

Exemptions and reliefs in respect of tax under section 123. ITA67 s115 and Sch3 pars 12 and 13; FA72 s13(4) and Sch1 PtIII par2; FA80 s10(1)(a) and (c); FA92 s18(2); FA93 s7(1) and s8(a); FA97 s12 201.—(1) (a) In this section and in Schedule 3—

“the basic exemption” means £6,000 together with £500 for each complete year of the service, up to the relevant date, of the holder in the office or employment in respect of which the payment is made;

“foreign service”, in relation to an office or employment, means service such that—

(i) tax was not chargeable in respect of the emoluments of the office or employment,

(ii) the office or employment being an office or employment within Schedule E, tax under that Schedule was not chargeable in respect of the whole of the emoluments of that office or employment, or

(iii) the office or employment being regarded as a possession in a place outside the State within the meaning of Case III of Schedule D, tax in respect of the income arising from that office or employment did not fall to be computed in accordance with section 71 (1);

“the relevant date”, in relation to a payment not being a payment in commutation of annual or other periodical payments, means the date of the termination or change in respect of which it is made and, in relation to a payment in commutation of annual or other periodical payments, means the date of the termination or change in respect of which those payments would have been made.

(b) In this section—

“control”, in relation to a body corporate, 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 that or any other body corporate, or

(ii) by virtue of any power conferred by the articles of association or other document regulating that or any other body corporate,

that the affairs of the first-mentioned body corporate are conducted in accordance with the wishes of that 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;

references to an employer or to a person controlling or controlled by an employer include references to such employer's or such person's successors.

(c) For the purposes of this section and of Schedule 3, offices or employments in respect of which payments to which section 123 applies are made shall be treated as held under associated employers if, on the date which is the relevant date in relation to any of those payments, one of those employers is under the

control of the other or of a third person who controls or is under the control of the other on that or any other such date.

(2) Income tax shall not be charged by virtue of section 123 in respect of the following payments—

(a) any payment made in connection with the termination of the holding of an office or employment by the death of the holder, or made on account of injury to or disability of the holder of an office or employment;

(b) any sum chargeable to tax under section 127;

(c) a benefit provided in pursuance of any retirement benefits scheme where under section 777 the employee (within the meaning of that section) was chargeable to tax in respect of sums paid, or treated as paid, with a view to the provision of the benefit;

(d) a benefit paid in pursuance of any scheme or fund described in section 778 (1).

(3) Subsection (2)(d) shall not apply to the following payments—

(a) a termination allowance payable in accordance with section 5 of the Oireachtas (Allowances to Members) and Ministerial and Parliamentary Offices (Amendment) Act, 1992 , and any regulations made under that section,

(b) a severance allowance or a special allowance payable in accordance with Part V (inserted by the Oireachtas (Allowances to Members) and Ministerial and Parliamentary Offices (Amendment) Act, 1992 ) of the Ministerial and Parliamentary Offices Act, 1938 ,

(c) a special severance gratuity payable under section 7 of the Superannuation and Pensions Act, 1963 , or any analogous payment payable under or by virtue of any other enactment, or

(d) a benefit paid in pursuance of any statutory scheme of Part 30) established or amended after the 10th day of May, 1997, other than a payment representing normal retirement benefits, which is made in consideration or in consequence of, or otherwise in connection with, the termination of the holding of an office or employment in circumstances—

(I) of redundancy or abolition of office, or

(II) for the purposes of facilitating improvements in the organisation of the employing company, organisation, Department or other body by which greater efficiency or economy can be effected,

and, for the purposes of this paragraph, “normal retirement benefits” means recognised superannuation benefits customarily payable to an individual on retirement at normal retirement date under the relevant statutory scheme, notwithstanding that, in relation to the termination of an office or employment in the circumstances described in this paragraph, such benefits may be paid earlier than the designated retirement date or may be calculated by reference to a period greater than the individual's actual period of service in the office or employment, and includes benefits described as short service gratuities which are calculated on

a basis approved by the Minister for Finance.

(4) Income tax shall not be charged by virtue of section 123 in respect of a payment in respect of an office or employment in which the holder's service included foreign service where the foreign service comprised—

(a) in any case, three-quarters of the whole period of service down to the relevant date,

(b) where the period of service down to the relevant date exceeded 10 years, the whole of the last 10 years, or

(c) where the period of service down to the relevant date exceeded 20 years, one-half of that period, including any 10 of the last 20 years.

(5) (a) Income tax shall not be charged by virtue of section 123 in respect of a payment of an amount not exceeding the basic exemption and, in the case of a payment which exceeds that amount, shall be charged only in respect of the excess.

(b) Notwithstanding paragraph (a), where 2 or more payments in respect of which tax is chargeable by virtue of section 123, or would be so chargeable apart from paragraph (a), are made to or in respect of the same person in respect of the same office or employment, or in respect of different offices or employments held under the same employer or under associated employers, that paragraph shall apply as if those payments were a single payment of an amount equal to that aggregate amount, and the amount of any one payment chargeable to tax shall be ascertained as follows:

(i) where the payments are treated as income of different years of assessment, the amount of the basic exemption 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 amount of the basic exemption shall be deducted rateably from the payments according to their respective amounts.

(6) The person chargeable to income tax by virtue of section 123 in respect of any payment may, before the expiration of 6 years after the end of the year of assessment of which that payment is treated as income, by notice in writing to the inspector claim any such relief in respect of the payment as is applicable to the payment under Schedule 3 and, where such a claim is duly made and allowed, all such repayments and assessments of income tax shall be made as are necessary to give effect to such a claim.

(7) For the purposes of any provision of the Income Tax Acts requiring income of any description to be treated as the highest part of a person's income, that income shall be calculated without regard to any payment chargeable to tax by virtue of section 123.