



Income Tax (Earnings and Pensions) Act 2003

2003 CHAPTER 1

PART 5

EMPLOYMENT INCOME: DEDUCTIONS ALLOWED FROM EARNINGS

CHAPTER 2

DEDUCTIONS FOR EMPLOYEE'S EXPENSES

Employee liabilities and indemnity insurance

346 Deduction for employee liabilities [^{F1}and expenses]

- (1) A deduction from earnings from an employment is allowed for any or all of the following—
- A. Payment in or towards the discharge of a liability related to the employment.
 - B. Payment of any costs or expenses incurred in connection with—
 - (a) a claim that the employee is subject to a liability related to the employment, or
 - (b) proceedings relating to or arising out of a claim that the employee is subject to a liability related to the employment.
 - [^{F2}BA. Payment of any costs or expenses not falling within paragraph B which are incurred in connection with the employee giving evidence about matters related to the employment in, or for the purposes of—
 - (a) a proceeding or other process (whether or not involving the employee), or
 - (b) an investigation (whether or not likely to lead to any proceeding or other process involving the employee).

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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 employee related to the employment, or
- (b) any other matters related to the 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 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 [^{F3}, BA or BB] .

- (2) But a deduction is not allowed for a payment which falls within paragraph A [^{F4}B, BA or BB] if it would be unlawful for the employer to enter into a contract of insurance in respect of the liability, or costs or expenses, in question.

[^{F5}(2A) Nor is a deduction allowed for a payment which falls within [^{F6}any of paragraphs A to C] if the payment is made in pursuance of arrangements the main purpose, or one of the main purposes, of which is the avoidance of tax.]

(3) In this Chapter—

- (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.

[^{F7}(4) In this section and section 349—

- (a) “acts” includes failures to act and acts are “related to the employment” if the employee was acting—
 - (i) in the employee's capacity as holder of the employment, or
 - (ii) in any other capacity in which the employee was acting in the performance of the duties of the 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. 346 heading inserted (with effect in accordance with s. 4(8) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), s. 4(2)(a)

F2 Words in s. 346(1) inserted (with effect in accordance with s. 4(8) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), s. 4(2)(b)

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- F3** Words in s. 346(1) inserted (with effect in accordance with s. 4(8) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 4\(2\)\(c\)](#)
- F4** Words in s. 346(2) substituted (with effect in accordance with s. 4(8) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 4\(2\)\(d\)](#)
- F5** S. 346(2A) inserted (with effect in accordance with s. 67(4) of the amending Act) by [Finance Act 2009 \(c. 10\), s. 67\(2\)](#)
- F6** Words in s. 346(2A) substituted (with effect in accordance with s. 4(8) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 4\(2\)\(e\)](#)
- F7** S. 346(4) inserted (with effect in accordance with s. 4(8) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 4\(2\)\(f\)](#)

347 Payments made after leaving the employment

- (1) A deduction for a payment is not allowed under section 346 if—
 - (a) the employee has ceased to hold the employment, and
 - (b) the payment is made after the day on which the employee ceased to hold the employment.
- (2) If subsection (1) applies, see section 555 (former employee entitled to deduction [^{F8}in calculating net income]).

Textual Amendments

- F8** Words in s. 347(2) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 435](#) (with [Sch. 2](#))

348 Liabilities related to the employment

For the purposes of this Chapter each of the following kinds of liability is related to the employment— A. Liability imposed upon the employee because he did an act, or failed to do an act—

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

B. Liability imposed upon the 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 employment, or
- (b) in any other capacity in which he acted in the performance of the duties of the employment.

349 Meaning of “qualifying insurance contract”

- (1) In section 346 “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 an employee against a liability related to the employment,

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- (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,
- [^{F9}(ca) the payment of costs or expenses incurred in connection with an employee giving evidence about matters related to the employee's employment in, or for the purposes of—
 - (i) a proceeding or other process (whether or not involving the employee), or
 - (ii) an investigation (whether or not likely to lead to any proceeding or other process involving the 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 an employee related to the employment, or
 - (ii) any other matters related to the employment of an 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 an employee in respect of—
 - (i) a liability related to the employment, or
 - (ii) any costs or expenses incurred as mentioned in paragraph (c) [^{F10}, (ca) or (cb)].

(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

F9 S. 349(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\(3\)\(a\)](#)

F10 Words in s. 349(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\(3\)\(b\)](#)

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350 Connected contracts

- (1) An insurance contract is connected with another contract for the purposes of section 349 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 349,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.

Changes to legislation:

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