

Relief for agreed pay restructuring. FA97 s14 202.—(1) (a) In this section—

“basic pay”, in relation to a participating employee of a qualifying company, means the employee's emoluments (other than non-pecuniary emoluments) from the company in respect of an employment held with the company;

“collective agreement” means an agreement entered into by a company with, or on behalf of, one or more than one body representative of employees of the company where each such body is either the holder of a negotiation licence under the Trade Union Act, 1941, or is an excepted body within the meaning of section 6 of that Act as amended by the Trade Union Act, 1942;

“control”, in relation to a qualifying company, means the power of a person to secure—

(i) by means of the holding of shares or the possession of voting power in or in relation to the qualifying company or any other qualifying company, or

(ii) by virtue of any power conferred by the articles of association or any other document regulating the qualifying company or any other qualifying company,

that the affairs of the first-mentioned qualifying company are conducted in accordance with the wishes of such person and, in relation to a partnership, means the right to a share of more than 50 per cent of the assets, or of more than 50 per cent of the income, of the partnership;

“emoluments” has the same meaning as in section 472;

“employment” means an office or employment of profit such that any emoluments of the office or employment of profit are to be charged to tax under Schedule E;

“the Minister” means the Minister for Enterprise, Trade and Employment;

“participating employee”, in relation to a qualifying company, means a qualifying employee who is a participant in a relevant agreement with the company;

“qualifying company” means a company to which the Minister has issued a certificate under subsection (2) which has not been withdrawn under that subsection;

“qualifying employee”, in relation to a qualifying company, means an employee of the company in receipt of emoluments from the company;

“reduced basic pay”, in relation to a participating employee, means the basic pay of the employee as reduced by the substantial reduction provided for in the relevant agreement concerned;

“relevant agreement”, in relation to a qualifying company, means a collective agreement covering all or

substantially all of the qualifying employees of the company—

(a) which provides amongst other things for—

(i) a substantial reduction in the basic pay of the participating employees,

(ii) the payment of the reduced basic pay to the participating employees for the duration of the relevant period, and

(iii) the payment to the participating employees of a lump sum to compensate for that reduction,

and

(b) which is registered with the Labour Relations Commission;

“relevant date”, in relation to a relevant agreement, means the date the relevant agreement was registered with the Labour Relations Commission;

“relevant period”, in relation to a relevant agreement, means the period of 5 years commencing on the relevant date in relation to that agreement;

“specified amount”, in relation to a participating employee, means £6,000 together with £200 for each complete year of service (subject to a maximum of 20 years), up to the relevant date, of the employee in the service of the qualifying company.

(b) For the purposes of this section—

(i) a reduction in the basic pay of a participating employee shall not be regarded as substantial unless it amounts to at least 10 per cent of the average for one year of the employee's basic pay ascertained by reference to such pay for the 2 year period ending on the relevant date, and

(ii) employments in respect of which payments to which this section applies are made shall be treated as held with associated qualifying companies if, on the date of any of those payments, one of those companies is under the control of the other company or of a third person who controls or is under the control of the other company on that or any other such date.

(2) (a) The Minister, on the making of an application in that behalf by a company, may, in accordance with guidelines laid down for the purpose by the Minister with the agreement of the Minister for Finance, give a certificate to a company stating that for the purposes of this section it may be treated as a qualifying company.

(b) The Minister may not grant a certificate to a company under this subsection unless the Minister is satisfied, on advice from the Labour Relations Commission, that—

(i) the company is faced with an actual or imminent substantial adverse change to its competitive

environment which will determine its survival,

(ii) to meet that change and achieve its survival, it is necessary for the company to enter into a relevant agreement with its qualifying employees, and

(iii) the relevant agreement into which it is proposed to enter is designed for the sole purpose of addressing, and can be reasonably expected to address, that change.

(c) An application under paragraph (a) shall be in such form as the Minister may direct and shall contain such information in relation to the company, its trade or business and the terms of the relevant agreement into which it proposes to enter with its qualifying employees as may be specified in the guidelines referred to in that paragraph.

(d) A certificate issued by the Minister under paragraph (a) shall contain such conditions as the Minister considers appropriate and specifies in the certificate.

(e) Any cost incurred by the Labour Relations Commission in providing advice to the Minister in accordance with paragraph (b) shall be reimbursed by the company concerned to the Commission.

(f) Where during the relevant period a qualifying company fails to comply with any of the conditions to which a certificate given to it under paragraph (a) is subject, the Minister may, by notice in writing to the company, revoke the certificate.

(g) The Minister may not give a certificate under paragraph (a) at any time on or after the 6th day of April, 2000.

(3) (a) An agreement shall not be a relevant agreement for the purposes of this section unless and until it has been registered with the Labour Relations Commission.

(b) A qualifying company shall, within the period of one month from the date of each of the first 5 anniversaries of the relevant date or such longer period as the Labour Relations Commission may in writing allow, confirm to the Commission, in such form as the Commission shall direct, that all the terms of the relevant agreement, to the extent that they are still relevant, continue to be in force.

(4) Nothing in this section shall be construed as preventing a participating employee from receiving during the relevant period an increase in basic pay—

(a) which is—

(i) provided for under the terms of the agreement known as Partnership 2000 for Inclusion, Employment and Competitiveness entered into by the Government and the Social Partners in December, 1996, or any similar increase under an agreement, whether negotiated on a national basis or otherwise, which succeeds that agreement or which succeeds an agreement which succeeds the first-mentioned agreement, or

(ii) part of an incremental scale under the terms of the employee's contract of employment and which was

in place 12 months before the relevant date,

and

(b) which is determined by reference to the employee's reduced basic pay or that pay as subsequently increased as provided for in paragraph (a).

(5) (a) This section shall apply to a payment made to a participating employee by a qualifying company under a relevant agreement.

(b) A payment to which this section applies shall, to the extent that the payment does not exceed the specified amount, be exempt from any charge to income tax.

(c) Where 2 or more payments to which this section applies are made to or in respect of the same person in respect of the same employment or in respect of different employments held with the same qualifying company or an associated qualifying company, this subsection shall apply as if those payments were a single payment of an amount equal to the aggregate of those payments, and the amount of any payment chargeable to income tax shall be ascertained as follows:

(i) where the payments are treated as income of different years of assessment, the specified amount shall be deducted from a payment treated as income of an earlier year before any payment treated as income of a later year, and

(ii) subject to subparagraph (i), the specified amount shall be deducted from a payment made earlier in a year of assessment before any payment made later in that year.

(6) Where during the relevant period—

(a) the Minister revokes, in accordance with paragraph (f) of subsection (2), a certificate given to a company under paragraph (a) of that subsection,

(b) a qualifying company fails to meet the requirements of subsection (3)(b), or

(c) a participating employee receives an increase in reduced basic pay other than as provided for in subsection (4),

then, any relief granted under this section, where paragraph (a) or (b) applies, to all the participating employees of the company or, where paragraph (c) applies, to the participating employee concerned, shall be withdrawn by the making of an assessment to income tax under Case IV of Schedule D for the year of assessment for which the relief was granted.

(7) Where during the relevant period a participating employee receives a payment from a qualifying company, other than a payment to which this section applies, which is chargeable to tax by virtue of section 123, any relief from tax in respect of that payment under section 201 (5) or Schedule 3 shall be reduced by the amount of any relief given under this section in respect of a payment to which this section applies made

in the relevant period.

(8) Section 201 and Schedule 3 and section 480 shall not apply in relation to a payment to which this section applies.