



Finance Act 2003

2003 CHAPTER 14

PART 9

MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

Administrative matters

202 Deduction of tax from interest: recognised clearing houses etc

- (1) Section 349 of the Taxes Act 1988 (payment of annual interest etc) is amended as follows.
- (2) In subsection (3) (cases where obligation to make interest payments net of tax does not apply), at the end insert “or—
 - (j) to interest paid by a recognised clearing house or recognised investment exchange carrying on business as provider of a central counterparty clearing service, in the ordinary course of that business, on margin or other collateral deposited with it by users of the service; or
 - (k) to interest treated by virtue of section 730A(2)(a) or (b) (repos) as paid by a recognised clearing house or recognised investment exchange in respect of contracts made by it as provider of a central counterparty clearing service.”.
- (3) In subsection (6) (definitions), at the appropriate places insert—

““central counterparty clearing service” means the service provided by a clearing house or investment exchange to the parties to a transaction where there are contracts between each of the parties and the clearing house or investment exchange (in place of, or as an alternative to, a contract directly between the parties);”;

““recognised clearing house” and “recognised investment exchange” have the same meaning as in the Financial Services and Markets Act 2000 (see section 285 of that Act);”.

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(4) This section applies in relation to payments of interest on or after 14th April 2003.

203 Authorised unit trusts: interest distributions paid gross

(1) Chapter 3 of Part 12 of the Taxes Act 1988 (unit trust schemes) is amended as follows.

(2) In section 468L(4) (obligation to deduct tax from interest distributions to be subject to provision made by sections 468M and 468N), for “sections 468M and 468N” substitute “section 468M”.

(3) For sections 468M and 468N substitute—

“468M Cases where no obligation to deduct tax

(1) Where an interest distribution is made for a distribution period to a unit holder, any obligation to deduct under section 349(2) does not apply to the interest distribution if—

- (a) the unit holder is a company or the trustees of a unit trust scheme, or
- (b) either the residence condition or the reputable intermediary condition is on the distribution date fulfilled with respect to the unit holder.

(2) Section 468O makes provision about the circumstances in which the residence condition or the reputable intermediary condition is fulfilled with respect to a unit holder.”.

(4) Section 468O (residence condition) is amended as follows.

(5) In subsection (1), for “sections 468M and 468N” substitute “section 468M”.

(6) After that subsection insert—

“(1A) For the purposes of section 468M, the reputable intermediary condition is fulfilled with respect to a unit holder if—

- (a) the interest distribution is paid on behalf of the unit holder to a company,
- (b) the company either is subject to the EC Money Laundering Directive, or to equivalent non-EC provisions, or is an associated company resident in a regulating country or territory of a company which is so subject, and
- (c) the trustees of the authorised unit trust have reasonable grounds for believing that the unit holder is not ordinarily resident in the United Kingdom.

(1B) For the purposes of subsection (1A)(b) above—

- (a) a company is subject to the EC Money Laundering Directive if it is a credit institution or financial institution as defined by Article 1 of Directive [91/308/EEC](#), as amended by Directive [2001/97/EC](#),
- (b) a company is subject to equivalent non-EC provisions if it is required by the law of any country or territory which is not a member State to comply with requirements similar to those which, under Article 3 of that Directive (as so amended), member States must ensure are complied with by credit institutions and financial institutions,

- (c) a company is to be treated as another's associated company if it would be so treated for the purposes of Part 11 (see section 416), and
 - (d) a country or territory is a regulating country or territory if it either is a member State or imposes requirements similar to those which, under Article 3 of that Directive (as so amended), member States must ensure are complied with by credit institutions and financial institutions.
- (1C) If Directive [91/308/EEC](#) ceases to have effect, or is further amended, the Treasury may by order make consequential amendments in subsections (1A) and (1B) above.”.
- (7) In the sidenote, insert at the end “and reputable intermediary condition”.
- (8) In section 468P(1) (residence declarations)—
- (a) for “468O” substitute “468O(1)”, and
 - (b) for “subsections (2) to (4)” substitute “subsection (2) or (3)”.
- (9) After section 468P insert—

“468PA Section 468O(1A): consequences of reasonable but incorrect belief

Where—

- (a) an interest distribution is made to a unit holder by the trustees of an authorised unit trust,
 - (b) the trustees, in reliance on the reputable intermediary condition being fulfilled with respect to the unit holder, do not comply with the obligation under section 349(2) to make a deduction from the interest distribution,
 - (c) that obligation would apply but for that condition being so fulfilled, and
 - (d) (contrary to the belief of the trustees) the unit holder is in fact ordinarily resident in the United Kingdom,
- section 350 and Schedule 16 have effect as if that obligation applied.

468PB Regulations supplementing sections 468M to 468PA

- (1) The Board may by regulations make provision for giving effect to sections 468M to 468PA.
- (2) The regulations may, in particular, include provision modifying the application of those sections in relation to interest distributions made to or received under a trust.
- (3) The regulations may, in particular, include provision for the giving by officers of the Board of notices requiring trustees of authorised unit trusts to supply information and make available books, documents and other records for inspection on behalf of the Board.
- (4) The regulations may—
 - (a) make provision in relation to times before they are made,
 - (b) make different provision for different cases, and

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- (c) make such supplementary, incidental, consequential or transitional provision as appears to the Board to be appropriate.”.
- (10) Section 98 of the Taxes Management Act 1970 (c. 9) (penalties: provisions requiring information etc in response to notices) is amended as follows.
- (11) In subsection (4A)(b), for “or (4D)” substitute “, (4D) or (4E)”.
- (12) After subsection (4D) insert—
- “(4E) A payment is within this subsection if—
- (a) it is an interest distribution made to a unit holder by the trustees of an authorised unit trust,
- (b) the trustees, in purported reliance on the reputable intermediary condition being fulfilled with respect to the unit holder, do not comply with the obligation under section 349(2) of the principal Act to make a deduction from the interest distribution,
- (c) that obligation would apply if that condition were not so fulfilled, and
- (d) the trustees did not believe that the unit holder was not ordinarily resident in the United Kingdom or could not reasonably have so believed (so that that condition was not so fulfilled).
- Expressions used in this subsection have the same meaning as in Chapter 3 of Part 12 of the principal Act.”.
- (13) In the first column of the Table, after the entry relating to regulations under section 431E(1) or 441A(3) of the principal Act, insert—
- “section 468P(6);
- regulations under section 468PB(3);”.
- (14) This section has effect in relation to interest distributions made on or after 16th October 2002.

204 Mandatory electronic payment by large employers

- (1) The Commissioners of Inland Revenue (“the Commissioners”) may make regulations requiring large employers, subject to such exceptions as may be specified, to use electronic means for the making of specified payments under legislation relating to any tax under the care and management of the Commissioners.
- (2) In subsection (1) “large employer” means a person paying PAYE income to 250 or more recipients.
- Regulations under this section may make provision as to the date or period by reference to which this is to be determined and the circumstances in which a person is to be treated as paying PAYE income to a recipient.
- (3) Regulations under this section may make provision—
- (a) as to conditions that must be complied with in connection with the use of electronic means for the making of any payment;
- (b) for treating a payment as not having been made unless conditions imposed by any of the regulations are satisfied;
- (c) for determining the time when payment is to be taken to have been made.

- (4) Regulations under this section may also make provision (which may include provision for the application of conclusive or other presumptions) as to the manner of proving for any purpose—
- (a) whether any use of electronic means for making a payment is to be taken as having resulted in the payment being made;
 - (b) the time of the making of any payment for the making of which electronic means have been used;
 - (c) any other matter for which provision may be made by regulations under this section.
- (5) Regulations under this section may—
- (a) allow any authorisation or requirement for which the regulations may provide to be given or imposed by means of a specific or general direction given by the Commissioners;
 - (b) provide that the conditions of any such authorisation or requirement are to be taken to be satisfied only where the Inland Revenue are satisfied as to specified matters.
- (6) Regulations under this section may contain provision—
- (a) requiring the Inland Revenue to notify persons appearing to them to be, or to have become, a person required to use electronic means for the making of any payments in accordance with the regulations;
 - (b) enabling a person so notified to have the question whether he is such a person determined in the same way as an appeal.
- (7) Regulations under this section may confer power on the Commissioners to give specific or general directions—
- (a) suspending, for any period during which the use of electronic means for the making of payments is impossible or impractical, any requirements imposed by the regulations relating to the use of such means;
 - (b) substituting alternative requirements for the suspended ones;
 - (c) making any provision that is necessary in consequence of the imposition of the substituted requirements.
- (8) The power to make provision by regulations under this section includes power—
- (a) to provide for a contravention of, or any failure to comply with, the regulations (a “default”) to attract a surcharge of a specified amount;
 - (b) to provide that specified enactments relating to penalties imposed for the purposes of any taxation matter within the care and management of the Commissioners (including enactments relating to assessments, review and appeal) apply, with or without modifications, in relation to surcharges under the regulations.
- (9) The regulations may specify the surcharge for each default as—
- (a) a specified percentage, depending on the circumstances but not exceeding 10%, of the amount of the payment to which the default relates, or
 - (b) a specified percentage, depending on the circumstances but not exceeding 0.83%, of the total amount of tax due for the accounting period, year of assessment or other specified period of twelve months during which the default occurred;
- but, in either case, they may specify £30 if it is more.

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- (10) Regulations under this section may—
- (a) make different provision for different cases;
 - (b) make such incidental, supplemental, consequential and transitional provision in connection with any provision contained in any of the regulations as the Commissioners think fit.
- (11) Regulations under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons.
- (12) In this section—
- “the Inland Revenue” means—
- (a) the Commissioners,
 - (b) any officer of the Commissioners, or
 - (c) any other person who for the purposes of electronic means of payment is acting under the authority of the Commissioners;
- “legislation” means any enactment, Community legislation or subordinate legislation;
- “specified” means specified by or under regulations under this section;
- “subordinate legislation” has the same meaning as in the Interpretation Act 1978 (c. 30).

205 Use of electronic means of payment under other provisions

- (1) Any power to make subordinate legislation for or in connection with the making of payments conferred in relation to a taxation matter on—
- (a) the Commissioners of Inland Revenue, or
 - (b) the Treasury,
- includes power to make any such provision in relation to the making of those payments as could be made in exercise of the power conferred by section 204.
- (2) Provision as to means of payment made in exercise of the powers conferred by section 204 or subsection (1) above has effect notwithstanding so much of any enactment or subordinate legislation as would otherwise allow payment to be made by any other means.
- (3) Expressions used in this section and section 204 have the same meaning in this section as in that section.
- (4) Nothing in this section shall be read as restricting the generality of the power conferred by section 204.

206 Admissibility of evidence not affected by offer of settlement etc

- (1) In section 105(1) of the Taxes Management Act 1970 (c. 9) (evidence in cases of fraudulent conduct), for paragraphs (a) and (b) and the word “that” preceding them substitute—
- “(a) that where serious tax fraud has been committed the Board may accept a money settlement and that the Board will accept such a settlement, and will not pursue a criminal prosecution, if he makes a full confession of all tax irregularities, or

- (b) that the extent to which he is helpful and volunteers information is a factor that will be taken into account in determining the amount of any penalty.”.
- (2) For the heading to that section substitute “**Admissibility of evidence not affected by offer of settlement etc**”.
- (3) In paragraph 3(1) of Schedule 18 to the Finance Act 1999 (c. 16) (which makes corresponding provision in relation to stamp duty), for paragraphs (a) and (b) substitute—
 - “(a) that where serious stamp duty fraud has been committed the Board may accept a money settlement and that the Board will accept such a settlement, and will not pursue a criminal prosecution, if he makes a full confession of all stamp duty irregularities, or
 - (b) that the extent to which he is helpful and volunteers information is a factor that will be taken into account in determining the amount of any penalty.”.
- (4) For the heading before that paragraph substitute “*Admissibility of evidence not affected by offer of settlement etc*”.
- (5) The above amendments have effect in relation to statements made, or documents produced, after the passing of this Act.

207 Consequential claims etc

- (1) In Part 4 of the Taxes Management Act 1970 (assessment and claims), after section 43B insert—

“43C Consequential claims etc

- (1) Where—
 - (a) a return is amended under section 28A(2)(b), 28B(2)(b) or 28B(4), and
 - (b) the amendment is made for the purpose of making good to the Crown any loss of tax attributable to fraudulent or negligent conduct on the part of the taxpayer or a person acting on his behalf,sections 36(3) and 43(2) apply in relation to the amendment as they apply in relation to any assessment under section 29.
- (2) Where—
 - (a) a return is amended under section 28A(2)(b), 28B(2)(b) or 28B(4), and
 - (b) the amendment is not made for the purpose mentioned in subsection (1)(b) above,sections 43(2), 43A and 43B apply in relation to the amendment as they apply in relation to any assessment under section 29.
- (3) References to an assessment in sections 36(3), 43(2), 43A and 43B, as they apply by virtue of subsection (1) or (2) above, shall accordingly be read as references to the amendment of the return.

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- (4) Where it is necessary to make any adjustment by way of an assessment on any person—
- (a) in order to give effect to a consequential claim, or
 - (b) as a result of allowing a consequential claim,
- the assessment is not out of time if it is made within one year of the final determination of the claim.

For this purpose a claim is not taken to be finally determined until it, or the amount to which it relates, can no longer be varied, on appeal or otherwise.

- (5) In subsection (4) above “consequential claim” means any claim, supplementary claim, election, application or notice that may be made or given under section 36(3), 43(2) or 43A (as it applies by virtue of subsection (1) or (2) above or otherwise).”
- (2) In section 43A of that Act (further assessments: claims etc), in subsection (2A) (elections to which extension of time limit does not apply) for the words from “an election under” to the end substitute “an election under—
- (a) section 257BA of the principal Act (election as to transfer of married couple’s allowance),
 - (b) Schedule 13B to that Act (elections as to transfer of children’s tax credit), or
 - (c) section 35(5) of the Taxation of Chargeable Gains Act 1992 (election for assets to be re-based to 1982).”
- (3) So far as it applies in relation to an amendment of a return, this section applies only where the notice of the amendment is issued after the day on which this Act is passed.