

Tax treatment of restrictive covenants. ITA67 s525; FA92 s18(1) and (3); FA97 s146(1) and Sch9 Ptl par1(35)  
127.—(1) In this section—

“accounting period” means an accounting period determined in accordance with section 27;

“basis period” means the period on the profits or gains of which income tax is to be finally computed under Schedule D or, where by virtue of the Income Tax Acts the profits or gains of any other period are to be taken to be the profits or gains of that period, that other period;

“office or employment” means any office or employment whatever such that the emoluments of that office or employment, if any, are or would be chargeable to income tax under Schedule E or under Case III of Schedule D for any year of assessment;

references to the giving of valuable consideration shall not include references to the mere assumption of an obligation to make over or provide valuable property, rights or advantages, but shall include references to the doing of anything in or towards the discharge of such an obligation.

(2) Where—

(a) an individual who holds, has held or is about to hold an office or employment gives, in connection with the holding of the office or employment, an undertaking (whether absolute or qualified and whether legally valid or not), the tenor or effect of which is to restrict the individual as to his or her conduct or activities,

(b) in respect of the giving of that undertaking by the individual, or of the total or partial fulfilment of that undertaking by the individual, any sum is paid either to the individual or to any other person, and

(c) apart from this section, the sum paid would not be treated as profits or gains from the office or employment,

the sum paid shall be deemed—

(i) to be profits or gains arising or accruing from the office or employment, and accordingly—

(I) in a case where the profits or gains from the office or employment are or would be chargeable to tax under the Schedule E, tax under that Schedule shall be charged on that sum, and tax so chargeable shall be computed under section 112 (1), or

(II) in a case where the profits or gains from the office or employment are or would be chargeable to tax under Case III of Schedule D, tax under that Case shall be charged on that sum,

and

(ii) in a case within paragraph (i)(I), to be emoluments to which Chapter 4 of Part 42 is applied by section 984,

for the year of assessment in which the sum is paid; but where the individual has died before the payment of the sum this subsection shall apply as if the sum had been paid immediately before the individual's death.

(3) Where valuable consideration otherwise than in the form of money is given in respect of the giving of, or of the total or partial fulfilment of, any undertaking, subsection (2) shall apply as if a sum had instead been paid equal to the value of that consideration.

(4) Notwithstanding section 81 (2), where any sum paid or valuable consideration given by a person carrying on a trade or profession is chargeable to tax in accordance with subsection (2), the sum paid or the value of the consideration given, as the case may be, may be deducted as an expense in computing for the purposes of Schedule D the profits or gains of that person's trade or profession, as the case may be—

(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 sum is paid or valuable consideration is given.

(5) Where any sum paid or valuable consideration given by an investment company ), or a company to which section 83 applies by virtue of section 707, is chargeable to tax in accordance with subsection (2), the sum paid or the value of consideration given, as the case may be, shall for the purposes of section 83 be treated as an expense of management for the accounting period in which the sum is paid or valuable consideration is given.

(6) This section shall apply in relation to any sum paid or consideration given in respect of the giving of, or the total or partial fulfilment of, any undertaking whenever given.