



# Income and Corporation Taxes Act 1970

## 1970 CHAPTER 10

### PART VIII

#### SCHEDULE E

### CHAPTER I

#### THE CHARGE

#### *Supplementary charging provisions*

#### **182 Voluntary pensions**

(1) Where—

- (a) a person has ceased to hold any office or employment, and
- (b) a pension or annual payment is paid to him, or to his widow or child, or to any relative or dependant of his, by the person under whom he held the office or by whom he was employed, or by the successors of that person, and
- (c) that pension or annual payment is paid otherwise than by or on behalf of a person outside the United Kingdom,

then, notwithstanding that the pension or payment is paid voluntarily, or is capable of being discontinued, it shall be deemed to be income for the purposes of assessment to tax, and shall be assessed and charged under Schedule E.

(2) For the avoidance of doubt, it is hereby declared that the expressions "annuity" and "pension" in Schedule E include respectively an annuity and a pension which is paid voluntarily or is capable of being discontinued.

#### **183 Offices and employments: scope of charge**

(1) Tax under Case I, II or III of Schedule E shall, except as hereinafter mentioned, be chargeable on the full amount of the emoluments falling under that Case,

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subject to such deductions only as may be authorised by the Tax Acts, and the expression "emoluments" shall include all salaries, fees, wages, perquisites and profits whatsoever.

- (2) Tax under Case III of Schedule E shall be chargeable whether or not tax is chargeable in respect of the same office or employment under Case I or II of that Schedule, but shall not be chargeable on any emoluments falling under the said Case I or II for the same or another chargeable period (or on any emoluments charged under Schedule E for a chargeable period earlier than the year 1956-57).

#### **184 Offices and employments: place of performance, and meaning of emoluments received in United Kingdom**

- (1) Where a person ordinarily performs the whole or part of the duties of his office or employment in the United Kingdom, then, for the purposes of Cases I and II of Schedule E his emoluments for any period of absence from the office or employment shall be treated as emoluments for duties performed in the United Kingdom, except in so far as it is shown that, but for that absence, they would have been emoluments for duties performed outside the United Kingdom.
- (2) Where an office or employment is in substance one the duties of which fall in the chargeable period to be performed outside the United Kingdom, then, for the purposes of Cases I and II of Schedule E, there shall be treated as so performed any duties performed in the United Kingdom the performance of which is merely incidental to the performance of the other duties outside the United Kingdom.
- (3) For the purposes of Cases I and II of Schedule E the following duties shall be treated as performed in the United Kingdom, namely—
- (a) the duties of any office or employment under the Crown which is of a public nature and the emoluments of which are payable out of the public revenue of the United Kingdom or of Northern Ireland, and
  - (b) any duties which a person performs on a vessel engaged on a voyage not extending to a port outside the United Kingdom, or which a person resident in the United Kingdom performs on a vessel or aircraft engaged on a voyage or journey beginning or ending in the United Kingdom, or on a part beginning or ending in the United Kingdom of any other voyage or journey.
- (4) For the purposes of Case III of Schedule E, emoluments shall be treated as received in the United Kingdom if they are paid, used or enjoyed in, or in any manner or form transmitted or brought to, the United Kingdom, and subsections (4) to (7) of section 122 of this Act (under which income applied outside the United Kingdom in payment of debts is, in certain cases, treated for the purposes of Cases IV and V of Schedule D as received in the United Kingdom) shall apply for the purposes of this subsection as they apply for the purposes of subsection (3) of the said section 122.

#### **185 Accommodation occupied by holder of office or employment**

- (1) Where any premises in the United Kingdom are available to the occupier by reason of his or his wife's holding an office or employment, and—
- (a) he pays no rent for the premises, or
  - (b) the rent which he pays for them is less than the annual value of the premises, determined in accordance with section 531 of this Act,

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the holder of the office or employment shall be treated for the purpose of tax under Schedule E as being in receipt (in addition to any other emoluments) of emoluments at an annual rate equal to the annual value of the premises, determined as aforesaid, reduced by the annual amount of any rent which he pays for them:

Provided that this section shall not apply if the rent is not less than might reasonably be expected to have been obtained at the time when the tenancy was granted, having regard to the terms of the tenancy, and, if at any subsequent time the landlord of the premises had the power (whether by terminating the tenancy or otherwise) to obtain a higher rent, the rent is not less than might reasonably be expected to have been obtained as aforesaid at that subsequent time.

- (2) Where the occupier of premises holds them under a tenancy from or by the leave of the person from whom he or his wife holds an office or employment, or any other person with whom that person is within the terms of section 533 of this Act, connected, the premises shall be conclusively presumed to be available to him by reason of his or his wife's holding the office or employment.
- (3) Subsection (1) above shall not apply in the case of premises provided by a local authority if the occupier proves that the terms on which he occupies are no more favourable than those on which similar premises provided by that authority are available to persons similarly circumstanced apart from the identity of the employer.
- (4) For the purposes of this section any person who under section 198(1) below would be a director of a body corporate shall be treated as holding an office from the body corporate.
- (5) This section shall apply to an occupier being a woman as it applies to an occupier being a man, with the substitution of " her husband " for " his wife ".
- (6) In this section " terms of the tenancy " does not include any obligation imposed on the occupier or his wife in connection with his or her office or employment.

## **186 Directors and employees of companies granted rights to acquire shares**

- (1) Where a person realises a gain by the exercise, or by the assignment or release, of a right to acquire shares in a body corporate obtained by that person as a director or employee of that or any other body corporate, he shall be chargeable to tax under Schedule E on an amount equal to the amount of his gain, as computed in accordance with this section.
- (2) Where tax may by virtue of this section become chargeable in respect of any gain which may be realised by the exercise of a right, tax shall not be chargeable under any other provision of the Tax Acts in respect of the receipt of the right.
- (3) Subject to subsection (8) below—
  - (a) the gain realised by the exercise of any such right at any time shall be taken to be the difference between the amount that a person might reasonably expect to obtain from a sale in the open market at that time of the shares acquired and the amount or value of the consideration given whether for them or for the grant of the right, and
  - (b) the gain realised by the assignment or release of any such right shall be taken to be the difference between the amount or value of the consideration for the assignment or release and the amount or value of the consideration given for the grant of the right,

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(a just apportionment being made of any entire consideration given for the grant of the right to acquire those shares and other shares or otherwise for the grant of the right to acquire those shares and for something besides):

Provided that neither the consideration given for the grant of the right nor any such entire consideration shall be taken to include the performance of any duties in or in connection with the office or employment by reason of which the right was granted, and no part of the amount or value of the consideration given for the grant shall be deducted more than once under this subsection.

(4) Subject to subsection (5) below a person shall, in the case of a right granted by reason of his office or employment, be chargeable to tax under this section in respect of a gain realised by another person—

- (a) if the right was granted to that other person, or
- (b) if the other person acquired the right otherwise than by or under an assignment made by way of a bargain at arm's length, or if the two are connected persons at the time when the gain is realised,

but in a case within paragraph (b) above the gain realised shall be treated as reduced by the amount of any gain realised by a previous holder on an assignment of the right.

(5) A person shall not be chargeable to tax by virtue of subsection (4)(6) above in respect of any gain realised by another person if the first mentioned person was divested of the right by operation of law on his bankruptcy or otherwise, but the other person shall be chargeable to tax in respect of the gain under Case VI of Schedule D.

(6) If a right to acquire shares in a body corporate is assigned or released in whole or in part for a consideration which consists of or comprises another right to acquire shares in that or any other body corporate, that other right shall not be treated as consideration for the assignment or release, but this section shall apply in relation to it as it applies in relation to the right assigned or released and as if the consideration for its acquisition did not include the value of the right assigned or released but did include the amount or value of the consideration given for the grant of the right assigned or released so far as that has not been offset by any valuable consideration for the assignment or release other than the consideration consisting of the other right.

(7) If as a result of two or more transactions a person ceases to hold a right to acquire shares in a body corporate and he or a connected person comes to hold another right to acquire shares in that or any other body corporate (whether or not acquired from the person to whom the other right was assigned) and any of those transactions was effected under arrangements to which two or more persons holding rights in respect of which tax may be chargeable under this section were parties, those transactions shall be treated for the purposes of the last preceding subsection as a single transaction whereby the one right is assigned for a consideration which consists of or comprises the other right.

This subsection applies in relation to two or more transactions whether they involve an assignment preceding, coinciding with, or subsequent to, an acquisition.

(8) In the case of a right to acquire shares granted before 3rd May 1966—

- (a) the amount of the gain realised at any time by the exercise, or by the assignment or release, of the right shall not exceed the difference between the market value of those shares at that time and their market value on 3rd May 1966 (and no gain shall be treated as so realised unless the later value exceeds the earlier value), and

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- (b) subsection (2) above shall not affect tax chargeable under Case I of Schedule E in respect of the receipt of the right, but the amount, if any, on which tax is so chargeable shall be taken into account under subsection (3)(a) and (b) above in relation to the gain realised by the exercise, or by the assignment or release, of the right as if that amount formed part (in addition to any other amount) of the consideration for the grant of the right.
- (9) For the purposes of this section a right to acquire shares is obtained by a person as a director or employee of a body corporate—
- (a) if it is granted to him by reason of his office or employment as a director or employee of the body corporate who is chargeable to tax in respect of that office or employment under Case I of Schedule E, or
  - (b) if the right is assigned to him and was granted by reason of any such office or employment of his to some other person,
- and paragraph (a) above shall apply to a right granted by reason of a person's office or employment after he has ceased to hold it if it would apply to a right so granted in the last chargeable period in which he did hold it.
- (10) For the purposes of this section—
- (a) references to the release of a right include references to agreeing to the restriction of the exercise of the right,
  - (b) any question whether a person is connected with another shall be determined in accordance with section 533 of this Act,
  - (c) "director" and "employee" have the meanings given by section 224(1) of this Act, and
  - (d) in so far as the context permits, "shares" includes stock,
- and this section shall apply in relation to any securities (as defined in section 237(5) of this Act) issued by a body corporate as it applies to shares in that body corporate.
- (11) Where in any year of assessment a body corporate grants a right in respect of which tax may become chargeable under this section, or allots or transfers any shares in pursuance of such a right, or gives any consideration for the assignment or for the release in whole or in part of such a right, or receives written notice of the assignment of such a right, it shall deliver particulars thereof in writing to the inspector not later than thirty days after the end of that year.
- (12) If a gain chargeable to tax under subsection (1) or subsection (4) of this section is realised by the exercise of a right to acquire shares—
- (a) paragraph 4(1)(a) of Schedule 6 to the Finance Act 1965 (computation of chargeable gains: allowable expenditure) shall apply as if a sum equal to the amount of the gain so chargeable to tax formed part of the consideration given by the person acquiring the shares for their acquisition by him, and
  - (b) without prejudice to section 162(5) above (Case VII of Schedule D: acquisition of assets taken into account as receipts for tax purposes), the amount of the gain or loss accruing to that person on the acquisition and disposal of any of the shares shall be computed for the purposes of the said Case VII as if the acquisition of the shares were for a consideration equal to their market value at the time when the right is exercised.

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### **187 Payments on retirement or removal from office or employment**

- (1) Subject to the provisions of this section and section 188 below, tax shall be charged under Schedule E in respect of any payment to which this section applies which is made to the holder or past holder of any office or employment, or to his executors or administrators, whether made by the person under whom he holds or held the office or employment or by any other person.
- (2) This section applies to any payment (not otherwise chargeable to tax) which is made, whether in pursuance of any legal obligation or not, either directly or indirectly in consideration or in consequence of, or otherwise in connection with, the termination of the holding of the office or employment or any change in its functions or emoluments, including any payment in commutation of annual or periodical payments (whether chargeable to tax or not) which would otherwise have been made as aforesaid.
- (3) For the purposes of this section and the said section 188, any payment made to the spouse or any relative or dependant of a person who holds or has held an office or employment, or made on behalf of or to the order of that person, shall be treated as made to that person, and any valuable consideration other than money shall be treated as a payment of money equal to the value of that consideration at the date when it is given.
- (4) Any payment which is chargeable to tax by virtue of this section shall be treated as income received on the following date, that is to say—
  - (a) in the case of a payment in commutation of annual or other periodical payments, the date on which the commutation is effected, and
  - (b) in the case of any other payment, the date of the termination or change in respect of which the payment is made,
 and shall be treated as emoluments of the holder or past holder of the office or employment assessable to tax under Schedule E ; and any such payment shall be treated for all the purposes of the Income Tax Acts as earned income.
- (5) In the case of the death of any person who, if he had not died, would have been chargeable to tax in respect of any such payment, the tax which would have been so chargeable shall be assessed and charged upon his executors or administrators and shall be a debt due from and payable out of his estate.
- (6) This section does not apply to any payment made in pursuance of an obligation incurred before 6th April 1960.
- (7) Where any payment chargeable to tax under this section is made to any person in any year of assessment, it shall be the duty of the person by whom it is made to deliver particulars thereof in writing to the inspector not later than thirty days after the end of that year.

### **188 Exemptions and reliefs in respect of tax under s. 187**

- (1) Tax shall not be charged by virtue of section 187 above in respect of the following payments, that is to say—
  - (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 surtax under section 34 of this Act (consideration for certain restrictive covenants),

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- (c) a benefit provided in pursuance of any such scheme or agreement as is referred to in section 220 of this Act (retirement benefits etc. for directors and employees of bodies corporate), where the holder of the office or employment 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 such scheme or fund as is described in subsections (1) and (2) of section 221 of this Act (exemptions from charge to tax under the said section 220),
- (e) any terminal grant, gratuity or other lump sum paid under any Royal Warrant, Queen's Order, or Order in Council relating to members of Her Majesty's forces, and any payment made in commutation of annual or other periodical payments authorised by any such Warrant or Order,
- (f) a payment of benefit under any superannuation scheme administered by the government of an overseas territory within the Commonwealth, or of compensation for loss of career, interruption of service or disturbance made in connection with any change in the constitution of any such overseas territory to persons who, before the change, were employed in the public services of that territory,

and references in paragraph (f) above to an overseas territory, to the government of such a territory, and to employment in the public services of such a territory shall be construed as if they occurred in the Overseas Service Act 1958, and subsections (2) and (3) of section 7 of that Act (which relate to the construction of such references) shall apply accordingly.

- (2) Tax shall not be charged by virtue of section 187 above in respect of a payment in the case of which any of the following conditions is satisfied, that is to say—
  - (a) in any case, that on the relevant date the holder of the office or employment was domiciled elsewhere than in the United Kingdom, and that immediately before that date he held the office or employment under or with any person, body of persons or partnership then resident outside, and not resident in, the United Kingdom, or
  - (b) in the case of a payment of compensation for loss of office—
    - (i) that the holder of the office or employment held it under a contract which did not require him to perform any of the duties of the office or employment in the United Kingdom, or
    - (ii) there being no express requirement in the contract as to the place of performance of those duties, that he did not perform any of them in the United Kingdom during the three years immediately preceding the relevant date, or
  - (c) in the case of a payment in respect of an office or employment in which the holder's service included foreign service, not being a payment of compensation for loss of office, that the foreign service comprised either—
    - (i) in any case, three-quarters of the whole period of service down to the relevant date, or
    - (ii) where the period of service down to the relevant date exceeded ten years, the whole of the last ten years, or
    - (iii) where the period of service down to the relevant date exceeded twenty years, one-half of that period, including any ten of the last twenty years ;

and where an office or employment was in substance one the duties of which fell in any year to be performed outside the United Kingdom, there shall, for the purposes of

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paragraph (b) above, be treated as so performed any duties performed in the United Kingdom the performance of which was merely incidental to the performance of the other duties outside the United Kingdom.

- (3) Tax shall not be charged by virtue of section 187 above in respect of a payment of an amount not exceeding £5,000, and in the case of a payment which exceeds that amount shall be charged only in respect of the excess:

Provided that, where two or more payments in respect of which tax is chargeable by virtue of that section, or would be so chargeable apart from the preceding provisions of this subsection, 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, this subsection 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, that is to say—

- (a) where the payments are treated as income of different chargeable periods, the said sum of £5,000 shall be deducted from a payment treated as income of an earlier period before any payment treated as income of a later period, and
  - (b) subject as aforesaid, the said sum shall be deducted rateably from the payments according to their respective amounts.
- (4) The person chargeable to tax by virtue of section 187 above in respect of any payment may make a claim for such relief in respect of the payment as is applicable thereto under Schedule 8 to this Act.
- (5) For the purposes of this section and the said Schedule 8 offices or employments in respect of which payments to which section 187 above 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 ("control" here having the meaning given by section 534 of this Act).
- (6) In this section "the relevant date", "payment of compensation for loss of office" and "foreign service" have the same meaning as in the said Schedule 8, and references to an employer or to a person controlling or controlled by an employer include references to his successors.