



# Scotland Act 1998

## 1998 CHAPTER 46

### PART IV

#### THE TAX-VARYING POWER

#### **73 Power to fix basic rate for Scottish taxpayers**

- (1) Subject to section 74, this section applies for any year of assessment for which income tax is charged if—
  - (a) the Parliament has passed a resolution providing for the percentage determined to be the basic rate for that year to be increased or reduced for Scottish taxpayers in accordance with the resolution,
  - (b) the increase or reduction provided for is confined to an increase or reduction by a number not exceeding three which is specified in the resolution and is either a whole number or half of a whole number, and
  - (c) the resolution has not been cancelled by a subsequent resolution of the Parliament.
- (2) Where this section applies for any year of assessment the Income Tax Acts (excluding this Part) shall have effect in relation to the income of Scottish taxpayers as if any rate determined by the Parliament of the United Kingdom to be the basic rate for that year were increased or reduced in accordance with the resolution of the Scottish Parliament.
- (3) In subsection (2) the reference to the income of Scottish taxpayers does not include a reference to any income of Scottish taxpayers which, had it been income for the year 1998-99, would have been income to which section 1A of the Income and Corporation Taxes Act 1988 (income from savings and distributions) applied for that year.
- (4) In this section—
  - (a) a reference, in relation to any year of assessment, to income tax being charged for that year includes a reference to the passing of a PCTA resolution that provides for the charging of that tax for that year, and
  - (b) a reference, in relation to a year of assessment, to the determination by the Parliament of the United Kingdom of a rate to be the basic rate for that

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year includes a reference to the passing of a PCTA resolution specifying a percentage to be the basic rate for that year.

- (5) In this section “a PCTA resolution” means a resolution of the House of Commons containing such a declaration as is mentioned in section 1(2)(b) of the Provisional Collection of Taxes Act 1968.

#### **74 Supplemental provision with respect to resolutions**

- (1) This section applies to any resolution of the Parliament (“a tax-varying resolution”) which—
- (a) provides, in accordance with section 73, for an increase or reduction for Scottish taxpayers of the basic rate for any year of assessment, or
  - (b) cancels a previous resolution of the Parliament providing for such an increase or reduction.
- (2) Subject to subsection (3), a tax-varying resolution—
- (a) must be expressed so as to relate to no more than a single year of assessment beginning after, but no more than twelve months after, the passing of the resolution, but
  - (b) shall have effect in relation to a determination by the Parliament of the United Kingdom of the rate to be the basic rate for that year irrespective of whether that determination had been made at the time of the passing of the resolution.
- (3) Subsection (2) shall not prevent a tax-varying resolution relating to any year of assessment from being passed and having effect where—
- (a) a determination by the Parliament of the United Kingdom of the rate to be the basic rate for that year is made after, or less than a month before, the beginning of that year,
  - (b) that determination is not confined to the passing of the enactment by which a determination of the same rate by a PCTA resolution is ratified, and
  - (c) the tax-varying resolution is passed within the period of one month beginning with the day of the making by the Parliament of the United Kingdom of its determination.
- (4) Where, in a case to which subsection (3) applies, a tax-varying resolution is passed after the beginning of the year of assessment to which it relates—
- (a) the resolution shall have effect as from the beginning of that year, and
  - (b) all such payments, repayments, deductions and other adjustments shall be made as are required to restore the position to what it would have been if the resolution had been passed before the beginning of that year.
- (5) Standing orders shall ensure that only a member of the Scottish Executive may move a motion for a tax-varying resolution.
- (6) A tax-varying resolution shall not be passed so as to have effect in relation to any year of assessment before the year 2000-01.
- (7) Subsections (4) and (5) of section 73 apply for the purposes of this section as they apply for the purposes of that section.

## **75 Scottish taxpayers**

- (1) For the purposes of this Part a person is a Scottish taxpayer in relation to any year of assessment if—
  - (a) he is an individual who, for income tax purposes, is treated as resident in the United Kingdom in that year, and
  - (b) Scotland is the part of the United Kingdom with which he has the closest connection during that year.
- (2) For the purposes of this section an individual who is treated for income tax purposes as resident in the United Kingdom in any year of assessment has his closest connection with Scotland during that year if, but only if, one or more of the following paragraphs applies in his case—
  - (a) he is an individual to whom subsection (3) applies for that year,
  - (b) the number of days which he spends in Scotland in that year is equal to or exceeds the number of days in that year which he spends elsewhere in the United Kingdom,
  - (c) he is an individual who, for the whole or any part of that year, is a member of Parliament for a constituency in Scotland, a member of the European Parliament for Scotland or a member of the Scottish Parliament.
- (3) This subsection applies to an individual for a year of assessment if—
  - (a) he spends at least a part of that year in Scotland,
  - (b) for at least a part of the time that he spends in Scotland in that year, his principal UK home is located in Scotland and he makes use of it as a place of residence, and
  - (c) the times in that year when Scotland is where his principal UK home is located comprise (in aggregate) at least as much of that year as the times (if any) in that year when the location of his principal UK home is not in Scotland.
- (4) For the purposes of this section—
  - (a) an individual spends a day in Scotland if, but only if, he is in Scotland at the end of that day, and
  - (b) an individual spends a day elsewhere in the United Kingdom if, but only if, he is in the United Kingdom at the end of that day and it is not a day that he spends in Scotland.
- (5) For the purposes of this section an individual's principal UK home at any time is located in Scotland if at that time—
  - (a) he is an individual with a place of residence in Scotland, and
  - (b) in the case of an individual with two or more places of residence in the United Kingdom, Scotland is the location of such one of those places as at that time is his main place of residence in the United Kingdom.
- (6) In this section “place” includes a place on board a vessel or other means of transport.

## **76 Changes to income tax structure**

- (1) This section applies where—
  - (a) there has been a proposal for the modification of any provision made by or under the Income Tax Acts,

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- (b) that proposal is one made and published by the Treasury or the Board, or (without having been so made and published) appears to the Treasury to be a proposal to which effect is likely to be given by Act of Parliament, and
  - (c) it appears to the Treasury that the proposed modification would have a significant effect on the practical extent for any year of assessment of the Parliament's tax-varying powers.
- (2) It shall be the duty of the Treasury, as soon as reasonably practicable after the publication of the proposal, or (as the case may be) as soon as reasonably practicable after it first appears to the Treasury that the proposal is likely to be enacted, to lay before the House of Commons—
- (a) a statement of whether, in the Treasury's opinion, an amendment of the Parliament's tax-varying powers is required as a consequence of the proposal, and
  - (b) if in their opinion an amendment of those powers is required, the Treasury's proposals for amending those powers.
- (3) Any proposals for amending the Parliament's tax-varying powers that are laid before the House of Commons by the Treasury under this section—
- (a) must be confined to income tax,
  - (b) must appear to the Treasury to satisfy the conditions set out in subsections (4) and (5), and
  - (c) must not contain any proposal for the Parliament's tax-varying powers to be exercisable in relation to the taxation of income from savings or distributions.
- (4) The first condition mentioned in subsection (3)(b) is that the proposals would secure—
- (a) so far as possible, and
  - (b) after making due allowance for annual changes in the retail prices index,
- that the practical extent of the Parliament's tax-varying powers would remain broadly the same from year to year as it would be if (apart from any resolution of the Parliament) the law relating to income tax were the same from year to year as it was in relation to the year 1997-98.
- (5) The second condition so mentioned is that the proposals would not enable the Parliament's tax-varying powers to be exercised for any year of assessment so as to have an effect on the levels of the after-tax income of Scottish taxpayers generally that would be significantly different from the effect their exercise could have had in any previous year of assessment.
- (6) References in this section to the practical extent of the Parliament's tax-varying powers are references to the amounts of income tax for any year of assessment which appear to be or (as the case may be) to have been the maximum amounts capable of being raised and foregone in that year in pursuance of a resolution of the Parliament.
- (7) In this section "income from savings or distributions" means income which, had it been income for the year 1998-99, would have been income to which section 1A of the Income and Corporation Taxes Act 1988 applied for that year.

## **77 Accounting for additional Scottish tax**

- (1) Where the basic rate for any year of assessment is increased for Scottish taxpayers by a resolution of the Parliament, it shall be the duty of the Board to pay amounts into the Scottish Consolidated Fund in accordance with this section.

- (2) The amounts of the payments to be made by the Board under this section, and the times at which they are to be made, shall be determined by the Board and notified to the Scottish Ministers as soon as reasonably practicable after the passing of the resolution providing for the increase to which they relate.
- (3) Any determination made by the Board under subsection (2) for any year of assessment shall be such as appears to the Board to be necessary for securing that, in the course of that year, amounts are paid into the Scottish Consolidated Fund which are equal in total to the amount estimated by the Board to represent the proportion of the income tax receipts for that year that is properly attributable to a resolution of the Parliament.
- (4) For the purposes of this section the Board shall make and maintain arrangements as to—
  - (a) the manner of estimating the proportion of the income tax receipts for a year of assessment that is properly attributable to a resolution of the Parliament,
  - (b) the circumstances and manner in which an estimate of that proportion or of those receipts may be revised before or in the course of the year of assessment to which it relates,
  - (c) the manner of determining the amount of each payment to be made in respect of any such estimate, and
  - (d) the times at which, and manner in which, those amounts are to be paid by the Board into the Scottish Consolidated Fund.
- (5) Arrangements under subsection (4) may include provision for the making of adjustments to the amounts paid by the Board where any estimate made for the purposes of this section in respect of any year of assessment (whether the current year or a previous year) turns out to have been inaccurate.
- (6) Before making or modifying any arrangements under subsection (4) or (5), the Board shall consult with the Scottish Ministers.
- (7) In this section “income tax receipts”, in relation to any year of assessment, means so much as is referable to income tax charged for that year of any sums which, disregarding both—
  - (a) subsection (8), and
  - (b) any regulations or direction made or given by the Treasury,are sums that have to be paid into the Consolidated Fund under section 10 of the Exchequer and Audit Departments Act 1866 (gross revenues of Board’s department to be paid into that Fund after the making of specified deductions).
- (8) Sums required by the Board for making payments under this section shall be paid out of the gross revenues of the Board’s department; and, accordingly, those sums shall be treated as included in the amounts to be deducted from those revenues before they are paid into the Consolidated Fund under section 10 of the Exchequer and Audit Departments Act 1866.

## **78 Effect of tax reduction for Scottish taxpayers**

- (1) Where the basic rate for any year of assessment is reduced for Scottish taxpayers by a resolution of the Parliament, payments to the Board in accordance with this section shall be charged on the Scottish Consolidated Fund.

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- (2) The amounts of the payments to be made out of the Scottish Consolidated Fund under this section, and the times at which they are to be made, shall be determined by the Board and notified to the Scottish Ministers as soon as reasonably practicable after the passing of the resolution providing for the reduction to which they relate.
- (3) Any determination made by the Board under subsection (2) for any year of assessment shall be such as appears to the Board to be necessary for securing that in the course of that year amounts are paid to the Board which are equal in total to the amount estimated by the Board to represent the shortfall in income tax receipts for that year that is properly attributable to a resolution of the Parliament.
- (4) For the purposes of this section the Board shall make and maintain arrangements as to—
  - (a) the manner of estimating the shortfall in income tax receipts for any year of assessment that is properly attributable to a resolution of the Parliament,
  - (b) the circumstances and manner in which an estimate of that shortfall may be revised before or in the course of the year of assessment to which it relates,
  - (c) the manner of determining the amount of each payment to be made in respect of any such estimate, and
  - (d) the times at which, and manner in which, those amounts are to be paid to the Board.
- (5) Arrangements under subsection (4) may include provision for the making of adjustments to the amounts paid to the Board where any estimate made for the purposes of this section in respect of any year of assessment (whether the current year or a previous year) turns out to have been inaccurate.
- (6) Before making or modifying any arrangements under subsection (4) or (5), the Board shall consult with the Scottish Ministers.
- (7) In this section “income tax receipts” has the same meaning as in section 77.
- (8) The sums paid to the Board under this section shall be treated for the purposes of section 10 of the Exchequer and Audit Departments Act 1866 (payment, after the making of the specified deductions, of gross revenues into the Consolidated Fund) as comprised in their department’s gross revenues.

## **79 Supplemental powers to modify enactments**

- (1) The Treasury may by order make such modifications of any enactment as they consider necessary or expedient in consequence of—
  - (a) the fact that the Parliament has, or is to have, the power to pass a tax-varying resolution, or
  - (b) the fact (where it is the case) that the Parliament has passed such a resolution.
- (2) The Treasury may by order make provision—
  - (a) excluding the operation of section 73(2) in relation to any enactment, and
  - (b) making any such other modifications of any enactment as they consider necessary or expedient in connection with, or for the purposes of, any such exclusion.
- (3) Without prejudice to the generality of the powers conferred by the preceding provisions of this section, an order under this section may provide that, where any tax-

varying resolution relating to any year of assessment is passed, that resolution does not require any change in the amounts repayable or deductible under section 203 of the Income and Corporation Taxes Act 1988 (PAYE) between—

- (a) the beginning of that year, and
  - (b) such day falling after the passing of the resolution as may be specified in the order.
- (4) An order under this section may, to the extent that the Treasury consider it to be appropriate, take effect retrospectively from the beginning of the year of assessment in which it is made.
- (5) In this section “tax-varying resolution” has the same meaning as in section 74.

## **80 Reimbursement of expenses**

The Scottish Ministers may reimburse any Minister of the Crown or government department for administrative expenses incurred by virtue of this Part at any time after the passing of this Act by the Minister or department.