end of the period of account in which the contributions are made.”
- (3) After subsection (2) insert—
- “(2AA) Subsection (2) is subject to subsections (1A) and (2AB).
- (2AB) Where subsection (3C) applies, no deduction is allowed for an amount in respect of the contributions for the period except so far as the amount is a qualifying amount (see subsection (3D)).”
- (4) After subsection (3) insert—
- “(3A) Subsection (3) is subject to subsections (1A) and (3B).
- (3B) Where subsection (3C) applies, an amount disallowed under subsection (2) is allowed as a deduction for a subsequent period only so far as it is a qualifying amount.
- (3C) This subsection applies where the provision of qualifying benefits out of, or by way of, the contributions gives rise both to an employment income tax charge and to an NIC charge.
- (3D) An amount in respect of employee benefit contributions is a “qualifying amount” if the relevant tax charges are paid before the end of the relevant period (and are not repaid).
- (3E) For the purposes of subsection (3D)—
- (a) the “relevant tax charges”, in relation to an amount, are the employment income tax charge and the NIC charge arising in respect of benefits which are provided out of, or by way of, that amount, and
 - (b) the “relevant period” is the period of 12 months immediately following the end of the period of account for which the deduction for the employee benefit contributions would (apart from this section) be allowable.

- (3F) For the purposes of subsections (3C) and (3E), “employment income tax charge” and “NIC charge” have the meaning given by section 40(7).”
- (5) After subsection (3F) (inserted by subsection (4)) insert—
- “(3G) Subsection (3H) applies where—
- (a) a deduction would, apart from this section, be allowable for an amount (the “remuneration amount”) in respect of employees’ remuneration, and
 - (b) in consequence of the payment of the employees’ remuneration, employee benefit contributions are made, or are to be made, in respect of the remuneration amount.
- (3H) In calculating for income tax purposes the profits of a trade, the deduction referred to in subsection (3G)(a) is to be treated as a deduction in respect of employee benefit contributions made or to be made (and is to be treated as not being a deduction in respect of employees’ remuneration).”
- (6) Section 866 of ITTOIA 2005 (employee benefit contributions: non-trades and non-property businesses) is amended in accordance with subsections (7) to (10).
- (7) After subsection (2) insert—
- “(2A) No deduction is allowed under this section in respect of employee benefit contributions for a period of account which starts more than 5 years after the end of the period of account in which the contributions are made.”
- (8) After subsection (3) insert—
- “(3A) Subsection (3) is subject to subsections (2A) and (3B).
- (3B) Where subsection (4C) applies, no deduction is allowed for an amount in respect of the contributions for the period except so far as the amount is a qualifying amount (see subsection (4D)).”
- (9) After subsection (4) insert—
- “(4A) Subsection (4) is subject to subsections (2A) and (4B).
- (4B) Where subsection (4C) applies, an amount disallowed under subsection (3) is allowed as a deduction for a subsequent period only so far as it is a qualifying amount.
- (4C) This subsection applies where the provision of qualifying benefits out of, or by way of, the contributions gives rise both to an employment income tax charge and to an NIC charge.
- (4D) An amount in respect of employee benefit contributions is a “qualifying amount” if the relevant tax charges are paid before the end of the relevant period (and are not repaid).
- (4E) For the purposes of subsection (4D)—
- (a) the “relevant tax charges”, in relation to an amount, are the employment income tax charge and the NIC charge arising in respect of benefits which are provided out of, or by way of, that amount, and

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- (b) the “relevant period” is the period of 12 months immediately following the end of the period of account for which the deduction for the employee benefit contributions would (apart from this section) be allowable.
- (4F) For the purposes of subsections (4C) and (4E), “employment income tax charge” and “NIC charge” have the meaning given by section 40(7).”
- (10) After subsection (4F) (inserted by subsection (9)) insert—
- “(4G) Subsection (4H) applies where—
- (a) a deduction would, apart from this section, be allowable for an amount (the “remuneration amount”) in respect of employees’ remuneration, and
 - (b) in consequence of the payment of the employees’ remuneration, employee benefit contributions are made, or are to be made, in respect of the remuneration amount.
- (4H) In calculating for income tax purposes a person’s profits or other income, the deduction referred to in subsection (4G)(a) is to be treated as a deduction in respect of employee benefit contributions made or to be made (and is to be treated as not being a deduction in respect of employees’ remuneration).”
- (11) The amendments made by subsections (2) to (4) and (7) to (9) have effect in relation to employee benefit contributions made, or to be made, on or after 6 April 2017.
- (12) The amendments made by subsections (5) and (10) have effect in relation to remuneration paid on or after 6 April 2017.

37 Disguised remuneration schemes: restriction of corporation tax relief

- (1) Section 1290 of CTA 2009 (restriction of deductions: employee benefit contributions) is amended in accordance with subsections (2) to (5).
- (2) After subsection (1) insert—
- “(1A) No deduction is allowed under this section in respect of employee benefit contributions for a period of account which starts more than 5 years after the end of the period of account in which the contributions are made.”
- (3) After subsection (2) insert—
- “(2A) Subsection (2) is subject to subsections (1A) and (2B).
- (2B) Where subsection (3C) applies, no deduction is allowed for an amount in respect of the contributions for the period except so far as the amount is a qualifying amount (see subsection (3D)).”
- (4) After subsection (3) insert—
- “(3A) Subsection (3) is subject to subsections (1A) and (3B).
- (3B) Where subsection (3C) applies, an amount disallowed under subsection (2) is allowed as a deduction for a subsequent period only so far as it is a qualifying amount.

- (3C) This subsection applies where the provision of qualifying benefits out of, or by way of, the contributions gives rise both to an employment income tax charge and to an NIC charge.
- (3D) An amount in respect of employee benefit contributions is a “qualifying amount” if the relevant tax charges are paid before the end of the relevant period (and are not repaid).
- (3E) For the purposes of subsection (3D)—
- (a) the “relevant tax charges”, in relation to an amount, are the employment income tax charge and the NIC charge arising in respect of benefits which are provided out of, or by way of, that amount, and
 - (b) the “relevant period” is the period of 12 months immediately following the end of the period of account for which the deduction for the employee benefit contributions would (apart from this section) be allowable.
- (3F) For the purposes of subsections (3C) and (3E), “employment income tax charge” and “NIC charge” have the meaning given by section 1292(7).”
- (5) After subsection (3F) (inserted by subsection (4)) insert—
- “(3G) Subsection (3H) applies where—
- (a) a deduction would, apart from this section, be allowable for an amount (the “remuneration amount”) in respect of employees’ remuneration, and
 - (b) in consequence of the payment of the employees’ remuneration, employee benefit contributions are made, or are to be made, in respect of the remuneration amount.
- (3H) In calculating for corporation tax purposes the profits of a company, the deduction referred to in subsection (3G)(a) is to be treated as a deduction in respect of employee benefit contributions made or to be made (and is to be treated as not being a deduction in respect of employees’ remuneration).”
- (6) The amendments made by subsections (2) to (4) have effect in relation to employee benefit contributions made, or to be made, on or after 1 April 2017.
- (7) The amendment made by subsection (5) has effect in relation to remuneration paid on or after 1 April 2017.