



# Finance Act 1968

## 1968 CHAPTER 44

### PART IV

#### THE SPECIAL CHARGE

#### 41 The special charge

- (1) In the case of an individual whose aggregate investment income for the year 1967-68 exceeded £3,000 plus the amount of his surtax personal allowances, there shall be made in accordance with the provisions of this Part of this Act a special charge in accordance with the following Table—

TABLE

For every pound of

the first thousand pounds of the excess	2 shillings
the next thousand pounds of the excess	3 shillings
the next three thousand pounds of the excess	6 shillings
the remainder of the excess	9 shillings.

- (2) For the purposes of subsection (1) above the amount of an individual's surtax personal allowances is the amount deductible from his total income for the year 1967-68 under section 14(1) of the Finance Act 1957, without regard to subsection (2) of that section (apportionment between husband and wife).
- (3) Subsection (1) above applies—
- to any individual domiciled in the United Kingdom in the year 1967-68, and
  - to any individual not so domiciled, if he was resident and ordinarily resident in the United Kingdom in the year 1967-68, and had been ordinarily resident in the United Kingdom throughout the nine preceding years.

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- (4) The special charge shall not be made in the case of an individual who died before the end of the year 1967-68, but if a husband or wife died during the year 1967-68, this Part of this Act shall apply to the survivor as if during that year they had not been married.
- (5) Schedule 15 to this Act shall have effect as respects trustees, including personal representatives, and income arising under a trust.
- (6) Except as otherwise expressly provided expressions used in this Part of this Act have the same meanings as in the Income Tax Acts.
- (7) This Part of this Act shall extend to Northern Ireland and the Government of Ireland Act 1920 shall have effect as if the special charge were included among the taxes mentioned in section 22(1) of that Act (reserved taxes).

#### **42 Investment income**

- (1) This section shall apply in ascertaining investment income and aggregate investment income for the purposes of this Part of this Act.
- (2) Subject to the provisions of this Part of this Act, " investment income " means income from any source other than a source of earned income and other than income chargeable under Case VII of Schedule D (short-term capital gains), and the " aggregate investment income " of an individual shall be taken to be the aggregate of his investment income from all sources.
- (3) Subject to the provisions of this Part of this Act, income from any source shall be ascertained as it is ascertained for the purposes of surtax, and income shall be treated as income of an individual if it would be so treated for the purposes of surtax.
- (4) Investment income shall not include—
  - (a) income from investments (including land) which falls to be taken into account as a receipt in computing, in accordance with the provisions of the Income Tax Acts, the profits or gains of a trade, profession or vocation, or which would fall so to be taken into account but for the fact that it has been subjected to tax under other provisions of those Acts,
  - (b) any other income arising from a trade, profession or vocation carried on by an individual otherwise than in partnership, not being income specified in subsection (5) below.
- (5) Investment income shall include income from investments (including land) held by or on behalf of the persons carrying on or exercising a trade, profession or vocation, not being income falling within subsection (4)(a) above.
- (6) Investment income shall not include—
  - (a) any annuity purchased for an individual in pursuance of any direction in a will, or to provide for an annuity payable by virtue of a will or settlement out of income of property disposed of by the will or settlement, or
  - (b) royalties or other sums paid for or in respect of—
    - (i) the copyright in a literary, dramatic, musical or artistic work, or
    - (ii) the use of a patent,
 where the copyright or patent or the right to receive such sums has devolved by will or on intestacy on the death of the author or inventor, and the recipient took on that death or after one or more further devolutions on death, or

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- (c) any amount as being a sum charged to surtax under section 242 of the Income Tax Act 1952 (consideration for certain restrictive covenants, etc.).
- (7) Subject to the following provisions of this section, in ascertaining aggregate investment income any deduction in respect of interest, annuities or other annual payments allowable in computing the individual's total income for the year 1967-68 for surtax shall be allowed as a deduction.
- (8) In ascertaining aggregate investment income no deduction shall be allowed in respect of—
  - (a) payments of any of the descriptions in subsections (1), (2), (3) and (4) of section 23 of the Finance Act 1966 (whether or not the disposition was made after 6th April 1965),
  - (b) periodical payments allowable as deductions in ascertaining total income for surtax, being payments—
    - (i) in pursuance of an order of any court for the payment of maintenance or aliment or in pursuance of an affiliation order or a decree of affiliation and aliment, or
    - (ii) in pursuance of a disposition not made for full consideration in money or money's worth,or any other payments constituting income of the description in subsection (5) of section 23 of the Finance Act 1966 (whether or not the disposition was made after 6th April 1965),
  - (c) payments allowable as deductions in computing profits or gains of any description,
  - (d) any loss incurred in carrying on a trade, profession, employment or vocation, or in the occupation of woodlands in respect of which the person in question has elected to be charged to tax under Schedule D.
- (9) Payments within paragraphs (a) and (b) of subsection (8) above shall not be treated as the income of any person other than the person making the payment.
- (10) In ascertaining aggregate investment income the amount of any allowance under Part X of the Income Tax Act 1952 (capital allowances) available or primarily available against a specified class of income for the year 1967-68 shall be allowed as a deduction, in so far only as the amount of the allowance does not exceed the individual's investment income for that year of that class.
- (11) In ascertaining aggregate investment income no deduction shall be allowed in respect of payments which are deemed under paragraph 9(1) of Schedule 21 to the Income Tax Act 1952 (underwriters' payments into special reserve fund) to be annual payments, and the following (also relating to underwriters) shall not be treated as the income of any person, namely—
  - (a) payments deemed to be annual payments under sub-paragraph (2) or sub-paragraph (3) of the said paragraph 9,
  - (b) annual payments deemed to have been received under section 3(2) of the Finance (No. 2) Act 1955.

#### **43 Due date, interest and administration**

- (1) Subject to the provisions of this Part of this Act, the special charge in respect of an individual's aggregate investment income shall be made by assessment on that individual, and shall be payable by that individual.

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- (2) Subject to the provisions of this Part of this Act, the special charge shall be payable on or before 1st January 1969, or on the day next following the making of the assessment, whichever is the later.
- (3) If all or any part of the special charge, whether already assessed or not, is not paid by 1st January 1969, it shall carry interest at the rate of four per cent, per annum from that date to the date of payment:

Provided that interest shall not be payable on the special charge made by any assessment unless the total amount of the interest exceeds five pounds.

- (4) The interest payable under subsection (3) above shall be paid without any deduction of income tax and shall be recoverable from the like persons as if it were part of the special charge in respect of which it is payable.
- (5) So far as all or any part of the special charge carries interest from 1st January 1969 to the date when the special charge, or that part of it, becomes due, the grossed-up amount of that interest shall be allowable as a deduction in computing income for surtax for the year of assessment in which the interest is paid, but, subject to that, interest payable under subsection (3) above for any period shall not be allowable as a deduction for surtax or for any other purpose.

In this subsection the "grossed-up" amount of any interest is such amount as would, after deduction of tax at the standard rate for the year in which it is paid, equal the amount of interest paid.

- (6) The special charge shall be under the care and management of the Board.
- (7) Subject to the provisions of this Part of this Act, the special charge shall be assessed and recoverable as if it were an amount of surtax, and all enactments applying to the management and administration of income tax, including those relating to incapacitated persons and personal representatives, those relating to assessing, collecting and receiving of income tax and those conferring or regulating a right of appeal, shall apply accordingly.
- (8) The Board shall have power by regulations contained in a statutory instrument subject to annulment in pursuance of a resolution of the Commons House of Parliament—
- (a) to direct that any of the provisions applied by sub-section (7) above shall have effect as may be prescribed by the regulations, and subject to such exceptions or modifications as may be so prescribed, and
  - (b) to make further provision for the management, administration and collection of the special charge and interest thereon, including provision for enabling any question which may affect the liability of two or more persons to pay the special charge in respect of any particular investment income to be determined for all those persons in the same proceedings.
- (9) Where an assessment, or a decision on a claim, which under the provisions of this Part of this Act may affect the amount of an individual's aggregate investment income has become final and conclusive for the purposes of the Income Tax Acts, it shall be final and conclusive for the purposes of this Part of this Act as to the amount of the income or relief in question.
- (10) An assessment to the special charge in respect of an individual's aggregate investment income may be made at any time if an assessment to surtax in respect of that

individual's total income for the year 1967-68 could be then made within the time limited by the Income Tax Acts for the making of assessments to surtax.

- (11) The Board may, whether an assessment to the special charge has been made or not, by notice in writing require any person in whose case it appears to the Board that the special charge may be payable by, or recoverable from, him, and that he has in his possession any information relevant to the assessment or recovery of the special charge, to furnish to the Board within such time as may be specified in the notice, not being less than thirty days, such particulars as they consider necessary for the purposes of the assessment or recovery of the special charge.

Part III of the Finance Act 1960 (penalties) shall have effect as if this subsection were referred to in column 2 of Schedule 6 to that Act, and subject to any modifications necessary for applying the said Part III to the special charge as it applies to income tax.

- (12) Special Commissioners or other persons who have made declarations in the form in Part I of Schedule 1 to the Income Tax Management Act 1964, or in the amended form provided for in paragraph 16 of Schedule 10 to the Finance Act 1965, shall be subject to the same obligations as to secrecy with respect to the special charge as they are subject to with respect to income tax.

#### **44 Husband and wife**

- (1) In ascertaining aggregate investment income, subsections (1), (2) and (4) of section 354 (wife's income to be treated as that of her husband) and section 361 (separation, etc.) of the Income Tax Act 1952 shall apply as they apply for the purposes of income tax, but subject to the following provisions of this section.
- (2) Subsection (3) below shall apply in the case of a husband and wife—
- (a) where application in that behalf is made either by the husband or the wife in such manner and form as may be prescribed by the Board, or
  - (b) where an application by the husband or wife under section 356 of the Income Tax Act 1952 for separate assessment to surtax has effect as respects the year 1967-68, unless notice in writing requiring that subsection (3) below shall not apply is given both by the husband and by the wife in such manner and form as may be prescribed by the Board:

Provided that no application or notice under this subsection shall be made or given after 5th October 1968 or such later date, not falling after the expiration of thirty days from the giving to the husband of a notice of the assessment to the special charge, as the Board may allow.

- (3) Where the provisions of this subsection apply—
- (a) the husband and wife shall be assessed under this Part of this Act, and the special charge shall be recoverable, as if they were not married, and this Part of this Act shall apply to each of them accordingly, but
  - (b) in ascertaining aggregate investment income for the purposes of this Part of this Act the income of the husband and wife shall be treated as the income of one individual, and
  - (c) the amount of the special charge payable by reference to the aggregate investment income so ascertained shall be divided between the husband and wife in proportion to the amounts of their respective aggregate investment incomes, after deducting the surtax personal allowances (that is to say the

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amount deductible under section 14(1) of the Finance Act 1957) apportioned in accordance with paragraph (d) below, and

- (d) that apportionment shall be made—
- (i) in the case of the allowances within subsection (2)(b)(i) of the said section 14 (allowances for certain children and dependants), according to the apportionment in the said sub-paragraph (i),
  - (ii) in the case of any other allowances, according to the respective amounts of the aggregate investment incomes of the husband and wife,

but so that, if the amount by which the aggregate investment income of either falls to be reduced under sub-paragraph (i) or (ii) of this paragraph exceeds the amount of that aggregate investment income, the aggregate investment income of the other shall be treated as reduced by the amount of the excess.

- (4) Section 359 (collection from wife of tax assessed on husband attributable to her income) and section 360 (disclaimer by husband of liability for tax on deceased wife's income) of the Income Tax Act 1952 shall apply with any necessary modifications for the purposes of the special charge as they apply for the purposes of income tax.

#### **45 Close companies**

- (1) It is hereby declared that, subject to subsection (3) below, investment income includes any amount apportioned for purposes of surtax (whether originally or by one or more sub-apportionments) to an individual under section 78 of the Finance Act 1965.
- (2) Subsection (5) of section 249 of the Income Tax Act 1952 as applied by the said section 78 (which, for surtax, prevents undistributed income which has been assessed and charged to surtax in pursuance of the said section 78 from being again assessed when distributed) shall apply for the purposes of computing investment income, but the other provisions of the said section 249 shall not apply for the purposes of this Part of this Act.
- (3) The Board may, if they see reason for it, apportion the whole of the income of a close company for the accounting period ending in the year 1967-68, up to the amount of the required standard, among the participators, and any amount apportioned to another close company, whether originally or by one or more sub-apportionments under this subsection, shall be further apportioned among the participators in that company.

Any income apportioned to an individual under this subsection shall be included in his aggregate investment income.

- (4) Where the Board have made an apportionment under subsection (3) above, any distribution made by the company and any apportionment of the company's income for surtax shall be left out of account in ascertaining aggregate investment income for the purposes of the special charge.
- (5) Subsection (3) above shall not apply in the case of a trading company or of a member of a trading group.
- (6) Schedule 16 to this Act shall have effect for supplementing and giving effect to this section.
- (7) For the purposes of this section and the said Schedule—

- (a) "distribution" shall have the meaning assigned by Schedule 11 to the Finance Act 1965,
  - (b) "the required standard" has the meaning given by section 77(2) of the Finance Act 1965,
  - (c) other expressions shall be construed in accordance with the provisions of the Corporation Tax Acts relating to close companies.
- (8) For the said purposes "the accounting period ending in the year 1967-68", in relation to a close company—
- (a) if there is one, and only one, accounting period of the company ending in the year 1967-68, and it is an accounting period of twelve months, means that accounting period,
  - (b) if not, means the parts of accounting periods, and any whole accounting periods, falling within the year 1967-68, apportioning income of any accounting period to the respective parts in accordance with section 89(6) of the Finance Act 1965.

#### **46 Relief where income attributable to period of years was received in 1967-68**

- (1) Where, on a claim being made, the Board are satisfied as respects any assets that the income from the assets represents more than the income which would be attributable to a period of one full year if the income were deemed to have accrued from day to day, the Board shall in ascertaining aggregate investment income for the purposes of this Part of this Act make such reduction, if any, as may be appropriate to secure that there shall be taken as representing the income from the assets an amount equivalent to a full year's income therefrom.

Section 240(1) of the Income Tax Act 1952 shall apply for the purposes of this subsection as it applies for the purposes of section 238 of that Act (corresponding provision for surtax).

- (2) If an individual's investment income includes an amount in respect of which a claim could be made for relief under section 472 of the Income Tax Act 1952 (spreading of patent royalties over several years) a claim may be made under this section requiring that amount to be reduced, in ascertaining the individual's aggregate investment income, by multiplying by the fraction of which—
- (a) the numerator is one, and
  - (b) the denominator is the six or less number of instalments into which that amount would be divided by a claim under the said section 472.
- (3) If an individual's investment income includes an amount in respect of which a claim could be made for relief under Schedule 6 to the Finance Act 1963 (premium, etc. treated as rent) a claim may be made under this section requiring that amount to be reduced, in ascertaining the individual's aggregate investment income, to the yearly equivalent of that amount, as defined in paragraph 1 of the said Schedule 6, less any sums deductible under paragraph 3(1)(a) of the said Schedule 6.
- (4) A claim for relief under this or either of the two next following sections—
- (a) may be made by any person who has borne or is liable to bear the special charge in respect of the income in question, either by assessment or by a payment under Schedule 15 to this Act,
  - (b) shall be made to the Board,

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- (c) shall be made not later than the end of the year 1973-74, except that a claim which could not have been allowed but for the making of an assessment to the special charge in the year 1973-74 or a later year may be made at any time before the end of the year of assessment following that in which the assessment was made,

and section 9 of the Income Tax Management Act 1964 shall apply to the claim as it applies for the purposes of income tax.

- (5) Where in pursuance of a claim for relief under this or either of the two next following sections any amount of the special charge is repaid, there shall also be repaid any interest paid in respect of that amount of the special charge.

#### **47 Relief where capital is subject to estate duty or capital gains tax**

- (1) If on a claim being made it is shown to the satisfaction of the Board that—
- (a) in consequence of a death occurring before the end of the year 1967-68 estate duty or capital gains tax became payable in respect of any assets, and
  - (b) investment income affecting, whether directly or in directly, the amount of the special charge arose from the assets, and
  - (c) the amount of that income exceeded what it would have been if all estate duty and capital gains tax payable in consequence of the death had been paid immediately on the occurrence of the death or other event whereby the estate duty or capital gains tax became payable,

the amount of the said investment income shall in ascertaining aggregate investment income for the purposes of this Part of this Act be treated as reduced by such amount as the Board may determine to be appropriate to offset the excess.

- (2) In this section " estate duty " includes estate duty payable under the law of Northern Ireland, and references to capital gains tax payable in consequence of a death shall be construed in accordance with subsection (8) and subsection (9)(a) of section 26 of the Finance Act 1965.

#### **48 Relief in respect of error or mistake**

If on a claim being made it is shown to the satisfaction of the Board that—

- (a) by reason of an error or mistake in a return or statement made for the purpose of the special charge, or for the purpose of income tax (including surtax), an assessment to the special charge was excessive, or
- (b) that after an assessment to the special charge became final, any adjustment was made under the provisions of the Income Tax Acts of any income which affected the ascertainment of aggregate investment income,

the Board shall make any appropriate adjustment.

#### **49 Double taxation relief**

- (1) Part XIII of the Income Tax Act 1952 together with any other enactment relating or referring to double taxation relief, and any arrangements made under section 347 of that Act in relation to income tax, shall have effect in relation to the special charge and investment income as they are expressed to have effect in relation to income tax and income subject to income tax.

- (2) In paragraph 5(1)(b) of Schedule 16 to the said Act (limit on total credit), as it applies to the total income for the year 1967-68 of an individual whose investment income is subject to the special charge, the sum of the rates there specified (effective income tax rate plus effective surtax rate) shall be increased for the purpose of allowing credit for foreign tax in respect of investment income by adding the rate ascertained by dividing the special charge by the amount of his aggregate investment income.

## **50 Transactions designed to avoid liability**

- (1) Where, as a result of any action or decision taken by any person on or after 19th March 1968, an individual's aggregate investment income is, apart from this section, less by any amount than it would have been but for that action or decision, his aggregate investment income shall for the purposes of this Part of this Act be increased by that amount unless it is shown to the satisfaction of the Board that avoidance of, or reduction of liability to, the special charge was not the main object or one of the main objects of the action or decision.
- (2) Without prejudice to the generality of subsection (1) above, the following shall be treated for the purposes of that subsection as actions or decisions as a result of which an individual's aggregate investment income is less than it would have been but for the action or decision—
- (a) the forgoing of any investment income to which the individual or his wife would otherwise have been entitled as income of the year 1967-68,
  - (b) the postponement of any entitlement to or receipt of investment income so as to prevent it from being income of the year 1967-68,
  - (c) the making of a settlement of which the individual or his wife is the settlor in consequence of which investment income becomes payable to any person or persons other than the individual or his wife,
  - (d) the incurring of any expenditure (including any liability to pay interest) which, but for this section, would affect the amount of the individual's aggregate investment income.
- (3) If it appears that the main benefit which might have been expected to accrue from the action or decision was the avoidance or reduction of liability either to the special charge, or to the special charge and surtax together, the avoidance or reduction of liability to special charge shall be deemed for the purposes of this section to have been the main object, or one of the main objects, of the action or decision.
- (4) If it appears to the Board that any person has taken or may have taken any action or decision as a result of which an individual's aggregate investment income is less than it would have been but for the action or decision, and that that person has in his possession any information relevant for the purpose of giving effect to this section, the Board may, whether an assessment to the special charge has been made or not, by notice in writing require that person to furnish to the Board within such time as may be specified in the notice, not being less than thirty days, such particulars as they consider necessary for that purpose.
- Part III of the Finance Act 1960 shall have effect as if this subsection were referred to in column 2 of Schedule 6 to that Act, and subject to any modifications necessary for applying the said Part III to the special charge as it applies to income tax.
- (5) In this section "settlement" and "settlor" have the meanings given by section 403 of the Income Tax Act 1952.