



# Finance Act 1988

## 1988 CHAPTER 39

### PART III

#### INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

### CHAPTER I

#### GENERAL

#### *Miscellaneous*

#### **65 Commercial woodlands**

Schedule 6 to this Act (which abolishes the charge to tax under Schedule B and makes other provision with respect to the occupation of commercial woodlands) shall have effect.

#### **66 Company residence**

- (1) Subject to the provisions of Schedule 7 to this Act, a company which is incorporated in the United Kingdom shall be regarded for the purposes of the Taxes Acts as resident there; and accordingly, if a different place of residence is given by any rule of law, that place shall no longer be taken into account for those purposes.
- (2) For the purposes of the Taxes Acts, a company which—
  - (a) is no longer carrying on any business; or
  - (b) is being wound up outside the United Kingdom,shall be regarded as continuing to be resident in the United Kingdom if it was so regarded for those purposes immediately before it ceased to carry on business or, as the case may be, before any of its activities came under the control of a person exercising functions which, in the United Kingdom, would be exercisable by a liquidator.

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- (3) In this section “the Taxes Acts” has the same meaning as in the Taxes Management Act 1970.
- (4) This section and Schedule 7 to this Act shall be deemed to have come into force on 15th March 1988.

## **67 Seafarers: foreign earnings**

- (1) In paragraph 3 of Schedule 12 to the Taxes Act 1988 (qualifying period for relief for foreign earnings) after sub-paragraph (2) there shall be inserted—

“(2A) In relation to emoluments from employment as a seafarer, sub-paragraph (2) above shall have effect—

- (a) as if the number of days specified in paragraph (a) were 90 instead of 62, and
- (b) as if the fraction specified in paragraph (b) were one quarter instead of one sixth;

and for the purposes of this sub-paragraph “employment as a seafarer” means employment consisting of the performance of duties on a ship (or of such duties and of others incidental to them).”

- (2) This section shall have effect for the year 1988-89 and subsequent years of assessment; but the relevant period and the earlier qualifying period referred to in paragraph 3(2) of Schedule 12 to the Taxes Act 1988 shall not be treated as a single period by virtue of this section if none of the intervening days falls after 5th April 1988.

## **68 Priority share allocations for employees etc**

- (1) Where—
- (a) there is an offer to the public of shares in a company at a fixed price or by tender, and
- (b) a director or employee (whether of that company or of any other company or person) is entitled by reason of his office or employment to an allocation of the shares, in priority to members of the public, at the fixed price or at the lowest price successfully tendered, and
- (c) the conditions set out in subsection (2) below are satisfied,
- any benefit derived by the director or employee from his entitlement shall not be treated as an emolument of his office or employment.
- (2) The conditions referred to in subsection (1) above are—
- (a) that the aggregate number of shares that may be allocated as mentioned in subsection (1)(b) above does not exceed 10 per cent. of the shares subject to the offer (including the shares that may be so allocated);
- (b) that all the persons entitled to such an allocation are entitled to it on similar terms;
- (c) that those persons are not restricted wholly or mainly to persons who are directors or whose remuneration exceeds a particular level.
- (3) For the purposes of subsection (2)(b) above the fact that different provision is made for persons according to the levels of their remuneration, the length of their service or similar factors shall not be regarded as meaning that they are not entitled to an allocation on similar terms.

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- (4) Section 29A(1) of the Capital Gains Tax Act 1979 (assets deemed to be acquired at market value) shall not apply to any acquisition in relation to which subsection (1) above applies.
- (5) In this section “director” includes a person who is to be, or has ceased to be, a director and “employee” includes a person who is to be, or has ceased to be, an employee.
- (6) This section shall apply to offers made on or after 23rd September 1987.

## **69 Share options: loans**

- (1) Paragraph 13 of Schedule 9 to the Taxes Act 1988 (approved share option schemes: cases where scheme shares are subject to restrictions) shall have effect, and shall be deemed always to have had effect, with the addition of the following sub-paragraph after sub-paragraph (2)—
  - “(3) In the case of schemes other than savings-related share option schemes, sub-paragraph (1) above does not apply in relation to any terms of a loan making provision about how it is to be repaid or the security to be given for it.”
- (2) Paragraph 10 of Schedule 10 to the Finance Act 1984 (approved share option schemes: cases where scheme shares are subject to restrictions) shall be deemed always to have had effect with the addition of the following sub-paragraph after sub-paragraph (2)—
  - “(3) Sub-paragraph (1) above does not apply in relation to any terms of a loan making provision about how it is to be repaid or the security to be given for it.”

## **70 Charities: payroll deduction scheme**

- (1) In section 202(7) of the Taxes Act 1988 (which limits to £120 the deductions attracting relief) for “£120” there shall be substituted “£240”.
- (2) This section shall have effect for the year 1988-89 and subsequent years of assessment.

## **71 Unit trusts: relief on certain payments**

Section 469 of the Taxes Act 1988 (taxation of unauthorised and certain other unit trusts) shall have effect, and shall be deemed always to have had effect, with the insertion of the following subsections after subsection (5)—

- “(5A) Subsection (5B) below applies where for any year of assessment—
  - (a) the trustees are (or, apart from this subsection, would be) chargeable under section 350 with tax on payments treated as made by them under subsection (3) above, and
  - (b) there is an uncredited surplus in the case of the scheme.
- (5B) Where this subsection applies, the amount on which the trustees would otherwise be so chargeable shall be reduced—
  - (a) if the surplus is greater than that amount, to nil, or
  - (b) if it is not, by an amount equal to the surplus.

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(5C) For the purposes of subsections (5A) and (5B) above whether there is an uncredited surplus for a year of assessment in the case of a scheme (and, if so, its amount) shall be ascertained by—

- (a) determining, for each earlier year of assessment in which the income on which the trustees were chargeable to tax by virtue of subsection (2) above exceeded the amount treated by subsection (3) above as annual payments received by the unit holders, the amount of the excess,
- (b) aggregating the amounts determined in the case of the scheme under paragraph (a) above, and
- (c) deducting from that aggregate the total of any reductions made in the case of the scheme under subsection (5B) above for earlier years of assessment.

(5D) The references in subsection (5C)(a) above to subsections (2) and (3) above include references to subsections (2) and (3) of section 354A of the 1970 Act.”

## **72 Entertainment of overseas customers**

- (1) Subsection (2) of section 577 of the Taxes Act 1988 (which excepts the entertainment of overseas customers from the general rule that entertainment expenses are not deductible for tax purposes) shall not have effect in relation to entertainment provided on or after 15th March 1988.
- (2) Subsection (1) above shall not apply where the expenses incurred or the assets used in providing the entertainment were incurred or used under a contract entered into before 15th March 1988.

## **73 Consideration for certain restrictive undertakings**

- (1) For subsections (1) to (5) of section 313 of the Taxes Act 1988 (taxation of consideration for certain restrictive undertakings) there shall be substituted—
  - “(1) Where an individual who holds, has held, or is about to hold, an office or employment gives in connection with his holding that office or employment an undertaking (whether absolute or qualified, and whether legally valid or not) the tenor or effect of which is to restrict him as to his conduct or activities, any sum to which this section applies shall be treated as an emolument of the office or employment, and accordingly shall be chargeable to tax under Schedule E, for the year of assessment in which it is paid.
  - (2) This section applies to any sum which—
    - (a) is paid, in respect of the giving of the undertaking or its total or partial fulfilment, either to the individual or to any other person; and
    - (b) would not, apart from this section, fall to be treated as an emolument of the office or employment.
  - (3) Where the individual has died before the payment of any sum to which this section applies, subsections (1) and (2) above shall have effect as if that sum had been paid immediately before his death.
  - (4) Where valuable consideration otherwise than in the form of money is given in respect of the giving of the undertaking or its total or partial fulfilment,

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subsections (1) to (3) above shall have effect as if a sum had instead been paid equal to the value of that consideration.”

- (2) Notwithstanding anything in section 74 of the Taxes Act 1988, any sum to which section 313 of that Act applies, and which is paid or treated as paid by a person carrying on a trade, profession or vocation, may be deducted as an expense in computing the profits or gains of the trade, profession or vocation for the purposes of tax.
- (3) Any sum to which section 313 of the Taxes Act 1988 applies, and which is paid or treated as paid by an investment company, shall for the purposes of section 75 of that Act be treated as an expense of management.
- (4) This section has effect in relation to sums paid or treated as paid in respect of the giving of, or the total or partial fulfilment of, undertakings given on or after 9th June 1988.

#### **74 Payments on termination of office or employment etc**

- (1) In section 188(4) of the Taxes Act 1988 (tax not chargeable by virtue of section 148 of that Act in respect of the first £25,000 of a payment on termination of office or employment etc.) for “£25,000” there shall be substituted “£30,000”.
- (2) Paragraphs 4 to 7 of Schedule 11 to that Act (relief by reduction of tax on next £50,000 of such a payment) shall cease to have effect.
- (3) This section shall apply to any payment treated by section 148(4) of that Act as income received on 6th April 1988 or any later date, unless a notice is given in relation to it in accordance with paragraph 12 of that Schedule (payments in pursuance of pre-10th March 1981 obligations).

#### **75 Premiums for leases etc**

Sections 39(3) and 780(5) of, and Schedule 2 to, the Taxes Act 1988 (top-slicing relief where premiums for leases etc. chargeable to income tax) shall not have effect for the year 1988-89 or any subsequent year of assessment.

#### **76 Foreign dividends etc., quoted Eurobonds and recognised clearing systems**

- (1) In section 17(1) of the Taxes Act 1988 (Schedule C) for paragraph 3 of Schedule C there shall be substituted—

Where a banker or any other person in the United Kingdom obtains payment of any overseas public revenue dividends by means of coupons received from any other person or otherwise on his behalf and either—

- (a) the payment of those dividends was not entrusted to any person in the United Kingdom, or
- (b) the securities in respect of which those dividends are paid are held in a recognised clearing system,

tax under this Schedule shall be charged in respect of those dividends.”

- (2) In section 45 of that Act (definitions relating to Schedule C) for the definition of “overseas public revenue dividends” there shall be substituted—

““overseas public revenue dividends” means public revenue dividends payable out of any public revenue other than that of the United Kingdom;”.

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- (3) In section 123 of that Act, in paragraph (a) of subsection (3) (Schedule D charge where collecting agents in UK obtain payment of foreign dividends elsewhere than in UK) for the words “elsewhere than in the United Kingdom” there shall be substituted the words “and either—
- (i) the payment of those dividends was not entrusted to any person in the United Kingdom, or
  - (ii) the stocks, funds, shares or securities in respect of which those dividends are paid are held in a recognised clearing system”.
- (4) In section 124 of that Act (interest on quoted Eurobonds) in subsection (5) (which applies, with modifications, section 123(3) to (6)) the following paragraph shall be inserted immediately before paragraph (a)—
- “(za) subsection (3)(a)(i) shall have effect in relation to quoted Eurobonds not held in a recognised clearing system as if the words “made by or” were inserted immediately before the words “entrusted to any person in the United Kingdom””.
- (5) In subsection (6) of that section (definitions)—
- (a) in the definition of “recognised clearing system” after the words “system for clearing quoted Eurobonds” there shall be inserted the words “or relevant foreign securities”; and
  - (b) after that definition there shall be added—
- ““relevant foreign securities” means any of the following, that is to say—
- (a) any such stocks, funds, shares or securities as give rise to foreign dividends, within the meaning of section 123; and
  - (b) any such securities as give rise to overseas public revenue dividends, within the meaning of Part III.”
- (6) Subsections (1) to (4) above shall have effect with respect to payments obtained on behalf of another by a banker or other person after the passing of this Act.