



Income Tax (Trading and Other Income) Act 2005

2005 CHAPTER 5

PART 2

TRADING INCOME

CHAPTER 4

TRADE PROFITS: RULES RESTRICTING DEDUCTIONS

Employee benefit contributions

38 Restriction of deductions

- [^{F1}(1) This section applies if, in calculating for income tax purposes the profits of a trade of a person (“the employer”) for a period, a deduction would otherwise be allowable for the period in respect of employee benefit contributions made or to be made (but see subsection (4)).]
- (2) No deduction is allowed for the contributions for the period except so far as—
- (a) qualifying benefits are provided, or qualifying expenses are paid, out of the contributions during the period or within 9 months from the end of it, or
 - (b) if the making of the contributions is itself the provision of qualifying benefits, the contributions are made during the period or within 9 months from the end of it.
- (3) An amount disallowed under subsection (2) is allowed as a deduction for a subsequent period so far as—
- (a) qualifying benefits are provided out of the contributions before the end of the subsequent period, or

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- (b) if the making of the contributions is itself the provision of qualifying benefits, the contributions are made before the end of the subsequent period.
- (4) This section does not apply to any deduction that is allowable for—
- (a) anything given as consideration for goods or services provided in the course of a trade or profession,
 - (b) contributions under a registered pension scheme or under a superannuation fund to which section 615(3) of ICTA applies,
 - (c) contributions under a qualifying overseas pension scheme in respect of an individual who is a relevant migrant member of the pension scheme in relation to the contributions, or
 - (d) contributions under an accident benefit scheme.

For the purposes of paragraph (c) “qualifying overseas pension scheme” and “relevant migrant member” have the same meaning as in Schedule 33 to FA 2004 (see paragraphs 4 to 6 of that Schedule).

- (5) See also—
- section 39 (making of “employee benefit contributions”),
 - section 40 (provision of qualifying benefits),
 - section 41 (timing and amount of certain qualifying benefits),
 - section 42 (provision or payment out of employee benefit contributions),
 - section 43 (profits calculated before end of 9 month period), and
 - section 44 (interpretation of sections 38 to 44).

Textual Amendments

- F1** S. 38(1) substituted (with effect as stated in s. 34(13) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 34\(8\)](#)

39 Making of “employee benefit contributions”

[^{F2}(1) For the purposes of section 38, an “employee benefit contribution” is made if, as a result of any act or omission—

- (a) property is held, or may be used, under an employee benefit scheme, or
- (b) there is an increase in the total value of property that is so held or may be so used (or a reduction in any liabilities under an employee benefit scheme).]

(2) For this purpose “employee benefit scheme” means a trust, scheme or other arrangement for the benefit of persons who are, or include, present or former employees of the employer.

Textual Amendments

- F2** S. 39(1) substituted (19.7.2007 with effect as stated in s. 34(13) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 34\(9\)](#)

40 Provision of qualifying benefits

(1) For the purposes of section 38 qualifying benefits are provided if there is—

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- (a) a payment of money, or
 - (b) a transfer of assets,
- which meets condition A, B, C or D.
- (2) Condition A is that the payment or transfer gives rise both to an employment income tax charge and to an NIC charge.
 - (3) Condition B is that the payment or transfer would give rise to both charges if—
 - (a) the duties of the employment in respect of which the payment or transfer was made were performed in the United Kingdom, and
 - (b) the person in respect of whose employment the payment or transfer was made met at all relevant times the conditions as to residence or presence in Great Britain or Northern Ireland prescribed under section 1(6) of the Contributions and Benefits Act.
 - (4) Condition C is that the payment or transfer is made in connection with the termination of the recipient's employment with the employer.
 - (5) Condition D is that the payment or transfer is made under an employer-financed retirement benefits scheme.
 - (6) None of the conditions is met if the payment or transfer is by way of loan.
 - (7) In this section—
 - “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),
 - “employment income tax charge” means a charge to tax under ITEPA 2003 (whether on the recipient or on someone else), and
 - “NIC charge” means a liability to pay national insurance contributions under section 6 (Class 1 contributions), section 10 (Class 1A contributions) or section 10A (Class 1B contributions) of the Contributions and Benefits Act.

41 Timing and amount of certain qualifying benefits

- (1) If the provision of a qualifying benefit—
 - (a) takes the form of a payment of money, and
 - (b) is not made under an employer-financed retirement benefits scheme,the benefit is provided for the purposes of section 38 when the money is treated as received for the purposes of Chapter 4 of Part 2 of ITEPA 2003 (applying the rules in section 18 of that Act (receipt of money earnings)).
- (2) If the provision of a qualifying benefit takes the form of a transfer of an asset, the amount provided for the purposes of section 38 is the total of—
 - (a) the amount (if any) spent on the asset by [^{F3}a scheme manager], and
 - (b) in a case where the asset was transferred to [^{F3}a scheme manager] by the employer, the amount of the deduction that would be allowable as mentioned in subsection (1) of that section in respect of the transfer.
- (3) But if the amount given by subsection (2) is more than the amount that—
 - (a) is charged to tax under ITEPA 2003 in respect of the transfer, or

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(b) would be so charged if condition B in section 40 were met, the deduction allowable under section 38(2) or (3) is limited to that lower amount.

Textual Amendments

F3 Words in s. 41 substituted (19.7.2007 with effect as stated in s. 34(13) of the amending Act) by Finance Act 2007 (c. 11), s. 34(10)

42 Provision or payment out of employee benefit contributions

- (1) For the purposes of section 38(2)(a)—
 - (a) any qualifying benefits provided, or
 - (b) any qualifying expenses paid,
 by [^{F4}a scheme manager] after the receipt by [^{F5}the scheme manager] of employee benefit contributions are treated as being provided or paid out of the contributions.
- (2) This operates up to the total amount of the contributions reduced by the amount of any benefits or expenses previously provided or paid as mentioned in section 38(2)(a).
- (3) For the purposes of section 38(3)(a) any qualifying benefits provided by [^{F6}a scheme manager] after the receipt by [^{F7}the scheme manager] of employee benefit contributions are treated as being provided out of the contributions.
- (4) This operates up to the total amount of the contributions reduced by the amount of any benefits or expenses previously provided or paid as mentioned in section 38(2)(a) or (3)(a).
- (5) For the purposes of this section no account is taken of any other amount received or paid by the [^{F8}scheme manager] .

Textual Amendments

- F4** Words in s. 42(1) substituted (19.7.2007 with effect as stated in s. 34(13) of the amending Act) by Finance Act 2007 (c. 11), s. 34(11)(a)
- F5** Words in s. 42(1) substituted (19.7.2007 with effect as stated in s. 34(13) of the amending Act) by Finance Act 2007 (c. 11), s. 34(11)(a)
- F6** Words in s. 42(3) substituted (19.7.2007 with effect as stated in s. 34(13) of the amending Act) by Finance Act 2007 (c. 11), s. 34(11)(b)
- F7** Words in s. 42(3) substituted (19.7.2007 with effect as stated in s. 34(13) of the amending Act) by Finance Act 2007 (c. 11), s. 34(11)(b)
- F8** Words in s. 42(5) substituted (19.7.2007 with effect as stated in s. 34(13) of the amending Act) by Finance Act 2007 (c. 11), s. 34(11)(c)

43 Profits calculated before end of 9 month period

- (1) This section applies if the profits of the trade are calculated before the end of the 9 month period mentioned in section 38(2).
- (2) It must be assumed, in making the calculation, that any benefits, expenses or contributions which are not provided, paid or made when the calculation is made will not be provided, paid or made before the end of that period.

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- (3) But if the benefits, expenses or contributions are subsequently provided, paid or made before the end of that period, nothing in this section prevents the calculation being revised and any tax return being amended accordingly.

44 Interpretation of sections 38 to 44

- (1) In this section and sections 38 to 43—

“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 the person's service as an employee of the employer,

“employee benefit contribution” is to be read in accordance with section 39(1),

“employee benefit scheme” has the meaning given by section 39(2),

“the employer” is to be read in accordance with section 38(1),

“employer-financed retirement benefits scheme” has the same meaning as in Chapter 2 of Part 6 of ITEPA 2003 (see section 393A of that Act),

“qualifying benefits” is to be read in accordance with section 40,

“qualifying expenses” includes any expenses of the third party (other than the provision of benefits to employees of the employer)—

- (a) which are incurred in operating the employee benefit scheme, and
- (b) which, if incurred by the employer, would be deductible in calculating for income tax purposes the employer's profits for any period, and

[^{F9}“scheme manager” means a person who administers an employee benefit scheme (acting in that capacity).]

- (2) A reference in this section and sections 38 to 43 to a person's employee includes the holder of an office under that person, and “employment” is to be read accordingly.

Textual Amendments

- F9** S. 44(1): definition of “third party” substituted (19.7.2007 with effect as stated in [s. 34\(13\)](#) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [s. 34\(12\)](#)

Status:

Point in time view as at 01/04/2011.

Changes to legislation:

There are currently no known outstanding effects for the Income Tax (Trading and Other Income) Act 2005, Cross Heading: Employee benefit contributions.