



# Corporation Tax Act 2009

## 2009 CHAPTER 4

### PART 3

#### TRADING INCOME

### CHAPTER 5

#### TRADE PROFITS: RULES ALLOWING DEDUCTIONS

##### *Redundancy payments etc*

## **76 Redundancy payments and approved contractual payments**

- (1) Sections 77 to 79 apply if—
- (a) a company (“the employer”) makes a redundancy payment or an approved contractual payment to another person (“the employee”), and
  - (b) the payment is in respect of the employee’s employment wholly in the employer’s trade or partly in the employer’s trade and partly in one or more other capacities.
- (2) For the purposes of this section and sections 77 to 81 “redundancy payment” means a redundancy payment payable under—
- (a) Part 11 of the Employment Rights Act 1996 (c. 18), or
  - (b) Part 12 of the Employment Rights (Northern Ireland) Order 1996 (S.I. 1996/1919 (N.I. 16)).
- (3) For the purposes of this section and those sections—
- “contractual payment” means a payment which, under an agreement, an employer is liable to make to an employee on the termination of the employee’s contract of employment, and
  - a contractual payment is “approved” if, in respect of that agreement, an order is in force under—

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*Status: This is the original version (as it was originally enacted).*

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- (a) section 157 of the Employment Rights Act 1996, or
- (b) Article 192 of the Employment Rights (Northern Ireland) Order 1996.

#### **77 Payments in respect of employment wholly in employer's trade**

- (1) This section applies if—
  - (a) the payment is in respect of the employee's employment wholly in the employer's trade, and
  - (b) no deduction would otherwise be allowable for the payment.
- (2) In calculating the profits of the trade, a deduction is allowed under this section for the payment.
- (3) The deduction under this section for an approved contractual payment must not exceed the amount which would have been due to the employee if a redundancy payment had been payable.
- (4) If the payment is made after the employer has permanently ceased to carry on the trade, it is treated as made on the last day on which the employer carried on the trade.
- (5) If there is a partnership change, subsection (4) does not apply so long as a company carrying on the trade in partnership immediately before the change continues to carry it on in partnership after the change.
- (6) The reference in subsection (5) to a partnership change is to a change in the persons carrying on the trade in circumstances where the trade is carried on by persons in partnership immediately before or immediately after the change (or at both those times).
- (7) The deduction under this section is allowed for the accounting period in which the payment is made (or treated under subsection (4) as made).

#### **78 Payments in respect of employment in more than one capacity**

- (1) This section applies if the payment is in respect of the employee's employment with the employer—
  - (a) partly in the employer's trade, and
  - (b) partly in one or more other capacities.
- (2) The amount of the redundancy payment, or the amount which would have been due if a redundancy payment had been payable, is to be apportioned on a just and reasonable basis between—
  - (a) the employment in the trade, and
  - (b) the employment in the other capacities.
- (3) The part of the payment apportioned to the employment in the trade is treated as a payment in respect of the employee's employment wholly in the trade for the purposes of section 77.

#### **79 Additional payments**

- (1) This section applies if the employer permanently ceases to carry on a trade or part of a trade and makes a payment to the employee in addition to—

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

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- (a) the redundancy payment, or
  - (b) if an approved contractual payment is made, the amount that would have been due if a redundancy payment had been payable.
- (2) If, in calculating the profits of the trade—
- (a) no deduction would otherwise be allowable for the additional payment, but
  - (b) a deduction would be allowable for it if the employer had not permanently ceased to carry on the trade or the part of the trade,
- a deduction is allowed under this section for the additional payment.
- (3) The deduction under this section is limited to 3 times the amount of—
- (a) the redundancy payment, or
  - (b) if an approved contractual payment is made, the amount that would have been due if a redundancy payment had been payable.
- (4) If the payment is made after the employer has permanently ceased to carry on the trade or the part of the trade, it is treated as made on the last day on which the employer carried on the trade or the part of the trade.
- (5) The deduction under this section is allowed for the accounting period in which the payment is made (or treated under subsection (4) as made).

## **80 Application of section 79 in cases involving partnerships**

- (1) This section deals with the application of section 79 in circumstances where—
- (a) there is a change in the persons carrying on a trade, and
  - (b) the trade is carried on by persons in partnership before or after the change (or at both those times).
- (2) The employer is treated for the purposes of section 79 as permanently ceasing to carry on the trade unless a company carrying on the trade in partnership immediately before the change continues to carry it on in partnership after the change.

## **81 Payments made by the Government**

- (1) This section applies if, in respect of a redundancy payment or an approved contractual payment payable by an employer—
- (a) the Secretary of State makes a payment under section 167 of the Employment Rights Act 1996 (c. 18), or
  - (b) the Department for Employment and Learning makes a payment under Article 202 of the Employment Rights (Northern Ireland) Order 1996 (S.I. 1996/1919 (N.I. 16)).
- (2) So far as the employer reimburses the Secretary of State or Department for the payment, sections 77 to 80 apply as if the payment were—
- (a) a redundancy payment, or
  - (b) an approved contractual payment,
- made by the employer.