

Status: Point in time view as at 16/06/2012.

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Income Tax (Earnings and Pensions) Act 2003

2003 CHAPTER 1

[^{F1}PART 7A

EMPLOYMENT INCOME PROVIDED THROUGH THIRD PARTIES

[^{F1}CHAPTER 2

TREATMENT OF RELEVANT STEP FOR INCOME TAX PURPOSES

Textual Amendments

F1 Pt. 7A inserted (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 1](#)

Modifications etc. (not altering text)

C1 Pt. 7A Ch. 2 disapplied (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Employment Income Provided Through Third Parties \(Excluded Relevant Steps\) Regulations 2011 \(S.I. 2011/2696\)](#), regs. 1(1), 3, 4

Employment income

554Z2 Value of relevant step to count as employment income

- (1) If this Chapter applies by reason of a relevant step, the value of the relevant step (see section 554Z3) counts as employment income of A in respect of A's employment with B—
- (a) if the relevant step is taken before A's employment with B starts, for the tax year in which the employment starts, or
 - (b) otherwise, for the tax year in which the relevant step is taken.

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- (2) If the relevant step gives rise to—
- (a) an amount which (apart from this subsection) would be treated as earnings of A under a provision of the benefits code, or
 - (b) any income of A which (apart from this subsection) would be dealt with under Chapter 3 of Part 4 of ITTOIA 2005,
- subsection (1) applies instead of that provision of the benefits code or Chapter 3 of Part 4 of ITTOIA 2005 (as the case may be).
- (3) In particular, in a case in which the relevant step is the making of an employment-related loan (within the meaning of Chapter 7 of Part 3), the effect of subsection (2) (a) is that the loan is not to be treated for any tax year as a taxable cheap loan for the purposes of that Chapter.

554Z3 Value of relevant step

- (1) If the relevant step involves a sum of money, its value is the amount of the sum.
- (2) In any other case, the value of the relevant step is—
- (a) the market value when the relevant step is taken of the asset which is the subject of the step, or
 - (b) if higher, the cost of the relevant step.
- (3) Subsection (2)(a) is subject to sections 437 and 452.
- (4) Subsection (2)(b) is to be ignored if—
- (a) the relevant step is within section 554C(1)(c), and
 - (b) any of Chapters 2 to 4A of Part 7 apply by virtue of the acquisition.
- (5) Subsection (2)(b) is also to be ignored if section 554Z7 applies.
- (6) In subsection (2)(b) the reference to the cost of the relevant step is to the expense incurred in connection with the relevant step (including a proper proportion of any expense relating partly to the relevant step and partly to other matters) by the person or persons at whose cost the relevant step is taken.
- (7) Subsections (1) and (2) are subject to sections 554Z4, 554Z5, 554Z6, 554Z7 and 554Z8, which, so far as applicable, are to be applied in that order.

554Z4 Residence issues

- (1) After the value of the relevant step is determined under section 554Z3, the particular tax year or years which the value of the relevant step is “for” are to be determined.
- (2) For this purpose, apply sections 16(1) to (4) and 17(1) to (3) as if the value of the relevant step were general earnings.
- (3) Subsection (4) applies if the value of the relevant step, or a part of it, is “for” a tax year in which A is non-UK resident.
- (4) The value, or the part of it, is to be reduced so far as it is not in respect of duties performed in the United Kingdom.
- (5) The question of the extent to which the value, or the part of it, is not in respect of duties performed in the United Kingdom is to be determined on a just and reasonable basis.

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- (6) This section does not change the tax year for which the value of the relevant step counts as employment income under section 554Z2(1).

554Z5 Overlap with earlier relevant step

- (1) This section applies if there is overlap between—
- (a) the sum of money or asset (“sum or asset P”) which is the subject of the relevant step, and
 - (b) the sum of money or asset (“sum or asset Q”) which was the subject of an earlier relevant step (“the earlier relevant step”) by reason of which this Chapter applied in respect of A's employment with B.
- (2) The value of the relevant step (after any reductions under section 554Z4) is reduced (but not below nil)—
- (a) if the overlap covers the whole of sum or asset Q, by the value of the earlier relevant step, or
 - (b) if the overlap covers only part of sum or asset Q, by the part of the value of the earlier relevant step which corresponds to the part of sum or asset Q covered by the overlap as determined on a just and reasonable basis.
- (3) In subsection (2) references to the value of the earlier relevant step are to that value—
- (a) after any reductions made to it under section 554Z4 or this section or section 554Z7, but
 - (b) before any reductions made to it under section 554Z6 or 554Z8.
- (4) For the purposes of this section there is overlap between sum or asset P and sum or asset Q so far as—
- (a) they are the same sum of money or asset, or
 - (b) sum or asset P, essentially, replaces sum or asset Q.
- (5) Further, if any reductions were made under this section to the value of the earlier relevant step, sum or asset P is treated as overlapping with any other sum of money or asset so far as the other sum of money or asset was treated as overlapping with sum or asset Q for the purposes of this section.

554Z6 Overlap with certain earnings

- (1) This section applies if the relevant step gives rise to relevant earnings of A from A's employment with B—
- (a) which are, in accordance with section 16 and (if applicable) section 17, “for” a tax year in which A is UK resident, or
 - (b) which are, in accordance with section 29 and (if applicable) section 30, “for” a tax year in which A is non-UK resident but which are in respect of duties performed in the United Kingdom for the purposes of section 27(1)(a).
- (2) The value of the relevant step (after any reductions under section 554Z4 or 554Z5) is reduced (but not below nil) by the amount of the relevant earnings.
- (3) For the purposes of this section the following are “relevant” earnings—
- (a) earnings within Chapter 1 of Part 3,
 - (b) amounts treated as earnings under Chapter 12 of Part 3, and

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- (c) a deemed employment payment under section 50 or any part of such a payment.
- (4) But anything which is exempt income, or which falls within Chapter 3 of Part 4 of ITTOIA 2005, is not “relevant”.

554Z7 Exercise price of share options

- (1) Subsection (3) applies if—
- (a) the relevant step is a step within section 554B (other than one treated as being taken by section 554L(5), (7) or (9) or 554M(4), (6) or (8)),
 - (b) B is a company,
 - (c) there is an arrangement (“B’s employee share scheme”) under which, in respect of A’s employment with B, a right (“a relevant share option”) may be granted to A—
 - (i) to acquire relevant shares, or
 - (ii) to receive a sum of money the amount of which is to be determined by reference to the market value of any relevant shares at the time the sum is to be paid,
 - (d) in order to exercise the relevant share option so as—
 - (i) to acquire the relevant shares, or
 - (ii) to receive the sum of money,

A would, under the terms of the option, have to pay a sum of money the amount of which can be determined at the time of the grant of the option,
 - (e) the subject of the relevant step is relevant shares (“earmarked shares”) which are earmarked, or otherwise start being held, solely with a view to providing shares, or paying a sum of money, pursuant to—
 - (i) a relevant share option granted to A under B’s employee share scheme as mentioned in paragraph (c) in relation to which the requirements of paragraph (d) are met, or
 - (ii) a relevant share option which is expected to be granted to A under B’s employee share scheme as mentioned in paragraph (c) and in relation to which the requirements of paragraph (d) would be met,
 - (f) the number of relevant shares of any type which are earmarked shares does not exceed the maximum number of relevant shares of that type which might reasonably be expected to be needed for providing shares, or paying a sum of money, pursuant to the relevant share option which is granted or expected to be granted, and
 - (g) there is no connection (direct or indirect) between the relevant step and a tax avoidance arrangement.
- (2) Subsection (3) also applies if—
- (a) the relevant step is a step treated as being taken by section 554L(9) or 554M(8), and
 - (b) in order to exercise the relevant share option to which the step relates so as—
 - (i) to acquire the shares which are the subject of the relevant step, or
 - (ii) to receive the sum of money determined by reference to the market value of those shares,

A would, under the terms of the option, have to pay a sum of money the amount of which can be determined at the time the option is granted.

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- (3) The value of the relevant step (after any reductions under sections 554Z4 to 554Z6) is to be reduced (but not below nil) by—
 - (a) the amount of the sum of money which A would have to pay as mentioned in subsection (1)(d) or (2)(b), or
 - (b) if the value of the relevant step was reduced under section 554Z4, X% of the amount of that sum of money.
- (4) In subsection (3)(b) “X%” means the proportion of the value of the relevant step (as determined under section 554Z3) left after the reduction under section 554Z4.
- (5) If subsection (3) applies by virtue of subsection (1) and the relevant step is taken in relation to an expected grant of a relevant share option as mentioned in subsection (1)(e)(ii), subsection (7) applies if—
 - (a) the grant is not made before the end of the date (“the final grant date”) falling immediately after the period of three months starting with the date on which the relevant step is taken, and
 - (b) as at the end of the final grant date, any of the earmarked shares continue to be held by or on behalf of P solely on the basis mentioned in subsection (1)(e).
- (6) If subsection (3) applies by virtue of subsection (1), subsection (7) also applies if at any time after the taking of the relevant step—
 - (a) any of the earmarked shares cease to be held by or on behalf of P solely on the basis mentioned in subsection (1)(e), but
 - (b) the shares continue to be held by or on behalf of P on the basis mentioned in section 554B(1)(a) or (b).
- (7) This Part has effect as if a relevant step within section 554B were taken at the end of the final grant date or when the shares cease to be held as mentioned in subsection (6)—
 - (a) the subject of which is the earmarked shares mentioned in subsection (5)(b) or (6), and
 - (b) by reason of which this Chapter is to apply (subject only to section 554A(4)).
- (8) In this section “relevant shares” has the meaning given by section 554I(4).

554Z8 Cases where consideration given for relevant step

- (1) Subsection (2) applies if—
 - (a) the relevant step is a step within section 554C(1)(a) to (c),
 - (b) the relevant step is for consideration given by A in the form of the transfer of an asset to P from A,
 - (c) the transfer by A of the asset is made before, or at or about, the time the relevant step is taken and is not by way of a loan, and
 - (d) there is no connection (direct or indirect) between the transfer by A of the asset and a tax avoidance arrangement.
- (2) The value of the relevant step (after any reductions under sections 554Z4 to 554Z6) is reduced (but not below nil) by—
 - (a) the market value of the asset transferred by A at the time of its transfer, or
 - (b) if the value of the relevant step was reduced under section 554Z4, X% of that market value.

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- (3) For the purposes of subsection (1)(d) it is (in particular) to be assumed that the transfer by A of the asset is connected with a tax avoidance arrangement if—
- (a) before the transfer, the asset was transferred to A by another person by way of a loan, or
 - (b) the asset is, or carries with it, any rights or interests under the relevant arrangement or any arrangement which is connected (directly or indirectly) with the relevant arrangement.
- (4) In subsection (3)(b) “the relevant arrangement” has the meaning given by section 554A(1)(b).
- (5) Subsection (6) applies if—
- (a) the relevant step is a step within section 554C(1)(b) or (c) or (e) or 554D and does not also involve a sum of money,
 - (b) the relevant step is for consideration given by A in the form of the payment of a sum of money to P by A, and
 - (c) the payment is made before, or at or about, the time the relevant step is taken.
- (6) The value of the relevant step (after any reductions under sections 554Z4 to 554Z6) is reduced (but not below nil) by—
- (a) the amount of the consideration given, or
 - (b) if the value of the relevant step was reduced under section 554Z4, X% of the amount of that consideration.
- (7) In subsections (2)(b) and (6)(b) “X%” means the proportion of the value of the relevant step (as determined under section 554Z3) left after the reduction under section 554Z4.
- (8) In this section references to A include references to any person linked with A.

Remittance basis

554Z9 Remittance basis: A is ordinarily UK resident

- (1) Subsection (2) applies if—
- (a) the value of the relevant step, or a part of it, is “for” a tax year (“the relevant tax year”) as determined under section 554Z4,
 - (b) section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to A for the relevant tax year,
 - (c) A is ordinarily UK resident in the relevant tax year,
 - (d) A's employment with B in the relevant tax year is employment with a foreign employer, and
 - (e) the duties of A's employment with B in the relevant tax year are performed wholly outside the United Kingdom.
- (2) A's employment income by virtue of section 554Z2(1), or the relevant part of it, is “taxable specific income” in a tax year so far as it is remitted to the United Kingdom in that year.
- (3) For this purpose, any income which is remitted before A's employment with B starts is treated as being remitted in the tax year in which the employment starts.
- (4) Subsection (5) applies if in the relevant tax year—

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- (a) A has associated employments, and
 - (b) the duties of the associated employments are not performed wholly outside the United Kingdom.
- (5) The amount of A's employment income to which subsection (2) applies is limited to such amount as is just and reasonable, having regard to—
- (a) A's employment income for the relevant tax year from all associated employments, together with A's employment with B,
 - (b) the proportion of that income which is general earnings to which section 22 applies or is employment income to which section 41A applies,
 - (c) the nature of and time devoted to the duties performed outside the United Kingdom, and those performed in the United Kingdom, in the relevant tax year, and
 - (d) all other relevant circumstances,
- and, if the amount of A's employment income to which subsection (2) would otherwise apply exceeds that limit, the amount of A's employment income to which that subsection applies is instead to be such amount as is just and reasonable.
- (6) In this section “associated employments” means employments with B or with employers associated with B; and section 24(5) and (6) applies for the purposes of this subsection.

554Z10 Remittance basis: A is not ordinarily resident

- (1) Subsection (2) applies if—
- (a) the value of the relevant step, or a part of it—
 - (i) is “for” a tax year (“the relevant tax year”) as determined under section 554Z4, and
 - (ii) is not in respect of duties performed in the United Kingdom,
 - (b) section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to A for the relevant tax year, and
 - (c) A is not ordinarily UK resident in the relevant tax year.
- (2) A's employment income by virtue of section 554Z2(1), or the relevant part of it, is “taxable specific income” in a tax year so far as it is remitted to the United Kingdom in that year.
- (3) For this purpose, any income which is remitted before A's employment with B starts is treated as being remitted in the tax year in which the employment starts.
- (4) The question of the extent to which the value of the relevant step, or any part of it, is not in respect of duties performed in the United Kingdom is to be determined on a just and reasonable basis.

554Z11 Remittance basis: supplementary

- (1) Subsection (2) applies if section 554Z9(1)(a) or 554Z10(1)(a) applies to a part (“the relevant part”) of the value of the relevant step.
- (2) Any reduction to the value of the relevant step to be made under any of sections 554Z5 to 554Z8 is to be made so that X% of the reduction is made by way of reducing the relevant part.

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- (3) In subsection (2) “X%” means the proportion of the value of the relevant step represented by the relevant part before any reductions under any of sections 554Z5 to 554Z8.
- (4) For the purpose of applying section 554Z9(2) or 554Z10(2), see Chapter A1 of Part 14 of ITA 2007 for the meaning of “remitted to the United Kingdom” etc.
- (5) If the relevant step involves a sum of money, for the purposes of that Chapter the sum of money is treated as deriving from A's employment income (or the relevant part of it) to which section 554Z9(2) or 554Z10(2) applies.
- (6) In any other case, for the purposes of that Chapter the asset which is the subject of the relevant step is treated as deriving from A's employment income (or the relevant part of it) to which section 554Z9(2) or 554Z10(2) applies.
- (7) Subsection (8) applies if—
- (a) after the relevant step is taken, there is another relevant step (“the later relevant step”) by reason of which this Chapter applies in respect of A's employment with B, and
 - (b) within the meaning of section 554Z5, there is overlap between the sum of money or asset (“sum or asset R”) which is the subject of the relevant step and the sum of money or asset (“sum or asset S”) which is the subject of the later relevant step.
- (8) Except so far as, in any event—
- (a) sum or asset S and sum or asset R are the same sum of money or asset, or
 - (b) sum or asset S derives from sum or asset R,
- for the purposes of Chapter A1 of Part 14 of ITA 2007 sum or asset S is treated, to the extent of the overlap, as deriving from sum or asset R.
- (9) Subsections (10) and (11) apply if—
- (a) the relevant tax year within the meaning of section 554Z9 or 554Z10 is the tax year 2007-08 or any earlier tax year, and
 - (b) A—
 - (i) was UK resident in that year, but
 - (ii) was not domiciled in the United Kingdom, or was not ordinarily UK resident, in that year.
- (10) Section 554Z9 or 554Z10 (as the case may be) applies as if section 809B of ITA 2007 applied to A for the relevant tax year.
- (11) In section 554Z9(1)(d) the reference to a foreign employer is to be read as not including a person resident in the Republic of Ireland.

Supplementary

554Z12 Relevant step taken after A's death etc

- (1) Subsection (3), (4) or (5) (as the case may be) applies if the relevant step is a step within section 554C or 554D and—
- (a) the relevant step is taken on or after A's death, or

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- (b) if relevant, any of A's employment income by virtue of section 554Z2(1) is remitted to the United Kingdom on or after A's death.
- But none of those subsections applies if A's employment with B never started before A's death.
- (2) In subsections (3) to (5) “the relevant person” means the relevant person (within the meaning of section 554C(1) or 554D(1) or (2)) in relation to the relevant step.
- (3) If the relevant person is A, A's personal representatives are liable for, as the case may be, the income tax on—
- (a) A's employment income by virtue of section 554Z2(1), or
 - (b) so much of that income as is remitted.
- (4) If the relevant person is an individual other than A, the amount which, as the case may be—
- (a) counts as employment income of A, or
 - (b) is remitted,
- is to count as an amount of employment income of the relevant person for the tax year in which the relevant step is taken or the income is remitted.
- (5) If the relevant person is not an individual, the relevant taxable person is chargeable to income tax on the amount which, as the case may be—
- (a) counts as employment income of A, or
 - (b) is remitted.
- (6) In subsection (5) “the relevant taxable person” is to be read as follows—
- (a) if the person (or any of the persons) who took the relevant step is UK resident, “the relevant taxable person” is the person (or each of the UK resident persons) who took the relevant step,
 - (b) if paragraph (a) does not apply and B is still alive or in existence when the relevant step is taken, “the relevant taxable person” is B, or
 - (c) if neither paragraph (a) nor paragraph (b) applies, “the relevant taxable person” is the non-UK resident person (or each of the non-UK resident persons) who took the relevant step.
- (7) For the purposes of subsection (5)—
- (a) the rate of tax is the rate applying for the purposes of section 394(2) (see section 394(4)) at the time of the relevant step or remittance of income, and
 - (b) the tax is charged for the tax year in which the relevant step is taken or the income is remitted.
- (8) If there is more than one relevant person in relation to the relevant step, the amount which, as the case may be—
- (a) counts as employment income of A, or
 - (b) is remitted,
- is to be apportioned between the relevant persons on a just and reasonable basis with subsections (3) to (5) applying accordingly.

554Z13 Subsequent income tax liability

- (1) This section applies if—
- (a) after the relevant step is taken, another event (“the later event”) occurs,

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- (b) other than by virtue of—
 - (i) this Chapter,
 - (ii) Chapters 2 to 5 of Part 7, or
 - (iii) Part 9,
 the later event would (apart from this section) give rise to a liability for income tax of A or any other person on an amount (“the later amount”), and
- (c) it is just and reasonable for this section to apply in order to avoid a double charge to income tax in respect of the sum of money or asset which is the subject of the relevant step.

- (2) So far as it is just and reasonable in order to avoid a double charge to income tax as mentioned in subsection (1)(c), there is to be no liability to income tax on the later amount by virtue of the later event.

554Z14 Relief where earmarking not followed by further relevant step

- (1) An application for relief may be made by A (or, if A has died, A's personal representatives) to an officer of Revenue and Customs if—
 - (a) this Chapter has applied by reason of a relevant step (“the original relevant step”) within section 554B taken by a person (“P”),
 - (b) there occurs an event (“the relevant event”) which is not a relevant step in relation to a relevant sum or asset,
 - (c) by reason of the relevant event no further relevant step is or will be taken by P or any other person in relation to any relevant sum or asset, and
 - (d) there is no connection (direct or indirect) between the relevant event and a tax avoidance arrangement.
- (2) In section 554Z(15) the reference to the avoidance of tax includes (in particular) a reference to the avoidance of tax by way of obtaining relief under this section.
- (3) In subsection (1) “relevant sum or asset” means—
 - (a) the sum of money or asset which is the subject of the original relevant step, or
 - (b) a sum of money or asset which (directly or indirectly) has arisen or derived, or may arise or derive, from the sum of money or asset mentioned in paragraph (a).
- (4) The application for relief must be made within four years from the time when the relevant event occurs.
- (5) If an officer of Revenue and Customs is satisfied that the requirements in subsection (1) are met, the officer must give such relief as the officer considers just and reasonable (if any) in respect of income tax paid on any previously charged amount.
- (6) In subsection (5) “previously charged amount” means—
 - (a) the amount which counted as employment income of A under this Chapter as a result of this Chapter applying by reason of the original relevant step, or
 - (b) any amount treated by section 222 as earnings of A in relation to the notional payment (within the meaning of that section) which B is treated as having made by virtue of the original relevant step.
- (7) Subsection (8) applies if, by virtue of this Chapter having applied by reason of the original relevant step, any tax liability of A or any other person arising from another event is reduced (including to nil) by virtue of section 554Z5 or 554Z13 or otherwise.

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- (8) In determining what is a just and reasonable amount of relief, the officer of Revenue and Customs must have regard (in particular) to the reduction in the tax liability and reduce the amount of relief which would otherwise have been given accordingly (including to nil).
- (9) The relief is to be given by repayment or otherwise as appropriate.
- (10) In relation to times after the relief is given, the Tax Acts have effect as if this Chapter had never applied by reason of the original relevant step.

554Z15 Location of employment duties

The following provisions apply for the purposes of this Chapter—

- (a) section 38 (but as if references to general earnings were to the value of the relevant step or a part of it),
- (b) section 39(1) and (2),
- (c) section 40 (but as if in subsections (3) and (4) references to section 24(1)(b) were to section 554Z9(4)(b)), and
- (d) section 41 (but as if references to general earnings were to the value of the relevant step or a part of it).]

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