



# Income and Corporation Taxes Act 1988

## 1988 CHAPTER 1

### PART XIII

#### MISCELLANEOUS SPECIAL PROVISIONS

#### CHAPTER I

#### INTELLECTUAL PROPERTY

#### *Copyright and public lending right*

#### **534 Relief for copyright payments etc**

(1) Where—

- (a) an author of a literary, dramatic, musical or artistic work assigns the copyright in the work wholly or partially, or grants any interest in the copyright by licence; and
- (b) the consideration for the assignment or grant consists wholly or partially of a payment to which this section applies, being a payment the whole amount of which would, but for this section, be included in computing the amount of his profits or gains for a single year of assessment; and
- (c) the author was engaged on the making of the work for a period of more than 12 months;

he may, on making a claim, require that effect shall be given to the following provisions of this section in connection with that payment.

- (2) If the period for which he was engaged on the making of the work does not exceed 24 months, then, for all income tax purposes, one-half only of the amount of the payment shall be treated as having become receivable on the date on which it actually became receivable, and the remaining half shall be treated as having become receivable 12 months before that date.

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- (3) If the period for which he was engaged on the making of the work exceeds 24 months, then, for all income tax purposes, one-third only of the amount of the payment shall be treated as having become receivable on the date on which it actually became receivable, and one-third shall be treated as having become receivable 12 months, and one-third 24 months, before that date.
- (4) This section applies to—
- (a) a lump sum payment, including an advance on account of royalties which is not returnable, and
  - (b) any payment of or on account of royalties or sums payable periodically,
- except that it shall not by virtue of paragraph (b) above apply to payments in respect of the copyright in any work which only become receivable more than two years after its first publication.
- (5) A claim under this section with respect to any payment to which it applies by virtue only of subsection (4)(b) above shall have effect as a claim with respect to all such payments in respect of the copyright in the same work which are receivable by the claimant, whether before or after the claim; and such a claim may be made at any time not later than 5th April next following the expiration of eight years after the work's first publication.
- (6) A claim cannot be made under this section in respect of a payment if a prior claim has been made under section 535 as respects that payment.
- (7) In this section—
- (a) “author” includes a joint author; and
  - (b) any reference to the first publication of a work is a reference to the first occasion on which the work or a reproduction of it is published, performed or exhibited.

### **535 Relief where copyright sold after ten years or more**

- (1) Where not less than ten years after the first publication of the work the author of a literary, dramatic, musical or artistic work assigns the copyright in the work wholly or partially, or grants any interest in the copyright by licence, and—
- (a) the consideration for the assignment or grant consists wholly or partially of a lump sum payment the whole amount of which would, but for this section, be included in computing the amount of his profits or gains for a single year of assessment, and
  - (b) the copyright or interest is not assigned or granted for a period of less than two years,
- he may by making a claim require that effect shall be given to the following provisions of this section in connection with that payment.
- (2) Except where the copyright or interest is assigned or granted for a period of less than six years, the amount of the payment shall for income tax purposes be treated as becoming receivable in six equal instalments at yearly intervals the first of which becomes receivable on the date when the payment actually became receivable.
- (3) Where the copyright or interest is assigned or granted for a period of less than six years, the amount of the payment shall for income tax purposes be treated as becoming receivable in a number of equal instalments at yearly intervals the first of which

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becomes receivable on the date when the payment actually became receivable, the number being the number of whole years in that period.

- (4) Subject to subsection (5) below, if the author dies, any instalment which under this section would, but for the death, be treated as becoming receivable after the death shall for income tax purposes be treated as becoming receivable on the date when the last instalment before the death is to be treated as becoming receivable.
- (5) If the personal representatives so elect—
- (a) the total amount of income tax which would have been payable by the deceased or out of his estate in respect of the payment if the copyright or interest had been assigned or granted for a period beginning with the date when the first instalment is treated as becoming receivable and ending with the day before the death shall be computed, and
  - (b) the income tax payable out of the estate by reason of the provisions of subsection (4) above shall be reduced so as not to exceed the amount at (a) above.

The references in this subsection to the income tax payable by a person include, in cases where the income of a wife is deemed to be the income of the husband, references to the income tax payable by his wife or her husband, as the case may be.

- (6) If—
- (a) the payment would, apart from this section, have been taken into account in assessing the profits or gains of a profession or vocation, and
  - (b) the profession or vocation is permanently discontinued (otherwise than on death) after the date on which the payment actually became receivable,
- any instalment which under this section would, but for the discontinuance, be treated as receivable on a date after the discontinuance shall for income tax purposes be treated as becoming receivable when the last instalment before the discontinuance is to be treated as becoming receivable, unless the author elects to be treated (for all purposes) as if the copyright or interest had been assigned or granted for a period beginning with the date when the first instalment is treated as becoming receivable and ending with the day before the discontinuance.
- (7) Notice of any election under subsection (5) or (6) above shall be served on the inspector within two years of the death, or as the case may be of the discontinuance.
- (8) In any case where—
- (a) but for this section, the payment would be included in computing any profits or gains chargeable to tax under Case VI of Schedule D, and
  - (b) any amount would be deductible from that payment in computing those profits or gains (whether under the general provisions relating to Case VI or under section 105(1)),
- the amount which, under this section, is to be treated as receivable in instalments shall be the amount of the payment after that deduction, and effect shall not be given to that deduction in any other way.
- (9) A claim cannot be made under this section in respect of a payment if a prior claim has been made under section 534 as respects that payment.
- (10) Where it is necessary, in order to give effect to a claim or election under this section, or as a result of the claim or election, to make any adjustment by way of an assessment

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on any person, the assessment shall not be out of time if it is made within one year of the final determination of the claim or, as the case may be, within one year from the giving of notice of the election.

(11) In this section—

“author” includes a joint author;

“lump sum payment” includes an advance on account of royalties which is not returnable;

and any reference to the first publication of a work is a reference to the first occasion on which the work or a reproduction of it is published, performed or exhibited.

### **536 Taxation of royalties where owner abroad**

(1) Subject to the provisions of this section, where the usual place of abode of the owner of a copyright is not within the United Kingdom, section 349(1) shall apply to any payment of or on account of any royalties or sums paid periodically for or in respect of that copyright as it applies to annual payments not payable out of profits or gains brought into charge to income tax.

(2) In subsection (1) above—

“copyright” does not include a copyright in any dramatic work being a cinematograph production, or in any artistic work being a photograph intended to be used for the purposes of the exhibition of pictures or other optical effects by means of a cinematograph or other similar apparatus; and

“owner of a copyright” includes a person who, notwithstanding that he has assigned a copyright to some other person, is entitled to receive periodical payments in respect of that copyright;

and the reference to royalties or sums paid periodically for or in respect of a copyright does not include royalties or sums paid in respect of copies of works which are shown on a claim to have been exported from the United Kingdom for distribution outside the United Kingdom.

(3) Subject to subsection (4) below, where any payment to which subsection (1) above applies is made through an agent resident in the United Kingdom and that agent is entitled as against the owner of the copyright to deduct any sum by way of commission in respect of services rendered, the amount of the payment shall for the purposes of section 349(1) be taken to be diminished by the sum which the agent is so entitled to deduct.

(4) Where the person by or through whom the payment is made does not know that any such commission is payable or does not know the amount of any such commission, any income tax deducted by or assessed and charged on him shall be computed in the first instance on, and the account to be delivered of the payment shall be an account of, the total amount of the payment without regard being had to any diminution thereof, and in that case, on proof of the facts on a claim, there shall be made to the agent on behalf of the owner of the copyright such repayment of income tax as is proper in respect of the sum deducted by way of commission.

(5) The time of the making of a payment to which subsection (1) above applies shall, for all tax purposes, be taken to be the time when it is made by the person by whom it is first made and not the time when it is made by or through any other person.

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- (6) Any agreement for the making of any payment to which subsection (1) above applies in full and without deduction of income tax shall be void.

**537 Public lending right**

Sections 534, 535 and 536 shall have effect in relation to public lending right as they have effect in relation to copyright.