

Exemption from Income Tax in respect of Certain Payments made under Employment Law

Part 07-01-27

This document should be read in conjunction with section 192A Taxes Consolidation Act
1997

Document last reviewed March 2024

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1. Introduction

Section 192A of the Taxes Consolidation Act 1997 (TCA 1997) provides for an exemption from income tax for certain payments made by employers to employees arising from claims under employment legislation. Where applicable, the exemption is effective from 4th February 2004.

Section 192A exempts from income tax compensatory awards or settlements made as a result of an infringement of an employee's statutory rights or entitlements (for example through discrimination, harassment or victimisation). The exemption applies to -

- (a) payments arising out of claims made under a "relevant Act" following a formal hearing before a "relevant authority" (or through a mediation process [– paragraph 3 below](#)), on foot of a recommendation, decision or determination by that relevant authority, and
- (b) subject to certain conditions, payments made under an out of court settlement, in place of a formal hearing before a relevant authority, which has been agreed between an employee and his or her employer (see [paragraph 4 below](#)).

There are a number of examples set out in Appendix 2, which illustrate the operation of the exemption.

2. Definition - Relevant Act and Relevant Authority

Relevant Act

A "relevant Act" means an enactment that contains provisions for –

- (a) the protection of employees' rights and entitlements, or

(b) the obligations of employers towards employees.

Examples of such legislation include:

- Employment Equality Acts 1998-2021
- Redundancy Payments Acts 1967 – 2022
- Unfair Dismissals Acts 1977 - 2015
- Terms of Employment (Information) Acts 1994 to 2014
- Protection of Young Persons (Employment) Act 1996
- Protection of Employees (Fixed-Term Work) Act 2003
- Sick Leave Act 2022
- Protected Disclosures Act 2014
- Maternity Protection Acts 1994 to 2022
- Parental Leave Act 1998 - 2019
- Carer’s Leave Act 2001
- Payment of Wages Act 1991
- Minimum Notice & Terms of Employment Acts 1973 to 2005
- Protection of Employees (Part-Time Work) Act 2001
- Organisation of Working Time Act 1997
- Parent’s Leave and Benefit Act 2019

Relevant authority

A “relevant authority” means any of the following:

- an adjudication officer of the Workplace Relations Commission;
- the Workplace Relations Commission;
- the Labour Court;
- the District Court;
- the Circuit Court; or
- the High Court.

3. Recommendations/Decisions/Determinations

The exemption afforded by section 192A applies to payments made on foot of a recommendation, decision or determination by a 'relevant authority' ([Paragraph 2](#)). The exemption also extends to a settlement arrived at under a mediation process provided for in a relevant Act.

The Employment Equality Acts and the Workplace Relations Act 2015 contain provisions that allow a dispute between an employee and an employer to be resolved through mediation. Where such mediation results in an agreement acceptable to both parties, the Mediator draws up the terms of settlement for signature by both parties. A payment made by an employer in accordance with such a settlement may be treated as a payment made on foot of a recommendation, decision or determination by a relevant authority for the purposes of the exemption.

4. Out of Court Settlements

Many disputes between employees and employers concerning the infringement of employees' rights and entitlements, or of employers' obligations to employees, are settled by agreement without referral to a "relevant authority". A payment made under such an agreement will also qualify for the exemption where **all** of the following conditions are met –

- the agreement in settlement of a claim is evidenced in writing;
- the original statement of claim by the employee is evidenced in writing;
- the agreement is not between connected persons as defined in section 10 of the TCA 1997 (e.g. employer and relative, employer and director – see [Appendix 1](#) for copy of section 10 TCA 1997);
- the claim would have been a bona fide claim under a "relevant Act" had it been made to a "relevant authority" (e.g. there are sufficient grounds for the claim; the claim is within the scope of a "relevant Act"; the claim is made within specified time limits, etc.);
- the claim is likely to have been the subject of a recommendation, decision or determination by a relevant authority that a payment be made to the person making the claim;
- the payment does not exceed the maximum amount which could have been awarded under relevant legislation by the "relevant authority". For example the maximum amount of compensation which can be awarded in respect of a breach of the Employment Equality Acts is 104 weeks' pay). **Note** -The relevant employment legislation is available on the [Irish Statute Book website](#).

Employers are obliged to retain copies of any such agreements together with the employees' statements of claim for a period of six years from the date the payment was

made, and to make these documents available to any officer of the Revenue Commissioners when requested to do so.

The format of the employee's original statement of claim, which must be evidenced in writing, and the details required to be included in same, will vary depending on the facts and circumstances of each individual case. However, such written documentation may reasonably be expected to include information such as the nature of the claim, the nature of the relationship between the parties involved, a high-level summary of the allegations and the impact of same. The employee need not engage an external advisor to prepare such written documentation on their behalf and there is no requirement for the statement of claim to have been formally submitted to a relevant authority, provided all other conditions set out above are met.

There is no obligation on employers to look for advance approval before granting the exemption under section 192A TCA 1997 in respect of out of court settlements. However, where an employer does seek such an approval, a copy of the settlement agreement and the employee's statement of claim should be provided to Revenue for consideration.

5. Payments not covered by section 192A TCA 1997

In general, a distinction can be made between salary/wages, including arrears of same (which are taxable) and compensation for a wrong done quantified by reference to salary/wages. Employment legislation typically provides for the calculation of maximum awards by reference to weeks' wages notwithstanding that the claimant may not have suffered any loss of income.

More specifically, the exemption does **NOT APPLY** to a payment (however described) in respect of:

- (a) actual remuneration or arrears of remuneration (chargeable to tax under section 112 TCA 1997) arising from a claim under a "relevant Act", for example, arising from -
 - the non-payment of wages (e.g. a payment in respect of a claim under the Organisation of Working Time Act 1997 for holiday pay).
 - the payment of insufficient wages (e.g. arrears of remuneration arising from a claim for equal pay under the Employment Equality Acts 1998 - 2021);
- (b) the termination of an office or employment (chargeable to tax under section 123 TCA 1997) including, for example, a payment in respect of a claim made under the Unfair Dismissals Acts 1977 - 2015;
- (c) compensation for a reduction or possible reduction in future remuneration arising from a reorganisation of a business or changes in work procedures, work methods, or a change of location where the duties of the employment are (chargeable under section 112 TCA 1997 but subject to relief under section 480 TCA 1997);
- (d) compensation under a court order under section 2B of the Employment Permits Act 2006.

In considering if the exemption provided for in section 192A TCA 1997 applies in respect of an out-of-court settlement, due regard must be had to all terms and clauses included within any written agreement between the parties involved. This includes any terms which attribute or apportion the settlement payment between different elements of the claim. Where the agreement does not clearly attribute the payment to any specific element of the claim, the classification and consequential tax treatment of the payment must be determined having due regard to the full facts and circumstances of the case and the terms of the agreement reached between the parties.

6. Tax Treatment of Legal Fees

Comprehensive guidance is set out in Tax and Duty Manual [Part 07-01-28](#).

Appendix 1 – section 10 TCA 1997

Section 10 TCA 1997 – Definition of “Connected Persons”

Connected persons 10.—

(1) In this section-

"close company" has the meaning assigned to it by *sections 430 and 431*;

"company" has the same meaning as in *section 4 (1)*;

"control" shall be construed in accordance with *section 432*;

"relative" means brother, sister, ancestor or lineal descendant and, for the purposes of the Capital Gains Tax Acts, also means uncle, aunt, niece or nephew;

"settlement" includes any disposition, trust, covenant, agreement or arrangement, and any transfer of money or other property or of any right to money or other property;

"settlor", in relation to a settlement, means any person by whom the settlement was made, and a person shall be deemed for the purposes of this section to have made a settlement if the person has made or entered into the settlement directly or indirectly and, in particular (but without prejudice to the generality of the preceding words), if the person has provided or undertaken to provide funds directly or indirectly for the purpose of the settlement, or has made with any other person a reciprocal arrangement for that other person to make or enter into the settlement.

(2) For the purposes of the Tax Acts and the Capital Gains Tax Acts, except where the context otherwise requires, any

question whether a person is connected with another person shall be determined in accordance with *subsections (3) to (8)* (any provision that one person is connected with another person being taken to mean that they are connected with one another).

(3) A person shall be connected with an individual if that person is the individual's husband, wife or civil partner, or is a relative, or the husband, wife or civil partner of a relative, of the individual or of the individual's husband, wife or civil partner.

(4) A person in the capacity as trustee of a settlement shall be connected with—

(a) any individual who in relation to the settlement is a settlor,
(b) any person connected with such an individual, and
(c) a body corporate which is deemed to be connected with that settlement, and a body corporate shall be deemed to be connected with a settlement in any accounting period or, as the case may be, year of assessment if, at any time in that period or year, as the case may be, it is a close company (or only not a close company because it is not resident in the State) and the participators then include the trustees of or a beneficiary under the settlement.

(5) Except in relation to acquisitions or disposals of partnership assets pursuant to bona fide commercial arrangements, a person shall be connected with any person with whom such person is in partnership, and with the spouse, or civil partner,

or a relative of any individual with whom such person is in partnership.

(6) A company shall be connected with another company—

(a) if the same person has control of both companies, or a person (in this paragraph referred to as "the first-mentioned person") has control of one company and persons connected with the first-mentioned person, or the first-mentioned person and persons connected with the first-mentioned person, have control of the other company, or

(b) if a group of 2 or more persons has control of each company, and the groups either consist of the same persons or could be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person with whom such member is connected.

(7) A company shall be connected with another person if that person has control of the company or if that person and persons connected with that person together have control of the company

(8) Any 2 or more persons acting together to secure or exercise control of, or to acquire a holding in, a company shall be treated in relation to that company as connected with one another and with any person acting on the direction of any of them to secure or exercise control of, or to acquire a holding in, the company.

Appendix 2 – Examples

Example 1

Michael made a claim under the Employment Equality Act 1998 claiming that he was discriminated against in a recruitment process at work. The WRC held that his employer had discriminated against him on grounds of civil status, family status and age in the manner in which it conducted the selection process for the relevant position. Michael was awarded €20,000 compensation for the distress suffered by him as a result of the discrimination.

Tax Treatment: The payment of €20,000 qualifies for exemption under section 192A TCA 1997.

Example 2

Siobhán, a civil servant, made a claim under the Employment Equality Act 1998 claiming that she was discriminated against by her employer when she was excluded from the higher pay scales applicable to senior members of her grade.

The WRC found that Siobhán's employer discriminated against her on age grounds and also found that she was victimised by her employer. She was awarded the higher pay scale payment and compensation of €8,000.

Tax Treatment: The payment of €8,000 awarded for victimisation qualifies for the exemption under section 192A TCA 1997. However, the higher scale payment itself is remuneration and chargeable under section 112 TCA 1997.

Example 3

Ciara took a claim against her employer under the Employment Equality Act 1998 claiming discrimination on the gender ground when she was not appointed to a particular position and the successful applicant was male.

The WRC awarded Ciara compensation in the form of arrears of remuneration in the gross amount of €60,000 and compensation for the effects of the discriminatory treatment in the amount of €10,000.

Tax Treatment: The payment of €60,000 is in respect of arrears of remuneration and is chargeable under section 112 TCA 1997. The payment of €10,000 as compensation for the act of discrimination qualifies for exemption under section 192A TCA.

Example 4

Ben lodged a claim for constructive dismissal under the Unfair Dismissals Act 1977 to 2015 on the grounds that his employer's conduct gave him no option but to resign.

The WRC found that Ben had been constructively dismissed and awarded him compensation in the sum of €70,500 being the equivalent of 78 weeks remuneration for unfair dismissal.

Tax treatment: The compensation of €70,500 is a payment to which section 123 of the TCA 1997 applies, being a payment made in connection with or otherwise as a consequence of the termination of the employee's employment. It is chargeable under that section subject to reliefs available under section 201 and Schedule 3 TCA 1997. The section 192A exemption does not apply.

Example 5

Sophia did not receive a written contract or terms of employment from her employer, nor was she provided with any payslips.

She brought a claim to the WRC which found that the employer was in breach of its statutory obligations under the Terms of Employment (Information) Act 1994. Sophia was awarded compensation quantified by reference to 4 weeks wages remuneration of €1,290.

Tax Treatment: The payment of €1,290 in respect of the employer's failure to supply the employee with a written contract or terms of employment, or payslips, qualifies for exemption under section 192A TCA 1997. Although calculated by reference to Sophia's wages, it is not a payment of arrear of wages.

Example 6

Liam's employer failed to ensure that he was getting appropriate rest breaks and he lodged a claim at the WRC for breach of the Organisation of Working Time Act 1997. He was awarded compensation of 10 weeks' wages.

Tax treatment: This payment is exempt from tax as it is compensation for the infringement of an employment right. Although calculated by reference to Liam's wages, it is not a payment of arrear of wages.

Example 7

Emily entered into a mediation process with her employer to address formal bullying claims she had made. Emily and her employer agreed to terminate the employment relationship and a payment of €65,000 plus a contribution to legal costs was agreed. The agreement stated that the employment was terminating by reason of redundancy.

Tax treatment: The payment does not come within s192A(3) as it was not made under a mediation process provided for in a relevant act.

The exemption does not apply as the payment was made "directly or indirectly, in consideration or in consequence of, or otherwise in connection with, the termination of the holding of an

office or employment". The payment will be taxable under section 123 subject to reliefs available under section 201 and Schedule 3 TCA 1997.

Example 8

David commenced High Court proceedings against his employer for breach of contract and a claim for personal injury arising from workplace stress, bullying and harassment. A settlement agreement was reached prior to the hearing. The agreement provided for €95,000 for loss of earnings calculated by reference to the income that David would have earned in full-time employment.

Tax treatment: As the settlement figure relates to a payment respect of remuneration the exemption in section 192A will not apply.

Example 9

Jack's employer reduced his contracted hours for a two-month period. Jack took a claim to the WRC claiming that his employer had made unlawful deductions from his wages without consent contrary to the Payment of Wages Act 1991. The WRC awarded him €2,000 to reflect the unlawful deductions which were taken from his pay.

Tax treatment: As the payment relates to arrears of wages, the exemption in section 192A will not apply.