

Payments under Restrictive Covenants Section 127 Taxes Consolidation Act (TCA) 1997

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1. Introduction

Section 127 TCA 1997 sets out the tax treatment for payments made, or valuable consideration given, under a restrictive covenant between an employer and an individual who holds, has held or is about to hold an office or employment.

2. Restrictive Covenant

A restrictive covenant, for the purposes of section 127 TCA 1997, is an agreement between an employer and employee under which the employee, arising out of the holding of the employment, gives an undertaking to the employer which restricts his/her conduct or activities. For example, the employee may undertake not to divulge the nature and content of research work being carried out.

3. Payments made or valuable consideration given

Payments made, or valuable consideration given, to an employee or any other person under a restrictive covenant are deemed to be emoluments from the office or employment and are chargeable to tax for the year of assessment in which the payment is made, or the valuable consideration is given, under either:

- (a) Schedule E, in cases where the profits or gains from the office or employment are or would be chargeable to tax under Schedule E PAYE (income tax, USC and PRSI, as appropriate), or
- (b) Case 111 of Schedule D, in cases where the profits or gains from the office or employment are or would be chargeable to tax under Case 111 of Schedule D.

3.1 Payments otherwise than in the form of cash

Where valuable consideration otherwise than in the form of money (e.g. an allotment of shares) is given, the value equal to that consideration is chargeable to tax under either Schedule E or Case 111 of Schedule D, as appropriate.

3.2 Deduction available to payer in computing taxable profit

Where any payment is made or valuable consideration is given under a restrictive covenant it is chargeable to tax under Schedule E or Case 111 of Schedule D. The payer may obtain a deduction in respect of the payment made, or the valuable consideration given, in computing taxable profit for the purposes of Schedule D:

- (a) in the case of a person chargeable to income tax, for the basis period, or

(b) in the case of a person chargeable to corporation tax, for the accounting period,

in which the payment is made or consideration given.