

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

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1. Introduction

Section 192A of the Taxes Consolidation Act 1997 (TCA 1997) provides for an exemption from income tax in respect of certain awards made for infringement of an employee's rights or entitlements or an employer's obligations under employment legislation. The exemption applies to awards made on or after 4 February 2004.

Section 192A TCA exempts from income tax compensatory awards made as a result of an employee's rights and entitlements in law having been infringed or breached through, for example, 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 2 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 legislation in respect of decisions/determinations/recommendations made by the Equality Tribunal, the Employment Appeals Tribunal, the Workplace Relations Commission and the Labour Court.

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 1998-2015
- Equal Status Acts 2000-2015
- 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
- Redundancy Payments Acts 1967 – 2014
- Protected Disclosures Act 2014
- Maternity Protection Acts 1994 and 2004
- Parental Leave Act 1998
- 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

Relevant authority

A “relevant authority” means any of the following:

- a Rights Commissioner;
- the Director of the Equality Tribunal;
- an adjudication officer of the Workplace Relations Commission;
- the Workplace Relations Commission;
- the District Court;
- an Employment Appeals Tribunal;
- the Labour Court;
- the Circuit Court; or
- the High Court.

3. Recommendations/Decisions/Determinations

The Employment Equality Act 1998 - 2015 contains provisions that allow a dispute between an employee and an employer to be resolved through mediation. Where 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.

An agreed order made by the Circuit Court may also be regarded as a recommendation, decision or determination 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 employers' obligations to employees are settled by agreement without referral to a "relevant authority". A payment made under such an agreement also qualifies 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. sufficient grounds for the claim; claim is within the scope of one of the relevant Acts; claim 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 Rights Commissioner, Director of the Equality Tribunal, Employment Appeals Tribunal, Workplace Relations Commission or Labour Court as appropriate (e.g. a claim made under the Employment Equality Act 1998 for acts of discrimination – maximum amount cannot exceed a sum calculated as being not greater than 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 claims 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 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 or 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 of 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 agreement and statement of the employee's claim should be sought and examined before granting the exemption, if due.

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 which is quantified by reference to salary/wages. For example, compensation in respect of claim under employment related law relating to harassment, which may qualify for the tax exemption, may be quantified as being not more than, say, 26 weeks wages.

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 - 2015);
- (b) the termination of an office or employment (chargeable to tax under section 123 TCA 1997). 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 out-of-court settlements, 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 payment between different elements of the claim as set out above. Where the agreement does not clearly attribute the payment to any specific element of the claim, the classification and consequential tax treatment of same 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

1.Examples of Decisions from the Director of Equality Investigations in the Equality Tribunal

Example 1

Claim

Employment - Selection Process - Promotion - Prima Facie Case - Family Status – Civil Status - Age - Direct Discrimination - Employment Equality Act 1998: sections 2, 6, and 8.

Background

The complainant alleged that she had been discriminated against on grounds of civil status, family status and age when the respondent failed to promote her following an internal competition.

Decision

The Equality Officer held that the respondent had discriminated against the complainant on grounds of civil status, family status and age, contrary to the Employment Equality Act 1998, in the manner in which it conducted the selection process for the relevant position.

The Equality Officer ordered the respondent to pay the complainant €20,000 as compensation for the distress suffered by her as a result of the discrimination. He also ordered the respondent to take all necessary steps to ensure that the complainant is personally given appropriate advance notice of all vacancies for the relevant position in the company for a period of two years from the date of the decision; that she is afforded the opportunity to attend all training courses relating to the position during

that period and that the respondent is to commence a review of the selection procedures within three months of the date of the decision.

Tax Treatment

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

Example 2**Claim**

Employment - Promotion - Higher Pay Scales - Age - Promotion Assessments -
Victimisation - The Employment Equality Act 1998 - section 6 (1) (f), (2) (a), (2) (f), 74(2),
82(1).

Background

The claimant, a civil servant, claimed that he was discriminated against by his then Department when he was excluded from the higher pay scales applicable to senior members of his grade. He subsequently made a claim under the Employment Equality Act 1977 that two female staff who were junior to him were promoted. He withdrew this latter claim but claimed that he was victimised by his employer subsequent to making it.

Decision

The Equality Officer found that the Department discriminated against the claimant on age grounds in refusing to place him on the higher pay scale. She also found that the claimant was victimised by the Department in a series of incidents subsequent to his claim under the Employment Equality Act 1977, which culminated with the refusal of the payment of the higher scale. The claimant was awarded the higher pay scale payment and compensation of €8,000 in total in respect of both complaints.

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**Claim**

Employment Equality Act 1998 sections 6 and 8 - Employment – Discriminatory treatment - Gender - Promotion – Victimisation.

Background

The complainant alleged that she was discriminated against by the respondent on the gender ground in terms of section 6(2)(a) of the Employment Equality Act 1998 and contrary to section 8 of that Act when she was not appointed to a particular position and the successful applicant was male. She also contends that she was victimised when she sought to address her grievance at not being selected for the position. The respondent denied the allegations.

Conclusions

The Equality Officer found that the respondent did discriminate against the complainant in terms of section 6(2)(a) of the Employment Equality Act 1998. The Equality Officer found that the respondent failed to display fairness in its selection procedures. The Equality Officer also found that there was a lack of transparency in the marking for core/special competencies.

In relation to the complainant's allegation of victimisation, the Equality Officer found that the evidence did not support the allegation.

Decision

The Equality Officer ordered the respondent to implement fair and transparent selection procedures in future competitive competitions for employment and promotions. The Equality Officer also ordered the respondent to pay the complainant compensation in the form of arrears of remuneration in the gross amount of €60,000 and compensation for the effects of the act of discrimination 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.

2.Examples of determinations from the Labour Court

Example 1

Claim

Section 8(1)(A), Anti-Discrimination (Pay) Act 1974.

Background

The worker concerned is employed by the company as a crèche supervisor.

The Union submitted a claim to an Equality Officer on behalf of the named female worker that she is entitled to the same rate of pay as that paid to fourteen named male comparators in terms of section 3(c) of the Anti-Discrimination (Pay) Act 1974.

The Equality Officer found that that the named female worker performs "like work" with that performed by each of the named male comparators in terms of section 3(c) of the Anti-Discrimination (Pay) Act 1974. She recommended that the Company pay the claimant the same rate of remuneration as that paid to each of the named male comparators i.e. the 7.5% differential. Payment should be made for three years in advance of the date of the claim.

The Company appealed the Recommendation to the Equality Officer.

Determination

The Labour Court determined that the claimant was entitled to a responsibility allowance equal to 7.5% of her basic rate, plus a pay adjustment equal to that paid to comparator E (who is in receipt of highest rate of pay adjustment), namely €25.39 per week. The resultant arrears should be paid retrospective to a given date.

Tax Treatment

The award made represents arrears of remuneration chargeable to tax under section 112 of the TCA 1997, thus the section 192A TCA exemption does not apply.

Example 2

Claim

Industrial Relations Acts 1946 to 1990 section 13(9) Industrial Relations Act 1969.

Subject

Appeal of Rights Commissioner's Recommendation concerning alleged unfair dismissal.

Background

The worker concerned was absent from work on sick leave for considerable periods of time and the dispute concerned the question of whether she resigned from her position with the Company in January 1997. The dispute was referred to a Rights Commissioner for investigation and recommendation. The Rights Commissioner's findings and recommendation were as follows:-

"While I accept that the claimant was very ill for a long period, I have come to the conclusion that she did resign her position, although she may not have been fully aware of the consequences of her actions at the time. I, therefore, recommend in favour to the Company."

The Rights Commissioner's Recommendation was appealed by the Union to the Labour Court under section 13(9) of the Industrial Relations Act 1969.

Decision

The Labour Court, taking into account all of the issues in this case, upheld the appeal and awarded the claimant €2,000 in compensation.

Tax Treatment

This is a global payment to take account of all of the issues involved including the termination of the employment. Consequently, it is a payment to which section 123 TCA 1997 applies (i.e. a payment made in connection with or otherwise as a consequence of the termination of the employee's employment). Accordingly, it would not fall within the scope of section 192A TCA 1997. However, it would be covered by the statutory exemption of €10,160 contained in section 201 TCA 1997.

3.Examples of decisions given by the Employment Appeals Tribunal

Example 1

Claim

Unfair Dismissals Acts 1977 to 2015

Subject

Alleged Constructive Dismissal.

Background

The worker concerned commenced employment with the employer in 1996 and resigned her employment in 2000. The claimant's case is that she was constructively dismissed in that the conduct of her employer and their treatment and attitude towards her left her no choice but to terminate her employment.

Issue for Tribunal – whether claimant was dismissed by construction under the definition of dismissal under section 1(b) of the Unfair Dismissals Act and having regard to this definition and to the evidence and submissions to the Tribunal whether it was reasonable for claimant to terminate her contract of employment.

Decision

The Tribunal unanimously finds the claimant to have been constructively dismissed but accepts that neither re-instatement nor re-engagement is a suitable remedy and the preferred redress is compensation. Both parties agree that, since dismissal, the claimant has been unfit for work by reason of illness and the Tribunal must now assess the extent of the financial loss suffered by the claimant. In all the circumstances therefore, having regard to her loss to date and the time-frame accepted by the Tribunal for future loss, it deemed as just and equitable that the claimant be awarded compensation in the sum of

€70,500 being the equivalent of 78 weeks remuneration (78 x €903.85) for unfair dismissal.

Tax treatment

The compensation of €70,500 is a payment to which section 123 of the TCA Act 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 2**Claim**

Payment of Wages Act 1991 & Terms of Employment (Information) Act 1994.

Subject

Appeal against the recommendations of the Rights Commissioner concerning alleged dismissal without notice and statutory entitlement to payments.

Background

The employee began work for the employer in June 2001. The employer had not furnished the employee with any written contract or terms of employment, nor did he provide him with any payslips. The employer submitted a P60, which described the employee's commencement date as September 2001.

The Rights Commissioner's Recommendation was appealed to the Employment Appeals Tribunal.

Decision

The Tribunal accepted the evidence of the employee that he was unfairly dismissed from his employment without notice in 2002. The Tribunal found that the employer was clearly in breach of its statutory obligations pursuant to sections 3 and 5 of the Terms of Employment (Information) Act 1994. The Tribunal awarded the employee compensation quantified by reference to 4 weeks wages remuneration of €1,290 and his statutory entitlement of one week's gross wages in lieu of notice.

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. The payment of one week's gross wages in lieu of notice is chargeable under section 123 TCA 1997 but would be covered by the exemption available under section 201 TCA 1997.