



# Finance Act 1995

## 1995 CHAPTER 4

### PART III

#### INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

##### *Reliefs*

#### **90 Relief for post-cessation expenditure.**

- (1) In Chapter VI of Part IV of the Taxes Act 1988 (provisions relating to the Schedule D charge: discontinuance, &c.), after section 109 insert—

*“ Relief for post-cessation expenditure*

#### **109A Relief for post-cessation expenditure.**

- (1) Where in connection with a trade, profession or vocation formerly carried on by him which has been permanently discontinued a person makes, within seven years of the discontinuance, a payment to which this section applies, he may, by notice given within twelve months from the 31st January next following the year of assessment in which the payment is made, claim relief from income tax on an amount of his income for that year equal to the amount of the payment.
- (2) This section applies to payments made wholly and exclusively—
- in remedying defective work done, goods supplied or services rendered in the course of the former trade, profession or vocation or by way of damages (whether awarded or agreed) in respect of any such defective work, goods or services; or
  - in defraying the expenses of legal or other professional services in connection with any claim that work done, goods supplied or services rendered in the course of the former trade, profession or vocation was or were defective;

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- (c) in insuring against any liabilities arising out of any such claim or against the incurring of such expenses; or
  - (d) for the purpose of collecting a debt taken into account in computing the profits or gains of the former trade, profession or vocation.
- (3) Where a payment of any of the above descriptions is made in circumstances such that relief under this section is available, the following shall be treated as sums to which section 103 applies (whether or not they would be so treated apart from this subsection)—
- (a) in the case of a payment within paragraph (a) or (b) of subsection (2) above, any sum received, by way of the proceeds of insurance or otherwise, for the purpose of enabling the payment to be made or by means of which it is reimbursed,
  - (b) in the case of a payment within paragraph (c) of that subsection, any sum (not falling within paragraph (a) above) received by way of refund of premium or otherwise in connection with the insurance, and
  - (c) in the case of a payment within paragraph (d) of that subsection, any sum received to meet the costs of collecting the debt;
- and no deduction shall be made under section 105 in respect of any such sums.

Where such a sum is received in a year of assessment earlier than that in which the related payment is made, it shall be treated as having been received in that later year and not in the earlier year; and any such adjustment shall be made, by way of modification of any assessment or discharge or repayment of tax, as is required to give effect to this subsection.

- (4) Where a trade, profession or vocation carried on by a person has been permanently discontinued and subsequently an unpaid debt which was taken into account in computing the profits or gains of that trade, profession or vocation and to the benefit of which he is entitled—
- (a) is proved to be bad, or
  - (b) is released, in whole or in part, as part of a relevant arrangement or compromise (within the meaning of section 74),

he shall be treated as making a payment to which this section applies of an amount equal to the amount of the debt or, as the case may be, the amount released or, if he was entitled to only part of the benefit of the debt, to an appropriate proportion of that amount.

If any sum is subsequently received by him in payment of a debt for which relief has been given by virtue of this subsection, the sum shall be treated as one to which section 103 applies; and no deduction shall be made under section 105 in respect of any such sum.

- (5) Where in the case of a trade, profession or vocation which has subsequently been permanently discontinued a deduction was made in computing the profits or losses of the trade, profession or vocation in respect of an expense not actually paid (an “unpaid expense”), then—
- (a) if relief under this section in connection with that trade, profession or vocation is claimed in respect of any year of assessment, the amount of the relief shall be reduced by the amount of any unpaid expenses at the end of that year;

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- (b) for the purposes of the application of paragraph (a) above in relation to a subsequent year of assessment, any amount by which relief under this section has been reduced by virtue of that paragraph shall be treated as having been paid in respect of the expense in question; and
  - (c) if subsequently any amount is in fact paid in respect of an expense in respect of which a reduction has been made under paragraph (a), that amount (or, if less, the amount of the reduction) shall be treated as a payment to which this section applies.
- (6) Relief shall not be given under this section in respect of an amount for which relief has been given or is available under any other provision of the Income Tax Acts.
- In applying this subsection relief available under section 105 shall be treated as given in respect of other amounts before any amount in respect of which relief is available under this section.
- (7) This section does not apply for the purposes of corporation tax.”.
- (2) Section 109A(1) of the Taxes Act 1988 (inserted by subsection (1) above) has effect as respects the years 1994-95 and 1995-96 with the substitution for the words “twelve months from the 31st January next following” of the words “two years after”.
- (3) In section 110(1) of the Taxes Act 1988 (interpretation, &c.) for “sections 103 to 109” substitute “sections 103 to 109A”.
- (4) Where under section 109A of the Taxes Act 1988 (inserted by subsection (1) above) a person makes a claim for relief for a year of assessment in respect of an amount which is available for relief under that section, he may in the notice by which the claim is made make a claim to have so much of that amount as cannot be set off against his income for the year (the “excess relief”) treated for the purposes of capital gains tax as an allowable loss accruing to him in that year.
- (5) No relief shall be available by virtue of subsection (4) above in respect of so much of the excess relief as exceeds the amount on which the claimant would be chargeable to capital gains tax for that year if the following (and the effect of that subsection) were disregarded—
- (a) any allowable losses falling to be carried forward to that year from a previous year for the purposes of section 2(2) of the <sup>M1</sup>Taxation of Chargeable Gains Act 1992;
  - (b) section 3(1) of that Act (the annual exempt amount); and
  - (c) any relief against capital gains tax under section 72 of the <sup>M2</sup>Finance Act 1991 (deduction of trading losses).
- (6) In section 105(2) of the Taxes Act 1988 (deductions allowed against post-cessation receipts: exclusion of amounts allowed elsewhere), after “any other provision of the Tax Acts” insert “or by virtue of section 90(4) of the Finance Act 1995”.
- (7) This section has effect in relation to payments made or treated as made (see subsection (4) of section 109A of the Taxes Act 1988 inserted by subsection (1) above) on or after 29th November 1994.

#### Marginal Citations

M1 1992 c. 12.

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M2 1991 c. 31.

## 91 Employee liabilities and indemnity insurance.

(1) After section 201 of the Taxes Act 1988 there shall be inserted the following section—

### “201AA Employee liabilities and indemnity insurance.

- (1) Subject to the provisions of this section, the following may be deducted from the emoluments of any office or employment to be assessed to tax, if defrayed out of those emoluments, that is to say—
  - (a) any amount paid in or towards the discharge of a qualifying liability of the person who is the holder of the office or employment;
  - (b) costs or expenses incurred in connection with any claim that that person is subject to such a liability or with any proceedings relating to or arising out of such a claim; and
  - (c) so much (if any) of any premium paid under a qualifying contract of insurance as relates to the indemnification of that person against a qualifying liability or to the payment of any such costs or expenses.
- (2) For the purposes of this section a liability is a qualifying liability, in relation to any office or employment, if it is imposed either—
  - (a) in respect of any acts or omissions of a person in his capacity as the holder of that office or employment or in any other capacity in which he acts in the performance of the duties of that office or employment; or
  - (b) in connection with any proceedings relating to or arising out of a claim that a person is subject to a liability imposed in respect of any such acts or omissions.
- (3) For the purposes of this section a qualifying contract of insurance is a contract of insurance which—
  - (a) so far as the risks insured against are concerned, relates exclusively to one or more of the matters mentioned in subsection (4) below;
  - (b) is not connected with any other contract;
  - (c) does not contain provision entitling the insured, in addition to cover for the risks insured against and any right to renew the policy, to receive any payment or other benefit the entitlement to which is something to which a significant part of the premium under the contract is reasonably attributable; and
  - (d) is a contract the period of insurance under which does not exceed two years (except by virtue of one or more renewals each for a period of two years or less) and is not a contract which the insured is required to renew for any period.
- (4) The matters referred to in subsection (3)(a) above in relation to any contract of insurance are the following, that is to say—
  - (a) the indemnification of any person holding any office or employment against any qualifying liability;

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- (b) the indemnification of any person against any vicarious liability in respect of acts or omissions giving rise, in the case of another, to such a qualifying liability;
  - (c) the payment of some or all of the costs or expenses incurred by or on behalf of that or any other person in connection with any claim that a person is subject to a liability to which the insurance relates or with any proceedings relating to or arising out of such a claim; and
  - (d) the indemnification of any person against any loss from the payment by him (whether or not in discharge of any liability) to a person holding an office or employment under him of any amount in respect of a qualifying liability or of any such costs or expenses.
- (5) For the purposes of this section a contract of insurance is connected with another contract at any time at or after the time when they have both been entered into if—
  - (a) either of them was entered into by reference to the other or with a view to enabling the other to be entered into on particular terms or to facilitating the other being entered into on particular terms; and
  - (b) the terms on which either of them was entered into would have been significantly different if it had not been entered into in anticipation of the other being entered into or if the other had not also been entered into.
- (6) Two or more contracts of insurance shall not be prevented by virtue of paragraph (b) of subsection (3) above from being qualifying contracts if—
  - (a) they each satisfy the requirements of paragraphs (a), (c) and (d) of that subsection; and
  - (b) the only respects in which there is a significant difference between the terms on which any of those contracts is entered into and what would have been those terms if the other contract or contracts had not been entered into consist in such reductions of premium as are reasonably attributable to—
    - (i) the fact that, where different contracts have been entered into as part of a single transaction, the premium under each of the contracts has been fixed by reference to the appropriate proportion of what would have been the premium under a single contract relating to all the risks covered by the different contracts; or
    - (ii) the fact that the contract in question contains a right to renew or is entered into by way of renewal or in pursuance of such a right.
- (7) For the purpose of determining the different parts of any premium under any contract of insurance which are to be treated for the purposes of this section as paid in respect of the different risks, different persons and different offices and employments to which the contract relates, such apportionment of that premium shall be made as may be reasonable.
- (8) Where it would be unlawful for a person under whom any other person holds any office or employment to enter into a contract of insurance in respect of liabilities of any description or in respect of costs or expenses of any description, no deduction may be made under this section in respect of—

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- (a) the discharge of any liability of that other person which is a liability of that description; or
  - (b) any costs or expenses incurred by or on behalf of that other person which are costs or expenses of that description.
- (9) References in this section to a premium, in relation to a contract of insurance, are references to any amount payable under the contract to the insurer.”
- (2) In sections 141(3), 142(2), 153(2) and 156(8) of that Act (which make provision, in relation to non-cash vouchers, credit-tokens, expenses and benefits in kind, about amounts which would have been deductible under certain provisions if paid out of a person’s emoluments), after “201”, in each case, there shall be inserted “ 201AA ”.
- (3) This section has effect for the year 1995-96 and subsequent years of assessment.

## **92 Post-employment deductions.**

- (1) Subject to the following provisions of this section, where any individual who has held any office or employment (“the former employee”) defrays any amount to which this section applies, he shall be entitled, on making a claim for the purpose, to a deduction of that amount in computing, for income tax purposes, his total income for the year of assessment in which that amount is defrayed.
- (2) This section applies to any amount defrayed by the former employee where that amount—
- (a) is defrayed by him in the period beginning when he ceased to hold the relevant office or employment and ending with the sixth year of assessment after that in which he ceased to hold it; and
  - (b) is not deductible in pursuance of section 201AA of the Taxes Act 1988 from the emoluments of that office or employment to be assessed for tax but would be so deductible if—
    - (i) the former employee had continued to hold that office or employment, and
    - (ii) that amount had been defrayed out of the emoluments of that office or employment for the year of assessment in which it is in fact defrayed.
- (3) In determining for the purposes of subsection (2) above whether any amount would be deductible as mentioned in paragraph (b) of that subsection, the assumption in subparagraph (i) of that paragraph shall be disregarded when identifying the liabilities which are to be regarded as qualifying liabilities within the meaning of section 201AA of the Taxes Act 1988.
- (4) This section shall not apply to any amount defrayed by the former employee in so far as the cost of defraying that amount, without being met out of his relevant retirement benefits or post-employment emoluments, is borne—
- (a) by the person under whom he held the relevant office or employment;
  - (b) by a person for the time being carrying on the whole or any part of the business or other undertaking for the purposes of which the former employee held that office or employment;
  - (c) by a person who is for the time being subject to any of the liabilities with respect to that business or other undertaking of the person mentioned in paragraph (a) above;

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- (d) by a person who within the terms of section 839 of the Taxes Act 1988 is connected with a person falling within any of paragraphs (a) to (c) above; or
  - (e) out of the proceeds of any contract of insurance relating to the matters in respect of which the amount is defrayed.
- (5) In so far as the amount of any expenditure which is either—
- (a) defrayed by any person mentioned in subsection (4)(a) to (d) above, or
  - (b) borne as mentioned in subsection (4)(a) to (e) above,
- is an amount which falls to be treated as a relevant retirement benefit or post-employment emolument of the former employee, that amount shall be deemed for the purposes of this section to be an amount defrayed by the former employee out of that benefit or emolument.
- (6) Subject to subsection (7) below, if an amount to which this section applies exceeds by any amount (“the excess relief”) the amount from which it is deductible in accordance with subsection (1) above, the former employee shall be entitled, on making a claim for the purpose, to have the amount of the excess relief treated for the purposes of capital gains tax as an allowable loss accruing to that person for that year of assessment.
- (7) No relief shall be available by virtue of this section in respect of so much of the excess relief for any year of assessment as exceeds the maximum amount.
- (8) For the purposes of subsection (7) above the maximum amount, in relation to the excess relief for any year of assessment, is the amount on which the claimant would be chargeable to capital gains tax for that year if the following (together with any relief available under this section) were disregarded, that is to say—
- (a) any allowable losses falling to be carried forward to that year from a previous year for the purposes of section 2(2) of the <sup>M3</sup>Taxation of Chargeable Gains Act 1992;
  - (b) section 3(1) of that Act (the annual exempt amount); and
  - (c) any relief against capital gains tax under section 72 of the <sup>M4</sup>Finance Act 1991 (deduction of trading losses) or under section 90(4) of this Act.
- (9) In this section—
- “post-employment emolument”, in relation to the former employee, means so much of any amount as, having been received when the relevant office or employment is no longer held by the former employee, is treated for the purposes of the Income Tax Acts as an emolument of that office or employment;
- “the relevant office or employment”, in relation to the former employee, means the office or employment in respect of which he is the former employee; and
- “relevant retirement benefit”, in relation to the former employee, means so much of any amount as, in accordance with section 596A of the Taxes Act 1988, is chargeable to tax as a benefit received by him under a retirement benefits scheme of which he is a member in respect of the relevant office or employment.

[<sup>F1</sup>(10) Tax shall not be charged under section 148 of the Taxes Act 1988 (payments and other benefits in connection with termination of employment etc) in respect of a payment or other benefit received by an individual, or an individual’s executors or administrators, in so far as—

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- (a) in the case of a cash benefit, it is provided for meeting the cost of an amount to which this subsection applies, or
- (b) in the case of a non-cash benefit, it is or represents a benefit equivalent to the cost of defraying such an amount.

This subsection applies to an amount which, without being an amount to which this section applies, would fall to be treated as such an amount if subsection (4) of this section were omitted and, where the individual has died, he had not died but had himself defrayed any amounts defrayed by his executors or administrators.]

(11) This section applies for the year 1995-96 and subsequent years of assessment.

#### Textual Amendments

**F1** S. 92(10) substituted (31.7.1998 with effect as mentioned in s. 58(4) of the amending Act) by 1998 c. 36, s. 58(3)(4), **Sch. 9 Pt. II para. 5**

#### Marginal Citations

**M3** 1992 c. 12.

**M4** 1991 c. 31.

### 93 Incidental overnight expenses etc.

(1) In section 141 of the Taxes Act 1988 (non-cash vouchers), after subsection (6B) there shall be inserted the following subsections—

“(6C) Subsection (1) above shall not apply in relation to a non-cash voucher to the extent that it is used by the employee to obtain goods, services or money where—

- (a) obtaining the goods or services is incidental to his being away from his usual place of abode during a qualifying absence from home or, as the case may be, the money is obtained for the purpose of being used to obtain goods or services which would be so incidental;
- (b) the authorised maximum is not exceeded in relation to that qualifying absence; and
- (c) the cost of obtaining the goods or services would not be deductible as mentioned in subsection (3) above if incurred by the employee out of his emoluments.

(6D) Subsections (3) to (5) of section 200A shall apply as they apply for the purposes of that section for construing the references in subsection (6C) above to a qualifying absence from home and for determining, for the purposes of that subsection, whether the authorised maximum is exceeded.”

(2) In section 142 of that Act (credit-tokens), after subsection (3B) there shall be inserted the following subsections—

“(3C) Subsection (1) above shall not apply in relation to a credit-token to the extent that it is used by the employee to obtain goods, services or money where—

- (a) obtaining the goods or services is incidental to his being away from his usual place of abode during a qualifying absence from home or, as the case may be, the money is obtained for the purpose of being used to obtain goods or services which would be so incidental;



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- (b) the authorised maximum is not exceeded in relation to that qualifying absence; and
  - (c) the cost of obtaining the goods or services would not be deductible as mentioned in subsection (2) above if incurred by the employee out of his emoluments.
- (3D) Subsections (3) to (5) of section 200A shall apply as they apply for the purposes of that section for construing the references in subsection (3C) above to a qualifying absence from home and for determining, for the purposes of that subsection, whether the authorised maximum is exceeded.”
- (3) In section 155 of that Act (exceptions from general charge on benefits in kind for persons in director’s or higher-paid employment), after subsection (1A) there shall be inserted the following subsections—
  - “(1B) Section 154 does not apply in the case of a benefit provided for the employee himself where—
    - (a) the provision of the benefit is incidental to the employee’s being away from his usual place of abode during a qualifying absence from home;
    - (b) the authorised maximum is not exceeded in relation to that qualifying absence; and
    - (c) the cost of the benefit would not be deductible as mentioned in section 156(8) if incurred by the employee out of his emoluments.
  - (1C) Subsections (3) to (5) of section 200A shall apply as they apply for the purposes of that section for construing the references in subsection (1B) above to a qualifying absence from home and for determining, for the purposes of that subsection, whether the authorised maximum is exceeded.”
- (4) After section 200 of that Act there shall be inserted the following section—

**“200A Incidental overnight expenses.**

- (1) Subject to subsection (2) below, sums paid to or on behalf of any person holding an office or employment, to the extent that they are paid wholly and exclusively for the purpose of defraying, or of being used for defraying, any expenses which—
  - (a) are incidental to that person’s being away from his usual place of abode during a qualifying absence from home, but
  - (b) would not be deductible under section 193, 194, 195, 198 or 332 if incurred out of that person’s emoluments,shall not be regarded as emoluments of the office or employment for any purpose of Schedule E.
- (2) Subsection (1) above shall not apply in the case of any qualifying absence in relation to which the authorised maximum is exceeded.
- (3) For the purposes of this section a qualifying absence from home, in relation to a person holding an office or employment, is any continuous period throughout which that person is obliged to stay away from his usual place of abode and during which he—
  - (a) has at least one overnight stay away from that place; but

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- (b) does not on any occasion stay overnight at a place other than a place the expenses of travelling to which are either—
      - (i) expenses incurred out of his emoluments and deductible, otherwise than by virtue of section 193(4), 194(2) or 195(6), under any of the provisions mentioned in subsection (1)(b) above, or
      - (ii) expenses which would be so deductible if so incurred.
  - (4) In this section “the authorised maximum”, in relation to each qualifying absence from home by any person, means the aggregate amount equal to the sum of the following amounts—
    - (a) £5 for every night (if any) during that absence which is a night the whole of which is spent by that person in the United Kingdom; and
    - (b) £10 for every night (if any) during that absence which is a night the whole or any part of which is spent by that person outside the United Kingdom.
  - (5) For the purposes of this section the authorised maximum is exceeded in relation to a qualifying absence from home by any person if that maximum is exceeded by the amount which, in the absence of subsection (2) above and of the other requirements of this Act that that maximum is not exceeded, would fall by virtue of this section and sections 141(6C), 142(3C) and 155(1B) to be disregarded, in relation to that qualifying absence, in determining the amount of that person’s emoluments.
  - (6) The Treasury may by order increase either or both of the sums for the time being specified in subsection (4)(a) and (b) above; and such an order shall have effect for determining what emoluments are received by any person on or after the date when the order comes into force.”
- (5) This section shall have effect for determining what emoluments are received by any person on or after 6th April 1995.

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