

Tax treatment of legal fees

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1. Overview

In some instances, employers will pay legal fees on behalf of a director or an employee. Having regard to the wide scope of the Schedule E charge, the payment of legal fees by an employer on behalf of an employee or director gives rise to an income tax charge under section 112 or section 123 of the Taxes Consolidation Act 1997, as the case may be, depending on the specific circumstances involved. However, where the conditions outlined below are met, an income tax charge should not be imposed.

2. Conditions

An income tax charge should not be imposed where all of the following conditions are met:

- (a) the fees must be what are termed 'legal fees' (i.e. fees due to a member of the legal profession arising from representing the employee or director);
- (b) the payment on behalf of the employee or director must represent a full or partial discharge of legal fees incurred by the employee only in connection with:
 - (i) an investigation/disciplinary procedure instigated by his or her employer, or
 - (ii) the termination of his or her office or employment, e.g. to recover compensation for loss of office or employment, or
 - (iii) an action taken by the employee or director against the employer for breaches of employment law by the employer.

Legal or other fees incurred on other matters do not qualify for this treatment.

- (c) the legal fees are paid directly by the employer to the employee's/director's legal representative and only after having had sight of the invoice relating to such fees (i.e. on sight of the invoice issued to either the employee/director or the employer by the employee's/director's legal representative);
- (d) where the payment of the legal fees is made either:
 - (i) under a court order, or
 - (ii) where a court order does not apply, under a specific term of a settlement agreement between the employer and the employee.

The tax treatment of other elements of the settlement (e.g. chargeable under Section 112 or Section 123 TCA, 1997, or whether they qualify for relief under Section 192A TCA 1997) will depend on the specific facts.