

Tax treatment of legal fees

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Overview

In some instances, employers will pay legal fees on behalf of a director or employee, for example, in connection with:

- (a) an investigation or disciplinary procedure instigated by the employer; or
- (b) an action taken by the director or employee in connection with the termination of his/her office or employment, e.g. to recover compensation for loss of office or employment; or,
- (c) an action taken by the director or employee for breaches of employment law by the employer.

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 in the above circumstances 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.

1. Conditions which must be met

An income tax charge should not be imposed where 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 her/his employer, or
 - (ii) an action taken by the employee or director against the employer in connection with the termination of his/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,(i.e. 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) under a specific term of a settlement agreement, where a settlement is reached outside of court.