

SCHEDULES

SCHEDULE 24

Section 143

RESTRICTION OF DEDUCTIONS FOR EMPLOYEE BENEFIT CONTRIBUTIONS

Restriction of deductions

- 1 (1) This Schedule applies where—
- (a) a calculation is required to be made for tax purposes of a person's profits for any period, and
 - (b) a deduction would (but for this Schedule) be allowed for that period in respect of employee benefit contributions made, or to be made, by that person ("the employer").

But it does not apply to a deduction of a kind mentioned in paragraph 8.

- (2) For the purposes of this Schedule an employer makes an "employee benefit contribution" if—
- (a) he pays money or transfers an asset to another person ("the third party"), and
 - (b) the third party is entitled or required, under the terms of an employee benefit scheme, to hold or use the money or asset for or in connection with the provision of benefits to employees of the employer.
- (3) The deduction in respect of employee benefit contributions mentioned in sub-paragraph (1) is allowed only to the extent that—
- (a) during the period in question or within nine months from the end of it—
 - (i) qualifying benefits are provided out of the contributions, or
 - (ii) qualifying expenses are paid out of the contributions,or
 - (b) where the making of the contributions is itself the provision of qualifying benefits, the contributions are made during that period or within those nine months.
- (4) An amount disallowed under sub-paragraph (3) is allowed as a deduction for a subsequent period to the extent that—
- (a) qualifying benefits are provided out of the employee benefit contributions in question before the end of that subsequent period, or
 - (b) where the making of the contributions is itself the provision of qualifying benefits, the contributions are made before the end of that subsequent period.

"Provision of qualifying benefits"

- 2 (1) For the purposes of this Schedule qualifying benefits are provided where there is a payment of money or transfer of assets, otherwise than by way of loan, that—
- (a) gives rise both to an employment income tax charge and to a NIC charge, or would do if the conditions in sub-paragraph (3) were met, or

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- (b) is made in connection with the termination of the recipient’s employment with the employer.
- (2) In sub-paragraph (1)(a)—
- “employment income tax charge” means a charge to tax under the Income Tax (Earnings and Pensions) Act 2003 (c. 1) (whether on the recipient or on someone else);
 - “NIC charge” means a liability to pay national insurance contributions under section 6 (Class 1 contributions), 10 (Class 1A contributions) or 10A (Class 1B contributions) of the Contributions and Benefits Act.
- (3) The conditions mentioned in sub-paragraph (1)(a) are—
- (a) that the duties of the employment in respect of which the payment or transfer was made were performed in the United Kingdom, and
 - (b) that the person in respect of whose employment the payment or transfer was made fulfilled at all relevant times the conditions as to residence or presence in Great Britain or Northern Ireland prescribed under section 1(6)(a) of the Contributions and Benefits Act.
- (4) In this paragraph “the Contributions and Benefits Act” means—
- (a) the Social Security Contributions and Benefits Act 1992 (c. 4), or
 - (b) the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7).
- (5) Where the provision of a qualifying benefit takes the form of the payment of money, the benefit is treated for the purposes of this Schedule as provided at the time when the money is treated as received for the purposes of Chapter 4 of Part 2 of the Income Tax (Earnings and Pensions) Act 2003, applying the rules in section 18 of that Act (receipt of money earnings).

“Qualifying expenses”

- 3 In this Schedule “qualifying expenses”—
- (a) does not include expenses that, if incurred by the employer, would not be deductible in calculating for tax purposes the employer’s profits for any period, but
 - (b) subject to that, includes any expenses of the third party (other than the provision of benefits to employees of the employer) in operating the employee benefit scheme in question.

Payment “out of” employee benefit contributions

- 4 (1) For the purposes of paragraph 1(3)(a) any qualifying benefits provided or qualifying expenses paid by the third party after the receipt by him of employee benefit contributions are regarded as being provided or paid out of those contributions, up to the total amount of the contributions as reduced by the amount of any benefits or expenses previously provided or paid as mentioned in paragraph 1(3)(a).
- (2) For the purposes of paragraph 1(4)(a) any qualifying benefits provided by the third party after the receipt by him of employee benefit contributions are regarded as being provided out of those contributions, up to the total amount of the contributions as reduced by the amount of any benefits or expenses previously provided or paid as mentioned in paragraph 1(3)(a) or (4)(a).

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- (3) In applying sub-paragraphs (1) and (2) above no account shall be taken of any other amount received or paid by the third party.

Transfer of asset to employee

- 5 (1) This paragraph applies where the provision of a qualifying benefit takes the form of the transfer of an asset.
- (2) The amount provided shall be taken for the purposes of this Schedule to be the total of—
- (a) the amount (if any) expended on the asset by the third party, and
 - (b) in a case where the asset was transferred to the third party by the employer, the amount of the deduction that would be allowed as mentioned in paragraph 1(1) in respect of the transfer.
- (3) But where the amount given by sub-paragraph (2) above is more than the amount that is charged to tax under the Income Tax (Earnings and Pensions) Act 2003 (c. 1) in respect of the transfer, or would be so charged if the condition in paragraph 2(3) (a) were met, the deduction allowable under paragraph 1(3) or (4) is limited to that lower amount.

Provisional calculation of profits

- 6 Where the calculation referred to in paragraph 1(1) is made before the end of the nine-month period mentioned in paragraph 1(3)—
- (a) for the purposes of making the calculation, paragraph 1(3) shall be read as if the reference to that nine-month period were a reference to the period ending at the time when the calculation is made, but
 - (b) after the end of the nine-month period the calculation shall if necessary be adjusted to take account of any benefits provided, expenses paid or contributions made within that period but after the time of the calculation.

Life assurance business

- 7 (1) In the case of an insurance company carrying on life assurance business, the effect of section 86 of the Finance Act 1989 (c. 26) (spreading of relief for acquisition expenses) shall be ignored in determining for the purposes of paragraph 1(1) whether a deduction would (apart from this Schedule) be allowed for a particular period.
- (2) But paragraph 1(4) has effect subject to that section where, in accordance with sub-paragraph (1) above, an amount is allowed as a deduction for a particular period under paragraph 1(4).

Deductions to which Schedule does not apply

- 8 This Schedule does not apply to any deduction that is allowable—
- (a) in respect of anything given as consideration for goods or services provided in the course of a trade or profession,
 - (b) in respect of contributions under a retirement benefits scheme within the meaning of Chapter 1 of Part 14 of the Taxes Act 1988 (see section 611 of that Act),

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- (c) in respect of contributions under a personal pension scheme approved under Chapter 4 of that Part (see section 630 of that Act),
- (d) in respect of contributions under an accident benefit scheme,
- (e) under Schedule 4AA to that Act (approved share incentive plans),
- (f) under section 67 of the Finance Act 1989 (c. 26) (qualifying share ownership trusts), or
- (g) under Schedule 23 to this Act (relief for employee share acquisition).

Interpretation

9 (1) In this Schedule—

“accident benefit scheme” means an employee benefit scheme under which benefits may be provided only by reason of a person’s disablement, or death, caused by an accident occurring during his service as an employee of the employer;

“employee benefit contribution” shall be read in accordance with paragraph 1(2);

“employee benefit scheme” means a trust, scheme or other arrangement for the benefit of persons who are, or include, employees of the employer;

“the employer” shall be read in accordance with paragraph 1(1);

“for tax purposes” means for any purposes of income tax or corporation tax;

“qualifying benefits” shall be read in accordance with paragraph 2;

“qualifying expenses” has the meaning given by paragraph 3;

“the third party” shall be read in accordance with paragraph 1(2).

(2) A reference in this Schedule to a person’s employee includes a reference to the holder of an office under that person, and “employment” shall be read accordingly.

Consequential amendments

10 (1) In section 43 (Schedule D) and section 44 (investment and insurance companies) of the Finance Act 1989 (c. 26), in subsection (2) (amounts charged in accounts in respect of employees’ remuneration) for paragraphs (a) and (b) substitute “for which provision is made in the accounts”.

(2) In Schedule 29 to the Finance Act 2002 (c. 23) (intangible fixed assets), in paragraph 113(3)(a) (meaning of “potential emoluments”) omit the words “or benefits” and “, or held by an intermediary,”.

Commencement and transitory provisions

11 (1) This Schedule has effect in relation to deductions that would (but for this Schedule) be allowed for a period ending on or after 27th November 2002 in respect of employee benefit contributions made on or after that date.

(2) In relation to any time before the coming into force of the Income Tax (Earnings and Pensions) Act 2003 (c. 1), this Schedule has effect as if—

(a) the references to tax under that Act were to income tax under Schedule E;

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- (b) the reference in paragraph 8(e) to Schedule 4AA to the Taxes Act 1988 (approved share incentive plans) were to Part 12 of Schedule 8 to the Finance Act 2000 (c. 17) (employee share ownership plans);
 - (c) for the words in paragraph 2(5) from “treated as received” to the end there were substituted “treated as received for the purposes of section 202A(1)(a) of the Taxes Act 1988, applying the rules in section 202B(1) to (6) of that Act (receipts basis of assessment for Schedule E)”.
- (3) In relation to any such time, sections 43(11)(a) and 44(9)(a) of the Finance Act 1989 have effect with the omission of the words “or benefits” and “, or held by an intermediary,”.
- (4) In relation to a period beginning before 1st January 2003, the reference in paragraph 8(g) to a deduction allowable under Schedule 23 to this Act shall be read as a reference to a deduction allowable to a company for that period in respect of a person—
- (a) acquiring shares that are qualifying shares within the meaning of that Schedule, or
 - (b) having a right to acquire such shares,
- whether in that period or subsequently, by reason of his or another’s employment with the company.