



# Finance Act 1995

## 1995 CHAPTER 4

### PART III

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

##### *Reliefs*

#### **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.

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*Status: This is the original version (as it was originally enacted).*

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- (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;
  - (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 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 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

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“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.

(10) Tax shall not be charged under section 148 of the Taxes Act 1988 (payments on retirement or removal from office or employment) in respect of any payment made or treated as made to any individual, or to any individual’s executors or administrators, in so far as the payment is made for meeting the cost of defraying any amount which, without being an amount to which this section applies in relation to that individual, would fall to be treated as such an amount if—

- (a) subsection (4) of this section were omitted; and
- (b) where that individual has died, he had not died but had himself defrayed any amounts defrayed by his executors or administrators;

and this subsection shall have effect in the case of any valuable consideration that is deemed under section 148(3) to be a payment as if the consideration were deemed, to the extent that it is or represents a benefit equivalent to meeting the cost of defraying such an amount, to be a payment made for meeting such a cost.

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