



Finance (No. 2) Act 2017

2017 CHAPTER 32

PART 1

DIRECT TAXES

Disguised remuneration

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.

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- (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.

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- (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
 - (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.

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. A1 para. 8(6)(b) omitted by [2022 c. 3 Sch. 1 para. 32\(b\)](#)
- Sch. A1 para. 8(2) substituted by [2022 c. 3 Sch. 1 para. 32\(a\)](#)